

 <p style="text-align: center;">STATE OF NEW YORK DEPARTMENT OF CORRECTIONS AND COMMUNITY SUPERVISION</p> <p style="text-align: center;">DIRECTIVE</p>	TITLE		NO. 6901
	Information Concerning Executive Clemency		DATE 12/31/2014
SUPERSEDES DIR #6901 Dtd. 11/18/2013	DISTRIBUTION A B	PAGES PAGE 1 OF 6	DATE LAST REVISED
REFERENCES (Include but are not limited to)	APPROVING AUTHORITY 		

I. PURPOSE: The policy of the Department of Corrections and Community Supervision is to assist its Executive Clemency Bureau in reviewing requests for executive clemency. In support of that end, the below information has been provided to guide Superintendents and facility staff in responding to requests for Executive Clemency Reports.

II. DESCRIPTION: Executive clemency is a matter which rests within the sole discretion of the Governor and is granted in only the most extraordinary and highly meritorious cases. A grant of clemency to an inmate generally commutes (reduces) the minimum sentence imposed in court which then makes the inmate immediately eligible to appear before the Board of Parole for possible release on parole. The Executive Clemency Bureau, a unit of the Department of Corrections and Community Supervision (DOCCS), assists in the clemency review process by compiling information used to evaluate applications and by dealing with correspondence and inquiries concerning clemency.

A document known as the "Guidelines for Review of Executive Clemency Applications," provides information about clemency in New York State. Copies are on file in the law library of each facility for the reference of inmates. (A copy is reproduced as Attachment A to this directive.)

III. REQUESTS FOR EXECUTIVE CLEMENCY REPORTS: As part of its preparation of cases for review, the Executive Clemency Bureau will send the "Letter to Superintendent," Attachment B, requesting reports concerning clemency applicants from the Superintendent of the facility in which those applicants then are incarcerated. The report is to summarize the applicant's adjustment from the start of the inmate's incarceration. The Executive Clemency Bureau generally asks that the report be completed within 30 days, although shorter due dates may be necessary on occasion.

In requesting a report, the Executive Clemency Bureau provides a "Release of Records," Attachment C, to be signed by the applicant and a staff witness. The form is returned to the Executive Clemency Bureau with the Superintendent's report, and the completed report should include a statement to the effect that the form was signed by the applicant.

IV. FORMAT OF EXECUTIVE CLEMENCY REPORTS

- A. Introduction: Provide the applicant's name and Departmental identification number; present conviction(s); sentence(s) now being served; date eligible for release on parole; and conditional release and maximum expiration dates, if applicable.
- B. Institutional History: List the facilities in which the applicant has been incarcerated on the present sentence and the dates at each facility. Describe work and program assignments at each facility, and indicate the quality of participation in those assignments. Note any significant work, educational, or other achievements of the applicant. Summarize the applicant's conduct within the facilities; include specific information on disciplinary infractions and the disciplinary action taken, if any, and attach a copy of the records of the inmate's disciplinary actions.
- C. Psychological and Psychiatric Evaluations: Photocopies of available psychological and psychiatric reports are to be submitted. Summarize any problems in this area.
- D. Visiting, Correspondence and Telephone Lists: Computerized listings of the applicant's visiting list and, when available, correspondence and telephone lists are to be provided. Any visitors or contacts considered significant should be noted.

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- E. Other Considerations: Note any significant factors regarding the applicant that are not discussed in other sections of the report. Advise as well if there are any current appeals or other actions pending concerning the applicant's case and, if so, provide available details. Include a statement concerning the applicant's signing of the "Release of Records" form provided by the Executive Clemency Bureau.
 - F. Recommendation: A recommendation regarding the applicant's request for executive clemency is to be made by the facility Superintendent. Except in rare cases explained by the Superintendent, this statement should include a definite recommendation for or against clemency based on the information available to the Superintendent. The statement may be a part of the larger report or may be made in a separate cover letter.

V. STAFF RECOMMENDATIONS

- A. Any facility staff member wishing to report an observation of or opinion about a particular inmate who has applied for clemency must do so through the Superintendent via the chain-of-command within the facility or work location.
- B. All submitted comments will be forwarded to the Executive Clemency Bureau as attachments to the Superintendent's report on the applicant or as a supplement to that report.
- C. Any materials provided by staff members to the Executive Clemency Bureau are official and confidential Departmental communications specifically intended for the Governor's Office. Copies may not be released to the inmate or any other unauthorized individual. (Section 3 of the Department of Corrections and Community Supervision "Employees' Manual" applies.)

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224
GUIDELINES FOR REVIEW OF
EXECUTIVE CLEMENCY APPLICATIONS

Under the State Constitution, the Governor has the power “to grant reprieves, commutations and pardons after convictions, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper.” New York State Constitution, Article IV, Section 4.

In order to assist applicants for executive clemency in further understanding the nature, scope and procedures of executive clemency, the following guidelines have been developed. However, clemency is a matter within the sole discretion of the Governor. *Compliance with the guidelines does not entitle an applicant to clemency.*

Pardon

A pardon is most commonly available:

- (1) to permit a judgment of conviction to be set aside where there is overwhelming and convincing proof of innocence not available at the time of conviction;
- (2) to relieve a disability imposed upon a judgment of conviction for an offense; or
- (3) to prevent deportation from or to permit re-entry into the United States.

Absent exceptional and compelling circumstances, a pardon is not available if the applicant has an adequate administrative or other legal remedy, including, for example, a certificate of relief from disabilities (Correction Law §§700-705), a certificate of good conduct (Correction Law §703-a. §703-b) or relief pursuant to the provisions of Article 23-A of the Correction Law. Information concerning these certificates may be obtained from the New York State Department of Corrections and Community Supervision, Executive Clemency Bureau, Harriman State Campus, Building 2, 1220 Washington Avenue, Albany, NY 12226.

