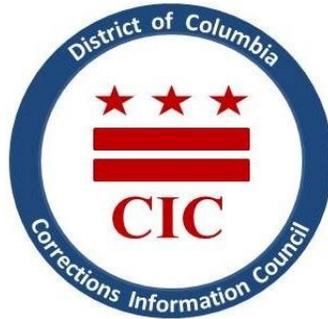


**District of Columbia
Corrections Information Council**



Thematic Report:

**The Implementation of DC Code 24-403.04
Motions for Compassionate Release
As of March 16, 2021**

April 23, 2021



District of Columbia Corrections Information Council

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About the District of Columbia Corrections Information Council

The District of Columbia Corrections Information Council (CIC) is an independent oversight body mandated by the United States Congress and the Council of the District of Columbia to inspect, monitor, and report on the conditions of confinement in correctional facilities where residents from the District of Columbia are incarcerated. This includes facilities operated by the Federal Bureau of Prisons (BOP), the District of Columbia Department of Corrections (DOC), and private contractors.

The CIC reports its observations and recommendations to the District of Columbia Representative in the United States Congress, the Mayor of the District of Columbia, the Council of the District of Columbia, the District of Columbia Deputy Mayor for Public Safety and Justice, the Director of the BOP, the Director of the DOC, and the community.

Although the CIC does not handle individual complaints or provide legal representation or advice, individuals are still encouraged to contact the CIC. Reports, concerns, and general information from incarcerated DC residents and the public are very important to the CIC, and they greatly inform our inspection schedule, recommendations, and reports. However, unless expressly permitted by the individuals or required by law, names and identifying information of residents, corrections staff not in leadership, and members of the general public will be kept anonymous and confidential.

DC Corrections Information Council

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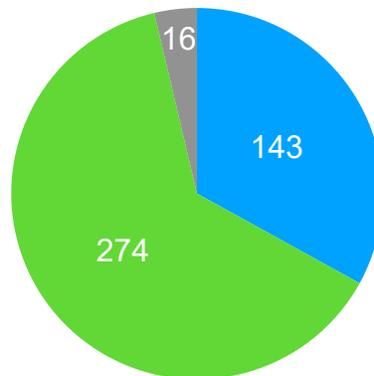
I. Introduction

On April 7, 2020, the DC Council passed emergency legislation which expanded the eligibility of DC Code Offenders to apply to the Superior Court for compassionate release. This legislation became permanent on January 13, 2021. The most recent data obtained by the DC CIC shows that as of March 16, 2021, the DC Compassionate Release Clearinghouse House had received and partially processed 824 questionnaires. Of the 824 requests, 693 cases have been assigned to judges. Of the 693 petitions, 433 have been decided.

Thirty-three percent of the decided cases have resulted in compassionate release. Of 433 cases that have been decided, 143 have resulted in compassionate releases, 274 motions have been denied, and 16 cases were noted as *other* result. Half of the *other* category (i.e. 8 of the 16) were motions that were withdrawn for a variety of reasons. One quarter of the *other* (4 of 16) were deemed moot since the person was already released. No deaths were reported for people awaiting a decision about compassionate release.

Number of Cases Granted and Denied

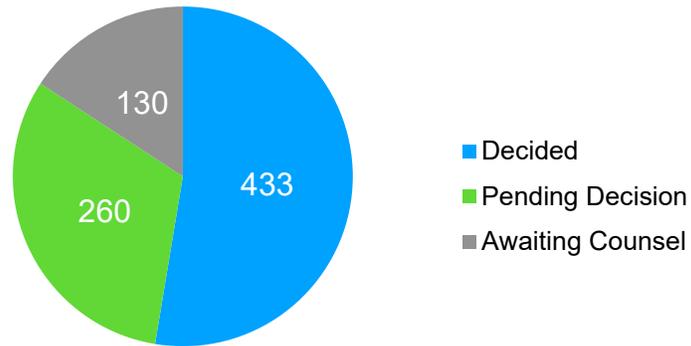
■ Granted ■ Denied ■ Other



There are 260 cases which have been filed and are awaiting a judge's decision, and at least another 130 requests for legal representation and ultimately a judge's decision.

