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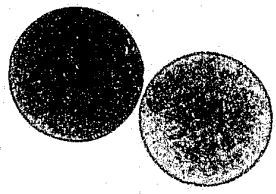

GUIDE TO EXECUTIVE CLEMENCY AMONG THE AMERICAN STATES

National Governors' Association

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GUIDE TO EXECUTIVE CLEMENCY AMONG THE AMERICAN STATES

prepared by

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GUIDE TO EXECUTIVE CLEMENCY AMONG THE AMERICAN STATES

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PREFACE

Because of the national interest in executive clemency, its use, and associated policy issues, the National Institute of Corrections awarded a grant to the National Governors Association to conduct this study. The Institute hopes this document will serve a variety of purposes: as a resource to governors, executive staff, clemency boards, and correctional personnel investigating clemency applications in the various states. We have found executive clemency to be a topic with a multiplicity of significant public policy and process consequences.

Raymond C. Brown, Director
National Institute of Corrections

FOREWORD

Among the many decisions made by Governors are those involving clemency. This power allows us to grant pardons, to commute sentences, to grant reprieves and amnesty, to remit fines and forfeitures and to restore civil rights to citizens, limited only by our State laws and the United States Constitution.

The clemency process may vary from State to State. Indeed, a few Governors are not involved in the process at all. But for most of us who are involved, it can be a very difficult task, especially in cases involving a capital offense. We alone must evaluate the mitigating and aggravating circumstances of the case, the fairness of the trial, and the community attitude toward the case.

In dealing with issues such as executive clemency, Governors can profit from the experience and knowledge of procedures and processes in other States. That is the purpose of this "Guide to Executive Clemency Among the American States." It is a review of the clemency process in the States, and the authority and administrative procedures used in granting clemency.

Even though there are many operational and administrative differences in the way States implement and Governors exercise clemency authority, there are a number of common concerns that all Governors share and there is much we can learn from one another.

It is my hope that this guide, developed by the Committee on Justice and Public Safety, will highlight areas of common interest to Governors and States. I believe it will stimulate and facilitate effective networks among States and Governors so we may share successful and unsuccessful clemency experiences and strategies to bring about efficient and effective clemency procedures and operations.

George Deukmejian
Governor of California
Chairman
Committee on Justice
and Public Safety of the
National Governors' Association

ACKNOWLEDGMENTS

A systematic review of the administration of executive clemency is timely. Governors and other policymakers have raised questions concerning the limitations and the political and fiscal ramifications of this power. Some of these concerns are the political ramifications of granting clemency to certain offenders, e.g., child molesters or rapists; the considerations which should be given to the victims of crime; and liability problems.

These issues of concern are complex. Answers must reflect the procedures of the decisionmaking process, as well as make allowances for each State's unique clemency laws, regulations, and constitution.

A hallmark study of executive clemency, Clemency: Legal Authority, Procedure, and Structure by the Center for State Courts, points out that clemency authority is administered by governors in some States and by special boards in others. This study, written in 1977, gives a clear description of clemency in the States. However, much of the discussion reflects the judicial concerns, with little attention to the complex executive responsibility involved.

This study of executive clemency explores the myriad of executive responsibilities, from the process of application to the actual investigation. The document reflects the constitutional and legal authority, procedures, fiscal implications, and organizational structures involved in the process of reaching clemency decisions.

As a part of this executive clemency study, three seminars were held with chief advisors, governors, and special clemency boards. Information gathered at these seminars is incorporated into the study.

On behalf of the National Governors' Association, I express sincere appreciation to all the individuals who participated in the three seminars. A few individuals stand out because of their extra effort in developing the seminars. Vance Raye, the Legal Affairs Secretary to the Governor of California, participated in two seminars, hosting one in California, and led discussions on several clemency issues during the seminars. He also reviewed the manuscript several times.

Raymond Brown, the Director of the National Institute of Corrections, deserves special recognition for his part in this report. This is not because the project is funded by the National Institute of Corrections, but because he personally participated in each seminar, and offered valuable suggestions on the manuscript in each of its stages.

Raymond Theim, Senior Attorney in the Office of the United States Pardon Attorney, participated in each seminar and offered words of wisdom now incorporated into the study. His review and historical analysis of how several Presidents used executive clemency set the stage for discussions at each seminar.

Bill DeLoach, who served as executive assistant to the former Governor of South Carolina, helped us focus on executive clemency for capital offenses.

The seminars and this guide would not have been successful without the logistical help of Sondra Nelson and Jan Dunlavey. Both assisted with the development and necessary procedures for the seminars. Tracking individual participants and typing parts of the manuscript were in the hands of Joan Pullian and Luisa Farrell. They deserve credit for keeping this study on schedule.

Andy Mitchell, formerly with Aspen Systems Corporation, assisted in the concept development for this study, the seminars, and the report. Lucy Younes performed the extensive legal and analytical research work for the project. Andy not only assisted in writing the guide along with Judy Green, but he also participated in each seminar explaining the data developed through the survey instrument. His work was continued through the final development of the manuscript by Emily Johnson.

Comments on sensitivity, style, and substance were received from Barry Van Lare, Joan Wills, and Gwen Holden. Each offered suggestions that are incorporated into this guide.

Finally, the project was developed through a grant from the National Institute of Corrections (grant number: GM-1) for a "Study of Executive Clemency." The grant was monitored by Andrea Sugar and Kermit Humphries.

The interpretations and analyses in this guide do not reflect the official position of the National Institute of Corrections. Neither do they reflect any official policy of the National Governors' Association. They are put forth as suggested strategies and procedures to assist officials in administering the executive clemency process.

Nolan E. Jones
Director
Committee on Justice and
Public Safety
National Governors' Association

Section I

OVERVIEW OF EXECUTIVE CLEMENCY

"The buck stops here." Popularized by President Harry S. Truman, that motto effectively summarizes the decisionmaking responsibility of chief executives throughout the United States. Yet, while the U.S. President and Governors are faced daily with important decisions that have far-reaching effects, the Truman saying is perhaps best used to describe the executive power and responsibility in making clemency decisions.

During their terms, most Governors are faced with trying decisions concerning the use of executive clemency--perhaps none so difficult as cases involving capital punishment. In 1982, for example, the Governor of Virginia declined to exercise his power to stay or commute the death sentence of Frank J. Coppola, a 38-year-old former policeman who was convicted in 1978 of a brutal murder. In a written statement after Coppola's execution--Virginia's first execution in 20 years--the Governor called his refusal to intervene, "the most difficult and emotionally draining decision I have made as Governor."1

Executive clemency--the constitutional authority vested primarily in the President and Governors of the United States to free convicts, to spare their lives and forgive their crimes--essentially offers the executive branch of government a veto power over the courts. This authority gives the executive branch broad discretionary freedom to grant pardons, commutations, reprieves, and amnesties, and to restore civil rights to and remit fines and forfeitures of convicted criminals--thus overriding court-imposed sanctions.

As powerful as the clemency power appears to be (and is, in fact), it is subject to the requirements and limitations of Federal and State constitutions, the acts of legislatures, and, in no small measure, the electorate, to which the executive branch is accountable.

Clearly public opinion plays a powerful role in influencing elected officials' responses to some clemency applications. Midway through President Lyndon B. Johnson's term, for example, the President had granted more than 70 clemencies per year. Then several newspapers and a U.S. Senator criticized Johnson for commuting the sentence of an organized crime figure in Cleveland. While no one ever accused the President of impropriety in the matter, he apparently decided not to risk further adverse publicity, granting only five commutations during the next 18 months.2

Public opinion and media attention also seemed to influence a clemency decision involving the widely publicized case of convicted rapist Gary Dotson. In 1985, the Governor of Illinois commuted Dotson's 25- to 30-year sentence to time served, after Dotson's alleged victim, Cathleen Crowell Webb, recanted her original charge, claiming that she had never been raped. The

Governor granted clemency to Dotson despite his doubts about Webb's revised testimony.3 These examples are unusual, however, in the widespread public attention they received; most of the 2,000 or so annual prison releases due to executive clemency do not receive such publicity.4

Executive clemency exists at both the Federal and State levels, with the President having the power over Federal cases. The Governor, a special board, or a combination of the two determines the outcome of State clemency applications.

The clemency process is closely linked to the functioning of other criminal justice system components, determining the necessity and frequency of clemency's use. A 1942 article in the Louisiana Law Review points out, "When (for example) innocent persons are not found guilty, when sentences imposed are not unduly long in relation to the crime committed, and when other release laws work properly, the responsibilities of the pardoning authority are greatly reduced. When legislative bodies assume the responsibility of restoring the ex-offender's civil rights and of removing employment disabilities...the duties of the pardoning authority are reduced still further."5

In 1976, when Alabama's Governor pardoned 64-year-old Clarence Norris--the last remaining "Scottsboro Boy"--the Governor was, in effect, acknowledging that Norris never committed the crime for which he was convicted in the early 1930's and sentenced to die.* Norris was 18 years old when Scottsboro, Alabama, police arrested him and eight other black teenagers for raping two white women. Despite a lack of evidence in the case--one woman even retracted her charge--Norris was sentenced to death. Norris' sentence eventually was commuted to life imprisonment and he was released on parole, but he lived under the shadow of the conviction until clearing his name in 1976.6

Executive clemency also allows for discretion in a way that the courtroom cannot; for example, by considering a criminal's background, the extenuating circumstances surrounding a crime, or an inmate's rehabilitation. In other words, Governors in charge of executive clemency are not bound by the same rules of evidence and procedures as the courtroom.

A former Arizona Governor, in the 1985 case of Baron Sumter, on recommendation of the State's Board of Pardon and Parole, granted full pardon to Sumter because of a combination of factors. Eleven years earlier, in 1974, Sumter was convicted of possessing 25 pounds of marijuana and was sentenced to 2 years in prison. However, the judge never set a date for Sumter to begin serving his term and no one caught the error until 1985.

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* Under Alabama law, persons whose death sentences have been commuted to life--as Norris' was--can receive a pardon only on a finding by the State Pardon and Parole Board that they were innocent at the outset.

Rather than having Sumter--who had been law abiding ever since his conviction--serve the sentence belatedly, the Governor pardoned him.7

In recent years, clemency also has been used to relieve prison crowding, to lessen the impact of determinate sentencing, and to prevent death sentences from being carried out. According to a 1980 report by The American Foundation, at least 10 States have used clemency on a regular basis as a means of prison population control.8 Between 1979 and 1980 the State of Maryland--then facing the possibility of a court order to reduce prison crowding--granted pardons or commutations to 1,142 inmates.9*

The use of clemency also has increased with the advent of more State-level "get tough on crime" policies that decrease the use of parole and increase the use of determinate sentencing. In New York, in recent years, Governors have granted clemency most often to those convicted on drug charges under the State's mandatory sentencing laws.10 In these instances, clemency was granted to persons sentenced prior to passage of the mandatory sentencing laws, who received more severe sentences than prescribed in the new laws.

One of the most emotional issues surrounding clemency concerns the death penalty. According to a March 1981 article in the Yale Law Journal, it is as routine for a condemned prisoner to seek clemency today as it is for him/her to seek appellate review.

In the early 1960's, California's Governor, who morally opposed the death penalty, routinely went out of his way to find specific other reasons to commute death sentences. Other past Governors, including Endicott Peabody, Massachusetts' Governor from 1963 to 1965, and Robert D. Holmes, Oregon's Governor from 1957 to 1959, have commuted all death sentences, even in the face of lawsuits from the legislature and outcry from the public.11 Most recently, in 1986, New Mexico's outgoing Governor commuted the sentences of the State's entire death-row population to life imprisonment on grounds that governmental killings are "immoral and anti-God."12

Types of Clemency

Most people lack clear understanding of the concepts behind executive clemency, a general term that covers specific categories. When President Ford commuted Patricia Hearst's prison sentence, for example, many newspapers mistakenly reported he had pardoned her.13

Further confusion arises over the tendency of States to establish "pardons and parole" boards--thus creating a link between two very distinct concepts. A 1978 handbook of the Texas

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* The bulk of the grants were issued at the time of major holidays such as Christmas and Easter, and were given to inmates within 90 days of the expiration of their sentences.

Board of Pardons and Paroles outlines some differences between the two functions: While pardon involves forgiveness and involves a limited to absolute remission of punishment, parole--permission to prisoners to serve some of their sentences outside prison walls--is part of the punishment. And, while fully pardoned prisoners are free, parolees may be arrested and reimprisoned without trial for the remainder of their sentences.14

According to the Attorney General's 1939 Survey of Release Procedures, the predominant argument favoring consolidation of the administration of pardon and parole is that it helps prevent duplication of effort. However, the report emphasizes that the "sounder approach would be not to perpetuate the present misalliance of pardon and parole by throwing them together on one board," but to separate them and define the proper scope of each.15

Pardon. A pardon is an act of grace and forgiveness that either partially or totally relieves the pardoned individual from some of the ramifications of the original sentence. In most States, a person may apply for a pardon after being convicted of a crime and after having exhausted his or her judicial appeals. (In a minority of States and in the Federal system, a pardon may be granted before trial, such as President Ford's pardon of Richard Nixon.) Prior to the establishment of parole, pardon was the primary mechanism for early release from prison.16

Today, pardons are usually granted to people who are no longer incarcerated, but who wish to regain certain rights that were lost or suspended on conviction; e.g., the right to vote, testify, serve on a jury, hold public office, or practice a profession.17*

Legal opinions vary somewhat, but the majority clearly states that a pardon does not erase guilt; it only forgives. Only in a few States, where police records are destroyed when a pardon is issued, does the State forget as well as forgive.18 In the majority of cases, acceptance of a pardon by the individual convicted of a crime is considered to carry an imputation of guilt.19

A pardon may be absolute, limited, conditional, or unconditional. The absolute pardon restores everything a pardon can restore in a particular jurisdiction; the limited pardon restores only what is specified. The conditional pardon has conditions attached; the unconditional pardon does not.

Conditional pardon is similar to parole in that it is revocable and it indicates certain things an individual may or may not do. Unlike parole, however, it does not normally involve supervision.

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* A conviction does not automatically remove a convict's rights; such sanctions are written in local and State laws. A pardon does not return the rights, but rather makes such return possible if State and local laws permit.

Commutation. A commutation, often given to adjust an excessive sentence or as a simple show of mercy, substitutes a new, lesser punishment for the original sentence. It does not cancel guilt, nor does it imply forgiveness.20 It may be granted for a variety of reasons--the prisoner's health or family needs, a determination that the original sentence was excessive--essentially "for any reason that the commuting authority deems adequate."21 On occasion, it has been granted as a reward for heroic or self-sacrificing conduct on the part of an inmate, e.g., saving the life of a correctional officer or volunteering to participate in medical research. Usually, however, it is granted to allow terminally ill inmates to die out of prison, to make inmates eligible for parole, or to reduce death sentences to life imprisonment.22

Investigative reports in capital cases are more extensive than for other clemency applications. While it is impossible to know which considerations are most influential when commutation of a death sentence is at stake, several factors stand out. Clemency authorities are likely to consider mitigating or aggravating circumstances surrounding the crime--e.g., intoxication, provocation, and duress--that, while not legally sufficient to reduce a crime in degree, may provide the basis for commutation. Other relevant issues include the viciousness of a crime, the level of public outrage, the fairness of the prisoner's trial, and the possibility that the prisoner is actually innocent. Investigations are examined in more detail in Section IV of the Guide.

