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Medical Parole Bill for Terminally Ill and Elderly Inmates Advances Amid Concerns of Undermining Governor's Authority

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Held in committee when it first came before the Senate Committee on Homeland Security, Justice and Public Safety [in late June](#), Bill 35-0045 was up for discussion again on Tuesday, aiming to establish parole considerations for incarcerated persons who are terminally ill or in old age.

“We have a moral imperative,” said Senator Franklin Johnson, sponsor of the measure. “Our justice system is built on principles of fairness and humanity.”

Mr. Johnson argued that while convicted felons should face the consequences of their actions, “they also have the right to die with dignity and humanity – a fundamental principle our territory has always upheld.” Arguing that terminally ill or incapacitated people are not a danger to society,

the senator concluded, “By granting medical parole we are not compromising the safety of our citizens but acknowledging the change in circumstances of the incarcerated.”

He also noted that the cost of caring for prisoners with advanced terminal conditions is significant for the Bureau of Corrections, which in one instance reportedly spent a sum north of \$350,000 in medical expenses for such an inmate. Mr. Johnson argued that not allowing parole to be considered in these types of cases is resulting in “diverting funds that could otherwise be invested in rehabilitation and education or other programs that serve the public good.” His measure would be one of fiscal responsibility, the senator declared, because it would be “transitioning the individuals to more appropriate care settings potentially covered by financial mechanisms like Medicaid.”

BOC Director Winnie Testamark, who according to committee Chair Senator Kenneth Gittens was present voluntarily despite being subpoenaed to appear, informed lawmakers that even having reached the age of 65, incarcerated people do not qualify for support services like Medicaid unless they have been hospitalized for at least 24 hours. After discharge from hospital, they lose those benefits when they return to jail.

Even so, Ms. Testamark said that the BOC could not support the bill as written. In general agreement with the concept of parole being considered for elderly, incapacitated, and terminally ill prisoners, the BOC director said the issues were with the language of the bill itself.

“It is internally inconsistent,” she argued, noting potential legal conflicts between the proposed measure and established parts of the Virgin Islands Code. Additionally, Ms. Testamark argued that the draft legislation “takes away the director’s discretion to recommend inmates to the parole board, or it undermines the authority of the governor regarding commutations and pardons.” She cautioned that as written, the bill may be too broad. In her assessment, “it would make most inmates 65 years or older eligible for geriatric parole, including those convicted of first-degree murder.”

Despite Senator Johnson’s protestations that the bill did not infringe on the rights of the governor or BOC director, and that the legislation would not mean that “we’re going to just loose people out on the street,” Ms. Testamark remained adamant. “I feel that it needs more work, and I feel that all the stakeholders need to be brought to the table to have a more robust discussion,” she said.

Senator Alma Francis Heyliger also felt the absence of relevant stakeholders keenly. When the measure was first brought to the floor in June, she critiqued the lack of input from anyone who represented the families of those killed, injured or wronged by the incarcerated people who are the subject of the proposed legislation. On Tuesday, she pointed out that once again: the discussion was being held without any representatives to testify from the perspective of victims. That perspective is important in shaping the discussion, she says, because “there’s a reason why someone is still locked up in prison at 65.”

During the initial debate, Ms. Francis Heyliger also questioned the overall economic benefit of the draft legislation, wondering whether the cost of medical care from these individuals would merely shift from the BOC to other state agencies or entities. That concern was amplified on Tuesday by Senator Angel Bolques Jr., who worried about transferring the responsibility to healthcare facilities and public housing agencies, as the ability of these potential parolees to earn sufficient income to support themselves is in question.

Both Senators Francis Heyliger and Bolques seemed to be angling for the bill to be held in committee for further development, an idea committee chair Senator Kenneth Gittens shot down.

“Everybody will be covered,” he said, noting that the measure would have to be passed by the full legislative body after making its way through the Committee on Rules & Judiciary.

Senate President Novelle Francis, who was present at Tuesday’s session despite not being a member of the committee, urged work to continue on the measure so that it can be passed with the support of the Bureau of Corrections. Senator Dwayne DeGraff, similarly a non-committee member, noted that he would only support the measure when it came before the Rules & Judiciary Committee if the language had been vetted and modified by victims’ advocates and the V.I. attorney general. Rules & Judiciary chair Senator Diane Capeheart, who was also present, said that she would be open to accommodating additional testimony from other stakeholders if the measure passed through to her committee.

At the end of discussion, lawmakers voted to adopt Mr. Johnson’s substitute bill and pass it out of the Committee on Homeland Security, Justice and Public Safety.

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