



July 27, 2023

Honorable Josh Shapiro, Governor
Honorable Austin Davis, Lieutenant Governor
Shelley Watson, Board of Pardons Secretary
Laurel R. Harry, Department of Corrections Secretary

Via electronic delivery

Re: Expanding and Improving Clemency in Pennsylvania

Dear Governor Shapiro, Lieutenant Governor Davis, Secretary Watson, and Secretary Harry:

Thank you for your stated commitment to clemency. We ask you to take immediate action to expand and improve the clemency process in Pennsylvania.

[FAMM](#) is a nonpartisan, nonprofit organization that advocates sentencing policies that are individualized and fair, protect public safety, and preserve families. Our members in Pennsylvania include thousands of families from all walks of life. They cross the political, geographic, and racial spectrum. Many of our families have suffered from both incarceration and crime; experiences that are not mutually exclusive. We unite currently and formerly incarcerated people, their families and loved ones, and diverse people working to improve our system of justice and create [safe second look mechanisms](#).

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 to expand and improve clemency, the vast majority of which have been previously shared. These include many simple, non-legislative changes 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 our work pertains mainly to commutations, this may also apply to pardons.



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FAMM's 2023 Clemency Recommendations:

1. Clear the backlog of clemency applications in 2023 and 2024. Direct the Board of Pardons (“the Board”) to hold additional hearings until this is accomplished. [37 Pa. Code § 81.261](#) provides that the Board should hold regular public hearings nine months out of the year.¹ During FAMM’s [#VisitAPrison](#) campaign, we met incarcerated people in their 70s. Some had served over fifty years in prison, were partially blind and deaf, and had not heard anything about commutation applications filed more than two years ago. That is unacceptable for any government process in Pennsylvania; and *this* process is absolutely critical to life and death for so many families.
2. Create more expedited clemency categories. Focus on specific classes of individuals, such as:
 - a. People who are over age 55, served 25 years in prison, and have the support of the Pennsylvania Department of Corrections (“DOC”);
 - b. People with serious medical issues;
 - c. People who were between the ages of 18 and 26 at the time of their offense. 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”;
 - d. People convicted of second-degree homicide, known as “felony murder,” which mandates an automatic life without the possibility of parole (LWOP) sentence, even for people who neither killed anyone nor intended to kill anyone. 79% of Pennsylvanians support changing the law, and this Administration has pledged support publicly to reform it.
3. Regarding those incarcerated people with serious health problems, the Board of Pardons and the DOC should staff commutations simultaneously with medical release petitions, and facilitate both processes moving concurrently in all respects. Elderly, ill people are the highest-cost and lowest-risk to incarcerate, and the Commonwealth should prioritize safe release of very sick people wherever possible. Further, people granted medical release are told that they may only seek palliative care upon release. If granted commutation, Pennsylvania families would be able to seek life-saving treatments for their loved one.
4. Direct the Board to adopt a process to provide reasons to concerned parties for granting and 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. This is particularly bewildering when the applicant spent decades in prison, has DOC’s full

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.

support, and is considered a paradigm of rehabilitation by every metric. Providing the reasons for a denial affords due process by showing that the law is administered fairly and rationally. Currently, the public impression of our families is that the process can be political, capricious, and downright mysterious. Providing reasons 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; or alternatively, understand that the Board will not consider them a worthy applicant. This knowledge will benefit the DOC and victim(s) also. FAMM suggests using a simple check-box form during clemency hearings that lists the common criteria the Board considers. We have enclosed a proposal for consideration.

5. DOC should immediately resume its historic practice of advising applicants of their institutional vote. FAMM's members indicate incarcerated people are being told that the DOC will no longer tell them whether the institutions they live in support their release. As detailed above, clemency is the *only hope* for thousands of Pennsylvania families to be reunited. Without it, they will experience the anguish of their loved one dying away from them in prison. In many cases, the applicants have lived in these institutions and worked with the same staff *for decades*. It is poor policy to take a previously transparent government process and convert it into a black box. Please cease this new practice.
6. Consider diversity of race and perspective when making appointments to the Board of Pardons. Historically, these are sorely lacking. To our knowledge, the Board has only commuted a miniscule number of people who identify as Hispanic or Latino/Latina, and no Governor has appointed a person of Hispanic descent to the Board of Pardons. The current administration has the opportunity to appoint diverse and directly impacted people to criminal justice roles within the government, and elevate voices (including from law enforcement) who believe in improving the system and providing second chances. Board members with diverse perspectives will make clemency more accessible and attainable.
7. 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* co-sponsor memos signaling legislation on this front from Representatives McClinton and Kinsey, Representative Marla Brown, Representative Amen Brown, and Senators Bartolotta and Haywood.
8. Create a structured process for applicants to correct the record and/or challenge incorrect information presented by other parties during the clemency process.

9. Remove systemic barriers to correction and rehabilitation for people serving capital and life without parole sentences. Eliminate the DOC Policy (No. 7.6.1, Section 1, paragraph M) that prohibits “lifers” from participating in the full range of 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.
10. Create and publish policy guidelines governing the criteria and timelines for the reviews conducted by A) the DOC, B) the Board of Pardons and C) the Governor’s office once an applicant has applied for commutation and/or received a favorable recommendation from the Board.
11. Provide additional commutation specialists to assist incarcerated people in applying for commutation, and reallocate staff within the DOC 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.). We understand that DOC is in the process of establishing a dedicated commutation unit, and we look forward to learning more about this effort. Thank you.
12. 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 past case, an individual did not know she was on the merit review list until after the merit review was over. This leaves families unable to properly prepare.
13. 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.
14. The DOC and the Parole Board should make available online the psychiatric, impulsivity, and/or risk assessment tools used to evaluate people for clemency.

We ask you to work together to immediately implement these recommendations. Most of them do not require legislative action. You have the opportunity to put a structure in place that will improve and expand clemency in Pennsylvania for years 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, Esquire
Deputy Director of Policy, [FAMM](#)

cc: Honorable Michelle Henry, 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

PENNSYLVANIA BOARD OF PARDONS

The Board of Pardons has considered¹ the following this _____ day of _____, _____ at the

MERIT REVIEW / PUBLIC HEARING OF _____.

REASON(S) FOR CLEMENCY DECISION

Check all that apply

To grant	To deny	<u>Reason</u>
		Nature and circumstances of the offense (including age at the time, role in offense, etc.)
		Time elapsed since the commission of the crime
		Punishment served and/or time served incarcerated
		Time elapsed on probation/parole, completion of sentence, and/or parole eligibility
		Legal remedies exhausted
		Evidence of rehabilitation
		Period of crime-free living and/or institutional conduct record
		Other criminal history/violence
		Programming, education, other pro-social or anti-social activities
		Work record
		Compliance with all court requirements, including but not limited to payment of all costs and fines
		Specific need for clemency
		Witness input (including but not limited to victim/survivor, prosecutor, judicial input)
		Parole and/or Dept. of Corrections input
		Responsibility/remorse (acceptance, demonstration, articulation)
		Risk to community (including but not limited to Predictive Analytics Scoring)
		Community/family support
		Other:

Recommendations for improvement: _____

¹ Neither the Pennsylvania Constitution nor the laws or regulations governing the Board of Pardons establish minimum eligibility requirements in order to apply for executive clemency. The law does not establish a specific list of factors that the Board must consider. This list contains the most common criteria considered. It is not exhaustive and the Board's decision *is not limited* to these factors. The Board of Pardons provides this list to applicants, victims, and the Dept. of Corrections solely for the purpose of furthering the goals of transparency and rehabilitation.