

***Testimony of Wynnie Testamark, Director
Virgin Islands Bureau of Corrections
Committee on Homeland Security, Justice & Public Safety
35th Legislature of the Virgin Islands
September 12, 2023***

Good morning, Chairman Gittens, distinguished Members of the Committee on Homeland Security, Justice & Public Safety, other distinguished Members of the 35th Legislature of the Virgin Islands, and our listening and viewing audience.

I am Wynnie Testamark, Director of the Bureau of Corrections (“Bureau” or “BOC”). On behalf of the dedicated staff at the Bureau, thank you for the opportunity to provide testimony on Bill Number 35-0045, which would amend the Virgin Islands Code to allow for medical and geriatric parole.

As requested, I will also give an update on the status of inmates in BOC custody who are housed at off-island facilities, particularly those at the Citrus County Detention Facility in Lecanto, FL. Together with members of our medical and security team, I visited and spoke with those inmates last week. During our trip, we also visited Virgin Islands inmates at the Tallahatchie County Correctional Facility in Mississippi. In April, we visited inmates in at three prisons in Virginia: Red Onion, Wallens Ridge, and Keen Mountain.

At the Bureau’s budget hearing last month, I gave detailed testimony about the Bureau’s accomplishments over the last fiscal year and discussed our goals, objectives, and vision for the future. I have attached a copy of my August 8th testimony before the Committee on Budget, Appropriations, and Finance, and I incorporate it by reference into my testimony.

Joining me today are members of the Bureau’s management team who can respond to inquiries that fall within their areas of responsibility.

A. The Bureau of Corrections Cannot Support Bill No. 35-045 In Its Current Form

While the Bureau generally agrees that prisoners who are terminally ill, permanently incapacitated, or who are 65 years or older and suffering from a life-threatening illness should be considered for parole under the right circumstances, it cannot support Bill No. 35-0045 in its current form. Among the concerns that the Bureau has about Bill 35-0045 as currently written are the following:

1. it is internally inconsistent
 - for example, the Bill mandates that the Bureau verify a “plan for residency” for all applicants for medical parole, including undocumented inmates with an immigration hold, even though undocumented inmates cannot legally have “residency” in the United States;
 - and it states that inmates can petition the courts for a writ of *habeas corpus* if the Parole Board does not act timely on their application for medical or geriatric parole, but Virgin Islands courts have recognized that inmates do not have any right to parole, which suggests that habeas corpus relief may be inappropriate.
2. it conflicts with other statutes as well as decisions of the Virgin Islands courts;
3. it takes away the Director’s discretion to recommend inmates to the Parole Board;
4. it undermines the authority of the Governor regarding commutations and pardons;
5. it would make most inmates 65 years or older eligible for geriatric parole, including those convicted of first-degree murder;
 - As of August 17, there are 19 inmates in BOC custody who are 65 years or older. All but 6 would be eligible to apply for geriatric parole today were they to have a chronic illness requiring assistance with the activities of daily living;

- with only one exception all inmates sentenced to life without parole for first degree murder would be eligible to apply for geriatric parole today, using this same standard;
 - by contrast, only 3 of these inmates would be eligible for medical parole today, if they were terminally ill or permanently incapacitated; but all 3 could apply for early or regular parole under existing law;¹
6. the Bill also would produce unintended and unjust results;
- an inmate with a “chronic, life-threatening illness” sentenced at 64 years of age to life without parole for committing murder theoretically would be eligible to apply for geriatric parole as soon as he turns 65;
 - but an inmate sentenced at the same age with the same condition who used a gun to rob a store – but killed no one – could not apply for either medical or geriatric parole until he turns 79, if he receives mandatory minimum 15-year sentence under 14 V.I.C. § 2254(b);
 - as shown in the attached Table, all inmates 65 years or older convicted of first degree murder – except one – would be eligible for geriatric parole, while 5 inmates given mandatory minimum sentences for sex crimes or firearm offenses would not.

¹ See Table (attached).

