

THE ROLE OF MERCY

Appendix

Table of States

Alabama	1
Arizona.....	3
Arkansas.....	4
California	6
Colorado.....	9
Connecticut	11
Delaware	12
Florida.....	14
Georgia.....	17
Idaho	19
Illinois	21
Indiana.....	23
Kansas	26
Kentucky.....	28
Louisiana.....	29
Maryland.....	32
Mississippi	33
Missouri	34
Montana	35
Nebraska	38
Nevada	40
New Hampshire	42
New Jersey	43
New Mexico.....	44
New York.....	45
North Carolina	46
Ohio.....	48
Oklahoma.....	50
Oregon.....	52
Pennsylvania	53
South Carolina	56
South Dakota.....	58
Tennessee.....	60
Texas	64
Utah.....	68
Virginia	72
Washington	73
Wyoming.....	74

THE ROLE OF MERCY

APPENDIX

Alabama

Distribution of Powers

The Alabama State Constitution was amended in 1939 to vest authority over clemency procedures in the state legislature.¹ The governor retains the authority to grant reprieves and commutations only from the death penalty.² The legislature has created the Alabama Board of Pardons and Paroles and vested in it the power to grant pardons in non-capital cases.³ The clemency powers granted to the Board by the legislature do not include commutation of sentence.

Structure of Board

The Board has three members appointed by the governor and approved by the Senate.⁴ The appointees must be selected from a list of five persons nominated by a board consisting of the Chief Justice of the Supreme Court as chairman, the presiding judge of the Court of Criminal Appeals, the Lieutenant Governor, the Speaker of the House and the President Pro Tempore of the Senate.⁵ The members serve six-year terms, and cannot be removed except by impeachment or for incapacitation.⁶ Members are compensated and serve on a full-time basis.⁷ Two members of the Board constitute a quorum.⁸

Currently, the Alabama Board of Pardons and Paroles contains four “special members” who are serving a single term to end in 2006.⁹ The special members have been appointed for the limited purpose of conducting hearings and making determinations concerning clemency, paroles, and revocations.¹⁰ During the term of the special members, the Board sits in two panels of three. Membership on each panel is designated by the chairperson of the Board, with the chairperson serving as an alternate on either panel.¹¹ Two members of each panel constitute a quorum.¹²

Meetings set for the purpose of conducting hearings and making determinations concerning clemency matters may be set by the chairperson, the Board, or a panel of the board.¹³

¹ ALA. CONST. of 1901, amend. 38 (1939).

² *Id.*

³ ALA. CODE § 15-22-20(a), -36(a) (Supp. 2004).

⁴ *Id.* § 15-22-20(a), (b).

⁵ *Id.* § 15-22-20(b).

⁶ *Id.* § 15-22-20(c), (e).

⁷ *Id.* § 15-22-20(g), (h).

⁸ *Id.* § 15-22-20(f).

⁹ *Id.* § 15-22-20(i).

¹⁰ *Id.*

¹¹ ALA. CODE § 15-22-20(j) (Supp. 2004).

¹² *Id.*

¹³ *Id.* § 15-22-23(a).

Process

The Board may grant a pardon to a person who is currently incarcerated only upon the unanimous affirmative vote of the board following receipt and filing of clear proof of his innocence of the crime for which he was convicted and the written approval of the judge who tried his case or district attorney.¹⁴

Any person who was sentenced to death but subsequently received a commutation of sentence from the governor is ineligible for a pardon unless sufficient evidence is presented to the Board to satisfy it that the person was innocent of the crime for which he or she was convicted, the Board votes unanimously to grant the pardon, and the governor concurs in and approves the granting of the pardon.¹⁵

Before a pardon is granted, 30 days notice must be given to the Attorney General, the judge and the district attorney who tried the applicant's case, the chief of police in the city in which the crime occurred, if the crime was committed in a city, and the sheriff of the county where convicted, and to the same officials of the county where the crime occurred if different from the county of conviction.¹⁶ When the applicant has been convicted of certain violent offenses, 30 days notice must also be given to the victim.¹⁷

Applications are considered filed simply by the applicant providing the Board his or her full name, social security number, date of birth, current address, and current telephone number, either in person, by telephone, or by letter.¹⁸ The Board states that this application process is "intended to facilitate application by individuals who lack formal education."¹⁹ The Board investigates thereafter and supplies itself with all further necessary information.²⁰

The Board will not consider or decide whether to order or grant clemency except in an open public meeting.²¹ Additionally, notice of the hearing must be given to the same persons for whom notice of the application is given, above.²² All of these persons must have been allowed to appear before the Board or give their views in writing.²³

¹⁴ ALA. CODE § 15-22-36(c) (Supp. 2004).

¹⁵ *Id.* § 15-22-27(a).

¹⁶ *Id.* § 15-22-36(d).

¹⁷ *Id.* § 15-22-36(e)(1).

¹⁸ ALA. ADMIN. CODE r. 640-X-6-.01 (2004). The Applicant may provide more information to the Board, but this information is minimally sufficient. *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ ALA. CODE § 15-22-23(b) (Supp. 2004); ALA. ADMIN. CODE r. 640-X-4-.01 (2004); ALABAMA BOARD OF PARDONS AND PAROLES RULES, REGULATIONS, AND PROCEDURES, art. 8(1), (6), (10), <http://www.paroles.state.al.us/>.

²² ALA. CODE § 15-22-23(b) (Supp. 2004).

²³ *Id.*

Board members review the file individually prior to the hearing, but Board members may not discuss with each other their views on any case before the hearing is held.²⁴ Any member may then order an investigation of any matter relevant to the Board's decision.²⁵

Information on how to apply to the governor for a commutation of a death sentence or what process, if any, is given upon application is not publicly available.

Arizona

Distribution of Powers

The Arizona constitution gives the governor the power to grant reprieves, commutations, and pardons subject to restrictions and limitations as provided by law.²⁶ By statute, the governor may not grant any reprieve, commutation, or pardon except upon the recommendation of the Board of Executive Clemency established by the legislature.²⁷

Structure of Board

The Arizona Board of Executive Clemency consists of five members, each of whom are appointed by the governor from a list of three candidates submitted by a selection committee defined by statute.²⁸ Board members serve on a full-time basis, are compensated, and are appointed to five-year terms on the basis of their professional and educational qualifications.²⁹ No more than two members from the same professional discipline may be members at the same time.³⁰ The governor may remove members only for cause.³¹ The chairperson is selected by the governor.³²

The Board must meet at least once per month.³³ Three members constitute a quorum, but the chairperson may designate that two members constitute a quorum.³⁴

Process

Notice of an intention to apply for a pardon must be given to the county attorney of the county where the applicant was convicted at least 10 days before the Board acts upon the application.³⁵ The applicant initiates the process by filling out and submitting an application provided by the

²⁴ ALABAMA BOARD OF PARDONS AND PAROLES RULES, REGULATIONS, AND PROCEDURES, art. 5(3)-(4); 8(1).

²⁵ *Id.*

²⁶ ARIZ. CONST. art. V, § 5.

²⁷ ARIZ. REV. STAT. § 31-402(A) (Supp. 2004).

²⁸ *Id.* § 31-401(A) (2002). The selection committee is a five-member committee and is itself appointed by the governor, but at least the director of the department of public safety and the director of the state department of corrections must sit on it. *Id.*

²⁹ *Id.* § 31-401(B), (D).

³⁰ *Id.* § 31-401(B).

³¹ *Id.* § 31-401(E).

³² *Id.* § 31-401(F).

³³ *Id.* § 31-401(H).

³⁴ *Id.* § 31-401(I).

³⁵ *Id.* § 31-442(A).

Board.³⁶ If the applicant is not an inmate, the application is submitted directly to the Board.³⁷ If the applicant is an inmate, the application is submitted to the Department of Corrections who verifies that the inmate is eligible to apply.³⁸ When an application is made for a pardon, the Board is authorized by statute to require the judge of the court of conviction or the county attorney who prosecuted the applicant to provide it a statement of facts proved at trial and any other information regarding the propriety of granting or refusing a pardon.³⁹

Once an eligible applicant has completed all application requirements, the Board must schedule a hearing at which it votes either to deny the request for a pardon or to recommend a pardon.⁴⁰ If the Board votes to recommend a pardon, members who voted in favor prepare and send to the governor a letter of recommendation that includes the reasons for the recommendation.⁴¹ Letters of dissent may likewise be prepared and sent to the governor.⁴²

The Board's administrative rules only explicitly refer to applications for pardon, and it has not passed any regulations concerning applications for commutations of sentence. Some statutory provisions exist which apply to commutation procedures, however. The Board may only recommend to the governor that a sentence be commuted after providing notice to the victim, county attorney, and presiding judge and giving them an opportunity to be heard.⁴³ Before recommending commutation to the governor, the Board must find finding by clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the offender and that there is a substantial probability that when released the offender will conform his or her conduct to the law.⁴⁴

The Board is also authorized to receive petitions from "individuals, organizations or the department [of corrections]" for review for either commutation of sentences and pardoning of offenders in extraordinary cases.⁴⁵ Last, any recommendation for commutation that is made unanimously by the Board and that is not acted on by the governor within 90 days after the board submits its recommendation to the governor automatically becomes effective.⁴⁶

Arkansas

Distribution of Powers

The governor has the sole power to grant reprieves, commutations, and pardons.⁴⁷ The legislature, however, regulates the procedures under which executive clemency may be

³⁶ ARIZ. ADMIN. CODE R5-4-201(B), (C) (2004).

³⁷ *Id.* R5-4-201(B).

³⁸ *Id.* R5-4-201(C).

³⁹ ARIZ. REV. STAT. § 31-441 (2002).

⁴⁰ ARIZ. ADMIN. CODE R5-4-201(E) (2004).

⁴¹ *Id.* R5-4-201(F).

⁴² *Id.*

⁴³ ARIZ. REV. STAT. § 31-402(C)(2) (Supp. 2004).

⁴⁴ *Id.*

⁴⁵ *Id.* § 31-402(C)(4).

⁴⁶ *Id.* § 31-402(D).

⁴⁷ ARK. CONST. of 1868, art. VI, § 18.

exercised.⁴⁸ The legislature has also established the Post Prison Transfer Board through which all applications for executive clemency must pass.⁴⁹ The Board's recommendations are not binding on the governor.

Structure of Board

The Post Prison Transfer Board is composed of seven members who are appointed by the governor and confirmed by the Senate.⁵⁰ Six of the members are full-time officials of the state, one of which is appointed chairperson by the governor.⁵¹ Members serve seven-year staggered terms such that the term of one member expires each year.⁵² Four members of the Board constitute a quorum.⁵³ Removal of Board members may only be for good cause, which includes (1) conduct constituting a criminal offense involving moral turpitude; (2) gross dereliction of duty; (3) gross abuse of authority; or (4) the unexcused absence of a board or commission member from three successive regular meetings without attending any intermediary called special meetings.⁵⁴ Explicitly, good cause does not include "any vote, decision, opinion, or other regularly performed or otherwise reasonably exercised power of a board or commission member."⁵⁵

Process

All applications for executive clemency must be referred to the Post Prison Transfer Board for investigation.⁵⁶ Prior to considering a request for a pardon or commutation, the Board is obligated to solicit the recommendation of the convicting court, the prosecuting attorney, and the sheriff of the county from which the person was convicted.⁵⁷ However, these recommendations are not binding on the Board.⁵⁸ Additionally, if the applicant was convicted of certain felonies, the Board must notify the victim of the crime or the victim's next of kin if he or she has filed a request for notice with the prosecuting attorney.⁵⁹ The Board also must also solicit the recommendations of the victim as well as notify him or her of the date, time, and place of the hearing.⁶⁰

The Post Prison Transfer Board's rules provide that an application for executive clemency may be filed for any of the following reasons: (1) to correct an injustice which may have occurred during the person's trial; (2) life threatening medical condition that does not qualify for Act 290; (3) to reduce an excessive sentence; (4) the person's institutional adjustment has been exemplary,

⁴⁸ ARK. CODE ANN. § 5-4-607 (Michie Supp. 2003).

⁴⁹ *Id.* § 16-93-204(a).

⁵⁰ *Id.* § 16-93-201(a)(1).

⁵¹ *Id.* § 16-93-201(a)(2).

⁵² *Id.* § 16-93-201(a)(3).

⁵³ *Id.* § 16-93-201(d).

⁵⁴ ARK. CODE ANN. § 25-16-804(a) (Michie 2002).

⁵⁵ *Id.*

⁵⁶ *Id.* § 16-93-204(a) (Michie Supp. 2003).

⁵⁷ *Id.* § 16-93-204(c)(1).

⁵⁸ *Id.* § 16-93-204(c)(4).

⁵⁹ *Id.* § 16-93-204(c)(2)(A).

⁶⁰ *Id.* § 16-93-204(c)(2)(B), (c)(5)(A).

and the ends of justice have been achieved.⁶¹ Board members then either vote to recommend that clemency be denied or schedule a person for a hearing before the Board.⁶² If the Board schedules a hearing, it must notify the victim of the date, time, and place of the hearing.⁶³ The applicant appears before the Board, along with his or her attorney, if any, and supporters.⁶⁴ In making its decision the Board considers the statements of the applicant, the applicant's file, the officer's report and/or pre-sentence report, and any documentary evidence presented by interested persons.⁶⁵

A person sentenced to death must apply for executive clemency no later than 21 days prior to any execution date.⁶⁶ The application for clemency is investigated by the Board and either the Board or a designated panel will interview the applicant at least seven days prior to the execution.⁶⁷

After its decision is made, the Board submits to the Governor its recommendation, a report of the investigation, and all other information it may have regarding the applicant.⁶⁸ At least 30 days before granting an application for pardon or commutation, the governor must file with the Secretary of State a notice of his intention to grant the application.⁶⁹ The governor must also direct the Department of Correction to send notice of his intention to the judge, the prosecuting attorney, and the sheriff of the county of conviction and, if applicable, to the victim.⁷⁰ Failure to provide these notices renders the grant void.⁷¹

If the governor does not grant a pardon or commutation within 120 days of the recommendation, the application is deemed denied.⁷² Any pardon or commutation granted after the 120-day period is deemed void.⁷³

California

Distribution of Powers

The California Constitution vests in the governor the power to grant executive clemency subject to application procedures provided by statute.⁷⁴ The governor cannot grant clemency to anyone twice convicted of a felony except on the recommendation of the Supreme Court, with at least four judges agreeing.⁷⁵ Whenever the governor makes the decision to grant clemency, he or she

⁶¹ CODE ARK. R. 158.00.001 (Executive Clemency) (Weil 2003).

⁶² *Id.*

⁶³ ARK. CODE ANN. § 16-91-204(c)(5)(A) (Michie 2004).

⁶⁴ CODE ARK. R. 158.00.001 (Executive Clemency) (Weil 2003).

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ ARK. CODE ANN. § 16-93-204(b) (Michie Supp. 2003).

⁶⁹ *Id.* § 16-93-207(a)(1)(A).

⁷⁰ *Id.* § 16-93-207(a)(1)(B)(i).

⁷¹ *Id.* § 16-93-207(a)(2).

⁷² *Id.* § 16-93-207(b).

⁷³ *Id.*

⁷⁴ CAL. CONST. art. V, § 8(a).

⁷⁵ *Id.*

must furnish the state legislature with a written statement that describes the reasons for doing so.⁷⁶ The legislature has authorized the Board of Prison Terms, when requested by the governor, to investigate, report, and make recommendations on all applications of clemency.⁷⁷ The Board is also authorized to report to the governor the names of persons imprisoned who it believes ought to have a commutation of sentence or be pardoned on account of good conduct, unusual term of sentence, or any other cause, including evidence of battered woman syndrome.⁷⁸

Structure of Board

The California Board of Prison Terms is composed of nine commissioners who are appointed by the governor with the advice and consent of the State Senate.⁷⁹ Each commissioner serves for a term of four years, and the terms are staggered so that no more than three terms expire every year.⁸⁰ Commissioners may be reappointed.⁸¹ The selection of commissioners must reflect as nearly as possible a cross section of the racial, sexual, economic, and geographic features of the population of the state.⁸² Commissioners are full-time employees and receive an annual salary.⁸³ Commissioners may be removed by the governor only for misconduct, incompetency, or neglect of duty and only after a full hearing before the Board of Corrections.⁸⁴

The Board may meet and transact business in panels consisting of three persons.⁸⁵ No action is valid unless concurred in by a majority vote of the persons present.⁸⁶ The Board may employ deputy commissioners to whom it may assign the duty of hearing cases and making decisions.⁸⁷ Last, the Board has the power to employ assistants, take testimony, examine witnesses under oath, administer oaths, and “do any and all things necessary to make a full and complete investigation of all applications referred to it.”⁸⁸

Process

At least 10 days before the governor acts on an application for a pardon, written notice of the intention to apply for it, signed by the applicant, must be served on the district attorney of the county of conviction.⁸⁹ Proof of service by affidavit must be given to the governor.⁹⁰

Every application for clemency must be accompanied by a full statement of any compensation being paid to any person for assisting the effort.⁹¹ Failure to do so results in denial of the

⁷⁶ *Id.*

⁷⁷ CAL. PENAL CODE § 4812 (West 2000).

⁷⁸ CAL. PENAL CODE § 4801(a) (West Supp. 2005).

⁷⁹ *Id.* § 5075(a).

⁸⁰ *Id.* § 5075(a), (c).

⁸¹ *Id.* § 5075(a).

⁸² CAL. PENAL CODE § 5075(c) (West 2000).

⁸³ *Id.* § 5076.

⁸⁴ *Id.* § 5081(a).

⁸⁵ *Id.* § 5076.1.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.* § 4812.

⁸⁹ *Id.* § 4804.

⁹⁰ *Id.*

application.⁹² Additionally, the person receiving compensation must file a statement with the governor so declaring.⁹³

Application for clemency is made to the governor on forms provided by that office; the governor then transmits the application to the Board. Only in the case of a person twice convicted of felony, however, is the governor statutorily obligated to transmit it to the Board of Prison Terms.⁹⁴

The governor or Board may require the judge of the court of conviction or the district attorney who prosecuted the case to furnish a summarized statement of the facts proved at trial, as well as any other facts bearing on the propriety of granting or refusing the application.⁹⁵ The judge and district attorney must also provide their recommendations on the application and the reasons for it if requested.⁹⁶

Before meeting en banc to consider the application, the Board assigns a deputy commissioner to complete a background investigation and submit to it a written report.⁹⁷ In all cases referred to it by the governor, the full Board (rather than a panel) considers it and decides upon the recommendation.⁹⁸ When conducting its review, the Board is required to examine the inmate's application, the record of judicial proceedings in the case, and all other documents submitted with the application.⁹⁹ The Board's recommendation, along with all associated documents, is then transmitted to the governor.¹⁰⁰

If the applicant has not been convicted of more than one felony, the governor may grant or deny the clemency request after he or she receives the Board's recommendation. However, in cases in which the applicant has been convicted of two or more felonies, the California Supreme Court must also approve the grant of clemency.¹⁰¹

The California Supreme Court treats clemency applications as a court proceeding. When applications come before the court from the governor, they are given a file number.¹⁰² The fact that application has been filed is public, but because the documents that the governor transmits may have confidential information within them, the files themselves are not made available to the public.¹⁰³ The Court appoints an attorney for the applicant if he or she is indigent, and the attorney is compensated for the representation.¹⁰⁴

⁹¹ CAL. PENAL CODE § 4807.2 (West 2000).

⁹² *Id.*

⁹³ *Id.* § 4807.3.

⁹⁴ *Id.* § 4802.

⁹⁵ *Id.* § 4803.

⁹⁶ *Id.*

⁹⁷ CAL. CODE REGS. tit. 15, § 2818 (2004).

⁹⁸ *Id.*

⁹⁹ CAL. PENAL CODE § 4812 (West 2000).

¹⁰⁰ *Id.* § 4813.

¹⁰¹ CAL. CONST. art. V, § 8(a).

¹⁰² CAL. SUPREME CT., INTERNAL OPERATING PRACTICES & PROC., XIV A (West 2004).

¹⁰³ *Id.*

¹⁰⁴ *Id.*, XV A, D.

Applications are denied by the Court unless four or more justices vote to recommend that clemency be granted.¹⁰⁵ In the event clemency is granted, the Chief Justice informs the governor by letter of the Court's recommendation, and the Clerk transmits the record to the governor's office.¹⁰⁶

The governor is not bound by any recommendations whether from the Board or from the California Supreme Court. Hence, he may deny an application even if recommended by both the Board and the Supreme Court. The only limit on the governor's clemency power is that the recommendation of the Supreme Court (but not the Board) *is* required before he or she may grant clemency to a person with more than one felony conviction.

Importantly, the California Habeas Corpus Resource Center, created by the California legislature to represent death-sentenced inmates in post-conviction appeals, is authorized to assist such inmates in the preparation of clemency petitions as well.¹⁰⁷

Colorado

Distribution of Powers

The governor has the constitutional power to grant reprieves, commutations, and pardons after conviction, with the exception of cases involving treason and impeachment.¹⁰⁸ The legislature is given the authority to regulate the manner of applying for pardons.¹⁰⁹ In every instance in which the governor exercises the clemency power, he or she must send to the legislature at its next session a transcript of the petition, all proceedings, and the reasons for the action taken.¹¹⁰ Colorado statutory law "fully authorizes" the governor to commute a death sentence to imprisonment for life or for a term of not less than twenty years at hard labor.¹¹¹

Structure of Board

The Colorado Executive Clemency Advisory Board is a non-statutory agency created by the governor that is subject to no law or administrative guidelines dictating how it must conduct itself. It consists of seven unpaid volunteer members appointed by the governor, and the governor consults it when making decisions concerning executive clemency.

Process

An application for a pardon or commutation of sentence must be accompanied by a certificate of the respective superintendent of the correctional facility showing the conduct of the applicant during his confinement together with such evidence of good character as the applicant is able to

¹⁰⁵ CAL. SUPREME CT., INTERNAL OPERATING PRACTICES & PROC., XIV A (West 2004).

¹⁰⁶ CAL. SUPREME CT., INTERNAL OPERATING PRACTICES & PROC., XIV A (West 2004); CAL. PENAL CODE § 4852 (West 2000).

¹⁰⁷ CAL. GOV'T CODE § 68661(a) (West Supp. 2005).

¹⁰⁸ COLO. CONST. art. IV, § 7.

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ COLO. REV. STAT. § 16-17-101 (2004).

produce.¹¹² Before the governor approves the application, it must first be submitted to the district attorney of the district in which the applicant was convicted, to the judge who sentenced the applicant, and to the attorney who actually prosecuted the applicant, if available, who have ten days from the receipt of the application to comment.¹¹³ Good character previous to conviction, good conduct during confinement in the correctional facility, the statements of the sentencing judge and the district attorneys, if any, and any other material concerning the merits of the application are to be given weight as the governor sees proper in the particular case, as is evidence that the applicant has reformed.¹¹⁴ The governor has the sole discretion in evaluating any comments and in soliciting whatever other comments he or she deems appropriate.¹¹⁵

The governor's office also maintains its own set of eligibility criteria for the exercise of the commutation power. First, the inmate must have served at least 10 years or one-third of his sentence, whichever is less. Nor can the inmate be within fifteen months of parole eligibility. Second, the inmate must not have committed any major violations of the Colorado Code of Penal Discipline within the two years prior to applying, and all inmates who are housed in administrative segregation are ineligible. Third, if the inmate was on probation at the time that the crime being proposed for clemency was committed the inmate is ineligible for a commutation. Fourth, all inmates with pending criminal charges or sentences are ineligible to apply. Finally, the inmate must have no pending appeals, and must have exhausted all other judicial remedies. The governor or the Director of the Department of Corrections may waive any of these requirements in the event that the inmate has "catastrophic" medical or health problems, or in exceptionally unique situations (such as "heroism," extreme disparity between the crime the offender committed and the sentence received, or that the inmate has been rehabilitated).

An inmate may obtain an application for executive clemency through the inmate's case manager, or by contacting the governor's office directly. All applicants for executive clemency must also complete the Executive Clemency Advisory Board's Application Eligibility Criteria for a Commutation of Sentence and Character Certificate. Several other documents must be submitted with an inmate's application for executive clemency. These include: (1) a personal letter to the governor stating the specific reasons for which clemency is sought; (2) the inmate's most recent Performance Review Summary (PRS);¹¹⁶ (3) the inmate's Admission Data Summary (ADS) and Diagnostic Summary (DS);¹¹⁷ (4) all psychological/psychiatric evaluations made of the inmate while he/she has been incarcerated; (5) reports of all disciplinary actions taken against the inmate including any investigative reports if applicable; (6) the inmate's most recent time computation; (7) the inmate's FBI record of arrest; (8) all of the inmate's detainers/notifications requests, or

¹¹² COLO. REV. STAT. § 16-17-102 (2004).

