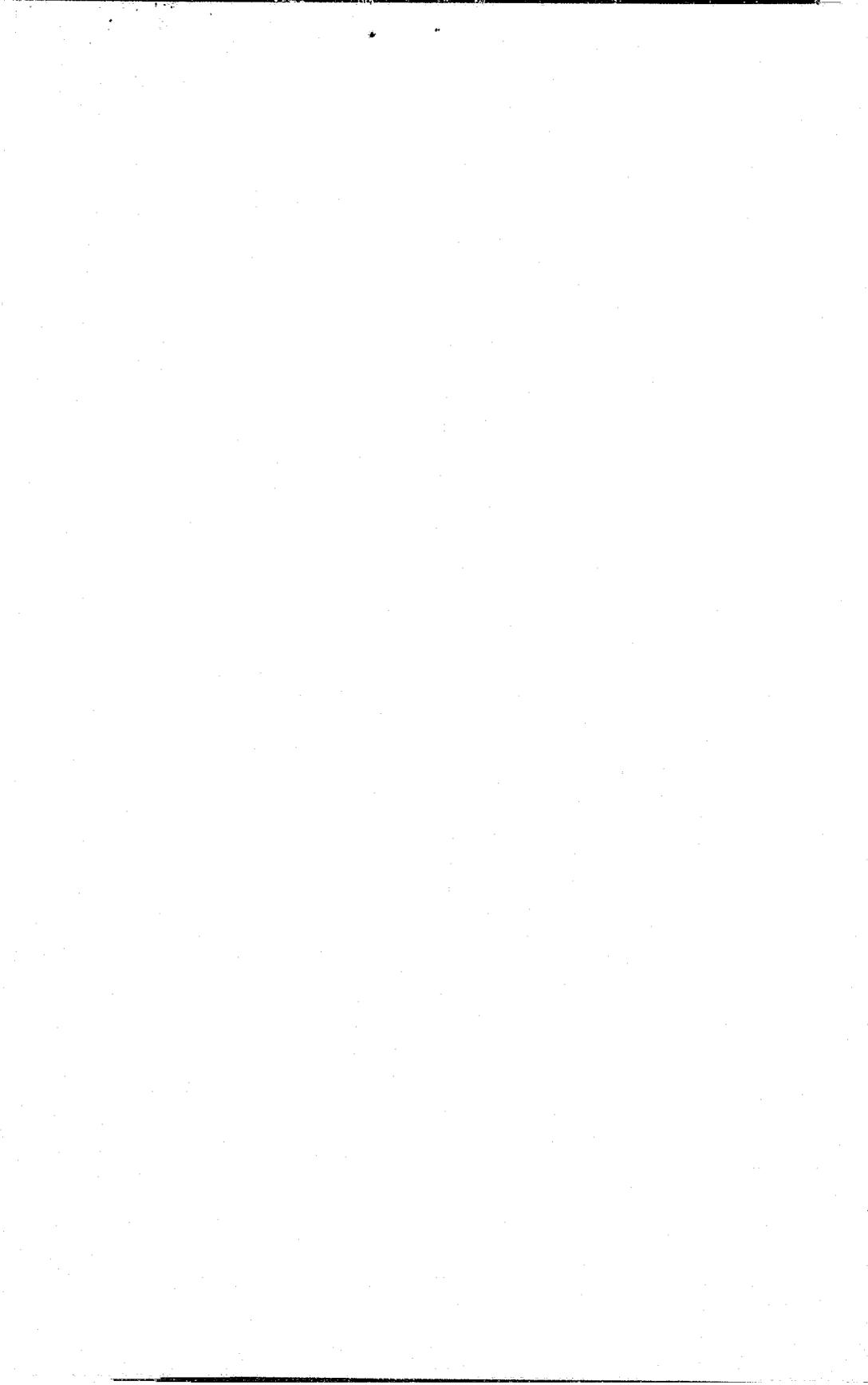


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**Clemency:
Legal Authority,
Procedure, and Structure**

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Prepared by
Samuel P. Stafford II

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Foreword

This report is a compilation of research results and an analysis of state constitutions, statutes, and rules dealing with clemency. It also utilizes material from law review articles and treatises and the comments of state officials involved in the administration of clemency. For this reason, this work does not attempt to present a complete description of either the conceptual or working model of each state's clemency authority; rather, it provides a practical delineation of clemency administration in the fifty states, with a detailed description of four distinctive modes in use in Colorado, Florida, Pennsylvania, and Wisconsin.

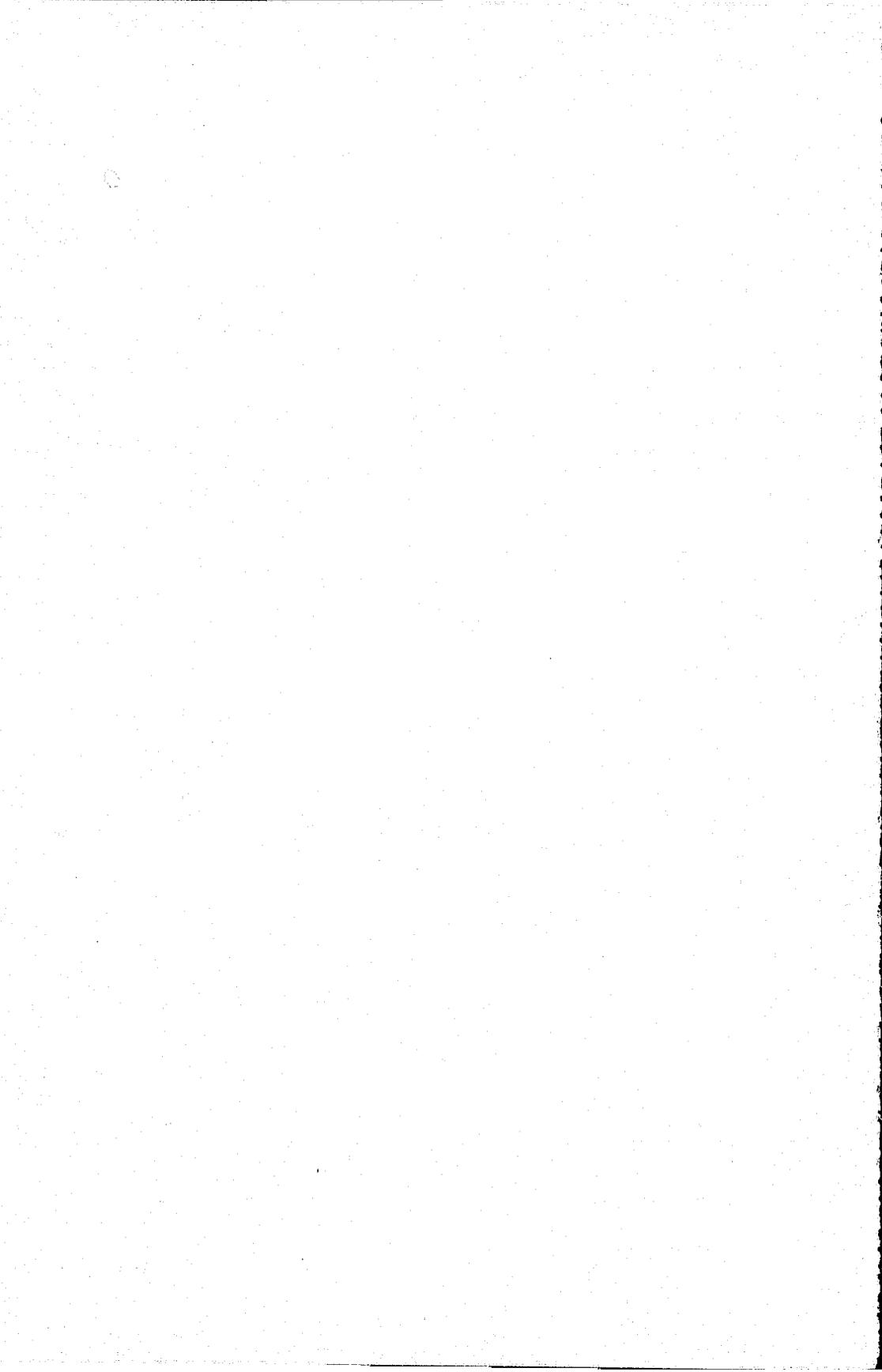
Because of time and funding constraints, it was not possible to construct a complete analysis or profile of each state. Nevertheless, every effort was made to create as timely and accurate a report as possible. If there are mistakes or inaccuracies, the reader is asked to advise the Research and Information Service of the National Center for State Courts.

Letters, clemency rules, and forms cited in this report are on file with the National Center for State Courts, 300 Newport Ave., Williamsburg, Virginia, 23185.

This document, like any other, is the product not only of the researcher's efforts but of a number of people involved in clemency in the state governments. We express our sincere gratitude to these individuals for their unstinting cooperation.

The Research and Information Service of the National Center is a nationwide resource for providing prompt, timely data to state court systems, the news media, the bar, legislators, and others. More extended research, as exemplified by this report, can be provided by special arrangement.

The original data were compiled by the Research and Information Service in conformity with a limited research contract with the state of California with funding provided by the Law Enforcement Assistance Administration. The major research and preparation of this article was done by Samuel P. Stafford II, staff attorney, with considerable assistance from Richard A. Caldwell, staff associate, and Debra R. Knapp, a law student. Editorial assistance was provided by Nancy Allbee, Vilma Boubelik, and Elizabeth Scott Anderson, and typing was done by Kathryn Goodin, project secretary. The project was supervised by Winifred L. Hepperle, director of the Research and Information Service.



Introduction

THE BASIC RATIONALE FOR THE CLEMENCY POWER

Appellate courts are the route of appeal for all but a handful of criminal convictions. Under Anglo-American law, however, another possibility exists for relief from the consequences of a conviction. A convicted offender may submit a petition for clemency directly to a "head of state"—in America, either the governor of a state or the President of the United States.

Clemency is defined as an act of leniency or a disposition to be merciful. The word "clemency" is a broad term which includes a pardon, commutation of sentence, reprieve, or remission of fines and forfeitures. Over the years "pardon" has become synonymous with clemency, although it is actually one type of clemency. The United States Supreme Court has described a pardon as "an act of grace, proceeding from the power intrusted [sic] with the execution of the laws, which exempts the individual, on whom it is bestowed from the punishment the law inflicts for a crime he has committed."¹

Clemency power is usually exercised after conviction, sometimes as a mechanism for facilitating early prison release. It may, however, also be exercised before conviction or even before criminal prosecution has been initiated.²

There are conflicting views about the effect of executive clemency. One view is that the clemency act eliminates the punishment resulting from the conviction and blots out of existence any moral guilt or blame which may have accompanied the commission of the crime. Opponents of that view believe that while clemency may remove the punishment, it does not remove the offender's moral guilt. Under this theory, clemency does not proceed upon the theory of innocence, but, rather, implies guilt; it involves forgiveness but not forgetfulness.³

It should be noted that clemency relates only to an offender's criminal liability. It does not discharge the offender's liability to make restitution for damage incurred by a private citizen as a result of criminal conduct.⁴ A

¹*United States v. Wilson*, 32 U.S. (7 Pet.) 150, 160 (1833). See Glossary of terms for definitions of commutation, reprieve, and remission of fines and forfeitures.

²*Ex parte Garland*, 71 U.S. 333 (1867); *Murphy v. Ford*, 390 F. Supp. 1372 (D.C. Mich. 1974).

³*Baldi v. Gilchrist*, 204 App. Div. 425, 198 N.Y.S. 493 (1st Dept. 1923); *Stone v. Oklahoma Real Estate Commission*, 369 P.2d 642, Okla. (1962). But there may be a confession of guilt implied in the acceptance of a pardon, See *Burdick v. United States*, 236 U.S. 79, 91 (1915).

⁴*Angle v. Chicago, St. P.M. and O.R. Co.*, 151 U.S. 1, (1893).

clemency grant, applicable by its terms to a specified offense, applies only to that one. It does not extend to another offense, even though such other offense was related or part of the same transaction.⁵

Clemency power is much more than a personal predilection of the chief of state, exercised according to his own concept of mercy or justice. Indeed, the legal systems of most civilized countries recognize the need for the right of appeal to an authority other than legislative or judge-made law. Clemency provides a means of modifying, in particular circumstances, the application of rigid, uniform laws. In the United States it is part of the American constitutional system.⁶

A pardon in our days is not a private act of grace from an individual happening to possess power. It is part of the constitutional scheme.

When granted, it is the determination of the ultimate authority that the public welfare will be better served by inflicting less than what the judgment fixed.⁷

The power to grant clemency is most often used to mitigate some deficiency in the process of justice. While this power was originally necessary to correct the harsh excesses of the common law, it now provides relief from the potential injustice of the application of highly technical and complicated rules of law.⁸ The clemency power thus may function in a manner akin to equity in order to allow the consideration of special or extenuating circumstances that may not or cannot always be taken into account during the course of the normal judicial process.

It is a constituent part of the judicial system that the judge sees only with judicial eyes, and knows nothing respecting a particular case of which he is not judicially informed.⁹

Interestingly, this notion of the inherent weakness of the process of justice in certain special instances has led to the generally accepted precept that a governor's commutation power cannot be infringed upon by the judiciary.¹⁰

Until little more than a century ago law was relatively static and inelastic. The idea that law should be a reflection of contemporary social reality or that it should be used as a powerful instrument of social reform was unheard of.

⁵*Curtin v. United States*, 236 U.S. 96 (1915). See also Annot., 35 A.L.R.2d 1261 (1954); Williston, "Does a Pardon Blot Out Guilt?" 28 *Harv. L. Rev.* 647 (1915); and Weihofen, "The Effect of a Pardon," 88 *U. Pa. L. Rev.* 177 (1939).

⁶An excellent historical treatment of executive clemency is contained in M. Belli, "The Story of Pardons," 80 *Case and Com.* 26 (1975). See also National Council on Crime and Delinquency, *Clemency in Pennsylvania*, § 1.23 (1973).

⁷*Biddle v. Perovich*, 274 U.S. 480, 486 (1927). Comment by Justice Holmes. This executive power was challenged recently by a convicted murderer who insisted on execution of his death sentence. *Matheson et al.*, no. 77-1019 (10th Cir. 1977).

⁸M. Belli, *supra* note 6, at 26.

⁹*U.S. v. Wilson*, 32 U.S. (7 Pet.) 150, 161 (1833).

¹⁰*People v. Herrera*, 183 Colo. 155, 516 P.2d 626 (1973).

That an outmoded legal rule should be abrogated by simply "passing a law" was not part of men's ordinary mode of thinking.¹¹

As the sovereign or large segments of society came to disapprove of punishing people who commit crimes under extraordinary circumstances, they resorted not to formal change in the law but to less drastic devices, such as clemency. For example, self defense, killing by misadventure, and insanity were not recognized as valid defenses to a criminal charge. The flexibility provided by a pardon was the means by which harsh, unjust, or unpopular results of the application of formal rules could be mitigated.¹² In point of fact, acts of executive clemency are meant to blunt or thwart justice occasionally for the sake of tempering it with charity or of better achieving political goals, such as social harmony or order. Thus, executive clemency has become one pathway to progress and reform within the legal structure.

The political nature of pardons sometimes makes them one of the more dramatic events in the appeal process. Recent controversial events, such as President Ford's executive pardon of Richard Nixon¹³ and President Carter's amnesty declaration for all Viet Nam draft evaders,¹⁴ have served to enflame public sentiment and to awaken scholarly and jurisprudential interest in the clemency process. Generally, the pardoning process is not widely publicized but on occasion (as in the cases of Caryl Chessman, Jimmy Hoffa, Lt. William Calley, and leading figures in organized crime) the notoriety of the offender may bring a particular appeal for executive clemency to the public's attention and create a political and moral dilemma for the executive.

The political and social nature of the clemency power is further indicated by contemporary trends in the area of criminal sentencing. As state legislatures, often under public pressure to "do something" about the "crime problem," move toward the enactment of determinate or presumptive sentencing statutes,¹⁵ the clemency power may become an important substitute

¹¹S. Rubin, *Law of Criminal Correction*, 652-53 (2d ed. 1973). See also Berman, "The Origins of Western Legal Science," 90 *Harv. L. Rev.* 894 (1977).

¹²S. Rubin, *supra* note 11, at 653.

¹³Proclamation 4311, 39 *Fed. Reg.* 32601 (1974).

¹⁴Proclamation 4483, 42 *Fed. Reg.* 4393 (1977).

¹⁵California, Indiana, Maine, New Mexico, and North Dakota have recently enacted definite sentencing legislation. During the 1976 legislative session, Alaska, Florida, Illinois, and Ohio considered substantive and comprehensive definite sentencing proposals. Although the governor of Minnesota vetoed definite sentencing legislation on technical grounds, the Minnesota Correctional Authority revised its administrative procedures to narrow its discretion in parole release decisions and to establish more predictable "time-served ranges" based on the severity of the offenses. (Michael Kannensohn, "Sentencing Criminal Offenders," *State Government* 7, Winter 1977; see also Council of State Governments, *Definite Sentencing: An Examination of Proposals in Four States*, prepared by Michael Kannensohn [1976].)

for judicial discretion.¹⁶ In addition, the 1976 series of cases¹⁷ in which the Supreme Court ruled on the legality of capital punishment may also provoke increased use of the clemency power in order to mitigate the possible far-reaching effects of imposition of the death penalty.¹⁸

In sum, while appeals to the executive for a clemency grant do not now greatly affect a substantial portion of the criminal law process, they may become increasingly important in the future.

GROUNDS FOR CLEMENCY

It has been pointed out that the powers of executive clemency operate as a last check on the decisions or discretion of the judiciary and of correctional administrators and agencies. Frequently used grounds for extending executive clemency include:¹⁹

- to correct hard cases (even under optimum conditions, exceptional cases arise that cannot be left to legally prescribed rules; laws cannot be drafted that will fit every conceivable situation);
- to correct unduly severe sentences;
- for mitigating circumstances;
- for innocence or dubious guilt;
- in death penalty cases;
- for physical condition;
- to restore civil rights;
- to prevent deportations;
- for political purposes and for reasons of state;
- for turning state's evidence; and
- for services to the state.

Whatever the reason for extending executive clemency, the growing frequency of its use is due in part to the increase in clemency applications and the realization by all concerned that this aspect of the judicial model needs critical reexamination.

The need for the pardon power, in most instances, reflects the need for alterations in the system preceding it. For example, a large number of pardons are granted in order to restore an ex-offender's civil rights or

¹⁶Extensive discussions of "individualized" sentencing are contained in Frankel, *Criminal Sentences* (1972) and A. von Hirsch, *Doing Justice: The Choice of Punishments* (1976).

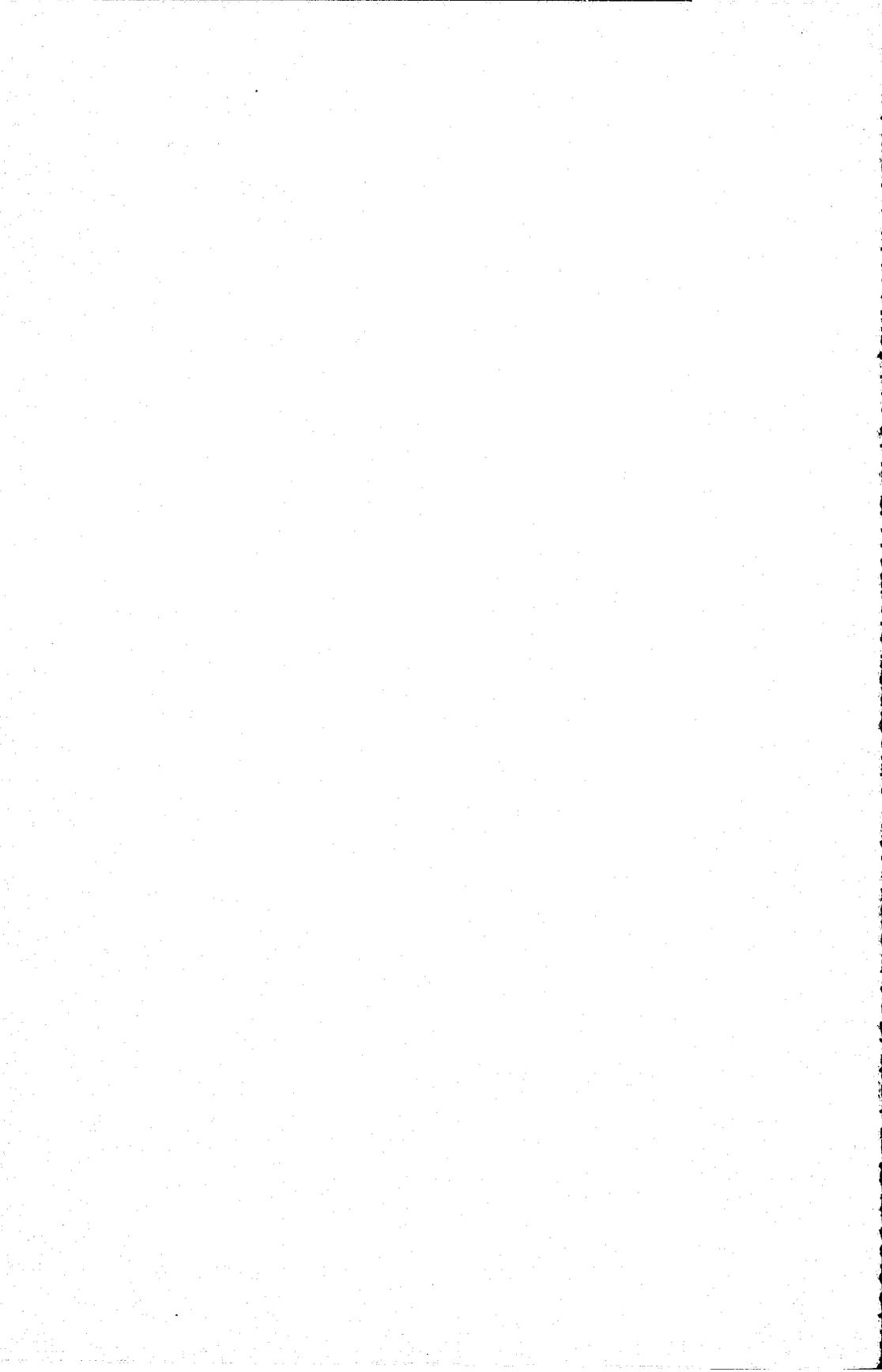
¹⁷*Gregg v. Georgia*, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976); *Proffitt v. Florida*, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976); *Jurek v. Texas*, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976).

¹⁸These issues are raised in C. Black, Jr., *Capital Punishment* (1974). Included is a discussion of the inherent "capriciousness" and discretion in applying the death penalty.

¹⁹See S. Rubin, *supra* note 11, at 653-65.

remove other legally imposed disabilities arising out of the conviction. Most such disabilities are unnecessary and should be eliminated. The remaining cases can be more appropriately resolved through judicial procedures if such are authorized.²⁰

²⁰National Advisory Commission on Criminal Justice Standards and Goals, *Corrections*, at 591, std. 16.16 (1973).



Part 1

The Exercise of the Clemency Power

INTERACTION AMONG THE EXECUTIVE, LEGISLATIVE, AND JUDICIAL BRANCHES OF GOVERNMENT

Each state through its constitution grants the pardon power differently. Originally the majority of the states granted the power to the governor alone. Now, however, there is a growing trend toward delegating the powers to a board.¹

Although thirty-one states currently place full clemency authority in their governors,² ten states vest it entirely in special boards.³ Seven states provide that their governors may only make clemency grants upon the affirmative recommendations of special boards.⁴ Two states have unique systems. In California, the governor has clemency authority, but in cases of twice-convicted felons he may exercise it only upon the recommendation of the state supreme court,⁵ while in Rhode Island the governor must obtain the advice and consent of the state senate for all clemency grants.⁶

Thus, there is bound to be some tension and interaction among the three branches of government with respect to clemency procedures and substantive results. While the legislative branch establishes the law and the judicial branch finds the facts and applies the law to the facts, the executive branch is constitutionally empowered to grant some exceptions to the law by virtue of its clemency authority.

Yet, the broad discretionary power of the executive can sometimes be checked by the participation of the judiciary. Most states require that the

¹M. Belli, "The Story of Pardons," 80 *Case and Com.* 38 (1975).

²Alaska, Arkansas, Colorado, Florida, Hawaii, Indiana, Illinois, Iowa, Kansas, Kentucky, Maine, Maryland, Michigan, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

³Alabama, Connecticut, Georgia, Idaho, Minnesota, Nebraska, Nevada, North Dakota, South Carolina, and Utah.

⁴Arizona, Delaware, Louisiana, Massachusetts, Montana, Pennsylvania, and Texas.

⁵*Cal. Const.* art. 5, § 8 (1977).

⁶*Rhode Island Const.*, art. VII, § 4. Only the legislature, however, can restore civil rights to an adult offender who has served a sentence of more than one year. (Rhode Island Gen. Laws § 13-6-2 (1956).

clemency applicant's sentencing judge and prosecuting attorney be given notice of the application and an opportunity to comment upon the propriety of the action.⁷ Other states require public notice via posting or newspaper advertisement. In at least two states, the governor may not grant a pardon or commutation to a twice-convicted felon except upon the recommendation of four state supreme court justices.⁸ One state—Nevada—has a pardon board composed of some state supreme court justices, the governor, and the attorney general.⁹

Twenty-seven states require that the governor make a report to the state legislature about his clemency activity.¹⁰ Reports to the legislature generally contain the following information for each case: name of grantee, date, type and place of conviction, date and type of grant, and reasons for grant.¹¹

It should be noted that the pardoning power granted by the constitution of a state to the governor, a board, or both, is not subject to restriction or interference by the legislature. If the constitution embodies limitations or exemptions, the legislature has no power to further delimit the pardoning authority.¹²

Finally, judicial review is generally not available when the clemency power has been granted or denied. Abuse of discretion is not a justiciable issue, nor is the motive of the clemency-granting authority.¹³

LIMITATIONS ON THE CLEMENCY POWER

As a general rule, there are few restrictions on the exercise of the clemency power in state constitutions. As of 1973, six states imposed no substantive limitations on the exercise of the clemency authority,¹⁴ one state excluded treason cases,¹⁵ seventeen states and the federal government

⁷Twenty-seven states require that either written or published notice of each clemency application be given to the applicant's prosecuting attorney, sentencing judge, and other interested parties. (Alabama, Arizona, California, Colorado, Florida, Idaho, Illinois, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Montana, Nevada, New Hampshire, North Dakota, Ohio, Oregon, Pennsylvania, South Dakota, Utah, Vermont, Wisconsin, and Wyoming.)

⁸Arizona and California (S. Rubin, *Law of Criminal Correction*, 682 (2d ed. 1973). See also descriptions for Arizona and California, *infra*.)

⁹Nev. Rev. Stat. § 213.010.

¹⁰Arizona, Arkansas, California, Colorado, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Maryland, Massachusetts, Michigan, Nebraska, Nevada, New York, Ohio, Oklahoma, Oregon, Tennessee, Utah, Virginia, Washington, Wisconsin, West Virginia, and Wyoming.

¹¹59 *Am. Jur. 2d, Pardon and Parole* § 39 (1971).

