

 <p><b>NEW YORK STATE</b> <b>Corrections and Community Supervision</b></p> <p><b>DIRECTIVE</b></p>	TITLE <b>Information Concerning Executive Clemency</b>		NO. 6901
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REFERENCES (Include but are not limited to) Penal Law §70.30; Directives #9105; DOCCS Employees' Manual; Guidelines for Review of Executive Clemency Applications	APPROVING AUTHORITY 		

- I. **PURPOSE:** The policy of the Department of Corrections and Community Supervision is to assist its Executive Clemency Bureau in reviewing requests for executive clemency. In support of that end, the below information has been provided to guide Superintendents and facility staff in responding to requests for Executive Clemency Reports.
- II. **DESCRIPTION:** Executive clemency is a matter which rests within the sole discretion of the Governor and is granted in only the most extraordinary and highly meritorious cases. A grant of clemency to an incarcerated individual generally commutes (reduces) the sentence imposed in court to the extent the incarcerated individual becomes immediately eligible for release.

To be eligible for executive clemency consideration in the form of a commutation of sentence, an incarcerated individual serving an indeterminate sentence must have served at least one-half of the minimum period of imprisonment and an incarcerated individual serving a determinate sentence must have served at least three-sevenths of the determinate sentence of imprisonment. In determining clemency eligibility, such one-half of the minimum period of the indeterminate sentence and three-sevenths of the term of the determinate sentence shall not be credited with any time served before the commencement of such sentence, except to the extent authorized by subdivision three of Penal Law §70.30.

Notwithstanding the aforementioned eligibility criteria, requests for executive clemency may be considered when the applicant is able to demonstrate that, for humanitarian reasons, such consideration is warranted. The Executive Clemency Bureau, a unit of the Department of Corrections and Community Supervision, assists the Governor's Office in the clemency review process by compiling information used to evaluate applications and by dealing with correspondence and inquiries concerning clemency. The Executive Clemency Bureau is responsible for the review and eligibility determination for all applicants.

A document known as the "Guidelines for Review of Executive Clemency Applications," [GRECA](#), provides information about clemency in New York State. Copies are on file in the law library of each facility for the reference of incarcerated individuals.

As part of the Governor's Pro Bono Clemency Project, it will be necessary for volunteer attorneys associated with the project to contact incarcerated individuals by phone as well as through legal visits. To facilitate this process, once a case has been accepted by a volunteer attorney, the Superintendent (or their designee) will assist with setting up an initial phone call between the incarcerated individual and the volunteer attorney, as well as provide assistance with setting up future calls as necessary. It will also be necessary for the volunteer attorney to visit the incarcerated individual in person to establish rapport and gather information to assist with preparing the incarcerated individual's clemency petition. Such requests for legal in-person visits should be facilitated pursuant to Department Directive #4404, "Incarcerated Individual Legal Visits."

Upon request, a legal visit can also include the possibility of a recorded interview to become a part of the clemency packet for submission.

In addition, clerical staff with the Office of the Commissioner will coordinate the process whereby the sentencing court can issue an order that allows a copy of the Pre-Sentence Report to be provided to the volunteer attorney.

**III. REQUESTS FOR EXECUTIVE CLEMENCY REPORTS:** As part of its preparation of cases for review, the Executive Clemency Bureau will send [Form #6901B](#), "Letter to Superintendent," requesting reports concerning clemency applicants from the Superintendent of the facility in which those applicants are incarcerated. The report is to summarize the applicant's adjustment from the start of their incarceration. The Executive Clemency Bureau generally asks that the report be completed within 30 days, although shorter due dates may be necessary on occasion.

In requesting a report, the Executive Clemency Bureau provides [Form #6901C](#), "Release of Records," to be signed by the applicant and a staff witness. The form is returned to the Executive Clemency Bureau, with the Superintendent's report, and the completed report should include a statement to the effect that the form was signed by the applicant.

#### **IV. FORMAT OF EXECUTIVE CLEMENCY REPORTS**

- A. Introduction: Provide the applicant's name and Departmental identification number; present conviction(s); sentence(s) now being served; date eligible for release on parole; and conditional release and maximum expiration dates, if applicable.
- B. Institutional History: List the facilities in which the applicant has been incarcerated on the present sentence and the dates at each facility. Describe work and program assignments at each facility and indicate the quality of participation in those assignments. Note any significant work, educational, or other achievements of the applicant. Summarize the applicant's conduct within the facilities; include specific information on disciplinary infractions and the disciplinary action taken, if any; and attach a copy of the records of the incarcerated individual's disciplinary history.
- C. Psychological and Psychiatric Evaluations: Photocopies of available psychological and psychiatric reports are to be submitted. Summarize any problems in this area.
- D. Visiting, Correspondence, and Telephone Lists: Computerized listings of the applicant's visiting list and, when available, correspondence and telephone lists are to be provided. Any visitors or contacts considered significant should be noted.
- E. Instant Offense Victim(s): The Superintendent or Superintendent's designee shall notify the Director of the Office of Victim Assistance that the incarcerated individual has applied for executive clemency. The clemency report will include a statement that there is, or is not, a confidential file at the correctional facility.
- F. Other Considerations: Note any significant factors regarding the applicant that are not discussed in other sections of the report. If known, advise if there are any current appeals or other actions pending concerning the applicant's case and, if so, provide available details. Include a statement concerning the applicant's signing of [Form #6901C](#), which is provided by the Executive Clemency Bureau.
- G. Recommendation: A recommendation regarding the applicant's request for executive clemency is to be made by the facility Superintendent. Except in rare cases explained by the Superintendent, this statement should include a definite recommendation for or against clemency based on the information available to the Superintendent. The statement may be a part of the larger report or may be made in a separate cover letter.

**V. STAFF AND/OR VOLUNTEER RECOMMENDATIONS**

- A. Any facility staff member or approved volunteer wishing to report an observation of or opinion about a particular incarcerated individual who has applied for clemency must do so through the Superintendent via the chain of command within the facility or work location.
- B. All submitted comments will be forwarded to the Executive Clemency Bureau as attachments to the Superintendent's report on the applicant or as a supplement to that report.
- C. Any materials provided by staff members to the Executive Clemency Bureau are official and confidential Departmental communications, which are specifically intended for the Governor's Office. Copies may not be released to the incarcerated individual or any other unauthorized individual. (Section 3 of the Department of Corrections and Community Supervision Employees' Manual applies.)