



STATE OF WASHINGTON
OFFICE OF THE GOVERNOR

Washington State Clemency & Pardons Board Policy Manual

Revised and Adopted 03/09/2018

I. OVERVIEW OF THE CLEMENCY & PARDONS PROCESS

The Washington State Constitution, Article III, Section 9, provides the Governor the authority to grant pardons, as does RCW 10.01.120 and RCW 9.94A.728(6). In addition, the Governor may grant an extraordinary release from incarceration under RCW 9.94A.728(4). The Clemency and Pardons Board (Board) has been established within the Office of the Governor pursuant to RCW 9.94A.880 and RCW 9.94A.885. The Board receives Petitions from individuals, the Department of Corrections, and organizations for commutation of sentences and pardons of offenders' convictions, and makes recommendations on those Petitions to the Governor. RCW 9.94A.885(1). The Governor makes the final decision in all cases heard by the Board.

The Board is also authorized to grant a petition to restore the right to engage in political office, if lost by operation of state law as a result of federal or out-of-state felony convictions. RCW 9.94A.885(2). However, since most people's right to vote would be restored by operation of law, and the right to engage in political office is ordinarily restored upon registration to vote, it would be unnecessary for the Board to take any action to restore the right to engage in political office. The Board is not aware of other circumstances in which the right to engage in political office is lost as a result of convictions for federal offenses or out-of-state felonies. However, a person who believes a petition for a certificate of restoration limited to engaging in political office is necessary due to unique circumstances, may explain the circumstances, request a copy of Petition for Restoration form, and the Board would consider the request.

The Board consists of five members appointed by the Governor, subject to confirmation by the Senate. RCW 9.94A.880(1). Members of the Board serve terms of four years or until their successors are appointed. RCW 9.94A.880(2). The Board elects a chairperson and a vice-chairperson from among its members. Members of the Board conduct hearings on a quarterly basis, or as needed, to review Petitions requiring Board consideration. Hearings are usually scheduled for the second Friday of the month in March, June, September and December.

This document describes the Board's policies and general procedures for receiving and considering Petitions from interested parties. Any procedure may be waived at the discretion of the Board if the particular circumstances warrant it. These policies are intended for guidance only and do not create, alter, or amend a right or benefit, substantive or procedural, for any individual or organization.

II. PETITION FOR PARDON OR COMMUTATION

The Board generally reviews and hears petitions for pardon or commutation only in cases in which judicial remedies for the conviction have been concluded to a final decision. This generally means that a Petition will not be heard until all direct appeals have been exhausted or until the time within which to appeal has expired. In most cases, absent unique or emergency circumstances, the Board will not consider a Petition until at least 10 years have passed from the date of conviction. Absent unique or emergency circumstances, the Governor will not consider a request for pardon or commutation unless a Petition has been submitted to the Board.

In addition, the Board ordinarily does not hear new Petitions from the same individual on the same matter until three years have elapsed from the date of the previous hearing. The Board may make exceptions where the circumstances are exceptional or where there is new information not previously considered by the Board.

A. Form of Petition

The Board has implemented the efficiency of a paperless process by transitioning to providing and receiving Board related materials in electronic format. If Petitioners have access to a computer and the internet, they may obtain a Petition form and review instructions by visiting the Board's website at <http://www.governor.wa.gov/clemency/default.asp>. Petitioners may also contact the Board's staff by email at CPBoard@atg.wa.gov. If Petitioners **do not** have access to a computer and the internet, they may continue to communicate via telephone at (360) 586-0047 or via the United States Mail by addressing correspondence to the:

Washington State Clemency and Pardons Board
c/o Jennifer E. Rhéaume
Office of the Attorney General
PO Box 40116
Olympia, Washington 98504-0116

It is important that the Petitioner provide as much detailed information as possible in response to the questions on the Petition form. If a petitioner is submitting a Petition for Commutation, the petitioner is required to obtain a certified copy of his/her infraction history from DOC and include a copy with the initial submission of the Petition. [In addition, a Petitioner who wishes to have his or her medical records reviewed must sign a medical records release that complies with the applicable health care records and confidentiality laws and rules allowing the Governor, the Board, the Attorney General's Office (AGO), and the AGO's staff permission to review the Petitioner's medical history. This is particularly necessary for a petition for extraordinary release from incarceration under RCW 9.94A.728(4). In other cases, other waivers or releases may be requested. The appropriate waiver form is included in the Petition packet.]

If represented by counsel, a copy of the Petition and all written materials submitted in support or opposed to a Petition, must be supplied to the prosecuting attorney's office at the same time it is supplied to the Board, consistent with deadlines set by the Board for receipt of submissions.

B. Consideration of Petitions

In determining what recommendation to make to the Governor, the Board focuses on the existence or non-existence of "extraordinary" circumstances, pursuant to RCW 9.94A.728(4) and RCW 9.94A.885(1). The Petitioner should demonstrate why his or her circumstances are extraordinary and warrant the exercise of the Governor's discretionary pardon power.

