



## FREQUENTLY ASKED QUESTIONS ABOUT COMMUTATIONS AND PARDONS

### **LEGAL DISCLAIMER:**

FAMM cannot provide legal advice, representation, referrals, or guidance to those seeking clemency. **Nothing on this form is intended to be legal advice or should be relied on as legal advice.** If you or your loved one feel that you need legal advice, consult with an attorney. Finally, clemency policies change frequently, and you should not rely on this document as the most recent statement of federal or state clemency policies.

### **Q: What does the term “executive clemency” mean?**

**A:** “Executive clemency” is a catch-all term that includes all the different ways a state’s governor or the United States president can use what is commonly called the “pardon power” (see below). “Executive clemency” includes commutation (a reduction in sentence), pardon (the removal of all punishment or disability, including restoration of civil rights), remission (a reduction in the amount of a fine that is owed), amnesties (granting pardons to large groups of people who have all committed the same crime, such as draft evasion), and reprieve (delaying imposition of a punishment, typically used in death penalty cases to postpone an execution). Sometimes people refer to a pardon or commutation as an “act of clemency” or a “grant of clemency” or simply “clemency.”

### **Q: Where does the “pardon power” come from?**

**A:** At the federal level, the president’s “pardon power” comes from Article II, Section 2 of the U.S. Constitution, which has been interpreted to include all the different forms of executive clemency (see above). In the states, many state governors (and sometimes an administrative board) also have a “pardon power.” Typically, that power comes from the state’s constitution.

### **Q: What is a commutation?**

**A:** A commutation is a reduction of a person’s prison sentence. The reduction can be to time served (e.g., from 10 years to time served) or from a period of years to a shorter period of time (e.g., from 10 years to 5 years, or from death to life imprisonment, or from life without parole to life with parole eligibility).

### **Q: Who can grant a commutation?**

**A:** Only the president of the United States can grant a commutation to a person convicted in a federal court. Congress and the federal courts do not have or share this power, cannot overturn or reverse a commutation, and cannot create rules limiting the president’s use of the power.

In the states, there are three possible ways that commutations can be granted: solely by the governor (i.e., the governor can grant clemency without the input or favorable recommendation of a parole, clemency, or pardon board), solely by a special executive clemency/pardon/parole board (i.e., the board makes the decision to grant clemency without any input or involvement from the governor), or by both the governor and a board (i.e., the governor has the final say in deciding to grant or deny clemency, but a board also reviews the case and makes a recommendation which the governor is required to consider, but not necessarily follow).



**Q: What are the differences between a pardon and a commutation?**

**A:** A pardon can be granted at any time after the offense is committed, including before a person is tried, convicted, sentenced, or starts serving a sentence. Typically, however, a pardon is not granted until after a person has *finished* serving their sentence and remained law-abiding for a certain period of time (e.g., 5 years). Commutations are typically granted only while the person is still serving their sentence.

The effects of a pardon are also different than the effects of a commutation. A pardon usually restores most or all of the offender's civil rights (e.g., voting, holding public office, serving as a juror, gun ownership) and, in a few states, also expunges (removes) the person's conviction from their criminal record. Unlike pardons, commutations do not restore civil rights or expunge a person's record. Receiving a pardon or a commutation usually also does not mean that the person is considered innocent of the crime. Both pardons and commutations can come with conditions attached, such as requiring that the person avoid certain behaviors (e.g., drug use) in the future.

**Q: How frequently are commutations granted by the president?**

**A:** Very, very rarely. You can view the numbers of commutations granted by recent presidents at the website of the Office of the Pardon Attorney, at [http://www.usdoj.gov/pardon/actions\\_administration.htm](http://www.usdoj.gov/pardon/actions_administration.htm).

**Q: How frequently are commutations granted in the states?**

**A:** It depends on the state, but in the vast majority of states, commutations are very, very rare.

**Q: Can executive clemency only be granted at the end of a president or governor's term?**

**A:** No. At both the federal level and in most states, the president or governor can grant clemency at any time, from the first day in office to the last day in office.