A year after passage of the legislation, only half of the cases have been decided.

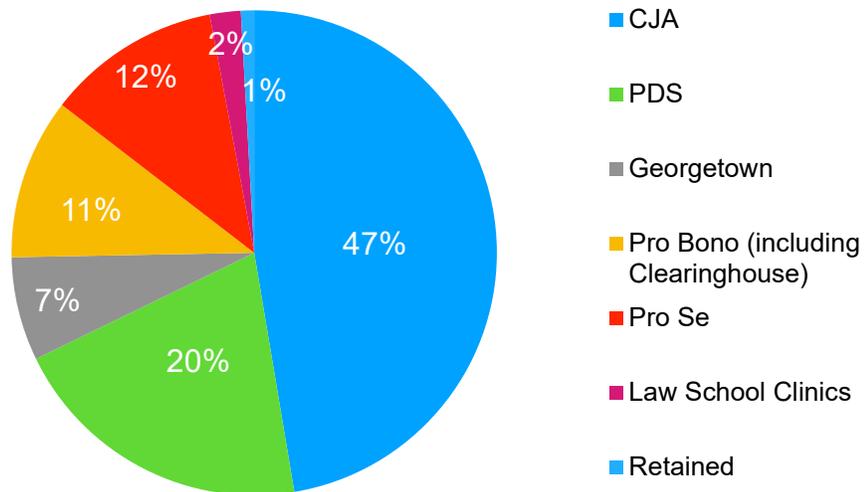
Number of Cases Decided, Pending Decision, and Awaiting Counsel



II. Legal Process

Through the Clearinghouse, various legal entities assembled training manuals and webinars, and developed resources and sample petitions to recruit, train, and assign lawyers to cases. These materials have helped with recruitment and training of attorneys, which is an on-going process because additional attorneys are still needed to address the number of applications.

Percentage of Cases Handled by Type of Counsel



Almost half of the cases (322 of 680)¹ are being handled by CJA attorneys.² The Public Defender Service is counsel on 139 of the cases. Seventy-nine motions were filed pro-se. Seventy-three were handled by pro bono attorneys, many of whom were recruited by the DC Clearinghouse for Compassionate Release. Fourteen cases have been represented by local law school clinics. Only six people retained paid counsel to handle their motions for compassionate release.

The collaborative effort provides guidance and collegial support to attorneys facing dilemmas created by the system. For example, attorneys must weigh the benefits and consequences of gaining freedom via compassionate release for people facing immigration detainees. If the candidate for compassionate release is successful, they may face deportation or more harsh confinement while waiting for a decision about deportation. Also, collaboration is needed when clients are seeking release through the compassionate release legislation and the existing parole system. Like the process for compassionate release, the process of seeking parole involves seeking and securing documentation about program participation. While precise figures are not available on the number of people seeking compassionate release who are also eligible for parole, the issue of the interplay between these two processes has been discussed in the legal community. It is agreed that the system is smoothest when the same attorney is handling both parole and compassionate release matters, so that the acquisition of documentation is not duplicative or confusing. In some cases, since parole release was not immediate, attorneys did not withdraw compassionate release cases for people who have been granted parole.

Recommendation

Consider funding incentives for the successful recruitment of additional attorneys willing to represent compassionate release candidates.

III. Role of Candidates for Compassionate Release

Rather than relying on specific criteria on which the courts can identify all eligible people, the process relies on inmate initiative and intellect to begin the process by completing the questionnaire. Completing the questionnaire may serve as a barrier, especially to the most frail and fragile - the very people the legislation is intended to address. Those who are very ill may be physically unable to complete the questionnaire or have the stamina to track down and collect the related paperwork.

¹ Data on legal counsel was available for only 680 of the 693 cases.

² DC Courts. REPORT OF THE SUPERIOR COURT COMMITTEE ON CRIMINAL JUSTICE ACT PANEL ATTORNEYS TO CHIEF JUDGE ROBERT E. MORIN. May 11, 2018. <https://www.dccourts.gov/sites/default/files/2018-05/18-04-ATTACHMENT-2018-CJA-Report-May-11-2018-Final.pdf> (“The Criminal Justice Act of the D.C. Code § 11-2601 et seq. (2001) and the Plan for Furnishing Representation to Indigents Under the District of Columbia Criminal Justice Act (“CJA Plan”) requires the D.C. Superior Court to develop and maintain panels of attorneys from which appointments are made for defendants found eligible for counsel under the Criminal Justice Act in connection with criminal cases prosecuted by the United States and the District of Columbia.”)

