

STATE OF OHIO



DEPARTMENT OF REHABILITATION
AND CORRECTION

SUBJECT: Clemency Procedure: Death Penalty Cases	PAGE <u> 1 </u> OF <u> 7 </u>
	NUMBER: 105-PBD-01
RULE/CODE REFERENCE: ORC 2967.01, 2967.03, 2967.04, 2967.06; 07; 08, 2967.12, 2930	SUPERSEDES: 105-PBD-01 dated 06/17/13
RELATED ACA STANDARDS: 2-1010; 2-1011	EFFECTIVE DATE: June 12, 2014
	APPROVED: 

I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the Ohio Department of Rehabilitation and Correction the authority to manage and direct the total operations of the Department and to establish such rules and regulations as the Director prescribes.

II. PURPOSE

The purpose of this policy is to establish a standard procedure for considering clemency in death penalty cases.

III. APPLICABILITY

This policy applies to the Ohio Parole Board and to other employees of the Ohio Department of Rehabilitation and Correction (DRC) who are responsible for collecting and providing information, scheduling hearings, providing notices, and performing other related tasks relevant to death penalty clemencies. This policy also applies to inmates under sentence of death and to the attorneys representing them.

IV. DEFINITIONS

Business Days - The days of the week, excluding Saturday, Sunday and any legal holiday.

Calendar Days - The days of the week, including Saturday, Sunday, and any legal holiday.

Commutation - The substitution by the Governor of a lesser for a greater punishment. A stated prison term may be commuted without the consent of the convict, except when granted upon the acceptance and performance by the convict of conditions precedent. After commutation, the commuted prison term shall be the only one in existence. The commutation may be stated in terms of commuting from a named offense to a lesser included offense with a shorter prison term, in terms of commuting from a stated prison term in months and years to a shorter prison term in months and years, or in terms of commuting from any other stated prison term to a shorter prison term.

Death Row - Death Row is a reference to a housing status for inmates sentenced to death; it is not a security classification. The specific locations of death row are: (1) A housing area at CCI that has been designated by the Director of the Department of Rehabilitation and Correction to house male inmates who are committed to the Department with a sentence of death; and (2) a housing area at ORW that is similarly designated to house female inmates committed to the Department with a sentence of death.

Executive Clemency - An act of mercy or leniency providing relief from certain consequences of a criminal conviction. The executive clemency power, including pardon, commutation and reprieve, is exercised by the Governor.

Executive Session - A closed meeting held by the Parole Board to consider, deliberate, and vote on matters which are the subject of clemency, Full Board, Sexually Violent Predator, or any other hearing conducted by the Board.

OnBase - An enterprise content management system utilized by DRC for electronic document archival and retrieval. Access to OnBase is restricted to essential users only.

Pardon - The remission of penalty. Pardons may be granted after conviction and may be absolute and entire or partial, and may be granted upon conditions precedent or subsequent.

Parole Board - That section of the Adult Parole Authority created in Ohio Revised Code sections 5149.02 and 5149.10 whose duties include, but are not limited to, reviewing and evaluating offenders for parole and clemency consideration and imposing post-release control.

Quorum - A majority of the members of the Parole Board.

Reprieve - The temporary suspension by the Governor of execution of a sentence or a prison term. The Governor may grant a reprieve without the consent of or against the will of the convict.

Victim - A person who has been directly affected or who has suffered from an act committed by an offender.

Victim Representative - A member of the victim's family or another person who pursuant to the authority of ORC 2930.02 exercises the right of a victim.

V. POLICY

It is the policy of the Ohio Department of Rehabilitation and Correction to fulfill its duties related to executive clemency in a manner that is expeditious and fair to the inmate sentenced to death and to all parties involved, and in a manner that conforms to the requirements of Ohio Revised Code sec 2967.03 through 2967.07, 2967.12 and 2930.

VI. PROCEDURE

A. Policy Notification

All inmates committed to the Ohio Department of Rehabilitation and Correction (DRC) with a sentence of death shall be given a copy of this policy by an institution employee designated by the Managing Officer.

B. Inmate Background Information

1. The Parole Board Chair/designee shall request a report upon an inmate's admission to the Ohio Department of Rehabilitation and Correction under a sentence of death.
2. The report shall include the following:
 - a. A complete arrest record (juvenile and adult);
 - b. Prior institutional and parole and/or probation supervision history, when applicable;
 - c. Social history.
 - d. Details of the offense.
3. If an inmate was supervised by the Adult Parole Authority (APA) at the time of the commission of the offense for which the death sentence was imposed, a copy of the APA unit file shall be forwarded to the Bureau of Records Management by the supervising unit to be scanned to OnBase.
4. When a clemency interview and hearing date have been established, the Parole Board Chair/designee shall contact the case manager at the institution where the inmate is incarcerated thirty (30) days prior to the scheduled interview date to request an institutional summary report (ISR). The ISR shall include a complete record of the inmate's work history, participation in programming, and disciplinary infractions while incarcerated under the sentence of death.