B. Depending On Their Sentence, Inmates Suffering From A Serious Medical Condition Already Can Petition the Parole Board for Early Release if They Have Been Recommended for Parole And Have Served One-Third of Their Sentence; But Bill 35-0045 Takes Away These Protections for Medical & Geriatric Parole

To appreciate the Bureau's concerns with Bill 35-0045, it is important to recognize what current law already provides. An inmate suffering from a serious medical condition can already petition the Parole Board for early release once he has served one-third of his sentence but only if: 1) such parole is not prohibited by law; 2) he has received the required recommendation from the Director and a psychiatrist or psychologist; and 3) "unusual or extenuating circumstances" justify such action.² Under existing law, the Parole Board must approve a petition for early parole by a two-thirds (2/3) vote.

Bill 35-0045 removes many of these protections. For example, an inmate must now serve at least one third (1/3) of his sentence before he can apply for early parole.³ The only way to be released sooner is to petition the Governor for a commutation or pardon. This Bill would undermine the Governor's authority by giving the Parole Board power to release inmates on medical or geriatric parole before they have served one third (1/3) of their sentence. And there is no requirement that such release be approved by a two-thirds vote.

Existing law also allows for early parole under extenuating circumstances – such as for inmates suffering from a serious medical condition – only if parole is not otherwise "prohibited

² *Martinez v. Gov't of the Virgin Islands*, 2016 V.I. LEXIS 201 at *15 (V.I. Super. Dec. 12, 2016).

³ "Most states require a minimum of 10 years of an inmate's sentence to be served before being eligible for consideration for geriatric parole. California sets the minimum length of time served at 25 years and states such as Mississippi and Oklahoma provide a term of years or a certain percentage of the sentence to be served." National Conference of State Legislatures, "State Medical and Geriatric Parole Laws," (updated August 27, 2018) (<https://www.ncsl.org/civil-and-criminal-justice/state-medical-and-geriatric-parole-laws>).

by law.”⁴ Sections of the Virgin Islands Code that provide for mandatory minimum sentences for firearms offenses⁵ and aggravated rape,⁶ currently prohibit parole or any form of release until an inmate serves the mandatory minimum portion of his sentence. But Bill 35-0045 creates a conflict with these existing provisions. Unlike medical and geriatric parole statutes elsewhere, Bill 35-0045 would allow inmates to apply for geriatric parole regardless of their offense or sentence.

For instance, the Bill reads on page 4, “Notwithstanding any other law to the contrary, a geriatric prisoner may be considered for parole by the Board of Parole.” But the Virgin Islands firearm statute already provides that, “Notwithstanding any other provision of law,” no person convicted of a specified firearms offense “shall be eligible for probation, parole, or any other form of release prior to serving the mandatory minimum term of imprisonment.” 14 V.I.C. § 2254(b). The aggravated rape statute contains similar language. Enacting this Bill in its current form could potentially result in the unintended repeal of certain mandatory minimum sentencing requirements in the Virgin Islands Code for those inmates who are eligible for geriatric parole.

Finally, under current law, the Director of the Bureau of Corrections and a qualified psychiatrist or psychologist act as gatekeepers for all parole applications before they go to the Parole Board. As the Virgin Islands Supreme Court wrote, “the statute expressly provides that

⁴ *Martinez*, 2016 V.I. LEXIS 201 at *15.

⁵ *See, e.g.*, 14 V.I.C. § 2254(b).

⁶ *See, e.g.*, 14 V.I.C. § 1700(c).

an inmate may not even be considered for parole without the recommendation of the Director of the Bureau of Corrections.”⁷ The Superior Court reiterated this statement of law in July.⁸

Bill No. 35-0045 removes this essential gatekeeper function. It would allow the Bureau’s Medical Director, the inmate, or his family to provide documentation to the Parole Board without a recommendation from the Director or a qualified psychiatrist or psychologist. It eliminates the discretion currently granted the Director to withhold parole applications deemed frivolous or without merit, thereby removing his/her input from the medical or geriatric parole decision. As agency head, the Director of the Bureau of Corrections may have critical information bearing on a parole decision that may not be available either to the Medical Director, the inmate, or the Parole Board for that matter. Without a psychiatric evaluation, for example, neither the Medical Director nor the Parole Board could determine to a reasonable certainty whether the inmate poses a risk to the community. Removing the Director and the psychiatrist as gatekeepers creates needless risks to public safety.