Reprieve. A reprieve suspends a sentence, usually temporarily.23 It is usually granted to provide the executive authority with an opportunity for final action on an application for a pardon or commutation.24 It does not lessen the severity of a sentence; it merely allows a period of grace after the sentence has been imposed.

Historically, the reprieve applied only to capital cases.25 Today, it is most commonly used in death-row cases to allow the prisoner to pursue further appeals, although some States permit a reprieve in conjunction with any criminal sentence. In Texas, for example, the Board of Pardons and Paroles may temporarily release on furlough a convicted offender from jail or prison before or during his or her term, often for medical reasons or the critical illness or death of a member of an inmate's family. Reprieves also have been granted to permit consideration of a pardon before the applicant is imprisoned.26

The reprieve procedure is usually the same as for pardons, except that some formalities frequently are relaxed.27 For example, if the next pardon board meeting is scheduled after the execution of a sentence, the applicant may go directly to the Governor for reprieve.

Remission of fines and forfeitures. The power to remit fines and forfeitures allows the executive authority to refrain from exacting such penalties. At the State level, this may involve the remission of a portion of a fine or the sureties on an appearance bond.

The level of restriction on this type of clemency varies from State to State; in some, the restrictions on remitting fines and forfeitures are stricter than for other forms of clemency, while in others, the opposite is true. The Attorney General's 1939 Report advocates less restriction for this type of clemency because, it said, it is a lesser power.28

Remission of fines and forfeitures is limited in that it may not interfere with the rights of third parties. For example, a fine that was already paid may be refunded to the defendant if it remains in the possession of the court or its officers. But, according to the Attorney General's survey, "if the rights of third persons have vested, these cannot be impaired by the Governor's action."29 For example, if a third party already has received restitution payments, a clemency grant cannot affect the payments.

Restoration of civil rights. In some States, the executive authority may elect to pave the way for restoration of certain rights to ex-convicts to facilitate their readjustment to life in society. However, unlike the pardon, which also provides for a restoration of rights, this form of clemency does not imply forgiveness. Rights that may be restored under this form of clemency include the right to vote, to serve on a jury, to testify, to hold public office, and to practice certain professions.

Amnesty. Pardon, commutation, reprieve, remission of fines and forfeitures, and restoration of civil rights all apply to the individual in specific cases that account for individual circumstances. Another form of executive clemency that differs fundamentally from the others is amnesty--a general pardon given to entire groups of criminals.

Historically, the act of amnesty has had a much broader purpose than the other forms of clemency, although the Supreme Court has ruled that there is no legal distinction between amnesties and pardons. The main criterion for amnesty is the overall good of the Nation. It is granted after a war, rebellion, or civil disorder, and the chief purpose is to unify the Nation. In other words, it sometimes may serve the Nation better to overlook some threatening act, rather than to prosecute.

President Carter's unconditional offer of amnesty to Vietnam draft resisters continued a tradition of presidents offering amnesty to unify the Nation after war. Other historic amnesties include President Lincoln's Amnesty Proclamation of 1863, followed by amnesty acts of President Andrew Johnson in 1865, 1867, and 1868. Soon after World War I, the U.S. Government gave amnesty, or pardon, to certain conscientious objectors and other violators of wartime statutes, including deserters. President Truman did likewise in 1945 and 1947. The last of these acts of clemency was for deserters between the end of World War II and the start of the Korean War in 1950.30

On occasion, amnesty has been granted at the State level for such purposes as correctional reform. In 1958, the Governor of Louisiana established a committee, popularly known as the "Forgotten Man's Committee," to study the State's prison system. After examining the records of each inmate, the committee brought 222 names to the State parole board, which consequently pardoned 107 inmates.31

The Evolution of Clemency

While clemency began as possibly an irrational system of granting mercy to criminals, many of its earliest tenets hold true today--albeit in modified form. While clemency is now usually granted after an investigation and hearing of a particular case, in early days it could be received if a "pure virgin" demanded to marry a condemned man, or if the latter encountered a vestal virgin on his way to the execution site.32 In one old German city, every woman sentenced to death by drowning was freed if she reached a certain point downstream alive. In such a case, it was believed that God had given a verdict attesting to the woman's innocence.33

Clearly, decisions concerning who would receive clemency often had more to do with luck and public acclaim than with justice or mercy. For example, Pontius Pilate, a Roman regional governor, commuted the death sentence of Barabbas, a robber and murderer, rather than that of Jesus Christ, because that was what an unruly crowd gathered before him demanded.34

Monarchs often granted clemency to help celebrate some royal occasion such as a coronation or the birth of an heir to the throne. In medieval towns not cosmopolitan enough to have a professional executioner, a condemned individual's sentence was sometimes commuted if he agreed to execute his partners in crime.35

According to some, the luck and public acclaim theories still hold true today. According to an article by Kevin Krajick in the June 1979 issue of Corrections Magazine, although "clemency is exercised within a legal framework, it is somehow above the law. When used constructively, clemency means that with a slash of the executive pen, backed only by common sense and compassion, a president or governor can cut through the anachronisms and technicalities of the legal system." But, as Krajick points out, the hand that wields the pen is subject to innumerable influences, including electoral politics, media attention, and personal qualities.

While it is unlikely today that an unruly crowd would hold such sway with a Governor or President as in the example of Barrabas, it is true that, by far, the largest number of commutations are announced just before Christmas. And, while modern society does not encourage criminals to execute their partners, commutations are sometimes given to informants who testify or provide information to aid in the apprehension or conviction of their cohorts in crime.

Nor can one discount the notion of being in the right place at the right time. Governors, at the end of their terms, sometimes commute the sentences of inmates who have been working as their domestic help. And inmates who are able to attract the attention of the press considerably improve their chances of convincing the electorate to urge executives to give ample consideration to their cases.

The possibility of abuse of clemency has always been present. In 12th century England the King openly granted two types of clemency--the first pardoned for the sake of justice and mercy, the second, in exchange for two gold marks paid to the King's treasury.36 While the phrase "control by the pardoning authority" is, of course, not synonymous with "abuse by the pardoning authority," abuse is a very grave associated danger. Indeed, to many, the concept of pardon implies unlimited discretion which, in turn, promises abuse.37

One well-known case of political corruption pertaining to abuse of the clemency authority in the United States occurred in Tennessee. Due to the integrity of Marie Ragghianti, former Chairwoman of Tennesee's Board of Pardons and Paroles, a high-level conspiracy to sell pardons and paroles was exposed, resulting in 5-year sentences in 1981 for two administration officials convicted of selling clemencies to State inmates and an early inauguration for the newly elected Governor of Tennessee.38

The framers of the Constitution were well aware of the potential for abuse if the power to grant clemency were too strongly vested in one individual. Yet, they also recognized the problems--time delays, conflicts of interest, power plays--inherent in spreading such authority too thin. While the Constitution delegates the clemency authority to the President, many State legislators cautiously directed their Governors to work in conjunction with an advisory body.39

Over the years, State clemency procedures in the United States have been refined. While 100 years ago a Governor might have been persuaded to grant clemency after being approached on the street by a prisoner's tearful wife, girlfriend, or mother pleading for mercy, this seems highly unlikely to occur today. Most States require that investigations and hearings precede clemency grants and often require that the Governor receive advice or consult an advisory board. Some States delegate responsibility solely to a board or panel on which a Governor may or may not sit.

State Clemency Today--Structure

In the United States today, there are three main structures through which applications for clemency are processed and reviewed. The first vests full clemency authority in the Governor. Generally these States permit the Governor to establish an executive office for processing applications. This office generally investigates each case and makes its recommendations to the Governor who generally follows its advice.

In the second structure, the clemency authority is vested entirely in a special board, usually called the Board of Pardons and Paroles. Board members may be appointed by the Governor, appointed by the State legislature, or both. They may be paid or unpaid.

In the third, the Governor has the authority to make clemency grants only on the recommendations of special boards. Sometimes the Governor is a member of the board who may or may not be permitted the deciding vote. For example, Arizona allows the Governor the power to grant clemency subject to the provisions of the State code pertaining to a board of pardons.

In addition, there are a multitude of possible variations in the laws directing the execution of the clemency power. For example, California gives its Governor full clemency authority except in the case of twice-convicted felons, where a decision to grant clemency must be preceded by a positive recommendation of the State supreme court. Another variation exists in Rhode Island, where the Governor must obtain the advice and consent of the State senate for all clemency grants.

Limitations on the clemency authority. The clemency authority is prescribed in the constitutihn of most States. Most constitutions provide for pardon, commutation, reprieve, and remission of fines and forfeitures, although other forms of clemency such as furloughs, amnesties, and respites also appear. A common constitutional restriction on executive clemency is the exemption of treason and impeachable crimes from the scope of pardonable offenses.

Another source of input in clemency procedures is State legislatures, which commonly prescribe guidelines to the executive process. Legislative guidelines may not restrict executive power, but may regulate the exercise of such power. Some States have enacted statutes that call for advisory boards to aid the executive in carrying out the clemency authority, while others direct the manner of applying for or granting pardons. For example, each State has its own standards stating who may apply for clemency and under what conditions clemency may be granted. Generally there are deadlines for filing clemency applications, specific forms to be filed, and evidence to be submitted with the application.

Most States employ a specific application and investigation process to clemency cases. Generally, an applicant must have exhausted judicial remedies, although this is not always required. Some States charge an application fee to clemency petitioners. Investigations into cases normally work with existing documents, for example court records, prison reports, and background information on the applicants.

The process for considering applications also varies. Some States conduct formal hearings; others conduct a strict administrative review. In States with formal hearings, there are due process protections and legal issues to be considered, such as the right to an attorney and the appointment of a lawyer to indigents. Another common requirement is that executives report annually to the legislature on all clemencies granted.

Courts and executive clemency. As a general principle, the courts have no power to grant clemency. Court decisions have made it clear that (1) the exercise of executive discretion in granting or refusing a pardon cannot be reviewed by the courts; (2) any attempt by the courts to interfere with the Governor's exercise of the pardoning power would be "manifest usurpation of authority"; (3) recommendations of judges and juries to the Governor for mercy have only such weight as the Governor sees fit to give them; and (4) the Governor's motive in granting a pardon may not be questioned by the courts.40

The courts do become involved, however, in cases where the validity of the clemency grant is in question; for example, if a pardon is suspected of having been granted fraudulently, the court may consider the evidence and revoke the pardon if a fraud were committed.

Unresolved issues. Even after years of refinement, modification, and use in the United States, there are still conflicting opinions and interpretations of issues related to executive clemency and its very existence.55 For example, some believe the clemency application process is becoming too complex for a person to petition on his or her own behalf. The number of forms, the need to look out for due process considerations, and to produce evidence require the involvement of an attorney, according to some. Yet, in most States, no such provision is made. In 1939, the Attorney General's survey recommended that pardon procedure be simple, thorough, public, free of charge, and adversarial rather than ex parte. However, in 1973, Goldfarb and Singer reported that most States were not thorough in their investigations.41 Investigations in only a few States proceeded beyond the collection of reports to actual interviewing of applicants, family members, defense counsel, and others who knew the prisoner.

Critics of clemency assert that it is outdated and unnecessary in the 20th century. According to Leslie Sebba, clemency is an "archaic survival of an earlier era (that) seems an anomaly in a democracy allegedly committed to a delicate separation of powers designed to ensure the independence of the judiciary."42 She also points out that other legal institutions have been developed that meet the needs formerly filled by the pardon power, for example, mental capacity, self-defense, and individualization of punishment.

Yet, for now at least, clemency remains an valuable outlet for the repercussions of a system in which human error remains a distinct possibility. In an ideal society with a perfect criminal justice system, there would, perhaps, be no need for clemency. In American society today, however, it is crucial to recognize the complexities surrounding executive clemency and the importance of carrying out the authority responsibly, and with sensitivity to its impact on individual communities and society as a whole.

Overview of the Guide

The remainder of this report discusses the findings of a survey of State and territorial laws and clemency practices. Section II profiles the legal basis for clemency procedures in U.S. States and territories. Information for this section was gathered through legal research into State laws, amendments, codes, and selected judicial opinions. To facilitate understanding of the findings, the section also includes charts that allow for comparison of the States and territories. Section III reviews the trends and emerging issues in clemency, based on a mail survey to each State and territory to elicit objective and subjective information on the actual implementation of clemency. Section IV examines the investigations of clemency applications and the prevalence of out-of-state requests for investigations. Appendixes to the report contain the survey used, a list of State contacts, a glossary of terms, and a suggested reading list.

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Section II

EXECUTIVE CLEMENCY IN THE UNITED STATES AND TERRITORIES

This section profiles the clemency authority in the 50 States and the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands. Information for the profiles was gathered from current statutory law, State constitutions, selected court rulings, and attorney general opinions.

The profiles, which provide legal citations referring readers to the actual law, ruling, or opinion for a more indepth view, are intended as comprehensive overviews of the clemency authority in the jurisdictions examined.

Overall Patterns and Trends

In terms of how clemency power is vested in the States and territories, the clemency authority structure can be divided into three basic models: Models I, II, and III. In Model I States, the Governor has primary authority to make clemency decisions. In some States, clemency decisions are made straight from the Governor's office; in others, the Governor may or must seek the recommendation of an advisory board--however, the board's rulings are nonbinding.

In Model II States, a board or administrative panel has primary authority to make clemency decisions. In most Model II States, the Governor appoints the board members.

In Model III States, power for making clemency decisions is shared between the Governor and a board or administrative panel. Power sharing can assume a variety of forms, including a situation in which the Governor sits on the board as an equal member, or the Governor must solicit the board's advice, which in some way is binding on the Governor.

Of the jurisdictions profiled, 35 are Model I, 5 are Model II, and 16 are Model III. Of the Model I jurisdictions, 14 vest power in the Governor alone and 21 provide for some type of advisory body. Of the five Model II States--Alabama, Connecticut, Georgia, Idaho, and South Carolina--four authorize the Governor to appoint the board members, while Idaho board members are appointed by the board of corrections. In Alabama and Idaho, the Governor has some additional clemency power consisting of sole authority to grant commutations and reprieves. In 16 Model III States, the Governor sits on the board as an equal member in 6, and in 10, the Governor must ask the board for advice that is in some way binding. In Florida, a Model III State, the Governor sits on the board as an equal member and may grant pardons, restorations of civil rights, and remissions of fines and forfeitures with the approval of three out of the six board members. See Table 1 for a view of which States fall under which model. The most common types of clemency available in the United States and Territories are pardons, remissions of fines and forfeitures, commutations, reprieves (also called respites),

and restorations of civil rights. In most jurisdictions, civil rights restorations are inherent in pardons; however, sometimes such restorations are optional in pardons or treated separately. Every jurisdiction profiled offers pardon, 35 offer remission of fines and forfeitures, 50 offer commutation, 55 offer reprieves, and 17 make special provisions for restoring civil rights. Certain States offer other types of clemency; for example, Arkansas provides for the granting of "indefinite furloughs," Connecticut for "releases," Tennessee for "exonerations," and Minnesota for "pardons extraordinary." California offers an additional route to pardon--via a certificate of rehabilitation granted by an appropriate court at least 3 years after a convict has been released from prison.

