

**Supreme Court**

No. 2020-267-M.P.

In Re Second Request for Prison Census :  
Control In Response to COVID-19.

**ORDER**

This matter came before the Court in conference on December 17, 2020 on the Emergency Petition to Modify Bail Guidelines (petition) filed by the Rhode Island Public Defender. The petition seeks a temporary modification of the current Bail Guidelines to “require the setting of personal recognizance bail—including in alleged violations of probation—except in extraordinary circumstances that must be enumerated on the record.” The stated purpose of the petition is “to alleviate the serious health risks” during the novel coronavirus COVID-19 pandemic.

The Public Defender maintains that the “proposed remedy is narrowly targeted to pretrial detainees whose releases are imminent” and that it would not apply to individuals charged with violent offenses or those being held pursuant to Article I, § 9 of the Rhode Island Constitution.

At the direction of the Duty Justice, the Rhode Island Office of Attorney General (Attorney General) and Rhode Island Department of Corrections (DOC)

filed responses to the Public Defender’s petition. In its responsive filing, the Attorney General, while stating that it shares the concerns raised in the petition, nonetheless objects to modification of the Bail Guidelines.

The Attorney General argues that the relief the Public Defender is seeking is different from that sought in its earlier petition to this Court which, pursuant to a stipulation, resulted in a reduction of sentences and immediate release of more than four dozen inmates. The Attorney General agrees “that individuals who pose no threat to public safety and present a low risk of non-appearance should not be held.” It further represents that it is “the policy and practice of the Attorney General to consider the COVID-19 pandemic before asking that anyone be held without bail \* \* \* and when asking that bail be set.” The Attorney General characterizes the number of individuals who are being held at the Adult Correctional Institutions (ACI) as “minimal”—fewer than fifty, only four of whom are awaiting trial on charges classified by the DOC as “nonviolent” offenses.

In its responsive filing, the DOC recognizes that “the fewer inmates the ACI maintains \* \* \* the safer the inmates are from a COVID-19 outbreak within the secured facilities.” The DOC also, however, is “fully cognizant of the need to maintain public safety.” To that end the DOC has set forth with particularity the comprehensive testing and safety protocols in place at every DOC facility. It represents that all arrestees committed to the Intake Service Center (ISC) and the

women's facility are placed in quarantine for fourteen days and are tested for COVID-19 on day two and day ten. Additionally, the entire ISC population is tested on a weekly basis.

The above-named parties have conferred with the Duty Justice, and the Duty Justice has reported the results to the full Court. After consideration of the Public Defender's petition and supplemental memorandum, as well as the responses to the petition filed by the Attorney General and DOC, the Court issues the following order.

The COVID-19 pandemic has had a devastating impact on public health in all aspects of society, particularly in congregate settings such as prisons. Although all parties agree that reducing inmate population at the ISC would lessen the potential for infection and the spread of the virus at the ISC, it is not at all clear to this Court how a modification of the Bail Guidelines would significantly reduce the population awaiting trial.

The Bail Guidelines currently provide, with respect to misdemeanors and non-capital felony offenses, that "[a] person charged with any crime shall be released on his/her personal recognizance unless such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person, property, or the community." Bail Guidelines, Section II(1).

The guidelines further provide in Section II that:

“(3) Monetary conditions shall only be set when it is found that no other conditions will reasonably assure the defendant’s appearance in court or adequately protect the community. The judicial officer shall not impose a monetary condition for the sole purpose of detaining the person until trial. \* \* \*

“(4) Money bail or surety bail shall be imposed only upon one or more of the following conditions:

“(a) The Court is reasonably satisfied that the defendant will not appear as required.

“(b) The Court is reasonably satisfied that the defendant will engage in other criminal conduct dangerous to the person or property of others. \* \* \*

“(c) The defendant is presently released to the community on his/her own personal recognizance or is on probation or parole and is charged with a new violation of law, or the defendant has an outstanding warrant for failure to appear in any other court.\* \* \*”

Thus, in misdemeanor and non-capital felony cases, the defendant must be released on personal recognizance unless a judicial officer is reasonably satisfied that the defendant will either not appear as required, presents a menace to public safety, or is already on personal recognizance or probation and is charged with a new offense. If monetary bail or surety is imposed, the reasons must be set forth. Moreover, the Public Defender has not proffered any evidence suggesting that judicial officers do not take COVID-19 health risks into consideration when deciding whether to release defendants on personal recognizance or to set money bail. Further, we have not been presented with any cause to disagree with the Attorney General’s representation that it is the policy and practice of that department

to consider the pandemic before its requests that bail be set in any given case. Finally, we have every confidence that the Public Defender and the defense bar are emphasizing the pandemic at all arraignments and presentments.

All parties involved in this matter, as well as the Court, can agree that no individual awaiting trial should be held unnecessarily at the ACI. Health concerns, however, must be balanced against the risks to public safety posed by defendants who are likely to continue to engage in criminal conduct. Those decisions are best made by individual judicial officers on a case-by-case basis with due regard for all relevant factors, including the impact of the current pandemic—which we have every expectation they are currently doing. We also expect that the Attorney General, the Public Defender, the defense bar, and the Department of Corrections shall continue to work cooperatively to identify non-violent defendants awaiting trial who present a low risk of non-appearance and to public safety, with a view toward recommending their pretrial release on personal recognizance.

Accordingly, the Emergency Petition to Modify Bail Guidelines filed by the Public Defender is denied.

Entered as an Order of this Court on this 28<sup>th</sup> day of December 2020.

By Order,

                  /s/                  

Clerk