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ The Performance Review Summary (PRS) is an annual report compiled for each inmate detailing his or her progress in the areas of work and training, group living (cooperation, personal hygiene, etc...), participation in counseling, and progress towards the goals set for the inmate by the correctional diagnostic program. *See* COLO. REV. STAT. § 17-22.5-302 (2004). If an inmate's PRS is more than 90 days old, a new summary must be compiled by the Department of Corrections before an inmate may apply for clemency.

¹¹⁷ The Admission Data Summary (ADS) is a summary of the inmate's background compiled by the Department of Corrections when the inmate first enters prison. The Diagnostic Summary (DS) is a report compiled when the inmate enters prison concerning his mental state.

other pertinent law enforcement communications; (9) the inmate's pre-sentence report or offense report; (10) if serious medical or mental health problems exist, a report containing the diagnosis, prognosis, and recommendations; and (11) any additional documents that the inmate feels will help the governor make his or her final decision.

Applications are routinely sent to the Colorado Executive Clemency Advisory Board for evaluation and recommendation. The governor, however, has sole authority to grant or deny clemency in any case.

Connecticut

Distribution of Powers

The governor has the power to grant reprieves in all cases except impeachment, but only until the end of the next legislative session.¹¹⁸ The legislature has created the Board of Pardons and Paroles, which is authorized to grant pardons and commutations, conditioned or absolute, including commutations of death sentences.¹¹⁹ Until this year, Connecticut separated clemency and parole functions, placing responsibility for executive clemency in the Board of Pardons.

Structure of Board

The Board is situated within the Department of Correction for administrative purposes only.¹²⁰ It is composed of 13 members appointed by the governor with the consent of either house of the legislature.¹²¹ The governor is obligated to appoint members so that the Board may "reflect the racial diversity of the state."¹²² The governor likewise appoints the chairperson, who is compensated and devotes his or her full time services to the Board.¹²³ Other members are paid per diem for each day spent in the performance of their duties.¹²⁴ Board members serve coterminous with the governor or until a successor is chosen.¹²⁵

Five members of the Board are assigned exclusively to hear pardon applications.¹²⁶ Seven are assigned exclusively to parole hearings, and the chairperson may serve both on parole and pardons panels.¹²⁷ Once a member is assigned to pardon hearings, he or she may not be subsequently assigned to parole hearings, and vice versa.¹²⁸

¹¹⁸ CONN. CONST. art. IV, § 13.

¹¹⁹ CONN. GEN. STAT. ANN. § 54-124a(f) (West Supp. 2004); CONN. GEN. STAT. ANN. § 18-26(a) (West 1998). The Board of Pardons and Paroles (formerly merely the Board of Paroles) has only in 2004 taken over the executive clemency functions, which used to reside in a separate Board of Pardons.

¹²⁰ CONN. GEN. STAT. ANN. § 54-124a(a) (West Supp. 2004).

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.* § 54-124a(a), (c).

¹²⁴ *Id.* § 54-124a(c).

¹²⁵ *Id.* § 54-124a(b).

¹²⁶ *Id.* § 54-124a(e).

¹²⁷ *Id.*

¹²⁸ *Id.*

Each pardons panel is composed of three members.¹²⁹ For hearings on commutations of death sentences, one member of the panel must be the chairperson.¹³⁰ The Board must hold a pardons hearing at least once every three months.¹³¹

Process

The legislature has passed some procedural rules that the Board is obligated to follow, but the new Board itself has not yet promulgated any regulations regarding how clemency petitions are processed.

At a session held by the Board to consider whether to grant a commutation or pardon, the Board must permit any victim of the crime to appear before it and make a statement for the record.¹³² Alternatively, the victim may submit a written statement to the Board, which it must make part of the record at the session.¹³³

Additionally, the Board may institute inquiries as to the previous history or character of any prisoner, and each prosecuting officer, judge, police officer, or other person must, when requested, provide to the Board whatever information he or she possesses with reference to the “habits, disposition, career and associates of any prisoner.”¹³⁴

Delaware

Distribution of Powers

The governor has the power to grant reprieves, commutations of sentence, and pardons. He or she may only exercise this power, however, upon the recommendation of a majority of the Delaware Board of Pardons.¹³⁵ There is an exception for reprieves of less than six months duration, for which no recommendation from the Board is required.¹³⁶

Structure of Board

The composition of the Delaware Board of Pardons is set by the Delaware constitution. Its members are the Chancellor, Lieutenant-Governor, Secretary of State, State Treasurer, and Auditor of Accounts.¹³⁷ The Board has the power to issue subpoenas requiring the attendance of witnesses and the production of such documents necessary for its investigations.¹³⁸

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ CONN. GEN. STAT. ANN. § 54-124a(k) (West Supp. 2004).

¹³² *Id.* § 18-27a(b).

¹³³ *Id.*

¹³⁴ CONN. GEN. STAT. ANN. § 18-30 (West 1998).

¹³⁵ DEL. CONST. art. VII, sec. 1.

¹³⁶ *Id.*

¹³⁷ DEL. CONST. art. VII, sec. 2.

¹³⁸ DEL. CODE ANN. tit. 11, § 4361(a) (2001).

Process

When a convicted person applies for a pardon, the Board must notify the Superior Court and the Attorney General, who in turn notify each person who was a victim or witness of the offense for which the person was convicted.¹³⁹ The notice must contain the time, date, and place where the matter is to be heard by the Board.¹⁴⁰ Victims and witnesses may testify before the Board or submit a written statement in lieu of testimony.

Before the Board may consider an application for pardon or commutation of sentence from a person convicted of certain felonies, a psychiatrist and a psychologist must have examined the applicant within the year preceding consideration of the application.¹⁴¹ The psychiatrist and psychologist who examine the applicant submit to the Board their opinions as to the mental and emotional health of the applicant and their opinions as to the probability of the applicant again committing any crime if released.¹⁴²

The applicant must give written notice of his or her application for a reprieve, pardon, or commutation to (1) the judge who imposed sentence; (2) the Attorney General; (3) the chief of police having jurisdiction of the place where the crime occurred; and (4) the Superintendent of the Delaware State Police.¹⁴³ Board hearings are open to the public; however, the Board may consider matters and arrive at decisions in executive sessions.¹⁴⁴ At hearings, the Board hears those individuals and receives that material it considers desirable to discharge its functions to hold a full hearing.¹⁴⁵ The Board also considers the trial transcript, affidavits, letters from the judge and jury who tried the case, the prosecuting attorney, responsible persons in the community where the crime was committed, and persons who were present at the trial.¹⁴⁶

No application is considered if there are any judicial proceedings pending concerning the matter.¹⁴⁷ Exceptions are made for cases involving capital punishment or for other urgent reasons.¹⁴⁸ Additionally, a majority of the Board may waive any of its administrative rules when good cause is shown for the adoption of other procedures in any particular application.¹⁴⁹

¹³⁹ *Id.* tit. 11, § 4361(d).

¹⁴⁰ *Id.*

¹⁴¹ DEL. CODE ANN. tit. 11, § 4362(b) (2001). Those crimes are: an act causing death; sexual offenses; kidnapping and related offenses; arson and related offenses; burglary in the first degree; burglary in the second degree; robbery; offenses relating to children and incompetents; cruelty to animals; abusing a corpse; unlawful use of an incendiary device, bomb or other explosive device; abuse of children; and distribution of a controlled substance to a person under age 18; or for an attempt as provided by statute to commit any of these crimes. *Id.* tit. 11, § 4362(a) (2001).

¹⁴² DEL. CODE ANN. tit. 11, § 4362(c) (2001).

¹⁴³ Board of Pardons Rules, Rule 2(d), <http://www.state.de.us/sos/pardrule.shtml>.

¹⁴⁴ *Id.* Rule 5(a).

¹⁴⁵ *Id.* Rule 6(a).

¹⁴⁶ *Id.* Rule 6(b).

¹⁴⁷ *Id.* Rule 7(a).

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* Rule 10.

Florida

Distribution of Powers

The Florida Constitution vests the power of executive clemency in the governor.¹⁵⁰ On his or her own and by executive order, the governor may grant reprieves, but these may not extend for more than 60 days.¹⁵¹ In order to grant full or conditional pardons and commutations of sentences the governor must have the approval of two of his cabinet members.¹⁵²

Structure of Board

The Office of Executive Clemency was established by the governor's office in 1975 to process clemency applications.¹⁵³ The Florida Board of Executive Clemency, which makes decisions on clemency applications, consists of the governor and three members of the governor's cabinet, and is currently composed of the attorney general, the chief financial officer, and the commissioner of agriculture. The Board relies on the Florida Parole Commission to investigate applications and to report to them the circumstances, the criminal records, and the social, physical, mental, and psychiatric conditions and histories of applicants.¹⁵⁴ All records developed by any state entity pursuant to an investigation into an application for executive clemency are classified, and may only be released with the approval of the governor.¹⁵⁵

Process

Eligibility for executive clemency depends upon the type of clemency requested. For a pardon, a person may not apply unless he or she has completed all sentences imposed and all conditions of supervision have expired for a period of no less than 10 years.¹⁵⁶ The applicant must not have any outstanding detainers or pecuniary penalties totaling more than \$1,000 resulting from any criminal conviction or traffic infraction and further must not have any outstanding victim restitution.¹⁵⁷ For a commutation, a waiver of eligibility must be obtained.¹⁵⁸ In any case deemed to have exceptional merit by a Board member, he or she may place a case on an upcoming agenda for consideration.¹⁵⁹

¹⁵⁰ FLA. CONST. art IV, §8.

¹⁵¹ *Id.*

¹⁵² *Id.*

¹⁵³ See FLA. ADMIN. CODE ANN. r. 27; FLA RULES OF EXECUTIVE CLEMENCY (2004), <http://www.state.fl.us/fpc/Execlem/ROEC06202003.pdf>.

¹⁵⁴ FLA. STAT. ANN. § 947.13(e) (West Supp. 2005).

¹⁵⁵ FLA. STAT. ANN. § 14.28 (West 2003).

¹⁵⁶ FLA. ADMIN. CODE ANN. r. 27-5(I)(A) (2004). Although the eligibility requirements for a pardon suggest that only people who have completed their sentences may apply, the definition of a full pardon in the rules contemplates those who are still serving a sentence, as part of the relief included in the pardon "unconditionally releases a person from punishment..." *Id.* r. 27-4(I)(A). Rule 8(I)(A) provides that inmates may seek a waiver to eligibility requirements so long as two years have elapsed since the inmate has been convicted or at any time if extraordinary merit is demonstrated. A waiver may only be granted by the governor and at least one other Board member. *Id.* r. 27-8(I)(A).

¹⁵⁷ FLA. ADMIN. CODE ANN. r. 27-5(I)(A) (2004).

¹⁵⁸ *Id.* r. 27-5(I)(B).

¹⁵⁹ *Id.* r. 27-17(A).

An Application for Executive Clemency can be obtained from the Coordinator of the Office of Executive Clemency, or by downloading it at the Office's website.¹⁶⁰ The completed application is filed with the Coordinator along with certified copies of the indictment, judgment, and sentence for each felony conviction.¹⁶¹ The inmate may also include other documents that are relevant to the application, including character references and letters of support.¹⁶² When the Coordinator receives the application, he or she must make reasonable attempts to notify the victim (or the victim's family members), the prosecuting attorney, the Office of the Statewide Prosecutor, and the Office of the Attorney General, Bureau of Advocacy and grants.¹⁶³ When an inmate has been sentenced to death, an application for executive clemency may only be filed within one year of the date that his last appeal is rejected by the Florida Supreme Court or by the United States Supreme Court, whichever is later.¹⁶⁴ Completed applications are referred to the Florida Parole Commission for an investigation, report, and recommendation.¹⁶⁵

Once an investigation is complete, the Coordinator places the case on the agenda for consideration by the Clemency Board.¹⁶⁶ The Board holds meetings during the months of March, June, September, and December, but the governor may call a special meeting at any time for any reason.¹⁶⁷ Inmates applying for clemency are not required to appear before the Board, but they are encouraged to do so, and the inmate, or anyone speaking on his or her behalf, must notify the Office of Executive Clemency of their intention to appear at least 10 days prior to the scheduled Board Meeting.¹⁶⁸ No person may be allowed more than five minutes to present his or her case, and all persons making presentations in favor of an applicant are allowed no more than 10 minutes cumulatively.¹⁶⁹ All persons opposing the application are likewise given a maximum of 10 minutes cumulatively.¹⁷⁰ At the hearing, the inmate's counsel and the state are each allotted 15 minutes to present their arguments, and representatives of the victim's family are allowed to speak for a cumulative time of five minutes.¹⁷¹ After the Board Hearing, the governor may decide to grant clemency with the approval of at least two members of the Board.

A person who has been denied clemency may not reapply for a period of two years.¹⁷²

Special rules apply to commutation applications in death penalty cases. There are no eligibility requirements for consideration of an application for commutation of a death sentence to a life sentence.¹⁷³ In all cases where an applicant is facing the death penalty, the Parole Commission can conduct a "thorough and detailed" investigation of all relevant factors pertaining to executive

¹⁶⁰ FLA. ADMIN. CODE ANN. r. 27-6(I)(A) (2004).

¹⁶¹ *Id.* r. 27-6(I)(B).

¹⁶² FLA. STAT. ANN. § 940.04 (West 2001).

¹⁶³ FLA. ADMIN. CODE ANN. r. 27-6 (2004).

¹⁶⁴ FLA. STAT. ANN. § 940.03 (West Supp. 2005).

¹⁶⁵ FLA. ADMIN. CODE ANN. r. 27-7 (2004).

¹⁶⁶ *Id.* r. 27-10(A).

¹⁶⁷ *Id.* r. 27-11(A).

¹⁶⁸ *Id.* r. 27-11(B).

¹⁶⁹ *Id.* r. 27-11(C).

¹⁷⁰ *Id.*

¹⁷¹ *Id.*

¹⁷² FLA. ADMIN. CODE ANN. r. 27-14 (2004).

¹⁷³ *Id.* r. 27-15.

clemency in order to provide the Board with a final report.¹⁷⁴ The Rules of Executive Clemency suggest that the investigation should consist of a series of interviews with the inmate (who is allowed to have counsel present), the prosecutor, the trial judge, and the inmate's family members.¹⁷⁵ However, the Commission may investigate further if the members feel it is appropriate.¹⁷⁶

The investigation begins at the time designated by the governor or, if the governor does not designate a time, it begins when the applicant's opportunities for post-conviction relief have effectively been exhausted.¹⁷⁷ The Commission employs a Capital Punishment Research Specialist who tracks the legal progress of death penalty cases.¹⁷⁸ If the Commission conducts an investigation, it must notify the Attorney General's office that it is doing so, and also must request that the victim's family members submit written comments.¹⁷⁹

Once the Commission has completed its investigation, those Commissioners who personally interviewed the inmate produce a final report that is submitted to the members of the Clemency Board.¹⁸⁰ The report must include statements made by the inmate during the course of the investigation, a detailed summary from each of the Commissioners who interviewed the inmate, and all information gathered during the course of the investigation.¹⁸¹ The report is submitted to the Board within 120 days of the commencement of the investigation, unless the governor extends the time period.¹⁸²

Like non-death penalty cases, once an investigation is complete, the Coordinator places the case on the agenda for the next scheduled meeting. In death penalty cases, however, any member of the Board may, after receiving the report of the Parole Commission, request a specially called meeting.¹⁸³ At the hearing in a death penalty case, the inmate's counsel and the state are each allotted 15 minutes to present their arguments, and representatives of the victim's family are allowed to speak for a cumulative time of five minutes.¹⁸⁴ The governor may extend these time limits at his or her discretion.¹⁸⁵

¹⁷⁴ *Id.* r. 27-15(B).

¹⁷⁵ *Id.*

¹⁷⁶ *Id.*

¹⁷⁷ FLA. ADMIN. CODE ANN. r. 27-15(C) (2004). Specifically, investigation begins immediately after the applicant's federal petition for writ of habeas corpus has been denied by the United States Court of Appeals for the 11th Circuit if all appeals have been timely filed. The investigation commences immediately upon any failure to timely file the initial motion for post-conviction review in state court and any appeal therefrom and likewise upon any failure to timely file an initial petition for writ of habeas corpus in federal court and any appeal therefrom. *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ FLA. ADMIN. CODE ANN. r. 27-15(B) (2004).

¹⁸⁰ *Id.* r. 27-15(D).

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* r. 27-15(E).

¹⁸⁴ *Id.* r. 27-15(H).

¹⁸⁵ *Id.*

Georgia

Distribution of Powers

The Georgia Constitution creates a State Board of Pardons and Paroles and vests it with the power of executive clemency subject to certain limitations.¹⁸⁶ One such limitation is that once the Board has commuted an inmate's sentence from death to life in prison, no authority exists to pardon or parole the individual until he or she has served at least 25 years in prison.¹⁸⁷ A second limitation is that where the legislature has provided for mandatory minimum sentences for certain violent offenses, no authority exists to pardon or commute the sentences of an individual during the mandatory portion of the sentence.¹⁸⁸

Additionally, the legislature is constitutionally empowered to create sentences of life without parole for persons convicted of murder and for persons who have twice been convicted of certain violent offenses.¹⁸⁹ When such a sentence is imposed, the Board has no authority to pardon or commute the sentence of the individual so sentenced.¹⁹⁰ The Georgia Constitution also reserves to the legislature the power to prohibit the Board from granting a pardon or to prescribe the terms of a pardon granted to any person who is incarcerated a second time for an offense for which the person could have been sentenced to life imprisonment as well as to any person who has received consecutive life sentences as a result of offenses occurring during the same series of acts.¹⁹¹

In cases where an inmate has been sentenced to death, the Chairman of the Board has the power to halt an execution for the amount of time that it takes for the Board to consider the inmate's application for executive clemency.¹⁹² The Constitution also provides that if an inmate can prove his or her innocence, the Board may grant the inmate a full pardon regardless of any limitations placed on the Board by other provisions of the Constitution.¹⁹³

¹⁸⁶ GA. CONST. art. IV, § II, ¶ II(a).

¹⁸⁷ GA. CONST. art. IV, § II, ¶ II(b)(1).

¹⁸⁸ GA. CONST. art. IV, § II, ¶ II(b)(2). The offenses for which such mandatory minimum sentencing laws can be passed are armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery. *Id.* Mandatory minimum sentencing laws may only be passed by 2/3 majority in each branch of the General Assembly. *Id.* The Georgia legislature has taken advantage of this provision. *See* GA. CODE ANN. § 17-10-6.1 (2004).

¹⁸⁹ GA. CONST. art. IV, § II, ¶ II(b)(3). The legislature may provide for a sentence of life without parole upon any conviction for murder or upon the second conviction for any of the following offenses: murder, armed robbery, kidnapping, rape, aggravated child molestation, aggravated sodomy, and aggravated sexual battery. *Id.* A sentence of life without parole may only be enacted by a two-thirds majority in each branch of the General Assembly. *Id.* The Georgia legislature has passed such a law imposing sentences of life without parole for the commission of serious violent felonies. *See* GA. CODE ANN. § 17-10-7(b)(2) (2004).

¹⁹⁰ *Id.*

¹⁹¹ GA. CONST. art. IV, § II, ¶ II(c)(1)-(2). The Georgia legislature has used this power as well. Any person who is convicted of murder and sentenced to life imprisonment and who has been previously incarcerated under a life sentence must serve at least 25 years before the Board may grant him or her a pardon. GA. CODE ANN. § 42-9-39 (1997).

¹⁹² GA. CONST. art. IV, § II, ¶ II(d).

¹⁹³ GA. CONST. art. IV, § II, ¶ II(e).

Structure of the Board

The Board of Pardons and Paroles consists of five members who are appointed by the governor and confirmed by the Senate to serve a seven-year term.¹⁹⁴ The members of the Board select one of their own to serve as chairman of the Board for the following year.¹⁹⁵ The Board's members serve full time and at a salary set by the governor.¹⁹⁶ Members of the Board may be removed for cause or for incapacitation.¹⁹⁷

Process

In Georgia, a pardon is a declaration that a person is relieved from the legal consequences of a particular conviction.¹⁹⁸ It restores civil and political rights and removes all legal disabilities resulting from the conviction.¹⁹⁹ A pardon may be granted to a person who proves his innocence of the crime for which he was convicted; newly available evidence proving the person's complete justification or non-guilt may be the basis for granting the pardon, and the application may be submitted to the Board in written form at any time after conviction.²⁰⁰ In all cases other than those involving the innocence of the convicted person, a pardon will only be granted to one who has completed his full sentence obligation, including serving any probated sentence and paying any fine, and who has since gone five years without any criminal involvement.²⁰¹

An application for a commutation of a death sentence to life in prison may be made to the Board in writing, and the only content requirement is that the application state the reasons for which a commutation is requested.²⁰² Once the Board receives the application, it decides whether or not to consider the inmate for a commutation and must make a decision after the inmate has exhausted all of his or her appeals through the courts or within 72 hours of the inmate's scheduled execution date regardless of any pending appeals.²⁰³ Following the inmate's last appeal, the Board will obtain information concerning the offense for which the inmate was convicted, as well as the inmate's criminal history.²⁰⁴ If the Board does not have sufficient time to consider an inmate's application it may suspend the inmate's execution for a period not to exceed 90 days in order to allow time for a proper review.²⁰⁵ Hearings are not mandatory.²⁰⁶

¹⁹⁴ GA. CONST. art. IV, § II, ¶ I.

¹⁹⁵ GA. CONST. art. IV, § I.

¹⁹⁶ GA. CODE ANN. § 42-9-5 (Supp. 2004).

¹⁹⁷ GA. CODE ANN. § 42-9-12, -14 (1997). A "removal committee" composed of the governor, the lieutenant governor, and one other appointee of the governor other than the attorney general, constitute the removal committee and can pass regulations regarding the procedures to be observed in removing members of the Board for cause and determinations as to what conduct by a board member constitutes cause for removal. *Id.*

¹⁹⁸ GA. COMP. R. & REGS. r. 475-3-.10(3) (2004).

¹⁹⁹ *Id.*

²⁰⁰ *Id.* r. 475-3-.10(3)(a).

²⁰¹ *Id.* r. 475-3-.10(3)(b).

²⁰² *Id.* r. 475-3-.10(2)(b).

²⁰³ *Id.*

²⁰⁴ *Id.*

²⁰⁵ GA. COMP. R. & REGS. r. 475-3-.10(2)(b) (2004); GA. CODE ANN. § 42-9-20 (1997).

²⁰⁶ GA. COMP. R. & REGS. r. 475-3-.10(2)(b) (2004).

In non-death penalty cases, the Board will consider a request for a commutation only when substantial evidence is submitted to the Board in writing that the sentence is either excessive, illegal, unconstitutional, or void; that the ends of justice would be best served thereby; and that such action would be in the best interests of society and the inmate.²⁰⁷

By statute, when considering “any case within its power,” the Board must consider at least the following information: (1) a report by the superintendent of the correctional institution in which the person has been confined outlining the conduct of the person while incarcerated; (2) the results of any physical and mental examinations that may have been conducted; (3) the extent to which the person appears to have responded to the efforts made to improve his social attitude; (4) the industrial record of the person while confined, the nature of his occupations while so confined, and a recommendation as to the kind of work he is best fitted to perform and at which he is most likely to succeed when and if he is released; and (5) the educational programs in which the person has participated and the level of education which the person has attained based on standardized reading tests.²⁰⁸ The board may also conduct other investigations it deems necessary to be fully informed about the person.²⁰⁹

The Board must give 20 days' advance notification to a victim whenever it considers making a final decision to grant executive clemency, and the Board must provide the victim with an opportunity to file a written objection to such action.²¹⁰ Notification need be given, however, only if the victim has expressed objection to release or has expressed a desire for notification and has provided the Board with current contact information.²¹¹

Decisions are made by a majority vote of the Board.²¹²

Georgia statutory law stresses that notwithstanding any contrary laws, the Board is authorized to pardon any person convicted of a crime who is subsequently determined to be innocent.²¹³

Idaho

Distribution of Powers

The Idaho constitution creates a board of pardons named by statute as the Idaho Commission of Pardons and Parole.²¹⁴ In this Commission is vested the authority to grant commutations and pardons in all cases except treason and impeachment, but only as provided by statute.²¹⁵ The legislature retains the power to prescribe the sessions of the Commission, the manner in which applications are to be made, and procedural regulations before the Commission.²¹⁶ The governor

²⁰⁷ *Id.* r. 475-3-.10(2)(c) (2004).