Therefore, while its objectives are admirable, Bill 3-0045 needs substantial revision to be workable. In drafting those revisions, all stakeholders should be consulted including the Attorney General, victims’ advocates, the office of probation, and the courts.

⁷ *Meral Smith v. Employees of the Bureau of Corrections*, 64 V.I. 383, 388 (V.I. 2016) (“In this case, the Director of the Bureau of Corrections, by returning Smith’s early parole application unanswered, clearly exercised his discretion to not recommend him for parole. Since . . . early parole is a privilege and not a right, we conclude that Smith failed to establish that his right to a *writ of mandamus* is clear and indisputable.”).

⁸ *Order Denying Petition for Writ of Habeas Corpus, Shevron Percival v. Government of the Virgin Islands*, Case No. SX-2022-MC-0036 (V.I. Super. July 24, 2023) (“eligibility for parole is discretionary, and such discretion lies with the BOC Director”) (citing *Smith v. Employees*).

C. Status of Off-Island Inmates, Particularly Those at the Citrus County Detention Facility

Turning to the issue of inmates housed at off-island facilities, last week my team and I visited with Virgin Islands inmates at the Citrus County Detention Facility in Florida (“Citrus County”) and the Tallahatchie County Correctional Facility in Mississippi. We spoke with all 82 inmates who were willing to meet with us. We listened to their concerns, reviewed their timesheets where necessary, and verified that they were receiving proper care and treatment. They all prefer to be home, of course, but the correctional facilities in the Virgin Islands cannot currently accommodate them.

I also made it a point to ascertain that our inmates are free to participate in vocational and educational programming at each facilities. I met with the Director of Programming for Citrus County, reviewed the vocational and educational courses offered, and scrutinized the list of inmates from the Virgin Islands who had taken those courses. I wanted to ascertain for myself whether the vocational and educational requirements of section 4503(c) were being met. Based on my personal observation and review, I can confirm that the placement of Virgin Islands offenders at these off-island facilities complies with the requirements of section 4503(c) of title 5.

Mr. Chairman, you will recall that in my response to your correspondence of May 24, 2023,⁹ I noted that the Bureau has housed inmates at Citrus County from before my tenure began. My research shows that Virgin Islands inmates have been housed at Citrus County since as early as 2011. But in December 2019, less than a year into my tenure, I insisted that all

⁹ For ease of reference, I have attached a copy of my correspondence dated July 21, 2023, to this testimony.

subsequent contracts with Citrus County include language mandating that “work, educational, and vocational programs to reduce idleness and increase marketable skills be made available to USVI inmates.”¹⁰

Historically, Virgin Islands inmates at facilities like Citrus County have raised several arguments to being housed off-island. They have argued that being housed at off-island facilities like Citrus County violated section 4503(c) because:

- a. the vocational and educational offerings were not the same as those at John Bell; or
- b. the facility was not a prison but a detention facility; or
- c. the inmate was transferred to the off-island facility without a pre-transfer hearing.

Each of these arguments has been considered and rejected by Virgin Islands courts.¹¹ Virgin Islands cases establish that 5 V.I.C. § 4503(c) does not require that the programs available at Citrus County or other off-island facilities be the same as those available at John Bell. Nor does § 4503(c) require that Virgin Islands inmates on the mainland be held in a prison rather than a detention center. Furthermore, our courts have made it clear that an inmate is not entitled to a hearing before his transfer to a mainland facility. To satisfy § 4503(c), “BOC must merely determine that the new facility offers some kind of education or vocational programs,” which we have done.¹²

¹⁰ Professional Services Contract P010BOCT21, Addendum 1 (entered Dec. 2019).

