



March 2, 2022

Honorable Tom Wolf, Governor
508 Main Capitol Building
Harrisburg, PA 17120

Lieutenant Governor John Fetterman
Board of Pardons Chairman
200 Main Capitol Building
Harrisburg, PA 17120

K. Celeste Trusty
Board of Pardons Secretary
333 Market Street
Harrisburg, PA 17126

Via electronic delivery

Re: Expanding and Improving Clemency in Pennsylvania

Dear Governor Wolf, Lieutenant Governor Fetterman, and Secretary Trusty:

Thank you for your commitment to criminal justice reform, and for your thoughtful consideration of clemency applications during your tenure. We ask you to take immediate action to expand and improve the clemency process in Pennsylvania.

Clemency is the only hope of relief for people serving very long and life without parole sentences. Pennsylvania's governors commuted the life sentences of 285 people between 1971 and 1994, but that number dropped by more than 90 percent over the following two decades. Commutations are a necessary mechanism to address injustice and support second chances, and their use should be substantially increased, particularly as the rate of elderly and sick people in Pennsylvania prisons skyrockets.

What follows are FAMM's recommendations as well as many simple improvements that will make the process more efficient and beneficial to the citizens of Pennsylvania. We have spoken to government officials, incarcerated people, their family members, subject matter experts, advocacy groups, and other stakeholders about the clemency process. The recommendations are based on that outreach. Although these recommendations pertain mainly to commutations, they may also may apply to pardons.

FAMM makes the following recommendations to improve and expand clemency:

- Clear the backlog of clemency applications in 2022. Immediately direct the Board of Pardons (“the Board”) to hold public hearings nine months per year as provided for in [37 Pa. Code § 81.261](#). The Board has only scheduled public hearings three months this year, despite a large backlog.¹
- Create more expedited clemency categories. Focus on specific classes of individuals, for instance:
 - People who are over age 55, served 25 years in prison, and have the support of the Pa. Dept. of Corrections;
 - People with serious medical issues;
 - People who were between the ages of 18 and 26 at the time of their offense, as the [United States Supreme Court has recognized that at this age, the brain is not yet fully developed](#), yet they narrowly missed qualifying for relief as “juvenile lifers”;
- Direct the Board to provide its reasons for denying clemency applications. The current process lacks transparency, and as a result, applicants and their families are left in the dark as to why they are denied. Providing the reasons for a denial affords due process by showing that the law is administered fairly and rationally. It is also a practical way to advance the rehabilitative goal of corrections by advising the applicant of what they can do to improve their prospects. FAMM suggests that the Board utilize a check-box form that lists [the common criteria the Board considers, and suggests what steps a person could take to be more favorably considered](#).
- Urge the General Assembly to eliminate the unanimous Board vote requirement for capital and life without parole cases. Doing so would allow a Governor to consider granting clemency when the Board recommends a person by a majority vote (3-2). Majority vote was the normative requirement throughout Pennsylvania’s history until the late 1990s. Returning to a majority vote does not guarantee commutation. It promotes rehabilitation, institutional order, and provides realistic second chances for those who have earned them. Expanding clemency also has significant fiscal savings for taxpayers. *See* HB 1713 (2021-2022 session).
- Remove systemic barriers to correction and rehabilitation for people serving capital and life without parole sentences. Eliminate the Dept. of Corrections Policy ([No. 7.6.1](#), Section 1, paragraph M) that prohibits “lifers” from participating in the full range of

¹ [61 Pa.C.S. § 7301\(f\)\(3\)](#) (amended by Act 59 of 2021, requiring a 60-day waiting period between merit review and public hearing for the purpose of victim notification) *does not prohibit* the Board from holding public hearings 9 months per year. It simply requires thoughtful, staggered scheduling of merit reviews and public hearings to allow for the requisite time to pass.

FAMM recommendations to improve and expand clemency (continued):

academic, vocational, and therapeutic programming normally offered due solely to their “life sentence” designation. Since commutation is a legal mechanism available to the 5,000 plus individuals serving life without parole sentences in Pennsylvania, these individuals should have the opportunity to attend rehabilitative programming. Participation in programming is evidence of rehabilitation, and of paramount importance to the Board.

- Create and publish policy guidelines governing the criteria and timelines for the reviews conducted by A) the Pa. Dept. of Corrections, B) the Board office and C) the Governor’s office once an applicant has applied for commutation and/or received a favorable recommendation from the Board.
- Provide additional commutation specialists to assist incarcerated people in applying for commutation, and reallocate staff within the Dept. Corrections to screen incarcerated people’s applications; ideally with dedicated specialists assigned to the prisons that house large geriatric populations (*e.g.* SCI Phoenix, SCI Dallas, etc.).
- Release the list of those individuals receiving merit review and public hearings at least two weeks in advance. Currently, applicants, family members, and the public often do not know who is on the hearing list until the day or week before the proceeding. In one case, an individual did not know she was on the merit review list until after the merit review was over. This leaves people unable to properly prepare.
- Allow supporters to speak directly to the Board during an applicant’s timed presentation. Note that direct and non-direct victims and survivors of crime are permitted to speak directly to the Board. Community and family members would provide the Board with a more holistic perspective of the applicant.
- Collect and make clemency data publicly available, including recidivism data on clemency recipients. Create a public dashboard that provides relevant information about historical and current clemency applications by type, length of processing, disposition, demographics, county of case origin, and more. The dashboard should include a way for applicants and family members to look up their case status.
- Direct the Dept. of Corrections and/or the Parole to make available online the psychiatric, impulsivity, and/or risk assessment tools used to evaluate people for clemency.

We ask you to work with the Dept. of Corrections and Board of Pardons to immediately implement and support these recommendations. Most of them do not require legislative action. You have the opportunity to leave a structure in place that will improve and expand clemency in Pennsylvania for decades to come.

Thank you for considering our views. Please contact (717) 945-9089 or mgoellner@famm.org if you have any questions or need assistance.

Respectfully,

/s Maria Goellner

Maria Goellner, Esq.
Pennsylvania State Policy Director
FAMM

cc: Honorable Josh Shapiro, Attorney General, Board Member
Honorable Harris Gubernick, Board Member
Honorable John P. Williams, MD, Board Member
Honorable Marsha H. Grayson, Esq., Board Member
Pennsylvania Senate Officers and Leadership
Pennsylvania Senate Judiciary Committee
Pennsylvania House Officers and Leadership
Pennsylvania House of Representatives Judiciary Committee