**Q: Where is information about clemencies granted in death penalty cases available?**

**A:** The Death Penalty Information Center has a website with death penalty clemency information at <http://www.deathpenaltyinfo.org/article.php?did=126&scid=13>. Their site also has information about the use of the federal death penalty at <http://www.deathpenaltyinfo.org/article.php?scid=29&did=147>.

**Q: How does a person apply for a federal commutation or pardon?**

**A: Only** people convicted in federal court can request a commutation or pardon from the president. An application is filed with the Office of the Pardon Attorney in Washington, D.C. The applicant should read all of the following documents before writing or filing the application:

- a. For commutations: "Information and Instructions on Commutations and Remissions": these are instructions for filling out the commutation application form ([http://www.usdoj.gov/pardon/commutation\\_instructions.htm](http://www.usdoj.gov/pardon/commutation_instructions.htm))
- a. For pardons: "Information and Instructions on Pardons": these are instructions for filling out the application form ([http://www.usdoj.gov/pardon/pardon\\_instructions.htm](http://www.usdoj.gov/pardon/pardon_instructions.htm))
- b. For all applicants: Sections 1.2110 to 1.2113 of the *United States Attorney's Manual*, "Standards for Consideration of Clemency Petitions": this describes



what the Office of the Pardon Attorney does, how United States Attorneys are involved, and the general factors that are considered when an application is reviewed (<http://www.usdoj.gov/pardon/petitions.htm>)

- c. For all applicants: Sections 1.1 to 1.11 of Title 28 of the Code of Federal Regulations: these rules describe how the application process works, from start to finish (<http://www.usdoj.gov/pardon/clemency.htm>).

All of these documents and application forms are available on the internet at <http://www.usdoj.gov/pardon/>. Prisoners can also request these documents and an application form from their case manager/counselor, warden, or may find one in their prison's law library. Additionally, prisoners, former prisoners, and their family members can request application forms and instructions by writing or calling the Office of the Pardon Attorney at 1425 New York Avenue, N.W., Suite 11000, Washington, D.C. 20530, (202) 616-6070.

**Q: How does a person apply for a commutation or pardon from the state governor?**

**A:** For people convicted in a state court, they will usually (but not always) be required to request a commutation or pardon from their state's governor (not the U.S. president), typically by filing an application form with the governor's office, a special executive clemency/pardon board, or the parole board. Most governors, parole boards, or executive clemency/pardon boards issue specific rules and guidelines about who can file for a commutation and what kinds of cases will be considered. Every state has different application procedures, so state prisoners should be sure to get a copy of their state's filing rules and guidelines and read them carefully before filing for clemency. State prisoners or their family members can get the appropriate forms, rules, and guidelines by requesting them from their case managers/counselors, wardens, checking their prison law libraries, or writing to their state's governor, parole board, or executive clemency/pardon board. Those convicted in state courts cannot receive a commutation or pardon from the president.

**Q: How long does the clemency application process take?**

**A:** For federal cases, FAMM members have informed us that it can take anywhere between two to seven years before a person is told whether a commutation request has been granted or denied. For those seeking federal pardons, the application process will typically take *at least* 18 months to two years because the Office of the Pardon Attorney will typically do a full background check and investigation when a person requests a pardon, and this investigation takes between 18 months and two years to complete. In the states, the application review process for commutations and pardons typically takes between six months to two years before the prisoner receives a decision on the request. At the state and federal level, many clemency/parole boards are backlogged with requests for commutations and pardons, so applicants may have a lengthy wait.

**Q: How long should a person wait before filing for a commutation?**

**A:** At the federal level, there is no waiting period for those filing for a commutation—a person incarcerated in federal prison can apply as soon as (1) they have exhausted all their legal remedies (i.e., their direct appeal, filing for and being denied certiorari by the Supreme Court, exhausting all their habeas remedies), (2) they have no other motions, appeals, or habeas petitions currently pending in court, and (3) they are incarcerated.