²⁰⁸ GA. CODE ANN. § 42-9-43 (1997).

²⁰⁹ *Id.*

²¹⁰ GA. CODE ANN. § 17-17-13 (2004).

²¹¹ *Id.*

²¹² GA. CODE ANN. § 42-9-20, -42(a) (1997).

²¹³ *Id.* § 42-9-39(d) (1997).

²¹⁴ IDAHO CONST. art. IV, § 7.

²¹⁵ *Id.*

²¹⁶ *Id.*

has the power to grant reprieves in all cases except treason and impeachment, but the reprieves granted cannot extend into the next session of the Commission, during which the Commission is to make a determination with respect to the reprieve or grant of a pardon or commutation.²¹⁷ By statute, the Commission's actions on pardons and commutations with respect to sentences for murder, voluntary manslaughter, rape, kidnapping, lewd and lascivious conduct with a minor child, and manufacture or delivery of controlled substances constitute only recommendations that must be submitted to the governor for approval.²¹⁸

Structure of Board

The Commission is composed of five compensated, part-time members who are appointed by the governor with the advice of the Idaho Senate and serve at the governor's pleasure.²¹⁹ Not more than three members may be from the same political party.²²⁰ The Commission has an executive director, who is also appointed by the governor and is a full-time employee.²²¹ The executive director is the official representative for the Commission and is responsible for the managing and administration of daily Commission business as well as scheduling hearing sessions at times convenient to the members of the Commission.²²²

Process

A request for commutation is initiated by submitting a petition, which cannot exceed four pages in length, to the Commission in the form provided by it and signed by the inmate.²²³ It must contain the reason the commutation is requested and the modification of the sentence that is sought.²²⁴ Petitions may be considered at any time by the Commission, but are usually scheduled for the Commission's quarterly sessions.²²⁵ The scheduling of a hearing is at the discretion of the Commission.²²⁶ If a hearing is scheduled, notice of it is published in a newspaper in Boise, Idaho once a week for four weeks.²²⁷ A copy of the notice is also mailed to the prosecuting attorney of the county from which the person was convicted.²²⁸ Deliberation on the petition is conducted in executive session.²²⁹

In death penalty cases, the Commission maintains an individual file of each person under sentence of death.²³⁰ At any time, the Commission may review the file or interview the inmate without activating the commutation process, which can only be done by the inmate or his

²¹⁷ *Id.*

²¹⁸ IDAHO CODE § 20-240 (Michie 2004).

²¹⁹ *Id.* § 20-210.

²²⁰ *Id.*

²²¹ *Id.*

²²² *Id.*

²²³ IDAHO ADMIN. CODE 50.01.01(450.01) (2004).

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.* 50.01.01(450.02).

²²⁷ *Id.*

²²⁸ *Id.*

²²⁹ *Id.* 50.01.01(450.01).

²³⁰ *Id.* 50.01.01 (450.05).

counsel.²³¹ The Commission may elect to receive and consider a petition for commutation of death sentence at any time.²³²

An application for pardon will not be considered until either three or five years have elapsed since the inmate has been discharged for custody, depending on the nature of the offense.²³³ To initiate the process, an application obtained from the Commission is completed and returned. The applicant can attach letters of recommendation or other documents in support.²³⁴ When an application is received, the Commission requests an investigation to be conducted by correctional field personnel in the area in which the person resides.²³⁵ The report of the investigation includes a criminal record check of the applicant, the applicant's employment history since completion of the sentence, the applicant's status as a good citizen, a summary of an interview with the applicant, and any additional information deemed appropriate.²³⁶ After receipt of the report, the Commission conducts a review in executive session and determines whether or not a hearing will be granted on the application.²³⁷ If a hearing is granted, the same notice is given as in an application for commutation.²³⁸

For commutation and pardon hearings, the subject is encouraged by the Commission to attend.²³⁹ The Commission allows the participation of attorneys, families of the subject, victims, and others who have a direct relationship to the hearing or subject.²⁴⁰ Persons who wish to participate must notify the Commission five days in advance of the scheduled hearing.²⁴¹ All written documents to be considered by the Commission must be submitted seven days in advance of the hearing.²⁴² Verbal testimony of witnesses, victims, and attorneys may be limited by the number of persons allowed to testify and by limits on time.²⁴³

Decisions are made by a majority vote of the Commission.²⁴⁴

Illinois

Distribution of Powers

The Illinois Constitution grants to the governor the power to grants reprieves, commutations, and pardons for all offenses as he or she deems proper.²⁴⁵ The manner of applying may be regulated by law.²⁴⁶

²³¹ *Id.*

²³² *Id.*

²³³ IDAHO ADMIN. CODE 50.01.01(550.01) (2004).

²³⁴ *Id.* 50.01.01(550.02).

²³⁵ *Id.*

²³⁶ *Id.*

²³⁷ *Id.* 50.01.01(550.03).

²³⁸ *Id.* 50.01.01(550.04).

²³⁹ *Id.* 50.01.01(200.05).

²⁴⁰ *Id.* 50.01.01(200.06).

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.*

²⁴⁴ *Id.* 50.01.01(200.08).

²⁴⁵ ILL. CONST. art. V, § 12.

Structure of Board

The Illinois legislature has created the Prisoner Review Board to make recommendations to the Governor in the exercise of his clemency power. It consists of fifteen persons appointed by the governor with the advice and consent of the Senate.²⁴⁷ To be qualified to serve, members must have a minimum of five years experience in the fields of penology, corrections work, law enforcement, sociology, law, education, social work, medicine, psychology, other behavioral sciences, or some combination thereof.²⁴⁸ At least six members so appointed must have had at least three years experience in the field of juvenile matters, and no more than eight Board members may be members of the same political party.²⁴⁹

Each member of the Board serves on a paid, full-time basis and may not hold any other salaried public office nor engage in any other business, employment, or vocation.²⁵⁰ Terms are six years, and the governor may remove any member for incompetence, neglect of duty, malfeasance, or inability to serve.²⁵¹ The Board is charged with the duty to hear by at least one member, and decide by a panel of at least three members, all requests for pardon, reprieve, or commutation, as well as to make confidential recommendations to the governor.²⁵²

Process

Petitions seeking pardon, commutation, or reprieve must be addressed to the governor and filed with the Prisoner Review Board.²⁵³ The petition must be in writing and signed by the person under conviction or by a person on his behalf, and must contain a brief history of the case, the reasons for seeking executive clemency, and other relevant information the Board may require.²⁵⁴

The Board must then give notice of the application to the committing court and the state's attorney of the county where the conviction was had.²⁵⁵

The Board must, if requested, give a hearing to each application, allowing representation by counsel, after which it confidentially advises the governor by a written report of its recommendations.²⁵⁶ The Board must meet to consider such petitions no less than four times each year.²⁵⁷ Its recommendations are by majority vote and are not binding on the governor.²⁵⁸

²⁴⁶ *Id.*

²⁴⁷ 730 ILL. COMP. STAT. 5/3-3-1(b) (Supp. 2003).

²⁴⁸ *Id.*

²⁴⁹ *Id.*

²⁵⁰ *Id.*

²⁵¹ *Id.* 5/3-3-1(c).

²⁵² *Id.* 5/3-3-2(a)(6).

²⁵³ *Id.* 5/3-3-13(a).

²⁵⁴ *Id.*

²⁵⁵ *Id.* 5/3-3-13(b).

²⁵⁶ *Id.* 5/3-3-13(c).

²⁵⁷ *Id.*

²⁵⁸ 730 Ill. COMP. STAT. 5/3-3-13(e) (Supp. 2003); ILL. ADMIN. CODE tit. 20 § 1610.180(h) (2004).

For each meeting of the Board, a docket is prepared listing all petitions filed 30 days or more before the date of the meeting.²⁵⁹ Counsel and those who wish to be heard in favor of or in opposition to those petitions on the docket must register in person at the meeting of the Board.²⁶⁰ The Board or a designated panel will hear those who appear at the scheduled public hearing.²⁶¹ The Board will also consider petitions on the docket on which there are no appearances and may elect to hear petitioners who are in confinement.²⁶²

After the governor has denied a petition, the Board may not accept a repeat petition for executive clemency for the same person until one full year has elapsed from the date of the denial.²⁶³ The Chairman of the Board may waive the one-year requirement if the petitioner offers in writing new information that was unavailable to the petitioner at the time of the filing of the prior petition and that the Chairman determines to be significant.²⁶⁴ The Chairman also may waive the one-year waiting period if the petitioner can show that a change in circumstances of a compelling humanitarian nature has arisen since the denial of the prior petition.²⁶⁵

Indiana

Distribution of Powers

The governor is authorized by the constitution to grant reprieves, commutations, and pardons, for all offenses except treason and cases of impeachment subject to regulations as provided by the legislature.²⁶⁶ The constitution also authorizes the legislature to create a board or “council” whose advice and consent must be given before the governor may grant pardons.²⁶⁷ The legislature has given to the Indiana Parole Board the power to hear clemency applications and make recommendations to the governor.²⁶⁸ It has not, however, exercised its constitutional prerogative to limit the governor’s authority to issue pardons only upon a favorable recommendation of the Board.²⁶⁹

Structure of Board

The Indiana Parole Board consists of five members who are appointed by the governor for four-year terms.²⁷⁰ Not more than three members may be affiliated with the same party.²⁷¹ Members may be reappointed and may only be removed for cause and after an opportunity to be heard by the governor.²⁷² To be qualified to serve as a member of the Board, one must have a bachelor’s

²⁵⁹ ILL. ADMIN. CODE tit. 20 § 1610.180(e) (2004).

²⁶⁰ *Id.*

²⁶¹ *Id.* tit. 20 § 1610.180(f).

²⁶² *Id.*

²⁶³ 730 ILL. COMP. STAT. 5/3-3-13(a-5) (Supp. 2003).

²⁶⁴ *Id.*

²⁶⁵ *Id.*

²⁶⁶ IND. CONST. art. 5 § 17.

²⁶⁷ *Id.*

²⁶⁸ IND. CODE ANN. § 11-9-1-2(a)(3) (Michie 2003).

²⁶⁹ *Id.* § 11-9-2-3.

²⁷⁰ *Id.* § 11-9-1-1(a).

²⁷¹ *Id.*

²⁷² *Id.*

degree from an accredited university and have at least 10 years experience in law enforcement.²⁷³ Members must devote full time to their duties and are salaried employees.²⁷⁴

Process

The Indiana Parole Board has fashioned rules delimiting when inmates are eligible to apply for clemency. Inmates may apply only after they have served a specified portion of their sentence.²⁷⁵ Additionally, the inmate must not have had any major disciplinary violations and no more than one minor disciplinary violation.²⁷⁶ Inmates who are not eligible to apply for clemency have no right to meet with the Board.²⁷⁷ They do, however, have the right to appeal an ineligibility determination by the Board.²⁷⁸ If appealed, the inmate meets with a member of the Board, who explains the reasons for the determination.²⁷⁹ The inmate may request that the Board reconsider.²⁸⁰

Those requesting commutations of death sentences may not apply until an execution date has been set.²⁸¹ If that date is subsequently stayed, investigation and consideration of the petition is ceased, and the inmate must reapply when the next execution date is set.²⁸²

To initiate the clemency process, an application to the governor for clemency is filed with the Parole Board.²⁸³ The application must be in writing and signed by the person seeking relief or by a person on his behalf.²⁸⁴ The Board may require the applicant to furnish information that it considers necessary to conduct a proper inquiry and hearing regarding the application.²⁸⁵

Before rendering a recommendation to the governor, the Board by statute must: (1) notify the sentencing court, the victim or the victim's next of kin, and the prosecuting attorney; (2) conduct an investigation, which must include the collection of records, reports, and other information relevant to consideration of the application; and (3) conduct a hearing where the petitioner and other interested parties are given an opportunity to appear and present information.²⁸⁶

Whenever the Parole Board is conducting an inquiry, investigation, hearing, or review, that function may be delegated to one or more members of the Board.²⁸⁷ If one or more member acts on behalf of the Board, he or she may exercise all the powers of the Board except the power to

²⁷³ *Id.* § 11-9-1-1(b).

²⁷⁴ *Id.*

²⁷⁵ IND. ADMIN CODE tit. 220 r. 1.1-4-1(a)-(e), (l) (2004).

²⁷⁶ *Id.* tit. 220 r. 1.1-4-1(i).

²⁷⁷ *Id.* tit. 220 r. 1.1-4-1(j).

²⁷⁸ *Id.* tit. 220 r. 1.1-4-1(k).

²⁷⁹ *Id.*

²⁸⁰ *Id.*

²⁸¹ *Id.* tit. 220 r. 1.1-4-1(d).

²⁸² *Id.*

²⁸³ IND. CODE ANN. § 11-9-2-1 (Michie 2003).

²⁸⁴ *Id.*

²⁸⁵ *Id.*

²⁸⁶ *Id.* § 11-9-2-2(b).

²⁸⁷ *Id.* § 11-9-1-3(a).

render a final decision.²⁸⁸ Upon completion of the inquiry, the member acting on behalf of the Board files the complete record of the proceedings together with his or her findings, conclusions, and recommended decision.²⁸⁹ Based upon the record and the findings, conclusions, and recommendations, the Board renders a final decision.²⁹⁰

Prior to making a recommendation to grant a commutation to the governor, the Board must conduct an investigation of the attitudes and opinions of the community in which the crime occurred, of the victim or the relatives and friends of the victim, and of the friends and relatives of the offender.²⁹¹ The Board must also prepare a report on the offender's medical, psychological, and psychiatric condition and history.²⁹² In making its recommendation to the governor, the board *must* consider:

- (1) the nature and circumstances of the crime for which the offender is committed, and the offender's participation in that crime;
- (2) the offender's prior criminal record;
- (3) the offender's conduct and attitude during commitment; and
- (4) the best interests of society.²⁹³

Additionally, in making its recommendation to the governor, the board *may* consider:

- (1) the offender's previous social history;
- (2) the offender's employment during commitment;
- (3) the offender's educational and vocational training both before and during commitment;
- (4) the offender's age at the time of committing the offense and his age and level of maturing at the time of the clemency appearance;
- (5) the offender's medical condition and history;
- (6) the offender's psychological and psychiatric condition and history;
- (7) the offender's employment history prior to commitment;
- (8) the relationship between the offender and the victim of the crime;
- (9) the offender's economic condition and history;
- (10) the offender's previous parole or probation experiences;
- (11) the offender's participation in substance abuse programs;
- (12) the attitudes and opinions of the community in which the crime occurred, including those of law enforcement officials;
- (13) the attitudes and opinions of the victim of the crime, or of the relatives or friends of the victim;
- (14) the attitudes and opinions of the friends and relatives of the offender;
- (15) any other matter reflecting upon the likelihood that the offender, if released upon parole, is able to and will fulfill the obligations of a law-abiding citizen; and

²⁸⁸ IND. CODE ANN. § 11-9-1-3(b) (Michie 2003).

²⁸⁹ *Id.*

²⁹⁰ *Id.*

²⁹¹ IND. ADMIN. CODE tit. 220 r. 1.1-4-4(b) (2004).

²⁹² *Id.* tit. 220 r. 1.1-4-4(c).

²⁹³ *Id.* tit. 220 r. 1.1-4-4(d).

- (16) the offender’s proposed places of employment and of residence were he to be released on parole.²⁹⁴

Kansas

Distribution of Powers

By constitution, the “pardoning power” is vested in the governor, subject to regulations and restrictions prescribed by the legislature.²⁹⁵ The Kansas Parole Board is authorized by statute to adopt rules governing the procedure for initiating, processing, and reviewing applications for pardon and commutation.²⁹⁶ All applications for clemency must be referred to the Board, which must examine each case and submit a nonbinding report to the governor.²⁹⁷ The governor may not grant or deny any application until he or she has received the report of the board or until 120 days after the referral to the board.²⁹⁸ The governor is not bound by the Board’s recommendation. Additionally, commutation may not be granted unless the statutory notice provisions have been fulfilled.²⁹⁹

In cases where the death penalty has been imposed, the governor may order the postponement of the execution of the sentence for a limited time.³⁰⁰ At the expiration of the time granted for postponement, however, the sentence of the court must be carried out.³⁰¹ A death sentence ultimately may not be commuted to less than a term of 10 years.³⁰²

Structure of Board

The Kansas Parole Board is comprised of three members appointed by the governor with Senate confirmation.³⁰³ No more than two members may be from the same political party.³⁰⁴ Members serve four year terms and then until their successors are confirmed.³⁰⁵ Each Board member is obligated to devote his or her full time to the duties Board and is paid an annual salary.³⁰⁶ The governor designates both the chairperson and vice-chairperson.³⁰⁷

The governor may not remove any member of the Board except for disability, inefficiency, neglect of duty, or malfeasance in office and removal may only be had after written notice of the charges and a public hearing.³⁰⁸ Upon removal, the governor must file in the office of the

²⁹⁴ *Id.* tit. 220 r. 1.1-4-4(e).

²⁹⁵ KAN. CONST. art. I, § 7; KAN. STAT. ANN. § 22-3701(1) (Supp. 2003).

²⁹⁶ KAN. STAT. ANN. § 22-3701(2) (Supp. 2003).

²⁹⁷ *Id.* § 22-3701(4).

²⁹⁸ *Id.*

²⁹⁹ *Id.*

³⁰⁰ KAN. STAT. ANN. § 22-3704 (1995).

³⁰¹ *Id.*

³⁰² *Id.* § 22-3705.

³⁰³ KAN. STAT. ANN. § 22-3707(a) (Supp. 2003).

³⁰⁴ *Id.*

³⁰⁵ *Id.*

³⁰⁶ *Id.* § 22-3707(a), -3708.

³⁰⁷ *Id.* § 22-3709.

³⁰⁸ *Id.* § 22-3707(b).

secretary of state a statement of all charges made against the member along with the findings and complete record of the proceedings.³⁰⁹

The Board is empowered to issue subpoenas requiring the attendance of witnesses and the production of evidence that it considers necessary for the investigation of the issues before it. Subpoenas may be signed and oaths administered by any member.³¹⁰ Additionally, the Board may authorize one or more of its members to conduct hearings on behalf of the whole Board.³¹¹

Process

All applications for pardon or commutation of sentence must be referred to the Board.³¹² An inmate initiates his request for clemency by making a request to the facility representative.³¹³ The applicant then prepares a written statement of the reasons for requesting clemency on forms furnished by the Board and provides all information required by the forms.³¹⁴ The application is returned to institutional staff or is then sent directly to the Board.³¹⁵

At least 30 days before a pardon or commutation may be granted, notice must be provided to the prosecuting attorney and judge of the court of conviction and, for certain offenses, the victim of the offense.³¹⁶ Additionally, notice of the receipt of the application must be published in the official newspaper of the county of conviction.³¹⁷ If the applicant is indigent, the cost of the publication during one twelve-month period is paid by the state.³¹⁸

The Board's review must include an examination of records and reports, as well as a personal interview with the applicant, if requested by the Board.³¹⁹ After the application is received and notice has been provided, the Board reviews the file to determine whether it warrants a personal interview with the inmate. The Board must then submit a report, together with any information the Board possesses concerning the applicant, to the governor within 120 days after it was referred.³²⁰ The governor in turn may not grant or deny any application until he or she has received the report of the board or until 120 days after the referral to the board, whichever is shorter.³²¹

³⁰⁹ *Id.*

³¹⁰ KAN. STAT. ANN. § 22-3720 (1995).

³¹¹ KAN. STAT. ANN. § 22-3713(a) (Supp. 2003).

³¹² *Id.* § 22-3701(4).

³¹³ KAN. ADMIN. REGS. 45-900-1(a) (2004).

³¹⁴ *Id.*, 45-900-1(b).

³¹⁵ *Id.*

³¹⁶ KAN. STAT. ANN. § 22-3701(3) (Supp. 2003).

³¹⁷ *Id.*

³¹⁸ *Id.*

³¹⁹ KAN. ADMIN. REGS. 45-900-1(c) (2004).

³²⁰ KAN. STAT. ANN. § 22-3701(4) (Supp. 2003).

³²¹ *Id.*

Kentucky

Distribution of Powers

The governor of Kentucky has the power to remit fines and forfeitures, commute sentences, and grant reprieves and pardons, except in cases of impeachment.³²² The governor must file with each application a statement of the reasons for his decision, which are open to public inspection.³²³ The governor may request that the Kentucky Parole Board investigate and report to him or her with respect to any case of executive clemency, but its recommendations are not binding on the governor.³²⁴

Structure of Board

The Kentucky Parole Board is composed of seven full-time members and two part-time members appointed by the governor and confirmed by the Senate.³²⁵ Each of the two part-time members must be from different political parties, and no more than five members in total may be from the same political party.³²⁶ Part-time members' authority, however, is limited by statute to making parole determinations.³²⁷ Each appointment, full-time and part-time, must be drawn from a list of three names given to the governor by the Commission on Correction and Community Service, and each person appointed must have at least five years of experience in the fields of penology, correction work, law enforcement, sociology, law, education, social work, medicine, or some combination of the above.³²⁸ Alternatively, a member is qualified if he or she has previously served five years on the Parole Board.³²⁹ The governor appoints one full-time member to be Chairperson.³³⁰

Full-time Board members must devote all of their time to the Board and are salaried employees, the Chairperson being compensated slightly more.³³¹ Terms are four years.³³² The Chairperson determines the Board's organization, but by statute a quorum for clemency matters requires four members.³³³

The governor may not remove any member of the Board except for disability, inefficiency, neglect of duty, or malfeasance in office.³³⁴ Before removal, the governor must give the member a written copy of the charges against him or her and an opportunity to be heard within 10 days.³³⁵

³²² KY. CONST. § 77.

³²³ *Id.*

³²⁴ KY. REV. STAT. ANN. § 439.450 (Michie 1999).

³²⁵ KY. REV. STAT. ANN. § 439.320(1) (Michie Supp. 2004).

³²⁶ *Id.*

³²⁷ *Id.* § 439.320(7).

³²⁸ *Id.*

³²⁹ *Id.*

³³⁰ *Id.* § 439.320(2).

³³¹ *Id.* § 439.320(3).

³³² *Id.*

³³³ *Id.* § 439.320(4).

³³⁴ *Id.* § 439.320(5).

³³⁵ *Id.*

Upon removal, the governor must file with the Secretary of State a statement of all charges made against the member, the findings made, and a record of the proceedings.³³⁶

The office of the executive director of the Parole Board is responsible for administration and the review, drafting, and promulgation of rules and regulations for the Board.³³⁷

Process

There does not appear to be any formal procedure for applying for executive clemency. The governor's office does have a form titled "Application for Pardon," which an inmate may fill out and submit to the governor's office. The Parole Board in practice does not appear to play a role in the executive clemency process. Its statutory duty is to conduct investigations at the request of the governor.

Louisiana

Distribution of Powers

The Louisiana Constitution vests the power of executive clemency in the governor, but in order to commute a sentence or grant a pardon the governor must first have a favorable recommendation from the Louisiana Board of Pardons.³³⁸

Structure of the Board

The Louisiana Board of Pardon has the duty to review and take action on applications for pardons pending before it, and meets on regularly scheduled dates or at other times designated by the Board's chairperson.³³⁹ The Board has the additional power to create rules and regulations and to employ a staff, including professional personnel with training or past experience in criminology, sociology, psychology, and psychiatry.³⁴⁰ The Board also has the authority to sanction applicants for "disorderly, threatening, or insolent behavior" or "use of insulting, abusive, or obscene language."³⁴¹ Such a sanction may include immediate termination of proceedings and denial of relief.³⁴²

By constitution, The Board consists of five members appointed by the governor and confirmed by the Senate for terms that run concurrent with the appointing governor.³⁴³ By statute, at least

³³⁶ *Id.*

³³⁷ KY. REV. STAT. ANN. § 439.320(8) (Michie Supp. 2004).

³³⁸ LA. CONST. art. IV, § 5(E)(1). However, a first offender convicted of a non-violent crime, or convicted of aggravated battery, second degree battery, aggravated assault, mingling harmful substances, aggravated criminal damage to property, purse snatching, extortion, or illegal use of weapons or dangerous instrumentalities never previously convicted of a felony is pardoned automatically upon the completion of his sentence, without a recommendation of the Board of Pardons and without action by the governor. *Id.*

³³⁹ LA. REV. STAT. ANN. § 15:572.1(C) (West Supp. 2005).

³⁴⁰ *Id.* § 15:572.3.