¹²*Ex parte Garland*, 71 U.S. 333, 380 (1867); *The Laura*, 114 U.S. 411, 414 (1885).

¹³*Eacret v. Holmes*, 215 Or. 121, 333 P.2d 741 (1958).

¹⁴Connecticut, Hawaii, Illinois, Kansas, Montana, and Washington.

¹⁵Oregon.

excepted impeachment cases,¹⁶ and twenty-six states excluded both treason and impeachment cases.¹⁷

In those states where treason and impeachment are not included in the general clemency-granting authority, the legislature is usually empowered to dispense clemency. However, these states often give the governor the authority to grant reprieves until such time as the case may be considered by the legislature.¹⁸

Another important restriction on the clemency authority is that, in the absence of an express constitutional mandate, the state clemency-granting authority does not extend to violations of municipal ordinances. The power extends only to offenses against the state. The legislature has the option of empowering municipal officials to pardon violators.¹⁹

Finally, most state constitutions provide that a pardon may be granted in a criminal case only after conviction.²⁰ However, in all states, the verdict is sufficient to constitute conviction, and thus a pardon can be granted during the appeal process.²¹

THE CIVIL AND POLITICAL DISABILITIES

The fact of conviction of a criminal offense, particularly of a felony offense, is of great significance to the offender even after he is released from the correctional process. Typically a felony conviction may prohibit the offender from serving on a jury, holding public office, and voting. It may also prohibit him from entering certain professions, such as medicine and law, and other licensed occupations such as barber and plumber. But beyond such formal legal disabilities, a record of conviction has a considerable disadvantage for the offender on the informal level, particularly his identification as an ex-convict. As a consequence, the "labeling process" may mean that applicants for employment may not be hired because employers frequently ask applicants if they have been convicted of crimes. Some educational institutions who screen their applicants to determine whether or

¹⁶Alabama, Alaska, Delaware, Maine, Maryland, Massachusetts, Minnesota, New Hampshire, New Jersey, North Carolina, Oklahoma, Pennsylvania, Rhode Island, South Carolina, Tennessee, Virginia, and West Virginia.

¹⁷Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Indiana, Iowa, Kentucky, Louisiana, Michigan, Mississippi, Missouri, Nebraska, Nevada, New Mexico, New York, North Dakota, Ohio, South Dakota, Texas, Utah, Vermont, Wisconsin, and Wyoming.

¹⁸59 *Am. Jur. 2d, Pardon and Parole* § 30 (1971).

¹⁹*Allen v. McGuire*, 100 Miss. 781, 57 So. 217 (1912); *State ex rel. City of Kansas City v. Renick*, 157 Mo. 292, 57 S.W. 713 (1900); *City of Clovis v. Hamilton*, 41 N.M. 4, 62 P.2d 1151 (1936).

²⁰S. Rubin, *supra* note 8, at 680-81.

²¹*Goss v. State*, 107 Tex. Crim. 659, 298 S.W. 585 (1927).

not they have been convicted of crimes may reject applicants because of reported convictions.²²

Generally, the formal legal disabilities of crime conviction can be removed by operation of a statute or a pardon from the clemency-granting authority of the state in which the conviction occurred. (Of course, the informal disabilities of conviction of crime—the detrimental impact upon employment and educational opportunities—are not affected.) While most civil rights revoked upon conviction are usually restored upon pardon, in general the grant does not give the offender a new and better character.²³

Civil and political rights restored by grants of pardon vary among jurisdictions. A pardoned offender may be entitled to vote,²⁴ file suit,²⁵ and serve as juror,²⁶ but where character is a necessary qualification for a license, the mere fact of a pardon does not necessarily remove the disqualification.²⁷ For example, the disbarment of an attorney is not prevented by granting of a pardon, and a pardon granted after the disbarment does not necessarily mean a person is entitled to seek restoration of a license to practice law.²⁸

Usually, an executive in one jurisdiction cannot pardon an offense against the laws of another jurisdiction. Civil rights lost upon conviction of a crime are not usually restored by executive pardon.²⁹

EMERGING LEGAL TRENDS

Clemency is a potentially powerful legal tool. The last comprehensive study of clemency was prepared by the United States Department of Justice in 1939 in its *Attorney General's Survey of Release Procedures: Pardon*.

A survey of the literature and the legal requirements of each state reveals a changing focus and direction of clemency procedures.

First, due process requirements are placing a greater emphasis on the provisions for *public notice* of clemency applications. The mechanics of filing a clemency application may vary from state to state, but the central idea seems to be to provide an opportunity for concerned individuals to support or oppose a pending clemency application and to open the process to

²²A comprehensive survey of the problem surrounding the restoration of civil rights after conviction is contained in Grant, Lecornu, Pickens, Rivkin and Vinson, "The Collateral Consequences of Criminal Conviction," 23 *Vanderbilt L. Rev.* 929 (1970).

²³*Attorney General's Survey of Release Procedures: Pardon* 268, 292-93 (1939).

²⁴*Hogan v. Hartwell*, 242 Ala. 646, 7 So.2d 889 (1942).

²⁵*White v. State*, 260 App. Div. 413, 23 N.Y.S.2d 526 (3d Dept. 1940).

²⁶*State ex rel. Collins v. Lewis*, 111 La. 693, 35 So. 816 (1904); *Puryear v. Commonwealth*, 83 Va. 51, 1 S.E. 512 (1887).

²⁷*Baldi v. Gilchrist*, 204 Ala. Div. 425, 198 N.Y.S. 493 (1st Dept. 1923); *Morris v. Hartsfield*, 186 Ga. 171, 197 S.E. 251 (1938).

²⁸*In re Wolfe's Disbarment*, 288 Pa. 331, 135 Atl. 732 (1927).

²⁹S. Rubin, *supra* note 8, at 721.

public view. For example, Pennsylvania specifically requires that clemency investigating agents notify an applicant's victim that a clemency application is being filed. Clemency notification procedures (for example, informing an applicant's sentencing judge and prosecuting attorney while soliciting information from them) are being developed to insure that clemency decisions are rooted in a broad opinion base.

Second, there is a growing trend toward the development of procedures designed to facilitate the *restoration of civil rights*. Eighteen states have established procedures to facilitate the restoration of these rights.³⁰ More significantly, Florida and Colorado provide for the automatic restoration of basic civil rights following prison release. (In Florida, however, the automatic restoration rule does not apply to individuals incarcerated for felony convictions, or to those who have outstanding detainers arising from state, out-of-state, or federal felony charges or convictions.)³¹ These automatic provisions in Florida and Colorado may prove to be administratively expedient in that they eliminate the necessity of individual clemency determinations in the area of civil rights restoration. These rules might also have a favorable impact on rehabilitation efforts in prison by making it possible for an offender to join the ongoing social, economic, and political institutions in his or her community upon release.³²

Third, there is clearly a growing trend toward the *decentralization of clemency authority*. While the final discretionary decision to grant clemency still rests with the executive for the most part, there is a movement toward shared power with various kinds of advisory boards. Thirty-four states have boards which advise, investigate, and make essentially nonbinding recommendations to the governor.³³ In ten states, however, a board of pardons has virtually exclusive power to grant clemency. Other states require that the governor receive at least a recommendation from a board before he can act.³⁴

Growing decentralization means that more attention will have to be paid to a number of areas concerning such boards: the scope of authority of the appointing power and the method of appointment; the term of office of board members; and the composition and membership of these various boards, including their racial, political, sexual, and professional composition. These factors may substantially affect basic fairness and clemency outcomes.

³⁰Alabama, Arizona, California, Georgia, Iowa, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, North Dakota, Oklahoma, Rhode Island, Virginia, Washington, Wisconsin, and Wyoming. See also 59 *Am.Jur.2d* *Pardon and Parole* § 39 (1971).

³¹*Florida Rules of Executive Clemency*, Rule 9C (1975).

³²National Advisory Commission on Criminal Justice Standards and Goals, *Corrections*, at 591, *std.* 16.16 (1973).

³³V. O'Leary and K. Hanrahan, *Parole Systems in the United States*, 26 (3d ed. 1976).

³⁴See the individual state descriptions for specific provisions.

These areas deserve deliberate and broad study. The impact of clemency as an avenue to release or rehabilitation of the criminal offender cannot be measured at this time. While statistical data on the use of clemency are not available, it would be imprudent to concede now that the use of executive clemency will diminish—particularly in light of changing public attitudes toward more stringent applications of criminal laws and punishments.

Part 2

Survey of the Individual States

INTRODUCTION

This chapter constitutes a descriptive and functional analysis of the clemency-granting authorities, structures, and procedures in each of the fifty states. Detailed information (as of September 1977) is contained in the following section on state descriptions. Much of it has been obtained from diverse sources—letters, memoranda, and telephone conversations. All available documentation is listed. Each state was given the opportunity to verify the information that is presented for that state. Nevertheless, these outlines do not attempt to provide an exhaustive state-by-state examination of this broad and complex area. Further information may be obtained by referring to the citations listed in the state descriptions.

Forty-six state descriptions are organized according to five major categories:

Clemency structures—the powers of the clemency-granting authorities and the duties and makeup of their supporting agencies.

Clemency types—the state's particular kinds of clemency; unusual features of these clemency types are explained.

Substantive limitations—the primary legal restraints imposed on the clemency-granting authorities and their agencies.

Procedural limitations—basic procedural due process restraints, such as notice, publication, and reporting.

Clemency procedures—the basic processing methods that must be followed in clemency applications and administration.

Four states—Colorado, Florida, Pennsylvania, and Wisconsin—are illustrative of the forms of clemency authority and administration presently in use. Since each represents different approaches and attitudes toward the use of clemency, they have been examined and reported in greater depth.

These four state descriptions include the above listed elements plus all additional information that could be obtained. The table of contents identifies the elements and exemplars that are included in these particular states. A brief description of each of the four states follows. Detailed data are located in the section on state descriptions.

Colorado: The governor has exclusive granting authority and absolute discretion in all clemency matters. He may grant unconditional pardons, commutations, and reprieves after conviction in all cases except treason and impeachment. He is assisted by the State Executive Clemency Advisory Board in these activities. Although the Colorado governor has complete clemency authority, the state legislature is empowered to regulate pardon application procedures.

Florida: Clemency is exercised through the Executive Clemency Board made up of the governor and his cabinet. A clemency grant requires the affirmative vote of the governor and three members of the board. In addition, the Florida system provides for the automatic restoration of civil rights following a clemency grant.

Pennsylvania: The governor has the authority to make clemency grants only upon the affirmative recommendation of the Board of Pardons. Although the governor may accept or refuse the board's recommendation, he cannot grant clemency without the board's prior recommendation. With such approval, the governor can grant pardons, commutations, and reprieves, and remit fines and forfeitures.

Wisconsin: The governor has complete authority and discretion in exercising the clemency power. He is assisted by his appointed legal counsel and small administrative staff. The office of the legal counsel is responsible for distributing clemency information, scheduling and conducting clemency hearings, and making nonbinding recommendations to the governor.

Citations to original source material for all fifty states are included within the text of the descriptions and provide ready access to pertinent rules, statutes, and constitutional provisions. Each state's treatment profiles the structural, procedural, and administrative aspects of that state's clemency system.

STATE DESCRIPTIONS

Alabama

For more information see Alabama Code title 42, §§ 1(2) and 3, 4, and 18(1).

Clemency Structures

Governor's Authority. The governor has the authority to grant reprieves and commutations to persons subject to the death penalty. (Ala. Const. amend. XXXVIII.)

Legislature's Authority. The state legislature has the authority to provide for and regulate the administration of pardons, paroles, and remission of fines and forfeitures. (Ala. Const. amend. XXXVIII.)

Board of Pardons and Paroles' Authority. The Board of Pardons and

Paroles has the authority to remit fines and forfeitures, grant pardons (full and conditional), and restore civil and political rights after conviction except in cases involving treason, impeachment, or the death penalty. (Ala. Code tit. 42, § 16.)

Board of Pardons and Paroles' Composition. The Board of Pardons and Paroles consists of three members who are appointed by the governor with the advice and consent of the state senate from a list of qualified persons nominated by a board. The nominating board is made up of the chief justice of the state supreme court, the presiding judge of the court of appeals, and the lieutenant governor. (Ala. Code tit. 42, § 1.)

Clemency Types

Commutation of Death Penalty.

Pardon (full and conditional).

Remission of Fines and Forfeitures.

Reprieve from Death Penalty.

Restoration of Civil and Political Rights.

Substantive Limitations

Death Sentence, Impeachment, or Treason. The Board of Pardons and Paroles has no clemency authority in cases involving the death penalty, impeachment, or treason. (Ala. Code tit. 42, § 16.)

Civil and Political Disabilities. Pardon grants do not restore civil and political rights in the absence of express stipulation by the Board of Pardons and Paroles. (Ala. Code tit. 42, § 16 and Ala. Const. amend. XXXVIII.)

Procedural Limitations

Notice to Prosecuting Attorney and Sentencing Judge. The Board must give notice of proposed clemency action to the prosecuting attorney and sentencing judge thirty days prior to any clemency grant by the Board. (Ala. Code tit. 42, § 16.)

Clemency Procedures

Time of Application. Pardons may be granted only after prisoners have served at least three years of permanent parole or after sentences have been served; however, this requirement is not applicable if there has been a satisfactory showing of innocence subsequent to conviction. (Ala. Code tit. 42, § 16.)

Alaska

Clemency Structures

Governor's Authority. The governor has the authority to grant pardons, commutations, and reprieves and to suspend and remit fines and forfeitures. (Alaska Stat. § 33.20.070.)

Board of Paroles' Duties. The Board of Paroles' staff investigates all clemency applications referred by the governor and subsequently submits reports to the governor. (Alaska Stat. § 33.20.080.)

Governor's Clemency Advisors. From the time Alaska became a state, the governor has utilized a group of clemency advisors. Upon the governor's request, these individuals provide recommendations prior to the final decision. The clemency advisors have no status either in the statutes or the constitution. Since it is strictly advisory, the group's composition and terms vary according to the needs of the governor. Sometimes the clemency advisors are citizens from the community, and other times, top level state officials.

Clemency Types

Commutation.

Pardon.

Remission of Fines and Forfeitures.

Reprieve.

Procedural Limitations

Consideration of Applications. Applications for pardon or commutation will not be considered pending appeal from judgments of conviction; in felony cases, within three months before the expiration of sentence; nor while the applicants are on parole, except in cases of life prisoners, and where prisoners have been on parole in excess of four years. Applications for executive clemency will not be considered until after the convicted person has served some portion of the sentence, or until he has reached his parole period (when applicable) and has been denied parole, except upon a substantial showing of innocence or some other exceptional circumstance arising after trial. (*State of Alaska Rules Governing Applications for Executive Clemency*, Rules 2, 3, and 4.)

Discharge Periods. In the absence of exceptional circumstances, petitions for pardon after completion of sentence will not be considered unless the applicant has been discharged from custody or from parole or probation not less than four years. A longer period may be required before favorable action is taken. This longer period is largely dependent on the nature of the offense and the character of the applicant, both before and after his conviction. (*State of Alaska Rules Governing Applications for Executive Clemency*, Rule 6.)

Notification of Final Action. Once final action is taken, the applicant or his attorney is notified of the result. Where clemency is extended, the official warrant of pardon or commutation is sent to the applicant, either through a law enforcement officer or the officer in charge of the place of imprisonment. In other cases, the warrant is sent directly to the applicant or his attorney. (Alaska Executive Clemency Rules, Rule 8.)

Arizona

Clemency Structures

Governor's Authority. The governor has the authority to grant commutations, reprieves, and pardons only upon the recommendation of the Board of Pardons and Paroles. This authority does not extend to matters of impeachment or treason. (Ariz. Rev. Stat. § 31-443.) The governor may impose conditions, limitations, and restrictions on clemency grants. (Ariz. Rev. Stat. § 31-443.)

Legislature's Authority. The legislature has all clemency authority in matters of treason. (Ariz. Rev. Stat § 31-444.)

Board of Pardons and Paroles' Duties. The Board investigates and makes recommendations of clemency action to the governor. The governor may not exercise his clemency authority in the absence of a recommendation by the Board. (Ariz. Rev. Stat. § 31-402[A].)

Board of Pardons and Paroles' Composition. The Board is composed of three full time members who are appointed by the governor. (Ariz. Rev. Stat § 31-401[A].)

Clemency Types

Commutation.

Pardon (full and medical).

Reprieve.

Restoration of Civil and Political Rights. Civil and political rights are restored only by pardon grants. (Op. Att'y Gen. no. 68-17.)

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Ariz. Rev. Stat. § 31-443.)

Treason. Although the governor has no clemency authority in matters of treason, he may suspend execution of sentences until such time as the legislature may consider the case. (Ariz. Rev. Stat. § 31-444.)

Procedural Limitations

Governor's Report. The governor must report all cases of executive clemency to the state legislature at each session. These reports must include explanations of the basis for each clemency action. (Ariz. Rev. Stat. § 31-446.)

Written Notice to Prosecuting Attorney. At least ten days prior to action on pardon applications, applicants must give written notice to their prosecuting attorneys. This requirement is waived in cases of medical pardons and in cases where applicants have less than ten days left to serve on their terms. (Ariz. Rev. Stat. § 31-442.)

Published Notice. Excluding the exceptions cited immediately above,

notice of pardon applications must also be published for thirty days prior to clemency action in the county in which the conviction occurred. (Ariz. Rev. Stat. § 31-442.)

Publication of Reasons for Reprieve, Stay, or Suspension of Death Sentence. When the governor exercises his clemency authority in cases in which the death penalty has been imposed, his reasons for action must be published within ten days in a newspaper of general circulation in the county in which the person was convicted. (Ariz. Rev. Stat. § 31-445.)

Arkansas

For more information, see Arkansas Constitution, article XI, § 18, and Arkansas Statutes Annotated, § 12-300(m).

Clemency Structures

Governor's Authority. The governor has the authority to grant reprieves, commutations, and pardons except in cases of impeachment and treason. He may also remit fines and forfeitures in criminal or penal cases only. (Ark. Const. art. VI, § 18.)

Clemency Types

Commutation.

Pardon (full and conditional). See *Ex parte Hawkins*, 61 Ark. 321, 33 S.W. 106 (1895).

Remission of Fines and Forfeitures.

Reprieve.

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Ark. Const. art. XI, § 18.)

Treason. The governor may, with the advice and consent of the state senate, grant reprieves and pardons in cases of treason. (Ark. Const. art. XI, § 18.)

Procedural Limitations

Governor's Report. The governor must report his clemency activities to the state legislature at every regular session. (Ark. Const. art. XI, § 18.)

California

Clemency Structures

Governor's Authority. The governor has the authority to grant reprieves, pardons, and commutations after sentence, except in matters of impeachment; however, he may not grant clemency to persons twice convicted of a felony, unless the governor receives the affirmative recommendation of four

members of the California Supreme Court. (Cal. Const. art. V, § 8.)

Community Release Board's Duties. The California Community Release Board functions as the governor's clemency advisory board. Upon the request of the governor, the Community Release Board investigates and reports on all clemency applications, and makes advisory recommendations to the governor. (Cal. Penal Code, § 5075, *et seq.*)

Community Release Board's Composition. The Board is composed of nine members who are appointed by the governor with the advice and consent of the California Senate. The members serve four-year terms.

California Supreme Court's Duties. When the clemency application or investigation reveals more than one felony conviction, the application and all supporting documents are forwarded to the clerk of the Supreme Court for the consideration of the justices. (Cal. Const. art. V, § 8.) If a majority of the Court recommends a clemency grant, the clerk of the state supreme court transmits the application and supporting papers to the governor for his final action. (Cal. Penal Code § 4852.)

Clemency Types

Commutation.

Pardon (full and conditional). The right to own or possess a firearm may be abridged if the clemency grantee was convicted of a felony involving the use of a dangerous weapon. (Cal. Penal Code §§ 4852.17, 12001, and 12021.)

Reprieve.

Restoration of Civil and Political Rights. In all cases where a full pardon has been granted by the governor, it restores all rights, privileges, and franchises of which the convicted person has been deprived. (Cal. Penal Code § 4853.) Similarly, if a person is granted a full and unconditional pardon based upon a certificate of rehabilitation, the pardon also entitles the grantee to exercise all civil and political rights of citizenship, including but not limited to the right to vote. (Cal. Penal Code §§ 4852.17 and 4852.15.)

Substantive Limitations

Two Methods for Gaining Clemency. Advisory Board Pardons—This method of gaining clemency is offered to applicants who live out of state, life termers applying for commutations of their sentences, and all other applicants for general commutation.

Certification of Rehabilitation—This method is offered to all California residents who have completed their sentences or have satisfied their parole obligations. (Cal. Penal Code § 4852.01 *et seq.*)

No filing fees or court costs of any kind are required of a petitioner engaged in any proceeding to gain a certificate of rehabilitation. (Cal. Penal Code § 4852.09.)

Procedural Limitations

Report and Recommendation from Trial Judge and District Attorney. When an application is made to the governor for a pardon or commutation of sentence, or when an application has been referred to the Community Release Board, the judge of the court in which the conviction was handed down, or the district attorney by whom the action was prosecuted, may be required to furnish a summarized statement of the facts proved at the trial and any other facts having reference to the propriety of granting or refusing the clemency application. These summaries are accompanied by recommendations for or against granting clemency and the reasons for the recommendation. (Cal. Penal Code § 4803.)

Notice to District Attorney. At least ten days before the governor acts upon an application for a pardon, written notice of the intention to apply for clemency is served upon the attorney of the county where the applicant was convicted. Proof of the service, in the form of an affidavit, is presented to the governor before further action is taken on the application. (Cal. Penal Code, § 4804.)

Certificate of Rehabilitation. The petitioner first obtains a certificate of rehabilitation application from the county clerk's office of the California county of residence. The petition for a certificate of rehabilitation is then filed in the superior court of the county of residence. The petitioner gives notice of the filings to the district attorney of the county in which the petition is filed and to the district attorney of each county in which the petitioner was convicted of a crime.

In addition, the office of the governor receives notice of the time of the hearing on the petition from the clerk of the applicable superior court at least thirty days prior to the date set for the hearing. (Cal. Penal Code, § 4852.07.) At this time, local officials (district attorney or probation department) may be requested by the court to conduct investigations and to submit a report on the petitioner.

The California Superior Court holds hearings to determine if the petitioner for certificate of rehabilitation has completed all necessary requirements in order to receive a grant. (Cal. Penal Code, § 4852.01 *et seq.*) If the petitioner demonstrates his fitness, then the Superior Court issues an order declaring the petitioner rehabilitated and recommends that the governor grant a full pardon to the petitioner. (Cal. Penal Code, §§ 4852.13 and 4852.14.) If granted, the certificate of rehabilitation is automatically forwarded to the governor and becomes an application for pardon. The governor usually asks the Community Release Board to conduct further investigations to ascertain the validity of the proposed pardon grant and to be certain that the applicant has not been convicted of other crimes. Finally, the governor may issue a pardon on his own, but in cases where the applicant has been twice convicted of felonies, the governor is unable to issue a pardon without first obtaining

the approval of a majority of the state supreme court justices. (Cal. Const. art. V, § 8.)

Notifying the State Agency; Facts to be Recorded. Whenever a person is issued a certificate of rehabilitation, or is granted a pardon from the governor, this fact is immediately reported to the California Bureau of Criminal Identification and Investigation by the clemency granting authority. The California Bureau records the facts on the person's criminal record and transmits them to the Federal Bureau of Investigation in Washington, D.C. When the criminal record is thereafter reported by the California Bureau, it reveals the additional information that the person received from the state a pardon or certificate of rehabilitation or both. (Cal. Penal Code, § 4852.17.)

Governor's Report to the Legislature. At the beginning of every session, the governor reports to the Legislature on his clemency activities. This report states the name of the person convicted, the crime of which he was convicted, the sentence and its date, the date of the clemency grant, and the reasons for making the grant. (Cal. Const. art. V, § 8.)

Special Provisions

Person Convicted Erroneously and Pardoned. Any person who was convicted of a felony, imprisoned in a state prison, and later granted a pardon by reason of innocence may present a claim against the state of California for pecuniary injury sustained through such erroneous conviction and imprisonment. (Cal. Penal Code, § 4900.) The amount recoverable may not exceed the sum of ten thousand dollars. (Cal. Penal Code, § 4904.)

Colorado

Introduction

In Colorado, the governor has full and absolute discretion in clemency matters. He may grant unconditional pardons, commutations, and reprieves after conviction in all cases except impeachment and treason. The source of this authority is Article IV, Section 7, of the Colorado Constitution, which states:

The governor shall have power to grant reprieves, commutations, and pardons after conviction, for all offenses except treason, and except in case of impeachment, subject to such regulations as may be prescribed by law relative to the manner of applying for pardons, but he shall in every case where he may exercise power, send to the general assembly at its first session, thereafter, a transcript of the petition, all proceedings, and the reasons for his action.

As is the case in other states in which the governor has full clemency granting authority, checks are built into the system to insure that the governor's power is exercised in a careful and considerate manner. Although the governor has full power to make clemency grants, the state legislature has

the authority to regulate pardon application procedures.¹ The governor's discretion is similarly checked by the requirement that the governor submit to the state legislature reports of his clemency activities, including transcripts of the petitions and proceedings as well as the rationale for the grants.² These limitations on the governor's clemency power, along with the utilization of an investigatory and advisory board, provide Colorado with a balanced yet centralized clemency system.

Timetable

The Colorado clemency system involves the utilization of diverse information sources; consequently, there is a certain amount of variation in the processing times for applications. There is a minimum lapse of six months between submission of an application for pardon and notification of the governor's decision. A comparable time requirement for commutations does not exist.³ This variation in turn-around time is common in clemency structures that do not have imposed time standards.

Executive Clemency Advisory Board

The present Colorado governor established the Executive Clemency Advisory Board by executive order to assist him in the exercise of his clemency authority.⁴ The primary responsibility of the Board is to provide the governor with pertinent information on clemency applicants.

The Board reviews all clemency applications, coordinates the collection of information for all cases, interviews applicants at its monthly meetings, and makes nonbinding recommendations to the governor.⁵ It systematically conducts commutation hearings, but holds pardon hearings only when necessary.

The Board currently meets each month at the Colorado State Penitentiary in Canon City, but additional meetings may be called if necessary. Supplemental intermittent Denver meetings are now under consideration.⁶

Board members are appointed by the governor and serve at his pleasure.⁷ The present Board includes seven members: the chairman of the Parole Board, the director of the Division of Corrections, the chief of the Office of

¹Colo. Const. Art. IV, § 7.

²*Id.*

³Colorado Executive Clemency Advisory Board's "Guidelines and Procedures," August 1976 at 2.

⁴Letter from Jeremy Shamos, assistant to Governor Lamm, to Samuel Stafford (June 14, 1977).

⁵Colorado Executive Clemency Advisory Board, *supra* note 3.

⁶Shamos letter, *supra* note 4.

⁷Phone interview with Gordon W. Heggie, chairman of the Colorado Parole Board (June 17, 1977).