These basic requirements are also typically true at the state level, though some states may also require that a person serve a certain percentage of their sentence before they are eligible to apply (e.g., or half or two-thirds of the sentence).

Depending on the type of crime and the length of the sentence, it is usually wise for a prisoner to serve a significant part of their sentence (i.e., 30-50% of their total time) before filing for a commutation. An important part of requesting a commutation includes admitting guilt for the offense and admitting that some (but not all) of the punishment imposed is fair and is deserved. Serving only a very short portion of the sentence and claiming that this short portion of the sentence is all the punishment that is deserved may not be looked upon favorably by the person deciding whether to grant a commutation.

**Q: How long should a person wait before filing for a pardon?**

**A:** At the federal level, the Office of the Pardon Attorney requires a minimum waiting period of five years from the date the sentence is completed. The date of sentence completion is the date the person is released from federal confinement. If the sentence was only probation or a fine, the date of sentence completion is the date the person was sentenced. People can apply for a pardon before the five-year waiting period has passed, but they must include a letter with their application that describes the “exceptional circumstances” in their case that justify a waiver of the five-year waiting period requirement. The Office of the Pardon Attorney will waive the five-year waiting period only in the most exceptional of cases.

At the state level, every state has different rules for how long someone must wait before filing for a pardon. Typically, a person cannot request a pardon until some time after he has finished serving his sentence, been released from confinement in prison, or successfully completed a term of probation or parole supervision after confinement. In some states, this waiting period can be as long as 10, 15, 20, or even 25 years.

At both the state and federal level, many people want to apply for a pardon at the end of the president or governor’s term in the hope that it will increase their chances of success. If this is part of an applicant’s strategy, he should make sure to apply for a pardon at least two years *before* the end of the president’s term, so that the background check and FBI investigation on his application is completed and the application receives full consideration before the president’s term expires. At the state level, those seeking end-of-term clemency should make sure to file their applications so that the state’s parole board or executive clemency/pardon board has sufficient time to complete any required investigation and hearings *before* the end of the governor’s term.

**Q: If a clemency request is denied, how long does the prisoner have to wait before reapplying?**

**A:** Federal prisoners denied a commutation must wait one year from the date the petition is denied before they can file again. Those who apply for and are denied a federal pardon must wait two years from the date the petition is denied before they can file again. In the states, the waiting period varies from state to state, but is typically one or two years.

**Q: Does a person need a lawyer to file for a commutation or pardon?**

**A:** Not necessarily. In most states and at the federal level, commutation and pardon application forms are straightforward, relatively short, and easy to understand and fill out. Many prisoners



may be able to fill out the forms by themselves or with the help of family or friends. If a prisoner has difficulty reading or writing in English, or there are legal issues the prisoner wants to raise in the application, a lawyer's help might be needed. If a person feels they need legal help to file a clemency application, they should seek that help.

**Q: What happens when the Office of the Pardon Attorney receives a federal commutation request?**

**A:** When a commutation petition is received by the Office of the Pardon Attorney, it is assigned to one of approximately five full-time attorneys working on that office's staff. That attorney is responsible for investigating and reviewing the petition, including getting help or information from the FBI and the BOP. The typical commutation investigation includes contacting the warden at the facility where the prisoner is currently incarcerated, obtaining the prisoner's most recent "progress report," and getting copies of court opinions, transcripts, the presentence investigation report, and any media coverage of the case. Most of the time, the pardon attorney's office can make a recommendation on the petition with only this basic information. In a minority of cases there could be more investigation, especially if the applicant appears particularly deserving of clemency, raises significant policy issues related to federal criminal law enforcement, or the petition is likely to attract widespread public attention because of the nature of the offense or the identity of the applicant. In these types of cases, the pardon attorney will contact the United States Attorney in the district where the applicant was convicted and the judge who sentenced the applicant. They will be asked for their opinions on whether clemency should be granted or denied. If the crime involved victims, the pardon attorney may also contact them. Applicants are not given a formal or informal hearing.

