

EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

JOHN BAXLEY, JR., *et al.*,

Plaintiffs,

v.

**Civil Action No. 3:18-cv-01526
(Chambers, J.)**

BETSY JIVIDEN, *et al.*,

Defendants.

AFFIDAVIT OF COMMISSIONER BETSY JIVIDEN

**STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, To-wit:**

I, Commissioner Betsy Jividen, being first duly sworn upon my oath, hereby come forth and state as follows:

1. I have worked at what is now known as the Division of Corrections and Rehabilitation, (“DCR”) since January 2018. I am a 1980 graduate of West Virginia University, College of Law. Upon graduation, I started with the United States Attorney’s Office for the Northern District of West Virginia, and remained in that office until December 2017. While at the United States Attorney’s Office, I held numerous positions, handling both civil and criminal litigation. I served as the Acting United States Attorney on three occasions. I also was the First Assistant and head of Civil Litigation in that office and represented the United States Bureau of Prisons.

2. Pursuant to the Court’s April 3, 2020 Order (Doc 179) I am responding to one subparagraph of ¶ 18 of Dr. Venters’ declaration:

c. WV DCR should undertake all available measures, including coordinating with other agencies, to release as many inmates as possible prior to an outbreak starting,

especially from those jails that are currently overcrowded, making social distancing impossible. WV DCR should take adequate measures to ensure that facilities are reduced to 75% capacity.

DCR has identified the issue of population reductions as one means to mitigate risks within our correctional units, jails and juvenile centers. The DCR has been reviewing law, rule and policy, analyzing potential options for population reductions, and identifying the point of authority best situated to make the reduction decision with each subset within the incarcerated population. Pursuant to W. Va. Code § 15A-4-2, we have considered furlough options. It should be noted that this statute provides for furloughs, not release of inmates. To date, we have extended Work Release Furloughs to approximately 70 inmates. We have also released approximately 70 inmates who were serving 30-60 day sanctions for parole sanction.

There are other entities that are also addressing this issue. Pursuant to the West Virginia Supreme Court of Appeal's judicial emergency order, various courts throughout the State are re-considering bond for pre-trial detainees. This also involves the Prosecuting Attorney's Office and various other factors that are not within the control of DCR.

In addition, the Parole Board is considering modification of traditional parole standards and there is consideration of inmate release prior to meeting all of the existing parole standards. These decisions are being made by the Parole Board and not DCR.

3. I receive daily updates on the COVID-19 Pandemic and DCR will continue to evolve on how we handle this situation. As Commissioner, I also have to be acutely aware of the community and public safety ramifications of releasing inmates from our correctional facilities. Today, for instance, I am aware that the Kanawha County Commission and the Kanawha County Prosecuting Attorney issued a press release (attached) that opposes the release of additional inmates. Releasing any inmate without a thorough and adequate review of his/her potential to pose a public safety risk and analysis of community resources to protect the citizens of the State of West Virginia would be irresponsible and dangerous.

Further the affiant sayeth naught.

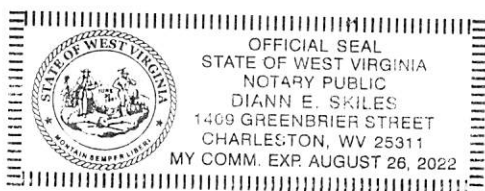
Commissioner Betsy Jividen
Commissioner Betsy Jividen

STATE OF WEST VIRGINIA

COUNTY OF KANAWHA,

Signed and sworn before me this 3rd day of April, 2020, by Commissioner Betsy Jividen.

My commission expires August 26, 2022.



Diann E. Skiles
Notary Public



Kanawha County Commission

Media Release

For Immediate Release

Date: April 3rd, 2020

Contact: Commission President Kent Carper, Kanawha County Commission

304-357-0109

Kanawha County Commission opposes plan to release prisoners from regional jail, announces it will continue to pay regional jail costs

During its April 2nd Kanawha County Commission meeting, the Commission heard from Kanawha County Prosecuting Attorney Chuck Miller concerning ongoing efforts to release inmates from jails in West Virginia. Several organizations, including the WV ACLU and Mountain State Justice, have called on Governor Justice to sign an executive order allowing inmates to be released early. The WV-ACLU's proposal encourages the release of prisoners over the age of 55. In addition, a lawsuit pending in Federal Court (3:18 cv01526) requests that the Federal Court issue an immediate order directing the West Virginia Division of Corrections to release inmates.

Commission President Kent Carper stated, "We heard loud and clear from the Prosecuting Attorney that the effort to allow a mass release of prisoners, including any plan that could potentially allow the release of convicted murderers or sex offenders, raises several legal issues and would prove to be very dangerous to the public.

Law enforcement is already working 24/7 to keep the public safe during this pandemic."

Commissioner Ben Salango noted, "We need to support our prosecuting attorneys, the sheriff's office, and all first responders during the pandemic. A release of prisoners convicted of serious or violent crimes, regardless of the current circumstances, is not a good plan."

In addition, Kanawha County has announced that it will continue to pay its regional jail bill during the COVID-19 pandemic. Commissioner Carper added, "Some counties have indicated they will stop paying jail costs during this pandemic. Kanawha County recognizes that we need to continue to support the Division of Corrections and the State of West Virginia during the pandemic. We have an obligation and we intend to fulfill it."