Most jurisdictions limit the clemency authority in relation to certain crimes--in 25, there are some sort of restrictions regarding treason and in 40, there are restrictions pertaining to impeachment. In most States, pardon may be granted only after conviction. Some States impose unique restrictions; for example, in Alabama individuals convicted of capital cases may be pardoned only if the death penalty has been commuted and if the person is innocent. California bars the granting of pardons or commutations to twice-convicted felons, unless upon the recommendation of the State supreme court, with four judges concurring. Kansas specifies permissible reductions in sentence for various sentences. Arkansas prohibits the Governor from pardoning anyone convicted of violating State law concerning the felonious manufacture or sale of liquor.

Table 1 offers a view of the clemency configurations in the various jurisdictions and facilitates comparison.

Special Clemency Provisions and Features

Various jurisdictions have special provisions pertaining to specific crimes or features of their clemency laws. Most common are special rules pertaining to capital cases, expungement of records, juvenile offenders, and others (such as mayors) who have been delegated limited clemency authority.

Victims' rights. While most States have requirements as to who should be notified of clemency applications or hearings, Louisiana's and South Dakota's provisions are notable for their emphasis on victims' rights. In Louisiana, the board must provide advance notice of clemency hearings to the victim (or spouse or next of kin if the victim is deceased), and must provide such individuals with reasonable opportunity to attend the hearing and be heard. South Dakota law specifies that any person aggrieved by a clemency application may appear before the board to present testimony on why a recommendation for clemency should not be granted.

Sovereign immunity waivers. Other States have passed laws to address their liability for unjust imprisonment. In 1985, Maine waived its sovereign immunity from claims for wrongful imprisonment, making the State liable for up to $100,000 in damages if an individual proves that he or she was convicted, incarcerated, and granted full gubernatorial pardon accompanied by the Governor's written finding that the person was innocent of the crime of

Table 1. Comparative view of clemency in the United States and Territories

State	Primary authority: Governor (Model I)			Primary authority: Board (Model II)		Primary authority: Combination (Model III)				Types of clemency available					Limitations			Special provisions				Reporting requirements
	Governor alone	Governor must seek board's nonbinding advice	Governor may seek board's advice	Members appointed by Governor	Members appointed by other means	Governor on board	Governor must seek binding advice	Applications sent to board	Members appointed by Governor	Pardon	Remission	Commutation	Reprieve	Restoration of civil rights	Treason	Impeachment	Other	Pertain to capital cases	Pertain to expungement of records	Others with clemency authority	Other	
Alabama				o						B	B	G	G	B	o	o	o1	o				B
Alaska			o							G	G	G	G			o						
American Samoa	o									G	G	G	G									
Arizona							o	o	o	G		G	G		o	o		o			o2	G
Arkansas		o								G	G	G	G		o	o		o	o			G
California			o							G		G	G			o	o3		o		o4,5	G
Colorado	o									G		G	G		o			o				G
Connecticut				o						B		B	G			o						B
Delaware							o			G	G	G	G			o					o6	B
District of Columbia	o7									M			M									
Florida						o				G	G	G	G	G	o	o						G
Georgia				o						B	B	B	B	B			o8					B
Guam			o							G	G		G									
Hawaii			o							G		G	G	G		o	o					

NOTES:

1. Capital cases, when death penalty is not commuted, may not be pardoned. If the sentence is commuted, the convict may be pardoned only if he or she is innocent.
2. Arizona law contains a sunset provision to terminate the Board of Pardons and Parcles.
3. Neither the Governor nor the legislature may grant a pardon or commutation in cases involving a twice-convicted felon, unless upon recommendation of the State Supreme Court.
4. California law provides for those pardoned after a wrongful conviction.
5. California offers an alternative route to pardon, via a "Certificate of Rehabilitation."
6. Special review procedures exist for clemency review of cases involving certain offenses.
7. The Mayor has primary clemency authority.
8. The Board of Pardons and Paroles is not empowered to grant clemency for criminal contempt of court and may not consider for clemency individuals serving first-offender sentences. Further, the General Assembly is empowered to prohibit the board from pardoning certain second offenders.

G = Governor's responsibility
B = Board's responsibility
M = Mayor's responsibility
H.C. = High Commissioner's responsibility
B,G = Shared responsibility with Governor and Board

Table 1. Comparative view of clemency in the United States and Territories (cont.)

State	Primary authority: Governor (Model I)			Board (Model II)		Combination (Model III)				Types of clemency available					Limitations			Special provisions				Reporting requirements
	Governor alone	Governor must seek board's nonbinding advice	Governor may seek board's advice	Members appointed by Governor	Members appointed by other means	Governor on board	Governor must seek binding advice	Applications sent to board	Members appointed by Governor	Pardon	Remission	Commutation	Reprieve	Restoration of civil rights	Treason	Impeachment	Other	Pertain to capital cases	Pertain to expungement of records	Others with clemency authority	Other	
Idaho					○					B	B	B	G		○	○						B
Illinois		○								G		G	G				○9					
Indiana							○		○	G	G	G	G		○	○						G
Iowa		○								G	G	G	G	G	○	○					○10	G
Kansas		○								G	G	G	G				○11					G
Kentucky	○									G	G	G	G		○	○		○				G
Louisiana			○							G	G	G	G			○					○12	B
Maine							○		○	G	G	G	G		○							
Maryland			○							G	G	G	G			○	○13					G
Massachusetts							○	○	○	G		G	G			○		○	○		○14	G
Michigan		○								G		G	G			○						G
Minnesota						○				B, G		B	B, G			○			○			
Mississippi			○							G	G	G	G		○	○				○		B
Missouri			○							G	G	G	G		○	○		○		○	○15	B

NOTES:

9. The Governor's clemency authority has been interpreted to pertain to criminal matters only. Also, the Governor may not remit court costs.
10. The only available release for certain "Class A" felons is release on parole if the Governor first commutes the sentence to a term of years. Iowa law also mandates that the Board of Parole recommends for pardon any paroled prisoner who, during parole, served in the U.S. (or allied) military.
11. Kansas law specifies permissible sentence reduction.
12. Pertains to State liability for unjust imprisonment.
13. The Governor may not remit principal or interest of any debt due the State.
14. A Governor's pardon will not necessarily free an individual from isolation if he or she is suffering from a communicable disease.
15. Missouri law specifies that when an inmate has an incurable disease, or when confinement will greatly endanger/shorten an inmate's life, the Governor may grant a commutation or pardon the inmate.

G = Governor's responsibility
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M = Mayor's responsibility
H.C. = High Commissioner's responsibility
B,G = Shared responsibility with Governor and Board

Table 1. Comparative view of clemency in the United States and Territories (cont.)

State	Primary authority: Governor (Model I)			Board (Model II)		Combination (Model III)				Types of clemency available					Limitations			Special provisions				Reporting requirements
	Governor alone	Governor must seek board's nonbinding advice	Governor may seek board's advice	Members appointed by Governor	Members appointed by other means	Governor on board	Governor must seek binding advice	Applications sent to board	Members appointed by Governor	Pardon	Remission	Commutation	Reprieve	Restoration of civil rights	Treason	Impeachment	Other	Pertain to capital cases	Pertain to expungement of records	Others with clemency authority	Other	
Montana							●	●		G	G	G	G	G							●16	G
Nebraska						●				B	B	B	B		●	●		●		●		
Nevada						●17				B	B	B	B	B		●		●		●		G
New Hampshire		●								G		G	G	G		●						
New Jersey			●							G	G	G	G	G	●	●		●				
New Mexico	●									G			G	G	●	●		●			●18	
New York	●									G		G	G		●	●						G
North Carolina	●									G		G	G	G		●						
North Dakota						●			●	B	B	B	B, G		●	●						G
Northern Mariana Is.	●19									H.C.										●		
Ohio		●								G		G	G		●	●						G
Oklahoma							●		●20	G		G	G		●	●						G
Oregon	●									G	G	G	G		●						●21	G
Pennsylvania							●		●22	G	G	G	G									

NOTES: · 16. Pertains to juvenile offenders.
17. Acting alone, the Governor may suspend collection of fines and forfeitures and grant limited reprieves and suspensions of sentences.
18. Pertains to juvenile offenders.
19. Power is vested in the High Commissioner.
20. Three of five members are appointed by the Governor.
21. Pertains to the timeframe for granting clemency after application is made.
22. Three of five members are appointed by the Governor.

G = Governor's responsibility
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M = Mayor's responsibility
H.C. = High Commissioner's responsibility
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Table 1. Comparative view of clemency in the United States and Territories (cont.)

State	Primary authority: Governor (Model I)			Board (Model II)		Combination (Model III)				Types of clemency available					Limitations			Special provisions				Reporting requirements
	Governor alone	Governor must seek board's nonbinding advice	Governor may seek board's advice	Members appointed by Governor	Members appointed by other means	Governor on board	Governor must seek binding advice	Applications sent to board	Members appointed by Governor	Pardon	Remission	Commutation	Reprieve	Restoration of civil rights	Treason	Impeachment	Other	Pertain to capital cases	Pertain to expungement of records	Others with clemency authority	Other	
Puerto Rico	○									G	G	G	G			○						G
Rhode Island							○			G			G	B		○						
South Carolina				○						B		G[23], B	G[23]								○24	
South Dakota			○							G	G	G	G	G	○	○						B
Tennessee			○							G		G	G	G				○	○		○25	G,B
Texas							○		○	G	G	G	G			○						B
Utah						○			○	B	B	B	B		○	○						B
Vermont			○							G	G		G		○	○						
Virginia			○							G	G	G	G	G		○26						G
Virgin Islands	○									G	G	G	G									G
Washington			○							G	G	G	G	G			○27	○				G
West Virginia	○									G	G	G	G			○28		○			○29	G
Wisconsin	○									G		G	G		○	○					○30	G
Wyoming	○									G	G	G	G	G	○	○		○				G

NOTES:
23. In capital cases only.
24. South Carolina law contains specific pardon eligibility guidelines as well as a provision addressing terminally ill inmates.
25. Pertains to a sunset provision in the law.
26. Implied.
27. Pertains to reform school inmates.
28. Implied.
29. Pertains to State liability for unjust imprisonment.
30. Applicant must serve a minimum term.

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conviction. California is liable for up to $10,000 in damages if its board of control determines an individual was wrongly imprisoned.*

Communicable diseases. While no State has yet imposed clemency provisions specifically relating to Acquired Immune Deficiency Syndrome (AIDS), several States have laws or rulings relating to illness and disease. In Massachusetts, a pardon will not necessarily free an inmate from quarantine or other isolation if he or she is suffering from a communicable disease such as "tuberculosis or venereal disease." Missouri provides that when an inmate is afflicted with an incurable disease, or when confinement will greatly endanger or shorten the inmate's life, the Governor may, on receiving the approved certification of the institution's physician, grant a commutation or pardon the inmate.

Board membership. Of the jurisdictions that involve a board or other administrative body in their clemency procedures, many prescribe or limit board membership in some way. For example, in Oklahoma, where the Governor cannot grant pardon without a favorable recommendation from the pardon and parole board, a statute mandates that three board members be appointed by the Governor, one by the chief justice of the State supreme court, and one by the presiding judge of the criminal court of appeals. In Montana, where the Governor must seek the advice of a three-member board for clemency matters, one board member must have particular knowledge of Native American culture and problems.

A more typical restriction is that the Governor may appoint board members, subject to approval by the State legislature. Other common restrictions limit board membership to individuals with relevant experience or education, or specify the number of board members who may belong to any one political party.

Restoration of civil rights. A full pardon does not always eradicate legal disabilities or disqualifications. For example, in Florida, relevant case law indicates that the restoration of civil rights via gubernatorial pardon may not be sufficient to allow a convicted felon to own or possess a firearm.

Some States have addressed the issue of restoring rights after release from prison. A 1986 Tennessee law allows for the issuance of a certificate of restoration that restores civil rights for some convicts whose pardons did not provide for such restoration. As mentioned earlier, California provides a special route for the restoration of rights and pardon after imprisonment, beginning with the granting of a certificate of rehabilitation from an appropriate court. Standards for granting the certificate specify that the recipient must have lived an honest, upright life during a 3-year period of "rehabilitation" after

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*The disparity between the cap on claims in Maine and California is due to inflation. California's limit, initially set at $5,000 in 1949, was increased to $10,000 in 1969, while Maine's law was enacted in 1985.

release from prison. Once granted, the certificate is transmitted to the Governor, who reviews the case and decides whether to issue a full pardon.

About the Profiles

In general, the information presented in the profiles is current as of the end of each jurisdiction's 1986 legislative session. Exceptions may have occurred if States did not publish supplemental materials with their latest session laws until after January 1987.

Data for the profiles were collected from State codes, constitutions, and session laws between October 1986 and January 1987. Court rulings and attorney general opinions are included to clarify statutory law.

Profiles are divided into three main sections: Overview of the Clemency Authority, Administrative Process, and Special Clemency Issues and Laws. The first section describes who has the clemency authority, the scope of the authority, and limitations on the authority. The second presents procedural information such as meeting and notice requirements, regulations, applicant's rights, and criteria for applying for clemency. The last section highlights any special issues pertaining to clemency; for example, laws, opinions, or rulings relating to capital cases, juveniles, or expungement of records.

Obviously, the actual manner in which the clemency process is conducted may not be perfectly reflected by statutes and selected legal rulings, due to executive orders, legislative regulations, and other policy guidelines that may be promulgated. Thus, readers interested in the complete clemency picture are encouraged to reference the statutes and legal opinions and to call or write to individual "State Clemency Contacts" listed in Appendix B.

ALABAMA

Overview of State System

Primary authority: Administrative panel--Board of Pardons and Paroles. The Board of Pardons and Paroles was created by the State legislature to exercise the clemency authority granted the legislature by a 1939 amendment to the State Constitution. The 1939 amendment vested the legislature with power to provide for and to regulate the administration of pardons, paroles, and remission of fines and forfeitures and to authorize courts with criminal jurisdiction to suspend sentences and to order probation. The Governor retains full authority for the granting of reprieves and commutations in death penalty cases. Ala. Const. Amend. No. 38 (Amendment of Art. V, §124) (Supp. 1986).

In having clemency authority vested in it by constitutional amendment, the State legislature enacted laws creating an administrative structure and procedures to exercise that power. Ala. Code §§15-22-20 to 15-22-40 (1975 & Supp. 1986).

Membership. The board consists of three members, appointed by the Governor, with the advice and consent of the State Senate. A nominating panel, consisting of the chief justice of the State Supreme Court as chairperson, the presiding judge of the Court of Criminal Appeals, and the Lieutenant Governor, submits a list of three names of qualified individuals to the Governor, who then makes a recommendation to the Senate, which has 5 days to act on the appointment. If the gubernatorial nominee is not confirmed by the Senate, the nominating panel makes three additional nominations, with the process continuing until the Senate confirms a nominee. Members of the board serve 6-year terms, with the chairperson to be designated by the Governor. Members are full-time State officials, taking an oath of office and subject to impeachment on the same grounds as other State officials. Member salaries are set by the legislature. §15-22-20.