The issue of inmate initiative was exemplified when several inmates contacted the DC CIC to inquire about their status for compassionate release. Several people believed that the process was similar to IRAA, and cases were “automatically” reviewed by their sentencing judge. Others believed that the DC process was like the federal compassionate release process, which requires action by BOP staff - including the warden. Others stated they had difficulty in completing the questionnaire and hoped to be assigned an attorney who would complete the necessary paperwork. When the CIC discovered that several of the potential candidates for compassionate release had not completed the questionnaire and were housed in a medical facility, the CIC reached out to a staff member at the facility to request that staff assist these individuals. With the assistance of staff, several of the individuals completed the questionnaire while staff obtained the related paperwork.

Recommendation

Provide educational materials to each of the BOP facilities about the DC Compassionate Release legislation, including the step-by-step planning booklet created by PDS to mitigate the possibility that the most fragile and frail potential candidates for compassionate release are overlooked. Additionally, develop a process for comparing BOP records and the court’s tracking system on cases that have been filed, so that candidates’ status is clear and can be easily communicated.

IV. Communication with Clients

Communication between the candidate and people outside the BOP is desired or required throughout the process, including completion of the initial questionnaire; assignment of an attorney; accessing records from BOP and elsewhere; re-entry planning with family, MORCA, and community based organizations; and arranging for continued supervision by CSOSA. While some communication can be done by public phone or Corrlinks, neither safeguards the candidate’s privacy or confidentiality. Several compassionate release candidates indicated a desire to talk with the judge to provide in-depth, heart-felt testimony about their personal transformations and hopes for the future; however, many of the cases are decided without a hearing, and the presence of a candidate for compassionate release is not required during hearings.

The recommended time frames and procedures developed by the courts for compassionate release motions detail the process for expediting litigation, including the US Attorneys Office’s (USAO) role in contacting the BOP for the candidate’s electronic medical and institutional records.

CSOSA is engaged in pre-and post-release planning for candidates for compassionate release, especially since judges are often requiring supervision as a condition of compassionate release. In spite of CSOSA’s status as a federal sister agency to the Bureau of Prisons, staff of CSOSA noted that because of the expedited timeframe for compassionate release, it is difficult to engage in planning for re-entry that normally takes place six months prior to release. In some cases, CSOSA has worked with the Court to delay a compassionate release until a proper plan is developed.

Several people involved in the compassionate release process suggested implementing video calls because sometimes telephone calls are ineffective. Video connections could be used for communication between clients, attorneys, judges, and various agencies, including MORCA and CSOSA.

Recommendation

Facilitate consistent access to telephone or videos calls between candidates for compassionate release and their attorneys, as well as organizations and agencies assisting with re-entry planning.

V. Release and Reentry

The Public Defender Service of DC has created a handbook for attorneys and others guiding compassionate release candidates through the process of request and release. Recognizing that housing is a major concern for candidates for compassionate release, the Public Defender Service included a chapter about developing a housing plan and resources for housing special populations.

Organizations and agencies have also collaborated to assist with reentry needs. For example, MORCA, RAN, and CSOSA have worked together to – respectively - find, provide, and pay for some temporary housing. According to CSOSA, between March 1, 2020 and March 22, 2021, 128 people who had been granted compassionate release transitioned to supervised release. This is 6% of CSOSA’s current caseload. CSOSA noted that half of the people granted compassionate release are expected to serve between 137 and 1,917 days. Some people granted compassionate release are required to be on supervised release for up to 11 ½ years. The 128 new cases created by compassionate release have not created an impact on CSOSA’s programming, operations, or expenditures. CSOSA noted that people granted compassionate release tend to be older, have served extended periods of incarceration, and are medically or physically fragile.

