

s/AWCJR

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
TO BILL NO. 35-0045
Offered by Senator Franklin D. Johnson**

Bill No. 35-0045 is amended by striking the entire language contained therein and inserting new language to read as follows:

“An Act amending title 5 Virgin Islands Code, chapter 407 relating to eligibility for parole release by adding section 4607 to establish Medical Parole Release, Geriatric Parole Release, and Non-Medical Geriatric Parole Release, and for other related purposes

SECTION 1. Title 5 Virgin Islands Code, chapter 407 is amended as follows:

- (a) In the chapter heading, after “Parole” insert “and Parole Release”.
- (b) Insert section 4607 to read:

“§ 4607. Parole Release

Terminally ill, permanently incapacitated, or geriatric prisoners will be eligible to apply for administrative release without post-release supervision, either by an application from the Bureau of Corrections, the prisoner, a family member, or a designee if it is determined that the prisoner no longer poses a threat to the community or themselves.

(a) **Definitions.** As used in this section, the following terms have the following meanings:

- (1) “Geriatric parole release” means the administrative release from prison of a geriatric prisoner without post-release supervision.
- (2) “Geriatric prisoner” means a prisoner who is 65 years of age or older and who suffers from a chronic life-threatening illness or serious age-related medical

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

(3) “Medical documentation” means all communications written, printed recorded or stored in any form about a person’s medical or mental health care, including information concerning a prisoner’s medical history and reports of examinations from a duly licensed physician providing a diagnosis of the condition, disease or syndrome that afflicts the prisoner; a prognosis concerning the likelihood of the prisoner’s recovery from the condition, disease or syndrome; a description of a prisoner’s physical incapacity, if applicable; and a prisoner’s records from a hospital, clinic or other healthcare facility.

(4) “Medical parole release” means the administrative release from prison of a terminally ill or permanently incapacitated prisoner without post-release supervision.

(5) “Non-medical geriatric prisoner” means a prisoner who is 65 years of age or older and who does not suffer from a chronic life-threatening illness, or serious age-related medical condition, who does not require assistance with necessary daily life functioning and who poses a low risk of danger to the community and who does not constitute a danger to self. The prisoner has completed available training and presented him or herself as a prisoner who has been rehabilitated.

(6) “Non-medical geriatric parole release” means the administrative release of a geriatric prisoner from prison without post-release supervision.

(7) “Permanently incapacitated prisoner” means a prisoner who, by reason of an existing physical or mental condition that is not terminal, is permanently and irreversibly physically incapacitated and who has such limited physical strength or capacity that the prisoner poses an extremely low risk of physical threat to self or the community.

(8) “Terminally ill prisoner” means a prisoner who has an incurable condition caused by illness or disease that is expected to produce death within 18 months, within a

reasonable degree of medical certainty, and who does not constitute a danger to self or the community.

(b) **Medical parole release.** A terminally ill or permanently incapacitated prisoner may be considered for medical parole release by the Board of Parole. However, this section does not apply to a prisoner who was convicted and sentenced to a term of imprisonment without the possibility of parole.

(1) The Bureau of Corrections shall establish an application for medical parole release which must include the prisoner's plan for residency and medical care if the Board of Parole grants medical parole release.

(2) The Medical Director of the Bureau of Corrections shall identify terminally ill and permanently incapacitated prisoners for medical parole release based on medical documentation. No later than 30 days after receipt of all necessary medical documentation that a prisoner is terminally ill or permanently incapacitated, the Medical Director of the Bureau of Corrections, through the Director of the Bureau of Corrections, shall forward an application and the medical documentation to the Board of Parole for consideration for medical parole release. The Board of Parole shall decide a prisoner's eligibility for medical parole release no later than 60 days after receiving the application and medical documentation from the Bureau of Corrections. The prisoner retains the option of filing a Petition for Writ of Habeas Corpus if the Board of Parole does not act timely upon the application.

(3) A prisoner or a prisoner's family member or designee may request consideration for medical parole release independently by applying and submitting medical documentation to the Bureau of Corrections. The Bureau of Corrections may require independent testing and examination by a physician to confirm a prisoner's diagnosis and prognosis. No later than 30 days after receipt of all necessary medical documentation to establish that a prisoner is terminally ill or permanently incapacitated,

the Bureau of Corrections shall forward an application and the medical documentation to the Board of Parole for consideration for medical parole release. The Board of Parole shall decide a prisoner's eligibility for medical parole release no later than 60 days after receiving the application and medical documentation from the Bureau of Corrections.

(4) A prisoner who has an immigration detainer may be considered for medical parole release.

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

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

(c) **Geriatric parole release.** Notwithstanding any other law to the contrary, a geriatric prisoner may be considered for geriatric parole release by the Board of Parole.