Administrative location. The board is an independent State agency, with necessary offices, supplies, and equipment provided as are supplied to other State departments, boards, commissions, bureaus, and offices. §15-22-22.

Regulations. The board has specific statutory authority to adopt and promulgate regulations with regard to its operation in all matters before it, including practice and procedure in matters pertaining to paroles, pardons, and remissions. §15-22-37. The board appoints its secretary and other clerical, stenographic, supervisory, and expert staff, subject to the approval of the Governor. Board staff are State employees subject to the State's civil service system. §15-22-21.

Reports required. The board must make a full annual report of its activities to the Governor, with copies filed with the Secretary of State, Office of the Department of Archives and History, and must retain a copy for its permanent records. §15-22-24 (b).

Types of clemency. The Board of Pardons and Paroles has authority to grant pardons and to remit fines and forfeitures. The authority to parole is included in this provision. §15-22-36. The Governor has sole authority to grant reprieves and commutations in capital cases. See also Restoration of civil rights, below.

Substantive limitations. Treason and impeachment, as well as capital cases in which the death penalty is not commuted, are not pardonable. The board has clemency power only after conviction. §15-22-36 (a). Also, civil and political disabilities are not relieved by a pardon unless so specified. §15-22-36 (c).

Administrative Process

Generally, pardons may not be granted unless the convict has successfully completed at least 3 years of permanent parole or until his or her sentence has expired, if the sentence was for less than 3 years. Exceptions are permitted upon unanimous vote by the board if it receives clear proof that the petitioner is innocent of the crime of conviction and with the written approval of the trial judge or district attorney. §15-22-36 (c).

However, when any defendant is convicted and sentenced to death or imprisonment, the presiding judge, if of the opinion that the defendant should be pardoned, may postpone the execution of the sentence for the time needed to obtain the Governor's action on an application for commutation of the death sentence or the Board of Pardons and Paroles' action for a pardon. §15-18-100.

Forum. Meetings of the board are held at the call of the chairperson or as determined by the board. No pardon, parole, remission of fine or forfeiture, or restoration of legal disabilities may be granted except in an open public meeting of the Board. §15-22-23.

Each board member who favors a pardon, parole, remission, or restoration of civil and political rights is required to file his or her reasons in detail, with the entry and order, for public record. §15-22-36 (b).

Notice requirements. The board must give the trial judge and district attorney 30-day written notice of its pending consideration of applications for pardons, paroles, remission of fines and forfeitures, or restorations of civil and political rights. §15-22-36 (d). The board may not act on any application or case until a parole officer has conducted a complete investigation of the prisoner's social and criminal record and a written report has been incorporated in the prisoner's file. §15-22-25 (b).

Rights of applicants. State officials may not represent applicants before the board for salary or any renumeration, unless the official was counsel of record for the applicant during trial. However, such representation is permitted on a volunteer basis. §15-22-24 (h). Statute makes specific provision for the right to counsel and to present witnesses for those being considered for parole, but is silent in regard to those under consideration for

pardon or other clemency. §15-22-37. All information in a prisoner's file is privileged, except for the reasons for favoring clemency. §15-22-36 (b).

Restoration of civil rights. Alabama law permits the board to restore the right to vote to those convicted of certain offenses, excluding treason and impeachment, whether the conviction was in State or Federal court. Such restoration must be specified in the pardon. §§17-3-10. However, the courts have found the State Board of Pardons and Paroles has authority to restore citizenship and political rights to persons convicted in Federal court, rejecting the contention that a pardon by the President of the United States was essential to restore lost rights. Hogan v. Hartwell, 242 Ala. 646, 7 So. 2d 889 (1942).

Special Clemency Issues and Laws

Other State officials with clemency powers. Alabama law specifically prohibits special, private, or local laws remitting fines, penalties, or forfeitures. §104(28).

Capital cases. The Governor has sole authority to grant reprieves and commutations from the death penalty. Ala. Const. Amend. No. 38; Wilson v. State 268 Ala. 86, 105 So. 2d 66 (1958); Liddell v. State, 287 Ala. 299, 251 So. 601 (1971). Individuals whose capital sentences are commuted by the Governor are not eligible for a pardon from the Board of Pardons and Paroles unless the board receives sufficient evidence to indicate that the person is innocent of the crime of conviction and unanimously approves the pardon, and the Governor concurs. §15-22-27.

ALASKA

Overview of State System

Primary authority: Governor. Alaska's Constitution vests sole clemency authority in the Governor. Alaska Const. Art. III., §21. This authority is exclusive, for the courts do not have the power of judicial review of these decisions. Davenport v. State, 543 P. 2d 1204 (1975); Szeratics v. State, 572 P.2d 63 (1977).

Administrative system: Board of Parole. In general, the Governor may request the assistance of the Board of Parole for the processing of clemency applications. If the Governor refers applications for executive clemency to the Board of Parole, the board must investigate each case and submit to the Governor a report of the investigation with all other information the board has regarding the applicant. Alaska Stat. §33.20.080 (1986).

Types of clemency. The Governor may grant pardons, commutations of sentence, and reprieves, and suspend and remit fines and forfeitures in whole or part for offenses against the laws of State. Alaska Stat. §33.20.070 (1986).

Substantive limitations--crimes not pardonable. Impeachment. Const. Art. III, §21.

AMERICAN SAMOA

Overview of Clemency System

Primary authority: Governor. Under the territorial constitution, clemency authority is vested solely in the Governor. Am. Samoa Code Ann. Const. Art. IV, §9 (1981). The Governor also has the power to issue executive regulations not in conflict with U.S. or American Samoan law and thus has full administrative authority in regard to executive clemency. Const. Art. IV, §6.

Scope of clemency authority. Permissible clemency actions are remission of fines and forfeitures, commutations of sentence, reprieves, and pardons after conviction for offenses against the laws of American Samoa. Const. Art. IV, §9.

ARIZONA

Overview of State System

Primary authority: Governor on advice of panel. Under the State Constitution, the Governor has clemency powers in accordance with the conditions, restrictions, and limitations provided by law. Ariz. Const. Art. 5, §5 (1984). However, the Governor's clemency authority is regulated by the legislature, via laws that create and govern the Board of Pardons and Paroles, and no reprieve, commutation, parole, or pardon may be granted by the Governor unless it has first been recommended by the board. Ariz. Rev. Stat. Ann. §§31-401 et seq. (1976 & West Supp. 1986).

Nonetheless, the Governor has sole authority to suspend execution of sentence upon a conviction for treason pending action by the legislature §31-444; (see "Special Clemency Laws, Other Crimes."). However, the power to commute a sentence is subject to the limitation that no commutation may be granted unless it has first been recommended by the State Board of Pardons and Paroles. Arizona State Bd. of Pardons and Paroles v. Superior Court of Maricopa County, 12 Ariz. App. 77, 467 P. 2d 917, Supp'd. 12 Ariz. App. 228, 469 P. 2d 120 (1970). The Board of Pardons and Paroles has discretion to decide the length of time an inmate must serve before becoming eligible for commutation. Op. Atty. Gen. No. 63-64-L.

Administrative system: Board of Pardons and Paroles. The board consists of seven full-time members, appointed by the Governor. Members must be appointed on the basis of broad professional or educational qualifications and experience, and must have a demonstrated interest in the State's correctional program. No more than two members from the same professional discipline may be board members at the same time. Members serve 5-year terms and may be removed by the Governor for cause. Board members select the board chairperson, who serves a 2-year term, as well as other officers. §31-401.

In creating the board and defining its duties, the legislature intended that the board's functions be exercised in person, not by deputies or assistants. In the absence of any specific constitutional or statutory provision, the board's functions, which are quasi-judicial, are not assignable. Op. Atty. Gen. No. 59-16.

Administrative location. The board is an independent State agency and a continuing body. Hofman v. Frohmiller, 45 Ariz. 365, 43 P. 2d 1007 (1935). The board may make rules and regulations as it deems proper for the conduct of its business, but amended or changed rules and regulations must be published and distributed as provided by the State Administrative Procedures Act.

Sunset law. A State sunset law terminates the Board of Pardons and Paroles on July 1, 1992, and terminates Article 3 concerning reprieves, commutations, and pardons on January 1, 1993, unless the board and legislation are continued by legislative act. §31-401, note (West Supp. 1986).

The board may employ case analysts as necessary within the limits of legislative appropriations. The analysts aid the board in investigating cases, securing information, and performing necessary administrative functions to assist the board with applications for parole and commutation. §31-402 (C).

Reports required. The Governor is required to report to the legislature at the beginning of every regular session each case of reprieve, commutation, or pardon granted, stating the name of the prisoner, the crime of conviction, the sentence and its date, the date of the clemency action, and the reasons for granting clemency. §31-446.

Types of clemency. Arizona laws permit the granting of reprieves, commutations, and pardons after conviction. §31-443. Both "full" and "conditional" pardons may be granted; the former is unrestricted, but the latter is granted on conditions precedent or subsequent, providing the conditions are not illegal, immoral, or impossible to perform. Op. Atty. Gen. No. 68-17.

Substantive limitations--crimes not pardonable. Impeachment. §31-443 See also Other crimes below.

Legal disabilities/disqualifications. A full and unconditional pardon absolves a convicted felon of all legal consequence of the crime and restores his or her civil rights. Ordinarily convicted felons, upon completing their sentences, lack these rights. Op. Atty. Gen. No. 68-17. Specifically, the rights denied to felony convicts upon conviction include the right to vote Ariz. Const. Art. 7, §2; the right to bear arms if the conviction was for a crime of violence §13-919; the right to serve on a jury §21-202; the right to be an executor §14-402; the right to practice certain professions and occupations, including law §32-272, accounting §32-741, and beauty culture §32-553; and when a life sentence was imposed, the rights negated by a declaration of civil death. §13-1653 (B).

Administrative Process

Criteria for application. While the bases upon which a convict may seek clemency are not provided by statute, case law indicates that the board may grant a pardon on a showing that the conviction was based on perjured testimony. Sam v. State, 33 Ariz. 383, 265 P. 609 (1928); see also, Gee Long v State, 33 Ariz. 420, 265 P. 622 (1928); Shew Chin v. State, 33 Ariz. 419, 265 P. 621 (1928).

Upon application. All clemency applications are transmitted to the board chairperson, who then returns the applications with the board's recommendations to the Governor. §31-402. When a pardon application is made, the board may require the judge of the court of conviction or the county attorney who prosecuted the case to

furnish it with a statement of facts proven at trial and any other facts relevant to the granting or refusal of the pardon. §31-441.

Forum. The board is required to meet at least once a month at the State prison. The presence of three members constitutes a quorum, except in meetings to consider final action on executive clemency matters in which case a majority of the board constitutes a quorum. §31-401 (F),(G),(H).

Notice requirements. At least 10 days before action on a pardon application, written notice of intention to apply signed by the applicant must be served on the county attorney who prosecuted the case and proof of service must be presented by affidavit. Unless waived by the Governor, a copy of the notice also must be published for 30 days in a newspaper in the county of conviction. These notification requirements do not apply when there is imminent danger of the death of the applicant or when the term of imprisonment is within 10 days of expiration. §31-442.

According to an Attorney General's Opinion, as of July 24, 1982, the board must give notice to the applicant at least 30 days prior to the commutation hearing. Op. Atty. Gen. No. I82-070.

Administrative hearing. The State has chosen to provide commutation and, implicitly, a right to apply for such relief, and has accorded due process protection to consideration of such applications. Due process of law requires that the prisoner be given notice and opportunity to be heard. The board may be legally compelled, by writ of mandamus, to conduct such a hearing. McGee v. Arizona State Bd. of Pardons and Paroles, 92 Ariz. 317, 376 P. 2d 779 (1963). In general, upon timely application for a commutation of death sentence, the board must comply with the minimal requirements of due process by providing the prisoner notice and an opportunity to be heard. However, in the absence of an application, a commutation hearing is not required. Op. Atty. Gen. No. I80-224. Due process does not require that applicants be provided with reasons for denial of commutations. Banks v. Arizona State Bd. of Pardons and Paroles, 129 Ariz. 199, 629 P. 2d 1035 (App.1981).

Other legal issues. The chairperson of the board lacks the authority to speak for other board members. In one particular case, the chairman promised that if the prisoner would cooperate and testify in connection with a case arising out of a prison escape, he would change his negative vote and persuade two other board members to vote for a commutation and immediate release. The court ruled that such promises were not within the chairman's authority and that no enforceable agreement arose thereby. Tuzon v. MacDougall, 137 Ariz. 482, 671 P. 2d 923 (App. 1983).

Restoration of civil rights. Procedures for the restoration of civil rights are provided in Rule 29 of the Arizona Rules of Criminal Procedure. The Rules are most applicable to probationers upon the termination of their probationary periods, but may also apply to recipients of conditional pardons. Applicants who were sentenced by an Arizona State court and not placed on probation must attach a certificate of absolute discharge from the director of the Department of Corrections. §13-1743.

Subsequent conviction after pardon. The board may recommend to the Governor that any pardon granted contain a provision stating that the pardon will be revoked automatically upon a subsequent conviction which becomes final, and that the pardon will not prevent the indictment of the pardoned convict under habitual criminal statutes. Op. Atty. Gen. No. I79-317.

Special Clemency Issues and Laws

Capital cases. The section of penal code that vests the power to suspend execution of death sentence in the Governor is activated upon request of the board, according to court ruling. State v. Sims, 17 Ariz. 410, 153 P.451 (1915) State v. Sims, 17 Ariz. 410, 153 P. 451 (1915). Under the board rule that it has the responsibility and authority to review all capital cases and to determine whether there are grounds to recommend a reprieve to the Governor, reprieve hearings should be set where an individual is given a death sentence. However, according to an Attorney General Opinion, such hearings need not be scheduled when an execution is not imminent, for example, when a stay of execution has been ordered.

Other crimes. The Governor may suspend execution of sentence upon a conviction for treason until the case may be reported to the legislature at its next session, at which time the legislature may either grant a pardon, direct execution of the sentence, or grant a further reprieve. §31-444.

ARKANSAS

Overview of State System

Primary authority: Governor. In all criminal and penal cases, with certain exceptions, the Governor has full clemency authority, under the rules and regulations prescribed by law. Ark. Const. Art. 6, §18 (1947 & Supp. 1985). However, all clemency applications must be referred to the Parole Board for investigation and recommendation. Ark. Stat. Ann. §43-2811 (1977).

The Governor's authority has been upheld by the courts, which have found that the executive branch has the sole authority to grant clemency to deserving individuals. Smith v. State, 262 Ark. 239, 555 S.W. 2d 569 (1977). In one ruling, a defendant who wished to be allowed credit on his sentence for time spent in the hospital and convalescing at home was found, in effect, to be presenting a plea for clemency that needed to be addressed to the executive branch. Coones v. State, 280 Ark. 321, 657 S.W.2d 553 (1983).

In another case, it was found that the State Supreme Court cannot reduce a seemingly unduly harsh sentence imposed by trial courts if the evidence supports the conviction and the sentence is within the limits set by the legislature; the right to exercise clemency is vested in the chief executive, not in the courts. Osborne v. State, 237 Ark. 5, 371 S.W. 2d 518 (1963); see also Abbott v. State, 256 Ark. 558, 508 S.W. 2d 733 (1974); Patterson v. State, 253 Ark. 393, 486 S.W. 2d 19 (1972).

