
 <p>Corrections and Community Supervision</p> <p>DIRECTIVE</p>	<p>TITLE</p> <p>Information Concerning Executive Clemency</p>		<p>NO. 6901</p>
			<p>DATE 12/08/2020</p>
<p>SUPERSEDES</p> <p>DIR# 6901 Dtd. 12/23/19</p>	<p>DISTRIBUTION</p> <p>A B</p>	<p>PAGES</p> <p>PAGE 1 OF 3</p>	<p>DATE LAST REVISED</p>
<p>REFERENCES (Include but are not limited to)</p> <p>Penal Law §70.30; Directives #4404, #9105; DOCCS Employees' Manual; Guidelines for Review of Executive Clemency Applications</p>	<p>APPROVING AUTHORITY</p> 		

- 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 inmates.

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, "Inmate 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 the inmate's 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 inmate'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.)



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 inmates 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 inmate of a correctional institution is available, however, in the form of a commutation of the inmate's minimum period of imprisonment. Commutation enables the inmate 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 inmate's term or minimum period of imprisonment is more than one year;
- (2) the inmate has served at least one-half of his or her minimum period of imprisonment; for an inmate with a determinate sentence, this means serving at least three-sevenths of his or her period of imprisonment; and
- (3) the inmate 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.



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

RELEASE OF RECORDS, INCLUDING DRUG AND ALCOHOL ABUSE RECORDS

I _____, DIN# _____, hereby authorize the New York State Department of Corrections and Community Supervision to release records and information about me in their possession, including any alcohol and substance abuse treatment records, as defined in 42 U.S.C. 290dd-2 and 42 CFR 2.11 et seq., to:

The Office of the Governor's Counsel
Executive Chamber
State Capitol
Albany, New York

The purpose of the disclosure permitted by this consent is to authorize a review for potential Executive Clemency consideration. I understand that this consent is subject to revocation at any time. I further understand that any records, which are confidential or protected by operation of law, will not be disclosed to any unauthorized persons.

Signature

DIN

Date

Witness' Signature



Corrections and Community Supervision

ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

Date

Superintendent

Re: Inmate

DIN #:

NYSID #:

Dear Superintendent:

This case is under review for executive clemency consideration in the form of a commutation of sentence.

In order to assist in the evaluation of the case, kindly provide a report following the format described in Departmental Directive #6901.

It is requested that you provide copies of any existing psychiatric/psychological reports, even if they are somewhat dated. Updated psychiatric/psychological analyses may be performed if your staff feels it advisable.

It will be necessary for the applicant and a staff witness to sign the attached "Release of Records" form which is to be returned to this office with your completed report. Please include in the report a statement to the effect that this form was signed by the applicant.

As part of your report, the Office of the Governor's Counsel requests that you make a recommendation for or against clemency on the basis of the information that you possess regarding the inmate's entire record while incarcerated, with particular emphasis on disciplinary and programmatic indicia. The seriousness and circumstances of the original crime will be separately evaluated by the Office of the Governor's Counsel and should not be addressed in your recommendation.

Please provide us with your report as soon as practicable.

Thank you for your assistance and cooperation.

Sincerely,

Director
Executive Clemency Bureau
Attachment