

<b>SUBJECT:</b> <b>Clemency Procedures: Non-Death          Penalty Cases</b>	PAGE <u>  1  </u> OF <u>  8  </u>
	<b>NUMBER: 105-PBD-05</b>
<b>RULE/CODE REFERENCE:</b> ORC 5149.10, 2967.03, 2967.07, 2967.12, 2967.16; OAC 5120:1-1-15	<b>SUPERSEDES:</b> 105-PBD-05 dated 07/11/16
<b>RELATED ACA STANDARDS:</b> 2-1010, 2-1011	<b>EFFECTIVE DATE:</b> <b>July 17, 2017</b>
	<b>APPROVED:</b> 

## I. AUTHORITY

This policy is issued in compliance with Ohio Revised Code 5120.01 which delegates to the Director of the 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 the application, processing, review, hearing and decision-making steps of the clemency process in non-death penalty cases.

## III. APPLICABILITY

This policy applies to the Ohio Parole Board and other employees of the Ohio Department of Rehabilitation and Correction (DRC) who are responsible for collecting and providing information, scheduling hearings, and providing notices to present or former inmates, persons convicted of any criminal offenses, their attorneys or representatives and any other interested party or parties concerning the clemency process. This policy is not applicable to existing or future inmates serving a sentence of death as their clemency procedures are established in a separate policy.

## IV. DEFINITIONS

**Community Attitude** - A section in a report completed on an offender that documents the opinions of the sentencing judge, prosecuting attorney, and the arresting law enforcement agency concerning the future possibility of release from confinement or the granting of executive clemency to the offender.

**Majority Vote** - The recommendation of the parole board that becomes the final decision because it received a greater number of votes cast by current and active parole board members than an alternate recommendation.

**Parole Board Hearing Panel** - That body of the parole board designated by the parole board chair to conduct release consideration hearings. A panel shall consist of a designated number of members and/or hearing officers.

**V. POLICY**

It is the policy of the Ohio Department of Rehabilitation and Correction (DRC) to fulfill its duties related to executive clemency in a manner that is expeditious and equitable while utilizing a process that ensures the exercise of sound professional judgment, furthers the interests of justice, and is consistent with the welfare and security of society.

**VI. PROCEDURES****A. Access To Clemency Applications**

1. Applications for executive clemency may be obtained through the DRC internet site at [www.drc.ohio.gov](http://www.drc.ohio.gov).
2. Requests for clemency applications may also be submitted in writing via U.S. mail to the Ohio Parole Board section or via email at [drc.clemency@odrc.state.oh.us](mailto:drc.clemency@odrc.state.oh.us). Requests shall include the applicant's name and address.
3. The designated parole board staff shall respond to these written requests within fifteen (15) business days of the receipt of the request by providing a Clemency Application (DRC3068) with guidelines and instructions.

**B. Initial Processing of Clemency Application**

1. The designated parole board staff shall review each application received to determine if filing requirements and data/documentation requirements have been met and if the application is signed and dated as required.
2. All incomplete applications shall be returned without further processing to the applicant or his/her legal representative with an accompanying correspondence specifying the deficiencies.
3. Correctly completed applications shall be accepted and an Ohio Parole Board clemency file shall be opened. The filing date of an application is the date the Ohio parole board received the completed application. The application shall be made available for the designated parole board member(s) to review.

**C. Review of Clemency Application and Determination Whether Additional Information is Warranted**

1. The designated parole board member(s) shall review as soon as administratively possible upon receiving an application and determine if an application warrants the collection of additional information by the designated parole board staff for the parole board members to consider and determine if the applicant should be scheduled for further consideration at a hearing.

2. If after the initial review by a designated parole board member(s), a majority of the parole board members determines that the application lacks sufficient reasons to further consider the merits, then an unfavorable recommendation shall result, and no further action shall be taken. The unfavorable recommendation shall be documented in the minutes of the parole board which shall be forwarded to the Governor.
3. If, during the initial review, it is determined that there is insufficient information to determine whether the application warrants further consideration on the merits, then the designated parole board staff shall assign to a parole board parole officer (PBPO) the completion of a clemency report or a supplemental clemency report. Please refer to OPS-MNL-22, Parole Board Investigations Manual, for report requirements. The clemency report shall be completed within sixty (60) calendar days from the date the case is assigned, and the supplemental shall be completed within forty-five (45) calendar days from the date the case is assigned, unless an extension is granted by the PBPO's supervisor(s).
4. Upon the referral from the designated parole board member after an initial review or by a majority vote of the parole board members, the designated parole board staff shall create a clemency report that includes some or all of the following information as requested by the parole board chair/designee:
  - a. Details of each criminal offense/traffic violation cited in the application;
  - b. The statement of the victim/victim's representative, if available or requested by the parole board chair/designee;
  - c. Verification of the payment of fines, court costs and/or restitution;
  - d. A complete arrest record (juvenile and adult) with a current criminal history to include LEADS and NCIC, traffic violations to include current BMV, and any other national or state system developed to organize and identify criminal/traffic violation histories;
  - e. Prior institutional and parole or probation supervision history, when applicable;
  - f. Social summary (if applicant is an inmate, then social summary information shall be obtained through available institutional records); and
  - g. Community attitude.