Parole and Community Services, the executive director of the Department of Institutions, an assistant attorney general, and two lay members.⁸

Standards for Clemency Determination

The Clemency Advisory Board considers the following factors in its clemency recommendations: 1) the potential risk to public safety; 2) the justice and fairness of the proposed action; 3) sundry psychological, medical, and physical records; 4) prison conduct; and 5) recommendations from the applicant's supervisors, family, and associates.⁹

Specifically in reviewing pardon applications, the Board weighs 1) the seriousness of the offense, 2) the length of time the applicant has been law-abiding following his release from probation or parole, and 3) the need (as opposed to the mere desire) for a pardon.¹⁰ It should be noted that because Colorado provides for the automatic restoration of most civil rights following prison release, pardons are seldom necessary, and hence are rarely granted.

Use of Clemency Types

The governor has full authority to grant commutations, pardons, and reprieves.¹¹

Commutation is the most common clemency form in Colorado. Its primary purpose is to provide relief to prisoners who are serving life or other lengthy sentences.¹²

The Colorado Department of Institutions prepares statistics which demonstrate that significantly more commutations than pardons are granted each year in Colorado. There are two major reasons for this. First, as previously mentioned, Colorado provides for the automatic restoration of most civil rights following release from prison. This provision substantially reduces the demand for pardons.¹³

The other reason for the greater number of commutations is that the Division of Corrections often uses them as a form of prisoner reward for good behavior. This use of commutation aids prisoners in gaining earlier eligibility for parole as well as for certain community release projects which require that participants remain under institutional supervision and on minimum sentences.¹⁴

Pardons, as mentioned above, are infrequently granted due to the Col-

⁸*Id.*

⁹Executive Clemency Advisory Board, *supra* note 3 at 3-6.

¹⁰Shamos letter, *supra* note 4 at 2.

¹¹Colo. Const. Art. IV, § 7.

¹²Executive Clemency Advisory Board, *supra* note 3 at 3.

¹³Shamos letter, *supra* note 4 at 2.

¹⁴*Id.*

orado provision for the automatic restoration of civil rights upon prison release.¹⁵ Because this provision applies only to Colorado residents, most pardon requests necessarily come from convicted felons who reside in other states.¹⁶

A convict must meet the two general requisites of the Colorado Five Year Rule before his pardon application will be given consideration by the Board. The Five Year Rule states that the applicant must have completed all the terms of his sentence, including parole and probation, five years prior to pardon application, and that he must have led a felony-free¹⁷ life since conviction.¹⁸

Although exceptions to the Five Year Rule are rarely made, the following situations have warranted waiver of the rule: 1) petition to take professional school entrance examinations, 2) postconviction reduction in the statutory punishment for certain crimes (e.g., possession of marijuana), and 3) sundry other requests which necessitate immediate clemency action.¹⁹ Such exceptions to the Five Year Rule are presented to the Board for consideration only after review by the chairman or vice-chairman, or upon direct recommendation by the governor.²⁰

Reprieves are rarely, if ever, utilized as a clemency remedy in Colorado. In recent years, this has been mainly because there has been no need for it due to the general moratorium on capital punishment. Formerly, the governor's power to commute death sentences to lesser punishment has accomplished the same end.²¹ Given the recent end to the moratorium on capital punishment, the use of reprieve in Colorado may increase in the future.

Periodic Review

Not only does the Clemency Advisory Board consider independent clemency applications, but it also periodically reviews the cases of prisoners in the Colorado State Correctional System who have completed two calendar years of institutionalization. The following cases, however, are not reviewed by the board:

— Individuals whose parole release or full discharge date is within nine

¹⁵Colo. Const. Art. VII, § 10.

¹⁶Shamos letter, *supra* note 4 at 2.

¹⁷Misdemeanors committed during the five-year period are evaluated by the Board on the basis of their relevancy to the applicant's overall case, but they do not necessarily preclude pardon consideration.

¹⁸Executive Clemency Advisory Board, *supra* note 3 at 1.

¹⁹Interview with Jeremy Shamos, assistant to Governor Lamm, in Denver (May 1977).

²⁰Executive Clemency Advisory Board, *supra* note 3 at 1.

²¹Interview with Jeremy Shamos, note 19, and telephone conversation with Edna Russell, extradition secretary to the Governor (June 1977).

months from the date on which their cases normally would be reviewed by the Board;

- Escaped prisoners who have returned to the institution (these persons must first serve two calendar years from the date of their return);
- Prisoners who have received additional sentences since their incarceration (these individuals must first serve an additional two years on their extra sentences);
- Death penalty prisoners;
- Prisoners whose paroles have been revoked;
- Individuals who have committed crimes within the institution (these individuals' cases must first be disposed of);
- Prisoners who have been transferred from a maximum to a minimum security institution within the past three months (these persons' cases are reviewed on the fourth month after their last transfer); and
- Prisoners who have not yet met the terms of punitive sanctions imposed for Class 1 or 2²² offenses. (These individuals will not be reviewed until all the terms have been met).²³

Clemency Procedures

Below is a detailed outline of the Colorado clemency process. It should be noted that the governor has exclusive and absolute clemency authority under the Colorado Constitution and may thus bypass any or all of the prescribed clemency procedures. This discretionary power is rarely exercised by the governor and in the past has been limited to emergency situations such as terminal illness, prisoner safety, and pregnancy.²⁴

Requisite Material. The documents required for pardon and commutation consideration differ significantly; so, to the extent that it is necessary, they will be considered separately within this section.

Because the Board systematically reviews the cases of prisoners who have completed two calendar years of institutionalization, formal *commutation* applications are not required. Instead, the following materials²⁵ must be submitted to the Board by the institutional superintendent at least two weeks prior to the Board's scheduled meeting at which the prisoner's case will be reviewed:

- Court and Investigatory Records. Court records, including but not limited to behavioral details, facts of crime, and presentence reports, as well as law enforcement records compiled by local police, the FBI, or other agencies.²⁶

²²See *Colorado Code of Penal Discipline* for a description of these offenses.

²³Executive Clemency Advisory Board, *supra* note 3 at 3-4.

²⁴Shamos letter, *supra* note 4 at 2.

²⁵Executive Clemency Advisory Board, *supra* note 3 at 5-6.

²⁶*Id.*

- Psychological Reports. Psychological and psychiatric materials, including diagnoses and test results.²⁷
- Medical Records. Current medical records if the inmate is under consideration for a commutation based on medical or health reasons or if otherwise relevant to the determination.²⁸
- Prison Record. The prison's inmate case summary and file, furlough record, current parole or discharge eligibility date, and a list of any serious disciplinary acts.²⁹
- Recommendations. Letters of recommendation from supervisory staff of work release or educational programs in which the applicant has participated, as well as those from family, prospective employers, and other interested persons, may be submitted for consideration by the Board.³⁰
- Certificate of Good Conduct. The Board is not authorized to consider a case for either commutation or pardon in the absence of submission of a Certificate of Good Conduct.³¹ This Certificate is issued by the applicant's institutional superintendent and attests to the applicant's conduct record while incarcerated. The applicant is permitted to present other evidence of his former good character which will accompany the Certificate.³²

Pardon applications must include the following materials besides the Certificate of Good Conduct discussed above:

- Letter of Application. The applicant must submit to the Board a letter of application which includes his full name, date of birth, aliases, discussion of the facts and circumstances of the offense and subsequent conviction, and the place of incarceration.³³
- Recommendations. Along with his own letter of application, an applicant must submit five letters of recommendation from responsible citizens who have witnessed his adjustment since his release from supervision.³⁴
- Law Enforcement Record. The Division of Corrections must supply the Board with the applicant's FBI and/or local law enforcement record.³⁵
- Probation or Parole Record. The Division of Corrections must send to the Board the applicant's probation record, including statements by the probation and judicial officers and relevant pre- and post-sentence material, or his parole record, including statements regarding the applicant's adjustment while on parole.³⁶

²⁷*Id.*

²⁸*Id.*

²⁹*Id.*

³⁰*Id.*

³¹Colorado Rev. Stat. § 16-17-102.

³²*Id.*

³³Executive Clemency Advisory Board, *supra* note 3 at 2.

³⁴*Id.*

³⁵*Id.*

³⁶*Id.*

— Prison Record. The Division of Corrections must submit a detailed report of the applicant's institutionalization, including progress reports if appropriate.³⁷

Notice. In accordance with a recently enacted statute,³⁸ an applicant's prosecuting attorney and sentencing judge must be notified of the clemency application and requested to supply relevant comment or information on the propriety of the proposed action.³⁹ The procedural details of its implementation are still in the planning stage. Prior to the passage of this act, such notification and the subsequent response were discretionary.

Hearings. At each Board meeting, approximately five pardon applications and fifteen to twenty commutation requests⁴⁰ are considered.⁴¹ Although inmate interviews are required for commutations of sentence, pardon applicants are interviewed only when the Board determines that a hearing is necessary to make a fair and proper recommendation to the governor.⁴²

Attendance at Board hearings by persons other than interviewers is strictly by invitation.⁴³ In the past, representatives from the governor's office and counsel for the inmate have been the most common invited participants. Press representatives are generally barred from hearings to prevent potential influencing of Board members who may later be called upon to re-examine the applicant's case.⁴⁴

Each clemency interview lasts about twenty minutes. During this time, the prisoner must highlight the strongest points that favor his clemency grant in addition to responding to questions from the Board.⁴⁵

Minutes of the Hearing. Within ten days following each clemency hearing, the Board's secretary prepares the minutes of the meeting, which are sent to the governor for his review. These minutes are confidential, and only the governor, the institution's superintendent, and members of the Board have access to them.⁴⁶

Board's Recommendations. In each clemency case in which the Board affirmatively recommends an applicant for either commutation or pardon, the applicant is not notified until the governor acts upon the Board's recommendation.⁴⁷ Should the Board recommend that the governor take no action

³⁷*Id.*

³⁸Colo. Rev. Stat. § 16-17-102, amended 1977.

³⁹See copy of the act.

⁴⁰According to Mr. Shamos, until recently all sentences served at the state reformatory have been indeterminate so that it has not been necessary in the past to consider commutation for reformatory inmates.

⁴¹Shamos letter, *supra* note 4 at 1.

⁴²Executive Clemency Advisory Board, *supra* note 3 at 2.

⁴³*Id.* at 6.

⁴⁴Interview with Shamos, *supra* note 19.

⁴⁵Shamos letter, *supra* note 4 at 2.

⁴⁶Executive Clemency Advisory Board, *supra* note 3 at 7.

⁴⁷*Id.*

on the application, the applicant is notified within thirty days of the decision in a letter which enumerates the reasons for the clemency denial.⁴⁸

In order for the Board's recommendation to be effective, a quorum of five of the seven members must be present at the meeting, and a majority of those in attendance must be in accord as to the action. Following the Board's advisory decision, the recommendation is communicated to the governor by the Board's chairman.⁴⁹

Concluding Procedures

Following recommendation by the Board, the governor may either grant or deny the clemency request.

In each case in which the governor denies a clemency request, the Board sends a letter of notification to the applicant informing him of the denial, the reasons for the refusal, and the appropriate time for reapplication.⁵⁰

In each case in which the governor approves the Board's recommendation, he issues and signs an executive order granting the clemency. The governor's Extradition Secretary then prepares, mails, and files the order.⁵¹

The concluding procedures for pardon and commutation grants are somewhat different. In each case in which a pardon is granted, the original executive order is sent to the grantee.⁵² Copies of the order are then sent to the FBI and the sheriff or police chief in the county or city⁵³ in which the crime was committed. Other copies are filed in the Governor's Executive Record Book and in the Executive Clemency File.⁵⁴

Following issuance of each commutation executive order, the original and one copy are sent⁵⁵ to the superintendent of the institution in which the prisoner is incarcerated. Other copies are sent to the State Division of Correctional Services, the Office of Parole and Community Services, and the Colorado Civil Rights Commission. A final copy is filed in the Governor's Executive Clemency File.⁵⁶

Clemency Reconsideration

A clemency applicant whose request has been denied by the Board is generally not reconsidered until five years after the original review.⁵⁷ There

⁴⁸Interview with Shamos, *supra* note 19.

⁴⁹Phone interview with staff member of Colorado Board of Parole (June 22, 1977).

⁵⁰Phone interview with Jeremy Shamos, assistant to Governor Lamm (June 22, 1977).

⁵¹Phone interview with Edna Russell, *supra* note 21.

⁵²This notification is by registered mail, with return receipt requested upon delivery.

⁵³According to Mrs. Russell, the Denver police chief is the only police official who receives notification of the grant. Generally, notice is sent only to the county sheriff.

⁵⁴Phone interview with Edna Russell, *supra* note 21.

⁵⁵Notification of commutation is sent by first class mail only.

⁵⁶Phone interview with Edna Russell, *supra* note 21.

⁵⁷Executive Clemency Advisory Board, *supra* note 3 at 4.

are exceptions to this practice, however. If the original clemency denial provides for an earlier review, or if the prison superintendent, the director of Community Services of the Division of Corrections, or the governor specifically requests earlier reconsideration, the five-year rule will not apply.⁵⁸

In each case in which the governor denies the clemency grant, the case will be reconsidered one year following the original hearing.⁵⁹

Conclusion

Colorado's executive clemency system is currently undergoing subtle procedural changes in order to increase efficiency and promote fairness.⁶⁰ These changes have resulted in a system that successfully⁶¹ combines the centralized clemency authority of the governor with the administrative efficiency of an advisory board.

Connecticut

Clemency Structures

Governor's Authority. The governor has the authority to grant reprieves. (Conn. Const. art. IV, § 13.)

Board of Pardon's Authority. The Board of Pardons has the exclusive authority to grant pardons (medical and absolute) and to commute sentences. (Conn. Gen. Stat. § 18-26).

Board of Pardon's Composition. The Board consists of five members appointed by the governor with the advice and consent of either legislative house. Members serve six-year terms and must be Connecticut residents. Two members must be licensed to practice law in Connecticut, one must be a physician, one must be a social science professional, and one must be a judge of the supreme court of errors. Excluding the judge, no more than two members of the Board can belong to the same political party. (Conn. Gen. Stat. § 18-24a.)

Clemency Types

Commutation.

Pardon. Pardons are granted by the Board only after the conviction, either

⁵⁸*Id.*

⁵⁹*Id.*

⁶⁰The involvement of various state agencies in the data collection process eliminates the applicant's need to supply expensive duplicates of court and institutional records.

⁶¹Two procedural changes may be warranted, however. Although a recent legislative act has provided for the input of the applicant's sentencing judge and prosecuting attorney, procedural standards might be established to ensure that such comments are communicated to the Board in an effective manner. Further, the possibility of notifying the clerk of the convicting court of the clemency grant should be given consideration. Such notification would complete the disposition of the case.

before or after service of sentence. (Conn. Gen. Stat. § 18-26.) Pardons may be granted for medical reasons.

Reprieve.

Procedural Limitations

Denial of Petition. When clemency applications are denied by the Board, petitioners must wait at least one year before they are eligible to reapply. (Rules for Petitions to the Connecticut Board of Pardons, Section V.)

Delaware

For more information, see Delaware Constitution article VII, §§ 1-3 (1974).

Clemency Structures

Governor's Authority. The governor has the authority to grant pardons, reprieves, and commutations and to remit fines and forfeitures except in cases of impeachment. Pardons or reprieves in excess of six months and all commutations must receive the affirmative written recommendation of a majority of the Board of Pardons. (Del. Const. art. VII, § 1 [1974].)

Board of Pardon's Duties. The Board of Pardons conducts hearings on clemency applications and recommends action to the governor. The Board's recommendations are required for pardons, reprieve actions extending beyond six months, and all commutation actions. (Del. Const. art. VII, § 1 [1974].)

Board of Pardon's Composition. The Board of Pardons is composed of the auditor of accounts, the chancellor, the lieutenant governor, the secretary of state, and the state treasurer. (Del. Const. art. VII, § 2 [1974].)

Clemency Types

Commutation.

Pardon.

Remission of Fines and Forfeitures.

Reprieve.

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Del. Const. art. VII, § 1 [1974].)

Recommendation by the Board of Pardons. Pardons or reprieves in excess of six months duration and all commutations must have the affirmative written recommendation of a majority of the Board of Pardons. (Del. Const. art. VII, § 1 [1974].)

Procedural Limitations

Governor's Register. The governor must fully record his reasons for

granting all commutations, reprieves, pardons, and remissions. These documents are then entered in the register of the governor's official acts and are presented for review to the General Assembly at its next regular session. (Del. Const. art. VII, § 1 [1974].)

Florida

Introduction

In Florida, executive clemency is vested in the governor by the Florida Constitution of 1968. Article 4, Section 8(a) of the constitution provides:

Except in cases of treason and in cases where impeachment results in conviction, the governor may, by executive order filed with the secretary of state, suspend collection of fines and forfeitures, grant reprieves not exceeding sixty days and, with the approval of three members of the cabinet, grant full or conditional pardons, restore civil rights, commute punishment, and remit fines and forfeitures for offenses.

Florida utilizes a clemency system in which the principal clemency authority is centralized in the governor. However, Florida prevents abuse of the power by mandating that the governor may act only upon his cabinet's recommendation. In practice, this system allows the cabinet to act as an effective balancing mechanism and significantly expedites the clemency process without abrogating the governor's power.

Timetable⁶²

Because Florida's clemency procedures are well-ordered and carefully synchronized, the system is an efficient one. In cases involving in-state offenses, the applicant can expect a final clemency determination within approximately sixty days of application (though the preparation of formal orders may take an additional four to six weeks). In cases involving out-of-state or federal offenses, investigations are more complicated and thus the applicant may not receive a decision for three to nine months after application.

Executive Clemency Board

Clemency is granted in the state of Florida by the governor and the cabinet, whose members consist of the attorney general, the commissioner of agriculture, the secretary of state, the state comptroller, the Office of the Treasurer and Insurance Commissioner, and the commissioner of education.

The governor may exercise his clemency authority only with the approval of three cabinet members.⁶³

⁶²Phone interview with Alice Ragsdale, executive clemency coordinator (June 15, 1977).

⁶³Fla. Const. art. IV, § 8(a).

The Executive Clemency Board has no constitutional or statutory jurisdiction on questions of parole and probation or in cases involving violations of municipal laws.⁶⁴

Clemency Coordinator

The Office of Executive Clemency assists the governor and cabinet in executing the clemency authority. At present, the office consists of a coordinator and three assistants. The primary tasks of the coordinator are to dispense clemency applications, to set the agenda for clemency hearings, to keep proper records of all clemency proceedings, and to act as the custodian of files and records arising out of the clemency process.⁶⁵

Standards for Clemency Determinations⁶⁶

The Parole and Probation Commission considers the following factors in making its clemency recommendations to the Board: 1) the type and seriousness of the offense, 2) the evidence of rehabilitation efforts, 3) the length of time since the conviction, and 4) the degree of need for the grant. It should be noted that a full pardon is granted only to an individual who has lived in accordance with the law for several years and/or has a genuine need for the pardon.

The Board is especially interested in human factors that could not be or were not weighed by the court in its original determination of a death sentence and in the rehabilitation of other clemency applicants.

Types of Clemency

The governor, with the approval of three cabinet members, may grant the following types of clemency:

Full pardon. A full pardon unconditionally releases the person from punishment, forgives guilt, and entitles the applicant to all of the rights of citizenship enjoyed by him before his conviction, thus absolving him of the legal consequences of his conviction.⁶⁷ Full pardons are granted only to the "very deserving," as determined by the Executive Clemency Board, and to people with special needs; e.g., law students, policemen, and medical students, according to the Board's coordinator. Between 1964 and 1968, there were more full pardons granted than any other type of clemency. Between 1969 and 1971, and again between 1975 and 1976, full pardons were the second most frequent type of clemency granted.

Conditional pardon. In granting a pardon after conviction, the governor,

⁶⁴Fla. Executive Clemency Rule 3 (1975).

⁶⁵*Id.*, at Rule 2.

⁶⁶Phone interview with Ragsdale, *supra* note 62.

⁶⁷Fla. Executive Clemency Rule 4A (1975).

with the approval of three cabinet members, may impose any condition, limitation, or restriction that is not illegal, immoral, or impossible to perform. For this reason, the pardon may contain conditions that must be fulfilled either before or after it is granted, and any violation of these conditions will result in the offender's loss of pardon and return to prison to serve the balance of the original sentence.⁶⁸ If a conditionally pardoned convict accepts the pardon conditions, he is bound to comply with the terms of the pardon. Whenever the applicant fulfills the conditions of the pardon and has been reinvestigated by the Board of Parole, the pardon becomes full and absolute.⁶⁹

Commutation of sentence in noncapital cases. The commutation of sentence does not restore the applicant's civil rights. An individual who is imprisoned, paroled, or on probation is not considered for commutation unless a waiver of the rule is granted by the governor with the approval of three members of the cabinet, or unless the commutation is recommended by the secretary of the Department of Offender Rehabilitation.⁷⁰

Commutation in capital cases. Florida amended its Executive Clemency Rules in December 1976 regarding commutation of death sentence. The new rules establish careful and expeditious procedures for clemency consideration. The rules provide that in capital cases, the clerk of the court must transmit a copy of the conviction and sentence to the governor. The governor or any cabinet member may then request an immediate clemency investigation by the Parole and Probation Commission. A hearing is held as a part of the investigation at which interested persons are encouraged to give testimony or to submit written statements. The results of the Commission's investigation are communicated to the governor and the cabinet. The Executive Clemency Board then holds a hearing at which the state's attorney and a representative of the public defender's office (or an attorney for the inmate) are given thirty minutes in which to advocate their positions. After this hearing, the governor and the cabinet make their determination. In order for a commutation to be granted, the governor and three cabinet members must concur in its favor.⁷¹

Remission of fines and forfeitures. The governor may, with the approval of three cabinet members, remit fines and forfeitures. This type of clemency suspends or removes all fines and forfeitures of the applicant.⁷²

Restoration of Civil Rights. A successful clemency applicant's rights of citizenship are automatically restored if the grant is for a felony convic-

⁶⁸*Id.*, at Rule 4B.

⁶⁹*Id.*

⁷⁰*Id.*, at Rule 4C.

⁷¹Fla. Executive Clemency Rule 7, as amended 1977.

⁷²*Id.*, at Rule 5D.

tion.⁷³ The governor and the requisite members of cabinet can also restore all or some of the Florida civil rights to a person convicted under laws of another state or government of the United States.⁷⁴

As to nonclemency releases, the law now provides that when a person receives a final release from the Department of Offender Rehabilitation, the Florida Parole and Probation Commission, or county jail, his civil rights are automatically restored.⁷⁵ All civil rights are restored except the right to possess or own a firearm, which must be applied for separately.⁷⁶

The procedures for restoration of civil rights are as follows. Each month the staffs of the Florida Parole and Probation Commission and the Department of Offender Rehabilitation provide the Office of Executive Clemency with lists of persons who have been granted final release from probation, parole, mandatory conditional release, or release from prison by expiration of sentence, along with the prison number, date of birth, and commission number for each person released. The Executive Clemency Office then prepares an executive order including the list to be signed by the governor with the concurrence of three members of the cabinet. Certificates of Automatic Restoration of Civil Rights for each person are typed, signed by the clemency coordinator, and sent back to the Parole and Probation Commission and to the Department of Offender Rehabilitation for transmittal to the affected persons.⁷⁷

The executive clemency office keeps a list with names and identification numbers in a permanent minute book. This book is indexed to inform state attorneys and others about persons who have been granted restoration of civil rights. The Office of Executive Clemency also handles lists that come from area sheriffs' offices of persons convicted of felonies and released from county jails.⁷⁸

The automatic restoration procedures do not apply to a person who has an outstanding detainer based upon a state, out-of-state, or federal felony

⁷³*Id.*, at Rule 5E.

⁷⁴*Id.*

⁷⁵Florida Office of Executive Clemency, "Procedures for Implementation of Automatic Restoration of Civil Rights," (1975). On November 1, 1975, the automatic restoration of civil rights became effective in the state of Florida. Before that time, the restoration of civil rights was governed by the Rules of the Executive Clemency Board.

⁷⁶*Id.* The authority to own a firearm must be specifically granted by the governor with the approval of three members of the cabinet. In addition, the 1968 Federal Gun Control Act requires that a person who has been convicted of a felony must apply to the regional director of the Bureau of Alcohol, Tobacco and Firearms in Atlanta, Ga., in order to obtain the authority to own or possess a firearm.

⁷⁷*Id.* Any person convicted of a felony who is released from parole, probation, mandatory conditional release, prison, or county jail prior to November 1, 1975, can have his civil rights reinstated upon application to the governor.

⁷⁸*Id.*

charge or conviction.⁷⁹ Individuals who are incarcerated or have charges pending are also unable to receive automatic restoration.⁸⁰

Restoration of civil rights in the state of Florida to applicants for out-of-state or federal convictions restores to the applicant all the rights of Florida citizenship, including the right to vote, the right to serve on a jury, and the right to hold public office.⁸¹

Restoration of Residence Rights. An individual who is not a citizen of the United States but who has been convicted of a felony under the laws of Florida, any other state, or the federal government may be granted a restoration of any or all rights enjoyed by him as a result of his residence in the state of Florida.⁸² In order to make his application to the Office of Executive Clemency for restoration of residence rights, the applicant must have been a bona fide resident of Florida for at least one year prior to making the application.⁸³

Reprieve. In cases of treason, the governor may grant a reprieve until the adjournment of the legislature's regular session which convenes after the conviction. At the start of this session, the legislature exercises all clemency powers with respect to treason cases.⁸⁴

Applicant Categories

The Florida clemency process is based on the premise that it is preferable that convicts earn their release through parole and work release programs. For this reason, commutations are rarely granted, and clemency grants are generally awarded only to persons who have completed their sentences.⁸⁵

Clemency Procedures

There are three major ways in which cases for executive clemency are considered.⁸⁶ The first is by individual application of a person convicted of a felony in the state of Florida. The forms used in making application for clemency are furnished by the clemency coordinator and can be obtained by writing to the Office of Executive Clemency.⁸⁷ Another way is for the Parole and Probation Commission to submit directly to the governor and members

⁷⁹Fla. Executive Clemency Rule 9C (1975).

⁸⁰*Id.*

⁸¹Fla. Stat. § 940.05.

⁸²Fla. Executive Clemency Rule 11 (1975).

⁸³*Id.*

⁸⁴Fla. Stat. § 940.01(2).

⁸⁵Phone interview with Ragsdale, *supra* note 62.

⁸⁶In addition, the secretary of the Department of Offender Rehabilitation may recommend a commutation of sentence for any prisoner who has actually served ten years of a life sentence, who has sustained no charge of misconduct, and who has a good institutional record. (Fla. Executive Clemency Rule 8B[3][c] [1975].)

⁸⁷*Id.*, at Rule 5.

of the cabinet the names of persons qualified for executive clemency consideration.⁸⁸ Under the third way, cases proposed by the governor or cabinet members⁸⁹ usually are acted upon by circulation of a proposed order without the necessity of a clemency meeting.⁹⁰ In all cases, the action must be approved by the governor and three members of the cabinet.⁹¹

Application for Executive Clemency. Any person applying for executive clemency must submit an application to the coordinator of the Office of Executive Clemency.⁹² Several supporting documents must be filed with the original clemency application including certified copies of the charging instrument (affidavit, information, or indictment), the judgment, and the sentence of each felony conviction under state, out-of-state, or federal laws.⁹³ The clerk of the court (or the judge, if there is no clerk) must furnish certified copies of the material without expense and upon request of the petitioner.⁹⁴

The clemency applicant must also file an affidavit showing that a copy of the application and all supporting documents were furnished to the prosecuting attorney and the presiding judge of the court in which the applicant was convicted.⁹⁵ Finally, the governor and the clemency coordinator may require that an applicant file a stenographic report of the trial testimony, if such a report is available. An applicant is not required to file a stenographic report unless specifically notified in writing by the clemency coordinator.⁹⁶

Applicants for executive clemency must apprise the Office of Executive Clemency of any change of address or status.