¹¹ *See, e.g., Simon v. Mullgrav*, 2018 V.I. LEXIS 97 at *20-21 (V.I. Super. Sep. 19, 2018) (collecting cases).

¹² *See, e.g., Simon v. Mullgrav*, 2018 V.I. LEXIS 97 at *20-21.

Since my tenure as Director began, I have made certain that off-island facilities where our inmates are housed provide adequate education and vocational programs, consistent with Virgin Islands law. I have visited each facility in Florida, Mississippi, and Virginia at least twice since 2019. Last week I visited Citrus County for the third time. On each visit, my team and I have gone the extra mile to ensure that our inmates were treated fairly, that their needs were met, their concerns addressed, and that the requirements of Virgin Islands law are carefully followed.

Conclusion

Mr. Chairman, thank you for giving me the opportunity to appear before the Committee today. My team and I stand ready to answer your questions.

Inmates in BOC Custody 65 Years or Older Potentially Eligible for Geriatric or Medical Parole Under Bill No. 35-0045

Inmate Initials	Age	Years in Custody	Top Charge	Sentence	Held At	Regular Parole? ¹	Geriatric Parole? ²	Medical Parole? ³
B., W.	74	50	1st Degree Murder	8 consecutive life sentences (240 years)	CCDF	N	Y	N
B., D.	66	42	1st Degree Murder	Life without parole	CCDF	N	Y	N
C. E.	68	2	Involuntary Manslaughter	5 years	JABACF	Y	Y	Y
C., D.	65	28	1st Degree Murder	Life without parole	CCDF	N	Y	N
D., S.	70	34	1st Degree Murder	Life without parole + 5 years	JABCF	N	N	N
G., J.	65	18	1st Degree Rape; Kidnapping for Rape	198 years	WRSP	N	N	N
G., B.	66	50	1st Degree Murder	8 consecutive life sentences (240 years)	CCDF	N	Y	N
G., R.	66	16	1st Degree Aggravated Rape	155 years	CCDF	N	N	N
G., L.	68	47	1st Degree Murder	Life without parole	JABACF	N	Y	N
H., T.	69	13	1st Degree Aggravated Rape	30 years	KMCC	N	N	N
H., J.	79	34	1st Degree Murder	Life without parole	JABACF	N	Y	N
J., T.	71	9	1st Degree Aggravated Rape	50 years	CCDF	N	N	N
L., A.	65	41	1st Degree Murder	Life without parole	CCDF	N	Y	N
R., P.	66	32	1st Degree Murder	Life without parole	CCDF	N	Y	N
R., C.	72	6	Attempted Murder / Firearm	15 years	JABACF	N	N	N
S., M.	72	50	1st Degree Murder	8 consecutive life sentences (240 years)	CCDF	N	Y	N
S., V.	65	8 months	1st Degree Murder	Life without parole	JABACF	N	Y	N
W., R.	65	34	2nd Degree Murder	60 years	JABACF	Y	Y	Y
W., W.	71	1 year 10 months	Poss. Of Marijuana w intent to distribute	5 years	JABACF	Y	Y	Y

¹ Eligibility for early or regular parole as of today under existing law, 5 V.I.C. § 4601.

² Eligibility for geriatric parole as of today under Bill No. 35-0045 as currently written, assuming inmate afflicted with chronic, life-threatening illness requiring assistance with activities of daily living.

³ Eligibility for medical parole as of today under Bill No. 35-0045 as currently written, assuming inmate is terminally ill, or permanently incapacitated.