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ LA. CONST. art. IV, § 5(E)(2).

one member of the Board “may” be chosen by the governor from a list of three names provided by Victims and Citizens Against Crime, Inc., a victims’ advocacy organization.³⁴⁴ The governor chooses a chairperson from among the Board members.³⁴⁵ The Board Members choose a vice-chairperson from among themselves.³⁴⁶ Four Board members constitute a quorum, and all actions of the Board require the favorable vote of at least four.³⁴⁷ Each Board member must devote his or her full time to the duties of the Board and is prohibited from holding any elective, appointive, or public employment and from engaging in any private business that is in conflict with his or duties on the Board.³⁴⁸ All Board members are paid an annual salary of \$36,000 except for the chairperson, who receives \$42,000.³⁴⁹

Process

A person who is sentenced to life is ineligible to apply for executive clemency until he or she has served 15 years from the date of the imposition of sentence.³⁵⁰ This rule does not apply, however, when the Board determines that new evidence that, notwithstanding the exercise of reasonable diligence by the applicant, was not discovered before or during the trial, exists which would probably have changed the verdict.³⁵¹

For an application to be considered by the Board it must be submitted on the fifteenth of the month prior to the Board’s next hearing, and applications from an inmate sentenced to death must be submitted within one year of the denial of the inmate’s direct appeal.³⁵² Completed applications may be given a hearing by the Board.³⁵³ No additional documents or information may be submitted to the Board other than those required by the application until the inmate has been notified that he or she has been given a hearing.³⁵⁴ An exception applies to inmates with a life sentence who have documentation proving innocence.³⁵⁵

The Board has discretion to refuse to hear an application for any reason. A non-exhaustive list of reasons the Board may decide to refuse to hear an application for clemency include:

³⁴⁴ LA. REV. STAT. ANN. § 15:572.1(A) (West Supp. 2005).

³⁴⁵ *Id.*

³⁴⁶ *Id.* § 15:572.1(D).

³⁴⁷ *Id.* § 15:572.1(E).

³⁴⁸ *Id.* § 15:572.1(F).

³⁴⁹ LA. REV. STAT. ANN. § 15:572.2 (West 1992).

³⁵⁰ LA. REV. STAT. ANN. § 15:572.4(D) (West Supp. 2005); LA. ADMIN CODE tit. 22, § 101(E) (2004).

³⁵¹ *Id.*

³⁵² LA. ADMIN CODE tit. 22, § 101(B), (D) (2004).

³⁵³ *Id.* tit. 22, § 101(A). A complete application must be submitted on the form provided by the Board and contain the following: the name of the applicant, the applicant’s prison number, date of birth, race, sex, education level, age at the time of the offense, present age, offender class, facility where the inmate is incarcerated, the parish where the inmate was convicted, the offenses for which the inmate was convicted of, the parish where the offenses were committed, the date of the inmate’s sentence, the amount of time served, a list of any previous clemency hearings that the inmate has had, the reasons that the inmate is requesting clemency, the particular type of clemency sought, and a statement of the facts surrounding the offense. *Id.* tit. 22, § 103(A). Additionally, inmates must attach their institutional disciplinary reports, and, if the inmate is sentenced to death, proof that the inmate’s direct appeal was denied. *Id.*; LA. ADMIN CODE tit. 22, § 103(B) (2004).

³⁵⁴ LA. ADMIN CODE tit. 22, § 103(C) (2004).

³⁵⁵ *Id.*

- (1) the serious nature of the offense;
- (2) insufficient time served on the sentence;
- (3) insufficient time has passed since release;
- (4) the proximity of parole or good time date;
- (5) institutional disciplinary reports;
- (6) probation or parole was unsatisfactory or violated; and
- (7) past criminal record.³⁵⁶

If the inmate receives a favorable recommendation from any of the Louisiana Risk Review Panels, the inmate will automatically receive a hearing without any further consideration by the Board.³⁵⁷

Contact with members of the Board is limited to appearing or testifying at a public hearing, or sending written letters addressed to the Board of Pardons.³⁵⁸ All letters in favor of or in opposition to a grant of clemency are left open to public inspection except letters written by the victim's family members and all letters written in opposition to clemency.³⁵⁹ However, all letters written by elected or appointed public officials whether in support of or in opposition to clemency being granted are kept open to public inspection.³⁶⁰

Before a hearing may be set, the applicant must have published notice of the application for clemency on three separate days within a thirty-day period of time in a newspaper recognized "as the official journal of the governing authority of the parish where the offense occurred."³⁶¹ Proof of this notice must be given to the Board within 90 days of when the applicant is notified that a hearing has been granted.³⁶² At this time the applicant may also submit additional letters and documents in support of his or her application.³⁶³

At least 30 days before the inmate's hearing is scheduled, the Board must notify (1) the prosecutor and sheriff of the parish where the offense was committed; (2) the applicant; (3) the victim's family members (unless they have requested not to be notified); (4) the Crime Victim's Service Bureau of the Department of Public Safety and Corrections; and (5) any other interested parties who have previously requested to be notified.³⁶⁴ All of these parties must be afforded the opportunity to appear at the inmate's hearing, and may be allowed to appear by telephone.³⁶⁵ At the hearing, only three people (the inmate included) are allowed to speak in favor of clemency, and only three persons (the victim or victim's family member included) are allowed to speak against, but there is no limit on how many written statements may be submitted.³⁶⁶ If the inmate

³⁵⁶ *Id.* tit. 22, § 105(A.1).

³⁵⁷ *Id.* tit. 22, § 105(E).

³⁵⁸ LA. REV. STAT. ANN. § 15:573.1(A) (West Supp. 2005); LA. ADMIN CODE tit. 22, § 107(A) (2004).

³⁵⁹ LA. REV. STAT. ANN. § 15:573.1(B) (West Supp. 2005); LA. ADMIN CODE tit. 22, § 107(D) (2004).

³⁶⁰ LA. ADMIN CODE tit. 22, § 107(E) (2004).

³⁶¹ LA. REV. STAT. ANN. § 15:572.4(C) (West Supp. 2005).

³⁶² LA. ADMIN CODE tit. 22, § 109(A) (2004).

³⁶³ *Id.* tit. 22, § 109(B) (2004).

³⁶⁴ *Id.* tit. 22, § 111(B) (2004). Most of these notices are required by statute; however, Louisiana statutory law does not require that notice be provided to the Crime Victims Services Bureau of the Department of Public Safety and Corrections. *See* LA. REV. STAT. ANN. § 15:572.4(B)(1) (West Supp. 2005).

³⁶⁵ LA. REV. STAT. ANN. § 15:572.4(B)(2)-(3), :573.2 (West Supp. 2005); LA. ADMIN CODE tit. 22, § 111(C) (2004).

³⁶⁶ LA. ADMIN CODE tit. 22, § 111(D) (2004).

fails to attend the hearing, or fails to inform the Board ahead of time of his or her inability to attend, then the inmate's application is automatically denied.³⁶⁷

The Board will notify the inmate if it makes the decision to deny the application, or if the governor rejects the inmate's application after a favorable recommendation by the Board.³⁶⁸ The governor will notify the inmate if he or she decides to grant clemency.³⁶⁹

Maryland

Distribution of Power

The Constitution of Maryland vests the power of executive clemency in the governor, but provides that before granting a pardon the governor must first give notice in one or more newspapers of the earliest day that he will make his decision.³⁷⁰ Additionally, the governor must submit to the legislature in every case in which the power is exercised an applicant's petition and the governor's reasons for the decision.³⁷¹ The Maryland legislature has authorized the Maryland Parole Commission to review and make recommendations to the governor on executive clemency when its assistance is requested.³⁷² The Commission's recommendations are not binding on the governor.

Structure of Commission

The Commission consists of 10 members appointed to six-year terms by the Maryland Secretary of Public Safety and Correctional Services subject to the approval of both the governor and the Senate.³⁷³ To qualify for a seat on the Commission, an individual must be appointed without regard to political affiliation, be a Maryland resident, and have experience in the fields of law, sociology, psychology, psychiatry, education, social work, or criminology.³⁷⁴ With the approval of the governor, the Secretary may designate a member of the Commission to serve as chairperson.³⁷⁵ Also with the approval of the governor, the Secretary may remove a member of the Commission only for disability, neglect of duty, or misconduct while in office.³⁷⁶ The Secretary must first serve the Commissioner with notice of the charges and hold a public hearing.³⁷⁷ The Commissioners serve full time, may not have any other employment that conflicts with the commissioner's full-time duties, and are compensated by an amount determined by the legislature.³⁷⁸

³⁶⁷ *Id.* tit. 22, § 111(F).

³⁶⁸ *Id.* tit. 22, §§ 113, 115.

³⁶⁹ *Id.* tit. 22, § 117(A).

³⁷⁰ MD. CONST. art. II, § 20.

³⁷¹ *Id.*

³⁷² MD. CODE ANN., CORRECTIONAL SERVICES § 7-206(3)(ii) (1999).

³⁷³ MD. CODE ANN., CORRECTIONAL SERVICES § 7-202(a), (d)(i) (Supp. 2004).

³⁷⁴ *Id.* § 7-202(b).

³⁷⁵ *Id.* § 7-202(g).

³⁷⁶ *Id.* § 7-202(e)(1).

³⁷⁷ *Id.* § 7-202(e)(2).

³⁷⁸ *Id.* § 7-202(c), -203.

Process

Any inmate may request that the Commission make a recommendation to the Governor that his or her sentence be commuted when all legal remedies are exhausted and the circumstances of the case are unusual.³⁷⁹ The Commission may entertain these requests at a parole hearing, and in its discretion may deny the request or submit it to the Governor with a recommendation.³⁸⁰ A sentence can be commuted to time served and the inmate released, or to a number of years. Once commuted, the Commission, in its discretion, may release the inmate on parole.³⁸¹ If the governor denies the request, it may be resubmitted after “a reasonable time.”³⁸² The Commission will recommend to the Governor a commutation of a life sentence where the case warrants special consideration or where the facts and circumstances of the crime justify special consideration, or both.³⁸³

A request for a pardon can be initiated by petition or letter directed to the Parole Commission.³⁸⁴ Proof of successful completion of any parole or probation in addition to a reasonable length of satisfactory adjustment in the community beyond the maximum expiration date of sentence, is preferred for a favorable pardon recommendation.³⁸⁵ Before making its recommendation to the governor, the Commission must have the Division of Parole and Probation undertake “a comprehensive investigation” of the individual and submit a report for the Commission and governor.³⁸⁶ If pardon is denied, the petitioner may reapply after a reasonable time.³⁸⁷

According to Maryland Governor Robert Ehrlich’s August 29, 2003 press release, the governor’s legal counsel also reviews applications for executive clemency and makes a recommendation to the governor. The legal counsel uses the following criteria when making clemency determinations: (1) the nature and circumstances of the relevant offense; (2) the effect that a pardon or commutation would have on the victim, community, and public safety; (3) the inmate’s criminal history; and (4) the reason that clemency is requested.³⁸⁸

Mississippi

Distribution of Powers

The Mississippi Constitution vests the power of executive clemency in the governor, and requires that in felony cases an inmate applying for a pardon post notice of his application in a newspaper in the county where his offense was committed for a period of 30 days before the

³⁷⁹ MD. REGS. CODE tit. 12 § 08.01.15(A) (2004).

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.* tit. 12 § 08.01.15(B).

³⁸⁴ *Id.* tit. 12 § 08.01.16(C).

³⁸⁵ *Id.*

³⁸⁶ *Id.* tit. 12 § 08.01.16(B).

³⁸⁷ *Id.*

³⁸⁸ Press Release, Governor Robert L. Ehrlich, Governor Ehrlich Clarifies Executive Clemency Process, Aug. 29, 2003, http://www.gov.state.md.us/pressreleases/2003/082903_clemency.html.

pardon may be granted.³⁸⁹ The Mississippi legislature has given the State Parole Board the “exclusive responsibility” for investigating clemency recommendations upon the request of the governor.³⁹⁰

Structure of Board

The Board consists of five members appointed without regard to their political affiliation by the governor upon the consent of the Senate and who serve terms “at the will and pleasure of the Governor.”³⁹¹ The Governor also has the power to appoint the chairperson.³⁹² To be eligible to become a member of the board, a person must have at least a bachelor’s degree, or a high school diploma with four years of work experience.³⁹³ Board members are full-time employees and are compensated for their services by an amount determined by the legislature.³⁹⁴ Members of the Board are immune from civil liability for acts made in good faith and in the execution of the Board’s legitimate authority.³⁹⁵

Process

Very little is codified concerning applications for executive clemency, but an examination of the clemency application provides some information as to what is required.³⁹⁶ The inmate must first obtain an application from the governor’s legal division, and send the completed application to the governor. Separate letters stating the unusual circumstances that the inmate believes warrant clemency are required to accompany the application, and letters of recommendation from former employers, pastors, church members, elected officials, judges, prosecutors, family members, and others are required to be submitted with the application as well. If the governor believes that further investigation into an inmate’s case is necessary in order to make a decision concerning clemency, the application may be referred to the State Parole Board to make an investigation and recommendation. The Board’s recommendations are not binding upon the governor.

Missouri

Distribution of Powers

By the Missouri Constitution, the governor has the sole authority to grant reprieves, commutations, and pardons for all offenses except treason and in cases of impeachment.³⁹⁷ The legislature may provide for the manner of applying for clemency.³⁹⁸ It has created the Missouri

³⁸⁹ MISS. CONST. art. V, § 124.

³⁹⁰ MISS. CODE ANN. § 47-7-5(3) (Supp. 2004).

³⁹¹ *Id.* § 47-7-5(1), (2).

³⁹² *Id.*

³⁹³ *Id.* § 47-7-5(2).

³⁹⁴ *Id.*

³⁹⁵ *Id.* § 47-7-5(4).

³⁹⁶ The form is available online at the Criminal Justice Policy Foundation website, <http://www.cjpf.org>.

³⁹⁷ MO. CONST. art. IV, § 7.

³⁹⁸ *Id.*

Board of Probation and Parole and all applications are referred to the Board for investigation and recommendation to the governor.³⁹⁹

Structure of Board

The Board is composed of seven members appointed by the governor with the advice and consent of the Senate.⁴⁰⁰ To be qualified, members must be “persons of recognized integrity and honor, known to possess education and ability in decision making through career experience.”⁴⁰¹ No more than four members may be of the same political party.⁴⁰² Members are appointed for six-year terms, and may be reappointed.⁴⁰³ They are full-time, compensated employees.⁴⁰⁴ The governor designates the chairperson.⁴⁰⁵

Process

The Missouri Board of Probation and Parole has not issued any rules or regulations with respect to executive clemency procedures. By statute, however, any meeting, record of proceedings, or vote involving pardons may be closed to the public.⁴⁰⁶

Montana

Distribution of Powers

The Montana constitution vests the executive clemency power solely in the governor, subject to procedures provided by the legislature.⁴⁰⁷ However, by statute, the legislature has created a Board of Pardons of Parole that “is responsible for executive clemency,” and if the Board recommends that clemency be denied in a non-capital case, “the application may not be forwarded to the governor and the governor may not take action on the case.”⁴⁰⁸ For those applications that are forwarded to the governor, the Board’s recommendation is not binding.⁴⁰⁹ The governor may grant respites without any recommendation from the Board, and in capital cases, this may have the effect of postponing the execution, but if clemency is not granted before the expiration of the respite, the death warrant is again in effect and the execution must take place on the date the respite expires.⁴¹⁰

³⁹⁹ MO. REV. STAT. ANN. § 217.800(2) (West 2004).

⁴⁰⁰ *Id.* § 217.665(1).

⁴⁰¹ *Id.* § 217.665(2).

⁴⁰² *Id.*

⁴⁰³ *Id.* § 217.665(3).

⁴⁰⁴ *Id.* § 217.665(6)-(7).

⁴⁰⁵ *Id.* § 217.665(5).

⁴⁰⁶ *Id.* § 217.670(5).

⁴⁰⁷ MONT. CONST. art. VI, § 12.

⁴⁰⁸ MONT. CODE ANN. § 46-23-104(1), -301(3) (2004).

⁴⁰⁹ *Id.* § 46-23-301(3).

⁴¹⁰ *Id.* § 46-23-315.

Structure of Board

The Montana Board of Pardons and Parole has three members and four “auxiliary members.”⁴¹¹ Members must undergo training imparting “knowledge of American Indian culture and problems” and they must possess academic training that has qualified them for professional practice in a field such as criminology, education, psychiatry, psychology, law, social work, sociology, or guidance and counseling.⁴¹²

All members serve staggered four-year terms and are appointed by the governor with the confirmation of the Senate.⁴¹³ The governor designates the chairman and may remove a member only for cause.⁴¹⁴ A majority of the Board constitutes a quorum, and a majority vote is required for any decision.⁴¹⁵ Members are compensated by legislative appropriation.⁴¹⁶

Process

A person convicted of a crime is not required to exhaust judicial or administrative remedies before filing an application for clemency, with the exception of applications with respect to sentences of death that are pending on automatic review to the Montana Supreme Court.⁴¹⁷

All applications for clemency must be made to the Board.⁴¹⁸ In death penalty cases, an application for clemency may be filed no later than 10 days after an execution date is set.⁴¹⁹ Applications may be filed only by the person convicted of the crime, by the person's attorney, or by a court-appointed next friend, guardian, or conservator acting on the person's behalf.⁴²⁰ The application must state the type of executive clemency requested, the particulars of the crime, the dates of commission, the court of conviction, the circumstances relating to the social condition of the applicant and the reasons for the request for executive clemency.⁴²¹

The Board undertakes an investigation when application is made, and by statute must base its recommendation on (1) all the circumstances surrounding the crime; and (2) the individual circumstances relating to social conditions of the applicant prior to commission of the crime, at the time the offense was committed, and at the time of the application for clemency.⁴²²

⁴¹¹ MONT. CODE ANN. § 2-15-2302(2) (2004). Auxiliary Board members are obligated to attend those meetings that regular Board members are unable to attend and when doing so possess all the powers of a regular member. *Id.* § 2-15-2302(3).

⁴¹² *Id.*

⁴¹³ *Id.* § 2-15-2302(4), -2302(7), -124(3).

⁴¹⁴ *Id.* § 2-15-2302(7), -124(5), -124(6).

⁴¹⁵ *Id.* § 2-15-2302(7), -124(8).

⁴¹⁶ *Id.* § 2-15-2302(7).

⁴¹⁷ *Id.* § 46-23-301(2).

⁴¹⁸ *Id.*

⁴¹⁹ *Id.*

⁴²⁰ *Id.* The Board of Pardons and Parole, however, has adopted a contrary rule. Applications in death penalty cases must be received no later than 30 days before the execution date, but the Board reserves the power to waive this rule if good cause is shown. MONT. ADMIN. R. 20.25.901(4) (2004).

⁴²¹ MONT. ADMIN. R. 20.25.901(3) (2004).

⁴²² *Id.*

The Board's rules lay out other considerations for determining its recommendation: (1) the nature of the crime; (2) the comments of the judge, the prosecuting attorney, the community, and the victims and victims' family regarding clemency for the applicant; and (3) whether release would pose a threat to the public safety.⁴²³ Board rules state that the public safety determination overrides even the most substantial showing of exceptional or compelling circumstances.⁴²⁴

According to Board regulations, executive clemency may be recommended for an individual who (1) can satisfactorily prove innocence of a crime for which the person is serving or has served time; (2) has demonstrated exemplary performance; (3) submits newly discovered evidence showing complete justification or non-guilt on the part of the person; (4) suffers from terminal illness or from a chronic disability; (5) can satisfactorily prove that further incarceration would be grossly unfair; (6) can satisfactorily prove that a death penalty should be avoided; or (7) can satisfactorily prove extraordinary mitigating or extenuating circumstances exist.⁴²⁵

Although those who plead guilty or are found guilty by juries are "deemed guilty," the Board reserves the right to initiate an investigation into a case where there is offered "substantial evidence showing innocence or complete justification on the part of the person convicted."⁴²⁶

At least 30 days are usually required for an investigation.⁴²⁷ When all necessary material is received and filed with the executive director, the application will be considered by the board at a meeting following the receipt of such investigation.

After considering an application, the Board decides by majority vote whether a hearing will be held on it, and, if so, it issues an order setting the date and providing notice to all interested parties, and publishes a copy of the order in a newspaper of general circulation in the county where the offense occurred at least once a week for two weeks before the hearing is to take place.⁴²⁸ A copy of the order must also be transmitted to the district judge, county attorney, and sheriff of the county where the crime was committed, as well as to the applicant.⁴²⁹ A hearing will always be held in capital cases.⁴³⁰

At a public and recorded hearing, the Board will hear all relevant facts and information of the petitioner, his or her counsel and witnesses, and any opponents to the petition.⁴³¹ The board must keep a record of (1) the names of all persons appearing before the board on behalf of the person seeking clemency; (2) the names of all persons appearing before the board in opposition to the granting of clemency; (3) the testimony of all persons giving evidence before the board.⁴³²

⁴²³ *Id.* 20.25.901A(6).

⁴²⁴ *Id.*

⁴²⁵ *Id.* 20.25.901A(5).

⁴²⁶ *Id.* 20.25.901A(7).

⁴²⁷ *Id.* 20.25.902(1).

⁴²⁸ MONT. CODE ANN. § 46-23-302, -303 (2004).

⁴²⁹ *Id.* § 46-23-303 (2004).

⁴³⁰ MONT. ADMIN. R. 20.25.902(3) (2004).

⁴³¹ *Id.* 20.25.904(1).

⁴³² MONT. CODE ANN. § 46-23-306 (2004). The Board must also keep a record showing that the return from the printer of the publication of the notice and order of hearing was on file prior to the hearing. *Id.*

Within 30 days of the hearing in capital cases and in every non-capital case in which the Board recommends that clemency be granted, the Board must make its decision in writing.⁴³³ In capital cases, the Board must transmit the application and its recommendation that clemency be either granted or denied to the governor.⁴³⁴ The governor must review the record of the hearing and the Board's recommendation before granting or denying clemency.⁴³⁵ An appeal may not be taken from the governor's decision to grant or deny clemency.⁴³⁶ Unless the Board otherwise orders or there has been a substantial change in circumstances, as determined by the Board, a person may not reapply for executive clemency for a period of 36 months.⁴³⁷

The governor must report to the legislature each case in which executive clemency is exercised as well as the reasons for the decisions and any objections by Board members.⁴³⁸

Nebraska

Distribution of Powers

The Nebraska Constitution delegates the power to remit fines and forfeitures and to grant respites, reprieves, pardons, and commutations in all cases except treason and impeachment to the governor, attorney general, and secretary of state, sitting as a board.⁴³⁹ This board is by statute called the Board of Pardons.⁴⁴⁰ The Board of Parole, created by the legislature, may advise the Board of Pardons on the merits of any application, but its advice is not binding upon it.⁴⁴¹

Structure of Board

As stated above, the Board of Pardons is composed of the governor, attorney general, and secretary of state.⁴⁴² The governor is chairperson of the Board.⁴⁴³ The Board has the power to issue subpoenas, to compel the attendance of witnesses and the production of documents, and to administer oaths and take the testimony of persons under oath.⁴⁴⁴ All actions of the Board are by majority vote.⁴⁴⁵ The Board may call upon the Board of Pardons to conduct investigations and to submit a written report and recommendation.⁴⁴⁶

⁴³³ MONT. CODE ANN. § 46-23-307 (2004).

⁴³⁴ *Id.* § 46-23-301(3). In noncapital cases, only favorable recommendations are transmitted to the governor. *Id.*

⁴³⁵ *Id.*

⁴³⁶ *Id.*

⁴³⁷ MONT. ADMIN. R. 20.25.901(3) (2004).

⁴³⁸ MONT. CODE ANN. § 46-23-316 (2004).

⁴³⁹ NEB. CONST. art. IV, § 13.

⁴⁴⁰ NEB. REV. STAT. § 83-1,126 (1999).

⁴⁴¹ NEB. CONST. art. IV, § 13.

⁴⁴² NEB. REV. STAT. § 83-1,126 (1999).

⁴⁴³ *Id.*

⁴⁴⁴ *Id.* § 83-1,128.

⁴⁴⁵ *Id.* § 83-1,130(3).

⁴⁴⁶ NEB. REV. STAT. § 83-1,127(4) (1999); NEBRASKA PARDONS BOARD POLICY AND PROCEDURE GUIDELINES, Rule 003.02, <http://www.pardons.state.ne.us/pardons.html>.