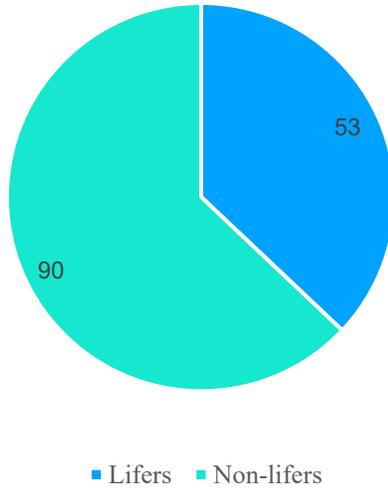
Recommendation

Create needed services, especially easy-access housing, and increase accessibility to reentry resources for newly released individuals.

VI. Compassionate Release for Life Sentences

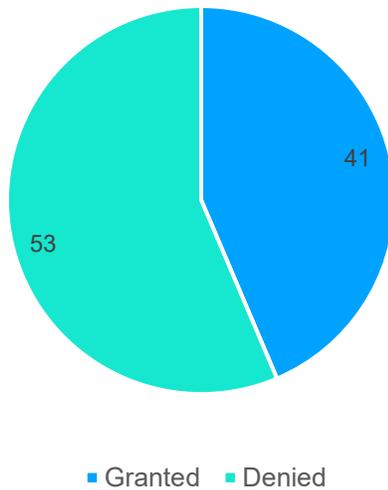
Re-entry services are usually not provided by the Bureau of Prisons to people serving a life sentence. Therefore, people who have been sentenced to life are the least prepared for re-entry if granted compassionate release. Thirty-seven percent of those who have been granted release (143) were committed to a life sentence (53).

Total Number of Compassionate Releases Granted to Lifers (53) and Non-lifers (90)

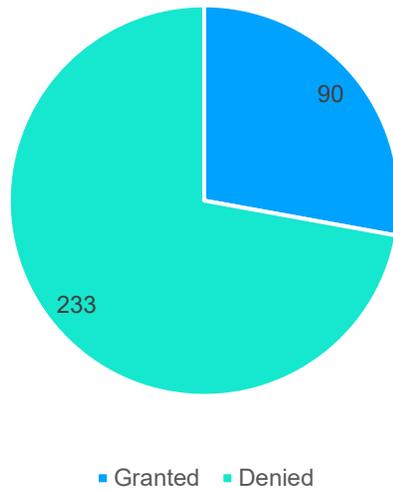


As of March 16, 2021, ninety-four (94) cases brought by people serving a life sentence have been decided. Fifty-three (53) were granted compassionate release, and 41 were denied.

Number of Lifers Granted (41) or Denied (53) Compassionate Release



**Number of Non-Lifers Granted (90) or Denied (233)
Compassionate Release**



Proportionally, those who sought compassionate release and were serving a life sentence benefited more from the compassionate release legislation than those not serving life sentences. Almost 33% of non- lifers were granted compassionate release, as compared to 56% of lifers. People serving life sentences tend to be older and may be more medically frail and fragile.

Recommendation

Continue developing services, especially easy-access housing, and increase accessibility to people upon release. Housing is especially needed for those persons who have served long sentences and have fewer family or community members on whom they can rely for housing.

Methodology

To determine the progress regarding the implementation of the compassion release legislation,³ CIC staff contacted participants in the process, including a variety of representatives from local organizations, agencies, and Superior Court. The CIC also reviewed data collected by Superior Court as cases are filed. Additionally, CIC received information from CSOSA about people granted compassionate release who are now under supervision.

The DC CIC conducted an initial analysis of the data collected by Superior Court with regard to grants or denials of requests from people serving life and non-life sentences. In comparing rate of success (“grants” as compared to “denials”), it appears that the rate of success increases with age. The court also provided data on age at sentencing. Interestingly, the age at sentence seemed to be almost inversely related to success i.e. People sentenced at younger ages had less success of being granted compassionate release. The DC CIC will continue to follow the implementation of the legislation and report on the characteristics of the candidates for compassionate release as information becomes available from Superior Court and other sources.

³ D.C. Code § 24–403.04. Motions for compassionate release for individuals convicted of felony offenses. <https://code.dccouncil.us/dc/council/code/sections/24-403.04.html>.