

**BILL NO. 35-0045**

**Thirty-Fifth Legislature of the Virgin Islands**

**February 27, 2023**

An Act amending title 5 Virgin Islands Code, chapter 407 relating to eligibility for parole by adding section 4601a to establish Medical Parole as a basis for parole; further amending title 5 Virgin Islands Code, chapter 407 by adding section 4601b to establish Geriatric Parole as a basis for parole and for other related purposes

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**PROPOSED BY:** Franklin D. Johnson

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*Be it enacted by the Legislature of the Virgin Islands:*

**SECTION 1.** Title 5 Virgin Islands Code, chapter 407 is amended by adding sections 4601a and 4601b to read as follows:

**“§ 4601a. Medical parole**

(a) Definitions. As used in this section, the following terms have the following meanings as set forth in this subsection.

(1) “Terminally ill prisoner” means a prisoner who has an incurable condition caused by illness or disease that is expected, within a reasonable degree of medical certainty, to produce death within 18 months and who does not constitute a danger to self or the community.

(2) “Permanently incapacitated prisoner” means a prisoner who, by reason of an existing physical or mental condition that is not terminal, is permanently and

1           irreversibly physically incapacitated and who has such limited physical strength or  
2           capacity that the prisoner poses an extremely low risk of physical threat to self or  
3           the community.

4           (3) “Medical documentation” means all communications written, printed  
5           recorded or stored in any form about a person’s medical or mental health care,  
6           including but not limited to, information concerning a prisoner’s medical history  
7           and reports of examinations from a duly licensed physician providing a diagnosis  
8           of the condition, disease or syndrome that afflicts the prisoner; a prognosis  
9           concerning the likelihood of the prisoner’s recovery from the condition, disease or  
10          syndrome; a description of a prisoner’s physical incapacity, if applicable; and a  
11          prisoner’s records from a hospital, clinic or other healthcare facility.

12          (b) A terminally ill prisoner or a permanently incapacitated prisoner may be  
13          considered for medical parole by the Board of Parole.

14          (c) This section does not apply to a prisoner convicted of first-degree murder.

15          (d) The Bureau of Corrections shall establish an application for medical parole  
16          which must include the prisoner’s plan for residency and medical care if medical parole  
17          is granted by the Board of Parole.

18          (e) The Medical Director of the Bureau of Corrections shall identify terminally  
19          ill and permanently incapacitated prisoners for medical parole based on medical  
20          documentation. No later than 30 days after receipt of all necessary medical  
21          documentation that a prisoner is terminally ill or permanently incapacitated, the Medical  
22          Director of the Bureau of Corrections shall forward an application and the medical  
23          documentation to the Board of Parole for consideration for medical parole. The Board  
24          of Parole shall, through the Director of the Bureau of Corrections, make a decision  
25          regarding a prisoner’s eligibility for medical parole no later than 60 days after receiving  
26          the application and medical documentation from the Bureau of Corrections. The prisoner

1 retains the option of filing a Petition for Writ of Habeas Corpus if the Board of Parole  
2 does not act timely upon the application.

3 (f) A prisoner or a family member or a designee may request consideration for  
4 medical parole independently by submitting an application and medical documentation  
5 to the Bureau of Corrections. The Bureau of Corrections may require independent testing  
6 and examination by a physician to confirm a prisoner's diagnosis and prognosis. No later  
7 than 30 days after receipt of all necessary medical documentation to establish that a  
8 prisoner is terminally ill or permanently incapacitated, the Bureau of Corrections shall  
9 forward an application and the medical documentation to the Board of Parole for  
10 consideration for medical parole. The Board of Parole shall, through the Director of the  
11 Bureau of Corrections, make a decision regarding a prisoner's eligibility for medical  
12 parole no later than 60 days after receiving the application and medical documentation  
13 from the Bureau of Corrections.

14 (g) A prisoner who has an immigration detainer may be considered for medical  
15 parole.

16 (h) The authority to grant medical parole rests solely with the Board of Parole.  
17 This section does not grant a right or entitlement to medical parole.

