

Public defenders threaten to sue Cuomo to allow vaccinations for prisoners

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BY ERIN DURKIN | 01/28/2021 11:00 AM EST



An employee leaves the Clinton Correctional Facility in Dannemora, N.Y. | Mark Lennihan, File/ AP Photo

Public defender groups are threatening to sue Gov. Andrew Cuomo if he does not allow prisoners to get the Covid-19 vaccine.

The state has [given the green light](#) for correction officers to get the vaccine, but people locked up in state prisons and local jails [are not eligible](#) — even as the virus rages inside prisons.

In a letter to Cuomo, Legal Aid and other organizations say the restrictions violate the state's legal obligation to protect the safety of people they hold in custody.

“This is deliberate indifference: New York has the ability to protect lives, but lacks the political will,” the attorneys wrote. “Your plan is costing lives as people are dying in New York State prisons from preventable COVID-19 illnesses.”

A judge [ordered the state](#) last week to administer the coronavirus vaccine to a 65-year-old inmate with chronic lung disease.

“We demand that you change this policy effective immediately and authorize vaccinations for people held in jail and prison custody. If you do not change your policy, we will have no choice but to seek legal remedies for our clients,” says the letter, also signed by Brooklyn Defender Services, Bronx Defenders, Neighborhood Defender Service of Harlem, New York County Defender Services and appellate lawyer groups.

The federal Centers for Disease Control and Prevention [recommends that](#) prisoners and staff get vaccinated at the same time, since they face similar risks. “Outbreaks in correctional and detention facilities are often difficult to control given the inability to physically distance, limited space for isolation or quarantine, and limited testing and personal protective equipment resources,” the CDC guidance says.

Thirty people have died in state prisons from Covid-19 — ten of them within the last month.

The threat comes on the same day Cuomo is facing damning allegations from Attorney General Tish James, first [reported by the New York Times](#), for dramatically undercounting Covid-19 deaths at nursing homes — another vulnerable population the governor has been accused of putting in harms way.

Outbreaks at [Elmira and Greene Correctional Facilities](#) grew from one case each as of Sept. 28 to 605 at Elmira and 162 at Greene by Dec. 2. Prisoners often sleep, eat, and shower in shared spaces, with little opportunity for distancing.

New York’s rules currently allow people 65 and older, health care workers, first responders, certain frontline workers including correction officers, and nursing home residents to get the vaccine. They also include homeless shelter residents, citing their high risk living in close quarters.

The state’s vaccination plan does not address when prisoners will be able to get the vaccine.

“There truly is no good rationale for it. There’s no health rationale. There’s no bioethical rationale,” Mary Lynne Werlwas, director of Legal Aid’s Prisoners’ Rights Project, said in an interview. “It’s clear to us that it’s just indifference to the lives of people who are incarcerated, who are predominantly Black and brown people.”

Neighboring states including [New Jersey](#) and [Massachusetts](#) have made prisoners eligible to get the vaccine because of the high risk of infection in correctional facilities, while Connecticut [says it will start](#) vaccinating incarcerated people and prison staff early next month.

But some leaders [have faced backlash](#) for putting prisons in a high priority group, with [opponents saying](#) they should not go before law-abiding citizens.

Cuomo’s office did not immediately respond to a request for comment.

Also Thursday, a group of 120 clergy members and religious leaders [asked Cuomo](#) to add prisoners to the current vaccination phase, known as 1B.

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