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Emergency Parole Release for Older Parole-Eligible DOC Inmates



**DAVID I.
BRUCK**

Washington & Lee
School of Law
March 18, 2020

Dear Secretary Moran and Chairwoman Bennett,

I am writing to urge you to protect elderly Virginia prison inmates from the risk of death from COVID-19 by granting immediate parole release to as many over-60 parole-eligible prisoners as possible, upon a showing that they are at low risk to re-offend, and have a supportive home to go to once released.

As Ms. Bennett knows, I run a legal clinic at Washington and Lee School of Law, the Virginia Capital Case Clearinghouse, which represents “old-law” prisoners who are seeking parole release. My students and I receive many more requests for help than we can meet, including from a substantial number from inmates in their 60s, 70s, and even 80s.

Both our older clients, and the much larger group whom we must decline to represent, are now facing a mortal threat from the coronavirus epidemic. As you know far better than I do, the virus is almost certain to permeate our prisons very soon, and when that happens, elderly prisoners – many of whom have been eligible for parole release for decades – are likely to suffer and die. The Centers for Disease Control informs us that at least one-third of affected individuals over the age of 65 require hospitalization, and 8 of the 10 deaths reported in the United States have been in adults 65 years or older. The CDC has recommended these individuals “avoid crowds, especially in poorly ventilated spaces” to avoid contracting COVID-19. Centers for Disease Control, *Coronavirus Disease 2019 (COVID-19): Get Ready for COVID-19* (Mar. 17, 2020).¹

As you know, prison conditions inherently fit this description,² as do nursing home and assisted living buildings, which have already closed in many states. See Deborah Schoch, *Families Concerned About Loved Ones in Nursing Homes, Assisted Living, AARP* (Mar. 18, 2020).³ Under these dire circumstances, elderly parole-eligible prison inmates can and should be paroled now in order to save lives.

No legislation is needed for such an emergency release. All of these “old-law” inmates have been reviewed by the Parole Board many times to determine their suitability for parole. Va. Code § 53.1-536(2)(a), and the Board’s files will disclose that almost all of them are currently rated as at low-risk to re-offend. In other words, the “thorough investigation . . . into the prisoner’s history, physical and mental condition and character and his conduct, employment and

attitude while in prison” required by Va. Code § 53.1-155 has already been conducted, many times over, for all of these prisoners.

Va. Code § 53.1-154 allows the Parole Board to “review the case of any prisoner eligible for parole at any . . . time,” and review the case of any prisoner prior to the designated quarter in which he is normally reviewed. The Board’s files should also reveal which of these inmates currently have families or friends ready to receive, shelter and care for them in their communities. Simply put, the Board has the statutory authority to act immediately in the face of this unprecedented emergency.

I recognize that almost all of these “old-law” offenders were convicted of very serious crimes. But forcing them to stay in prison to helplessly await the coming of COVID-19 was not any part of their sentences, and the cruelty of doing so far outweighs the retributive value of still more imprisonment – after they have served 25, 30, 35, 40 or more years already.

The window of time during which you can take this lifesaving step is rapidly closing. Much of the country now looks back ruefully on the weeks and months that our federal government wasted before finally taking vigorous action to combat the spread of COVID-19. If you can still act to protect elderly inmates from grave illness and death in Virginia’s prisons, you should do so. The virus will surely infect the prison population very soon, and then it will be too late to move these elderly people out of harm’s way.

Please consider using the Parole Board’s existing authority to parole these prisoners immediately.

Thank you for considering this urgent request.

Yours truly,

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Notes

- ¹ <https://www.cdc.gov/coronavirus/2019-ncov/specific-groups/get-ready.html>
- ² <https://www.nytimes.com/2020/03/17/us/coronavirus-prisons-jails.html>
- ³ <https://www.aarp.org/caregiving/health/info-2020/preventing-coronavirus-in-nursing-homes.html>

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