Time for Filing. All clemency applications and necessary supporting documents must be filed with the clemency coordinator at least sixty days before the date set for the clemency meeting.⁹⁷ At present, the Board meets on the first Wednesday after the second Monday in the months of March, June, September, and December of each year.⁹⁸

Applications for restoration of civil rights lost by reason of conviction in the state of Florida or under the laws of another state government and which would have constituted a felony under Florida law must be filed with the clemency coordinator at least ninety days before the date set for the clemency meeting.⁹⁹ Applicants must have been bona fide residents of Florida

⁸⁸*Id.*, at Rule 8(3) and Fla. Stat. § 940.06.

⁸⁹*Id.*, at Rule 16.

⁹⁰*Id.*, at Rule 17.

⁹¹Fla. Const. art. IV, § 8(a).

⁹²Fla. Executive Clemency Rule 7A (1975).

⁹³*Id.*, at Rule 6A(1).

⁹⁴Fla. Stat. § 940.04.

⁹⁵Fla. Executive Clemency Rule 6A(2) (1975).

⁹⁶*Id.*, at Rule 6C.

⁹⁷*Id.*, at Rule 7A.

⁹⁸*Id.*, at Rule 17.

⁹⁹*Id.*, at Rule 7B.

for at least one year prior to making the application. Any application that does not meet the requirements is returned to the applicant.

Investigation and Recommendation Stage. Each application found by the clemency coordinator to be complete is referred to the Florida Parole and Probation Commission for investigation, report, and recommendation.¹⁰⁰ Persons who have submitted applications for clemency usually are required to comply with reasonable requests for additional information made by the Parole Commission during its investigation.

Agenda. When recommendations are returned from the Parole Commission, the clemency coordinator makes up an agenda for the upcoming clemency meeting.¹⁰¹

The agenda is filed with the secretary of state seven days before the meeting, and copies are furnished to the governor, the cabinet, and all members of the public that request it.¹⁰² A preclemency meeting for clemency aides is held one week before the regular meeting in order to brief the aides about each case.¹⁰³ When an applicant is unable to meet all of the requirements necessary to have an application for clemency considered by the Board, the applicant may petition the governor and cabinet for a waiver of certain rules. Such a waiver may be granted by the governor and three members of the cabinet. When the clemency coordinator receives written notification of the waiver, the coordinator places the petitioner's application for clemency on the agenda.¹⁰⁴

Clemency Meeting. In order to save the expense of attending the meeting, an applicant whose case has received a favorable recommendation from the Parole Commission is advised that he need not appear at the meeting unless he wishes to.¹⁰⁵ The governor and cabinet meet in Tallahassee at the Capitol.¹⁰⁶ All meetings are open to the press and public. The clemency meetings of the governor and cabinet are recorded by the secretary of state's office, and copies of the transcript are distributed upon request.¹⁰⁷ Special meetings may only be called by the governor in cases of extreme emergency.¹⁰⁸

According to Rule 18 of the Executive Clemency Rules of Florida (1975),

¹⁰⁰*Id.*, at Rule 14.

¹⁰¹*Id.*, at Rules 8 and 15.

¹⁰²*Id.*, at Rule 15.

¹⁰³"Procedures for Implementation of Automatic Restoration of Civil Rights," *supra* note 75.

¹⁰⁴Fla. Executive Clemency Rule 13 (1975).

¹⁰⁵"Procedures for Implementation of Automatic Restoration of Civil Rights," *supra* note 75.

¹⁰⁶Fla. Executive Clemency Rule 17 (1964).

¹⁰⁷"Procedures for Implementation of Automatic Restoration of Civil Rights," *supra* note 75.

¹⁰⁸*Id.*

the following is the order of business for each clemency meeting:

- Invocation.
- Favorable recommendations.
- Unfavorable recommendations without representation by counsel (the applicant or any representative of applicant present is invited to speak).
- Unfavorable recommendations represented by counsel.
- Consideration of statutory relief cases (submitted by the secretary of the Department of Offender Rehabilitation through the Florida Parole and Probation Commission once each year).
- Any unfinished business.
- Adjournment.

Concluding Procedures

Once the meeting is completed, the clemency coordinator sends a letter to the applicant which officially states the disposition of the application.¹⁰⁹ After the clemency orders have been signed and mailed, the original copies are filed with the secretary of state's office.¹¹⁰

Cases held under advisement are marked "continued" and noted on each subsequent agenda until disposed of. Before cases can be continued, the governor with the approval of three cabinet members must recommend this new status.¹¹¹ Cases withdrawn from the agenda before consideration by the entire Board are not considered again until the person refiles an application with the Executive Clemency Office.¹¹²

When the clemency orders and disposition letters have been mailed out, index cards are completed and placed in the applicant's files noting the action taken by the governor and cabinet. Information about each applicant receiving clemency is then written in a permanent minute book which serves as the basis for reports to the governor which are ultimately transmitted to the legislature.¹¹³ Copies of all executive clemency orders are permanently filed in the coordinator's office so that certificates can be sent to the state attorneys, sheriffs, etc., verifying that a defendant was granted a restoration of civil rights.¹¹⁴

¹⁰⁹*Supra* note 106.

¹¹⁰"Procedures for Implementation of Automatic Restoration of Civil Rights," *supra* note 75.

¹¹¹Fla. Executive Clemency Rule 17, *supra* note 106 (1975).

¹¹²*Id.*

¹¹³Fla. Stat. § 940.01 and "Procedures for Implementation of Automatic Restoration of Civil Rights," *supra* note 75.

¹¹⁴"Procedures for Implementation of Automatic Restoration of Civil Rights," *supra* note 75.

Denials and Resubmission

A case that has been considered and denied by the Clemency Board is not reconsidered for a year after the date of the clemency meeting at which the case was reviewed.¹¹⁵ Whenever an applicant desires to resubmit an application for clemency, written notice must be sent to the Office of Executive Clemency at least sixty days before the date of the next meeting.¹¹⁶

Conclusion

Although the Florida clemency system is, to a great extent, representative of the majority of states, two features distinguish it. First, the system incorporates all the benefits of a governor-controlled clemency structure with those of a balancing auxiliary board.

The other distinctive feature of the Florida system is the provision for automatic restoration of civil rights following final release from parole, probation, or prison by the expiration of sentence. This provision is also administratively expedient in that it eliminates the necessity of individual clemency determinations in matters of civil rights restoration.¹¹⁷ The provision for automatic restoration of civil rights does not include the ownership or use of firearms.

In these ways, the Florida system provides for the expeditious administration of the clemency power.

Georgia Clemency Structures

Governor's Authority. The governor has the authority to suspend temporarily a sentence of capital punishment until the Board of Pardons and Paroles is able to consider clemency action. The governor similarly has the authority to suspend sentences imposed for treason until such cases may be received by the General Assembly at its next session. (Ga. Const. § 2-2802 [1977].)

Board of Pardons and Paroles' Authority. The Board has the authority to grant pardons, paroles, reprieves, and commutations after conviction and to remove all civil and political disabilities except in cases of impeachment and treason. (Ga. Const. § 2-2001 [1977].)

Board of Pardons and Paroles' Composition. The Board is composed of five members who are full-time salaried employees of the state. Members of the Board are appointed by the governor and confirmed by the state Senate. (Ga. Code Ann. § 77-501.)

¹¹⁵Fla. Executive Clemency Rule 17, *supra* note 106 (1975).

¹¹⁶*Id.*

¹¹⁷The automatic nature of this process has been criticized by some observers who believe that restoration of rights should be considered on a case-by-case basis.

Clemency Types

Commutation.

Pardon.

Reprieve.

Restoration of Civil and Political Rights. All pardons granted by the Board relieve their recipients from all civil or political disabilities. (Ga. Code Ann. § 77-528.)

Temporary Suspension of Sentence.

Substantive Limitations

Vote of Board Required. In all clemency cases, a majority vote of the Board is required for action.

Impeachment and Treason. All clemency authority of impeachment or treason is vested in the state legislature. (Ga. Const. § 2-2001 [1977].)

Procedural Limitations

Governor's Report. The governor must report to each legislative session on all cases of suspension of sentence. (Ga. Const. § 2-2802 [1977].)

Hawaii

Clemency Structures

Governor's Authority. The governor has the authority to grant reprieves, commutations, and pardons after conviction except in cases of impeachment. (Haw. Const. art. IV, § 5.)

Director of Social Services and Hawaii Paroling Authority's Duties. The director, in conjunction with the Paroling Authority, investigates all clemency cases and makes nonbinding recommendations to the governor. (Haw. Rev. Stat. § 353-72.)

Clemency Types

Commutation.

Pardon.

Reprieve.

Substantive Limitations

Impeachment. The constitution of Hawaii expressly empowers the state legislature to authorize the governor to grant pardons for impeachment. (Haw. Const. art. IV, § 5.)

Idaho

Clemency Structures

Governor's Authority. The governor has the authority to grant respites and reprieves in all cases except treason or impeachment. (Idaho Const., art. IV, § 17.)

Legislature's Duties and Authority. The legislature prescribes the manner in which applications for clemency are made. (Idaho Const. art. VI, § 7.) The legislature has clemency authority in treason matters. (Idaho Code, § 20-240 [Supp. 1976].)

Commission of Pardons and Paroles' Authority. The Commission has the authority to remit fines and forfeitures and to grant pardons (full and conditional), and commutations after conviction. (Idaho Const. art. IV, § 7; Idaho Code § 20-210 [Supp. 1976].)

State Commission's Composition. The Commission is composed of five members, each of whom have knowledge in psychology, rehabilitative services, and sociology. Not more than three members may belong to the same political party. (Idaho Code § 20-210 [Supp. 1976].)

Clemency Types

Pardon (full and conditional).

Commutation.

Remission of Fines and Forfeitures.

Respite. Does not extend beyond the next legislative session of the Commission. (Idaho Const. art. IV, § 7.)

Reprieve. Does not extend beyond the next session of the Commission. (Idaho Const. art. IV, § 7.)

Substantive Limitations

Treason. The governor may suspend the execution of a treason sentence until the case is reported to the legislature at its next regular session, at which time the legislature can pardon, commute, direct execution of the original sentence, or grant a further reprieve. (Idaho Code § 20-240 [Supp. 1976].)

Impeachment. Neither the Commission nor the governor has clemency authority over cases of impeachment. (Idaho Const. art. VI, § 7.)

Procedural Limitations

Notice. Notice of all Commission meetings in which clemency matters are considered is published in a newspaper of general circulation in Boise at least once a week for four consecutive weeks. The notice lists the names of all clemency petitioners. A copy of the meeting notice is mailed to each prosecuting attorney in the county in which the offense was committed. (Idaho Code § 20-213.)

Decision. The minutes of the proceedings of the Commission must include its reason for action and the opinions of any dissenting members. All dissents must be filed in the secretary of state's office with all other documents used in the hearing. (Idaho Const. art. IV, § 17.)

Clemency Procedures

Meeting. The Commission meets quarterly to consider clemency applications and act as advisor on matters of adult probation and parole. (Idaho Code §§ 20-213 and 20-210 [Supp. 1976].)

Reapplication. The Commission usually considers one application from each inmate during any twelve month period. (Idaho Code § 20-213 [Supp. 1976].)

Illinois

Clemency Structures

Governor's Authority. The governor has the authority to grant pardons, commutations, and reprieves after convictions for all offenses. (Ill. Const. art. V, § 12.)

General Assembly's Authority. Section 12 of article V of the Illinois Constitution has been interpreted to mean that the authority to establish clemency application procedures is vested in the state legislature. (*People ex rel. Smith v. Jenkins*, 325 Ill. 372, 156 N.E. 290 [1927].)

Parole and Pardon Board's Duties. The Board holds hearings on all applications for executive clemency and submits its nonbinding recommendations to the governor. (Ill. Rev. Stat. ch. 38, § 1003-3-2[b].)

Clemency Types

Commutation.

Pardon.

Reprieve.

Procedural Limitations

Board's Report to the Governor. The Parole and Pardon Board is required to send a detailed report of its clemency activities to the governor each year. (Ill. Rev. Stat. ch. 38, § 1003-3-2[h].)

Notice. Copies of clemency petitions are given to the applicant's sentencing judge and prosecuting attorney. (Ill. Rev. Stat. § 1003-3-13.)

Indiana

Clemency Structures

Governor's Authority. The governor has the authority after conviction to grant commutations, pardons (full and conditional), and reprieves and to remit fines and forfeitures. This authority, however, does not extend to matters of impeachment or treason. (Ind. Const. art. V, § 17.) Following convictions for treason, the governor may suspend the sentences until the state legislature has the opportunity to consider clemency action. (Ind. Const. art. V, § 17.)

General Assembly's Authority. The state legislature has complete clemency authority in matters of impeachment or treason. (Ind. Const. art. V, § 17.)

Clemency Types

Commutation.

Pardon (full and conditional).

Remission of Fines and Forfeitures.

Reprieve.

Substantive Limitations

Impeachment or Treason. All clemency authority in matters of impeachment and treason are vested in the state legislature. (Ind. Const. art. V, § 17.)

Procedural Limitations

Governor's Report. At each regular session of the state legislature, the governor reports on his clemency activities. (Ind. Const. art. V, § 17.)

Iowa

Clemency Structures

Governor's Authority. The governor has the authority after conviction to grant pardons, commutations, and reprieves. This authority, however, does not extend to matters of impeachment or treason. In cases of treason, he may suspend execution of the sentence until consideration by the state legislature is possible. (Iowa Const. art. IV, § 16.) The governor has the power to remit fines and forfeitures upon such conditions as he may think proper. (Iowa Code § 248.13.) The governor also has the power to grant certificates restoring citizenship rights. (Iowa Code § 248.12.)

Board of Parole's Duties. The Board is required by law to investigate all applications in reference to the pardons of persons convicted of crimes and recommend action to the governor. (Iowa Code § 248.8.)

Clemency Types

Commutation.

Pardon.

Remission of Fines and Forfeitures.

Reprieve.

Restoration of Citizen Rights.

Temporary Suspension of Sentence in Treason Cases.

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Iowa Const. art. IV, § 16.)

Treason. In cases of treason, the governor can suspend execution of the sentence until consideration of the case by the legislature is possible. (Iowa Const. art. IV, § 16.)

Felony Cases. Following felony convictions, neither pardons nor commutations may be granted by the governor without first obtaining the advice of the Board of Parole. (Iowa Code § 248.6.)

Procedural Limitations

Governor's Report. The governor must report each case of reprieve, commutation, pardon, or remission of fines and forfeitures to the state legislature at each session. (Iowa Const. art. IV, § 16.)

Public Notice. Before presenting an application for pardon to the Board of Parole for its action, where the sentence is death or imprisonment for life, the governor shall cause a notice containing the reasons for granting the pardon to be published in two newspapers. One of these newspapers must be located in the capital city and the other in the county where the defendant was convicted. (Iowa Code § 248.7.)

Testimony. The governor may take relevant testimony to aid in the clemency determination. (Iowa Code § 248.10.)

Kansas

Clemency Structures

Governor's Authority. The governor has the authority to grant pardons and commutations. (Kan. Stat. Ann. § 22-2701.) He may also grant reprieves in capital cases. (Kan. Stat. Ann. § 22-3704.) The governor may impose restrictions on clemency grants. (Kan. Stat. Ann. § 3701.)

Adult Authority's Duties. The Adult Authority investigates clemency applications and reports all relevant information to the governor. (Kan. Stat. Ann. § 22-3701[4].)

Clemency Types

Commutation.

Pardon.

Reprieve (capital cases only).

Procedural Limitations

Governor's Report. The governor reports on his clemency activities at each regular session of the state legislature. (Kan. Stat. Ann. § 22-2703.)

Kentucky

Clemency Structures

Governor's Authority. The governor has the authority to grant pardons (full and conditional), commutations, and reprieves and to remit fines and forfeitures. This power, however, does not extend to cases of treason or impeachment. (Ky. Const. § 77.)

General Assembly's Authority. The General Assembly has clemency

authority in matters of treason. (Ky. Const. § 77.)

Parole Board's Duties. The Parole Board investigates clemency applications and advises the governor through recommendations. (Ky. Rev. Stat. § 439.450 [1975].)

Clemency Types

Commutation.

Pardon (full and conditional). The governor may grant either a full or conditional pardon. Failure to comply with the terms of a conditional pardon is a valid basis for revocation of the pardon. (*Meredith v. Hall*, 277 Ky. 612, 126 S.W.2d 1056 [1939].)

Remission of Fines and Forfeitures.

Reprieve.

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Ky. Const. § 77.)

Treason. In cases of treason, the governor may grant a reprieve only until the next session of the General Assembly, at which time clemency power is vested in the General Assembly. (Ky. Const. § 77.)

Louisiana

Clemency Structures

Governor's Authority. The governor has complete authority to grant reprieves. Upon the recommendation of the Board of Pardons, the governor may also pardon, commute sentences, and remit fines and forfeitures. (La. Rev. Stat. Ann. § 15:572[A] [Supp. 1976].)

Board of Pardon's Duties. The Board of Pardons investigates, reviews, and recommends clemency applications for action by the governor. (La. Rev. Stat. Ann. § 15:572[C] [Supp. 1976].)

Board of Pardon's Composition. The Board of Pardons consists of five full-time members who are appointed by the governor and confirmed by the state senate. (La. Rev. Stat. Ann. § 15:572.1 [Supp. 1976].)

Department of Public Safety and Corrections' Duties. These departments provide the Board of Pardons with information on each clemency applicant's social history, past criminal record, prison record, and mental and physical condition. (La. Rev. Stat. Ann. § 15:572.5 [Supp. 1976].)

Clemency Types

Commutation.

Pardon. A first offender who has never previously been convicted of a felony is automatically pardoned upon the completion of his sentence. This automatic pardon is granted without any action by either the governor or the

Board of Pardons, but may be exercised only once per individual. (La. Rev. Stat. Ann. § 15:572 [B-D] [Supp. 1976].)

*Remission of Fines and Forfeitures.
Reprieve.*

Procedural Limitations

Majority Vote Required for Board Action. Any action by the Board of Pardons requires the affirmative vote of at least a majority of the members. (La. Rev. Stat. Ann. § 15:572.1 [E] [Supp. 1976].)

Open Meeting of the Board. All Board meetings are open to the public. (La. Rev. Stat. Ann. § 15:572.1 [D] [Supp. 1976].)

Written Notice to District Attorney and Opportunity for Public Comment. Before any clemency application is considered, the Board must give written notice to the district attorney of the parish in which the applicant was convicted. The district attorney and other interested persons are given a reasonable opportunity to comment upon the clemency application at the Board's meeting. (La. Rev. Stat. Ann. § 15:572.4 [Supp. 1976].)

Governor's Discretion. Although the governor may refuse to grant a pardon recommended by the Board of Pardons, he may not grant a pardon without the recommendation of the Board. (La. Rev. Stat. Ann. § 15:572[A] [Supp. 1976].)

Reconsideration of Clemency Action Originally Denied. If a recommendation for pardon is denied, the reasons for the Board's action are attached to the application. An application that is originally denied may be reconsidered if additional supportive evidence is presented. (La. Rev. Stat. Ann. § 15:572.4 [Supp. 1976].)

Maine

For more information, see Maine Revised Statutes, title 15, §§ 2161-2166.

Clemency Structures

Governor's Authority. The governor has the authority, after conviction, to grant pardons (full and conditional), commutations, and reprieves and to remit forfeitures and penalties. This authority, however, does not extend to cases of impeachment. (Me. Const. art. V, pt. 1, § 11 [Supp. 1976-1977].) The governor may attach restrictions to his clemency grants. (Me. Const. art. V, pt. 1, § 11.)

Division of Probation and Parole's Duties. The Board's field officers investigate clemency applications.

Governor's Advisory Board on Executive Clemency's Duties. The Advisory Board utilizes the background investigations of the Division of Probation and Parole to conduct hearings and to make nonbinding recommendations to the governor. The governor has provided the Board with the power to

terminate any individual clemency application whenever it deems it appropriate. The final clemency decision, however, rests with the governor. (Executive Order No. 5-FY-1977.)

Advisory Board's Composition. The Governor's Advisory Board on Executive Clemency is composed of three persons appointed by the governor to serve at his pleasure. Two alternate members are also appointed by the governor. All members of the Board and their alternates are Maine citizens who have exhibited a humanitarian concern as well as a thorough knowledge of the criminal justice system. In addition, the members must have demonstrated these qualities in their professional and private lives. (Executive Order No. 5-FY-1977.)

Clemency Types

Commutation. A state prisoner's sentence may be commuted to imprisonment in a county jail, though the state continues to support the prisoner. (Me. Rev. Stat. tit. 15, § 2162 [Supp. 1976-1977].)

Pardon (full and conditional). The governor may attach conditions or restrictions to his clemency grants. (Me. Const. art. V, pt. 1, § 11.) Conditional pardons may be granted, but upon a finding of the violation of a term, the pardon will be revoked. (Me. Rev. Stat. tit. 15, §§ 2164, 2165 [Supp. 1976-1977].)

Remission of Forfeitures and Penalties.

Reprieve.

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Me. Const. art. V, pt. 1, § 11. [Supp. 1975-1976].)

Reconsideration of Clemency Applications. Twelve months must elapse before the Governor's Advisory Board on Executive Clemency will reconsider a request for clemency from the same applicant.

Procedural Limitations

Notice, Attendance at Hearing, and Report. Written notice of each clemency petition is given to both the attorney general and to the applicant's prosecuting attorney at least four weeks prior to the clemency hearing. The attorney general and prosecuting attorney may be requested to attend the hearing if the conviction involved a crime punishable by confinement in a state prison. In addition, the prosecuting attorney and the sentencing judge may also be required to present a report of relevant facts at the hearing. (Me. Rev. Stat. tit. 15, § 2161 [Supp. 1976-1977].)

Advisory Board's Meetings. The Board meets at the call of the chairman, who is designated by the governor. At least seven days' notice is given to members prior to any meeting. The Advisory Board meets no less than once every two months. (Executive Order No. 5-FY-1977.)

Maryland

Clemency Structures

Governor's Authority. Except in cases of impeachment, the governor has the authority to grant reprieves and pardons (full, conditional, and partial) and to remit fines and forfeitures. (Md. Const. art. II § 20.) The governor has the authority to commute sentences. (Md. Ann. Code art. 41, § 118.)

Parole Commission's Duties. The Parole Commission assists the governor in clemency determination by reviewing clemency applications and recommending pardon, commutation, or some other clemency action. (Md. Ann. Code art. 41, § 110[b][3] [Supp. 1976].) Upon request by the governor, the Parole Commission hears cases involving violations of conditional pardons. (Md. Ann. Code art. 41 §§ 110[a][7] [Supp. 1976].)

Parole Commission's Composition. The Parole Commission is composed of seven Maryland residents who are appointed by the secretary of public safety and correctional services and approved by the governor with the advice and consent of the state senate. Commission members are full-time salaried employees who have both training and experience in criminology, education, law, psychiatry, psychology, social work, or sociology. (Md. Ann. Code art. 41, §§ 108[b-e] [Supp. 1976].)

Clemency Types

Commutation.

Pardon (full, partial, and conditional). A partial pardon, by its terms, has a limited effect. (Md. Ann. Code art. 41, § 107[b].)

Remission of Fines and Forfeitures.

Reprieve.

Substantive Limitations

Impeachment. The governor has no clemency power in cases involving impeachment. (Md. Const. art. II, § 30.)

Procedural Limitations

Notice of Pardon. The governor must give notice of pardon in one or more newspapers on the day of or immediately following his action. (Md. Const. art. II, § 20.)

Governor's Report. When required to do so, the governor must fully report and explain the basis for his clemency activities to the state legislature. (Md. Const. art. II, § 20.)

Massachusetts

For more information, see Massachusetts General Law Annotated, Chapter 127, §§ 135, 152, 154, 157, 167, and Chapter 27 § 4.

Clemency Structures

Governor's Authority. With the advice and consent of the executive council, the governor has the authority to grant pardons. This power, however, does not extend to impeachment cases. The term "pardon" includes all forms of pardoning power except respite from sentence. (Mass. Const. pt. 2, c. 2, § 1, art. VIII, and Mass. Gen. Laws Ann. ch. 127, § 152.) The pardoning power, however, does not extend to impeachment cases. (Mass. Const. pt. 2, c. 2, art. VIII.)

General Court's Authority. In felony cases, the General Court has the authority to prescribe the terms and conditions upon which pardons may be granted. (Mass. Const. pt. 2, c. 2, § 1, art. VIII.)

Parole Board's Duties. The Parole Board acts as an advisory board to the governor in clemency matters. In this capacity, the Board notifies the appropriate officials of all clemency petitions, investigates applicants, holds clemency hearings, and makes nonbinding recommendations to the governor on clemency action. (Mass. Gen. Laws Ann. ch. 127, § 154 and ch. 27, § 5 [Supp. 1977-1978].)

Clemency Types

Commutation.

Pardon (full and conditional). Prisoners who violate the terms of their pardons are arrested and detained by the Board of Parole until examination of their cases is completed by the governor and council. (Mass. Gen. Laws Ann. ch. 127, § 155.) Violation of the terms of clemency grants gives grounds for reinstatement of sentence. (Mass. Gen. Laws Ann. ch. 127, § 156.)

Substantive Limitations

Impeachment. Neither the governor nor the council has clemency authority in matters of impeachment. (Mass. Const. pt. 2, c. 2, § 1, art. VII.)

Procedural Limitations

Notice. When the Parole Board receives a pardon petition, it forwards a copy of the petition to the attorney general, commissioner of correction, and to the chief of police, district attorney, or justice of the court in which the sentence was imposed. Upon receipt of the petition by the appropriate officials, they may make written recommendations to the Board concerning the petition. (Mass. Gen. Laws Ann. ch. 127, § 154.)

Hearing. If the Parole Board holds a hearing, the governor is immediately notified. Both the attorney general and the district attorney are informed of the time and place of the hearing so that they or their representatives will have an opportunity to examine the petitioner's witnesses and present the Commonwealth's case before the Board. (Mass. Gen. Laws Ann., ch. 127,

§ 153.) If a hearing is necessary, the Parole Board must report its findings and recommendations to the governor within six months of the original receipt of the clemency petition. (Mass. Gen. Laws Ann., ch. 127, § 154.)

Governor's Report to the General Court. At the end of each year, the governor transmits a report of his clemency activities to the General Court. This report includes a discussion of the actions taken by the Parole Board in its function as clemency advisors to the governor. (Mass. Gen. Laws Ann. ch. 127, § 152.)

Michigan

Clemency Structures

Governor's Authority. The governor has the authority, after conviction, to grant pardons (full and conditional), commutations, and reprieves, except in cases of impeachment. (Mich. Const. art. V, § 14 [1963].)

Parole Board's Duties. The Parole Board investigates applications for clemency, holds public hearings on the applications, and makes nonbinding recommendations to the governor. (Mich Stat. Ann. § 28.2314[c] and [f].)