Administrative system: State Board of Pardons and Paroles. Referred to in the laws as the "Parole Board," Arkansas' administrative body for clemency matters was created and is generally governed by the provisions of Chapter 28, Pardons and Paroles, of Title 43, Code of Criminal Procedure. Ark. Stat. Ann. §§43-2801 et seq. (1977 & Supp. 1985).

While the Parole Board also makes recommendations to the Governor regarding clemency, its authority in this regard is strictly limited by statute. A parole may be ordered only for the best interest of society, and not as an award of clemency; it may not be considered a reduction of sentence or pardon. §43-2808.

Operations. All applications for pardon, commutation of sentence, reprieve, respite, or remission of fine or forfeiture must be referred to the Parole Board for investigation. The Parole Board is required to investigate each such case and to submit to the Governor its recommendation, a report of the investigation, and all other information it has regarding the applicant. §43-2811.

Membership. The Parole Board is composed of five members appointed by the Governor and confirmed by the Senate. One member from each of the four congressional districts must be appointed and one member must be appointed to represent the State at large. Board members serve 5-year terms. They receive $60 per day for each day they are actually engaged in official business or at

official meetings, and are compensated for mileage at the same rate or reimbursed for the use of a private airplane in the same manner authorized by State travel regulations for State employees. §43-2802.1.

Administrative location. The Parole Board is a division of the State Department of Corrections, Pardons and Paroles, inasmuch as the moneys to be paid and reimbursed as compensation and travel expenses to board members are payable from the maintenance funds appropriated for that department. §43-2802.1.

Regulations. The State Board of Pardons and Paroles is empowered to adopt appropriate rules and regulations to carry out the intent and purposes of its enabling legislation. §43-2842.

Reports required. Under the State Constitution, the Governor must report to the General Assembly at every regular session each clemency action taken; the reasons for granting; the name, crime, and sentence of the convict; and the date of the clemency action. Const. Art. 6, §18. The same information concerning each clemency grant must be filed with each house of the General Assembly upon the granting of the application. §41-1306 (c).

Types of clemency. Arkansas law permits the granting of reprieves, commutations of sentence, and pardons after conviction, and remission of fines and forfeitures in all criminal and penal cases, with certain exceptions. Const. Art. 6, §18. In addition to the types of clemency provided for by statute, an instrument granting an "indefinite furlough" subject to revocation has been interpreted by the courts to be in effect a conditional commutation that releases the punishment without removing guilt. Williams v. Brents, 171 Ark. 367, 284 S.W. 56 (1926). Conditional pardons, too, have been upheld by the courts. (See below, Procedures Upon Grant of Clemency. infra.).

By judicial interpretation, remission power includes the authority to remit a forfeited bail bond. Tinkle v. State, 230 Ark. 966, 328 S.W. 2d 111(1959) In another case concerning bail bonds, the court held that the right of the Governor to take clemency action in criminal cases does not extend to civil matters. However, in a case in which a person charged with a crime made bond and failed to appear, a forfeiture was taken on his bond and a civil jury trial on the bond forfeiture resulted in a verdict against the bondsman; the jury trial did not change the nature of the proceedings from criminal to civil. Therefore, being a criminal proceeding, the Governor had the authority to issue a remission releasing the forfeiture of the bond. Hood v. State, 237 Ark. 332, 372 S.W. 2d 588 (1963).

The Governor has power to pardon a criminal while the latter's case is pending in the Supreme Court on appeal. Cole v. State, 84 Ark. 473, 106 S.W. 673 (1907).

Substantive limitations--crimes not pardonable. Treason and impeachment, except that in cases of treason, the Governor has the power, with the advice and consent of the Senate, to grant reprieves and pardons and may, during Senate recesses, respite the sentence until the adjournment of the next regular session of the General Assembly. Const. Art. 6, §18. Also, it is an abuse

of power and an impeachable offense for the Governor to issue a pardon to anyone convicted of violating any State laws concerning the felonious manufacture or sale of liquors, except on proof that such person was not guilty. However, the Governor may issue such person a furlough not to exceed 90 days. §48-1106.

The power to remit fines and forfeitures as well as the power to pardon is confined to criminal or penal cases after conviction or judgment and does not reach to granting general amnesties or relief from civil penalties or forfeitures. Hutton v. McCleskey, 132 Ark. 391, 200 S.W. 1032 (1918).

Administrative Process

Procedures for clemency review. Statutory regulations concerning application for executive clemency are addressed only to the pardon or the commutation of sentence of capital murder convicts. §41-1306.

Notice requirements. The clemency application must contain the grounds upon which the pardon or commutation is requested and must be published by two insertions, separated by a minimum of 7 days, in a newspaper of general circulation in the county or counties in which the offense or offenses of the applicant were committed. §41-1306 (b). Copies of the application for pardon or commutation must be filed with the Secretary of State, the Attorney General, the sheriff of the county in which the offense was committed, the prosecuting attorney in the court of conviction or his or her successor, and the circuit judge presiding at conviction or his or her successor. §41-1306 (1)(a).

Procedures upon grant of clemency. Under statutory regulations concerning applications for executive clemency, a person sentenced to death or to life imprisonment without parole is ineligible for parole. If the sentence of a person sentenced to death or life imprisonment without parole is commuted by the Governor to a term of years, the person may not be paroled, nor may the length of incarceration be reduced in any way to less than the full term of years specified in the order of commutation. §41-1306 (2) & (3).

A general pardon exonerates from the payment of fines and removes the criminal character of the judgment for costs, which become no longer enforceable by imprisonment but only as a civil liability. Ex parte Purcell, 61 Ark. 17, 31 S.W. 738. However, a pardon does not relieve the defendant of paying the costs. Villines v. State, 105 Ark. 471, 151 S.W. 1023, 43 L.R.A. (N.S.) 207 (1912).

Release. In one early case, it was held that a pardon granted upon condition that the convict leave the State and never return does not violate the State Constitution's provision against banishment. Ex parte Hawkings, 61 Ark. 321, 33 S.W. 106, 30 L.R.A. 736, 54 Am. St. 209 (1895). In another case in which the respite granted by the Governor expired, the Circuit Court had to order the commitment of the defendant when the Supreme Court affirmed the conviction. Scaife v. State, 210 Ark. 544, 196 S.W. 2d 902 (1946).

More recently, where at the time of defendant's conviction, the sentence for first-degree rape could be anywhere from 30 years to life, a sentence for life was not subject to parole unless executive clemency was first obtained, but if the sentence was commuted, and if the defendant had served one-third of the newly fixed term of years, the defendant became immediately eligible for parole. Rogers v. Britton, 476 F.Supp. 1036 (E.D.Ark. 1979), rev'd on other grounds, 631 F. 2d 572 (8th Cir. 1980), cert. denied, 451 U.S. 939, 101 S. Ct. 2021, 68 L.Ed. 2d 327 (1981).

Restoration of civil rights. With regard to qualification as a witness in court, the common law disability by infamy may be removed by a pardon. Werner v. State, 44 Ark. 122 (1884). To qualify court witnesses with felony convictions, the best evidence of a pardon is the original or certified copy. Without such evidence, it has been found to be an error for a court to allow such a witness to testify based only upon oral evidence of the pardon. Redd v. State, 65 Ark. 475, 47 S.W. 119 (1898).

The pardoning power of the Governor is not intended to permit such an act of clemency to supersede the clear mandate of the State Constitution concerning the qualifications of office-holders so as to permit a person convicted of embezzlement of public money to hold public office. Ridgeway v. Catlett, 238 Ark.323, 379 S.W. 2d 277 (1964).

Expungement of records. A person convicted of a nonviolent felony committed when he or she was under age 18 may, upon or any time after release, petition the convicting court to have the record of the conviction expunged. The court may, if it determines that it is in the best interests of the petitioner and the State, enter an order expunging the record. §43-2831. The expungement order seals the record kept by law enforcement agencies and judicial officials, which is then available only to those agencies and officials. The records are not physically destroyed. §43-2832. The petitioner is issued an appropriate Certificate of Expungement, upon which the person may thereafter, in any applications for employment, licenses, or permits, or in any other instance or situation in which civil rights or privileges are involved, state that he or she has not been convicted. §43-2833. Under the same procedure, any person who committed a felony when under age 16 and was convicted, given a suspended sentence, and subsequently pardoned, and who has not been convicted of another criminal offense, may have the criminal record expunged by the sentencing court. §43-2834.

Subsequent conviction after pardon. Where a conditional pardon was granted and the condition was subsequently broken, the pardon became of no effect and the former judgment was restored to its full force and effect. Ex parte Brady, 70 Ark. 376, 68 S.W. 34 (1902).

Special Clemency Issues and Laws

Capital cases. As noted in ("Procedures for Clemency Review), the provisions of the Arkansas Criminal Code governing the imposition of the death penalty (§§41-1301 through 41-1307) contain the only statutory regulation of applications for executive clemency. §41-1306; "Procedure for Clemency Review."

Youthful offenders. As noted in Expungement of Records, Arkansas has special procedures for the expungement of records of offenders committing crimes while minors. §§43-2831 through 43-2834.

CALIFORNIA

Overview of State System

Primary authority: Governor. Under California's Constitution, the Governor has exclusive clemency authority, except when the applicant has been twice convicted of a felony. Cal. Const. Art. V, §8 (West Supp. 1987). In such cases, clemency requests must be referred to the judges of the State Supreme Court. (See below, Special Clemency Issues and Laws). The Governor's authority is subject to the application procedures provided by statute, but is nonetheless exclusive. Way v. Superior Court For San Diego County, 141 Cal. Rptr. 383, 74 C.A. 3d 165 (1977).

Administrative system: Board of Prison Terms. The powers and duties vested in the Governor under the State Constitution are further defined in the California Penal Code, Title 6, Reprieves, Pardons, and Commutations, Chapter 1, which also describes the duties and responsibilities of the Board of Prison Terms. Cal. Penal Code §§4800 through 4814 (West 1974 & Supp. 1987). The Board of Prison Terms serves in an advisory capacity to the Governor by making recommendations for clemency consideration. §4801.

At the Governor's request, the board investigates and reports on clemency applications, making appropriate recommendations. In formulating its recommendations, the board examines and considers all applications, transcripts of judicial proceedings, and other supporting evidence. The board also has the power to employ assistants and to take testimony and to examine witnesses under oath as well as any other powers it needs to fully and completely investigate applications.

Administrative location. The Board of Prison Terms is an executive agency within the purview of the Governor and associated with the Department of Corrections.

Reports required. The State Constitution requires the Governor to report to the legislature each reprieve, pardon, and commutation granted, stating the pertinent facts and the reasons for granting. Const. Art. 5, §8. These reports must be presented at the beginning of each legislative session. §4807. The Board of Prison Terms is required to make a biennial report to the Governor, on or before the first day of December of each even-numbered year, containing the status of matters under its consideration, an account of its expenditures, and suggestions with regard to its duties. §4814.

The Governor is responsible for maintaining a register of all applications for pardon or commutation of sentence, with a list of the official signatures and recommendations in favor of each application. Cal. Govt. Code §12030 (a) (West Supp. 1980). The Secretary of State must keep a register and verify the official acts of the Governor, including pardons and other public instruments. Ibid., §12162. While other public documents carry attestation fees, pardons are among those to be confirmed without charge. Ibid., §12197.

Scope of clemency authority. In accordance with the constitutional provision empowering the Governor to grant pardons after "conviction," the Governor has been held to be authorized to grant an unconditional pardon after a verdict of guilty but before sentence and judgment in a criminal conspiracy prosecution because the sentence by the court was not essential to the completion of the "conviction." In re Anderson, 92 P.2d 1020, 34 C.A.2d 48.

Types of clemency. Reprieves, pardons, and commutations. Cal. Const. Art. 5, §8. Caselaw also refers to general amnesties in noting that only the Governor can grant general amnesty, as the Governor can pardon or commute. Way v. Superior Court for San Diego County, supra. California also provides an alternate route to pardon--via a "certificate of rehabilitation." See Certificate of rehabilitation below.

Statutory provisions relating to penalties for first degree murder do not limit the Governor's power to impose conditions on commutations of sentences. Once a commutation is accepted by a prisoner, the validity of the conditions of commutation depend on their reasonableness. The Governor may attach any conditions he or she deems proper, providing the conditions are reasonable and compatible with the spirit of the law and are not illegal, immoral, or impossible to perform. In one case, the courts ruled that the Governor has the power to commute a death sentence or life imprisonment without parole, even though the statute for the offense involved prescribed punishment of death or life imprisonment with possibility of parole. Green v. Gordon, 246 P. 2d 38, 39 C. 2d 230, cert. denies 73 S. Ct. 187, 344 U.S. 886, 97 L.Ed. 686 (1952). However, a condition does not restrict the power of later governors to grant further executive clemency to that imposed by a former Governor. Ex parte Collie, 240 P.2d 275, 38 C. 2d 396, cert. denied 73 S. Ct. 1145, 345 U.S. 1000, 97 L.Ed. 1371 (1952).

Substantive limitations--crimes not pardonable. Impeachment. Also, as noted earlier, neither the Governor nor the legislature has the power to grant pardons or commutations of sentence in any case where the convict has been twice convicted of a felony, unless upon the recommendation of the Supreme Court, with four judges concurring. Const. Art. 5, §9.

Administrative Process

Certificate of rehabilitation. In addition to grants of clemency directly from the Governor, California has detailed statutory procedures for the restoration of rights and for applying for pardon after imprisonment, which begin with the granting of a certificate of rehabilitation from an appropriate court. These procedures are generally found in Title 6 of the Penal Code, Chapter 3.5. Cal. Penal Code §§4852.01 through 4852.21 (West 1982). These procedures provide an additional, but not exclusive, procedure for the restoration of rights and application for pardon, and they do not repeal any other provision of law providing for restoration of rights or application for pardon. §4852.19.

The following people may apply for a certificate of rehabilitation and pardon:

(1) Convicted felons who have been released from imprisonment in the State, whether discharged after completion of sentence or released on parole prior to May 13, 1943, who have not been incarcerated in a State prison or other penal institution since release and who present satisfactory evidence of 3 years of residence in the State immediately prior to application.

(2) Convicted felons who, on May 13, 1943, were confined in a State correctional facility, and anyone convicted of a felony after that date who is committed to a State institution.

(3) Convicted felons who have had the accusatory pleading dismissed after completion of their probationary terms, provided that they have not been incarcerated in any penal or correctional facility since that dismissal and are not on probation for the commission of any other felony, and are able to present satisfactory evidence of 3 years of residence in the State prior to the filing of the application. §4852.01 (a), (b), (c). (Note: California has a procedure for the dismissal of accusatory pleadings after successful completion of a probationary period. This dismissal generally releases the person from the disabilities and penalties of a criminal conviction, with certain exceptions, including the continued obligation to provide full disclosure on application for State licenses and ineligibility to possess a firearm. See Cal. Penal Code §1203.4.)