Process

A person seeking clemency must request an application from the Pardon Board's secretary. The application must be returned to the secretary and must state the specific relief requested and whatever other information is required by the Board.⁴⁴⁷

Applications are considered by the Board with or without a hearing at its next regularly scheduled meeting.⁴⁴⁸ An informal hearing may be held, and, if so, a record of the proceedings will be made.⁴⁴⁹ It is the general policy of the Board that it will not grant an application for pardon or commutation without holding a hearing.⁴⁵⁰

If the Board grants a hearing to a person seeking a pardon or commutation for a crime against a person, the Board will attempt to contact the victim or victims' family and offer them an opportunity to present information.⁴⁵¹ The Board may hear sworn or unsworn testimony and may receive written statements and other information the Board deems useful.⁴⁵² The presentation of information is at the discretion of the Board, but ordinarily the applicant or his or her representative will present first, followed by the presentation of information by those opposing the application.⁴⁵³ If the applicant has not yet completed the sentence imposed upon him, the Board will request the presence of the county attorney from the county where the crime was committed to present information concerning the nature and seriousness of the crime and any reasons why the application should be denied.⁴⁵⁴ If the county attorney declines to present information, the presentation is to be made by the Nebraska Attorney General's Office.⁴⁵⁵

After the Board considers an application and after any further investigation it may deem appropriate, the Board will vote either to grant or deny the relief requested.⁴⁵⁶

There are special procedures in death penalty cases. By statute, whenever an application for clemency is filed by a death-sentenced inmate, the sentence may not be carried out until the Board rules on the application.⁴⁵⁷ If the Board denies relief, it may set the time and date of execution and refuse to accept further applications from the inmate.⁴⁵⁸

The Board's Procedure Guidelines state that when the Board is notified that an execution date has been set for a death-sentenced inmate, the Board's staff prepares a file concerning the prisoner and begins to gather documentation as if the an application for clemency has been filed.⁴⁵⁹ A stay of execution is immediately issued by the Secretary of the Board as soon as an

⁴⁴⁷ NEB. REV. STAT. § 83-1,129(1) (Supp. 2003).

⁴⁴⁸ *Id.* § 83-1,129(3).

⁴⁴⁹ *Id.*

⁴⁵⁰ NEBRASKA PARDONS BOARD POLICY AND PROCEDURE GUIDELINES, Rule 004.02.

⁴⁵¹ *Id.*, Rule 004.03(A).

⁴⁵² *Id.*, Rule 004.03(C).

⁴⁵³ *Id.*

⁴⁵⁴ *Id.*

⁴⁵⁵ *Id.* The Board may vote otherwise. *Id.*

⁴⁵⁶ NEB. REV. STAT. § 83-1,130(1) (1999).

⁴⁵⁷ *Id.* § 83-1,132.

⁴⁵⁸ *Id.*

⁴⁵⁹ NEBRASKA PARDONS BOARD POLICY AND PROCEDURE GUIDELINES, Rule 004.5.

application is filed.⁴⁶⁰ The stay remains in effect until the Board makes a decision on the application.⁴⁶¹

The Board meets within five days of the filing of the application to consider it and determine whether a hearing should be held.⁴⁶² If a hearing is decided upon, it will be held within 30 days of the filing of the application.⁴⁶³ At the hearing, a representative of the death-sentenced inmate will be given three hours for presentation of information and argument to the Board.⁴⁶⁴ The presentation may include a sworn statement of the inmate made by videotape, audiotape, or affidavit.⁴⁶⁵ A portion of the time allotted may be reserved for rebuttal.⁴⁶⁶ In turn, the State receives three hours for presentation and argument to the Board, which includes a portion allotted to representatives of the victims who wish to present information.⁴⁶⁷ Any other interested persons may submit written commentary or information for the Board's consideration prior to or on the date of the hearing.⁴⁶⁸

If the application is denied, the stay is lifted.⁴⁶⁹ If the execution date has elapsed, the Board issues a warrant to the Warden establishing a new date.⁴⁷⁰ The Board determines by vote in each particular case whether additional applications from the death-sentenced inmate will be accepted.⁴⁷¹

Nevada

Distribution of Powers

The Nevada Constitution authorizes “[t]he governor, justices of the supreme court, and attorney general, or a major part of them, of whom the governor shall be one,” to grant remittance of fines and forfeitures, commute punishments, and grant pardons in all cases except treason and impeachment subject to regulations as provided by the legislature as to the manner of application.⁴⁷² However, a sentence of death or a sentence of life imprisonment without possibility of parole cannot be commuted to a sentence that would allow parole.⁴⁷³

Structure of Board

The Nevada legislature has created the State Board of Pardons Commissioners, which consists of the governor, the justices of the Supreme Court, and the attorney general, as required by

⁴⁶⁰ *Id.*

⁴⁶¹ *Id.*

⁴⁶² *Id.*

⁴⁶³ *Id.*

⁴⁶⁴ NEBRASKA PARDONS BOARD POLICY AND PROCEDURE GUIDELINES, Rule 004.5.

⁴⁶⁵ *Id.*

⁴⁶⁶ *Id.*

⁴⁶⁷ *Id.*

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*

⁴⁷² NEV. CONST. art. 5, § 14(1).

⁴⁷³ NEV. CONST. art. 5, § 14(2).

constitution.⁴⁷⁴ Members of the Board who have served as a district judge or as a justice of the Supreme Court for at least four years are entitled to compensation equal to two percent of their annual salary as a judge.⁴⁷⁵ Board members have the authority to administer oaths and affirmations.⁴⁷⁶

Process

Any person seeking executive clemency in Nevada must first serve notice upon the district attorney and district judge of the county of conviction, the Director of the Department of Corrections, and the Clerk of the Board.⁴⁷⁷ The notice must be served at least 30 days before the application is filed and must state: (1) the court in which the judgment was rendered; (2) the amount of the fine or forfeiture, or kind or character of punishment; (3) the name of the person in whose favor the application is to be made; (4) the particular grounds on which the application will be based; and (5) the time when it will be presented.⁴⁷⁸ By administrative rule, the notice must also include a request for the recommendations of the officials to whom it is sent as well as an invitation for them to testify at the hearing.⁴⁷⁹ Notice is not required, however, for an application to commute a death sentence.⁴⁸⁰

All district attorneys receiving notice of an application for clemency must send the Board a statement in writing of facts surrounding the commission of the offense and any other information affecting the merits of the application.⁴⁸¹ The district attorney must also forward to the victim a copy of the notice, if the victim has requested such notice.⁴⁸²

The Board meets semiannually, but special meetings may be called by any member of the board or the executive secretary of the board, with the consent of the governor.⁴⁸³ The application for clemency must be submitted at least 60 days before the semiannual meeting and must state whether or not a hearing is requested.⁴⁸⁴ Ordinarily, no application will be considered by the Board unless it has first been recommended by the director of the department of corrections to the Secretary of the Board.⁴⁸⁵ The Secretary then has the final approval in placing an application on the agenda, and, if given, the applicant will be granted a hearing before the Board.⁴⁸⁶ The

⁴⁷⁴ NEV. REV. STAT. ANN. 213.010 (Michie 2000).

⁴⁷⁵ *Id.* 213.015.

⁴⁷⁶ *Id.* 213.050(1).

⁴⁷⁷ NEV. REV. STAT. ANN. 213.020(2) (Michie Supp. 2003).

⁴⁷⁸ *Id.* 213.020(1), (3). A Board member may prescribe a shorter time. *Id.*

⁴⁷⁹ NEV. ADMIN. CODE § 213.060 (2004).

⁴⁸⁰ NEV. REV. STAT. ANN. 213.030(2) (Michie 2000).

⁴⁸¹ *Id.* 213.040(1).

⁴⁸² *Id.* 213.040(2). All personal information pertaining to a victim that is received by the district attorney is confidential. *Id.*

⁴⁸³ NEV. REV. STAT. ANN. 213.010(2) (Michie 2000); NEV. ADMIN. CODE § 213.020(1), (3) (2004).

⁴⁸⁴ NEV. ADMIN. CODE § 213.040(1), .050 (2004). The governor may prescribe a shorter period for a special hearing of the board. *Id.* § 213.040(2).

⁴⁸⁵ NEV. ADMIN. CODE § 213.090(1) (2004).

⁴⁸⁶ *Id.* § 213.090(2).

Board retains authority, however, to review an application that lacks a recommendation from the director of the department of corrections and/or the approval of the Secretary.⁴⁸⁷

The Board must give written notice at least 15 days before a meeting to the victims of the crimes committed by each person whose application for clemency is under consideration, if the victim has so requested, and the victim may submit a written response to the Board at any time before the meeting.⁴⁸⁸ Hearings before the Board are informal.⁴⁸⁹ The Board may, however, require all testimony to be given under oath, require the presence of the applicant, and accept for consideration any affidavits or depositions.⁴⁹⁰

Whenever any death sentence is commuted, the Board must sign a written statement stating: (1) the name of the person whose punishment is commuted; (2) the time and place where conviction occurred; (3) the amount, kind, and character of punishment substituted instead of the death penalty; and (4) the place where the substituted punishment is to be served out or suffered.⁴⁹¹ In all cases in which clemency is granted, the Board must provide written notice to the victim, if he or she has so requested.⁴⁹²

New Hampshire

Distribution of Powers

The New Hampshire Constitution vests the “power of pardoning” in the governor, with the advice of the Executive Council.⁴⁹³ The governor has the power, with advice of the Council, to grant a death-sentenced inmate a “pardon” on condition that he will remain imprisoned for life or any term of years expressed in the pardon.⁴⁹⁴ The governor and Council may likewise respite the execution of a death sentence while legal proceedings are pending or if they feel that more time is needed to investigate and consider the application.⁴⁹⁵

Structure of Board

The Executive Council is not a typical pardons board. It is rather a constitutionally created core of the New Hampshire executive branch that advises the governor.⁴⁹⁶ The Council is composed

⁴⁸⁷ NEV. ADMIN. CODE § 213.090(3) (2004). A list of all applicants who are denied a hearing and the reason for the denial must be available for the Board’s consideration for this reason. *Id.* § 213.090(4).

⁴⁸⁸ NEV. REV. STAT. ANN. 213.010(3) (Michie 2000).

⁴⁸⁹ NEV. ADMIN. CODE § 213.190 (2004).

⁴⁹⁰ *Id.* § 213.200.

⁴⁹¹ NEV. REV. STAT. ANN. 213.080(1) (Michie 2000).

⁴⁹² *Id.* 213.095.

⁴⁹³ N.H. CONST. pt. II, art. 52.

⁴⁹⁴ N.H. REV. STAT. ANN. § 4:23 (2001). The New Hampshire legislature refers to the commutation of the death sentence as a pardon. It would thus appear that the phrase “pardoning power” in the New Hampshire Constitution encompasses all typical forms of executive clemency, and hence the governor’s commutation power is actually constitutionally based rather than statutorily based.

⁴⁹⁵ *Id.* § 4:24. A respite may also be granted if it appears to the governor and Council that the death-sentenced inmate has become insane or pregnant, until they have had sufficient time to investigate or until the cause is removed. *Id.*

⁴⁹⁶ N.H. CONST. pt. II, art. 60.

of five people who are elected every two years.⁴⁹⁷ The governor is given the authority to convene the Council at his discretion and, with them, direct “the affairs of the state, according to the laws of the land.”⁴⁹⁸

Process

Very little statutory or regulatory guidance is provided as to the manner of applying for clemency and the process that is given to an application.

Pardon forms are available through the Office of the Attorney General. On all petitions to the governor and Council for pardon or commutation of sentence, written notice of the application must be given to the state's counsel as well as notice to those that the governor directs.⁴⁹⁹ The prosecuting officer may be required to provide a statement of the case as proved at the trial and any other facts bearing on the propriety of granting the petition.⁵⁰⁰ The governor may summon witnesses to appear before him or her and the Council and to testify at hearings before them, and may require the witnesses to produce documents.⁵⁰¹

New Jersey

Distribution of Powers

The governor may grant pardons and reprieves in all cases other than impeachment and treason, and may suspend and remit fines and forfeitures.⁵⁰² A commission or other body may be established by law to assist and advise the governor in the exercise of his or her clemency power.⁵⁰³ The governor may, upon application for commutation of sentence of any person sentenced to imprisonment, commute the sentence upon whatever terms he or she may direct.⁵⁰⁴ The governor must report to the legislature each grant of clemency, along with the name of the convicted person, the crime for which the person was convicted, the sentence imposed, its date, the date of the clemency grant and the reasons it was granted.⁵⁰⁵

Structure of Board

The New Jersey State Parole Board consists of a chairman, 14 associate members, and three alternate Board members.⁵⁰⁶ Every member is appointed by the governor with the advice and consent of the Senate from qualified persons with training or experience in law, sociology, criminal justice, juvenile justice, or related branches of the social sciences.⁵⁰⁷ All terms are for

⁴⁹⁷ *Id.*

⁴⁹⁸ N.H. CONST. pt. II, art. 62.

⁴⁹⁹ N.H. REV. STAT. ANN. § 4:21 (2001).

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.* § 4:28.

⁵⁰² N.J. CONST. art. V, § 2(1).

⁵⁰³ *Id.*

⁵⁰⁴ N.J. STAT. ANN. § 2A:167-4 (West 1985).

⁵⁰⁵ *Id.* § 2A:167-3.

⁵⁰⁶ N.J. STAT. ANN. § 30:4-123.47(a) (West Supp. 2004).

⁵⁰⁷ *Id.*

six years.⁵⁰⁸ Any Board member, including alternates, may be removed from office by the Governor only for cause.⁵⁰⁹ Members must devote their full time to the performance of Board duties and are compensated pursuant to state law.⁵¹⁰ Alternate members are also entitled to compensation on a per diem basis.⁵¹¹

All policies and determinations are to be made by majority vote of the Board.⁵¹²

Process

Applications for commutation of sentences, other than death sentences, are to be made on forms prescribed by the governor.⁵¹³ The governor may refer the application to the state parole board for an investigation.⁵¹⁴ If an application is referred, the Board must make a full and complete investigation and issue a written report to the governor with its recommendation in the case, which is not binding on the governor.⁵¹⁵

The Board has not published nor promulgated any regulations concerning the executive clemency application process.

New Mexico

Distribution of Powers

Subject to such regulations as may be prescribed by the legislature, the governor of New Mexico has the power to grant reprieves and pardons.⁵¹⁶ By statute, the New Mexico Parole Board is authorized to investigate and report to the governor with respect to any case of pardon, commutation of sentence, or reprieve, when so requested by the governor.⁵¹⁷

Structure of Board

The Parole Board consists of nine members appointed by the governor with the consent of the Senate.⁵¹⁸ Terms are staggered and for six years.⁵¹⁹ The governor may remove a member for any reason, and is responsible for designating the chairperson.⁵²⁰ Members of the Board must be qualified “by such academic training or professional experience as is deemed necessary to render them fit,” and no member may be an official or employee of any other federal, state, or local

⁵⁰⁸ *Id.*

⁵⁰⁹ N.J. STAT. ANN. § 30:4-123.47(b)(1) (West Supp. 2004).

⁵¹⁰ *Id.* § 30:4-123.47(c).

⁵¹¹ *Id.*

⁵¹² *Id.* § 30:4-123.48(a).

⁵¹³ N.J. STAT. ANN. § 2A:167-6 (West 1985).

⁵¹⁴ *Id.* § 2A:167-7.

⁵¹⁵ *Id.*

⁵¹⁶ N.M. CONST. art. V, § 6.

⁵¹⁷ N.M. STAT. ANN. § 31-21-17 (Michie 2000).

⁵¹⁸ *Id.* § 31-21-24(A).

⁵¹⁹ *Id.* § 31-21-24(B). Two members are replaced every six years. *Id.*

⁵²⁰ N.M. CONST. art. V, § 5; N.M. STAT. ANN. § 31-21-24(C), (F) (Michie 2000).

government entity.⁵²¹ Members are not salaried but receive a per diem and mileage to cover expenses.⁵²²

The Board has the power to conduct or cause to be conducted investigations, examinations, interviews, hearings, and other proceedings.⁵²³ The Board may also summon witnesses, documents, or tangible things and administer oaths.⁵²⁴

Process

No procedures are specified either by statute or administrative regulation.

New York

Distribution of Powers

The governor has the power to grant reprieves, commutations, and pardons for all offenses except treason and cases of impeachment and subject to conditions and regulations provided by the legislature as to the manner of application.⁵²⁵ The governor must report annually to the legislature each case of clemency granted, including the name of the convict, the crime he or she was convicted of committing, the sentence and its date, and the date of the grant.⁵²⁶ Additionally, the governor in the exercise of his clemency authority has the power to issue a subpoena to compel the attendance of persons before him or an appointed hearing examiner and to compel the production of documents.⁵²⁷ Last, the governor or the person appointed to conduct a hearing may administer oaths.⁵²⁸

Structure of Board

The New York Parole Board must, when requested by the governor, report to him or her the facts, circumstances, criminal records, and social, physical, mental, and psychiatric conditions and histories of inmates under consideration for clemency.⁵²⁹ The Executive Clemency Bureau within the Division of Parole (1) screens candidates for satisfaction of the governor's eligibility requirements; (2) gathers materials concerning clemency applications; and (3) corresponds with applicants.⁵³⁰

⁵²¹ N.M. STAT. ANN. § 31-21-24(D) (Michie 2000).

⁵²² *Id.* § 31-21-24(E).

⁵²³ N.M. STAT. ANN. § 31-21-25(B)(2) (Michie Supp. 2004).

⁵²⁴ *Id.* § 31-21-25(B)(3).

⁵²⁵ N.Y. CONST., art. IV, § 4.

⁵²⁶ *Id.*

⁵²⁷ N.Y. CORRECT. LAW §§ 261, 262 (McKinney 2003).

⁵²⁸ *Id.* § 263 (McKinney 2003).

⁵²⁹ N.Y. EXEC. LAW § 259-c(8) (McKinney Supp. 2005).

⁵³⁰ New York State Parole Handbook, Sec. 9, <http://parole.state.ny.us/INTROparolehandbook.html>.

Process

Pardons are considered only if no other adequate administrative or legal remedy is available in three instances: (1) to set aside a conviction when there is convincing proof of innocence; (2) to relieve a disability imposed as a result of a conviction; or (3) to prevent deportation or permit reentry into the United States.⁵³¹

Commutation in New York serves only to reduce one's minimum period of imprisonment so as to enable the inmate to appear before the Board of Parole for release consideration at an earlier time than would otherwise be permitted by the original sentence.⁵³² The governor considers it the responsibility of the Board of Parole to determine when prisoners are eligible for release and as a matter of policy does not consider for clemency those people who are eligible for parole release.⁵³³ Commutation is available only if (1) the term or minimum period of imprisonment is more than one year; (2) the person has served at least one-half of the minimum period of imprisonment; (3) the person will not become eligible for parole within one year from the date of application; and (4) the person is not eligible for parole in the discretion of the Board of Parole.⁵³⁴

North Carolina

Distribution of Powers

The North Carolina Constitution grants to the governor the sole power to grant reprieves, commutations, and pardons – except in cases of impeachment – subject only to regulations provided by law as to the manner of application for pardons.⁵³⁵ Additionally, in any case in which the governor is authorized by the constitution to grant a pardon, he or she may grant it subject to conditions, restrictions, and limitations considered proper or necessary.⁵³⁶ The governor has the power to determine whether a violation of a conditional pardon has occurred, and, if so, the duty to order the person confined for the remainder of the sentence.⁵³⁷ The North Carolina legislature has created the Post-Release Supervision and Parole Commission, which is given by statute the duty to assist the governor at his or her request in exercising executive clemency authority.⁵³⁸

Structure of Commission

The Post-Release Supervision and Parole Commission consists of three full-time members, appointed to staggered four-year terms by the governor from persons whose recognized ability, training, experience, and character qualify them for service on the Commission.⁵³⁹ The governor

⁵³¹ *Id.*

⁵³² *Id.*

⁵³³ *Id.*

⁵³⁴ *Id.*

⁵³⁵ N.C. CONST. art. III, § 5(6).

⁵³⁶ N.C. GEN. STAT. § 147-23 (2003).

⁵³⁷ *Id.* § 147-24.

⁵³⁸ *Id.* § 143B-266.

⁵³⁹ *Id.* § 143B-267.

has the power to designate the chairman at his pleasure and to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance.⁵⁴⁰ Any matters that come before the Commission are decided by majority vote of the full Commission.⁵⁴¹ The full-time members of the Commission receive the salary fixed by the General Assembly and receive necessary travel and subsistence expenses.⁵⁴²

Process

Pardon

There are three types of pardons in North Carolina. A pardon of forgiveness is granted to those requesting forgiveness of their crimes. It does not expunge or erase a criminal record nor does it restore their right to own or possess a firearm. An unconditional pardon may be granted where it would assist the person to seek employment; it also restores the recipient's right to own and possess a firearm. A pardon of innocence declares an individual innocent of the crime after it has been determined by a court that the individual is not guilty. It allows the recipient to pursue expungement of his or her criminal record. The pardon in and of itself does not expunge or erase a criminal record; expungement is handled by the judiciary.

The North Carolina legislature has mandated that every application for pardon must be made to the governor in writing and signed by the party seeking clemency or by a person on his or her behalf.⁵⁴³ The application must contain the grounds upon which the pardon is sought and must be accompanied by a certified copy of the indictment, the verdict, and judgment in the case.⁵⁴⁴

Once an application is complete, an investigation – coordinated by the Office of Executive Clemency – is conducted, after which the case is presented to the governor for decision. By statute, the Office of Executive Clemency within the governor's office must notify the victim when it is considering granting a pardon.⁵⁴⁵ The victim has a constitutional right to this notice and also the right to be heard by presenting a written statement for consideration by the Office before a pardon is issued.⁵⁴⁶

A person must wait to apply for a pardon until at least five years have passed since he or she was released from state supervision (including probation and parole). The governor, however, has discretion to reduce the waiting period when a specific need can be demonstrated. There exists a three-year waiting period from the date of denial of one application until another application may be made. The governor also has discretion to reduce the waiting period when new or additional information becomes available.

⁵⁴⁰ *Id.*

⁵⁴¹ *Id.*

⁵⁴² *Id.*

⁵⁴³ N.C. GEN. STAT. § 147-21 (2003).

⁵⁴⁴ *Id.*

⁵⁴⁵ *Id.* § 15A-838 (2003).

⁵⁴⁶ N.C. CONST. art. I, § 37(1)(f)-(g); N.C. GEN. STAT. § 15A-838 (2003). Although no time frame is given, the governor's office will give the victim 20 to 30 days from the date the notification is received to present his or her views on the action being considered.

Commutation

A commutation serves to commute the sentence of a presently incarcerated person or to reduce a sentence by a specified amount of time, to make it parole eligible, or to time served. The application for a commutation is the same as for a pardon, except that the governor must be informed of the current legal status of the person's case. Victims of crimes have the right to be notified that commutation is being considered, to be heard, and, if a commutation is granted, to be given notice within 20 days of the decision.⁵⁴⁷ Also to be notified in the event of commutation are the victim's spouse, children, and parents; any other members of the victim's family who request in writing to be notified; and the Chairs of the Joint Legislative Corrections, Crime Control, and Juvenile Justice Oversight Committees.

Ohio

Distribution of Powers

The Ohio Constitution vests the power of executive clemency in the governor subject to such regulations as the legislature places on the application process.⁵⁴⁸ The governor must report to the legislature during every regular session each case of clemency that he or she has granted stating the inmate's name, crime, sentence, date of sentence, date that clemency was granted, and the reasons for the decision.⁵⁴⁹ The legislature has created the Adult Parole Authority, which is charged with administering clemency regulations passed by the legislature.⁵⁵⁰

Structure of Board

The Authority is a division of the Parole and Community Services division of the Department of Rehabilitation and Correction.⁵⁵¹ The Authority is appointed by the Director of the Department and consists of a Chief (Chairman), one or more of the Superintendents of the Field Services Section of the Department, and the chairperson of the Parole Board.⁵⁵² To be appointed Chief of the Authority, a person must be educated or experienced in the fields of correctional work (including law enforcement), probation, parole, law, social work, or a combination of these categories.⁵⁵³

Process

All applications for executive clemency must be made to the Ohio Adult Parole Authority for their investigation and recommendations.⁵⁵⁴ To initiate the application process for executive clemency the inmate, or someone acting on his or her behalf, must request an application from

⁵⁴⁷ N.C. GEN. STAT. § 15A-838, 147-16(b) (2003).

⁵⁴⁸ OHIO CONST. art. III, § 11.

⁵⁴⁹ *Id.*

⁵⁵⁰ OHIO REV. CODE. ANN. § 5149.02 (Anderson 2004).