Clemency Types

Commutation.

Pardon (full and conditional).

Reprieve.

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Mich. Const. art. V, § 14.)

Procedural Limitations

Notice to Prosecuting Attorney and Sentencing Judge. Within ten days of each clemency application, a written notice including a brief summary of the case, a copy of the application, and copies of all supporting documents is forwarded to the sentencing judge and the prosecuting attorney. The sentencing judge and prosecuting attorney then have ten days to file any comments or objections they have to the proposed clemency action. (Mich. Stat. Ann. § 28.2314[a] and [b].)

Public Hearings. The Parole Board conducts a public hearing only in cases in which a favorable recommendation to the governor is contemplated. The attorney general represents the public's interest. Any person wishing to comment on the application is sworn in as a witness. (Mich. Stat. Ann. § 28.2314[c].)

Governor's Report. Annually the governor reports to the state legislature on his clemency activities. This report includes details of each action and the basis for each decision. (Mich. Const. art. V, § 14 [1963].)

Clemency Procedures

Applications. All clemency applications are filed with the Parole Board on forms supplied by the Board. Upon receipt of an application, the Board delivers the original to the governor and retains a copy for its investigation and hearing. (Mich. Stat. Ann. § 28.2313.)

Minnesota

For more information, see Minnesota Statutes § 638.05 and Minnesota Constitution article V, § 4.

Clemency Structures

Board of Pardon's Authority. All clemency power is vested in the Board of Pardons, including the authority to grant absolute and conditional pardons, reprieves, commutations, and pardons extraordinary [sic]. (Minn. Stat. § 638.01, .02.)

Board of Pardons' Composition. The Board of Pardons consists of the governor, the attorney general, and the chief justice of the supreme court. (Minn. Stat. § 638.01.) The Board of Pardons meets four times a year and may hold additional sessions when necessary. (Minn. Stat. § 638.04.)

Clemency Types

Commutation.

Pardon (absolute, conditional, or extraordinary). The Board may grant either absolute or conditional pardons. All conditional pardons must state the terms under which they are granted. Pardons extraordinary are granted to offenders who have completed their sentences and are found by the Board to be of good character and reputation. Pardons extraordinary have the effect of restoring all civil rights to the offender and nullifying the conviction. (Minn. Stat. § 638.02.)

Reprieve.

Procedural Limitations

Unanimous Vote by the Board. Pardons and commutations are granted only upon a unanimous vote by the Board. (Minn. Stat. § 638.02[1].)

Notification to District Attorney and Sentencing Judge. Prior to consideration of each clemency application, the Board of Pardons must notify the applicant's prosecuting attorney and sentencing judge (or their successors) of the location and time of the applicant's hearing. (Minn. Stat. § 638.06.)

Reconsideration Subsequent to Denial of Clemency. With the consent of two of the Board's members, there may be a rehearing of a clemency action that was earlier denied. (Minn. Stat. § 638.06.)

Open Files of Clemency Proceedings. All records of the Board's clemency activities are open for public inspection. (Minn. Stat. § 638.07.)

Mississippi

Clemency Structures

Governor's Authority. The governor has the authority, after conviction, to grant pardons and reprieves, to remit fines, to stay forfeitures, and, with the consent of the state senate, to remit forfeitures. The governor's clemency power, however, does not extend to cases of treason and impeachment. (Miss. Const. art. V, § 124.) Mississippi's caselaw provides that the power to commute sentences is implicit in the governor's authority to pardon and may not be infringed upon by legislative action. (*Whittington v. Stevens*, 221 Mississippi 598, 73 So.2d 137 [1954].)

Legislature's Authority to Commute Sentences. The state legislature has the authority to commute sentences for good behavior only. (Miss. Const. art. X, § 225.)

Department of Correction's Duties. The Department of Corrections, at the request of the governor, investigates and reports on all applications for reprieves, pardons, commutations, and remissions of fines and forfeitures. (Miss. Code Ann. § 47-7-31 [Supp. 1976].)

Clemency Types

Commutation.

Pardon. No pardon may be granted prior to conviction. (Miss. Const. art. V, § 124.)

Remission of Fines and Forfeitures. In forfeiture cases, the governor can stay the collection until the end of the next legislative session. With the consent of the state senate, the governor can remit forfeitures. (Miss. Const. art. V, § 124.)

Restoration of Civil and Political Rights. Persons convicted of the following crimes can have civil and political disabilities removed only through a full pardon by the governor: arson, bigamy, bribery, burglary, embezzlement, forgery, obtaining goods or money under false pretences, perjury, and theft. (Miss. Code Ann. § 99-19-35.)

Reprieve.

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Miss. Const. art. V, § 124.)

Treason. The governor may, with the consent of the state senate, grant reprieves or suspend the sentence imposed in a treason case until the end of the next session of the legislature. (Miss. Const. art. V, § 124.)

Procedural Limitations

Public Notice Requirement. Following a felony conviction, a pardon may not be granted until the applicant publishes for thirty days his petition for

pardon in the newspaper of the county in which the crime was committed (or in an adjoining county's newspaper). (Miss. Const. art. V, § 124.)

Clemency Procedures

Copies Filed as Permanent Record of Pardon. When pardons are granted by the governor, a copy is filed by the secretary of state in a permanent register and another copy is placed on record in the circuit clerk's office in the county in which the person was convicted. (Miss. Code Ann. § 9-7-139.)

Missouri

For more information, see Missouri Revised Statutes, §§ 216.355 and 549.111; *Guastello v. Department of Liquor Control*, 536 S.W.2d 21 (Mo. 1976).

Clemency Structures

Governor's Authority. The governor has full authority, after conviction, to grant pardons (full and conditional), commutations, and reprieves. His clemency power, however, does not extend to matters of impeachment or treason. (Mo. Const. art. IV, § 7.)

State Board of Probation and Parole's Duties. The State Board investigates all clemency applications and submits both reports and nonbinding recommendations to the governor. (Mo. Rev. Stat. § 549.241 [Supp. 1977].)

State Board of Probation and Parole's Composition. The State Board consists of three members who are appointed by the governor with the advice and consent of the state senate. (Mo. Rev. Stat. § 549.205 [Supp. 1977].)

Clemency Types

Commutation.

Pardon (full, conditional, and medical). The governor may attach conditions and restrictions to pardon grants. (Mo. Rev. Stat. § 549.010.) Inmates suffering incurable diseases may be pardoned by the governor if continued confinement either endangers or shortens their lives. (Mo. Rev. Stat. § 216.280.)

Reprieve.

Restoration of Civil and Political Rights. Civil and political disabilities can be removed only by a pardon from the governor. (Mo. Rev. Stat. § 222.030.) Beginning January 1, 1978, however, a person convicted of a felony or misdemeanor will be entitled to register and vote if he has been 1) granted a pardon by the governor or other proper authority, 2) released pursuant to the provisions of Mo. Rev. Stat. § 216.355, 3) discharged from probation or parole pursuant to Mo. Rev. Stat. § 549.111, or 4) pardoned, released or discharged pursuant to the rules or statutes of the jurisdiction in

which he was convicted. (Missouri House Bill 101, 79th General Assembly [1977].)

Substantive Limitations

Impeachment and Treason. The governor has no authority to exercise clemency in cases involving impeachment or treason. (Mo. Const. art. IV § 7.)

Montana

Clemency Structures

Governor's Authority. The governor has the authority to grant reprieves, commutations, and pardons, restore citizenship, and suspend and remit fines and forfeitures. (Mont. Const. art. VI, § 12 [Supp. 1975].) The governor may also grant respites for such time as he determines necessary. (Mont. Rev. Code Ann. § 95-3230 [Supp. 1975].)

Board of Pardons' Duties. The Board of Pardons investigates, holds hearings, and reports to the governor on each clemency application. Approval by a majority of Board members is required before a clemency grant can become final. (Mont. Rev. Code Ann. § 95-3223 [Supp. 1975].)

Clemency Types

Commutation.

Pardon.

Remission of Fines and Forfeitures.

Respite.

Restoration of Citizenship. Convictions, in the absence of express stipulation by the sentencing judge, do not deprive the offender of any civil or constitutional rights. (Mont. Rev. Code Ann. § 95-2227 [Supp. 1975].)

Procedural Limitations

Governor's Report. The governor must report to the state legislature at each regular session on his clemency activities. This report must include the reasons for clemency grants and, when relevant, the objections to the grants. (Mont. Rev. Code Ann. § 95-3231 [Supp. 1975].)

Notice of Hearing. The Board must give notice of each clemency hearing by publishing the hearing order once each week for two consecutive weeks in a newspaper of general circulation in the county where the crime was committed. (Mont. Rev. Code Ann. § 95-3224 [Supp. 1975].) Publication is unnecessary if the applicant is in imminent danger of death or if his term of imprisonment is within ten days of completion. (Mont. Rev. Code Ann. § 95-3228 [Supp. 1975].)

Public Hearing. Any interested persons may comment upon clemency applications at the Board's public hearings. (Mont. Rev. Code Ann. § 95-3224 [Supp. 1975].)

Nebraska

Clemency Structures

Governor's Authority. In a treason case, the governor has the authority to suspend execution of the sentence until the case is considered by the legislature. The legislature may then grant a pardon, reprieve, or commutation, or deny clemency. (Neb. Const. art. IV, § 13.)

Board of Pardons' Authority. The Board of Pardons has the authority to grant respites, reprieves, pardons, and commutations and to remit fines and forfeitures, except in cases of treason and impeachment. (Neb. Const. art. IV, § 13.)

Board of Pardons' Composition. The Board consists of the governor, the attorney general, and the secretary of state. (Neb. Const. art. IV, § 13.)

Board of Parole's Duties. The Board of Parole makes nonbinding recommendations to the Board of Pardons concerning the merits of clemency applications. (Neb. Rev. Stat. § 83-1,127[4].)

Clemency Types

Commutation.

Pardon. Convicted felons who have been pardoned may possess, receive, or transport firearms if specifically authorized to do so by the Board of Pardons. (Neb. Rev. Stat. § 83-1,130[2].)

Respite.

Restoration of Civil Rights. A warrant of discharge from the Board of Pardons removes all civil disabilities imposed as a result of a felony conviction. Civil disabilities include the incapacity to vote, to act as a juror, or to hold public office. (Neb. Rev. Stat. § 29-112.) Persons convicted of crimes and imprisoned in states other than Nebraska may have their rights restored only by a general pardon from the clemency authority in the state where they were incarcerated. (Neb. Rev. Stat. § 29-113.)

Temporary Suspension. In a treason case, the governor may suspend execution of sentence until the case is considered by the state legislature. (Neb. Const. art. IV, § 13.) A clemency application from a person who is sentenced to death is suspended until ruled on by the Board. (Neb. Rev. Stat. § 83-1,132.)

Substantive Limitations

Impeachment and Treason. The Board has no clemency authority in matters of impeachment or treason. (Neb. Const. art. IV, § 13.)

Procedural Limitations

Majority Vote. All actions of the Board of Pardons are by a majority vote. (Neb. Rev. Stat. § 38-1,130[3].)

Governor's Report. The Board of Pardons must submit an annual report of

its clemency activities to the state legislature. (Neb. Rev. Stat. § 83-1,127[5].)

Clemency Procedures

Applications. A clemency applicant must file a written application with the Board of Pardons' secretary (i.e., the secretary of state) specifying the relief requested and providing other information required by the Board. (Neb. Rev. Stat. § 83-1,129[1].)

Capital Punishment Cases. A clemency application from a person under sentence of death is suspended until ruled on by the Board. (Neb. Rev. Stat. § 83-1,132.) Should the Board deny relief for a person sentenced to death, the Board may establish the date and time of execution. (Neb. Rev. Stat. § 83-1,132.)

Nevada

For more information, see Nevada Revised Statutes, §§ 176.385, 176.395.

Clemency Structures

Governor's Authority. The governor has the authority to suspend the collection of fines and forfeitures and to grant reprieves for a period not exceeding sixty days from the date of conviction. This power, however, does not extend to matters of impeachment. The governor can also suspend treason sentences until the time of legislative review. Thereafter, if the legislature fails or refuses to make final disposition, the governor has complete authority to enforce the sentence as originally imposed. (Nev. Const. art. V, § 13.)

State Board of Pardons' Authority. The Board has the authority, after conviction, to remit fines and forfeitures, to commute punishment, and to grant pardons (full and conditional). This authority, however, does not extend to matters of impeachment or treason. (Nev. Const. art. V, § 14.) The Board also has the power to restore citizenship rights. (Nev. Rev. Stat. § 213.090.)

State Board of Pardons' Composition. The State Board consists of the governor, the justices of the supreme court, and the attorney general. (Nev. Rev. Stat. § 213.010.)

Legislature's Authority. The legislature is authorized to 1) pass laws empowering the district courts to suspend the execution of sentence and 2) exercise clemency in cases of treason. (Nev. Const. art. V, §§ 13, 14.)

Clemency Types

Commutation.

Pardon (full and conditional).

Remission of Fines and Forfeitures. When the Board remits any judgment

of fine or forfeiture, a certificate stating that the judgment has been remitted is filed with the clerk of the court where the judgment was entered. The clerk thereupon makes an entry in the court's judgment docket showing the remission and satisfaction of the judgment. (Nev. Rev. Stat. § 213.060.)

Reprieve.

Restoration of Citizenship. A full pardon may include restoration of citizenship rights if it is specified in the pardon document. (Nev. Rev. Stat. § 213.090[1].) If a pardon is granted without an immediate restoration of citizenship, the person can apply to the Board of Pardons for restoration and release from disabilities and penalties if he has not been convicted of any violations within ten years of the pardon. (Nev. Rev. Stat. § 213.090[2].)

Substantive Limitations

Impeachment. The Board and governor are unable to exercise clemency powers in cases of impeachment. (Nev. Const. art. V, §§ 13 and 14.)

Treason. The governor has the power to suspend a treason sentence until the case is reported to the legislature at its next regular session, at which time the legislature has full clemency authority over the case. If the legislature fails or refuses to make a final disposition, the governor is empowered to execute the original sentence. (Nev. Const. art. V, § 13.)

Procedural Limitations

Notice. Any person intending to apply for clemency must give notice of the application to the following individuals: the clerk of the Board of Pardons, the district judge of the court where the conviction occurred, the warden of the Nevada State Prison and the district attorney of the county in which the crime was committed. If the applicant seeks remission of fines and forfeitures, the notice must also be served on the chairman of the board of county commissioners of the county in which the offense was committed. (Nev. Rev. Stat. § 213.020[1] and [2].) A clemency notice must be served at least thirty days before the application is presented (unless a Board member prescribes a shorter time). (Nev. Rev. Stat. § 213.020[3].) Notice of clemency application is not required for commutation of the death penalty or restoration to citizenship following the fulfillment of the sentence. (Nev. Rev. Stat. § 213.030[1] and [2].)

Governor's Report to the Legislature. At the beginning of each session, the governor must report to the legislature on his clemency activities. (Nev. Const. art. V, § 13.)

District Attorney's Statement. Upon receiving notice of a clemency application, the prosecuting district attorney must prepare a written statement for the Board. This statement must include a recitation of the facts of the case as well as all other information that would assist the Board in its determination. (Nev. Rev. Stat. § 213.040.)

New Hampshire

Clemency Structures

Governor's Authority. The governor, with the advice of the Council, has the authority, after conviction, to grant pardons (absolute and conditional), respites, and commutations of the death penalty, except in cases of impeachment. (N.H. Const. pt. 2, art. 52; N.H. Rev. Stat. Ann. §§ 4:21, 23, 24, 25.)

Council's Duties. The Council advises the governor on all clemency actions and petitions. (N.H. Const. pt. 2, art. 52.)

Clemency Types

Pardon (absolute and conditional). A prisoner who is granted a conditional pardon must not violate any laws during the term of the pardon. If a person is arrested for breach of a conditional pardon, the governor will return him to prison for the remainder of his unfinished term. (N.H. Rev. Stat. Ann. §§ 4:25-27.)

Respite. The governor with the advice of the Council may respite the execution of a death sentence if 1) new trial proceedings are pending, 2) the convict is insane, 3) the convict is pregnant, or 4) the governor and Council determine that more time is necessary for a proper investigation of facts concerning the issuance of absolute and conditional pardons. (N.H. Stat. Ann. § 4:24.)

Commutation of Death Penalty. The governor and Council are empowered to commute sentences of death to life imprisonment or to any other term of years. (N.H. Rev. Stat. Ann. § 4:23.)

Substantive Limitations

Impeachment. Neither the Council nor the governor has any clemency authority in cases of impeachment. (N.H. Const. pt. 2, art. 52.)

Procedural Limitations

Notice. Written notice of all clemency applications must be sent to the state's attorney and to all other officials that the governor shall recommend. (N.H. Rev. Stat. Ann. § 4:21.)

Clemency Procedures

Information. If the clemency applicant is presently jailed in the state prison, the board of prison trustees must report on the petition before it is referred to the Council for action. (N.H. Rev. Stat. Ann. § 4:22.) If the applicant has been released from confinement, the prosecuting officer may be required to furnish a statement of the petitioner's case and any other relevant facts. (N.H. Rev. Stat. Ann. § 4:21.)

Special Features

Awards. The governor with the advice and consent of the council is authorized to receive petitions and to make monetary rewards to persons who were wrongfully imprisoned. (N.H. Rev. Stat. Ann. § 4:27a.)

New Jersey

Clemency Structures

Governor's Authority. The governor has the authority to remit or suspend fines and forfeitures, to commute capital punishment, and to grant pardons and reprieves. This authority, however, does not extend to cases of treason or impeachment. (N.J. Const. art. V, § 2[1] and N.J. Stat. Ann. 2A: 167-2.)

State Parole Board Duties. The governor may refer clemency applications to the Parole Board for investigation. After a full investigation is made, the Board reports its findings and makes written recommendations to the governor. (N.J. Stat. Ann. 2A: 167-7.)

Clemency Types

Commutation of Death Penalty. Upon an application for pardon from any person sentenced to death, the governor may direct that the sentence be commuted to hard labor imprisonment for life or for a term of years. (N.J. Stat. Ann. 2A: 167-2.)

Pardon.

Reprieve.

Restoration of Rights of Suffrage and Other Civil Rights. Upon application for restoration of civil rights and privileges, the governor may sign an order removing all former disabilities. (N.J. Stat. Ann. 2A: 167-5.)

Suspension or Remission of Fines and Forfeitures.

Substantive Limitations

Impeachment and Treason. The governor has no clemency authority in cases of impeachment or treason. (N.J. Const. art. V, § 2[1].)

New Mexico

Clemency Structures

Governor's Authority. The governor has complete authority to grant pardons (full and conditional) and reprieves following convictions, except in cases of treason or impeachment. (N.M. Const. art. V, § 6.) The governor's power to commute sentences is implied by statute. (See N.M. Stat. Ann., § 41-17-31.)

Board of Probation and Parole's Duties. The Board investigates and reports to the governor on all potential clemency actions. (N.M. Stat. Ann. § 41-17-31.)

Clemency Types

Commutation.

Pardon (full and conditional). A conditional pardon places the individual on parole until he has met the minimum requirements of his release or until he has completed his sentence as originally imposed. (N.M. Stat. Ann. § 41-17-25.)

Reprieve.

Restoration of Civil Rights. A person convicted of a felony is not allowed to vote or hold public office. These disabilities can be removed only by obtaining from the governor either a full pardon or a grant of reinstatement of the rights of citizenship. (N.M. Stat. Ann. § 40A-29-14.)

New York

Clemency Structures

Governor's Authority. The governor has the authority to grant commutations, reprieves, and pardons after conviction for all cases except treason and impeachment. (N.Y. Const. art. IV, § 4.) He may remove civil disabilities by the issuance of absolute pardons. The governor may also impose restrictions or limitations on clemency grants as he chooses. (N.Y. Const. art. I, § 4.)

Board of Parole's Authority. The Board of Parole has the authority to restore citizenship rights by issuing certificates of relief from disabilities and certificates of good conduct. (N.Y. Correc. Law [McKinney] § 6-a[3] [Supp. 1976-77].)

Board of Parole's Duties. Upon the governor's request, the Board of Parole investigates all clemency applications, interviews each applicant, and advises the governor on them. (N.Y. Correc. Law [McKinney] § 6-a[4] [Supp. 1975].)

Board of Parole's Composition. The New York State Board of Parole consists of twelve members who serve staggered six-year terms. The members of the Board are appointed by the governor and confirmed by the state senate.

Clemency Types

Commutation. A commutation can be revoked any time prior to the actual discharge of the convict. (N.Y. Const. art. IV, § 4.)

Pardon (absolute). An absolute pardon restores civil rights but does not annul the conviction. (*People ex rel. Prisament v. Brophy*, 287 N.Y. 132, 38 N.E.2d 468, cert. denied 317 U.S. 625 [1941].)

Removal of Disabilities. An individual who has not been convicted of more than one felony can have his civil rights restored by either a certificate of good conduct or a certificate of relief from disabilities by the Board of Parole. (N.Y. Correc. Law [McKinney] §§ 703 and 703[b] [Supp. 1975].)

Reprieve. A reprieve is available only in cases of capital punishment.

Substantive Limitations

Impeachment. The governor has no clemency authority in cases of impeachment. (N.Y. Const. art. IV, § 4.)

Treason. The governor can suspend a treason sentence until the case can be reported to the legislature at its next meeting. The legislature can then grant a commutation, pardon, or reprieve, or order the execution of the sentence. (N.Y. Const. art. IV, § 4.)

Procedural Limitations

Governor's Report. The governor must present annually a detailed report on his clemency activities. (N.Y. Const. art. IV, § 4.)

Special Note

Change in Parole Board's Status. Effective January 1, 1978, the Board of Parole will become a separate division under the New York State Executive Branch. (S.6912/A.9015, adopted July 7, 1977, at the 1977-78 Regular Session.)

North Carolina

Clemency Structures

Governor's Authority. The governor has the authority, after conviction, to grant pardons (full and conditional), commutations, and reprieves in all cases except impeachment. (N.C. Const. art. III, § 5[6].) The governor may attach such restrictions or limitations to clemency grants as he thinks necessary. (N.C. Const. art. III, § 5[6].)

Clemency Types

Commutation.

Pardon (of innocence, of forgiveness, full and conditional). If the conditions of a pardon are violated, the governor can have the pardon revoked and the convict reconfined for the remainder of the unserved sentence. (N.C. Gen. Stat. § 147-24.) A pardon of innocence states that the person convicted did not commit the crime for which he was convicted; a pardon of forgiveness does not indicate the guilt or innocence of the person convicted but is formal acknowledgement by the state of North Carolina that the person is to be forgiven for the crime of which he was convicted.

Reprieve.

Substantive Limitations

Impeachment. The governor has no clemency authority in cases of impeachment. (N.C. Const. art. III, § 5[6].)

Clemency Procedures

Applications. A clemency application must be in writing and signed by the applicant or his designate. The application must contain the reasons and grounds for seeking clemency. Each application must be accompanied by certified copies of the indictment, verdict, and judgment. (N.C. Gen. Stat. § 147-21.)

North Dakota

Clemency Structures

Governor's Authority. The governor has the exclusive authority to grant reprieves in capital cases and to suspend the execution of a sentence imposed for treason. (N.D. Cent. Code § 12-55-28, 29.)

Board of Pardons' Authority. The Board of Pardons has the authority to remit fines and forfeitures and to grant pardons (absolute and conditional), commutations, and reprieves after conviction except in cases of impeachment and treason. (N.D. Cent. Code § 12-55-05.) The Board may also restore civil rights to a person convicted of any offense. (N.D. Cent. Code § 12-55-24.)

Board of Pardons' Composition. The Board of Pardons consists of the governor, the chief justice of the state supreme court, the attorney general, and two qualified electors appointed by the governor. The two electors may also be members of the Parole Board. (N.D. Cent. Code § 12-55-01.) The Board of Pardons holds three regular meetings per year. Additional meetings may be held in cases of extreme emergency. (N.D. Cent. Code § 12-55-03.)

Clemency Types

Commutation.

Pardon (absolute and conditional).

Remission of Fines and Forfeitures.

Reprieve.

Restoration of Civil Rights.

Substantive Limitations

Impeachment and Treason. Neither the governor nor the Board of Pardons has any clemency authority in matters of impeachment. The governor may only temporarily suspend the execution of a sentence imposed for treason. (N.D. Const. § 76.)

Reconsideration of Clemency Grants. The Board of Pardons may reconsider its clemency grant at any time prior to the convict's release. (N.D. Cent. Code § 12-55-22.)

Vote of Board Required. Each clemency grant must be in writing and approved by four of the five members of the Board. (N.D. Cent. Code § 12-55-11.)

Procedural Limitations

Notice to Sentencing Judge and Prosecuting Attorney. Notice of an application for clemency is given by the clerk of the Board to the applicant's sentencing judge and to the prosecuting attorney (or their successors). The sentencing judge and state's attorney may then file separate statements with the Board in an effort to assist in the clemency determination. (N.D. Cent. Code §§ 12-55-20, 30.)

Clemency Procedures

Applications. Applications for clemency must be in writing, addressed to the Board, and signed by the convict or his designate. The application must state the relief sought and must be filed with the clerk of the Board at least six weeks prior to the next scheduled hearing. (N.D. Cent. Code § 12-55-17, 18.)

Ohio

Clemency Structures

Governor's Authority. The governor has the authority, after conviction, to grant pardons (unconditional and conditional), reprieves, and commutations, except in cases of treason and impeachment. (Ohio Const. art. III, § 11 [1851].)

Adult Parole Authority's Duties. The Adult Parole Authority investigates all clemency applications and makes nonbinding recommendations to the governor. (Ohio Rev. Code Ann. § 2967.03.)

Clemency Types

Commutation.

Pardon (conditional and unconditional). The governor may grant unconditional or conditional pardons. An unconditional pardon relieves a person from all disabilities arising out of the conviction. (Ohio Rev. Code Ann. § 2967.04[A] and [B].) Violation of the terms of a conditional pardon subjects the person to arrest and detention for the remainder of his unfinished term besides removing his reinstated right to vote. (Ohio Rev. Code Ann. §§ 2967.15 and 2961.01.)

Reprieve. The governor may grant reprieves of definite duration in capital punishment cases. A reprieve may be granted without notice or application. (Ohio Rev. Code Ann. § 2967.08.)

Substantive Limitations

Treason and Impeachment. The governor has no clemency authority in matters of treason or impeachment. (Ohio Const. art. III, § 11.)

Procedural Limitations

Governor's Report. The governor must make a clemency report at each regular session of the general assembly. The report must detail each clemency grant and provide an explanation of the basis for each action. (Ohio Const. art. III, § 11.)

Notice to Sentencing Judge and Prosecuting Attorney. At least three weeks before its final recommendation is sent to the governor, the Adult Parole Authority gives notice of the pardon application to the sentencing judge and prosecuting attorney. The Authority may request that the trial judge and/or the prosecuting attorney furnish a summary of relevant information and a statement of their positions with regard to the propriety of a clemency grant. (Ohio Rev. Code Ann. §§ 2967.12 and .03.)