The following are ineligible to apply for a certificate of rehabilitation and pardon: those convicted of misdemeanors who are serving a mandatory life parole; those committed under death sentences; and those in the military service. §4852.01 (d). However, the requirement that only convicted felons are eligible to apply cannot constitutionally be applied to deny community college credentials to a person who has been convicted of a misdemeanor since statutory preferential treatment for felons as contrasted with misdemeanants would deny misdemeanants equal protection of the laws. Newland v. Board of Governors of California Community Colleges, 139 Cal. Rptr. 620, 566 P. 2d 254, 19 C. 3d 705 (1977).

Petitions for certificates of rehabilitation cannot be filed until and unless the petitioner has continuously resided in the State after leaving prison for a period of not less than 3 years immediately preceding the date of filing. §4852.06. The residency requirement does not apply to the filing of the notice of intention to apply, but only precludes the actual filing of the petition. Accordingly, an applicant residing out of State who would otherwise be eligible cannot petition for a certificate of rehabiliation. 2 Ops. Atty. Gen. 98, 8-19-43.

The statutory standards during the period of rehabilitation are that the person "shall live an honest and upright life, shall conduct himself with sobriety and industry, shall exhibit a good moral character, and shall conform to and obey the laws of the land." §4852.05.

With regard to clemency directly from the Governor, the Board of Prison Terms may refer to the Governor the names of persons imprisoned in any State prison who, it believes, are entitled to clemency because of good conduct, unusual term of sentence, or any other cause.

Potential applicants are to be informed of their right to apply and the procedures for obtaining a certificate of rehabilitation and pardon. They must be informed in writing by the official in charge of the place of confinement or the clerk of court if released from a probationary term. §4852.21 Generally, a statutory time period of 3 years, which begins to run upon release, must elapse before a person is eligible to petition for a certificate of rehabilitation. Additional time must elapse if the individual was convicted of certain offenses or as may be ordered by the trial court hearing the application.

After the period of rehabilitation has elapsed, each person who has met the standards of conduct during the rehabilitation period may file for a certificate of rehabilitation in the Superior Court of the county in which he or she resides. §4852.06.

If, after a hearing, the court finds that the petitioner has demonstrated his or her rehabilitation and fitness to exercise all of the civil and political rights of citizenship, the court then orders that the petitioner has been rehabilitated and recommends that the Governor grant a full pardon to the petitioner. §4852.13. The clerk of the court must immediately transmit certified copies of the certificate of rehabilitation to the Governor, the Board of Prison Terms, and the Department of Justice, and, in the case of persons twice convicted of a felony, the Supreme Court. §4852.14.

After issuance, the certified copy of a certificate of rehabilitation transmitted to the Governor constitutes an application for a full pardon. Upon receipt, the Governor may, without any further investigation, issue a pardon, except as subject to the special procedures concerning those twice convicted of felonies. §4852.16.

The Board of Prison Terms furnishes to the county clerk of each county a set of sample forms for a petition for certificate of rehabilitation and pardon, a notice of filing of petition for certificate of rehabilitation and pardon, and a certificate of rehabilitation. The county clerk must have a sufficient number of these forms printed and must make them available free of charge. §4852.18.

To apply for a certificate of rehabilitation, the petitioner must give notice of filing to the district attorney of the county in which the petition is filed, the district attorney of the county in which the petitioner was convicted, and the office of the Governor, together with notice of time of the hearing of the petition, at least 30 days prior to the hearing date. §4852.07.

To apply for pardon directly from the Governor, written notice of the intention to apply, signed by the applicant, must be served upon the district attorney in the county of conviction,

and an affidavit that such notice was served must be presented to the Governor at least 10 days before the Governor acts upon the applications. This notice requirement does not apply when there is imminent danger of the death of the applicant or when the term of imprisonment of the applicant is within 10 days of expiration. §4806. This notice requirement is directed only to the applicant for a pardon, and a pardon granted by the Governor without compliance by the applicant is valid notwithstanding such noncompliances. 33 Ops. Atty. Gen. 64, 4-15-59.

For a hearing on a petition for a certificate of rehabilitation, the court may require direct testimony, and the production, without expense to the petitioner, of all records and reports relating to the petitioner and the crime of conviction, and written reports or records concerning the conduct of the petitioner since his or her release. §§4852.1 and 4852.12. The Adult Authority cannot withhold files from inspection if rehabilitation proceedings are pending. 13 Ops. Atty. Gen. 180, 5-10-49.

Every clemency application must be accompanied by a full statement of any compensation being paid to any person for procuring or assisting in procuring the pardon or commutation. Without such a statement, the application will be denied. §4807.2. Also, the person receiving such compensation for assistance in procuring a pardon must file with the Governor a full statement of the amount and character of the compensation or gift within 10 days of receipt. Failure to do so is a misdemeanor. §4807.3.

When any application is made for clemency, including applications for twice-convicted felons, the primary authority may require the judge of the court of conviction or the district attorney who prosecuted the case to furnish a summarized statement of the facts proved at trial and of any other facts relevant to the propriety of granting or refusing the application, together with a recommendation and reasons for that recommendation. §4803.

Any peace officer contacted pursuant to the filing of a petition for a certificate of rehabilitation must report to the court all violations of law committed by the petitioner of which the peace officer is aware. On receiving proof of such violations, the court may deny the petition and determine a new period of rehabilitation not to exceed the original period for the same crime. In that event, before granting the petition, the court may require the petitioner to fulfill all requirements as before the filing of the original petition. §4852.11.

Each person applying for a certificate of rehabilitation/pardon is entitled to receive counsel and assistance from all rehabilitative agencies, including adult probation officers, State parole officers, or the Youth Authority. §4852.04. During the hearing on the petition, the petitioner may be represented by the counsel of his or her choice. If the petitioner has no counsel, he or she is to be represented by the public defender, if there is one in the county. If not, the petitioner is to be represented by the adult probation officer of the county or if, in the opinion of the court, the petitioner needs an attorney, one is to be appointed by the court. §4852.08. The

public defender has a duty to appear for proceedings for rehabilitation and pardon. Ligda v. Superior Court of Solano County, 85 Cal. Rptr. 744, 5 C.A. 3d 811 (1970).

No filing fee or court fees of any kind are required of a petitioner in these proceedings. §4852.09. Furthermore, it is a misdemeanor for anyone to solicit or accept any fee, money, or anything of value in exchange for services as an attorney or otherwise for a petitioner in any proceeding for a certificate of rehabilitation or in any application to the Governor for a pardon. §4852.2.

Restoration of civil rights. The effect of a full pardon and the rights and privileges restored by that pardon are generally set out in chapter 4, Title 6 of the California Penal Code. Cal. Penal Code, §§4853 & 4854, (West Supp. 1986). A pardon entitles the person to exercise all civil and political rights of citizenship, including but not limited to the right to vote and the right to own, possess, and keep any type of firearm that may lawfully be owned and possessed by other citizens, except if the person was ever convicted of a felony involving the use of a dangerous weapon. §4852.17. However, if the pardon is based on a determination of innocence, the statute forbidding possession of firearms by convicted felons does not apply. 28 Ops. Atty. Gen. 178.

Nonetheless, a pardon does not affect the authority conferred by law of any professional or occupational board to revoke or suspend any licenses, certificates, or permits for any act or omission not involved in the conviction, and does not require the reinstatement of the right to practice any profession or occupation that requires a license, permit, or certificate. This includes any provision of the California Business and Professions Code vesting licensing authority, and the power of the Board of Medical Examiners, as well as any board that issues a certificate permitting people to practice their art or profession on others. Similarly, such certificates do not affect the power or authority of the courts or the State Bar in relation to the licensing and regulation of attorneys. §4852.15.

Without a pardon, an ex-felon is disqualified under various provisions of California law for certain specified professions. Any person who has been convicted of a felony, in California or another jurisdiction, is ineligible to serve in any capacity as a peace officer in the State, although that person may work as a parole officer of the Department of Corrections or the Department of the Youth Authority, or as a probation officer in a county probation department if he or she has been granted a full and unconditional pardon. Cal. Govt. Code, §1029 (West Supp. 1986). A person who has been determined to be a sexual psychopath under State law, who has been convicted of any sex offense, or who has been convicted of a controlled substance offense is denied teaching credentials unless he or she has obtained a certificate of rehabilitation and his or her probation has been terminated and the accusation dismissed. Cal. Educ. Code §44346 (West Supp. 1986).

With regard to the reinstatement of disbarred attorneys, a statute purporting to bestow the power to reinstate or direct reinstatement without showing of moral rehabilitation was declared unconstitutional as a legislative encroachment upon the courts' inherent power to admit attorneys to practice, and as tantamount to vacating a judicial order by legislative mandate. Thus, a full pardon presented to a disbarred attorney was inadequate to show that he possessed the moral stamina essential to qualify to practice law. In re Lavine, 41 P. 2d 161, 2 C. 2d 324, modified on other grounds and rehearing denied 42 P. 2d 311, 2 C. 2d 324.

Eligibility as witnesses. Under California's rules of evidence, the credibility of an ex-felon witness may be attacked in court unless a pardon based on innocence has been granted to the witness, a certificate of rehabilitation has been issued, or the accusatory pleading has been dismissed, except in a criminal trial where the witness is being prosecuted for a subsequent offense.

Expungement of records. Whenever a person is issued a certificate of rehabilitation or granted a pardon, that fact must immediately be reported to the Department of Justice by the court, Governor, or other granting officer or agency. The Department of Justice must then immediately record these facts on the person's former criminal record and transmit such facts to the Federal Bureau of Investigation. §4852.17.

Under California law, a pardon does not obliterate the record of conviction. People v. Norton, 146 Cal. Rptr. 343, 80 C.A. 3d Supp. 14 (1978). However, arrest records may be destroyed if there was no conviction without infringing on power of executive clemency and violating separation of powers. Younger v. Superior Court of Sacramento County, 145 Cal. Rptr. 674, 577 P.2d 1014, 21 C.3d 102 (1978).

Special Clemency Issues and Laws

State liability for unjust imprisonment. California law concerning indemnity for those who were pardoned after an erroneous conviction are found in Chapter 5, Title 6 of the California Penal Code. Cal. Penal Code §§4900 through 4906 (West 1982 & Supp. 1987).

Any person, who, having been convicted of any felony against the State of California and having been imprisoned in that State, was granted a pardon by the Governor because the crime with which he or she was charged was never committed, or was not committed by that person, may present a claim against the State to the State Board of Control for the monetary damages suffered as a result of the imprisonment. §4900. This provision has been interpreted to mean that a plaintiff who was found not guilty by reason of insanity was not eligible for compensation when he did not otherwise contend that he did not commit the acts that were elements of the crimes. Ebberts v. State Board of Control, 148 Cal. Rptr. 543, 84 C.A. 3d 329 (1978). For a case generally concerning the indemnity procedure, see Plum v. State Board of Control, 124 P. 2d 891, 51 C.A. 2d 382 (1942). Concerning

judicial review of Board of Control actions with regard to a claim of justifiable homicide, see Diola v. Board of Control of State of California, 185 Cal. Rptr. 511, 135 C.A. 3d 580 (1982).

To be considered by the Board of Control, claims must be presented within a period of 6 months after judgment of acquittal or discharge, or after the pardon is granted, or after release from imprisonment, and at least 4 months prior to the next meeting of the State legislature. §4901.

Upon the presentation of a claim, the Board of Control must set a time and place for a hearing and must mail notice of the scheduled hearing to the Attorney General at least 15 days in advance of the hearing. §4902.

At the hearing, the claimant must introduce evidence in support of the claim and the Attorney General may introduce evidence in opposition. The claimant must prove the facts presented in the claim, including the fact of innocence, the fact that he or she did not in any way contribute to the arrest or conviction, and the amount of financial injury sustained as a result of the erroneous conviction and imprisonment. §4903.

If the facts alleged are proven, the Board of Control must report the case and its conclusions to the State legislature at its next meeting, with a recommendation for appropriations to indemnify the claimant for financial damages suffered, never to exceed $10,000. §4904. The Board of Control also must make a report and recommendation to the State Controller showing the moneys appropriated to satisfy these claims. §4905.

The Board of Control is authorized to make all necessary rules and regulations consistent with the law for the purpose of carrying into the effect the system for indemnifying those wrongly convicted. §4906.

Special procedures for those with two felony convictions. The constitutional provisions vesting clemency authority in the Governor include a prohibition against granting pardons or commutations to a person twice convicted of a felony, unless upon the recommendation of the Supreme Court, with four judges concurring. Const. Art. 5, §9. Although the ultimate decision-making authority with regard to the granting or refusal of a pardon to a person twice convicted of a felony rests with a majority of the justices of the State Supreme Court, the administrative system for the submission of pardon applications remains within the purview of the Governor and the Board of Prison Terms.

The application for pardon or commutation of sentence is made directly to the Governor, who then transmits to the Board of Prison Terms all papers and documents relied upon in support of and in opposition to the application. §4802. The Board of Prison Terms, after investigation, then returns its written recommendation concerning such clemency applications to the Governor, together with all papers filed in connection with the application. §4813.

When the clemency application is made to the Governor or referred to the Board of Prison Terms, the judge of the court of conviction or the district attorney who prosecuted the case may be required to furnish a summarized statement of the facts proved at trial and of any other facts relevant to the propriety of granting or refusing the application, together with a recommendation and reasons for that recommendation. §4803. As with other pardon requests, on the issuance of a certificate of rehabilitation, the clerk of the court granting the certificate must immediately transmit certified copies of the certificate to the appropriate authority which, in the case of persons twice convicted of a felony, is the Supreme Court. §4852.14.

An application that has not received a favorable recommendation from the Board of Prison Terms is not forwarded to the Clerk of the Supreme Court unless the Governor especially refers the application to the justices for their recommendation. §4850. When the Board of Prison Terms makes a favorable recommendation or the Governor overrides an adverse recommendation, the application, together with all background information, including prison records and recommendations, is then forwarded to the Clerk of the Supreme Court. §4851.

On application to the State Supreme Court for recommendation to the Governor for pardon, the standard presumption of innocence does not apply, placing the burden on the applicant to show why he or she should receive clemency. The Supreme Court may base its decisions on circumstantial evidence. In a case that established these standards of evidence with regard to clemency applications from those twice convicted, the Supreme Court determined that the applicant had not made a sufficient case and recommendation for pardon was denied. In re Billings, 298 P. 1071, 210 C. 669 (1930).

If a majority of the justices recommend that clemency be granted, the Clerk of the Supreme Court is to transmit the application with its file to the Governor. Otherwise, the documents are to remain in the files of the court. §4852 The Governor actually grants the pardon once it is approved by the court. The Governor's authority was confirmed in a case in which the accused had been convicted for first-degree murder and burglary, and the Governor commuted his death sentence to life imprisonment without having received recommendation of majority of the Justices of the Supreme Court. The State Supreme Court held that the Superior Court that had convicted the defendant could not then reimpose the death sentence, because the Governor had the power to grant executive clemency without the recommendation of a majority of the judges of the Supreme Court. Green v. Superior Court in and for Los Angeles County, 37 P. 2d 694, 2 C.2d 1 (1934).

COLORADO

Overview of State System

Primary authority: Governor. The Colorado Constitution vests full clemency authority in the Governor except in cases of treason. The Governor is, however, subject to reporting and other procedural requirements as prescribed by law. Colo. Const. Ann. Art. IV, §57 (1980 & Supp. 1986).