(1) The Bureau of Corrections shall establish an application for geriatric parole release which must include the prisoner's plan for residency and medical care if the Board of Parole grants the geriatric parole release.

(2) The Medical Director of the Bureau of Corrections shall identify geriatric prisoners for geriatric parole release based on medical documentation. If the Medical Director of the Bureau of Corrections determines that a prisoner may be eligible for geriatric parole release, the Medical Director, through the Director of the Bureau of Corrections, must forward an application and the medical documentation to the Board of Parole for consideration of the prisoner for geriatric parole release.

(3) A prisoner, or a prisoner's family member or a designee may request consideration for geriatric parole release independently by applying and submitting medical documentation to the Bureau of Corrections. The Bureau of Corrections may also require independent testing and examination by a physician to confirm a prisoner's diagnosis and prognosis. The Bureau of Corrections shall forward an application for

geriatric parole release and the medical documentation received from a prisoner or the prisoner's family member or designee to the Board of Parole for consideration of the prisoner for geriatric parole release.

(4) In determining whether to grant geriatric parole, the prisoner's age may not be the primary factor. The Board of Parole shall consider the following factors:

(A) The sentence imposed on the prisoner and the percentage of total time served;

(B) The severity of illness, disease, or infirmities;

(C) The prisoner's age;

(D) The prisoner's institutional behavior;

(E) The prisoner's criminal history; and

(F) The prisoner's level of danger to self or the community.

(5) The authority to grant geriatric parole release rests solely with the Board of Parole. This section does not grant any right or entitlement to geriatric parole release.

(d) **Non-medical geriatric parole release.** Notwithstanding any other law to the contrary, a non-medical geriatric prisoner may be considered for non-medical geriatric parole release by the Board of Parole.

(1) The Bureau of Corrections shall establish an application for non-medical geriatric parole release which must include the prisoner's plan for residency if granted non-medical geriatric parole release by the Board of Parole.

(2) The Director of the Bureau of Corrections shall forward an application and the medical documentation to the Board of Parole for consideration of the prisoner for non-medical geriatric parole release.

(3) A prisoner, or a prisoner's family member or a designee may request consideration for non-medical geriatric parole release independently by applying to the Bureau of Corrections. The Bureau of Corrections shall forward an application for non-

medical geriatric parole release and the documentation from a prisoner or a prisoner's family member or designee to the Board of Parole for consideration of the prisoner for non-medical geriatric parole release.

(4) In determining whether to grant geriatric parole release, age of the prisoner may not be the primary factor. The Board of Parole shall consider the following factors:

(A) The sentence imposed on the prisoner and percentage of total time served;

(B) The ability of the prisoner to contribute as a private citizen in the community;

(C) The prisoner's age;

(D) The prisoner's institutional behavior;

(E) The prisoner's criminal history;

(F) The prisoner must be considered low risk as determined by a forensic psychiatrist or psychologist; and

(G) The prisoner's level of danger to self and the community.

(5) The authority to grant non-medical geriatric parole release rests solely with the Board of Parole. This section does not grant any right or entitlement to non-medical geriatric parole release. Prisoners do not have the right to appeal the decision of the Board of Parole. Prisoners have the right to submit a new application if non-medical geriatric parole release is not granted.

(6) A prisoner who is sentenced to imprisonment on or after the prisoner's 62nd birthday shall serve at least 40% of the sentence imposed by the presiding judicial officer before the prisoner is eligible for consideration or release under this section.

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

BILL SUMMARY

This bill establishes medical parole release, geriatric parole release, and non-medical geriatric parole release as types of parole releases that the Board of Parole may consider. Terminally ill prisoners, permanently incapacitated, or geriatric prisoners would be eligible to apply for parole release, either by an application from the Bureau of Corrections, the prisoner, a family member, or a designee. A prisoner convicted of a crime for which the sentence imposed is without the possibility of parole is not eligible for any parole release programs. The Bureau of Corrections spends a significant amount of funds caring for terminally ill prisoners, permanently incapacitated prisoners, and geriatric prisoners, some of whom have chronic life-threatening illnesses or serious age-related medical conditions. This bill allows the Board of Parole to consider medical parole release, geriatric parole release, or non-medical geriatric parole release for prisoners who pose a low risk of danger to the community and who does not constitute a danger to themselves. The Bureau of Corrections would be required to establish an application for the three types of parole release which would include a prisoner's plan for residency and medical care if such parole release is granted by the Board of Parole. Medical parole release, geriatric parole release, and non-medical geriatric parole releases are in addition to other forms of release and will not be a right.””

Amendment No. 35-415/ August 24, 2023/ PFA