Oklahoma

Clemency Structures

Governor's Authority. Upon recommendation of the Board, the governor has the authority, after conviction, to grant pardons, paroles, and commutations. He may restore citizenship to persons who have been pardoned or who have completed their sentences. Even in the absence of Board approval, he may also grant reprieves or leaves of absence under sixty days. The governor's authority, however, does not extend to matters of impeachment. (Okla. Const. art. VI, § 10.)

Pardon and Parole Board's Duties. The Pardon and Parole Board investigates all clemency applications and makes advisory recommendations to the governor. (Okla. Stat. Ann. tit. 57, § 332.2.) *See also* Okla. Stat. Ann. tit. 11, § 629 for further information on municipal level clemency. The Board similarly investigates and recommends eligible parolees for pardons. (Okla. Stat. Ann. tit. 57, § 332.10.)

Pardon and Parole Board's Composition. The Board is composed of five members who serve part-time. All members' terms are concurrent with that of the governor who appoints them. Presently the governor appoints three members, the state supreme court chief justice appoints one, and the presiding judge of the Oklahoma Court of Criminal Appeals appoints one. (Okla. Stat. Ann. tit. 57, § 332.1.)

Municipal Mayor's Authority. A mayor can grant pardons for the violation of city ordinances. He may also remit fines and costs upon the recommendation of the municipal judge. (Okla. Stat. Ann. tit. 11, § 962.19[6].)

City Council's Authority. City councils have limited clemency powers regarding the violation of city ordinances. (Okla. Stat. Ann. tit. 11, § 961.5[8].) *See also* Okla. Stat. Ann. tit. 11, § 629 for further information on municipal level clemency.

Clemency Types

Commutation.

Leaves of Absence. The governor may grant leaves of absence under sixty days. (Okla. Const. art. VI, § 10.)

Pardon.

Remission of Fines. Local mayors may remit fines and costs for the violation of city ordinances. (Okla. Stat. Ann. tit. 11, § 962, 19[6].)

Reprieve. The governor may grant reprieves under sixty days. (Okla. Const. art. VI, § 10.)

Restoration of Citizenship. The governor may restore citizenship to persons who have either been pardoned or who have completed their sentences. (Okla. Const. art. VI, § 10.)

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Okla. Const. art. VI, § 10.)

Procedural Limitations

Governor's Report. The governor must report all of his clemency activities to each legislative session, including the names, sentences, dates, and types of clemency granted, as well as his reasons for each act. (Okla. Stat. Ann. tit. 57 § 342.)

Oregon

For more information, see Oregon Revised Statutes, § 138.530(a-d).

Clemency Structures

Governor's Authority. The governor has the full authority to grant pardons, reprieves, and commutations after conviction for all offenses except treason. (Or. Const. art. V, § 14 [1975].) He also has the power to remit, after judgment, all forfeitures and penalties. (Or. Rev. Stat. § 144.640.) The governor may impose any restrictions or limitations on clemency grants. (Or. Rev. Stat. § 144.640.)

Clemency Types

Commutation.

Pardon.

Remission of Fines and Forfeitures.

Reprieve.

Substantive Limitations

Treason. In cases involving treason convictions, the governor can suspend execution of the sentence until the legislative assembly reviews the

case at its next session. Only the legislature has clemency authority in matters of treason. (Or. Const. art. V, § 14 [1975].)

Procedural Limitations

Notice. Twenty days before a prisoner applies to the governor for clemency, he must send written notice of his intention to the State Board of Parole, the administrator of the corrections division, and the applicant's prosecuting attorney. The notice must include the grounds on which clemency is sought. (Or. Rev. Stat. § 144.650.) Proof of service must be given to the governor.

Public Record. Following a clemency grant, the governor must file all investigative material including the application with the secretary of state's office, where they become public records. (Or. Rev. Stat. § 114.670.) It is unclear whether confidential documents (psychiatric reports, etc.) that are not public under Or. Rev. Stat. § 192.500 must be filed.

Governor's Report. At each regular session, the governor must present a detailed report of his clemency activities including the bases for his determinations. (Or. Rev. Stat. § 144.660.)

Pennsylvania

Introduction

In Pennsylvania, the governor has the authority to make clemency grants only upon the affirmative recommendation of the Board of Pardons. With the approval of the Board of Pardons, the governor has the power to remit fines and forfeitures and to grant pardons, reprieves and commutations. This authority is outlined in the Pennsylvania Constitution, Art. IV, § 9(a).

In all criminal cases except impeachment, the Governor shall have the power to remit fines and forfeitures, to grant reprieves, commutations of sentences and pardons; but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, after full hearing in open session, upon due public notice. The recommendation, with the reasons therefor at length, shall be delivered to the Governor and a copy thereof shall be kept on file in the office of the Lieutenant Governor in a docket kept for that purpose.

The Probation and Parole Board investigates each clemency application and submits a report to the Board of Pardons for analysis prior to the applicant's hearing.¹¹⁸ In each case in which the Board of Pardons makes an affirmative recommendation to the governor, the governor may subsequently approve or refuse the clemency grant.

¹¹⁸Pa. Stat. Ann. tit. 61, § 334.34 (Purdon).

Timetable

According to Rule 115 of the *Pennsylvania Board of Pardons' Rules*, release dates for successful clemency applicants must be determined within sixty days¹¹⁹ following the Board's executive session at which their requests were considered.

Board of Pardons

The Board of Pardons consists of five members: the lieutenant governor,¹²⁰ the attorney general, and three members appointed for six-year terms by the governor with the approval of the state senate. The appointed Board members must be Pennsylvania residents and recognized authorities in their professional fields. One member must be a penologist, another an attorney, and the third a medical doctor, psychiatrist, or psychologist.¹²¹

The Board of Pardon's primary responsibilities include collecting and analyzing information from diverse sources, holding public clemency hearings, and making recommendations of action to the governor. The major source of information used by the Board in its clemency determinations is the investigatory report researched and prepared by the Probation and Parole Board.¹²²

The Board's clemency recommendations are transmitted to the governor who may accept or reject them. All recommendations must be in writing and must include the reasons¹²³ favoring the grant.¹²⁴

The Board is required to keep records of its clemency activities. These records are on file in the office of the lieutenant governor, and only the application and reasons recommending clemency are open to the public.¹²⁵

Pardons Case Specialist

The Pennsylvania Bureau of Corrections employs pardon case specialists at each state penal institution.¹²⁶ The principal tasks of each pardons specialist are to provide legal counsel to inmates seeking release through clemency and to act as representative for inmates who are unable to attend their clemency hearings.¹²⁷

Pardons specialists also have the responsibility of notifying unsuccessful

¹¹⁹In practice, however, most clemency grants take much longer due to lengthy consideration of the applications by the governor.

¹²⁰The lieutenant governor serves as chairman of the Board.

¹²¹Pa. Const. art. IV, § 9(b).

¹²²Pa. Stat. Ann. tit. 61, § 331.34 (Purdon).

¹²³The opposition to clemency grants is generally in the form of a dissenting opinion attached to the recommendation.

¹²⁴Pa. Const. art. IV, § 9(a).

¹²⁵*Id.*

¹²⁶Phone interview with Shirley Greer, member of the pardon board's staff, June 21, 1977.

¹²⁷Rule 40, *Pennsylvania Board of Pardons Rules*, effective March 17, 1969.

clemency applicants of their clemency denials. The secretary of the Board of Pardons notifies the pardons specialist by form letter that the grant has been denied by either the Board or the governor. The specialist then communicates the denial to the unsuccessful applicant¹²⁸ through the director of treatment in the various institutions.

Standards for Clemency Determination

In considering the propriety of each clemency grant, the Board weighs the following factors: 1) community attitudes and willingness to reassimilate the applicant, 2) the type and seriousness of the criminal offense,¹²⁹ 3) the testimony and comments of the applicant's sentencing judge, prosecuting attorney and victims or their survivors, 4) results of psychological and medical examinations, and 5) evidence of any extenuating circumstances which were not disclosed at the trial.¹³⁰

Clemency Types

The governor of Pennsylvania has the authority to grant commutations, pardons, and reprieves and to remit fines and forfeitures.¹³¹

Commutation. Besides the general use of commutation to reduce prison terms, commutation is the only process under which a sentence may be reduced to less than its minimum term. This use of commutation is particularly important in cases of life sentence in which inmates are not given minimum sentences. In these cases, the inmates may not be released on parole or probation unless the Board of Pardons sets minimum sentences by commutation.¹³²

In cases in which commutation has been granted, the Board of Probation and Parole may refuse parole, but it must notify the Board of Pardons of its reasons for denial within ten days of the expiration of the minimum sentence. The Board of Pardons, however, has the authority to order the Board of Probation and Parole to release a prisoner on parole.¹³³

Pardon. The Board of Pardons may recommend, and the governor may grant, either an absolute or a conditional pardon. A conditional pardon may

¹²⁸Phone interview with Shirley Greer, *supra* note 126.

¹²⁹The Board is particularly careful in its consideration of persons who have been convicted of murder, armed robbery, aggravated assault and battery, rape, or assault with intent to kill. G. Gillingham, Secretary of the Board, *The Board of Pardons, Commonwealth of Pennsylvania* (October 1974) at 6-7.

¹³⁰*Id.*

¹³¹Pa. Const. art. IV, § 9(a).

¹³²Gillingham, *supra* note 129 at 3-4.

¹³³*Id.*, at 10.

be further categorized as either subject to a condition precedent¹³⁴ or condition subsequent.¹³⁵

In Pennsylvania, unlike most other states, a pardon may be granted at any time after the commission of an offense (i.e., either before or after conviction).¹³⁶

The effect of a pardon is limited in Pennsylvania. A pardon does not remit restitution¹³⁷ or restore the right to practice a profession, but does restore the right to a license which was revoked as a result of conviction.¹³⁸ The criminal record of an individual who has been pardoned is not expunged from state police files unless that individual was pardoned by reason of innocence.¹³⁹

The Board does not generally grant a pardon to a convict who has committed a serious crime or who has an extensive criminal record. Instead, an individual who has committed a "victimless" crime and who has no prior criminal record is a more likely candidate for a pardon.¹⁴⁰

Remission of Fines and Forfeitures. Applications for the remission of fines and forfeitures are submitted to the Board by county court clerks who have been unable to collect the fines or costs. The Board's current policy provides that no fines or forfeitures less than ten years overdue will be considered for remission.¹⁴¹

Reprieve. Reprieves are rarely if ever utilized as a clemency remedy in Pennsylvania. In recent years, this has been mainly because there has been no need for them because of the general moratorium on capital punishment. Prior to the moratorium, the governor's power to commute death sentences to lesser punishment virtually eliminated the use of reprieves.¹⁴²

Clemency Procedures

Application and Indigency Forms. All clemency applications must be made on forms prescribed by the Board of Pardons. These forms may be obtained from the secretary of the Board at a charge of \$2.00 per set.¹⁴³ In capital cases, the original and five application copies must be filed.¹⁴⁴ In all

¹³⁴For more information on pardons that are subject to conditions precedent or subsequent, see *Commonwealth v. Hatsfields*, 1 Clark 177 (1842).

¹³⁵*Narcise v. Board of Trustees, Eastern State Penitentiary*, 137 Pa. Super. 394, 9 A.2d 165 (1940).

¹³⁶*York County v. Dalhousen*, 45 Pa. 372 (1863).

¹³⁷*Commonwealth v. Soudani*, 193 Pa. Super. 353, 165 A.2d 709 (1961).

¹³⁸*Wolfe's Disbarment*, 288 Pa. St. 331, 135 A 732 (1927).

¹³⁹*Cohen v. Barger*, 11 Pa. Cmwlth. 617, 314 A.2d 353 (1974).

¹⁴⁰*Gillingham*, *supra* note 129, at 4.

¹⁴¹*Id.*, at 1.

¹⁴²Phone interview with Shirley Greer, member of pardon board's staff, June 23, 1977.

¹⁴³Rule 20, Pa. Board of Pardons Rules, *supra* note 127.

¹⁴⁴*Id.*, at Rule 71.

other cases, ten application copies and the original must be submitted along with a filing fee which is nonrefundable.¹⁴⁵ Photos must also be supplied by the applicant.¹⁴⁶

Filing fees are waived in each case in which the applicant submits evidence of inability to pay due to indigence. Each individual who alleges indigence must complete an *in forma pauperis* application demonstrating his financial status. This form, as the others, is available at the Board secretary's office, and must be returned there when completed. The Board, upon receipt of the indigency forms, determines whether or not the fees will be waived.¹⁴⁷

Service of Notice. In capital cases, a clemency applicant requesting commutation of the death sentence to life imprisonment must serve notice of his clemency application to 1) the sentencing judge and 2) prosecuting attorney (or their successors), 3) the private prosecuting attorney where applicable, 4) the warden, commissioner, or superintendent of the penal institution in which the applicant is confined, and 5) the district attorney of the county where the crime was committed. Service of notice must be completed before the clemency application is sent to the Board's secretary. Following this service, an affidavit or proof of service must be filed with the Board at least five days before the scheduled clemency hearing.¹⁴⁸

In noncapital cases, the Board's secretary sends a copy of the clemency application to the 1) sentencing judge, 2) prosecuting attorney, 3) superintendent, warden, or commissioner of the correctional institution where the applicant is or was confined, and 4) Board of Probation and Parole.¹⁴⁹

Publication of Notice. In capital cases, the applicant must publish notice of his clemency application once a week for two consecutive weeks prior to the date of public hearing. The notice must appear in a newspaper of general circulation in the county in which the crime occurred. Proof of publication must be sent to the Board's secretary prior to the applicant's hearing. Such proof usually consists of an affidavit from the publisher and a copy of the notice itself.¹⁵⁰

In noncapital cases, the secretary of the Board publishes the clemency application notice in a newspaper of general circulation in the county where the crime was committed. This notice must be published at least one week prior to the applicant's public hearing.¹⁵¹

¹⁴⁵*Id.*, at Rule 21-22.

¹⁴⁶*Id.*, at Rule 116.

¹⁴⁷*Id.*, at Rule 22.

¹⁴⁸*Id.*, at Rule 74.

¹⁴⁹*Id.*, at Rule 23.

¹⁵⁰*Id.*, at Rule 75.

¹⁵¹*Id.*, at Rule 93.

*Probation and Parole Board's Investigation.*¹⁵² The Board of Probation and Parole conducts all clemency investigations for the Board of Pardons. In each clemency case, a parole agent is assigned to investigate the applicant's police and court records as well as to gather all other available pertinent data.¹⁵³

When time permits, the parole agent personally contacts both the applicant's sentencing judge and prosecuting attorney. This personal notification is intended to encourage the judge and prosecutor's comments as to the propriety of the clemency grant.¹⁵⁴ In cases of violent crimes, the parole agent also has the responsibility of providing notification of the applicant's upcoming hearing to the applicant's victim (or the victim's survivors). Generally, notification is sent by mail to the victim's survivors at their last known addresses and requests that he/they appear and comment at the applicant's hearing.¹⁵⁵

When the parole agent's investigation is complete, his report and all supporting documents are sent to the Board's secretary for review by the Board.¹⁵⁶

*Bureau of Corrections' Report.*¹⁵⁷ In addition to the parole agent's report, the Board of Pardons receives from the Bureau of Corrections an account of the clemency applicant's prison behavior and adjustment. This account details the applicant's conduct, medical and psychological condition, and educational and vocational training.¹⁵⁸

Calendar. Following completion of all clemency application forms and receipt of all investigative reports, the Board's secretary prepares and prints the official calendar of cases which will be heard by the Board at its next scheduled hearing.¹⁵⁹ The calendar lists the date, place and time of hearing as well as each applicant's name, crime, sentence, institution, nature of appeal, and legal representative.¹⁶⁰ A copy of the calendar is mailed to the applicant or his representative as well as to the Commissioner of Corrections, Board of Probation and Parole, the district attorney in the county

¹⁵²From 1875 to 1941, Pennsylvania consolidated the parole and pardon authority into one board. Since 1941, the Board has been divided into a pardon board and a probation and parole board. Rubin, S., *Law of Criminal Correction* 677 (2d ed. 1973).

¹⁵³Gillingham, *supra* note 129, at 5-6.

¹⁵⁴*Id.*, at 6.

¹⁵⁵*Id.*

¹⁵⁶*Id.*

¹⁵⁷It appears that currently there is no formalized process by which an inmate is informed of his right to apply for a clemency grant. Logically, the Bureau of Corrections would be the party to undertake this notification responsibility, perhaps by distribution of an explanatory pamphlet upon each prisoner's arrival at the institution.

¹⁵⁸*Id.*, at 5.

¹⁵⁹Rule 100, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁶⁰Gillingham, *supra* note 129, at 10.

where the applicant was sentenced, and other interested parties.¹⁶¹

*Hearing.*¹⁶² Pennsylvania is divided into three hearing districts: Eastern (Philadelphia), Central (Harrisburg), and Western (Pittsburgh). Clemency cases are assigned to districts for hearing according to the county in which the applicant was convicted.¹⁶³ Although the Board meets and holds hearings in all months except January, July, and August, emergency and supplemental meetings may be held.¹⁶⁴

The chairman of the Board begins each hearing by announcing the first case. If the applicant or his representative is not present, the case is set aside temporarily but will be reviewed at the same meeting if the applicant or representative subsequently appears.¹⁶⁵

Each applicant who is not currently under sentence is required to attend his clemency hearing unless extenuating circumstances cause the Board to excuse him. If the applicant is confined at the time of his hearing, he may designate someone as his hearing representative.¹⁶⁶

Any person may serve as an applicant's representative as long as he is not presently incarcerated. A representative need not be an attorney; in the past, housewives, teachers, clergymen, construction workers, etc., have all acted as representatives.¹⁶⁷

All clemency hearings are open to the public, and interested persons are encouraged to provide input to the Board's determination. Individuals who oppose a clemency grant may either personally appear and testify or file a written protest with the Board's secretary.¹⁶⁸

If necessary, the Board may request that particular individuals with relevant and specialized knowledge of the case appear¹⁶⁹ at the hearing as witnesses.¹⁷⁰ In previous cases, the pool of witnesses has most commonly included police officers and prosecuting attorneys, though occasionally other persons have appeared.

Argument. Each individual clemency hearing opens with the applicant's (or his representative's) presentation of his case. In noncapital cases, the

¹⁶¹Rule 101, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁶²Following the commencement of a clemency hearing and prior to final determination, Board members are forbidden to discuss the case with any outside persons. (Rule 114, *Pa. Board of Pardons Rules*, *supra*.)

¹⁶³Gillingham, *supra* note 129, at 10.

¹⁶⁴Rule 50, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁶⁵Rule 102, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁶⁶Rule 40, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁶⁷Gillingham, *supra* note 129, at 2.

¹⁶⁸Rules 112-113, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁶⁹Rule 110 states that when depositions are taken for hearing use, the district attorney of the county where the applicant was convicted and the applicant himself must be given notice prior to the hearing at which they will be presented.

¹⁷⁰*Id.*, at Rule 111.

applicant is allowed fifteen minutes in which to advocate his case.¹⁷¹ In capital cases, the applicant is allowed thirty minutes.¹⁷²

The applicant's argument may include favorable testimony by family members, friends, and other responsible citizens. These witnesses may be questioned by Board members.¹⁷³

Equal argument time is allotted to individuals who may oppose the clemency grant. Such persons may include the applicant's sentencing judge, prosecuting attorney, victim or victim's survivors, and other interested persons.¹⁷⁴

Executive Session. Following each public Board meeting, the members adjourn to a private executive session at which they review and discuss each clemency application.¹⁷⁵ This session may be held immediately after the hearing or at a later date.¹⁷⁶

At the executive session, each member states his position on the case currently under consideration and then a vote is taken on the propriety of the grant. A grant is recommended to the governor only if approved by a majority of Board members.¹⁷⁷ Because the governor may act only upon the recommendation of the Board, he is not involved in the Board's clemency denials.

Concluding Procedures

After a recommendation is signed by the Board members, it is sent to the governor for review.

If the governor approves the clemency grant, he signs and issues the Board's recommendation.¹⁷⁸ The governor notifies the Board's secretary of his favorable determination, and the secretary then prepares a public announcement of the determination.¹⁷⁹ After the recommendation is issued, the Board's secretary has four to six weeks to prepare the Warrant of Commutation or the Charter of Pardon for the governor's signature.¹⁸⁰ The signed charter or warrant is forwarded to the secretary of the commonwealth, who signs and seals it.¹⁸¹

Finally, the clemency document is returned to the Board's secretary, who

¹⁷¹*Id.*, at Rule 53(a).

¹⁷²*Id.*, at Rule 53(b).

¹⁷³Gillingham, *supra* note 129, at 10.

¹⁷⁴Rule 53(a), *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁷⁵Gillingham, *supra* note 129, at 11.

¹⁷⁶*Id.*

¹⁷⁷*Id.*

¹⁷⁸See Pennsylvania recommendation and charter forms.

¹⁷⁹Rule 121, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁸⁰Gillingham, *supra* note 129, at 11.

¹⁸¹Rule 122, *Pa. Board of Pardons Rules*, *supra* note 127.

transmits it to the grantee, at which point it becomes operative upon acceptance.¹⁸²

Following public announcement of a favorable clemency determination, the Board's recommendations become open to public inspection in the lieutenant governor's office,¹⁸³ and copies of the recommendation and its rationale are sent to the state legislature.¹⁸⁴

In those cases in which the grant is denied, applicants are notified by the Board's secretary. Form letters are sent to the applicants informing them of the denial without explaining the rationale.¹⁸⁵

As explained above, denial notification for incarcerated applicants is communicated via the institution's pardons case specialist.¹⁸⁶

Continuances and Rehearings

Continuances are granted in clemency matters only if a motion is presented to the Board at its hearing or if the applicant files a written request in which the prosecuting attorney concurs.¹⁸⁷ Following a continuance, the applicant need not reapply or pay¹⁸⁸ an additional filing fee.¹⁸⁹

Petitions for rehearing may be filed if substantially different facts have come to light since the original hearing.¹⁹⁰ Rehearings are allowed, generally, only after one year has passed since the first date of filing, though an applicant may petition for earlier reconsideration.¹⁹¹

Conclusion

Pennsylvania, like several other states, has devised a clemency system in which the executive clemency authority is centralized in the governor. Pennsylvania, however, safeguards against potential abuses of the power by mandating that the governor may act only upon the Board's recommendation. In practice, this system allows the Board of Pardons to act as an effective screening mechanism and significantly expedites the clemency process without unduly restricting the governor's power.

¹⁸²Gillingham, *supra* note 129, at 11.

¹⁸³Rule 123, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁸⁴*Id.*

¹⁸⁵Phone interview with Shirley Greer, *supra* note 126.

¹⁸⁶*Id.*

¹⁸⁷Rule 80, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁸⁸These filing fees and duplicating costs may represent major hurdles to clemency applicants. Although Pennsylvania waives certain costs in cases of indigency, costs for photos are not eliminated. Further, the procedures for gaining indigent status are complicated and time-consuming. The initial clemency application costs should be significantly reduced or the indigent designation should be procedurally simplified.

¹⁸⁹Rule 81, *Pa. Board of Pardons Rules*, *supra* note 127.

¹⁹⁰*Id.*, at Rule 64.

¹⁹¹*Id.*, at Rule 60.

Rhode Island

Clemency Structures

Governor's Authority. The governor, with the advice and consent of the senate, has the authority to grant pardons (full and conditional) and to exercise all other state clemency powers, except in cases of impeachment. (R.I. Const. Amend. II.) The governor also has the authority to grant reprieves after conviction. Such reprieves may extend only until the end of the next session of the state legislature. Reprieves can be granted in all cases except impeachment. (R.I. Const. art. VII, § 4.)

General Assembly's Authority. Only the legislature can restore civil rights to an adult offender who has been sentenced to prison for more than one year. (R.I. Gen. Laws § 13-6-2 [1956].)

Parole Board's Duties. The Parole Board may make a recommendation to the governor that a prisoner sentenced before March 31, 1915, be pardoned. (R.I. Gen. Laws Ann. § 13-8-15.)

Clemency Types

Pardon (full and conditional). If a prisoner was confined in a state institution prior to March 31, 1915, the Parole Board may recommend to the governor that such a person be granted clemency. The governor, with the advice and consent of the senate, may issue a conditional pardon to the prisoner. The major condition is that he shall be under the supervision of the Parole Board for the remainder of the sentence. The Board has the power to revoke the pardon for violation of any terms or conditions and return the prisoner to the state prison to complete the unserved portion of his sentence. (R.I. Gen. Laws Ann. § 13-8-15.)

Reprieve.

Restoration of Civil Rights.

Substantive Limitations

Impeachment. None of the clemency-granting authorities has the power to grant clemency in cases of impeachment. (R.I. Const. art. VII, § 4, and R.I. Const. Amend. II.)

Clemency Procedures

Petitions. Clemency petitions are presented to the governor, subject to rules of procedure periodically prescribed by his office. (R.I. Gen. Laws Ann. § 13-10-1.)

Compliance. Persons receiving the benefits of the clemency power must comply with and be subject to all terms and conditions imposed by the governor. (R.I. Gen. Laws Ann. § 13-10-2.)

South Carolina

Clemency Structures

Governor's Authority. The governor has the authority to grant reprieves and to commute death sentences to life imprisonment. (S.C. Const. art. IV, § 14.) The governor has the authority to order unlimited extra sessions of the Board. (S.C. Code 24-21-30 [1976].)

Probation, Parole and Pardon Board's Authority. The Board has the authority to grant all other forms of clemency, including pardons. (S.C. Code 24-21-920 [1976].)

Probation, Parole and Pardon Board's Duties. Upon referral by the governor, the Board shall make recommendations regarding petitions for clemency. (S.C. Code 24-21-920 [1976].)

Probation, Parole and Pardon Board's Composition. The Board consists of six members who serve without salary. The members are appointed by the governor and approved by the state senate. The Board meets at least four times a year, and when necessary the governor may order unlimited extra sessions. (S.C. Code 24-21-10 [1976].)

State Board of Corrections' Duties. This Board has a statutory mandate to examine the sentences of convicts and to recommend clemency for those whom it deems fit. Probation, parole, and pardon recommendations are reported to the Probation, Parole and Pardon Board four times a year. (S.C. Code 24-21-200 [1976].)

Clemency Types

Commutation. The governor may commute death sentences to life imprisonment. (S.C. Const. art. IV, § 14.)

Pardon. All voting disqualifications are removed by a pardon. (S.C. Code 7-5-120 [1976].)

Reprieve.

Procedural Limitations

Commutation and Reprieve Recommendations. Although the governor is not bound by the reprieve and commutation recommendations of the Probation, Parole and Pardon Board, should he refuse to adopt its suggestions, he must submit his reasons to the General Assembly. (S.C. Code Ann. 24-21-920 [1976].)

Pardon Approvals. All pardon orders must be signed by at least two-thirds of the Board's members. (S.C. Code Ann. 24-21-930 [1976].)

South Dakota

For more information, see South Dakota Compiled Laws Annotated §§ 23-58-1, 23-58-2, 23-58-3, 23-58-6, 23-59-3, and 23-59-4.

Clemency Structures

Governor's Authority. The governor has the authority, upon the written recommendation of the Board of Pardons and Paroles, to suspend fines and forfeitures and to grant pardons (full and exceptional), commutations, and reprieves. This authority, however, does not extend to cases of treason or impeachment. (S.D. Const. art. IV, § 3 [Supp. 1976] and S.D. Compiled Laws Ann. § 23-59-1.)