Colorado courts have ruled that the Governor alone has the authority to modify sentences after final conviction, but that a trial court may take a "second look" at the sentence before the conviction is final. People v. Lyons, 44 Colo. App. 126, 618 P. 2d 673 (1980). Once conviction is final, however, the only means to modify the resulting sentence is via appeal for executive clemency. If a court would modify a sentence after a final conviction is made, this would represent encroachment on executive authority. McClure v. District Court, 187 Colo. 359, 532 P.2d 340 (1975); People v. Arellano, 185 Colo. 280, 524 P. 2d 305 (1974); People v. Chavez, 185 Colo. 310, 524 P. 2d 307 (1974).

The Governor's clemency power is regulated by Article 17 of the Colorado Code of Criminal Procedure. These laws do not provide for an administrative body to assist the executive. Colo. Rev. Stat. §16-17-101 and 16-17-102 (1978 Repl. and Supp. 1984). Pardons not issued in compliance with Article 17 provisions are invalid. People ex rel. Garrison v. Lamson, 622 P. 2d 87 (Colo. Ct. App. 1980).

Reports required. The State Constitution requires that, for every case in which executive clemency authority is exercised, the Governor send a transcript of the clemency petition, all proceedings, and the reasons for the action to the General Assembly at its next session following the grant. Art. IV, §7.

Types of clemency. The Governor may grant reprieves, commutations, and pardons for all offenses after conviction. Art. IV, §7.

Substantive limitations. Crimes of treason are not pardonable. Art. IV, §7.

Administrative Process

Standards for granting. In considering clemency applications, the Governor is required to give weight to good character prior to conviction, good conduct during imprisonment, statements of the sentencing judge and district attorneys, the rehabilitation of the convict, and any other material concerning the merits of the application as seem appropriate for each particular case. §16-17-102.

Evidence. All applicants for commutation or pardon must submit a certificate from the superintendent of the correctional facility, describing the applicant's conduct during imprisonment, along

with any evidence of former good character. §16-17-102. By law, the Governor has sole discretion in evaluating comments and soliciting other comments as deemed appropriate. §16-17-102.

Notice requirements. Before the Governor approves an application, the application must be submitted to the district attorney of the county of conviction, the sentencing judge, and the prosecuting attorney for comment on its merits. The Governor must make reasonable efforts to locate the sentencing judge and prosecuting attorney and must allow them at least 10 days to comment on the application. This notification requirement is considered to have been met if comments are not made within 10 days or time allotted for receipt by the Governor, or if the sentencing judge or prosecuting attorney cannot be located, are incapacitated, or are otherwise unavailable despite the Governor's good-faith efforts to obtain their comments. §16-17-102.

Appeal reconsideration. Where the Governor has commuted a sentence, the Supreme Court or District Court cannot reduce, or in any way alter or amend, the sentence as commuted. People v. Simms, 186 Colo. 447, 528 P. 2d 228 (1974); People ex rel. Dunbar v. District Court, 180 Colo. 107, 502 P. 2d 420 (1972). In People v. Quintana, for example, a motion filed to correct clerical errors after commutation was denied because the courts lack jurisdiction to alter or amend a commuted sentence. People v. Quintana, 42 Colo. App. 477, 601 P. 2d 637 (1979).

Special Clemency Issues and Laws

Capital cases. The Governor is fully authorized, when he or she deems it proper and consistent with the public interest and the rights of the condemned, to commute the sentence in any case by reducing the penalty in a capital case to imprisonment for life or a term of not less than 20 years at hard labor. §6-17-101.

CONNECTICUT

Overview of State System

Primary authority: Administrative panel. In Connecticut, the Board of Pardons has primary clemency authority with jurisdiction over the granting of commutations and pardons. See generally, Conn. Gen. Stat. Ann. §§18-24a to 18-30 (1985) The Governor has a limited power to grant reprieves after conviction. Conn. Const. Art. IV, §13 (1985).

Membership. The board consists of five State residents, appointed for 6-year terms by the Governor with the advice and consent of the General Assembly. Two members must be attorneys, one member must be skilled in the social sciences, one must be a physician, and one must be a judge of the State Supreme Court who is designated by the other justices to sit on the board. No more than two board members may belong to any one political party. The board elects its chairperson biennially. Members are compensated on a per diem basis for attendance at each session of the board in lieu of expenses as approved by the Commissioner of Administrative Services. §§18-24a.

Administrative location. The board is an autonomous body, placed within the Department of Corrections for administrative purposes only. §§18-24a.

Regulations. The board has rule-making authority for procedural matters and must appoint a secretary trained in law for procedural and administrative tasks as required by law or the board. §§18-27.

Reports required. When the board grants an absolute pardon, the secretary must provide written notification of the pardon to the clerk or chief court administrator of the court of conviction. §§18-26(c).

Types of clemency. The board may grant commutations or releases, conditional or absolute, to any person convicted of any offense against the State. It also may grant commutation from the death penalty, as well as conditional or absolute pardons, for any offense against the State after the sentence is imposed. §§18-26(a) & (b) The Governor may grant reprieves after conviction. Const. Art. IV, 513.

Substantive limitations. The only substantive limitations on clemency authority apply to the Governor's power to grant reprieves; the Governor may grant reprieves in all cases except impeachment, but only until the end of the following session of the General Assembly. Const. Art. IV, §13.

Administrative Process

Evidence. The board has the same authority as the courts to compel the attendance of witnesses. §§18-28. The board may inquire as to the previous history or character of any prisoner; upon request, each prosecuting officer, judge, police officer, or

other involved person is required to give the board any information concerning the habits, disposition, career, and associates of any prisoner. §§18-30.

Forum. The board meets in formal session as required. §§18-27.

Other procedural rules. To make the board's judgment operative, four of the five board members must concur. §§18-27. The sheriff of Hartford County or the sheriff's deputy is required to attend board sessions. §§18-28. Prisoners also are required to attend board sessions, with the board having the legal authority to compel their transportation to their hearings. §§18-29.

DELAWARE

Overview of State System

Primary authority: Governor on advice of panel. The Delaware Constitution vests clemency authority in the Governor, but pardons, commutations, and reprieves of longer than 6 months are subject to the written recommendations of the Board of Pardons. Del. Const. Ann. Art. VII, §1 (1974).

Administrative system: Board of Pardons. The Board of Pardons is composed of the State Chancellor, Lieutenant Governor, Secretary of State, State Treasurer, and Auditor of Accounts. Const. Art. VII, §2. The Lieutenant Governor is president of the board and the Secretary of State is its secretary. Rule 5 (c) & (d). (Refer to "Administrative Process" for primary citation for Rules of the Board of Pardons.) The State Constitution also indicates that the Lieutenant Governor's compensation for services as a member of the Board of Pardons is determined by the General Assembly. Del. Const. Ann. Art. III, §19 (1974 & 1986 Supp.).

Reports required. The board's recommendations for clemency action by the Governor, with the reasons for such recommendations, are to be filed and recorded in the Office of the Secretary of State, who then notifies the Governor. Const. Art. VII, §1.

Types of clemency. Remission of fines and forfeitures, reprieves, commutations of sentence, and pardons. Const. Art. VII, §1 Per case law, the Governor may grant conditional pardons, the only limitation being that the conditions not be illegal, immoral, or impossible to perform. In re McKinney, 33 Del. 434, 138 A.649 (Super. Ct. 1927).

Substantive limitations. Impeachable offenses may not be pardoned. Art. VII, §1.

Administrative Process

The application and review procedures of the board are generally governed by the Rules of the Board of Pardons. Del. Code Ann. Rules, Par. Bd. R. 1 to 9 (1981 Repl.).

Time requirements. Except for urgent reasons or in cases of reprieve or corporal or capital punishment, applications and supporting papers must be filed and the required notice given at least 15 days prior to the board session at which they are to be considered. In urgent or exceptional situations, the president of the board or a majority may call a special session. Rule 4 Applications for clemency will not be heard if the matter is pending in any judicial proceeding in any court and no applications will be heard for 18 months after any decision on a prior application. Rule 7.

Form to be used. Application petitions may be filed personally or through a representative. If the applicant is in the custody of the Department of Corrections, actions for clemency consider-

ation must first be initiated by an application filed with the board and a notice of this application to the Board of Corrections for referral to the Board of Parole. Rule 2(a) and (c).

Evidence. Six separate copies of the application must be filed with the board's secretary and must contain a certified copy of the court docket entries showing the sentence, a brief statement of the reasons for the application, a short history of the case, including the existence and status of any pending judicial or executive proceedings in regard to that case. For persons not in the custody of the Department of Corrections and who desire clemency review for certain statutorily enumerated crimes (see Special Clemency Laws, infra.), six copies of a current psychiatric and psychological evaluation report must also be filed. Applications must be filed with and correspondence addressed to the Secretary of State. Rule 3 (a), (b), and (c).

Notice requirements. The applicant must have written notice of the clemency application mailed or served upon the sentencing judge, the Attorney General, the chief of police having jurisdiction where the crime occurred, and the Superintendent of the Delaware State Police. This notice must state when and where the application will be made and the grounds on which the application is based. No grounds other than those contained in this notice will be considered by the board. This notice must be given at least 15 days prior to the meeting of the board and written proof that such notice was given is required. Rule 2 (d), (e), and (f).

Forum. The board meets in open session to consider applications on the fourth Thursday of every month except July and August, at the time and place determined by the president of the board. Rule 1 Board meetings are open to the public, but the board considers applications in executive session. Rule 5 (a).

Other procedural rules. According to the Constitution, the board may require information from the State's Attorney General on any subject relating to its duties. Const. Art. VII, §3. The board's secretary is responsible for notifying the Attorney General that the board requests a legal representative from the Attorney General's office to attend all board sessions related to applications for clemency. Rule 8. The Secretary of the board must also request, upon receiving an application, a report summarizing the complete record of the applicant, including an opinion concerning state of rehabilitation from the Board of Parole. The secretary must mail copies of the application to board members and the Attorney General. Rule 3 (f) and (g). By statute, whenever the board receives a clemency application from a person in the legal custody of the Department of Health and Social Services, the board must request from the Board of Parole a summary of the person's complete record and an opinion as to the person's state of rehabilitation. §4363.

Administrative hearing--rules and/or standards of evidence. By statute, the Board of Pardons has full subpoena power and thus may require the attendance of witnesses and production of evidence. Such power may be exercised by any member of the board, who also may administer oaths. Witnesses who fail to appear or to produce subpoenaed evidence, or who testify falsely are sub-

ject to the same penalties as if they were before the Superior Court, which may be asked by the board to cite for contempt. On request by the board, the Department of Corrections investigates applications and makes recommendations. §4361 (a), (c), (d), and (e). In addition to its subpoena powers, which are referenced in the Rules of the Board, the board has full discretion to hear witnesses and receive evidence as it deems desirable. Among other matters generally deemed appropriate for board consideration are the transcript of the trial evidence, proper affidavits, letters from the judge and the jury who tried the case, the prosecuting attorney, responsible persons in the community where the crime was committed, and persons present at the trial. Rule 6.

Special Clemency Issues and Laws

Delaware has special procedures, including a mandatory psychiatric examination, for clemency review of cases in which the individual was convicted of certain offenses. §4362.

When the Board of Pardons considers, for recommendation to the Governor, the pardon or commutation of sentence of any person convicted of an act causing death; sexual offenses; kidnapping and related offenses; arson and related offenses; burglary in the first degree; burglary in the second degree; robbery; offenses relating to children and incompetents, cruelty to animals, abuse of a corpse; unlawful use of an incendiary device, bomb, or other explosive device; abuse of children; and distribution of a controlled substance to a person under age 18; or for an attempt to commit any of these crimes, each member of the Board of Pardons and the Governor must be furnished with a copy of the report of the psychiatrist and psychologist who have examined the person. A psychiatrist's report also must be submitted when the Board of Pardons considers the clemency application of any person who has been convicted of murder, voluntary manslaughter, rape, kidnapping, abducting a child, poisoning with intent to harm, robbery, burglary in the first degree, burglary in the second degree, mayhem, arson, and assault with intent to murder, to rape, or to rob, or for an attempt to commit any of these crimes.

Prior to the Board of Pardon's consideration and recommendation for release via pardon or commutation of sentence of any person who has been incarcerated for any of the above-mentioned crimes, the petitioner must be adequately examined by a physician who has practiced in psychiatry, and the petitioner must undergo adequate psychological clinical studies for a period of not less than 30 days, within a 5-month period immediately preceding consideration of his or her case by the Board of Pardons. The Director of the Division of Correction may request the Director of the Division of Mental Health and Retardation to cause examination and studies to be made. The examining psychiatrist is required to furnish each member of the Board of Pardons with a copy of the report of his or her findings, opinion as to the physical, mental, and emotional health of the person who is being considered for recommendation for pardons or commutation of sentence, and opinion of the probability of the petitioner's again committing a crime similar to the one for which he or she was incarcerated or of violating any other State law. Should the Board of Pardons recommend a pardon or commutation of sentence, a copy of the psychiatrist's report must be furnished to the

Governor. If the required examination and clinical studies cannot be made at the correctional institution, the prisoner may be transferred, under adequate security safeguards, to the Delaware State Hospital for such examination and studies. Del. Code Ann. §4362 (1979 Repl.); Rule 9.

DISTRICT OF COLUMBIA

Overview of Clemency System

Primary authority: Mayor. Given its unique governmental structure, the clemency provisions of the District of Columbia also are unique. With regard to clemency authority, the D.C. Code specifies only that "The Mayor of the District of Columbia may grant pardons and respites for offenses against the late corporation of Washington, the ordinances of Georgetown and the levy court, the laws enacted by the Legislative Assembly, and the police and building regulations of the District. He shall commission all officers appointed under the laws of the District, and shall take care that the laws be faithfully executed." D.C. Code Ann. §1-311 (1981). Thus, pardons and respites for violations of Washington, D.C., laws may be granted by the Mayor.

Legislative history. The relevant section of the D.C. Code originated at a time when local government powers were delegated to a Board of Commissioners of the District of Columbia. Section 401 of Reorganization Plan No. 3 of 1967 transferred all of the functions of the Board of Commissioners to a single Commissioner. The District of Columbia Self-Government and Governmental Reorganization Act, 87 Stat. 818, §711 (D.C. Code, §§1-211) abolished the District of Columbia Council and the Office of Commissioner of the District of Columbia. These branches of government were replaced by the Council of the District of Columbia and the Office of Mayor of the District of Columbia, respectively. This reorganization transferred clemency authority to the Mayor. Ibid., notes.

FLORIDA

Overview of State System

Primary authority: Governor on advice of panel. According to the Florida Constitution (as amended), the Governor of Florida has the sole discretion, via executive order filed with the Secretary of State, to grant reprieves of up to 60 days, and to suspend collection of fines and forfeitures, except in cases involving treason or impeachment. Subject to the approval of three cabinet members, the Governor may grant full or conditional pardons, restore civil rights, commute punishments, and remit fines and forfeitures for offenses. Fla. Const. Art. 4,§(1970 & West Supp. 1986). Thus, Florida's Constitution divides clemency authority into two groups: reprieves and suspensions--both within the sole discretion of the Governor; and pardons, restorations of civil rights, and remissions--subject to approval by an outside body. D'Alemberte, T., "Commentary," Fla. Const. Art. 4, §8 (1970).