Washington law does not define "extraordinary" circumstances, and there is no limitation on the factors the Board may consider in making its recommendation to the Governor. Petitioners should submit to the Board information and supporting documentation related to any factors that

demonstrate that the circumstances are extraordinary and warrant relief. Petitioners should fully consider and explain how their circumstances differ from similarly situated individuals. Examples of factors that Petitioners have presented include the following:

- The seriousness of the offense;
- The impact on the victims;
- Whether there is a significant and documented need for clemency;
- Acceptance of responsibility, remorse, and atonement;
- Personal development and positive life changes since the offense occurred;
- The offender's criminal history and other relevant background;
- Whether the individual has complied with all obligations imposed by the court;
- The amount of time elapsed since the offense occurred; and
- The risk or benefit to the community.

The Board will also consider all written materials submitted in support or opposed to a Petition, consistent with deadlines set by the Board for receipt of submissions. The Board expects that everyone who submits a letter of recommendation in support of a Petitioner is aware of the specific criminal conviction and some of the related facts, and, of Petitioner's specific request for clemency. It is Petitioners' obligation to ensure that their references are so informed.

III. REVIEW & HEARING PROCESS FOR PETITIONS FOR PARDON OR COMMUTATION

A. Preliminary Review Committee

Each petition is reviewed by the Preliminary Review Committee consisting of two Board Members on a rotational basis. The Preliminary Review Committee considers whether the Petition may demonstrate the existence of extraordinary circumstances and warrant a hearing. On the vote of one member of the Preliminary Review Committee, the Petition will be scheduled for a hearing before the full Board. After review, the Petitioner receives notice of the decision of the Preliminary Review Committee.

B. Notice to Interested Parties

The following parties receive notice from the Board of Petitions for Pardon or Commutation:

- Indeterminate Sentencing Review Board (ISRB): If the ISRB determines that a Petitioner is within its jurisdiction, it provides a case analysis to the Board.
- Department of Corrections (DOC): Initially, the DOC provides the Board with the Petitioner's criminal history and a Legal Face Sheet if the Petitioner is currently an inmate. If the Petition is scheduled for a hearing, the DOC provides a case analysis for cases not under the jurisdiction of the ISRB.
- Prosecuting Attorney: The prosecuting attorney's office then complies with its responsibilities under RCW 9.94A.885(3), which include notifying victims and survivors of victims so that they may participate in the hearing. United States Attorney's Office: Receives notice in appropriate cases of Petitions set for hearing.

Also, the Petitioner receives notification prior to the hearing of the date, time, and location of the hearing.

The law requires the prosecuting attorney of the county where the conviction was obtained to be notified at least thirty days prior to the scheduled hearing that a petition has been filed and the date and place at which the hearing on the petition will be held. The Board may waive the thirty-day notice requirement in cases where it determines that waiver is necessary to permit timely action on the petition. *In cases in which a death sentence is affirmed and a death warrant has been issued pursuant to RCW 10.95.160, a petition should be filed in time to allow a minimum twenty-day notice to the prosecuting attorney, who in turn provides notice to the survivors of victims.*

C. Hearing Process

The Board considers the Petitions at regularly scheduled quarterly hearings. The hearings are open to the public. A court reporter will attend and transcribe all hearings. In addition to the petitions selected by the Preliminary Review Committee for hearing, the Governor, Chairperson or a majority of the Board may call a Special Hearing on a petition, in accordance with the Bylaws. At the hearing, the Board hears oral statements, deliberates, and makes a final decision concerning whether to recommend to the Governor that petitions be granted.

1. General Introduction

At the opening of each hearing, the Chairperson introduces each member of the Board, the Board staff, legal counsel, and representatives from the DOC and ISRB. The Chairperson also provides a brief overview of the hearing process.

The order in which Petitions are heard is determined by the Board and Staff. The order of Petitions on the Board's Agenda is generally as follows:

- (1) Petitions for Pardon or Commutation involving Petitioners who are incarcerated and who will appear by telephone or Skype; and,
- (2) All other Petitions for Pardon or Commutation.

2. Oral Presentations and Consideration of Facts

The Petitioner, his or her representative, witnesses, the prosecutor or the U.S. Attorney and other interested persons may address the Board. If the Petitioner is incarcerated, he or she may arrange to make a statement by telephone or Skype. Pursuant to RCW 7.69 and 9.94A.885, victims and survivors of victims have the right to present statements in person, via audio or videotape, or other electronic means, or in writing, at any hearing on a Petition for Pardon or Commutation.

In an effort to gauge how much time is needed for each case, the Petitioner or his or her representative, are required to provide the Board with a list of speakers two weeks prior to the scheduled hearing. The Board may limit the length of time and the number of individuals who may address the Board, other than as required by law.

Among the areas of consideration, the Board may inquire into the underlying facts of the convictions, because doing so may assist in understanding the issues presented in the Petition. However, the hearing is not a forum to retry the conviction. A rare exception may be made if the law provides no judicial recourse for consideration by the courts of newly discovered and incontrovertible proof of actual innocence.