⁵⁵¹ *Id.*

⁵⁵² *Id.*

⁵⁵³ *Id.*

⁵⁵⁴ OHIO REV. CODE. ANN. § 2967.07 (Anderson 2003).

the Ohio Adult Parole Authority.⁵⁵⁵ The application must be filled out and returned to the Authority, which will subsequently conduct an investigation into the inmate's case, and make recommendations to the governor concerning whether or not clemency should be granted.⁵⁵⁶

During the investigation there are several notification requirements with which the Authority has to comply.⁵⁵⁷ At least 30 days prior to making a recommendation, the Authority must notify the judge of the court where the inmate was indicted, the prosecutor, and the victim's family members if they request to be notified.⁵⁵⁸ The notice to the victim's family members must inform them that they have the right to submit written statements to the Authority concerning the effect that the crime has had upon them, and their recommendations concerning whether or not clemency should be granted.⁵⁵⁹ The Authority must consider the victim's statements before making its final recommendations.⁵⁶⁰ In cases where the death penalty has been imposed, the governor may modify the notice requirements if there is not enough time in which to comply with them.⁵⁶¹

The Authority may require the prosecutor and the judge to supply it with a brief statement of the facts proved at the trial, as well as a recommendation for or against granting clemency.⁵⁶² It should be noted that the governor may grant a reprieve to a person under a sentence of death without complying with the mandatory notification requirements, and may even do so without an application from the inmate.⁵⁶³

Once the Board has conducted its investigation, held hearings (it does not have to hold hearings), and made its recommendations, it must forward those recommendations, along with a brief statement of the facts of the case and the record of its investigation, to the governor for a final decision.⁵⁶⁴

If the inmate has applied for a pardon or commutation, the governor has several options.⁵⁶⁵ He or she may grant the inmate a full pardon or a full commutation, or attach such conditions to either form of clemency as he or she sees fit.⁵⁶⁶ Those conditions must be agreed to by the inmate, who must sign the warrant granting clemency, and the warrant must also be attested to by at least one witness.⁵⁶⁷

⁵⁵⁵ See Ohio Parole Board Application for Executive Clemency Instructions and Guidelines, <http://www.cjpf.org/clemency/OhioApp2.pdf>.

⁵⁵⁶ OHIO REV. CODE. ANN. § 2967.07 (Anderson 2003).

⁵⁵⁷ *Id.* § 2967.12.

⁵⁵⁸ *Id.*

⁵⁵⁹ *Id.*

⁵⁶⁰ *Id.*

⁵⁶¹ *Id.*

⁵⁶² OHIO REV. CODE. ANN. § 2967.03 (Anderson 2003).

⁵⁶³ *Id.* § 2967.08.

⁵⁶⁴ *Id.* § 2967.07.

⁵⁶⁵ *Id.* § 2967.04.

⁵⁶⁶ *Id.*

⁵⁶⁷ *Id.*

If an inmate is released from prison as the result of a pardon, the Authority must notify the prosecutor at least two weeks before the release date.⁵⁶⁸ The notice must contain: (1) the inmate's name; (2) the inmate's release date; (3) the offense for which the inmate was convicted; (4) the inmate's conviction date; (5) the sentence imposed on the inmate; (6) the length of time that the inmate will be under supervision (if applicable); (7) the contact information of the inmate's supervising officer; and (8) the address where the inmate will reside once released.⁵⁶⁹

Oklahoma

Distribution of Powers

The Oklahoma Constitution vests the power of executive clemency in the governor, but mandates that he or she may not grant clemency but upon a recommendation of a majority of the members of the Oklahoma Pardon and Parole Board.⁵⁷⁰ The governor may, however, grant reprieves, which may not extend beyond 60 days without the consent of the Board.⁵⁷¹ The constitution also allows the legislature to impose restrictions and regulations upon the governor's executive clemency power.⁵⁷²

Structure of Board

The Oklahoma Pardon and Parole Board consists of five members, three of which are appointed by the governor. One member is appointed by the Chief Justice of the Oklahoma Supreme Court and the last is appointed by the Presiding Judge of the Oklahoma Criminal Court of Appeals.⁵⁷³ The terms of the members expire at the same time that the governor's term expires, and members are removable only for cause.⁵⁷⁴ The Board, which is authorized to hire professional investigators, must impartially investigate all applications for clemency and make recommendations to the governor of applicants that it deems worthy of clemency.⁵⁷⁵ New members of the Board must go through a 12-hour training course, and must complete a further six hours of training for each year that they remain a member.⁵⁷⁶ The members select from among themselves a chairperson.⁵⁷⁷ By law, Board meetings must be open to the public.⁵⁷⁸

Process

The Pardon and Parole Board meets upon the call of the chairperson to pass upon clemency applications.⁵⁷⁹ The Board must provide all prosecutors around the state with a copy of the list

⁵⁶⁸ *Id.* § 2967.121.

⁵⁶⁹ *Id.*

⁵⁷⁰ OKLA. CONST. art. VI, § 10.

⁵⁷¹ *Id.*

⁵⁷² *Id.*

⁵⁷³ *Id.*

⁵⁷⁴ *Id.*

⁵⁷⁵ OKLA. CONST. art. VI, § 10; OKLA. STAT. ANN. tit. 57, § 332.1 (West 2004).

⁵⁷⁶ OKLA. STAT. ANN. tit. 57, § 332.1A (West 2004).

⁵⁷⁷ *Id.* tit. 57, § 332.4.

⁵⁷⁸ *Id.* tit. 57, § 332.2(G).

⁵⁷⁹ *Id.* tit. 57, § 332.2(A).

of offenders to be considered at the next board meeting at least 20 days in advance, and must similarly notify members of the victim's families, and inform them of their right to testify at the hearing.⁵⁸⁰

At the hearing, the Board Rules specify that time must be set aside for testimony from the prosecutor, the victim's family members, and the inmate or those acting on his behalf.⁵⁸¹ For security purposes, the Board regulates admittance to the hearings, and generally does not allow the inmate and the victim's family to be admitted at the same time.⁵⁸² Victims' family members are able to address the Board at the hearing for a total of five minutes, and no more than two victim's family members per offender are allowed to speak.⁵⁸³ Statements made by the victim's family members at the hearing are not considered confidential, as are most other communications between the victim's family and the Board.⁵⁸⁴ Prosecutors and law enforcement officials are also allowed to address the Board, but if they speak on behalf of the victim's family they are subject to the same time limitations.⁵⁸⁵ Persons speaking on behalf of an inmate are subject to a two-minute time limitation and no more than two people may speak on behalf of a single inmate.⁵⁸⁶ The offender may also be eligible to appear, and there are no limitations imposed on the amount of time that he or she may take in addressing the Board.⁵⁸⁷

The Board must notify both prosecutors and the victim's family members of its recommendations within 20 days of the hearing, and anyone can inquire about the Board's decision sooner than that by telephoning the Board's office.⁵⁸⁸ After 20 days, the recommendations of the Board may be viewed on the Board's website, which is the Board's chosen method of notification.⁵⁸⁹ However, the Board must still send written notification to members of the victim's family if they so request.⁵⁹⁰

If the Board does not approve an inmate's application for clemency, the application is deemed denied, but should the Board approve an inmate's application, it must forward its recommendation, along with the application itself, to the governor within 30 days.⁵⁹¹ The governor then has 90 days to grant or deny clemency, and if no action is taken in that time the application is deemed denied.⁵⁹² If the governor grants clemency, the Board must provide written notification to (1) the sheriff of the county where the inmate was sentenced; (2) the prosecutor of the county where the inmate was sentenced; (3) the chief law enforcement officer of any city or town in the county where the inmate was sentenced, provided that person has requested to be notified; and (4) any member of the victim's family who previously requested to

⁵⁸⁰ OKLA. STAT. ANN. tit. 57, § 332.2(B), (C) (West 2004).

⁵⁸¹ OKLA. ADMIN. CODE § 515:1-7-1(b)-(d) (2004).

⁵⁸² *Id.* § 515:1-7-1(a).

⁵⁸³ *Id.*

⁵⁸⁴ *Id.*

⁵⁸⁵ *Id.*

⁵⁸⁶ *Id.*

⁵⁸⁷ *Id.*

⁵⁸⁸ OKLA. STAT. ANN. tit. 57, § 332.2(D) (West 2004); OKLA. ADMIN. CODE § 515:1-5-2 (2004).

⁵⁸⁹ OKLA. ADMIN. CODE § 515:1-5-2 (2004).

⁵⁹⁰ *Id.*

⁵⁹¹ OKLA. STAT. ANN. tit. 57, § 332.19 (West 2004).

⁵⁹² *Id.*

be notified, provided the Board does not disclose the address of the inmate's new place of residence.⁵⁹³

Anyone submitting information to the Board may assert or substantiate a claim of confidentiality, but if no such claim is made the information will be made available to the public.⁵⁹⁴ However, the following is always considered confidential: (1) victim protest letters; (2) any correspondence from persons exercising their rights under the Oklahoma Constitution; (3) an inmate's criminal history not resulting in convictions; (4) juvenile records; (5) medical records; (6) any references to a Department of Corrections internal investigation; (7) pre-sentence investigations; and (8) any other information deemed confidential by the Board's Executive Director or General Counsel pursuant to Oklahoma law.⁵⁹⁵ All information not considered confidential is made available to the public and can be reproduced at the Board's Office.⁵⁹⁶

One of the interesting features of the clemency process in Oklahoma is that during the Board's monthly business meeting, it sets aside time for public input.⁵⁹⁷ Anyone can have an item placed on the Board's meeting agenda by contacting the Board's office at least seven days prior to the meeting and having the item approved by the chairperson at least three days in advance.⁵⁹⁸ Additionally, at the hearing the chairperson may recognize anyone to speak who is not listed on the Board's agenda.⁵⁹⁹

Oregon

Distribution of Powers

The governor of Oregon has the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and subject to such regulations as the legislature provides.⁶⁰⁰ The governor likewise has the power to remit fines and forfeitures, as regulated by the legislature.⁶⁰¹ He or she must report to the legislature at its next meeting each case of reprieve, commutation, or pardon granted and the reasons for the grant.⁶⁰²

Structure of Board

The Oregon legislature has created the State Board of Parole and Post-Prison Supervision, but it is not given any statutory functions or duties with respect to executive clemency, short of supplying records to the governor.⁶⁰³

⁵⁹³ OKLA. STAT. ANN. tit. 57, § 360(B) (West 2004).

⁵⁹⁴ OKLA. ADMIN. CODE § 515:1-3-2 (2004).

⁵⁹⁵ *Id.*

⁵⁹⁶ *Id.*

⁵⁹⁷ *Id.* § 515:1-7-2.

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ OR. CONST. art. V, § 14; OR. REV. STAT. § 144.649 (2003).

⁶⁰¹ OR. CONST. art. V, § 14.

⁶⁰² *Id.*

⁶⁰³ OR. REV. STAT. § 144.650(1), (3) (2003).

Process

When an application for a pardon, commutation, or remission is made to the governor, a copy of the application, signed by the person applying and stating the grounds of the application, must also be served on: (1) the district attorney of the county of conviction; (2) the district attorney of the county in which he or she is incarcerated; (3) the State Board of Parole and Post-Prison Supervision; and (4) the Director of the Department of Corrections.⁶⁰⁴ Proof of service (by affidavit) must be presented to the governor.⁶⁰⁵ All recipients of the above-described notice must provide to the governor any requested information and records relating to the case and any further information relating to the case that the recipient considers relevant to the clemency application.⁶⁰⁶ Information considered relevant that must be provided includes: (1) statements by the victim of the crime or any member of the victim's immediate family; (2) a statement by the district attorney of the county of conviction; and (3) photos of the victim and the autopsy report, if applicable.⁶⁰⁷

Following receipt by the governor of a clemency application, he or she is prohibited from granting the application for at least 30 days.⁶⁰⁸ After 180 days, if the governor has not granted clemency, the application is deemed denied and any further proceedings for clemency must begin anew, pursuant to further application and notice.⁶⁰⁹

Pennsylvania

Distribution of Powers

In all criminal cases except impeachment, the governor has the power to remit fines and forfeitures and to grant reprieves, commutations of sentences, and pardons.⁶¹⁰ The governor's exercise of his or her power to grant pardons and commutations, however, may be exercised only on the written recommendation of the majority of the Board of Pardons.⁶¹¹ Additionally, if the case is one involving a death sentence or life imprisonment, the governor may not act except on the *unanimous* recommendation of the Board of Pardons and only after a full hearing in open session after public notice.⁶¹²

Structure of Board

The Board of Pardons is composed of the lieutenant governor, who is chairperson, the attorney general, and three members appointed by the governor with the consent of a majority of the Senate.⁶¹³ The three members appointed by the governor must be residents of the state.⁶¹⁴

⁶⁰⁴ OR. REV. STAT. § 144.650(1) (2003).

⁶⁰⁵ *Id.* § 144.650(2).

⁶⁰⁶ *Id.* § 144.650(3).

⁶⁰⁷ *Id.*

⁶⁰⁸ *Id.* § 144.650(4).

⁶⁰⁹ *Id.*

⁶¹⁰ PA. CONST. art. IV, § 9(a).

⁶¹¹ *Id.*

⁶¹² *Id.*

⁶¹³ PA. CONST. art. IV, § 9(b).

Additionally, one must be a crime victim; one a corrections expert; and the third a doctor of medicine, psychiatrist, or psychologist.⁶¹⁵ Terms are for six years.⁶¹⁶ Three members constitute a quorum.⁶¹⁷ The Board's records of its actions are at all times open for public inspection.⁶¹⁸

Process

Applications for clemency are made on forms prescribed by the Board.⁶¹⁹ A fee is required to obtain the form, although it may be waived by the Board upon evidence of indigency.⁶²⁰ An individual must file the original application along with 10 copies with the Secretary of the Board.⁶²¹ If a person is not confined at the time of application, he or she must also furnish five passport type photos.⁶²² With the exception of capital cases, an applicant for executive clemency must pay a filing fee, but this also may be waived upon proof of indigency.⁶²³ In death penalty cases, the application must be filed with the Board within 10 days of the governor's issuance of a death warrant specifying the execution date.⁶²⁴

A copy of each application received is sent to the court, to the district attorney of the county of sentencing, and to the correctional institution in which the applicant is confined for the purpose of obtaining opinions as to the merits of the application.⁶²⁵ Judges and district attorneys have a statutory duty to provide information when the Board so requests.⁶²⁶ An additional copy is sent to the Board of Probation and Parole for an investigation.⁶²⁷

When the reports of the parole Board and the opinions of the trial officials have been received, the Board will review the case, and vote in public as to whether a hearing will be granted.⁶²⁸ For prisoners serving life sentences or sentences for crimes of violence, a majority of the Board is required to vote in favor of the hearing.⁶²⁹ In all other cases, except capital cases, only two votes are required for the applicant to obtain a hearing.⁶³⁰ In capital cases, death-sentenced inmates seeking commutation of their sentence automatically receive a public hearing.⁶³¹

⁶¹⁴ *Id.*

⁶¹⁵ *Id.*

⁶¹⁶ 71 PA. CONS. STAT. ANN. § 113 (West Supp. 2004).

⁶¹⁷ *Id.*

⁶¹⁸ *Id.*

⁶¹⁹ 37 PA. CODE § 81.221 (2004).

⁶²⁰ *Id.*

⁶²¹ *Id.* § 81.222(a). The application is public and remains available for public inspection. *Id.* § 81.227.

⁶²² 37 PA. CODE § 81.222(b) (2004).

⁶²³ *Id.* § 81.225(a), (b).

⁶²⁴ 71 PA. CONS. STAT. ANN. § 299(c) (West Supp. 2004); 37 PA. CODE § 81.231(b) (2004).

⁶²⁵ 37 PA. CODE § 81.226(a) (2004).

⁶²⁶ 71 PA. CONS. STAT. ANN. § 299a (West Supp. 2004).

⁶²⁷ 37 PA. CODE § 81.226(a) (2004).

⁶²⁸ *Id.* § 81.226(b).

⁶²⁹ *Id.* § 81.231(a). "Crimes of violence" include murder of the third degree, voluntary manslaughter, rape, sexual assault, involuntary deviate sexual intercourse, aggravated assault, robbery, kidnapping, attempt to commit any of the previous offenses, or an offense committed while in visible possession of a firearm. 71 PA. CONS. STAT. ANN. § 299(h) (West Supp. 2004); 37 PA. CODE § 81.202 (2004).

⁶³⁰ *Id.*

⁶³¹ 37 PA. CODE § 81.231(b) (2004).

If a public hearing is denied, the application is deemed denied at that time.⁶³² If a public hearing is granted, the Board makes a reasonable effort to notify victims, the Department of Corrections, the Board of Probation and Parole, and “those whose whereabouts are otherwise known.”⁶³³ Victims are notified that they are entitled to offer “prior comment” regarding an application that has been granted a hearing, which may be submitted in writing or presented orally.⁶³⁴ Written communications from the victim with the Board are confidential.⁶³⁵

If a hearing is granted to a person sentenced to death or life or who was convicted of murder, voluntary manslaughter, or an attempt to commit murder or voluntary manslaughter, each member of the Board will interview the applicant before the public hearing.⁶³⁶ If a Board member fails to interview the applicant, that member is prohibited from voting on the application.⁶³⁷ The interview may be conducted either individually or as a group.⁶³⁸ It is a private interview, but it also must be recorded, and “subsequent use” of the interview is left to the Board’s discretion.⁶³⁹ The applicant’s attorney is permitted to be present.⁶⁴⁰

Hearings of the Board are public and audiotaped for preservation purposes.⁶⁴¹ A confined applicant is prohibited from attending the public hearing, but he or she may designate a person to appear on his or her behalf.⁶⁴² If the applicant is not confined at the time of the hearing, he or she must appear unless excused by the Board.⁶⁴³ Applicants may be represented by privately retained counsel or by any person designated by them.⁶⁴⁴ Additionally, confined applicants may request representation from the Department of Corrections.⁶⁴⁵ The attorney for the Commonwealth of Pennsylvania has the right and is encouraged to attend and offer his or her opinion at the hearing.⁶⁴⁶

In noncapital cases, 15 minutes are allowed for the entire presentation in support of an application.⁶⁴⁷ The same amount of time is allotted for the opposition.⁶⁴⁸ In capital cases, however, a maximum of 30 minutes are allowed for each side.⁶⁴⁹ The Board may request or subpoena a witness to appear at the hearing as well.⁶⁵⁰

⁶³² *Id.* § 81.226(b).

⁶³³ *Id.* § 81.226(c). Aside from this personal notice, the Board must also publish a general notice at least one week before the hearing in a newspaper of general circulation in the county where the offenses were committed. 37 PA. CODE § 81.233 (2004).

⁶³⁴ 71 PA. CONS. STAT. ANN. § 299(d) (West Supp. 2004); 37 PA. CODE § 81.226(d) (2004).

⁶³⁵ *Id.*

⁶³⁶ 71 PA. CONS. STAT. ANN. § 299(e) (West Supp. 2004); 37 PA. CODE § 81.232(a) (2004).

⁶³⁷ 37 PA. CODE § 81.232(b) (2004).

⁶³⁸ *Id.* § 81.232(c).

⁶³⁹ *Id.*

⁶⁴⁰ *Id.*

⁶⁴¹ *Id.* § 81.263.

⁶⁴² *Id.* § 81.281.

⁶⁴³ *Id.*

⁶⁴⁴ *Id.* § 81.282.

⁶⁴⁵ *Id.*

⁶⁴⁶ 37 PA. CODE § 81.283 (2004).

⁶⁴⁷ *Id.* § 81.292(a).

⁶⁴⁸ *Id.*

⁶⁴⁹ *Id.* § 81.292(b).

⁶⁵⁰ *Id.* § 81.293.

The application must be approved by the Board at a public hearing by a majority vote.⁶⁵¹ An application for commutation of a death or life imprisonment sentence must be approved by the Board at a public hearing by a unanimous vote.⁶⁵²

If a recommendation for commutation is granted to a person sentenced to death or life or who was convicted of murder, voluntary manslaughter, or an attempt to commit murder or voluntary manslaughter, the recommendation to the governor must include a requirement that the individual serve at least one year in a “prerelease center” before he or she is released on parole.⁶⁵³ Recommendations for commutations are always conditional, in that the person must not commit any probation or parole violations or any new criminal offenses.⁶⁵⁴ Recommendations for pardons may be made conditional in the same manner.⁶⁵⁵

Last, a request for reconsideration of any decision may be made to the Board.⁶⁵⁶ The applicant must show a change of circumstances to warrant reconsideration.⁶⁵⁷ The request is taken up at the next public hearing upon a public motion by any Board member.⁶⁵⁸ A majority vote is required to grant reconsideration.⁶⁵⁹

South Carolina

Distribution of Powers

South Carolina divides clemency power between the governor and the Probation, Parole, and Pardon Services Board. By constitution, the governor has the sole power to grant reprieves and to commute a death sentence to a sentence of life in prison.⁶⁶⁰ The granting of all other clemency, however, is left to be provided for by law.⁶⁶¹ By statute, the legislature has given the power to grant clemency in all other cases solely to the Probation, Parole, and Pardon Services Board.⁶⁶² The Board also considers all petitions for reprieves and commutations of death sentences referred to it by the governor for recommendation.⁶⁶³ In those cases, its recommendation is not binding on the governor, but if the governor does not follow the recommendation, he or she must provide reasons for not doing so.⁶⁶⁴ For those cases that fall within the governor’s clemency authority, he or she is not obligated to refer them to the Board for recommendation.⁶⁶⁵

⁶⁵¹ 37 PA. CODE § 81.301(a) (2004).

⁶⁵² *Id.*

⁶⁵³ 71 PA. CONS. STAT. ANN. § 299(f) (West Supp. 2004); 37 PA. CODE § 81.301(b) (2004).

⁶⁵⁴ 71 PA. CONS. STAT. ANN. § 299(g) (West Supp. 2004); 37 PA. CODE § 81.301(c), (e) (2004).

⁶⁵⁵ 37 PA. CODE § 81.301(d) (2004).

⁶⁵⁶ *Id.* § 81.271(a).

⁶⁵⁷ *Id.*

⁶⁵⁸ *Id.* § 81.271(b).

⁶⁵⁹ *Id.*

⁶⁶⁰ S.C. CONST. art. IV, § 14.

⁶⁶¹ *Id.*

⁶⁶² S.C. CODE ANN. § 24-21-920 (Law. Co-op. 1989).

⁶⁶³ S.C. CODE ANN. § 24-21-910 (Law Co-op. Supp. 2004).

⁶⁶⁴ *Id.*

⁶⁶⁵ *Id.*

Structure of Board

The Board of Probation, Parole, and Pardon Services is located within the Department of Probation, Parole, and Pardon Services. The Board itself has seven members, appointed by the governor with the consent of the Senate, who each serve a six-year term.⁶⁶⁶ Six of the seven members are appointed from each of the congressional districts, with one member appointed at large.⁶⁶⁷ A chairperson is elected annually by a majority of the Board.⁶⁶⁸ Members are not salaried but are compensated per diem.⁶⁶⁹ Board members are subject to removal by the governor only for malfeasance, misfeasance, incompetency, absenteeism, conflicts of interest, misconduct, persistent neglect of duty in office, or incapacity.⁶⁷⁰

Process

In South Carolina, a pardon means that the individual is fully pardoned from all legal consequences of his crime and conviction, both direct and collateral.⁶⁷¹ By statute, each pardon application must be accompanied with a pardon application fee of 50 dollars, which is applied towards the “pardon process.”⁶⁷² An additional restriction on pardon eligibility is that the offender must have paid in full any restitution ordered by the court.⁶⁷³

The legislature has established criteria that, when satisfied, require the Board to consider the application for pardon. A request for pardon must be considered by the Board when the applicant has either completed probation, been discharged from confinement without parole, or has successfully completed parole or at least five years of parole.⁶⁷⁴ Those who are incarcerated at the time of application are eligible only when evidence of “extraordinary circumstances” is produced.⁶⁷⁵ Additionally, the victim of a crime or a member of a convicted person’s family living within the state may petition for a pardon for anybody who has completed supervision or has been discharged from a sentence.⁶⁷⁶

To obtain a pardon from the Board, the applicant must write to the Department of Probation, Parole and Pardon Services for an application. The application has three components: (1) written letters of reference; (2) information from the applicant; and (3) the application fee. After the individual submits the application, it is investigated by agents of the Department in the county where the offense was committed.⁶⁷⁷ When the investigation is completed, the case is turned over to the Board for a hearing.

⁶⁶⁶ S.C. CODE ANN. § 24-21-10(B), (C) (Law Co-op. Supp. 2004).

⁶⁶⁷ *Id.* § 24-21-10(B).

⁶⁶⁸ *Id.*

⁶⁶⁹ *Id.* § 24-21-12.

⁶⁷⁰ S.C. CODE ANN. § 24-21-11 (Law Co-op. Supp. 2004); *Id.* § 1-3-240 (Law Co-op. Supp. 2003).

⁶⁷¹ S.C. CODE ANN. § 24-21-940 (Law Co-op. 1989).