In completing the report, designated parole board staff may contact the applicant to conduct an interview, ask the applicant to complete a questionnaire, or both. Applicants may also download a copy of the questionnaire as a PDF file from the DRC official website, complete the questionnaire, and submit it with the their clemency applications.

5. The clemency report is a confidential document. It is not a public record and shall not be released.
6. When the clemency file contains all of the necessary information required for processing back to the parole board members for a determination whether to conduct a hearing, it shall be made available to the parole board members for review either in paper or electronic format.

7. The parole board members shall review the additional information received and determine by a majority vote whether the applicant warrants further consideration at a clemency hearing.
  - a. If the parole board member(s) determines that sufficient data/documentation has not been provided, then they shall notify the designated parole board staff with specific instructions requesting the additional data or documentation. The additional information shall be obtained within 30-60 calendar days when administratively possible.
  - b. After the information has been received, it shall be made available to the parole board member(s) within fourteen (14) calendar days.
8. If a majority of parole board members determines that the applicant does not merit further consideration at a clemency hearing, then an unfavorable recommendation shall result, and no further action shall be taken. The unfavorable recommendation shall be documented in the minutes of the parole board which shall be forwarded to the Governor.

**D. Notice And Scheduling of A Hearing**

1. Except as otherwise provided in this paragraph, if by majority vote, the parole board determines that the merits of the application warrant further consideration at a hearing, then the parole board chair/designee shall notify the applicant in writing and coordinate the scheduling of a hearing. The designated parole board staff shall provide all notifications as mandated in Ohio Revised Code section 2967.12 Notice of Pendency of Pardon, Commutation, and Parole. The parole board may make a favorable recommendation regarding clemency without conducting a hearing on the application if the merits of the application were recently considered at a clemency hearing, the previous consideration resulted in a favorable recommendation, and the subsequent application does not present significant new information warranting another hearing, provided that the notifications mandated in Ohio Revised Code section 2967.12 shall be provided prior to making any such favorable recommendation.
2. The notification shall include the scheduled date of the clemency hearing if applicable or, if the parole board is considering making a favorable recommendation without a hearing as provided in section VI.D.1 of this policy, the date on or before which input must be provided to the board. The date set forth in the notification shall conform to timeframes mandated by Ohio Revised Code section 2967.12. The parole board shall invite the party notified to appear in person and/or to submit any written statement or information that the party wishes the parole board to consider. The notification shall also contain the following information:
  - a. The name as noted in the sentencing journal entry and any aliases of the person seeking clemency;
  - b. The offense for which the person was convicted;
  - c. The date of conviction;
  - d. The term of the person's sentence; and

- e. The victim's right to submit a written statement regarding the impact should the applicant receive executive clemency, and, if applicable, the victim's right to appear at the clemency hearing to give testimony.
3. The judge and prosecutor/city attorney may request a copy of the clemency application packet prior to submitting a statement and/or appearing at a scheduled hearing. Letters of support, including those received with a clemency application, shall not be released.
4. Letters received from the judge, prosecutor/city attorney and/or victim/victim's representative in response to a notice provided under section VI.D.2 of this policy are not public record and shall not be released.
5. In the event that any party notified requests additional time to collect and provide information, such additional time shall be freely granted by the parole board chair, provided that the request is made prior to the hearing date or prior to the deadline for providing input set forth in the notification, whichever the case may be.
6. When a hearing has been continued, the designated parole board staff shall provide notice of the continued hearing date as mandated in Ohio Revised Code section 2967.12.

#### **E. Clemency Hearing Attendants and Participation**

1. The following parties shall be permitted to attend and participate in a clemency hearing:
  - a. The applicant, the applicant's counsel, or both at the discretion of the parole board chair/designee. If the applicant is an inmate, at the discretion of the parole board chair/designee, arrangements may be made to interview the inmate at a time when that interview can be arranged;
  - b. Applicant's family and supporters;
  - c. Judge;
  - d. Prosecutor of the county of indictment or city attorney and or his/her representatives;
  - e. Victim/family of the victim/victim's representative; and
  - f. Any additional participant at the discretion of the parole board chair/designee.
2. Efforts shall be made to interview applicants telephonically by a designated parole board member(s) if the applicant is not able to attend the hearing.
3. Attendance at the clemency hearing by members of the generally recognized professional news media is permitted at the discretion of the Office of Communication.