3. Board Deliberations and Recommendation

At the end of the oral presentations, the Board deliberates and reaches a determination. The Board may recommend that the Governor deny the petition or grant the petition with or without conditions. Deliberations on the recommendation occur in the public hearing. Each member will vote and may explain his or her reasons for the recommendation. Petitioners and interested parties should not interrupt the deliberations process, but may answer any additional questions that the Board raises during its deliberations.

After the Board has reached a decision, the Chairperson announces it and closes the Board's record on the Petition. The recommendation is submitted to the Governor, who is not bound to follow the Board's recommendation or take any action on the Petition.

4. Consideration of Late Submissions

Prior to the scheduled hearing on a Petition, the Board reviews all documents submitted in favor and opposing the Petition. Additional submissions concerning a Petition set for hearing will not be accepted or considered by the Board if received after 5:00 p.m. on the Monday preceding the scheduled hearing on a Petition.

5. Requests for Continuances

By Petitioner:

The Board's Quarterly Hearings are set in advance and posted on the Board's website, as well as filed with the Code Reviser. Submission deadlines are also posted on the Board's website for purposes of determining when a Petition will most likely be set for hearing before the full Board if selected. By submitting a Petition, the Board expects that the Petitioner will be ready and able to move forward with the hearing on any one of the dates set forth in the Notice of Quarterly Hearings. At the time of submitting a Petition, the Petitioner may make a specific written request that his/her hearing, if selected, not be set on a specific Quarterly Hearing date.

Hearings before the Board are scheduled on a space available basis. Continuances are not favored and will not be routinely granted. Absent significant extenuating circumstances, once a Petition is selected for hearing before the full Board, the Board will not agree to continue the hearing of a Petition to a different Quarterly Hearing date. If a continuance is sought, a written request must be submitted. If a request for continuance is denied by the Board, the Petitioner has the option of withdrawing his/her Petition from the Board's Agenda and reapplying at a future time or going forward with the hearing as scheduled.

By Prosecutor and/or Victims, survivors of victims, and witnesses of crime:

In recognition of the severe and detrimental impact of crime on victims, survivors of victims, and witnesses of crime, a thoughtful recommendation on a petition for clemency is dependent upon input from the victims and survivors of victims of crimes. It is the intent of the Board to ensure that all victims and survivors of victims of crimes are afforded a meaningful role in the clemency process.

It is also the intent of the Board to ensure that the prosecuting attorney who obtained the conviction and the law enforcement agency that conducted the investigation are afforded a meaningful role in the clemency process.

A request for a continuance by the prosecutor, the law enforcement agency that conducted the investigation, or the victims, survivors of victims and witnesses of the crime will be granted by the Board, if good cause is shown, to the next scheduled Quarterly Hearing date. Any subsequent request for a continuance will be considered on a case by case basis.

IV. ANNUAL CALENDAR FOR PROCESSING PETITIONS

Board hearings are scheduled quarterly in the months of March, June, September and December, generally on the second Friday of the month.

V. BOARD MEMBER’S IMPARTIALITY

In order to maintain a clemency and pardons system that openly and objectively evaluates petitions before recommendations are made to the Governor, a Board member will not discuss a petition pending before the Board, or a matter anticipated to be presented to the Board, with anyone outside of the quarterly hearings. Please do not contact a member of the Board about a petition.

Board members shall be impartial and make their recommendations solely on the record presented to them through the process established by the Board. Board members are required to disclose any real or perceived conflicts of interest or *ex parte* communication and shall disclose any such conflicts or communications on the record at the hearing. For purposes of this section, the term “*ex parte*” shall mean where, without notice, one or more interested parties is not present to participate in the communication.

After disclosing a real or perceived conflict or *ex parte* communication, a Board member may either choose to recuse him/herself or may choose to continue in the proceeding if the Board member believes he or she can exercise his or her statutory duty in a fair, impartial, and objective manner. Such recusal is an act taken by a Board member of his or her own volition.

VI. DISCRETIONARY POWERS OF THE BOARD

Nothing in these policies is intended or should be construed to limit the Board’s statutory authority to consider, hear, or make a recommendation to the Governor to grant or deny a Petition for pardon, commutation or restoration of rights.

VII. AMENDMENTS TO THE POLICIES

By majority vote, with a quorum present, the Board may adopt, amend, or repeal these policies at anytime it deems appropriate. Minor clerical changes may be made at the direction of the Chairperson without a vote of the Board.

CERTIFICATION OF ADOPTION

The undersigned Chairperson of the Washington State Clemency and Pardons Board certifies that the above policies, were adopted by the Board members and that the same do now constitute the policies of the Clemency and Pardons Board, and that they supersede any prior policies or resolutions adopted by the Board or its predecessors.

Dated this 9th day of March 2018.

Jennifer Rancourt

Jennifer Rancourt, Chairperson

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