⁶⁷² S.C. CODE ANN. § 24-21-960(A) (Law Co-op. Supp. 2004).

⁶⁷³ S.C. CODE ANN. § 17-25-322(E) (Law Co-op. Supp. 2003).

⁶⁷⁴ S.C. CODE ANN. § 24-21-950(A)(1)-(3) (Law Co-op. Supp. 2004).

⁶⁷⁵ *Id.* § 24-21-950(A)(4).

⁶⁷⁶ *Id.* § 24-21-950(A)(5).

⁶⁷⁷ See State of South Carolina Department of Probation, Parole, and Pardon Services Pardon Application Package, <http://www.dppps.sc.gov/index.html>.

The Board must hold hearings during which it is statutorily obligated to permit arguments and appearances by counsel or any individual before it.⁶⁷⁸ An applicant has no right of confrontation, however.⁶⁷⁹ The chairperson may direct that hearings be conducted by three member panels, and a unanimous decision of such a panel constitutes a decision by the Board.⁶⁸⁰ A panel that is not unanimous does not constitute an act of the Board, and the matter is referred to the entire Board for determination.⁶⁸¹ The vote of the majority of the Board usually constitutes the Board's decision.⁶⁸² However, the legislature has provided that an order of pardon must be signed by two-thirds of the members of the Board.⁶⁸³

No written law, regulations, or guidelines exist with respect to commutations of sentences.

South Dakota

Distribution of Powers

The South Dakota Constitution gives the governor the power to grant pardons, commutations, and reprieves, except in cases of treason and impeachment, and to suspend and remit fines and forfeitures.⁶⁸⁴ The governor may, however, by executive order delegate to the Board of Pardons and Paroles the authority to hear applications for clemency, and to make its recommendations to him or her.⁶⁸⁵ The governor is never, however, bound to follow any recommendation returned by the Board.⁶⁸⁶

Structure of Board

The Board of Pardons and Paroles consists of nine members.⁶⁸⁷ The governor, the attorney general, and the Supreme Court appoint three members each.⁶⁸⁸ For each set of three, at least one appointee must be an attorney, for a minimum of three attorneys on the Board.⁶⁸⁹ Each member of the Board must be a resident of South Dakota and is appointed only with the advice and consent of the Senate.⁶⁹⁰ Members serve four-year terms and are eligible for reappointment.⁶⁹¹ The chairperson is selected by the Board.⁶⁹² A majority of the Board is required for a quorum.⁶⁹³

⁶⁷⁸ S.C. CODE ANN. § 24-21-50 (Law Co-op. Supp. 2004).

⁶⁷⁹ *Id.*

⁶⁸⁰ *Id.* § 24-21-30(A).

⁶⁸¹ *Id.*

⁶⁸² *Id.*

⁶⁸³ *Id.* § 24-21-930.

⁶⁸⁴ S.D. CONST. art. IV, § 3.

⁶⁸⁵ S.D. CODIFIED LAWS § 24-14-1 (Michie 1998).

⁶⁸⁶ *Id.* § 24-14-5.

⁶⁸⁷ S.D. CODIFIED LAWS § 24-13-1 (Michie Supp. 2003).

⁶⁸⁸ *Id.*

⁶⁸⁹ *Id.*

⁶⁹⁰ *Id.*

⁶⁹¹ *Id.* § 24-13-2.

⁶⁹² S.D. CODIFIED LAWS § 24-13-4 (Michie 1998).

⁶⁹³ *Id.* § 24-13-4.1.

The Board is administered under the direction and supervision of the Department of Corrections but retains “the quasi-judicial, quasi-legislative, advisory, and other non-administrative functions otherwise vested in it,” and exercises those functions independently of the Department of Corrections.⁶⁹⁴ Board members are compensated pursuant to statute for attending meetings and for their expenses.⁶⁹⁵

Process

Before filing an application for clemency, an individual must serve notice on the state’s attorney who prosecuted the individual or his or her successor at least 30 days before the application is filed with the Board.⁶⁹⁶ Additionally, the applicant must publish notice once a week for three consecutive weeks in one of the official newspapers of the county where the offense was committed.⁶⁹⁷ The notice must include the person’s name, the offense, the date of conviction, and the term of imprisonment.⁶⁹⁸ An affidavit of publication must accompany the application.⁶⁹⁹

Applications for clemency are on a form provided by the Board of Pardons and Paroles. It must be accompanied by a written statement, signed by the applicant, setting forth a “reasonable and realistic” recommendation the Board may make to the governor.⁷⁰⁰ The statement may include any plea the individual wishes to make in support of his or her application.⁷⁰¹ The application, notices, and any supporting papers must be filed at least 30 days before the Board’s regular meeting at which the hearing on the application is to be held.⁷⁰²

After the application is received, the Board itself then gives notice to the prosecuting attorney, the presiding judge at trial, and the sheriff of the county where the conviction occurred.⁷⁰³ Additionally, upon scheduling a clemency hearing, the Board must notify the victim.⁷⁰⁴ The executive director of the Board obtains a copy of the applicant’s prison record.⁷⁰⁵

A hearing is held on all applications.⁷⁰⁶ Verbal arguments and petitions before the Board in support of or opposing any application for clemency are considered, and written statements that may have a bearing on the case are accepted.⁷⁰⁷ When considering an application, the Board has established a set of non-exhaustive criteria, which includes:

⁶⁹⁴ S.D. CODIFIED LAWS § 24-13-3 (Michie 1998).

⁶⁹⁵ *Id.* § 24-13-5.

⁶⁹⁶ S.D. ADMIN. R. 17:60:05:03 (2004).

⁶⁹⁷ S.D. CODIFIED LAWS § 24-14-4 (Michie Supp. 2003).

⁶⁹⁸ *Id.*

⁶⁹⁹ *Id.*

⁷⁰⁰ S.D. ADMIN. R. 17:60:05:01 (2004).

⁷⁰¹ *Id.*

⁷⁰² *Id.* 17:60:05:08.

⁷⁰³ *Id.* 17:60:05:06.

⁷⁰⁴ S.D. CODIFIED LAWS § 24-14-4.1 (Michie Supp. 2003).

⁷⁰⁵ S.D. ADMIN. R. 17:60:05:07 (2004).

⁷⁰⁶ *Id.* 17:60:05:06, :08.

⁷⁰⁷ S.D. CODIFIED LAWS § 24-14-6 (Michie 1998); S.D. ADMIN. R. 17:60:01:06 (2004).

- (1) Substantial evidence indicates that the sentence is excessive or constitutes a miscarriage of justice;
- (2) The applicant's innocence of the crime for which he was convicted has been proven by clear and convincing evidence;
- (3) The applicant has shown remarkable rehabilitation;
- (4) Substantial evidence indicates that the Board should be in a position at the earliest possible time to deal with the applicant as a parolee under supervision;
- (5) Review of the applicant's personal and family history; his or her attitude, character, capabilities and habits; the nature and circumstances of the offense; and the effect the inmate's release will have on the victims of his crime and the community indicates that he or she has carried the stigma of the crime for a long enough period to justify its removal;
- (6) The applicant wishes to pursue a professional career from which society can benefit, but a felony conviction prevents it; and
- (7) The applicant's age and medical status is such that it is in the best interest of society that the inmate be released.⁷⁰⁸

A favorable recommendation of clemency must be made by a majority of the Board.⁷⁰⁹ When the Board recommends clemency, a record is made of the findings, which must include the reasons for the recommendation.⁷¹⁰ The record is furnished to the governor, along with the Board's recommendation.⁷¹¹ If the application is denied, the Board will not reconsider or rehear the matter.⁷¹²

Tennessee

Distribution of Powers

Tennessee vests the power of executive clemency in the governor.⁷¹³ The governor has the power to grant reprieves and pardons after conviction, except in cases of impeachment.⁷¹⁴ The legislature has given the Tennessee Board of Probation and Parole the duty, upon the request of the governor, to consider and to make nonbinding recommendations concerning all requests for pardons, reprieves, or commutations.⁷¹⁵

Structure of Board

The Tennessee Board of Probation and Parole is composed of seven members who are appointed by the governor and who are autonomous.⁷¹⁶ All members serve six-year terms and are eligible

⁷⁰⁸ S.D. ADMIN. R. 17:60:05:12 (2004).

⁷⁰⁹ S.D. CODIFIED LAWS § 24-13-4.6 (Michie 1998).

⁷¹⁰ S.D. CODIFIED LAWS § 24-14-7 (Michie 1998); S.D. ADMIN. R. 17:60:05:09 (2004).

⁷¹¹ *Id.*

⁷¹² S.D. ADMIN. R. 17:60:05:10 (2004).

⁷¹³ TENN. CONST. art. III, § 6.

⁷¹⁴ *Id.*

⁷¹⁵ TENN. CODE ANN. § 40-28-104(a)(10) (2003).

⁷¹⁶ *Id.* § 40-28-103(a).

for reappointment.⁷¹⁷ In considering persons for appointment, governor is to give preference to candidates with training, education, or experience in the criminal justice system, law, medicine, education, social work, or the behavioral sciences.⁷¹⁸ No member of the board may hold any other salaried public office or engage in any other paid business or profession.⁷¹⁹ The governor appoints one member of the board to serve as its chair for a term of two years.⁷²⁰ All votes of the Board are by public ballot or public roll call.⁷²¹ A majority of the Board constitutes a quorum.⁷²²

The governor or the attorney general and reporter may seek the removal of a member of the Board only for knowing or willful misconduct in office, for knowing or willful neglect, for failure to perform any duty, or for the conviction of any felony offense.⁷²³ Removal is conducted according to formal and general procedures provided by law.

The Board has discretion to make either favorable or unfavorable recommendations based upon its application of guidelines and criteria adopted by the governor.⁷²⁴ The Board also has the authority upon request of the governor to issue warrants authorizing the arrest and return to their former places of incarceration of persons who are reasonably believed to have violated the conditions of their grants of executive clemency.⁷²⁵ Also charged to the Board is the duty, when requested by the governor, to collect records, make investigations, and report to the governor the facts, circumstances, criminal records, and the social, physical, mental, and psychiatric conditions and histories of prisoners under consideration for clemency.⁷²⁶ The Board does possess the power to administer oaths and to issue subpoenas to compel the attendance of witnesses and the production of documents.⁷²⁷

Process

Upon receipt of a request for an inmate for executive clemency consideration, the Board responds by sending to the individual making the request an executive clemency application with a cover letter explaining the application procedure.⁷²⁸ The person for whom clemency is requested must apply directly to the board.⁷²⁹

An application for pardon must be accompanied by information and evidence sufficient to enable the Board to determine whether the applicant is entitled to consideration for a pardon under the governor's guidelines.⁷³⁰ The Board reviews the application and supporting information and

⁷¹⁷ *Id.* § 40-28-103(b).

⁷¹⁸ *Id.* § 40-28-103(c).

⁷¹⁹ *Id.*

⁷²⁰ TENN. CODE ANN. § 40-28-103(e) (2003).

⁷²¹ *Id.* § 40-28-105(b).

⁷²² *Id.* § 40-28-105(d)(1).

⁷²³ *Id.* § 40-28-105(f).

⁷²⁴ *Id.* § 40-28-104(a)(10).

⁷²⁵ TENN. CODE ANN. § 40-28-104(a)(13) (2003).

⁷²⁶ *Id.* § 40-28-106(c).

⁷²⁷ *Id.* § 40-28-106(a)(1), (2).

⁷²⁸ TENN. COMP. R. & REGS. 1100-1-1-.15(1)(a)(1) (2004).

⁷²⁹ *Id.* 1100-1-1-.15(1)(a)(2).

⁷³⁰ *Id.* 1100-1-1-.15(1)(b)(1).

determines whether the application should be scheduled for a hearing.⁷³¹ If the applicant is determined not to be eligible for consideration, he or she will be advised of this and of the reasons he or she is not eligible for consideration.⁷³²

For commutation requests, the Board reviews the application and any supporting information to determine whether the applicant falls within the governor's guidelines and the Board's screening factors and hence whether the applicant should be scheduled for a hearing.⁷³³ If the application does not fall within the governor's criteria, the inmate is advised as to the reasons he or she is ineligible for consideration and will not be scheduled for a hearing.⁷³⁴

After the application is received, the individual is advised as to whether the case is to be scheduled for a hearing and the date, time and place of any such hearing.⁷³⁵ Hearings are held promptly following the notice to the applicant, unless they are continued at the request of the applicant or pending receipt by the board of essential information.⁷³⁶ The notice to the applicant explains that he or she is entitled to appear at the hearing and to present witnesses and other evidence on his or her behalf.⁷³⁷ The notice also includes a description of the type of evidence considered by the Board.⁷³⁸ Notice of the hearing is also sent to the appropriate judge and district attorney general.⁷³⁹ The notice to the judge and district attorney provides that the Board solicits their views and recommendations concerning clemency for the applicant.⁷⁴⁰

For consideration at the hearing, the Board's staff may compile the following information on the applicant:

- (1) a reclassification/ parole summary completed by the institutional staff, if the applicant is an inmate;
- (2) information about the facts and circumstances surrounding the offense and conviction. Such information is obtained through investigation conducted by a parole officer or other individual designated by the board;
- (3) a psychiatric/psychological evaluation if the applicant is an individual convicted of a sexual offense or sex related crime;
- (4) information about medical, mental, and family problems obtained through investigation by a parole officer or other individual designated by the board, if appropriate; and
- (5) the application, original request, and supporting evidence, and any correspondence in the board's file concerning the application.⁷⁴¹

⁷³¹ *Id.* 1100-1-1-.15(1)(b)(2).

⁷³² *Id.* 1100-1-1-.15(1)(b)(3).

⁷³³ TENN. COMP. R. & REGS. 1100-1-1-.15(1)(c)(1) (2004).

⁷³⁴ *Id.* 1100-1-1-.15(1)(c)(2).

⁷³⁵ *Id.* 1100-1-1-.15(1)(d)(1).

⁷³⁶ *Id.*

⁷³⁷ *Id.*

⁷³⁸ *Id.*

⁷³⁹ TENN. CODE ANN. § 40-28-126(b) (2003); TENN. COMP. R. & REGS. 1100-1-1-.15(1)(d)(2) (2004).

⁷⁴⁰ *Id.*

⁷⁴¹ TENN. COMP. R. & REGS. 1100-1-1-.15(1)(d)(3) (2004).

Additional information is obtained if the applicant is requesting a pardon, including: (1) information obtained for FBI and local records checks; (2) information regarding recent social history and reputation in the community; and (3) information verifying reasons for the pardon request.⁷⁴² It should be noted that although the Board's staff obtains the above information in order that clemency hearings not be completely *ex parte* in nature, the burden remains on the applicant to establish that he or she is entitled to clemency.⁷⁴³

At a clemency hearing, the Board considers the following factors:

- (1) the nature and severity of the crime;
- (2) the applicant's institutional record;
- (3) the applicant's previous criminal record;
- (4) the views of the trial judge and the district attorney general who prosecuted the case;
- (5) the sentences, ages, and comparative degree of guilt of co-defendants or others involved in the applicant's offense;
- (6) the applicant's circumstances if returned to the community;
- (7) any mitigating circumstances surrounding the offense;
- (8) the views of the community, victims of the crime or their families, institutional staff, parole officers, or other interested parties; and
- (9) medical and psychiatric evaluation when applicable.⁷⁴⁴

The Board informs the applicant of its recommendation at the end of the hearing or in its discretion will take the case under advisement.⁷⁴⁵ When the decision has been made, the chairperson designates one member of the board to write a report to the governor concerning the case.⁷⁴⁶ This report must include: (1) a statement of the reasons for the recommendation; (2) the complete file; (3) the views of the various members of the board, if the recommendation is not unanimous; and (4) the specifics of the recommendation—whether it is a positive or negative one and if a positive recommendation, any terms and conditions recommended by the Board.⁷⁴⁷

After the Board's clemency recommendation, it must forward to the appropriate standing committees of the legislature a written list of the names of all persons receiving favorable and unfavorable recommendations for executive clemency along with the reasons for the recommendations.⁷⁴⁸

In reviewing the Board's recommendation, the governor will give serious consideration to commutation of sentence requests where the petition has demonstrated by clear and convincing evidence that the petitioner has made exceptional strides in self-development and self-

⁷⁴² *Id.* 1100-1-1-.15(1)(d)(4).

⁷⁴³ *Id.* 1100-1-1-.15(1)(d)(5).

⁷⁴⁴ *Id.* 1100-1-1-.15(1)(d)(6).

⁷⁴⁵ *Id.* 1100-1-1-.15(1)(d)(7).

⁷⁴⁶ TENN. COMP. R. & REGS. 1100-1-1-.15(1)(d)(8) (2004).

⁷⁴⁷ *Id.*

⁷⁴⁸ TENN. CODE ANN. § 40-28-107(b) (2003); TENN. COMP. R. & REGS. 1100-1-1-.15(1)(f) (2004).

improvement, and would be a law abiding citizen.⁷⁴⁹ Additionally, one of three of the following conditions must be satisfied:

- (1) The inmate is suffering from a life-threatening illness or has a severe chronic disability, evidence of such illness or disability is documented, and the relief requested would mitigate the illness;
- (2) The inmate's parent, spouse, or child has a life-threatening illness, evidence of the illness is documented, and the petitioner is the only person able to assist in the care of the relative; or
- (3) The inmate has been rehabilitated; is no longer a threat to society; has demonstrated, to the extent his age and health permit, a desire and an ability to maintain gainful employment; and fairness supports the petitioner's application.⁷⁵⁰

Tennessee has a unique form of clemency called "exoneration." After consideration of any newly discovered evidence in a particular case, the governor may grant exoneration to any person who he or she finds did not commit the crime for which the person was convicted.⁷⁵¹ No person may apply for nor may the governor grant exoneration, however, until the person has exhausted all possible state judicial remedies.⁷⁵² Exoneration is as a matter of law unconditional and automatically expunges all records of the person's arrest, indictment, and conviction, and restores all rights of citizenship.⁷⁵³

Texas

Distribution of Powers

The Constitution of the State of Texas mandates that the legislature establish a Board of Pardons and Paroles.⁷⁵⁴ It vests in the governor the power to grant reprieves, commutations of punishment, and pardons, but only upon a written and signed recommendation of a majority of the Board.⁷⁵⁵ The governor may, however, grant one reprieve in a capital case, not to exceed 30 days in length, even without the recommendation of the Board.⁷⁵⁶

Structure of Board

The Texas Board of Pardons and Paroles consists of seven members that are appointed by the governor with the advice and consent of the Senate.⁷⁵⁷ To be eligible, Board members must be

⁷⁴⁹ Application for Commutation, State of Tennessee Board of Probation and Parole, <http://www.cjpf.org/clemency/Tennessee.html>.

⁷⁵⁰ *Id.*

⁷⁵¹ TENN. CODE ANN. § 40-27-109(a) (2003).

⁷⁵² *Id.*

⁷⁵³ *Id.* § 40-27-109(b).

⁷⁵⁴ TEX. CONST. art. IV, § 11(a).

⁷⁵⁵ TEX. CONST. art. IV, § 11(b).

⁷⁵⁶ *Id.*

⁷⁵⁷ TEX. GOV'T CODE ANN. § 508.031(a) (Vernon 2004). In 2003, legislation effective January 2004 reduced the Board from 18 members to seven. At the same time, the legislature authorized the Board to hire "parole commissioners" to hear and decide parole matters in three-member panels that must include at least one Board member. The eleven people who were Board members at the time the legislation became effective but were not

representative of the general public and must have resided in Texas for the previous two years before appointment.⁷⁵⁸ Additionally, a former employee of the Texas Department of Criminal Justice may not serve on the Board until two years have passed since his or her employment was terminated, and no more than three Board members may be former employees of the Department at any given time.⁷⁵⁹ Several provisions also disqualify a person from Board membership based upon conflicts of interest.⁷⁶⁰

Each Board member must undergo some basic training as to the role of the Board and the laws that govern it.⁷⁶¹ One member of the Board is designated by the governor to serve as the Presiding Officer, and this person serves as the administrative head of the Board, delegating authorities and responsibilities, appointing advisory committees, and establishing administrative policies and procedures.⁷⁶²

Board members serve terms of six years, and the terms are staggered so that one-third of them expire every two years.⁷⁶³ Members are full-time employees and draw a salary as provided by the legislature.⁷⁶⁴ The governor may remove one of his or her own appointees at any time and for any reason.⁷⁶⁵ However, members appointed by former governors may be removed only for cause. Grounds for removal for cause are: (1) statutory ineligibility for membership; (2) inability to discharge duties for a substantial part of the term because of illness or disability; and (3) failure to attend half of the regularly scheduled Board or panel meetings during a calendar year.⁷⁶⁶

The Board has the power to issue subpoenas and administer oaths.⁷⁶⁷ By statute, the Board is not required to meet as a body to perform the members' duties in clemency matters.⁷⁶⁸

Process

Reprieve From A Death Sentence

A reprieve is defined by the Board as a temporary release from the terms of an imposed sentence.⁷⁶⁹ As discussed above, the governor is authorized to grant one reprieve not to exceed

appointed in 2004 were employed as "parole commissioners." Because three-member panels have always voted on parole decisions, this structural change in the Board has not affected parole considerations, as the 18 people making parole decisions now are the same as those who made them before the change. Clemency decisions, however, are voted on by the entire Board and not by panels. Thus, rather than 18 votes, clemency matters are now decided by only seven.

⁷⁵⁸ TEX. GOV'T CODE ANN. § 508.032(a), (b) (Vernon 2004).

⁷⁵⁹ *Id.* § 508.032(c), (d).

⁷⁶⁰ *Id.* § 508.033.

⁷⁶¹ *Id.* § 508.0362.

⁷⁶² *Id.* § 508.035.

⁷⁶³ TEX. GOV'T CODE ANN. § 508.037(a), (b) (Vernon 2004).

⁷⁶⁴ *Id.* § 508.039.

⁷⁶⁵ *Id.* § 508.037(c).

⁷⁶⁶ *Id.* § 508.034(a).

⁷⁶⁷ *Id.* § 508.048(b).

⁷⁶⁸ *Id.* § 508.047(b).

⁷⁶⁹ 37 TEX. ADMIN. CODE § 141.111 (West 2004).

30 days. However, upon the recommendation of the Board, the governor is always authorized to grant a reprieve (even if he or she has already granted one to the inmate), and for as long as the Board recommends.⁷⁷⁰

Once a death warrant has been issued for an inmate's life, that inmate may apply for a reprieve from the governor. An application written by, or on behalf of, an inmate must contain (1) the name of the inmate and his or her attorneys or other representatives; (2) certified copies of the indictment, judgment, verdict of the jury, and sentence, including a document verifying the scheduled execution date; (3) a brief statement of the offense for which the inmate was sentenced to death; (4) a brief history of all appellate proceedings pertinent to the case including any current proceedings; (5) a brief statement of all legal issues that have been raised during the judicial proceedings; (6) the length of time the inmate requests for a reprieve (must be in increments of 30 days); (7) all grounds upon which the reprieve is requested, as long as the grounds do not ask the Board to decide technical questions of law that are better decided by a court; and (8) a brief statement of the effect that the inmate's crime has had upon the family members of the victim.⁷⁷¹

An application for a reprieve must be delivered to the Board of Pardons and Paroles no later than 21 days before the scheduled execution date of the inmate.⁷⁷² If an inmate wishes to submit any supplemental materials to his application, that information must be submitted to the Board no later than 15 days before the scheduled execution date.⁷⁷³

An inmate may request an interview in his or her application or any supplementary filing.⁷⁷⁴ If requested, the interview is conducted at the prison by a member of the Board designated by the presiding officer.⁷⁷⁵ Only the inmate, the designated Board member, and TDCJ staff may attend the interview, and the Board may consider statements by the inmate when considering his or her application.⁷⁷⁶

After the Board has received the application and conducted the interview, it may recommend by majority vote that the governor either grant the inmate a reprieve from execution, or refuse to do so.⁷⁷⁷ The Board does not have to meet to do either.⁷⁷⁸ Alternatively, it may schedule a hearing on the request for a reprieve, at which it must allow the attendance of and presentation of information by any trial officials who wish to do so.⁷⁷⁹ It must also notify a representative of the victim's family (who has previously requested to be notified), and allow that family member to attend the hearing or submit written comments pertaining to the case.⁷⁸⁰ Additionally, advocates for and against the death penalty, generally, and members of the general public may submit

⁷⁷⁰ *Id.* § 143.41(c).

⁷⁷¹ *Id.* § 143.42.

⁷⁷² *Id.* § 143.43(a).

⁷⁷³ *Id.* § 143.43(c).

⁷⁷⁴ *Id.* § 143.43(d).

