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Grand Juries to Resume Work Statewide

Supreme Court Order Phases Out Excludable Time for 2,700 Jailed Defendants

A Supreme Court [order issued today](#) provides a plan for the statewide return of grand juries, ending a delay that has affected thousands of defendants held in custody since the start of the Covid-19 health crisis.

The order also allows defendants detained more than 90 days to promptly receive discovery material from prosecutors and it ends pre-indictment excludable time in phases, prioritizing those defendants who have been detained the longest. The first phase ends excludable time on Jan. 15 for cases involving nearly 600 defendants who were detained prior to March 16.

While prosecutors typically have 90 days to bring a case to a grand jury, certain delays stop the clock and qualify as “excludable time.” Defendants have accrued more than 200 days of excludable time since in-person grand jury selections were suspended in March due to Covid-19. There are currently more than 2,700 defendants in county jails whose matters have not been brought to a grand jury.

“The number of unindicted detained defendants will continue to grow unless grand juries are established in all counties and enabled to perform their critical function effectively, efficiently, and consistent with public health requirements,” the Court wrote in its order.

Jurors in all counties have now been summoned for new grand jury selections.

The Supreme Court’s order provides options for prosecutors to seek indictment through both virtual and in-person sessions.

Virtual grand juries have been operating in Mercer and Bergen counties since June. Under the order, each county must equip new panels with the technology and training needed to convene in a virtual format by Dec. 1. Prosecutors may then choose to present cases before grand juries.

Alternatively, counties may convene in-person grand juries in Judiciary locations in a manner consistent with public health recommendations. As an additional option, county prosecutors may submit a proposal to conduct grand jury sessions in an outside facility if a Judiciary location is not available.

Also under the order, the Court is provisionally adopting a new rule, modeled after the federal court system, that allows for hearings that would afford eligible defendants the right to cross-examine witnesses and present evidence while requiring the state to demonstrate probable cause and present witness testimony. The hearings would not be held if an indictment is returned.

The plan protects the rights of the thousands of defendants who are detained and awaiting appearance before a grand jury and provides the state the opportunity to prepare and present cases. It also enables the criminal justice system to move forward in a way that protects the health of jurors, attorneys, witnesses and court staff.

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