Board of Pardons and Paroles' Duties. The State Board of Pardons and Paroles investigates all clemency applications and makes recommendations to the governor. (S.D. Compiled Laws Ann. § 23-59-8.)

Board of Pardons and Paroles' Composition. The Board consists of an assistant attorney general, who is appointed by the attorney general, and two electors, who are appointed to four-year terms. One of the electors is appointed by the governor and the other by the state supreme court. (S.D. Compiled Laws Ann. § 23-58-1.) The Board is administered under the direction and supervision of the Division of Corrections. (S.D. Compiled Laws Ann. § 23-58-1.1.)

Clemency Types

Commutation.

Pardon (full and exceptional). An exceptional pardon may be granted to a convict who 1) has been released for five years, 2) was convicted of only one felony that was not punishable by death or life imprisonment, and 3) made application to the Board for pardon. (S.D. Compiled Laws Ann. § 23-59-11 [Supp. 1976].) All notice requirements are waived for exceptional pardons. (S.D. Compiled Laws Ann. § 23-59-12 [Supp. 1976].) No pardon can be recommended by the Board of Pardons and Paroles for a person convicted of the following crimes unless a full hearing by the Board proves that the person convicted was actually innocent of the crime: murder, kidnapping, possession of ransom money, threatening kidnapping and demanding ransom. (S.D. Compiled Laws Ann. § 23-59-9.)

Remission of Fines and Forfeitures.

Reprieve.

Substantive Limitations

Impeachment. Neither the Board nor the governor has clemency powers that affect impeachment cases. (S.D. Const. art. IV, § 3 [Supp. 1976].)

Treason. The governor has power to suspend the execution of a treason sentence until the case is reported to the legislature at its next regular session. The legislature can then pardon or commute the sentence, direct execution of the original sentence, or grant a further reprieve. (S.D. Compiled Laws Ann. § 23-59-2.)

Procedural Limitations

Notice. Notice of clemency application must be given to the applicant's prosecuting attorney or his successor. This notice must be received at least thirty days before the application is filed with the Board of Pardons and Paroles. (S.D. Compiled Laws Ann. § 23-59-5.) In addition, notice of application must be published once a week for four successive weeks in a newspaper of general circulation in the county in which the offense was committed. If there is no newspaper, the notice should be posted in a conspicuous place on the county courthouse door for four successive weeks prior to filing the application. An affidavit of the newspaper publisher or the person posting the notice must accompany the clemency application. (S.D. Compiled Laws Ann. § 23-59-6.)

Clemency Procedures

The executive office of the Board is in the city of Sioux Falls, outside the state penitentiary. (S.D. Compiled Laws Ann. § 23-58-4.) Meetings for hearing clemency applications are held once every two months at the penitentiary. (S.D. Compiled Laws Ann. § 23-58-5.) All individuals aggrieved by the clemency application are given an opportunity to appear personally before the Board during the consideration of the clemency request. (S.D. Compiled Laws Ann. § 23-59-7.)

Tennessee

Clemency Structures

Governor's Authority. The governor has the authority to grant pardons (full and conditional), reprieves, and commutations after conviction in all cases except impeachment. The governor may also in certain instances temporarily suspend the execution of a sentence. (Tenn. Code Ann. § 40-3501, § 40-3502; *Spencer v. State*, 125 Tenn. 64, 140 S.W. 597 [1911].)

Board of Pardons and Paroles' Duties. The Board may recommend to the governor that he remit a portion of the imprisonment of a convict. Upon the request of the governor, the Board will investigate the background of a prisoner under consideration for pardon or commutation of sentence. (Tenn. Code Ann. §§ 40-3504, 40-3603.)

Board of Pardons and Paroles' Composition. The Board consists of three full-time members who are appointed by the governor to six-year terms. (Tenn. Code Ann. § 40-3601 [1975].)

Clemency Types

Commutation.

Pardon (full and conditional).

Reprieve.

Temporary Suspension. A judge may suspend the execution of a sentence

to allow an application for pardon to be filed. (Tenn. Code Ann. § 40-3002.) The governor's authority to pardon includes suspension of sentences. (*Spencer v. State*, 125 Tenn. 64, 140 S.W. 597 [1911].)

Special Provisions

Death Sentence. A person sentenced to death may apply to the governor for a pardon. If the governor determines that the facts do not warrant a full pardon, he may instead commute the sentence to life imprisonment. A death sentence may similarly be commuted to life imprisonment if the state supreme court sends a certificate to the governor stating that the extenuating circumstances of the case warrant commutation. The governor, upon receipt of such a certificate, may commute the sentence. (Tenn. Code Ann. § 40-3505, § 40-3506.)

Restoration of Citizenship. A petitioner convicted of manslaughter who later receives a full pardon from the governor has his former citizenship rights automatically restored. (Tenn. Code Ann. § 40-3508.)

Substantive Limitations

Impeachment. The governor has no clemency authority in impeachment matters. (Tenn. Code Ann. § 40-3501.)

Procedural Limitations

Governor's Record and Report. The governor is required to record the reasons for all clemency decisions in a book kept for that purpose. All of this material must be submitted when requested by the state legislature. (Tenn. Code Ann. § 40-3507.)

Clemency Procedures

Recommendations. A recommendation of clemency can be communicated to the governor by the Board of Pardons and Paroles. (Tenn. Code Ann. § 40-3603.)

Texas

Clemency Structures

Governor's Authority. Upon the recommendation of the Texas Board of Pardons and Paroles, the governor has the authority to remit fines and forfeitures and to grant reprieves, commutations, and pardons (full and conditional). This authority, however, does not extend to matters of impeachment or treason. (Tex. Const. art. IV, § 11 [1876].)

Board of Pardons and Paroles' Duties. The Board fully investigates each clemency case and makes recommendations to the governor. (Tex. Code Crim. Proc. Ann. art. 48.01 [1966].)

Board of Pardons and Paroles' Composition. The Board is composed of

three full-time members who are appointed to six-year terms by the governor, the chief justice, and the presiding justice of the court of criminal appeals. These appointments must be approved by two-thirds of those senate members who are present at the time of the vote. (Tex. Const. art. IV, § 11, [1876].)

Clemency Types

Commutation.

Pardon (full and conditional).

Remission of Fines and Forfeitures.

Reprieve.

Procedural Limitations

Clemency Recommendations. The governor may exercise his clemency authority upon recommendation of action by the Board of Pardons and Paroles. (Tex. Const. art. IV, § 11 [1876].)

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Tex. Const. art. IV, § 11 [1876].)

Treason. The governor can grant reprieves, pardons, and commutations following convictions for treason only with the advice and consent of the state legislature. (Tex. Code Crim. Proc. Ann. art. 48.01 [1966].)

Utah

Clemency Structures

Governor's Authority. The governor has the power to grant reprieves and respites except in cases of treason and impeachment. (Utah Const. art. VII, § 12.)

Board of Pardons' Authority. The Board of Pardons may, after conviction, remit fines and forfeitures, commute sentences, and grant pardons for all cases except impeachment and treason. (Utah Code Ann. § 77-62-3[a] and Utah Const. art. VII, § 12.)

Board of Pardons' Composition. The Board consists of three part-time members who are appointed by the Board of Corrections to serve four-year terms. All of the members must be resident electors of the state of Utah. (Utah Code Ann., § 77-62-2 [Supp. 1975].)

Clemency Types

Commutation.

Pardon.

Remission of Fines and Forfeitures.

Respite or Reprieve. A grant of respite or reprieve by the governor does

not extend beyond the next session of the Board of Pardons. At the next session, the Board can continue or end the respite or reprieve. Further, the Board may commute or pardon the original offense. (Utah Code Ann. § 77-62-3[c] [Supp. 1975].)

Substantive Limitations

Impeachment. Neither the governor nor the Board of Pardons has clemency authority in impeachment cases. (Utah Const. art. VII, § 12.)

Treason. In case of conviction for treason, the governor has the power to suspend execution of the sentence until the case is reported to the legislature at its next regular session. The legislature then may pardon or commute the sentence or direct its execution. (Utah Code Ann., §§ 77-63-3[c].)

Procedural Limitations

Notice. The Board cannot hold a clemency hearing without giving prior notice of the time and place of the hearing to all interested parties. (Utah Code Ann., § 77-62-3[a].)

Full Hearing. No fine or forfeiture can be remitted and no pardon or parole granted or commutation or sentence terminated unless a full hearing of the Board of Pardons has been held. The orders of the Board must be in writing. (Utah Code Ann. § 77-62-3[a].)

Governor's Report. The governor must make a clemency report to the state legislature at each regular session, stating the reasons for each clemency grant and the objections any Board members made to the grant. (Utah Const. art. VII, § 12.)

Vermont

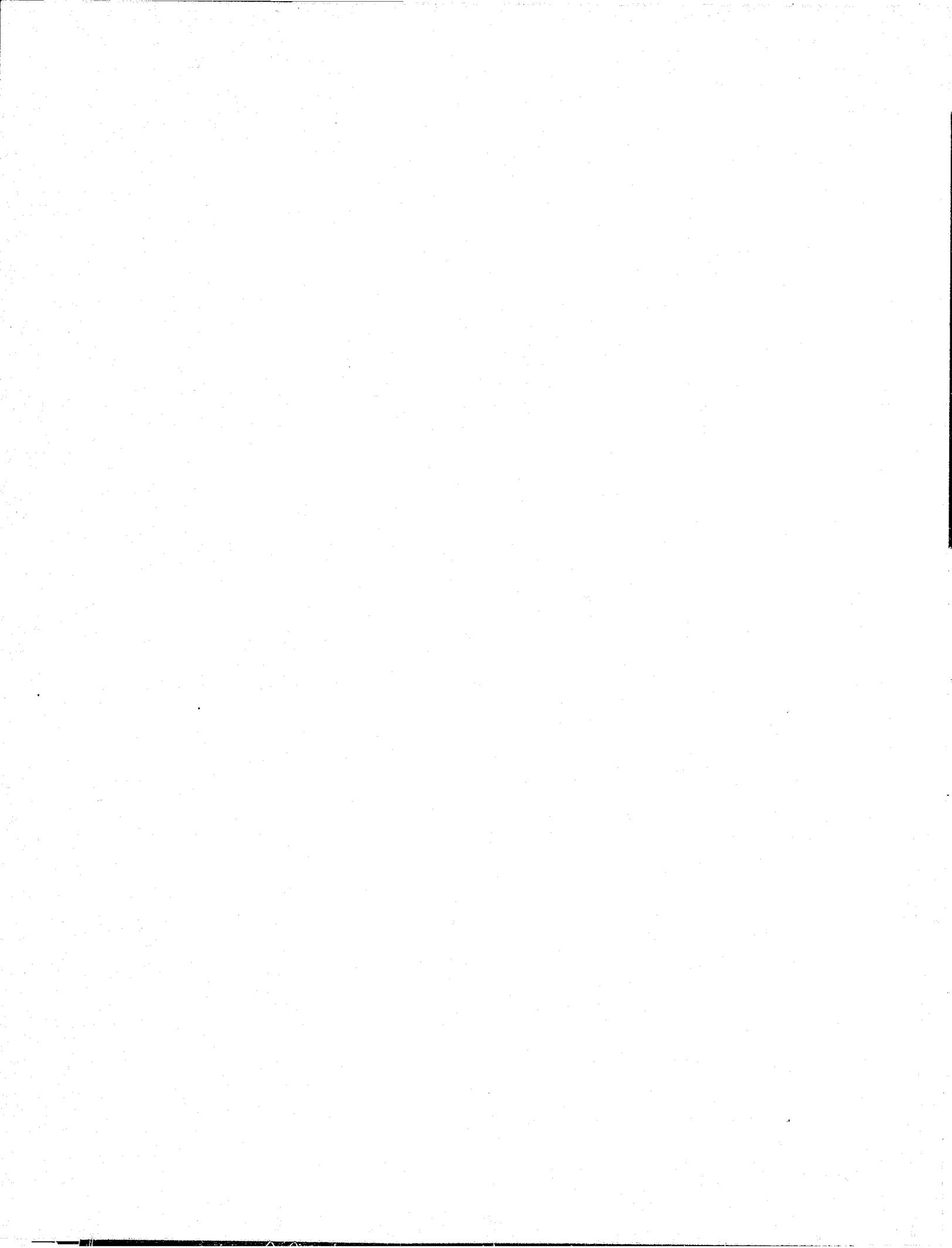
Clemency Structures

Governor's Authority. The governor has the authority to grant pardons (full and conditional) and to remit fines. This authority, however, does not extend to cases of treason. (Vt. Const. ch. II, § 20.)

Board of Parole Duties. The Board acts in an advisory capacity in pardon applications. It investigates applications and makes recommendations to the governor. (Vt. Stat. Ann. tit. 28, § 1023.)

Board of Parole Composition. The Board of Parole is composed of three part-time members who are appointed to six-year terms by the governor with the consent of the senate. (Vt. Stat. Ann. tit. 28, § 1023.)

State Supreme Court Justices' Duties. The governor has the discretion to request that not more than three justices of the supreme court sit with him during clemency application hearings. The justices counsel and advise the governor as to the propriety of granting pardons. (Vt. Stat. Ann. tit. 28, § 902.)



CONTINUED

1 OF 2

Types of Clemency

Pardon (full and conditional). A conditional pardon grant does not remove any civil or political disabilities resulting from conviction. The governor is the sole judge as to whether any conditions of the pardon have been violated. If any terms have been broken, the prisoner is returned to jail to complete the remainder of the sentence. (Vt. Stat. Ann. tit. 28, § 904.)

Remission of Fines.

Substantive Limitations

Impeachment. The governor cannot grant reprieves or pardons, nor can he remit or mitigate punishment in cases of impeachment. The state legislature has full clemency authority in matters of impeachment. (Vt. Const. ch. II, § 20.)

Treason. In cases of treason, the governor has the power to grant reprieves but not pardons until after the end of the next session of the General Assembly. (Vt. Const. ch. II, § 20.)

Procedural Limitations

Notice. After the governor receives the application, and if he believes the stated reasons constitute cause for granting clemency, he shall give notice of the application and the hearing to the clemency applicant and the state's attorney in the county in which the petitioner was convicted and sentenced. (Vt. Stat. Ann. tit. 28, § 901.)

Clemency Procedures

Application. All clemency applications must be in writing and must state the reasons for seeking clemency. (Vt. Stat. Ann. tit. 28, § 901.)

Decision. After a decision has been reached, it is communicated in writing to the applicant and the state's attorney. The governor also has the discretion to publish the clemency decision in one or more newspapers in the state. (Vt. Stat. Ann. tit. 28, § 903.)

Virginia

Clemency Structures

Governor's Authority. The governor has the exclusive authority to grant pardons (absolute and conditional), commutation of death sentences, and reprieves, to remit fines and penalties, and to restore civil rights. He does not, however, have any authority in matters of impeachment. (Va. Const., art. V, § 12.)

Parole Board's Duties. When requested by the governor through the secretary of the commonwealth, the Board makes investigations and reports on executive clemency applications. (Va. Code § 53-265[a].) The governor may require the chairman of the Parole Board, through the probation and

parole officers, to exercise supervision over prisoners released on conditional pardons. (Va. Code § 53-265[b].) The Parole Board may recommend for clemency consideration any cases it believes merit the governor's consideration. (Va. Code § 53-229.)

Secretary of the Commonwealth. Coordinates requests for executive clemency as ex officio secretary to the governor. (Va. Code § 2.1-66.)

Clemency Types

Commutations. The governor may commute death sentence to life sentence. (Va. Code § 53-228.1.)

Pardon. (Va. Code § 53-265.) An absolute pardon results from after-discovered information that proves the convicted one innocent.

A conditional pardon to an inmate relieves the prisoner of the punishment imposed by the sentencing court. Conditions usually include supervision by the Parole Board for a stated period of time.

The simple pardon is given in the case of ex-prisoners who have re-established themselves as members of society. It has no practical effect.

A pardon does not remove political disabilities. This requires a separate action by the governor.

Remission of Fines and Penalties.

Removal of Political Disabilities. Serves to restore the right to vote, to run for and hold public office, and to serve on a jury.

Reprieve.

Substantive Limitations

Impeachment. The governor has no clemency powers over impeachment cases. (Va. Const., art. V, § 12.)

Procedural Limitations

Governor's Report to the Legislature. The governor is required to report to the General Assembly on the pertinent factors of his clemency activity, including the recommendations of the Parole Board, the sentencing judge and commonwealth's attorney who prosecuted the case, and interested citizens. (Va. Const., art. V, § 12, and Stone, W.F., "Pardons in Virginia," 26 *Washington and Lee L. Rev.* 307 at 318 [1969].)

Clemency Procedures. Requests for executive clemency are addressed to the governor or the secretary of the commonwealth, who coordinates the information-gathering process including the securing of recommendations from the Parole Board, the trial judge, and the commonwealth's attorney.

Purging and Expunging. The Criminal Justice Services Commission has been empowered to purge or expunge records in certain instances.

Washington

Clemency Structures

Governor's Authority. The governor has the authority to commute death sentences to imprisonment for life at hard labor and to grant pardons and reprieves. Such clemency grants may include limitations or conditions. (Wash. Rev. Code Ann. § 10.01.120.) The governor may also remit fines and forfeitures (Wash. Const. art. III, § 11) and restore civil rights. (Wash. Rev. Code Ann. § 9.96.010.)

Board of Prison Terms and Paroles' Duties. The Board reviews and makes recommendations on all representations made in support of applications for pardon or for restoration of civil rights. (Wash. Rev. Code Ann. § 9.95.260 [Supp. 1976].) The Board can also issue certificates of discharge that have the effect of restoring all civil rights lost through conviction. (Wash. Rev. Code Ann. § 9.96.050 [Supp. 1976].)

Board of Prison Terms and Paroles' Composition. The Board consists of seven full-time members who serve renewable five-year terms. All members are appointed by the governor with the approval of the state senate. No qualifications are specifically required by law for appointment. (Phone interview with Tom Pappas, case analyst, Washington Board of Prison Terms and Paroles [June 22, 1977].)

Clemency Types

Commutation of Death Penalty to Life Imprisonment (full and conditional).

Pardon (full and conditional).

Remission of Fines and Forfeitures.

Reprieve.

Restoration of Civil Rights.

Procedural Limitations

Record of Pardons. The governor must keep a record of all clemency grants. (Wash. Rev. Code § 43.06.020.)

Governor's Report. The governor must report and give reasons for his clemency determinations at each regular session of the legislature. (Wash. Const. art. III, § 11.)

West Virginia

For more information, see West Virginia Constitution, article VII, § 11, West Virginia Code Annotated §§ 5-1-15 through 5-1-17, 14 *Michie's Jurisprudence*, Pardon, Probation, and Parole, §§ 1 through 18.

Clemency Structures

Governor's Authority. The governor has the authority to remit fines and

penalties, to commute capital punishment, and to grant reprieves and pardons. This authority, however, does not extend to matters of impeachment. (W. Va. Code § 5-1-16 [1971].)

Clemency Types

Commutation of the Death Penalty.

Pardon.

Remission of Fines and Forfeitures. The governor may remit fines or penalties only in cases of (a) contempt of court, (b) court martial, and (c) fines payable to the state upon a showing of good cause or on recommendation of the judge or jury.

Reprieve.

Substantive Limitations

Impeachment. The governor has no power to grant reprieves, paroles, and pardons in cases involving prosecution by the House of Delegates. (W. Va. Code § 5-1-16 [1971].)

Procedural Limitations

Recordation and Report. Clemency grants must be recorded in the Journal of Executive Proceedings and reported to the legislature during each session. (W. Va. Code § 5-1-16 [1971].)

Wisconsin

Introduction

Wisconsin's governor has full and absolute discretion in the granting of clemency. The basic source of this clemency authority is Article 5, Section 6 of the State Constitution. This section gives the governor the "power to grant reprieves, commutations and pardons, after conviction, for all offenses, except treason and cases of impeachment. . . ." ¹⁹²

Although the Wisconsin governor has complete discretion in exercising clemency power, the state constitution and statutes provide the legislature with supervisory powers in two key areas that ensure that the governor performs in a responsible manner. As is true with most states that allow the chief executive to exercise clemency power, the Wisconsin governor must make periodic reports to the legislature on all acts of clemency. These reports state the pardoned recipient's offense, the length of the sentences served, the type of clemency granted, and the governor's reasons for granting executive clemency. ¹⁹³

¹⁹²Wis. Const. art. V, § 6.

¹⁹³*Id.*

The Wisconsin legislature also exerts some influence on state executive clemency by regulating the clemency application procedures.¹⁹⁴ In these ways, the governor's discretion on clemency matters is subject to certain legislative safeguards.

Timetable

The Wisconsin executive clemency procedure is based on receiving and incorporating information from many different sources. The orderly flow of this information makes it possible for a final decision to be reached within five months after the submission of the clemency application and supporting documents. Usually a hearing is held one month after the original petition is filed. From the time of the hearing to receipt of a final decision, there is an additional lapse of three-and-a-half months.¹⁹⁵

Legal Counsel

Unlike most states that provide their governors with assistance from state pardon boards or similar agencies, Wisconsin has a legal counsel, a full-time secretary, and two part-time law students. Although there is no statutory or constitutional authority for any of these positions, they have evolved as an informal aid to assist the governor in processing clemency applications. The legal counsel is appointed by the governor and serves at his pleasure concurrently with the governor's term.¹⁹⁶

The office of the legal counsel is responsible for distributing information to applicants, receiving documents and applications, scheduling hearings, maintaining complete information files on each applicant, and making summaries and recommendations to the governor.¹⁹⁷

Standards for Clemency Determination

Executive clemency is rarely granted to persons who are incarcerated or on probation or parole at the time application is made to the governor. For this reason, an individual who has been discharged from prison for several years and who has subsequently lived a socially responsible and crime-free life in his community is in a better position to secure executive clemency. Regardless of whether or not the applicant is incarcerated, executive clemency is generally considered when the petitioner can clearly demonstrate

¹⁹⁴*Id.*

¹⁹⁵Parsons, Edward M., pardon counsel. "The Pardon Counsel's Letter to All Prospective Applicants." Wisconsin Governor's Office, October 1, 1976.

¹⁹⁶Bauer, Bruce R. "Executive Clemency in Wisconsin: Procedures and Policies." 1973 *Wisc. L. Rev.* 1154.

¹⁹⁷*Id.*

that the Wisconsin criminal justice system has wrought substantial injustice in his or her case.¹⁹⁸

There are several minimum criteria used by the governor to determine the propriety of an executive clemency grant: 1) the length of time between discharge from prison and application for clemency, 2) evidence of proven stability and rehabilitation, 3) proof of exceptional efforts toward rehabilitation (incarcerated persons only), 4) the seriousness of the offense committed, 5) the applicant's candor during the pardon hearing, 6) the presence of a compelling need for the pardon to alleviate social and legal restrictions, and 7) necessity for the ultimate mercy of the state executive.¹⁹⁹

Many of the above factors and others are discussed in "Minimum Standards for Executive Clemency" and "The Pardon Counsel's Letter to All Prospective Applicants."

Clemency Types

There are three principal forms of clemency grants in Wisconsin: reprieves, pardons (full and conditional), and commutations.

Reprieves are almost obsolete in Wisconsin owing to the abolishment of capital punishment and the Wisconsin appellate court's ability to stay sentences during the appellate process.²⁰⁰ Reprieves are used by the governor in treason cases to suspend the execution of the sentence, thus allowing the treason case to be reported to the legislature at its next meeting, at which time the legislature may grant a pardon, commute the sentence, grant a further reprieve, or direct the execution of the sentence.²⁰¹

Pardons may be full or conditional: the Wisconsin Constitution empowers the governor to issue pardons "upon such conditions and with such restrictions and limitations as he may think proper."²⁰² One-half of all clemency grants involve a form of pardon.²⁰³ Full pardons are the most common form of clemency granted because the decisional factors illustrating rehabilitation are more clearly defined. This pardon form is most often granted to applicants who can prove their rehabilitation by stable conduct during the several years elapsed between discharge from incarceration and application for executive clemency.²⁰⁴ For this reason, full pardons are not granted to obtain release from detention or to eliminate supervision by the Department of Health and Social Services.

¹⁹⁸Letter by David R. Reimer, pardon counsel. "Minimum Standards for Executive Clemency." Wisconsin Governor's Office, February 17, 1976.

¹⁹⁹Bauer, *supra* note 196, at 1167 and 1170.

²⁰⁰*Id.* at 1157.

²⁰¹Wis. Const. art V, § 6.

²⁰²*Id.*

²⁰³Bauer, *supra* note 196, at 1166.

²⁰⁴*Id.*

Conditional pardons are rarely granted. The speculative criteria used in awarding conditional pardons makes it crucial that the governor fix conditions that assure rehabilitation of the recipient and provide adequate safeguards for the community.²⁰⁵ The governor may revoke a pardon if he determines that the applicant has violated any of the conditions.²⁰⁶ According to Wisconsin's 1973 statistics on conditional pardons, the majority of cases were for relatively minor offenses such as attempted forgery, theft, battery, criminal damage to property, and similar crimes.²⁰⁷

Commutations of sentence are granted even less often than full or conditional pardons.²⁰⁸ This form of clemency is used to bring about an earlier parole eligibility for the prisoner. First degree murder cases and most life sentences are prime categories for commutation consideration, since the life prisoner must first serve a statutory minimum of eleven years, nine months, before reaching parole eligibility.²⁰⁹ The rationale for such action is that this period of time may be detrimental to any rehabilitative value that prisons may provide. Because of recent legislative revisions of the Wisconsin Marijuana Statute, excessive sentences for marijuana convictions have also become prime targets for commutation consideration.²¹⁰ Most commutation grants are made on the basis of correctional personnel's documented evidence of the applicant's rehabilitation, adjustment to prison life, and personal improvement as evidenced by vocational and educational training results.²¹¹

Applicant Categories²¹²

Clemency applicants are divided into three distinct classes: "1) lifers, 2) parolees and probationers, and 3) persons discharged from their sentences."²¹³ An applicant's chances for clemency are largely determined by whether he is incarcerated, subject to supervision, or has gained release from prison.

Lifers. Executive clemency is rarely granted to persons who are currently incarcerated. For clemency to be considered, the applicant must convincingly demonstrate that (a) he has served more time in prison than persons

²⁰⁵*Id.* at 1168.

²⁰⁶Wis. Stat. § 57.11.

²⁰⁷Bauer, *supra* note 196, at 1167, note 108.

²⁰⁸*Id.*

²⁰⁹Wis. Stat. § 57.06(1)(a) (1971).

²¹⁰Bauer, *supra* note 196, at 1169.

²¹¹*Id.* at 1169, note 128.

²¹²Wisconsin, like most other representative states, fails to inform adequately all entering inmates of the opportunities for clemency application. The brief pamphlet, "Laws and Regulations Governing Application for Executive Clemency," for example, does not include a simple description of the pertinent clemency statutes and regulations.