C. Scheduling of a Clemency Hearing

1. The Parole Board Chair/designee shall schedule a death penalty clemency hearing as follows:
 - a. Upon receipt of notice from the Ohio Supreme Court of the execution date of an inmate for which the appeals process has been exhausted;
 - b. Upon receipt of notice from the Ohio Supreme Court of the execution date of an inmate who has waived all future appeals; or
 - c. Upon its own initiative.
2. The death penalty clemency hearing shall be scheduled on a date that is satisfactory to the Governor's office and that allows sufficient time for the Governor to review the report and other materials received from the Parole Board prior to the scheduled execution date.

The Parole Board Chair/designee shall schedule a clemency hearing to be held during normal business hours at a location to be determined by the Parole Board.

D. Clemency Hearing Notification

1. The Parole Board shall provide all notifications as mandated in Ohio Revised Code section 2967.12, Notice of Pendency of Pardon, Commutation, and Parole. The Office of Victim Services shall provide notice of hearings to qualified victims, victims' family members, or victims' representatives.
2. The Parole Board Chair/designee shall direct a Parole Board staff member or designated institutional staff to notify the inmate in person and in writing that a clemency recommendation will be made to the Governor and of the scheduled date of the clemency hearing.

E. Inmate Interview

1. The inmate shall be notified by a Parole Board staff member or by designated institutional staff, in person and in writing that the inmate may participate in an interview with the Parole Board prior to the scheduled clemency hearing. The inmate shall indicate, in writing, receipt of the notice and his/her intention whether to participate in the interview. A copy of the notice shall be forwarded to the inmate's attorney of record. An interview with the inmate shall be scheduled at least ten (10) calendar days prior to the scheduled clemency hearing, if possible.
2. If the inmate indicates his/her intention is to participate in an interview, then the Parole Board Chair/designee shall reserve locations so that all Parole Board members can participate through video-conferencing.
3. There shall be no recording or transcription of the interview. A counsel for the inmate may be present at the institution with the inmate during the interview. The interview with the inmate may be observed via video-conference at a DRC and/or APA site(s) only, to be determined by the Parole Board Chair/designee. Only designated case attorneys from the Prosecutor's office of the county of indictment, the Attorney General's office, and the inmate's counsel/co-counsel as well as representatives from the Governor's office shall be permitted to observe the interview. The observers shall be located at a separate location from the Parole Board members. Out of state sites may be approved by the Parole Board Chair/Designee if designated case attorneys are located outside of the state of Ohio. However, those who are approved to observe from an out of state site must agree in writing that a recording or transcription of the interview shall not be made by any means.
4. Only the Parole Board members and the inmate shall participate in the interview. If the inmate needs an interpreter to participate in the interview, that person shall also be permitted to participate. The observers, whether located at the institution with the inmate or at a video-conferencing site, shall not be permitted to either question the inmate or present arguments to the Parole Board. The presentation of arguments in support of or in opposition to clemency shall be reserved for the clemency hearing.

F. Submission of Materials

1. All submissions to the Parole Board shall be made either electronically or in paper form no later than 4:00 pm on the day the materials are due to the Parole Board. Parties choosing to submit materials in paper form shall provide three (3) copies. Timeframes for submitting the below required materials shall occur as follows:
 - a. Trial transcripts and judicial decisions from the Attorney General's office in neutral format, two (2) weeks prior to the inmate's interview;
 - b. Application on behalf of the inmate, one (1) week prior to the scheduled hearing. If the inmate's counsel intends to present oral argument at the hearing in support of clemency, counsel shall submit a written application summarizing the arguments to be presented one (1) week prior to the scheduled hearing. In the event the inmate is not seeking clemency, and counsel does not intend to make oral arguments at the hearing and/or submit an application in support of clemency, written notification indicating same shall be submitted by counsel one (1) week prior to the hearing.
 - c. State's response, two (2) business days following submission of the application.
2. Parties submitting the application or written notification referenced in F 1. b., and response shall be responsible for providing copies to the opposing party.
3. Requests from media for copies of these documents shall be directed to the party who provided the information.

