



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

**GUIDELINES FOR REVIEW OF
EXECUTIVE CLEMENCY APPLICATIONS**

Under the State Constitution, the Governor has the power “to grant reprieves, commutations and pardons after convictions, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper.” New York State Constitution, Article IV, Section 4.

In order to assist applicants for executive clemency in further understanding the nature, scope and procedures of executive clemency, the following guidelines have been developed. However, clemency is a matter within the sole discretion of the Governor. *Compliance with the guidelines does not entitle an applicant to clemency.*

Pardon

A pardon is most commonly available:

- (1) to permit a judgment of conviction to be set aside where there is overwhelming and convincing proof of innocence not available at the time of conviction;
- (2) to relieve a disability imposed upon a judgment of conviction for an offense; or
- (3) to prevent deportation from or to permit re-entry into the United States.

Absent exceptional and compelling circumstances, a pardon is not available if the applicant has an adequate administrative or other legal remedy, including, for example, a certificate of relief from disabilities (Correction Law §§700-705), a certificate of good conduct (Correction Law §703-a, §703-b) or relief pursuant to the provisions of Article 23-A of the Correction Law. Information concerning these certificates may be obtained from the New York State Department of Corrections and Community Supervision, Executive Clemency Bureau, Harriman State Campus, 1220 Washington Avenue, Albany, New York 12226.

An application for a pardon should be accompanied by a certified copy of any judgment of conviction rendered against the applicant at any time during his life.

An applicant for a pardon must demonstrate a specific and compelling need for the relief *and* for applications under (2) and (3), a substantial period of good citizenship.

Commutation of Sentence

The Board of Parole is an independent quasi-judicial body charged with the power and duty of determining which incarcerated individuals sentenced to imprisonment and eligible for release on community supervision may be released when and under what conditions. The exercise of executive clemency to intervene in matters reserved by law for the Board of Parole is thus inappropriate.

Executive clemency for an incarcerated individual of a New York State correctional institution is available, however, in the form of a commutation of the individual's minimum period of imprisonment. Commutation enables the incarcerated individual to be considered for release on community supervision at an earlier time than permitted by the sentence imposed by the court.

Absent an exceptional and compelling circumstance, a commutation of a sentence will be considered only if:

- (1) the incarcerated individual's term or minimum period of imprisonment is more than one year;
- (2) the incarcerated individual has served at least one-half of his or her minimum period of imprisonment; for an incarcerated individual with a determinate sentence, this means serving at least three-sevenths of his or her period of imprisonment; and
- (3) the incarcerated individual will not become eligible for release on community supervision within one year from the date of his application for executive clemency.

Commutation of sentence is extraordinary relief and, therefore, the applicant has the burden of demonstrating, by clear and convincing evidence, that:

- (1) (a) he or she has, within his or her capabilities, made exceptional strides in self-development and improvement;
(b) he or she has made responsible use of available rehabilitative programs and has addressed identified treatment needs; and
(c) commutation of the sentence is in the interest of justice, consistent with public safety and the rehabilitation of the applicant; or
- (2) He or she is suffering terminal illness or has a severe and chronic disability which would be substantially mitigated by release from prison and that such release is in the interest of justice and consistent with public safety; or
- (3) further incarceration would constitute gross unfairness because of the basic inequities involved. (It is expected that commutations under this paragraph will be rarely granted.)

Applications

A formal application for executive clemency is not required; nor is an applicant required to retain an attorney. A written request for executive clemency consideration will suffice to cause a review and compilation of necessary information to determine eligibility, need for further investigation, scope of any investigation and eventual decision. The full cooperation of the applicant upon such review is, of course, required.

Applications for executive clemency should be made only by the subject of the application those having authority, express or implied, either from the subject of the application or from some relative or member of his family, or such other person as may be presumed to represent him. Anyone may submit a recommendation in support of or in opposition to a pending application. The applicant should forward all supporting materials within thirty days of his application. Papers filed in connection with an application may not be returned; nor may copies be furnished. Thus, correspondents should retain such copies of forwarded materials as they are likely to require. Material in the clemency file is considered confidential and will be made available only in the discretion of the Governor. The name and post-office address of the correspondent should appear on all communications; and all communications should be addressed to either:

The Governor of the State of New York
Executive Chamber
State Capitol
Albany, New York 12224

OR

Director, Executive Clemency Bureau
New York State Department of Corrections and Community Supervision
Harriman State Campus
1220 Washington Avenue
Albany, New York 12226

Procedures

In the case of each eligible applicant considered for commutation, the Governor will request:

- (1) a report from each institution in which the applicant has been incarcerated concerning his performance and behavior; and
- (2) a recommendation from the district attorney and the sentencing judge concerning the application.

The Governor may request medical and mental health reports and evaluations. The Governor may also request the opinion of the Board of Parole prior to making a decision. Materials in the executive clemency file may be made available to the Board of Parole for the imposition of release conditions or if its opinion is sought.

Applications for executive clemency will be reviewed at intervals throughout the year. Except where exceptional and compelling circumstances exist, applications will be considered, to the extent possible, in the order received.

An eligible applicant who has been notified that his application for clemency has not been granted may reapply after one year from the date of the notification, unless authorized to do so sooner in the letter informing him of an unfavorable decision.