²¹³Reimer, *supra* note 198, at 1.

with similar offenses, background, and institutional records, or (b) his incarceration is a miscarriage of justice because he is innocent. If either of these factors can be demonstrated, executive clemency will be considered when the applicant has completed a substantial portion of his sentence. A lifer with full "good time allowances" is eligible for parole when five to six years of the mandatory minimum of eleven years and nine months has been served. In addition, the prisoner must demonstrate that he has maintained a good institutional record and has a special need for parole eligibility.²¹⁴

Parolees and Probationers. Executive clemency for an individual under parole or probation supervision is most likely to be considered when he shows that he has an excellent probation or parole record that has not been adequately recognized by the Department of Health and Social Services, and when he demonstrates that the remaining time under supervision is substantially greater than that of other persons with similar offenses, backgrounds, and records.²¹⁵

Discharged Individuals. An applicant who has been discharged from prison for several years and has lived a "crime-free and socially responsible life" during that time has an increased chance of securing executive clemency. The Wisconsin governor's office, in collaboration with the pardon counsel, has developed a few "rules of thumb" to help evaluate the importance of the length of time since discharge. If only a few years (two to three) have elapsed since release, the applicant is usually required to show 1) that he has led a crime-free existence, 2) that his prior infraction was a minor offense, and 3) that he has a specific career or job-related need for a favorable grant of executive clemency. If a longer period of time has passed since discharge (four years or more), the applicant's personal desire to clear his name may provide a sufficient basis for extending clemency consideration.²¹⁶

Clemency Procedures

Requisite Material. There are five categories of application papers and supporting documents for executive clemency.

— *Proof of Notice and Publication.* There must be proof that both the notice and publication requirements have been fulfilled. Evidence of publication must be supplied by an affidavit from the newspaper. The notice to the district attorney and judge are demonstrated by enclosing the signed responses of both the district attorney and the judge. The publication and notice requirements must be successfully completed before an applicant will be considered for hearing.²¹⁷

²¹⁴*Id.*

²¹⁵*Id.*

²¹⁶*Id.* at 2.

²¹⁷Bauer, *supra* note 196, at 1159.

— Court Records. Certified copies of specific court records, such as docket entries, the information, or indictment, and "such additional papers on file in the courts. . . as the governor may require,"²¹⁸ must be a part of each clemency application. Additional papers may include a criminal warrant, sentence document, and the plea. Several commentators have questioned the validity of requiring expensive and duplicative documents, since many of the papers are readily available from the Division of Corrections, Department of Health and Social Services, or the governor's office.²¹⁹

As a result of the cost of preparing and submitting an application for clemency, the governor's office provides a financial status questionnaire that must be completed by all petitioners who claim indigency. Since 1973, the state has provided financial assistance to incarcerated applicants who have less than \$50.00 in their institutional accounts. In addition to this help, a qualified applicant receives from the pardon counsel's office a certificate that allows the petitioner to secure the required court documents without cost.²²⁰

— Petitions. An applicant must submit a notarized petition to the governor that states all of the facts and reasons upon which the clemency application is based.²²¹ This document is the most important paper submitted by the applicant. The pardon counsel directs that each statement of fact must be concise and personal and must seek to emphasize any extenuating circumstances surrounding the offense. Most applicants use the petitions to show that they are presently rehabilitated.²²²

— Statements from Judges and District Attorneys. A previous investigation of this area²²³ reveals that most sentencing judges and prosecuting district attorneys do not supply additional information beyond acknowledging the notice. Thus the applicant, legal counsel, and governor are often without any recommendation from this key class of participants. When a statement is made by either the district attorney or judge, the recommendation is carefully weighed but usually is not totally determinative of the governor's final decision.²²⁴

— Warden's Certificate. A certificate from the applicant's jail warden gives information about the applicant's conduct during imprisonment. Such fac-

²¹⁸Wis. Stat. § 57.10(2) (1971).

²¹⁹Bauer, *supra* note 196, at 1171.

²²⁰*Id.* at 1160. Unfortunately these remedial measures do not eliminate the original problem of clemency application fees but instead provide only limited exemptions. It is not improbable that the initial fees as well as the complicated paperwork of financial questionnaires discourage prospective clemency applicants.

²²¹Wis. Stat. § 57.10(3) (1971).

²²²Parsons, *supra* note 195, at 2.

²²³Bauer, *supra* note 196, at 1161.

²²⁴*Id.*

tors as the degree of participation in educational and vocational training programs and the prisoner's conduct record are components of this certificate.²²⁵

Notice. Section 57.09 of the Wisconsin Statutes requires that every applicant give notice of his clemency application to both the judge who sentenced him and the district attorney who prosecuted his case. The legal counsel's office provides a suggested notice form. Notice of the application must be served on the district attorney and judge at least three weeks before the hearing. If the applicant is unable to locate the district attorney or judge because either person is deceased or has retired, then the notice is given to their successors. The clemency applicant is personally responsible for giving the proper notice pursuant to Section 57.09 and for providing the governor's office with proof that the notice requirement was fulfilled.

Publication. In addition to complying with the notice requirements of Section 57.09, every applicant is required to publish notice of his application in a newspaper of general circulation in the county in which the crime was committed. The notice is published once each week for two successive weeks before the hearing. If there is no newspaper, the notice must be conspicuously posted on the door of the county courthouse for three weeks before the hearing and published for two consecutive weeks in an adjoining county's newspaper. Proof that such publication was given must be in the form of an affidavit submitted by the newspaper to the governor as part of the clemency applicant's papers. The applicant must be careful to publish his application in a newspaper that is, according to statutory requirement, a "newspaper of general circulation in the county where the offense was committed."²²⁶

The notices of application must give the name of the applicant, the offense committed, the date and term of the sentence, and the date of the clemency application hearing. No further notice is required when the recipient of a conditional pardon applies for a full pardon.²²⁷ An applicant who is sentenced to confinement for less than one year and who has completed his prison term is not required to fulfill the publication mandate.²²⁸

*Pardon Hearings.*²²⁹ When all of the applicant's documents have been received by the governor's office, a pardon hearing is scheduled. The pardon calendar is prepared one month in advance of the hearings. Thus all papers must be received by the governor's office before the second Wednesday of

²²⁵Parsons, *supra* note 195, at 3.

²²⁶Wis. Stat. § 57.09.

²²⁷21 Wis. Op. Attorney Gen. 535 (1932).

²²⁸Parsons, *supra* note 195.

²²⁹All information in this section was obtained from the Wisconsin Governor's office, "Laws, Rules and Regulations Governing Applications for Pardons" (1973).

the month preceding the hearing. After a date is chosen and assigned by the legal secretary, a copy of the pardon calendar is sent to the applicant and his attorney two weeks prior to the hearing.

Prior to June 1972, the legal counsel conducted hearings only in Madison, Wisconsin, on the second Wednesday of each month. This meant that incarcerated petitioners were limited to filing written applications. Because the Wisconsin governor's pardon rules state that the legal counsel "will make every effort to hold a hearing with the petitioner present," the legal counsel has since held hearings at correctional institutions throughout the state on succeeding days after the second Wednesday of each month.²³⁰

The pardon hearing is informal and is aimed toward resolving questions about the petition and allowing the applicant to put forth new substantive information. In keeping with its informal nature, the hearing usually lasts twenty minutes. The hearing also provides an opportunity for the applicant to direct the legal counsel's attention to the most positive aspects of his case.

Although there is no official restriction, clemency applicants usually do not need an attorney for the preparation of the clemency documents or for the pardon hearing. The applicant is allowed to invite family members and close friends to the hearing. These individuals usually lend their moral support or speak favorably on behalf of the clemency applicant.

In reviewing the merits of a pardon hearing of this type, the author of a recent law review on clemency in Wisconsin stated:

[The] hearings seem . . . to serve three important functions. . . . They at least serve to humanize what is otherwise an impersonal process. Second, informal conversation enables the pardon counsel to pursue significant points which may be imperfectly raised in the applicant's written or oral statements. Finally, hearings provide a vehicle for the dissemination of procedural information which is not easily communicated in writing to all applicants.²³¹

Additional Material. The Wisconsin statutes are not clear concerning the submission of additional information by the clemency petitioner. The legal counsel's letter to each prospective applicant mentions that additional relevant information can be submitted. Although this material is not legally necessary, the information often proves helpful in evaluating the petition for clemency. In the past, additional supportive information has taken the form of official descriptions of the applicant's conduct, letters of recommendation, and similar items.²³²

Division of Corrections' Recommendations. The legal counsel routinely requests recommendations from the Division of Corrections. These recom-

²³⁰*Id.*

²³¹Bauer, *supra* note 196, at 1162-63.

²³²Parsons, *supra* note 195, at 3.

recommendations are based on information contained in the applicant's correctional files, which are maintained for all prisoners. The recommendations themselves are usually prepared by members of the Parole Board and then approved or modified by the division administrator before being sent to the legal counsel.²³³

The Division's recommendations are typically based on four key criteria: 1) the seriousness of the crime and the potential harm to the community; 2) a comparison of the sentence imposed with the sentences normally imposed; 3) the benefit or harm anticipated by continued imprisonment or supervision; and 4) the degree to which the petitioner's rights were protected within the criminal justice system.²³⁴

In cases in which the correctional influences are minimal, the Division of Corrections usually makes no recommendations but merely hands the applicants' correctional files to the pardon counsel.

The Division's recommendations are not absolutely determinative of the governor's decision; however, specific recommendations pertaining to the commutation of sentences are usually followed by the governor.²³⁵ Because the Division often does not prepare full recommendations on all applicants, it is difficult to determine the degree of influence asserted by the Division.

Concluding Procedures

After each hearing is completed, law clerks review each application and make a recommendation (deny, grant, type of grant) to the legal counsel. Basing his reaction on the legal counsel's impression of the hearing and the Division of Corrections' recommendation, the legal counsel will concur or disagree with the clerk's recommendation.²³⁶ The next to last step in the pardon process is the legal counsel's applicant summary and recommendation to the governor. Although this final work product is usually only one typewritten page, it is composed of information from the original applicant documents, the hearing, additional information, and the Division of Corrections' recommendations and correctional file on the individual. The pardon counsel's final written recommendation usually highlights determinative factors that support its final recommendation. All of the accumulated files, applications, and papers on each case are forwarded along with the pardon counsel's recommendation to the governor's office.²³⁷

²³³Bauer, *supra* note 196, at 1163.

²³⁴*Id.* at 1164.

²³⁵*Id.*

²³⁶Letter from Royce A. Finne to Samuel Stafford (April 22, 1977).

²³⁷Bauer, *supra* note 196, at 1164.

During the time in which the governor makes the final clemency decision, the legal counsel is always present to answer questions and discuss the case with the governor.²³⁸

After the governor reaches his final decision on the matter, the legal counsel supervises the preparation, execution, and delivery of warrants to the successful applicant. Unsuccessful applicants are promptly notified by the legal counsel. Wisconsin executive policy precludes the legal counsel from giving specific reasons for a denial of clemency.²³⁹

If an applicant is unsuccessful, there is a one-year waiting period from the date of receipt of notification of the governor's final decision until reapplication can be made.²⁴⁰ Wisconsin law does not provide that criminal records are expunged upon the issuance of a governor's pardon. The pardon merely removes various civil and legal disabilities that may result from a criminal conviction.²⁴¹

Conclusion

The present Wisconsin clemency system is an example of a small and informal administrative process. The legal counsel and staff help to reduce the administrative demands placed upon the governor by an ever-increasing volume of clemency applications. The governor is then better able to make considered and objective clemency determinations. In these ways, the Wisconsin governor has the benefit of an assisting structure without the complications and expense of a larger, more formalized pardon board.

Wyoming

Clemency Structures

Governor's Authority. The governor has the authority to remit fines and forfeitures, and to grant reprieves, commutations, and pardons, except in cases of treason and impeachment. The governor may suspend a conviction for treason until it is reported to the legislature at its next regular session, at which time the legislature must decide to commute or execute the sentence. (Wyo. Const. art. IV, § 5.)

State Legislature's Authority. The state legislature has the authority to regulate the procedures for clemency grants and fine remittances. The state legislature has complete clemency authority in matters of treason. (Wyo. Const. art. IV, § 5.)

²³⁸*Id.*

²³⁹*Id.* at 1162, notes 65 and 66.

²⁴⁰State of Wisconsin *Executive Clemency Regulations*, page 2.

²⁴¹Finne, *supra* note 236.

Clemency Types

Commutation.

Pardon. In cases where an inmate's life is in imminent danger, neither application nor notice is required for pardon. The penitentiary physician instead states the facts of the prisoner's condition in a certificate which is sent to the governor along with the warden's affirmative recommendation of pardon. (Wyo. Stat. § 7-385.)

Reprieve (conditional). When the governor grants a reprieve from a sentence of death, the conditions are specified in the warrant. In accepting the reprieve, the prisoner agrees to fulfill the conditions of the warrant. A person who violates the conditions of a reprieve is accorded the same treatment as an escaped convict. (Wyo. Stat. §§ 7-379, 381.)

Restoration of Citizenship. Two types of petitions are used in application for restoration of citizen rights. The first kind must be signed by twenty-five freeholders who have been closely acquainted with the habits and behavior of the petitioner since his release from prison. The second type, which must be supported by a statement from the warden of the penitentiary, must show that the petitioner maintained an excellent conduct record while incarcerated. Upon receipt of a petition, the governor may conduct his own investigation of the petitioner and consequently grant or deny restoration of citizenship rights. (Wyo. Stat. §§ 7-386, 387.)

Substantive Limitations

Impeachment. The governor has no clemency authority in matters of impeachment. (Wyo. Const. art. IV, § 5.)

Treason. The governor may suspend the execution of a sentence imposed for treason only until the case can be considered by the legislature at its next regular session. (See Wyo. Const. art. IV, § 5.)

Procedural Limitations

Notice of Clemency Application. Before a clemency application may be filed with the governor's office, notice must be given to the prosecuting attorney in the county in which the applicant was convicted. Notice must also be published in a newspaper of general circulation in the county in which the crime was perpetrated. If there is no such newspaper, notice must be posted on the door of the county courthouse for three weeks. (Wyo. Stat. § 7-383.) The notices, in any case, must be authenticated by the prosecuting attorney or a credible witness three weeks before the application is reviewed by the governor. (Wyo. Stat. § 7-383.)

Statement of Prosecuting Attorney. Upon receiving notice of the clemency application, the prosecuting attorney must forward a statement of facts and, if relevant, a discussion of any aggravating or extenuating cir-

circumstances that might influence the governor in his determination. (Wyo. Stat. § 7-384.)

Clemency Procedures

Governor's Report. The governor is required to make a clemency report at each regular session of the legislature, including a discussion of the basis for each clemency grant. (Wyo. Const. art. IV, § 5.)

Glossary of Terms

Clemency: The word is derived from two Latin words—*clemens*, meaning merciful, and *clementia*, meaning mildness.¹ Clemency is defined as “an act of leniency or a disposition to be merciful.”²

Over the years clemency has become synonymous with the word “pardon,” which is actually a type of clemency. Clemency is used in this report as an umbrella term encompassing pardons, commutations, reprieves, and remission of fines and forfeitures.

Commutation: This type of clemency substitutes a lesser type of punishment for the original sentence. There are two ways in which a commutation differs from a pardon: first, a commutation usually leads to supervised release (parole); secondly, it does not restore civil rights nor does it imply official forgiveness.³

A commutation may have conditions attached to its grant. Today, commutations are used as a means of substituting life imprisonment for the death penalty. This action usually takes the form of commuting the sentence to life without an opportunity for parole.⁴

Pardon—absolute or unconditional: An act of grace and mercy which exempts the grantee from the punishment inflicted by the law. This type of pardon releases an individual from the consequences of the conviction without any conditions.⁵ In some cases, an absolute or unconditional pardon serves to restore civil rights to the prisoner.

Pardon—conditional: A pardon with a condition precedent or subsequent attached to it. If a pardon has a condition subsequent, it remains valid as long as the recipient adheres to the specified terms and conditions. A pardon with a condition precedent is inoperative until the designated act is satisfactorily performed by the clemency grantee. Usually, any condition may be imposed by the clemency authority as long as it is not immoral, illegal, or impossible of performance. These pardon types are also the progenitors of the parole system.⁶

¹Webster's Unabridged Dictionary (2d ed. 1956).

²Webster's Seventh New Collegiate Dictionary 154 (16th ed. 1971).

³S. Rubin, *The Law of Criminal Correction* 665 (2d ed. 1973).

⁴*Id.*, at 671.

⁵Black's Law Dictionary 1268 (Rev. 4th ed. 1968).

⁶Rubin, *supra* note 3.

Remission of Fines and Forfeitures: In many states the clemency power includes the constitutional authority to suspend the collection of or to release an indebted person from fines and forfeitures.

Reprieve or Respite: This action provides a postponement of the execution of a sentence for a set interval of time. The temporary suspension of execution has usually been used to investigate new evidence, appeal a conviction, or complete action on a clemency application.⁷ A reprieve is considered part of the general clemency power whether it is expressly included in a state's constitutional or statutory clemency grant or not.⁸

Restoration of Civil Rights: This act restores to the pardoned individual the basic civil rights lost as a result of the conviction. The restoration of civil rights may be automatic or may require the submission of an application and the issuance of a certificate of restoration.⁹

⁷*Id.*, at 669.

⁸C. Newman, *Sourcebook on Probation, Parole and Pardons* 62 (3d ed. 1977).

⁹Rubin, *supra* note 3, at 660-61.

Capital Punishment Data

Status of Capital Punishment and Methods of Execution in the United States

Source: 1975 *Information Please Almanac* questionnaires to the states; CONTACT publication, "The Question of Capital Punishment," 1977, p. 179; and the National Center for State Courts Research and Information Service telephone update, September 1977.

State	Method
Alabama	Electrocution
Alaska	No death penalty
Arizona	Lethal gas
Arkansas	Electrocution
California	Lethal gas
Colorado	Lethal gas
Connecticut	Electrocution
Delaware	Hanging
District of Columbia	Electrocution
Florida	Electrocution
Georgia	Electrocution
Hawaii	No death penalty
Idaho	Hanging
Illinois	Electrocution
Indiana	Electrocution
Iowa	No death penalty
Kansas	Hanging
Kentucky	Electrocution
Louisiana	Electrocution
Maine	No death penalty
Maryland	Lethal gas
Massachusetts	No death penalty
Michigan	No death penalty
Minnesota	No death penalty
Mississippi	Lethal gas
Missouri	Lethal gas
Montana	Hanging

Nebraska	Electrocution
Nevada	Lethal gas
New Hampshire	Hanging
New Jersey	Electrocution
New Mexico	Lethal gas
New York	Electrocution
North Carolina	Lethal gas
North Dakota	No death penalty
Ohio	Electrocution
*Oklahoma	
Oregon	No death penalty
Pennsylvania	Electrocution
Rhode Island	No death penalty
South Carolina	Electrocution
South Dakota	Electrocution
Tennessee	Electrocution
**Texas	
***Utah	Hanging or shooting
Vermont	No death penalty
Virginia	Electrocution
Washington	Hanging
West Virginia	No death penalty
Wisconsin	No death penalty
Wyoming	Lethal gas

*Oklahoma recently enacted a statute requiring execution by intravenous injection. In the event that such a procedure is unconstitutional, the alternative modes are first, electrocution and second, firing squad.

**Texas also enacted a statute providing only for intravenous injection.

***The prisoner in Utah chooses his mode of execution. If he will not choose, the sentencing judge must do so.

Death Row Census on August 1, 1977

Based on information provided by the National Association for the Advancement of Colored People Legal Defense Fund, American Civil Liberties Union affiliates, and state coalitions.

Total Number of Persons under Sentence of Death: 392

By Sex

Males	387
Females	5

By Race

Black	184 (incl. one female)	(46.9%)
Hispanic	14	(3.6%)
American Indian	1	(0.3%)
Total nonwhite	199 (incl. one female)	(50.8%)
White	193 (incl. four females)	(49.2%)

By Crime

Homicide	391
Rape	1 (white)

By Jurisdiction

Death penalty laws	33 states
	1 federal jurisdiction
No death penalty laws	17 states
	2 federal jurisdictions

Roster of Death Row Population and Death Penalty Laws by Jurisdiction

Compiled by the Capital Punishment Project of the American Civil Liberties Union

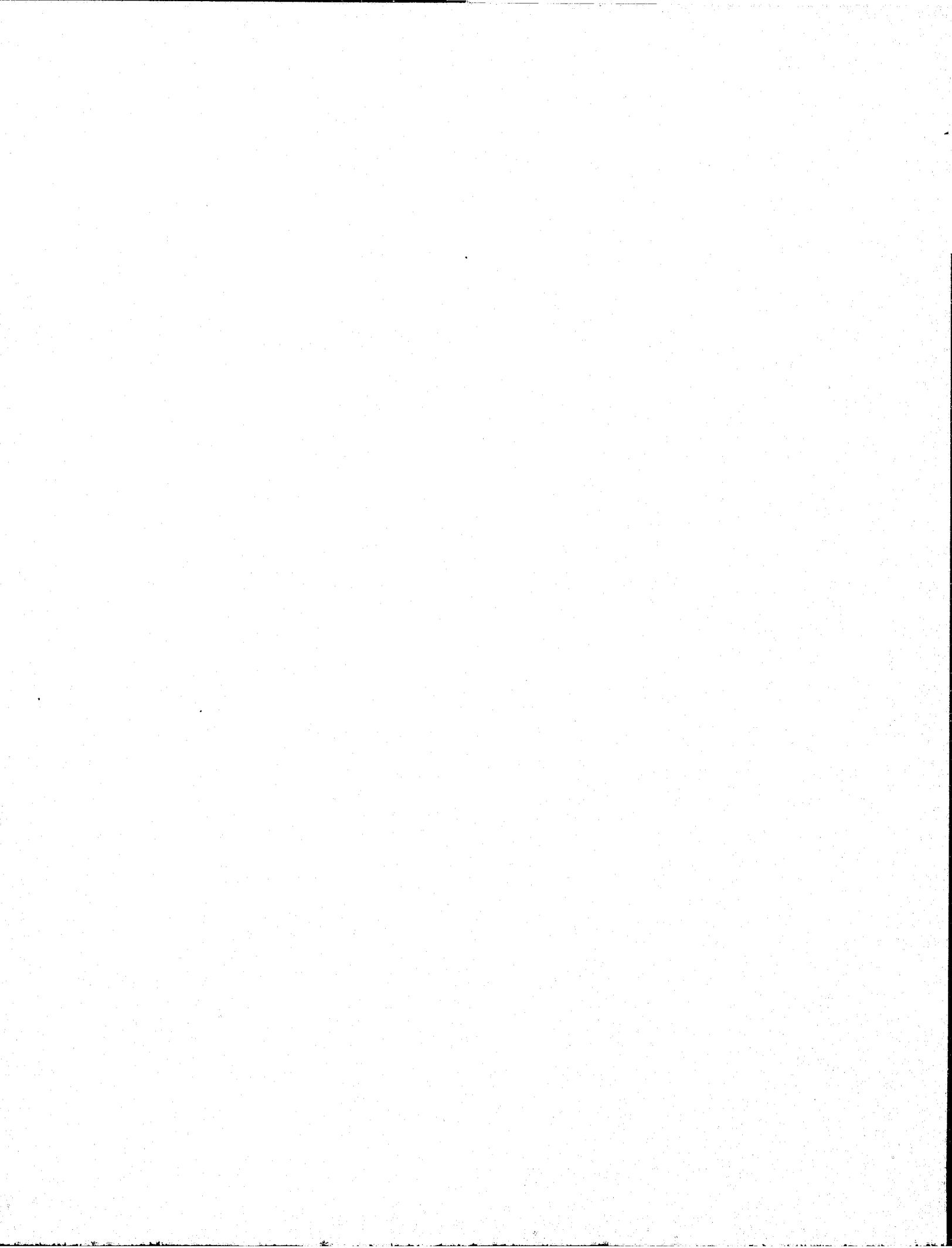
State	Death Row Population (as of Aug. 1, 1977)				TOTAL	Law (as of Nov. 30, 1977) Symbols: P-F = Post-Furman enactment P-G = Post-Gregg enactment
	Black	White	Hispanic Surname	Amer. Indian		
Alabama	3	4	—	—	7	P-F (under challenge)
Alaska	—	—	—	—	0	None; no legislative action pending
Arizona	1	11	4	—	16	P-F
Arkansas	4	3	—	—	7	P-F
California	—	—	—	—	0	P-G (veto overridden on 8/11/77)
Colorado	2	3	—	—	5	P-F
Connecticut	—	—	—	—	0	P-F
Delaware	—	—	—	—	0	P-G
Florida	34	50 (1F)*	1	—	85	P-F; upheld by Supreme Court
Georgia	32	27 (1F)*	—	—	59	P-F; upheld by Supreme Court
Hawaii	—	—	—	—	0	None (legislative action defeated)
Idaho	2	—	—	1	3	P-F and P-G
Illinois	—	—	—	—	0	P-G
Indiana	4	5	—	—	9	P-G
Iowa	—	—	—	—	0	None (legislative action defeated)
Kansas	—	—	—	—	0	None (legislative action defeated)
Kentucky	—	—	—	—	0	P-G
Louisiana	—	—	—	—	0	P-G
Maine	—	—	—	—	0	None (legislative action defeated)
Maryland	—	—	—	—	0	None (P-G vetoed)
Massachusetts	—	—	—	—	0	None; legislative action pending
Michigan	—	—	—	—	0	None; legislative action pending
Minnesota	—	—	—	—	0	None; no legislative action pending
Mississippi	18	4	—	—	22	P-F and P-G (under challenge)
Missouri	—	—	—	—	0	P-G
Montana	1	4	—	—	5	P-G
Nebraska	—	4	—	—	4	P-F
Nevada	—	3	—	—	3	P-G
New Hampshire	—	—	—	—	0	P-G
New Jersey	—	—	—	—	0	None (P-G awaiting signature)
New Mexico	—	—	—	—	0	None (legislative action defeated)
New York	2	—	—	—	2	P-F (under challenge); P-G vetoed
North Carolina	—	—	—	—	0	P-G
North Dakota	—	—	—	—	0	None; no legislative action pending
Ohio	43 (1F)*	30 (2F)*	—	—	73	P-F (under challenge)
Oklahoma	1	3	—	—	4	P-G (injection law enacted)
Oregon	—	—	—	—	0	None; no legislative action pending
Pennsylvania	12	6	—	—	18	P-F
Rhode Island	2	—	—	—	2	P-F
South Carolina	—	—	—	—	0	P-G
South Dakota	—	—	—	—	0	None; no legislative action pending
Tennessee	—	—	—	—	0	P-G (veto overridden)
Texas	21	32	9	—	62	P-F; upheld by Supreme Court, (injection law enacted)
Utah	2	3	—	—	5	P-F and P-G (execution 1-17-77)
Vermont	—	—	—	—	0	Pre-Furman
Virginia	—	—	—	—	0	P-G
Washington	—	1	—	—	1	P-G
West Virginia	—	—	—	—	0	None; no legislative action pending
Wisconsin	—	—	—	—	0	None; no legislative action pending
Wyoming	—	—	—	—	0	P-G
U.S. Code	—	—	—	—	0	P-F struck down; legislative action pending
U.C.M.J. District of Columbia	—	—	—	—	0	Pre-Furman None; no legislative action pending
TOTALS	184 (1F)*	193 (4F)*	14	1	392 (5F)*	34 death penalty states 1 death penalty federal jurisdiction 16 no death penalty states
Percentage of total by ethnic group	46.9%	49.2%	3.6%	0.3%	100%	

*F indicates no. of females included.

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