An application for a pardon should be accompanied by a certified copy of any judgment of conviction rendered against the applicant at any time during his life.

An applicant for a pardon must demonstrate a specific and compelling need for the relief *and* for applications under (2) and (3), a substantial period of good citizenship.

Commutation of Sentence

The Board of Parole is an independent quasi-judicial body charged with the power and duty of determining which inmates sentenced to imprisonment and eligible for release on parole may be released when and under what conditions. The exercise of executive clemency to intervene in matters reserved by law for the Board of Parole is thus inappropriate.

Executive clemency for an inmate of a correctional institution is available, however, in the form of a commutation of the inmate’s minimum period of imprisonment. Commutation enables the inmate to appear before the Board of Parole for consideration for release on parole at an earlier time than permitted by the sentence imposed by the court. Section 259-i (2) (c) of the Executive Law provides, in part, that:

****Discretionary release on parole shall not be granted merely as a reward for good conduct or efficient performance of duties while confined but after considering if there is a reasonable probability that, if such inmate is released, he/she will live and remain at liberty without violating the law, and that his/her release is not incompatible with the welfare of society and will not so deprecate the seriousness of his/her crime as to undermine respect for the law.****

Absent an exceptional and compelling circumstance, a commutation of a sentence will be considered only if;

- (1) the inmate’s term or minimum period of imprisonment is more than one year;
- (2) the inmate has served at least one-half of his/her minimum period of imprisonment;
- (3) the inmate will not become eligible for release on parole within one year from the date of his/her application for executive clemency; and
- (4) the inmate is not eligible for release on parole in the discretion of the Board of Parole.

Commutation of sentence is extraordinary relief and, therefore, the applicant has the burden of demonstrating, by clear and convincing evidence, that:

- (1)(a) he/she has, within his/her capabilities, made exceptional strides in self-development and improvement;
 - (b) he/she has made responsible use of available rehabilitative programs and has addressed identified treatment needs; and
 - (c) commutation of the sentence is in the interest of justice, consistent with public safety and the rehabilitation of the applicant; or
- (2) he/she is suffering terminal illness or has a severe and chronic disability which would be substantially mitigated by release from prison and that such release is in the interest of justice and consistent with public safety; or
- (3) further incarceration would constitute gross unfairness because of the basic inequities involved. (It is expected that commutations under this paragraph will be rarely granted.)

Applications

A formal application for executive clemency is not required; nor is an applicant required to retain an attorney. A written request for executive clemency consideration will suffice to cause a review and compilation of necessary information to determine eligibility, need for further investigation, scope of any investigation and eventual decision. The full cooperation of the applicant upon such review is, of course, required. Formal hearings are ordinarily granted only if the application is for a commutation of a sentence of death.

Applications for executive clemency should be made only by the subject of the application those having authority, addressed to either:

The Governor of the State of New York
Executive Chamber
State Capitol
Albany, New York 12224

OR

Director, Executive Clemency Bureau
New York State Department of
Corrections and Community Supervision
Harriman State Campus
Building 2
1220 Washington Avenue
Albany, New York 12226

Procedures

In the case of each eligible applicant considered for commutation, the Governor will request:

- (a) a report from each institution in which the applicant has been incarcerated concerning his/her performance and behavior; and
- (b) a recommendation from the district attorney and the sentencing judge concerning the application.

The Governor may also request medical and psychiatric reports and evaluations and may request the opinion of the Board of Parole prior to making a decision. The Governor will rarely grant a commutation without seeking the opinion of the Board of Parole. Materials in the executive clemency file may be made available to the Board of Parole if its opinion is sought, for the limited purpose of making an informed judgment and recommendation regarding the application.

Applications for executive clemency will be reviewed at intervals throughout the year. Except where exceptional and compelling circumstances exist, applications will be considered, to the extent possible, in the order received. An eligible applicant who has been notified that his/her application for clemency has not been granted may reapply after one year from the date of the notification, unless authorized to do so sooner in the letter informing him/her of an unfavorable decision.



ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

THOMAS J. HERZOG
Deputy Commissioner

Date

Superintendent

Re: Inmate

DIN #:

NYSID #:

Dear Superintendent:

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

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

In addition to that material, please advise if you are aware of any current appeals or other actions pending concerning the case noted above and, if so, provide what details you have.

Unless your staff feels it advisable, current psychiatric/psychological reports are not necessary at this time. It is requested, however, that you provide copies of any existing reports.

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

As part of your report, the Governor's Counsel requests that you make a definite recommendation for or against clemency on the basis of the information that you possess.

Please provide us with your report by (*due date*).

Thank you for your assistance and cooperation.

Sincerely,

Director
Executive Clemency Bureau

Attachment



ANDREW M. CUOMO
Governor

ANTHONY J. ANNUCCI
Acting Commissioner

THOMAS J. HERZOG
Deputy Commissioner

RELEASE OF RECORDS, INCLUDING DRUG AND ALCOHOL ABUSE RECORDS

I _____, DIN# _____, hereby authorize the New York State Department of Corrections and Community Supervision to release records and information in their possession and, specifically, to release, such as may exist, alcohol abuse and treatment records as defined in 42 U.S.C.A 290ee-3 and information therefrom to:

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

The purpose for the disclosure permitted by this consent is to seek Executive Clemency. I understand that this consent is subject to revocation at any time. Even without such express revocation, this consent automatically will expire, unless I renew it before that time, on *(two years from Superintendent's report due date)*.

Signature

DOCCS ID No.

Date

Witness' Signature