BUREAU OF CORRECTIONS

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July 21, 2023

VIA EMAIL: senatorgittens@legvi.org

Honorable Kenneth L. Gittens, Chairperson
Committee on Homeland Security, Justice & Public Safety
3022 Golden Rock
Christiansted, VI 00820

Re: Response to Your Inquiry Regarding Educational & Vocational Programming at Citrus County Detention Facility

Dear Senator Gittens:

The Bureau of Corrections ("Bureau" or "BOC") has reviewed your correspondence of May 24, 2023, concerning allegedly inadequate vocational and educational programs at the Citrus County Detention Facility ("CCDF") in Lecanto, Florida where 83 Virgin Islands inmates currently are housed. Your correspondence arose from an email you received from Isiah Lincoln, purporting to give a first-hand account of the alleged dearth of programming at CCDF.

But after a diligent search of our records and those of CCDF we can find no evidence that Isiah Lincoln was ever incarcerated at CCDF. The Bureau also reviewed the public records of the Superior Court of the Virgin Islands. That search likewise found no evidence that Isiah Lincoln was ever sentenced to a term of imprisonment at BOC. The Superior Court records show that he was criminally charged in 2004 and 2005,¹ but both cases were dismissed and neither resulted in a conviction.² Given these facts, the email you received from Isiah Lincoln is of dubious credibility and does not appear to be based on any firsthand knowledge.

In truth, CCDF has numerous educational and vocational programs for Virgin Islands inmates, as an affidavit from Robert Hoilko, CCDF's Director of Programming,

¹ See *People of the Virgin Islands v. Isiah T. Lincoln*, Case No. SX-2004-CR-00387 (criminal case filed Dec. 6, 2004); *People of the Virgin Islands v. Isiah T. Lincoln*, Case No. SX-2005-CR-00518 (criminal case filed Nov. 25, 2005).

² See Order of Dismissal in *People v. Lincoln*, Case No. SX-2004-CR-00387 (entered July 18, 2005); Order of Dismissal in *People v. Lincoln*, Case No. SX-2005-CR-00518 (entered March 14, 2006).

confirms.³ Mr. Hoilko filed this affidavit in a Virgin Islands case brought by a BOC inmate who claimed that his confinement at CCDF violated 5 V.I.C. § 4503(c) because the vocational and educational offerings allegedly were inadequate. Mr. Hoilko's affidavit showed the breadth of vocational and educational offerings at CCDF. Indeed, during the time he was housed at CCDF, the inmate had taken 51 courses totaling over 190 hours and encompassing 303 lessons.⁴

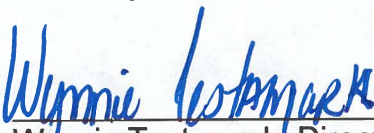
The Bureau has housed Virgin Islands inmates at CCDF since well before my tenure as Director began. But in December 2019, I insisted that all subsequent contracts with CCDF include new language mandating that CCDF "shall make available to USVI inmates work, educational, and vocational programs to reduce idleness and increase their marketable skills." Professional Services Contract P010BOCT21, Addendum 1 (Dec. 2019).

I last visited CCDF in June 2021, along with members of the Bureau's medical, mental health, and security staff, to check on the wellbeing of our inmates. I was satisfied with the treatment they received and the vocational and educational offerings available to them. I plan to return before the end of the fiscal year.

Section 4503(c) does not mandate that the programs available at CCDF be the same as those available at the John Bell Adult Correctional Facility. *Simon v. Mullgrav*, 2018 V.I. LEXIS 97 at *20-21 (collecting cases). Nor does it require that Virgin Islands inmates on the mainland be held in a prison rather than a detention center. To satisfy § 4503(c), "BOC must merely determine that the new facility offers some kind of educational or vocational programs." *Id.* at *21.

Please feel free to contact me if I can be of further assistance.

Sincerely,


Wynnie Testamark, Director

³ See Affidavit of Robert Hoilko in *Meral Smith v. Testamark*, Case No. SX-2017-CV-00319 (dated Nov. 23, 2021) (attached).

⁴ The Superior Court has considered similar claims under section 4503(c) about the adequacy of vocational and educational offerings at CCDF and have rejected them. *Simon v. Mullgrav*, 2018 V.I. LEXIS 97, at *19-21 (V.I. Super. Sep. 19, 2018).