G. Clemency Hearing Attendance and Participation

1. The following parties shall be permitted to attend and participate in the clemency hearing:
 - a. Inmate's attorney;
 - b. Inmate's family and supporters;
 - c. Prosecutor of the county of indictment and or his/her representatives;
 - d. Case attorneys from the Attorney General's office;
 - e. Family of the victim/victim's representative;
 - f. Any additional participant at the discretion of the Parole Board Chair/designee.
2. Counsel for the inmate as well as counsel for the state must notify the Parole Board Chair/designee of those individuals who will be presenting to the Board at the hearing, and in which format the presentation will occur (live speaker, videotaped statement, etc.) no later than two business days prior to the hearing date. Presenters shall only be permitted to present to the Board through one (1) format, and shall not be permitted to present to the Board both through a video-taped or other pre-recorded statement and a live presentation.
3. Attendance by observers at the hearing is at the sole discretion of the Parole Board Chair/designee.

4. Attendance at the clemency hearing by members of the generally recognized professional news media is permitted at the discretion of the Ohio Department of Rehabilitation and Correction Office of Communications.

H. Hearing Protocol

1. The clemency hearing shall be conducted with at least a majority of the Parole Board members present.
2. All participants and observers must be seated in the hearing room prior to the beginning of the hearing. Persons arriving after the hearing has begun may be excluded from the hearing. Any person whose behavior or decorum causes disruption in the hearing shall be asked to leave the hearing room.
3. The Parole Board shall hear arguments for and against clemency. The order in which arguments are presented shall be determined by the Parole Board Chair/designee, but most generally shall occur in the following order:
 - a. Inmate's attorney and other presenters;
 - b. Inmate's family and/or supporters;
 - c. Prosecutor and/or his/her representative of the county of indictment and other presenters;
 - d. Case attorneys from the Attorney General's office;
 - e. Family of the victim/victim's representative; and
 - f. Any additional presenters approved at the discretion of the Parole Board Chair/designee.
4. All presentations shall be given from the designated table/podium. Submissions in the form of video or audio statements shall only be permitted if the presenter is not also intending to present live to the Board at the hearing. Time limitations may be placed on presenters at the discretion of the Parole Board Chair.
5. After hearing the presentation of a participant, the Parole Board members shall receive an opportunity to individually ask questions of the participant.
6. The Parole Board Chair shall allow for breaks as necessary including a sufficient break for lunch when appropriate.
7. Upon conclusion of all presenters, the Parole Board Chair shall adjourn the hearing and the Parole Board members shall move into executive session for the purposes of deliberation. Deliberations may be continued to the next business day if time does not permit for the deliberations to occur within normal business hours.
8. In the event that the hearing cannot be concluded within normal business hours, the Parole Board Chair shall continue the hearing to the next business day. However, if the hearing can be concluded within a reasonable time beyond normal working hours the Parole Board Chair may permit the hearing to proceed to conclusion.

I. Parole Board Deliberation and Recommendation

1. During deliberations, the Parole Board members shall consider all available relevant information including any statement that the inmate gave at the time of the interview and any oral arguments and written documentation provided.
2. The Parole Board members shall deliberate in executive session and shall vote for either a favorable or unfavorable recommendation in regard to granting clemency. Board members shall sign a vote sheet(s) reflecting their individual votes.
3. A report of the clemency hearing and recommendation shall be written by a Parole Board member assigned by the Parole Board Chair. The report shall include any dissenting opinion.
4. Within six (6) business days after the clemency hearing has concluded or as otherwise directed by the Governor's Office, the Parole Board shall send the written clemency report and recommendation to the Governor's Office. Upon delivery of the clemency report and recommendation to the Governor's Office, the Parole Board shall notify by e-mail the Managing Officer of the institution where the inmate is confined, the inmate's counsel, the Prosecutor of the county of indictment or his/her representative, the Office of Victim Services, and the Office of the Attorney General of its recommendation. The Managing Officer or designee shall notify the inmate in person of the recommendation.
5. A press release shall be prepared by the Office of Communications and the report shall be made available to the news media after the written clemency report and recommendation have been delivered to the Office of the Governor.

J. Significant New Information Not Already Considered

1. In the event that the Parole Board is made aware of significant new information or circumstances not considered in its initial recommendation and report, or in the event an application is received on behalf of the inmate who previously indicated an intention not to apply for clemency subsequent to the initial report and recommendation, then the Parole Board may supplement and/or amend its initial recommendation and report as appropriate.
2. At the discretion of the Parole Board Chair/designee, or at the direction of the Office of the Chief Legal Counsel for the Governor, a hearing may be convened to consider significant new information or to consider the application received on behalf of the inmate who previously indicated an intention not to apply for clemency subsequent to the Board's initial recommendation. If such a hearing is convened, then it shall be conducted in accordance with the procedures set forth in this policy and a subsequent report and recommendation shall be provided to the Governor.