⁷⁷⁵ *Id.* § 143.43(e).

⁷⁷⁶ *Id.*

⁷⁷⁷ *Id.* § 143.43(f)(1)-(2).

⁷⁷⁸ TEX GOV'T CODE § 508.047(b) (Vernon 2004).

⁷⁷⁹ 37 TEX. ADMIN. CODE § 143.43(f)(3), (g) (West 2004).

⁷⁸⁰ *Id.* § 143.43(g).

written information for the Board’s consideration at its central office headquarters at any reasonable time.⁷⁸¹

If a hearing is held, it is open to the public, except those portions of the hearing that discuss confidential matters.⁷⁸² The Board’s decision, made at the conclusion of the hearing by majority vote, must be made and announced in an open meeting.⁷⁸³

If the Board recommends that a reprieve be granted, the governor does not have to act upon that recommendation.

Pardon

A full pardon is defined by the Board as an unconditional act of clemency that serves to release the grantee from the conditions of his or her sentence and from any disabilities imposed by law thereby.⁷⁸⁴ A full pardon does not, however, declare a person innocent of the crimes committed nor does it truly absolve an offender of the legal consequences of his or her crime, such as registering as a sex offender.⁷⁸⁵ Only a special pardon—a full pardon on the grounds of innocence—declares a person innocent of the crime and provides for complete freedom from legal implications of the conviction.

The Texas Board of Pardons and Paroles will not consider a request for a full pardon from an inmate who is currently in prison, unless “exceptional circumstances” exist.⁷⁸⁶ With respect to pardons on the grounds of innocence, the Board will not consider an application unless it has the unanimous written recommendation of the current trial officials in the county of conviction and affidavits of witnesses upon which the recommendation of innocence is based.⁷⁸⁷ Additionally, if the basis for the recommendation is evidence that was not previously available, the Board requires a certified order or judgment of a court having jurisdiction accompanied with a certified copy of the findings of fact.⁷⁸⁸ These requirements are not statutory requirements, but are administrative rules, enacted by the Board pursuant to its rulemaking authority.

If the Board recommends that a pardon be granted, the governor is not obligated to act on that recommendation.

⁷⁸¹ *Id.* § 143.43(i).

⁷⁸² *Id.* § 143.43(h). According to the rule, a matter is confidential if deemed to be so by statute.

⁷⁸³ *Id.* § 143.43(h), (j).

⁷⁸⁴ *Id.* § 141.111(20).

⁷⁸⁵ *See* TEX CODE CRIM. PROC. art. 62.11(b)(2) (Vernon Supp. 2004-2005); *See also, Taylor v. State*, 612 S.W.2d 566 (Tex. Crim. App. 1981), in which the Court held that a full pardon would not “wipe the slate clean” in terms of probation eligibility.

⁷⁸⁶ 37 TEX. ADMIN. CODE § 143.6 (West 2004).

⁷⁸⁷ *Id.* § 143.2(1)-(2).

⁷⁸⁸ *Id.* § 143.2(3).

Commutation of a Death Sentence to Life in Prison

A commutation of sentence is defined by Texas statute as “an act of clemency by the governor which serves to modify the conditions of a sentence.”⁷⁸⁹

The Texas Board of Pardons and Paroles will consider a recommendation of commutation at the written request of the inmate,⁷⁹⁰ the governor,⁷⁹¹ or a majority of the trial officials of the court of conviction.

The procedure followed by the Board upon receipt of a valid request is identical to that followed by the Board when considering a request for a reprieve.

Commutation of Sentence in Non-Death Penalty Cases

The Board considers applications for commutation of sentence in non-death penalty cases only when accompanied by the written recommendation of a majority of the trial officials.⁷⁹² In their recommendation, the trial officials must state that the penalty now appears excessive and must suggest a definite term that would be more just.⁷⁹³ Finally, the recommendation must provide reasons based on facts directly related to the case that existed at the time of trial but were unknown to the court and jury.⁷⁹⁴ Alternatively, the reasons may be based on a statutory change in penalty for the offense that renders the original penalty excessive.⁷⁹⁵ Like the rules governing consideration for pardons based on innocence, these rules are not provided by statute but by administrative regulation.

Utah

Distribution of Powers

The Utah State Constitution creates a Board of Pardon and Parole, which has the power by majority vote to commute punishments and grant pardons subject to regulations provided by the legislature.⁷⁹⁶ Although the governor may grant respites or reprieves, any such grants may not extend beyond the next session of the Board, which will then consider whether to extend the reprieve or to grant a commutation or pardon.⁷⁹⁷

Structure of Board

⁷⁸⁹ *Id.* § 141.111(8).

⁷⁹⁰ *Id.* § 143.57(a).

⁷⁹¹ 37 TEX. ADMIN. CODE § 143.58 (West 2004).

⁷⁹² *Id.* § 143.52 (a).

⁷⁹³ *Id.* § 143.52 (d).

⁷⁹⁴ *Id.*

⁷⁹⁵ *Id.*

⁷⁹⁶ UTAH CONST. art. VII, §12(1), (2)(a).

⁷⁹⁷ UTAH CONST. art. VII, §12(3)(a).

By constitution, Board members are to be appointed by the governor with the consent of the Senate.⁷⁹⁸ The Board has five full-time members and five pro tempore members.⁷⁹⁹ Full-time members are paid salaries determined by the governor from a range specified by the legislature, and pro tempore members are paid on a per diem basis when they fill in for full-time Board members.⁸⁰⁰

The Commission on Criminal and Juvenile Justice recommends five applicants to the governor for appointment to the Board of Pardons and Parole unless the governor is appointing a sitting board member to a new term in office.⁸⁰¹ All members serve a term of five years, though the expiration of terms is staggered.⁸⁰² The governor selects a chairperson who in turn selects a vice chairperson.⁸⁰³ In addition, the Board must appoint a mental health adviser whose responsibilities include preparing reports and recommendations on all persons adjudicated as “guilty and mentally ill.”⁸⁰⁴ Any member of the Board may be removed by the governor only for inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.⁸⁰⁵

A majority of the Board constitutes a quorum, and action taken by a majority of the Board constitutes an action of the Board.⁸⁰⁶ Additionally, any investigation, inquiry, or hearing that the Board has authority to undertake may be conducted by any Board member alone or an examiner appointed by the Board for that purpose.⁸⁰⁷ When approved and confirmed by the Board, actions taken by the appointee are considered to be the action of the Board.⁸⁰⁸ The Board is empowered to issue subpoenas to compel the attendance of witnesses and the production of evidence, to administer oaths, and to take testimony for the purpose of any investigation.⁸⁰⁹

Process

A commutation or pardon may be granted only after a full hearing before the Board.⁸¹⁰

Commutations for Death Penalty Cases

The Board of Pardons and Parole may consider the commutation of a death sentence only to life without parole.⁸¹¹ Only the applicant himself or herself, or the applicant’s attorney, may apply.⁸¹² The petition must be in writing, signed personally by the person sentenced to death,

⁷⁹⁸ UTAH CONST. art. VII, §12(1).

⁷⁹⁹ UTAH CODE ANN. § 77-27-2(1) (2003).

⁸⁰⁰ *Id.* § 77-27-2(1), (2).

⁸⁰¹ *Id.* § 77-27-2(3)(a).

⁸⁰² *Id.* § 77-27-2(2)(a).

⁸⁰³ *Id.* § 77-27-4.

⁸⁰⁴ *Id.* § 77-27-2(4)(a).

⁸⁰⁵ UTAH CODE ANN. § 77-27-2(2)(c) (2003).

⁸⁰⁶ *Id.* § 77-27-2(2)(e).

⁸⁰⁷ *Id.* § 77-27-2(2)(f).

⁸⁰⁸ *Id.*

⁸⁰⁹ *Id.* § 77-27-9(3).

⁸¹⁰ *Id.* § 77-27-5(1)(d).

⁸¹¹ UTAH CODE ANN. § 77-27-5.5(1), -9(e) (2003).

⁸¹² *Id.* § 77-27-5.5(2).

and must include the grounds upon which the applicant seeks review; the State must be given the opportunity to respond to the petition in writing.⁸¹³ The Board reviews the petition and determines whether it presents a substantial issue that has not been reviewed in the judicial process; without such an issue the board must deny a hearing to the petitioner.⁸¹⁴ The Board may not consider legal issues that (1) have been reviewed by judicial courts; (2) should have been raised during the judicial process; or (3) are subject to judicial review, if based on new information or evidence.⁸¹⁵ If a substantial issue is found, the Board must conduct a hearing in which the petitioner and the state present evidence and arguments.⁸¹⁶

There are separate procedures for those inmates sentenced to death before April 27, 1992, and those inmates sentenced to death after or on that date.⁸¹⁷ In short, the limitations on the authority of the Board to consider the legal issues outlined above do not apply to those convicted before April 27, 1992.⁸¹⁸

In cases of inmates sentenced to death before April 27, 1992, the inmate must file his petition no later than seven days after the sentencing court has signed a warrant setting an execution date.⁸¹⁹ In cases of inmates sentenced to death after April 26, 1992, the inmate must file his petition no later than 23 days before the scheduled execution date.⁸²⁰ Regardless of the sentencing date, if an execution is stayed for any reason before the hearing has commenced, the commutation proceedings terminate.⁸²¹ If, however, an execution is stayed after a hearing has already begun, the hearings continue and a decision is rendered.⁸²²

In all cases, the petition must include copies of all written evidence the petitioner intends to present along with the names and summary of anticipated testimony of all witnesses he or she intends to call.⁸²³

If the petitioner was sentenced before April 27, 1992, the petition should also include a statement of reasons why the petitioner believes the sentence of death should be commuted.⁸²⁴ This statement, along with the above, is all that is required in the petition of such an inmate.

For petitioners sentenced after April 26, 1992, the application must include not only a statement of reasons the petitioner believes the sentence of death is not appropriate, but also whether any of the proffered reasons have been reviewed in the judicial process.⁸²⁵ If the petition involves new information, the inmate must provide a statement explaining why it should be considered new

⁸¹³ *Id.* § 77-27-5.5(3), (4).

⁸¹⁴ *Id.* § 77-27-5.5(5), (7)(a).

⁸¹⁵ UTAH CODE ANN. § 77-27-5.5(6) (2003).

⁸¹⁶ *Id.* § 77-27-5.5(7)(b).

⁸¹⁷ UTAH ADMIN CODE 671-312-2, -3 (2004).

⁸¹⁸ *Id.* 671-312-1.

⁸¹⁹ *Id.* 671-312-2(1).

⁸²⁰ *Id.* 671-312-3(1).

⁸²¹ *Id.* 671-312-3(1), -2(1).

⁸²² *Id.*

⁸²³ UTAH ADMIN CODE 671-312-2(2)(c), -3(2)(g) (2004).

⁸²⁴ *Id.* 671-312-2(2)(b).

⁸²⁵ *Id.* 671-312-3(2)(c).

and why it was not, nor currently is, subject to judicial review.⁸²⁶ If legal or constitutional reasons are claimed, the applicant must provide a statement explaining why the Board is not statutorily prohibited from considering it.⁸²⁷ If the Board believes it cannot hear the petition because it is based on legal or constitutional issues, it denies the petition a hearing due to lack of a substantial issue.⁸²⁸

In any case, if the petitioner has already had a commutation hearing, the petition must also include a statement explaining what, if any, new and significant information exists that justifies another hearing.⁸²⁹ A copy of the petition must be sent to the attorney representing the State.⁸³⁰

After the petition has been filed, the process is substantially the same for all petitioners, regardless of the date of sentencing. The State has seven days to respond, and must provide to the Board and petitioner copies of all written evidence, names of witnesses, and a summary of their anticipated testimony.⁸³¹ The Board can request additional information from either side.⁸³² The day after receiving the State's response, the Board holds a pre-trial conference to limit the number of witnesses that each side will call and clarify the issues.⁸³³

The hearing itself is not adversarial and cross-examination is not allowed by either side.⁸³⁴ The Board itself may ask questions freely of any witness, the inmate, the inmate's representative, and the state's representative.⁸³⁵ The representative of the State is limited to rebutting the petitioner's claim and assisting the Board in determining all facts relevant to the inquiry and petitioner's claims.⁸³⁶ All witnesses are under oath, and the Board may impose a time limit on each side for presenting its case.⁸³⁷

The Board reconvenes in open session to announce and distribute its written decision.⁸³⁸

The Board has not promulgated regulations regarding commutation procedures in non-death penalty cases.

Pardons

The Board may pardon or commute the sentence of any offender who was confined for a felony or class A misdemeanor, but only after a full hearing in open session.⁸³⁹ However, a person sentenced to life without parole may not be pardoned unless the Board finds by clear and

⁸²⁶ *Id.* 671-312-3(2)(d).

⁸²⁷ *Id.* 671-312-3(2)(e).

⁸²⁸ *Id.* 671-312-3(3).

⁸²⁹ UTAH ADMIN CODE 671-312-2(3), -3(2)(f) (2004).

⁸³⁰ *Id.* 671-312-2(1), -3(1).

⁸³¹ *Id.* 671-312-2(5), -3(6).

⁸³² *Id.*

⁸³³ *Id.* 671-312-2(6), -3(7).

⁸³⁴ UTAH ADMIN CODE 671-312-2(7), -3(8) (2004).

⁸³⁵ *Id.*

⁸³⁶ *Id.*

⁸³⁷ *Id.* 671-312-2(8), -3(9).

⁸³⁸ *Id.* 671-312-2(9), -3(10).

⁸³⁹ UTAH CODE ANN. § 77-27-9(1)(a), (c) (2003).

convincing evidence that the person is permanently incapable of being a threat to the safety of society.⁸⁴⁰

The Board only considers for pardon those whose sentence has been terminated or expired for five years and who have exhausted all judicial remedies including expungement.⁸⁴¹ After verifying that the individual meets these criteria, the Board may initiate an investigation of the petitioner that may include criminal, personal, and employment history.⁸⁴² After considering an application, the Board may deny a petition by majority vote without a hearing.⁸⁴³ If the Board decides to consider granting a pardon, however, a hearing will be scheduled and notice will be given to the victim, the chief law enforcement officer of the arresting agency, the presiding judge of the court of conviction, and the county, district, or city attorney where the case was prosecuted.⁸⁴⁴ A conditional or unconditional pardon may be granted, and the petitioner is notified in writing of the results.⁸⁴⁵

Decisions of the board in cases involving pardons and commutations are final and are not subject to judicial review.⁸⁴⁶

Virginia

Distribution of Powers

The Constitution of the State of Virginia vests in the governor the sole power to grant reprieves and pardons after conviction and to commute capital punishment, except when the prosecution has been carried on by the House of Delegates.⁸⁴⁷ The Virginia legislature has authorized the Parole Board, at the request of the governor, to investigate and report to him or her on cases in which executive clemency is sought.⁸⁴⁸ Additionally, the Board may investigate and report to the governor with its recommendations on any other case in which it believes action by the governor is proper or in the best interest of the public.⁸⁴⁹ Recommendations are not binding on the governor in any way. The Board, at the governor's request for conditional pardon and after violation of those conditions, is empowered to re-incarcerate the once-pardoned individual.⁸⁵⁰

Structure of Board

The Virginia Parole Board consists of up to five members appointed by the governor subject to confirmation by the General Assembly.⁸⁵¹ At least one member of the Board must be a

⁸⁴⁰ UTAH CODE ANN. § 77-27-9(2)(d), -9(6) (2003).

⁸⁴¹ UTAH ADMIN CODE 671-315-1 (2004).

⁸⁴² *Id.*

⁸⁴³ *Id.*

⁸⁴⁴ *Id.*

⁸⁴⁵ *Id.*

⁸⁴⁶ UTAH CODE ANN. § 77-27-5(3) (2003).

⁸⁴⁷ VA. CONST. art. V, § 12.

⁸⁴⁸ VA. CODE ANN. § 53.1-136(5) (Michie Supp. 2004); *Id.* § 53.1-231 (Michie 2002).

⁸⁴⁹ *Id.*

⁸⁵⁰ VA. CODE ANN. § 53.1-136 (Michie Supp. 2004).

⁸⁵¹ VA. CODE ANN. § 53.1-134 (Michie 2002).

representative of a crime victims' organization or a victim of crime.⁸⁵² Board members have no limitation on the amount of time they can serve, and instead serve at the pleasure of the governor.⁸⁵³

The governor designates one member of the Board as the chairperson, who is considered a full-time state employee.⁸⁵⁴ No more than two other members may be designated by the governor as full-time employees.⁸⁵⁵ All other members are part-time employees.⁸⁵⁶

Process

Executive clemency is handled through the Secretary of the Commonwealth who has established the processes and procedures. Although there does not appear to be any formal application process for commutation of sentences, the Secretary has established a procedure for applications for pardons, of which there are three types: (1) absolute pardon (predicated on belief that inmate is innocent and serves as basis for record expungement); (2) conditional pardon (operates as a kind of parole whereby presently incarcerated inmates can secure their release from confinement under conditions the violation of which may result in re-incarceration); and (3) simple pardon (official forgiveness but does not serve to expunge records).⁸⁵⁷

To apply for a pardon, an individual must send a letter to the governor containing (1) reasons for the request; (2) name; (3) date of birth; (4) Social Security number; (5) current address; (6) the crime the inmate has been convicted of; (7) the date and court of conviction; (8) sentence or other disposition of conviction; and (9) location of incarceration.⁸⁵⁸

Once the application is received, the request is reviewed to determine if it warrants investigation by the Virginia Parole Board.⁸⁵⁹ If so, an investigation is requested and the governor's office then proceeds based on the Board's recommendation.⁸⁶⁰ If a petition for clemency is denied, the petitioner has no right of appeal, but may reapply after a two-year period.⁸⁶¹

Washington

Distribution of Powers

The pardoning power is vested in the governor but limited by the regulations and restrictions passed by the legislature.⁸⁶² The governor must report to the legislature at each session each case

⁸⁵² VA. CODE ANN. § 53.1-134 (Michie 2002); *Id.* § 19.2-11.01 (Michie 2004).

⁸⁵³ VA. CODE ANN. § 53.1-134 (Michie 2002).

⁸⁵⁴ *Id.* § 53.1-135 (Michie 2002).

⁸⁵⁵ *Id.*

⁸⁵⁶ *Id.*

⁸⁵⁷ Clemency Pardon Letter from the Secretary of the Commonwealth, <http://www.commonwealth.virginia.gov/Clemency/clemency.cfm>; *see also* VA. CODE ANN. § 19.2-392.2 (Michie 2004).

⁸⁵⁸ Clemency Pardon Letter from the Secretary of the Commonwealth.

⁸⁵⁹ *Id.*

⁸⁶⁰ *Id.*

⁸⁶¹ *Id.*

⁸⁶² WASH. CONST. art. III, sec. 9.

of reprieve, commutation, or pardon granted and the reasons for granting them.⁸⁶³ The Washington State Clemency and Pardons Board is charged with receiving petitions from individuals, organizations, and the department of corrections for commutation of sentences and pardoning of offenders in extraordinary cases, and to make commutation and pardon recommendations to the governor.⁸⁶⁴ These recommendations, however, are not binding on the governor.⁸⁶⁵

Structure of Board

The Washington State Clemency and Pardons Board is housed within the office of the governor and consists of five members serving staggered four-year terms appointed by the governor and confirmed by the senate.⁸⁶⁶ Board members elect their own chairperson and are uncompensated except for travel reimbursement.⁸⁶⁷

Process

The Board receives petitions for executive clemency.⁸⁶⁸ Prior to recommending clemency on behalf of a person, the Board must hold a public hearing on the petition wherein the prosecuting attorney is given 30 days notice along with a copy of the petition.⁸⁶⁹ The prosecuting attorney, in turn, is to notify victims, survivors of victims, witnesses, and the law enforcement agency or agencies that conducted the investigation about the hearing.⁸⁷⁰ The Board must consider the statements given by those so notified in whatever form.⁸⁷¹

The Board itself does not publish any rules and regulations it follows in making clemency recommendations. According to the Criminal Justice Policy Foundation, the Board's review committee reviews applications for clemency and determines which petitions will be heard by the full Board.⁸⁷² The Board reviews only those cases referred to it by the review committee.⁸⁷³

Wyoming

Distribution of Powers

The governor has the power to grant reprieves, commutations, and pardons for all offenses except treason and cases of impeachment; however, the legislature may by law regulate the

⁸⁶³ WASH. CONST. art. III, sec. 11.

⁸⁶⁴ WASH. REV. CODE ANN. § 9.94A.885(1) (West 2003).

⁸⁶⁵ WASH. REV. CODE ANN. § 10.01.120 (West 2002).

⁸⁶⁶ WASH. REV. CODE ANN. § 9.94A.880(1), (2) (West 2003). It should be noted that the Indeterminate Sentence Review Board is also authorized to "pass on the representations made in support of applications for pardons for convicted persons and make recommendations thereon to the governor," but only when requested to do so by the governor. *Id.* § 9.95.260(1).

⁸⁶⁷ *Id.* § 9.94A.880(3), (4).

⁸⁶⁸ *Id.* § 9.94A.885(1).

⁸⁶⁹ *Id.* § 9.94A.885(3).

⁸⁷⁰ *Id.*

⁸⁷¹ *Id.*

⁸⁷² See <http://www.cjpf.org/clemency/Washington.html>

⁸⁷³ *Id.*

manner in which pardons, commutations, and reprieves may be applied for.⁸⁷⁴ At each regular session, the governor must communicate to the legislature who was granted executive clemency, and the reasons for the grant.⁸⁷⁵ The Wyoming Constitution grants the legislature the power to create a penalty of life in prison without parole for a class of crimes over which the governor has no commutation power.⁸⁷⁶ The legislature has used this constitutional grant and created a class of crimes punishable by life in prison without parole over which the governor has no commutation power.⁸⁷⁷ The legislature may also limit commutations of death sentences to life in prison without parole, which cannot in turn be commuted any further.⁸⁷⁸ However, the power of the governor to issue pardons is not so limited.⁸⁷⁹ Although the Wyoming Board of Parole makes recommendations for commutations, the governor is not bound by any recommendation and retains the sole authority to grant or deny pardons, reprieves, and commutations subject to the substantive limitations imposed by the legislature.

Structure of Board

The Wyoming legislature has created the Wyoming Board of Parole. The Board is composed of seven members appointed for six-year terms by the governor with the advice and consent of the state senate, with no more than four members being of the same political party.⁸⁸⁰ Board members serve at the pleasure of the governor.⁸⁸¹ The members elect their own chairperson.⁸⁸² Board members receive a salary equivalent to that of Wyoming's legislators.⁸⁸³ The Board's role in executive clemency decisions is limited to recommending prisoners for commutations of sentence.⁸⁸⁴ Although three members constitute a hearing panel empowered to make parole decisions, fewer than three are empowered to make decisions regarding the recommendation of commutation to the governor.⁸⁸⁵ A decision of a panel constitutes a decision of the Board.⁸⁸⁶

Process

Wyoming's legislature regulates the manner in which applications for pardons and reprieves are made. Applications for pardons and reprieves are sent to the governor.⁸⁸⁷ In the case of pardons, the governor must notify the district attorney of the county in which the applicant was indicted or informed against at least three weeks before governor considers the application.⁸⁸⁸ Within 10 days after receiving the notice, the district attorney must forward to the governor a statement setting forth the time of the trial and conviction, the date and term of the sentence, the crime of

⁸⁷⁴ WYO. CONST. art. 4, sec. 5.

⁸⁷⁵ *Id.*

⁸⁷⁶ WYO. CONST. art. 3, sec. 53.

⁸⁷⁷ WYO. STAT. ANN. § 6-10-301(a), (c) (Michie 2003).

⁸⁷⁸ *Id.*

⁸⁷⁹ *Id.*

⁸⁸⁰ *Id.* § 7-13-401(b).

⁸⁸¹ WYO. STAT. ANN. § 7-13-401(b) (Michie 2003); *Id.* § 9-1-202(a).

⁸⁸² *Id.* § 7-13-401(c).

⁸⁸³ *Id.* § 7-13-401(d).

⁸⁸⁴ *Id.* § 7-13-401(f).

⁸⁸⁵ *Id.*

⁸⁸⁶ *Id.*

⁸⁸⁷ *Id.* § 7-13-801, -804.

⁸⁸⁸ *Id.* § 7-13-804.

which the person was convicted, and any circumstances in aggravation or extenuation that appeared in the trial and sentencing of the applicant.⁸⁸⁹

The Parole Board does not maintain any current regulations regarding procedures or substantive criteria for making commutation recommendations to the governor. Nor are there any available procedures and criteria used by the governor in making clemency decisions.

⁸⁸⁹ WYO. STAT. ANN. § 7-13-805 (Michie 2003).