#### **F. Clemency Hearing Procedures**

1. Clemency hearings shall be conducted with at least a majority of the members of the parole board present and at a location determined by the parole board chair. Hearings may be conducted through the use of video-conferencing to allow attendees and parole board members the ability to participate from a location that requires the least amount of travel.

2. Interested parties wishing to provide information concerning the clemency applicant, to include any party who must be notified as mandated in Ohio Revised Code section 2967.12, may provide information to the parole board in writing prior to the clemency hearing at the discretion of the parole board chair/designee. Such persons may appear and present to the parole board at the clemency hearing.
3. If the prosecutor/city attorney and/or judge elect to appear at a clemency hearing, they may also provide any materials to the parole board for its consideration. The materials shall be submitted to the parole board at least one (1) week prior to the scheduled hearing, either electronically or in paper form. The parole board shall provide a copy of any documents submitted by a prosecutor/city attorney or judge to the applicant or the applicant's counsel, unless it is considered a confidential document.

Requests from media for copies of these materials shall be directed to the party who provided the information.

4. The parole board chair/designee shall preside over the hearing. All participants shall be given the opportunity to speak and present arguments for or against clemency. The parole board members shall be given the opportunity to ask questions of all participants.
5. 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 any disruption in the hearing will be asked to leave the hearing room.
6. On the date of the clemency hearing or no earlier than two business days prior to the review, the designated parole board staff shall request a current LEADS/NCIC check on the applicant to include: BCI, FBI, wants and warrants, driver's license and motor vehicle registration.
7. Upon completion of the clemency hearing, the parole board members present shall move into executive session for the purpose of deliberation.

#### **G. Parole Board Deliberation and Recommendation**

1. During deliberations, the parole board members shall consider all available relevant information including any statement of the applicant and any oral arguments and written documentation provided.
2. The parole board members shall submit votes for either a favorable or unfavorable recommendation regarding clemency.
3. A report including the recommendation shall be written by a parole board member assigned by the parole board chair/designee. The report shall include the following:
  - a. Summary;
  - b. Introduction;
  - c. Detailed Description of Crime;

- d. Legal Proceedings;
  - e. Institution/Supervision Adjustment;
  - f. Applicant's Arguments in Support of Clemency Request;
  - g. Response to Application;
  - h. Conclusion; and
  - i. Recommendation.
4. The complete report and recommendation shall be sent to the Governor within sixty (60) calendar days from the date of the parole board's vote. The applicant shall receive the Governor's final decision in a written communication directly from the Governor's Office. Pursuant to section 5120:1-1-15 of the Ohio Administrative Code, the recommendation is not subject to administrative review.
  5. Copies of the parole board's report shall be forwarded to the applicant and/or his/her representative within ten (10) business days of the date the report is transmitted to the Governor's Office. Any information not considered public record, such as information from or about a victim and/or a victim's representative, as well as statements provided by a victim, judge, prosecutor, or law enforcement, shall be redacted prior to release.

#### **H. Clemency Files**

Upon receipt of the Governor's decision, all clemency files shall be forwarded to the Bureau of Records Management (BORM).

#### **I. Timeframes When Reapplying For Clemency Consideration**

1. An applicant may re-apply for clemency consideration two (2) years from the date the previous application was denied by the Governor.
2. If significant new information exists that was not available at the time of the earlier application, then an applicant may re-apply in less than two (2) years.
  - a. If it is determined that the updated application does not include any new information that could not have been available at the time of the initial application, then the application shall be returned and the applicant shall be advised of the earliest date when he/she can re-apply.
  - b. If new information exists, then the application shall be processed as described within this policy.

#### **J. Staff Input**

At any stage in its consideration of an application for executive clemency, the parole board may consider input from DRC employees. Employees other than managing officers may provide such input by creating and routing a Staff Hearing Input Form (DRC3031) through the electronic forms application. The submitted form shall be routed and approved by the managing officer of the institution in which the person providing input is employed or the managing officer's

designee prior to being routed to the parole board. Managing officers may provide input by creating and routing a Warden Hearing Input Form (DRC3032).

**Related Department Forms:**

Staff Hearing Input Form	DRC3031
Warden Hearing Input Form	DRC3032
Ohio Parole Board Application for Executive Clemency	DRC3068
Community Attitude	DRC3520