Once the investigation is complete, the pardon attorney prepares a recommendation to the president to grant or deny the petition. The pardon attorney's recommendation is sent to the deputy attorney general, who reviews and forwards the recommendation to the White House if he agrees with it. If the deputy attorney general disagrees with the pardon attorney's recommendation, he can order that the recommendation be rewritten. Once a recommendation is sent to the White House, it will be referred to the Office of the Counsel, which will review it and offer advice to the president, who makes the final decision. If the president grants a commutation, the White House counsel tells the deputy attorney general and the pardon attorney, who prepares the documentation needed to get the prisoner released. If the commutation is denied, the prisoner or his lawyer is notified by the pardon attorney.

**Q: What happens when the Office of the Pardon Attorney receives a federal pardon request?**

**A:** When a pardon request is filed, the Office of the Pardon Attorney handles the request much like it would handle a request for a commutation. The biggest difference is that the application is also referred to the FBI for a complete background check and investigation. This investigation can take between 18 months and two years to complete and includes a check on the applicant's criminal history and, frequently, interviews with the applicant's neighbors, current and former employers, and probation officer. Once the investigation is complete, the Office of the Pardon Attorney will write a recommendation and forward it to the deputy attorney general and, finally, the White House counsel and the president, who makes the final decision.



**Q: What happens when a state's governor or parole board receives an application for a commutation or pardon?**

**A:** The process is different in every state, so state prisoners should always research how their state's process works before they apply for a commutation or pardon. Typically, in a state in which the governor is responsible for granting clemency, the application is submitted to the governor's office and then referred to either a special executive clemency/pardon board or to the state's parole board (sometimes, the application is sent directly to one of these boards and not to the governor's office). Usually, the board reviews the application and may do an investigation, including interviewing the applicant or having a private or public hearing, at which the applicant may be allowed to appear with or without counsel, make a statement, present witnesses, and answer the board's questions. After its investigation is complete, the board typically will write a recommendation that is sent to the governor, who makes the final decision to grant or deny clemency. Depending on the state, the governor may be required to follow the board's recommendations or to obtain the state legislature's approval for each grant of clemency. In a few states, the governor plays no role in the clemency process at all. The clemency application is submitted directly to the parole board or a special executive clemency/pardon board, which does an investigation of the applicant and votes to grant or deny the applicant clemency, without any input from the governor.

Before filing, state prisoners should read their state's rules and regulations for executive clemency and have a supporter call their state's parole/clemency board and ask for a step-by-step explanation of how the process works. General information and links are available at the Criminal Justice Policy Foundation's website, <http://www.cjpf.org/clemency/clemencystates.html>, or at <http://www.llrx.com/features/clemencylaw.htm>. For an excellent survey of each state's procedures, see Margaret Colgate Love's book "Relief from the Collateral Consequences of a Criminal Conviction: A State-By-State Resource Guide" (a summary and buying information are available at <http://www.sentencingproject.org/PublicationDetails.aspx?PublicationID=486>).

**Q: What kind of help does FAMM provide to people seeking clemency?**

**A:** FAMM has a Commutations Project that was launched in mid-2007. The Project is designed to provide accurate, up-to-date information about the federal clemency process to FAMM members and their supporters, attorneys, and loved ones, including suggestions for how to write the petition and raise support from people in the community, legislators, and others. The Project is limited to commutations. Due to our limited resources and small staff, **the Project does not do any of the following:**

- **Write commutation petitions for prisoners**
- **Write letters of support on behalf of prisoners**
- **Sign petitions in favor of a prisoner's commutation**
- **Publicize the case of someone seeking a commutation, or**
- **Provide legal representation, advice, research or referrals to people seeking commutations.**

Please do not write to us asking us to do any of the above, as we cannot provide this kind of help.