18 (i) The provisions for medical parole set forth in this section are in addition to  
19 any other form of release for which a prisoner may be eligible.

20 **§ 4601b. Geriatric parole**

21 (a) Definitions. As used in this section, the following terms have the following  
22 meanings as set forth in this subsection.

23 (1) "Necessary functions of daily living" means eating, breathing,  
24 toileting, walking or bathing.

25 (2) "Geriatric prisoner" means a prisoner who is 65 years of age or older  
26 and who suffers from a chronic life-threatening illness, or serious age-related

1           medical condition, who requires assistance with necessary daily life functioning  
2           and poses a low risk of danger to the community and who does not constitute a  
3           danger to self.

4           (b) Notwithstanding any other law to the contrary, a geriatric prisoner may be  
5           considered for geriatric parole by the Board of Parole.

6           (c) The Bureau of Corrections shall establish an application for geriatric parole  
7           which must include the prisoner's plan for residency and medical care if geriatric parole  
8           is granted by the Board of Parole.

9           (d) The Medical Director of the Bureau of Corrections shall identify geriatric  
10          prisoners for geriatric parole based on medical documentation. If the Medical Director  
11          of the Bureau of Corrections determines that a prisoner may be eligible for geriatric  
12          parole, the Medical Director, through the Director of the Bureau of Corrections, shall  
13          forward an application and the medical documentation to the Board of Parole for  
14          consideration of the prisoner for geriatric parole.

15          (e) A prisoner, a family member or a designee may request consideration for  
16          geriatric parole independently by submitting an application and medical documentation  
17          to the Bureau of Corrections. The Bureau of Corrections may also require independent  
18          testing and examination by a physician to confirm a prisoner's diagnosis and prognosis.  
19          The Bureau of Corrections shall forward an application for geriatric parole and the  
20          medical documentation received from a prisoner or the prisoner's family member or  
21          designee to the Board of Parole for consideration of the prisoner for geriatric parole.

22          (f) In determining whether to grant geriatric parole, age of the prisoner must not  
23          be the primary factor. The Board of Parole shall consider the following factors:

- 24                   (1) the sentence imposed on prisoner and percentage of total time served;  
25                   (2) the severity of illness, disease or infirmities;  
26                   (3) the age of prisoner;

1 (4) the prisoner's institutional behavior;

2 (5) the prisoner's criminal history; and

3 (6) the prisoner's level of danger to self or the community.

4 (g) The authority to grant geriatric parole rests solely with the Board of Parole.

5 This section does not grant any right or entitlement to geriatric parole.

6 (h) The provisions for geriatric parole set forth in this section are in addition to  
7 any other form of release for which a prisoner may be eligible.

### 8 **Bill Summary**

9 This bill establishes medical parole and geriatric parole as types of parole that the Board  
10 of Parole may consider in determining whether or not to grant parole to a prisoner. Terminally  
11 ill prisoners or permanently incapacitated prisoners would be eligible to apply for medical  
12 parole, either by an application from the Bureau of Corrections, the prisoner, a family member  
13 or a designee. A prisoner convicted of First-Degree Murder is not eligible for medical parole.  
14 A geriatric prisoner who is 65 years of age or older and who suffers from a chronic life-  
15 threatening illness or serious age-related medical condition, would be eligible for geriatric  
16 parole.

17 The Bureau of Corrections spends a significant amount of funds caring for terminally ill  
18 prisoners, permanently incapacitated prisoners and geriatric prisoners who have chronic life-  
19 threatening illnesses or serious age-related medical conditions. This bill allows the Board of  
20 Parole to consider medical parole or geriatric parole for a prisoner who poses a low risk of  
21 danger to the community and who does not constitute a danger to self. The Bureau of  
22 Corrections would be required to establish an application for medical parole and an application  
23 for geriatric parole which would include a prisoner's plan for residency and medical care if  
24 such parole is granted by the Board of Parole. Medical parole and geriatric parole will be in  
25 addition to other forms of release and will not be a right.

26 **BR23-0359/February 7, 2023/PFA**