Office of Executive Clemency. To assist in the orderly and expeditious exercise of this executive power, the Office of Executive Clemency was created to process those matters of Executive Clemency requiring approval of the Governor and three members of the Cabinet. These rules ("Rules of Executive Clemency of Florida") were created by mutual consent of the governor and Cabinet and nothing contained can or is intended to limit the authority given to the Governor or the Cabinet in the exercie of this constitutional prerogative.

The Governor, with the approval of three members of the Cabinet, appoints a Coordinator to keep records of all proceedings and manage the Office of Executive Clemency.

Administrative system: Board of Executive Clemency/Board of Pardons. Florida's advisory body for pardons, restorations, and remissions of fines and forfeitures is the Board of Executive Clemency (formerly the Board of Pardons; name changed in 1975). The board is composed of the Governor and the six independently elected cabinet members: the Secretaries of State, Agriculture, and Education; Comptroller; Attorney General; and Treasurer. With the approval of three out of six members of this board, the Governor may grant pardons, restorations of civil rights, and remissions of fines and forfeitures. Ibid.

The statutory provisions governing the exercise of executive clemency are found in Chapter 940 of the Florida Code. Fla. Stat. Ann §§940.01 through 940.06 (1985) These provisions reiterate the State Constitution's delegation of clemency authority and regulate the application process. Additional provisions concerning the clemency application, recommendation, and review process are included in Chapter 947 of the Florida Code. Chapter 947 generally describes and governs the State Parole and Probation Commission, which provides investigatory support to the board. Fla. Stat. Ann. §§947.001 through 947.27 (1985 & Supp. 1986). Relevant sections of Chapter 947 and substantial legislative changes enacted in 1986 (effective July 1, 1987) are discussed under Administrative Process, below.

Reports required. At the beginning of each legislative session, the Governor is required to report to the legislature each case of remission of fines and forfeitues, reprieve, pardon, and commutation granted, stating the convict's name, the crime of conviction, the sentence, the sentencing date, and the date of the granting of remission, commutation, pardon, or reprieve. §940.01.

Types of clemency. Clemency comprises full or conditional pardons, restorations of civil rights, commutations of punishment, remissions of fines and forfeitures, and reprieves. Const. Art. 4, §8. In granting pardons after conviction, any condition, limitation, or restriction that is not illegal, immoral, or impossible to perform may be imposed. State ex rel. Bailey v. Mayo, 65 So.2d 721 (1953).

Substantive limitations--crimes not pardonable. Florida's clemency laws do not apply to crimes involving treason or impeachment. In cases of treason, the Governor may grant reprieves only until adjournment of the regular session of the legislature convening after the conviction.

Administrative Process

Procedures for clemency review. Recommendations for clemency are received through individual application, or through the recommendation of the Parole and Probation Commission, Department of Corrections, or any citizen, depending on the type of clemency sought and the circumstances of the applicant.

Until 1986, any prisoner who was sentenced to life imprisonment and who had served 10 years with no charges of misconduct and a good institutional record was to be recommended by the Department of Corrections for a commutation of sentence to a term of years. (Such commutation would make the individual eligible for release after expiration of that term). §944.30. In 1986, this provision was substantially revised by the legislature to include any person sentenced for a term in excess of 40 years, up to and including life imprisonment, for a noncapital felony. To be recommended for clemency, the prisoner must have served 10 years of the sentence with the cumulative loss of no more than 30 days "gain-time" (time off for good behavior). This recommendation may be made by the Secretary of Corrections, and therefore appears to be at the discretion of that Secretary, in contrast with the old law, under which such recommendation was to be automatic. 1986 Fla. Sess. Law Serv. 198 (West).

The Parole and Probation Commission may also recommend for clemency, commutation of sentence, or full or partial remission of any fine, forfeiture, or other penalty, those parolees it determines are deserving of such grants.

Application process. Forms to be used in making application for clemency will be furnished by the Coordinator of the Office of Executive Clemency on request. All correspondence regarding application should be addressed to the Coordinator, Office of Executive Clemency.

Evidence investigation. At present, the Parole and Probation Commission reports to the board the facts, circumstances, criminal records, and social, physical, mental, and psychiatric conditions and histories of persons under consideration for pardon, commutation, or remission. §947.13 (e). However, effective July 1, 1987, responsibility for these investigations and reports was transferred to the newly created Board of Clemency Review. This board is composed of three to five commission members appointed by the Governor and Cabinet, and will report to Executive Clemency Board as did the commission, but it does not alter or diminish the role of the Office of Executive Clemency, that board's administrative arm. 1986 Fla. Sess. Law Serv. 193 (West); new section to be codified as Fla. Stat. §947.081.

The new Board of Clemency Review will also assume the duties of the Parole and Probation Commission with regard to clemency recommendations for parolees. 1986 Fla. Sess. Law Serv. 198. (West); amends Fla. Stat. §947.25.

Revocation of clemency. The conditional commutation of sentence granted to a convict may be revoked by Governor and Cabinet. These commutations, when accepted by a convict, become binding on the State. In other words, as long as the convict does not violate the conditions of commutation, he or she cannot be required to perform the sentence previously imposed. Thus, courts have held as ineffective a Board of Pardons revocation of conditional commutation of sentence for a the cause other than the conditions on which commutation was granted. Stone v. Burch, 114 Fla. 460, 154 So.128 (1934) In another case, in which a prisoner accepted a conditional pardon, was released from custody, and later violated the conditions and was convicted of unlawful possession of an illicit distillery, cancellation of the pardon and requirement that he serve the remainder of the original sentence was found not to violate any of his constitutional rights. Walker v. Mayo, 156 Fla. 537, 23 So.2d 673 (1946).

Restoration of civil rights. When a person has been convicted in a Florida State court and has completed service of all sentences imposed or has terminated from parole, probation, or adult community control, his civil rights may be reinstated, without the case being considered at an executive clemency meetings, in the absence of the filing of an objection as provided in Subsection E of this rule. The records of each person receiving such final release shall be reviewed by the Florida Parole and Probation Commission to determine eligibility under these rules. The rights restored under this provision shall exclude the specific authority to own, possess or use a firearm.

A full pardon does not always eradicate legal disabilities or disqualifications. For example, the granting of pardon to a physician who was convicted for perjury, possession of stolen goods, and grand larceny provided no defense to a subsequent proceeding before the Board of Medical Examiners to revoke or annul the physician's license. Page v. Watson, 140 Fla. 536, 192 So. 205, 126 A.L.R. 249 (1939). Similarly, in a case in which an attorney was granted full and complete pardon, the pardon and restoration to citizenship did not permit the attorney to regain his status as attorney. State v.Snyder, 136 Fla. 875, 187 So. 381 (1939). Persons who have lost their civil rights,

including the right to vote, due to felony convictions, may have their rights restored only by the Governor and Cabinet. The payment of a fine imposed on such individuals does not restore their civil rights. Op. Atty. Gen. 101 (1951).

Another civil right lost on conviction for a felony is the right to possess firearms. Thompson v. State, 438 So.2d 1005 (App. 2) Dist. (1983). Case law, with regard to the possession of firearms after restoration of civil rights, indicates that such restoration by the Governor may not be sufficient to allow a convicted felon to own or possess a firearm. Williams v. State, 402 So.2d 78 (App. 1981).

The constitutional and statutory restrictions on the exercise of civil rights and privileges by a felony convict apply regardless of the age of the person at the time of conviction. The operation of such constitutional and statutory provisions is not affected by the fact that a person was a minor and, thus, unable to exercise such rights at the time of conviction. Op. Atty. Gen. 078-45 (May 10, 1978).

GEORGIA

Overview of State System

Primary authority: State Board of Pardons and Paroles. According to the Georgia Constitution, the State Board of Pardons and Paroles exercises executive clemency authority in all criminal and penal cases, with certain exceptions, based on rules and regulations prescribed by law. Ga. Const. Art IV, §2 (1981).

Referred to in the laws as the "Board of Pardons and Paroles," Georgia's administrative body for clemency matters is generally governed by the provisions of §§42-9-1 et seq. (1981 & Supp. 1986).

Membership. The Board of Pardons and Paroles is composed of five members who are appointed for 7-year terms by the Governor, as confirmed by the Senate. Each year, the board elects one of its members to chair the board for the ensuing year. The chairperson draws no additional salary than that earned by the State's other board members. Board members serve ex officio in an advisory capacity to the Board of Corrections. §§42-9-12.

Administrative location. The board is an independent State agency, assigned to the Department of Offender Rehabilitation for administrative purposes only. §§42-9-2, 42-9-11.

Regulations. The board may adopt and promulgate rules and regulations, including the practice and procedure relating to paroles, pardons, reprieves, commutation of penalties, remission of fines and forfeitures, removal of disabilities imposed by law, and remission of any part of a sentence. The Attorney General acts as legal advisor to the board. §42-9-45.

Reports required. On or before January 1 of each year, the board must make a written report of its activities. Copies of the report are sent to the Governor, the Attorney General, and other officers and persons as the board sees fit. One copy of the report becomes part of the records of the board. At each session of the General Assembly, the board must communicate in detail each case of reprieve or suspension of sentence. §42-9-19.

Scope of clemency authority. All applications for pardons, reprieves, paroles, commutations of penalties, removal of disabilities imposed by law, or remission of any part of any sentence for any offense against the State after conviction are referred to the Board of Pardons and Paroles. §42-9-20.

The State Constitution vests the General Assembly with the power to prohibit the board from granting pardon or parole to anyone who is incarcerated for a second or subsequent time for any offense punishable by life imprisonment, or anyone who has received consecutive life sentences resulting from offenses occurring during the same series of acts. The Constitution also authorizes the legislative body to supersede the board in prescribing the terms and conditions for the board's granting pardon or parole to these two groups. Ga. Const. Art. IV, §2.

In addition, when the Governor declares a state of emergency with regard to jail and prison overcrowding, the board is prohibited from selecting dangerous offenders, namely State prison inmates convicted of any of the crimes defined by Title 16 of the Criminal Code of Georgia, for release. §42-9-60.

Types of clemency. Georgia's Constitution permits the granting of parole, pardon, reprieve, commutation of penalties, remission of fines and forfeitures, removal of disabilities imposed by law, and remission of any part of a sentence, with certain exceptions. Ga. Const. Art. IV, §2.

Substantive limitations--crimes not pardonable. The Board of Pardons and Paroles is not empowered to grant clemency in cases where the offense is criminal contempt of court. Op. Atty.Gen. 79-36. Also, the board does not have the authority to consider for clemency persons serving first offender sentences, such as those provided for misdemeanors under §27-2506 of the Georgia Code. Op. Atty. Gen. 82-101, Op. Atty. Gen. U83-77 (December 30, 1983).

Where a death sentence is commuted to life imprisonment, the board lacks the authority to grant pardon or parole to a convicted person until that convict has served at least 25 years the penitentiary. Also, when a person is convicted of armed robbery, the board may not consider the convict for pardon or parole until he or she has served at least 5 years in the penitentiary. Ga. Const. Art. IV, §2.

Administrative Process

Clemency, pardon, parole, or other relief from sentence may be granted only by a majority vote of the board, and by written decision. No inmate may be paroled unless the board finds that there is reasonable probability that, if released, the inmate will behave in a respectable and law-abiding manner, and that such release will be compatible with the welfare of both the inmate and society. In addition, no convict may be paroled or released on pardon unless the board is satisfied that the convict will be suitably employed or that he or she will not become a public charge. §42-9-42.

Procedure for clemency review. Applications for clemency must follow the rules and regulations established by statute or promulgated by the board. Applicants must follow the board's established procedures. §42-9-45.

The board is required to call forth all pertinent information about the applicant. Such material includes a report by the warden or jailer of the correctional institution in which the petitioner has been incarcerated; the results of physical and mental examinations; information on the applicant's response to efforts to improve his or her social attitude; the applicant's work record while confined coupled with a recommendation about the kind of work the applicant is best fitted to perform if released, and a description of the educational programs in which the applicant has participated and the level of education attained.

Forum. The board may have the petitioner appear before it to assess the individual in person. §42-9-43. All required hearings must be public. The transcripts of such hearings are exempt from otherwise applicable privacy laws, and the board must preserve on file all documents on which it has acted in the granting of pardons, paroles, and other relief. §42-9-53.

Other procedural rules. Upon consideration of the petitioner's application for clemency, the board must determine whether the applicant should be granted relief. The board then provides its findings to the petitioner and to the correctional official with custody over the petitioner. §42-9-43.

Restoration of civil rights. A pardon or a restoration of civil rights is necessary for a person convicted of a felony to serve on a grand or trial jury, even after completing his or her sentence. Op. Atty. Gen. 83-33 (May 27, 1983). However, in one case, a restoration of civil and political rights by the Board of Pardons and Paroles did not remove the fact that an individual was twice before convicted of molesting a minor child; thus an appeal bond motion was properly denied, according to the State Court of Appeals. Morton v. State 166 Ga. App. 170, 303 S.E. 2d 509 (1983).

GUAM

Overview of Clemency System

Primary authority: Governor. Under U.S. Federal law, the Governor of Guam may grant pardons, reprieves, or remissions of fines or forfeiture for offenses against local laws. 48 U.S.C.A. §1422 (Supp. 1986).

Administrative system: Territorial Parole Board. Guam's administrative body for clemency matters was created and is generally governed by the provisions of Chapter I, "Territorial Parole Board," of Title XXXV of the Government Code of the Territory of Guam. Guam Gov't. Code §§39000 et seq. 1970). While the board makes recommendations to the Governor regarding clemency, its authority in this matter is strictly limited by statute. §39200.

Membership. The board is composed of five members appointed by the Governor and confirmed by the legislature. §39000. The Governor is required to appoint one member of the board as its chairperson. The board must meet regularly, at least monthly. Special meetings may be called by the chairperson. §39001. Board members serve 4-year terms. §39002.

HAWAII

Overview of State System

Primary authority: Governor. Hawaii's Constitution vests full clemency authority in the Governor in all criminal and penal cases, with certain exceptions, under the rules and regulations prescribed by law. Hawaii Const. Art. IV, §5 (1968, Amend. 1978).

Administrative system: Hawaii Paroling Authority. Referred to in the laws as the Hawaii Paroling Authority, Hawaii's administrative body for clemency related matters was created and is generally governed by the provisions of Part II, Paroles and Pardons, of Title 353, Social Services. Hawaii Rev. Stat. §§353.61 et seq. (1976). If the Governor deems it appropriate, he or she may refer applications for executive pardon to the Hawaii Paroling Authority for investigation and recommendation. Hawaii Rev. Stat. §353-72 (1976). While the Paroling Authority makes recommendations to the Governor regarding clemency, its authority in this matter is strictly limited. §353-62.

Operations. The Paroling Authority must consider every application for pardon referred to it by the Governor. As soon as possible after such consideration, it must furnish the Governor with all its information concerning the applicant and a recommendation whether pardon should be granted or refused. §353-72.

Membership. The Paroling Authority is composed of three members appointed by the Governor. The Governor chooses the appointees from a pool of persons nominated by a panel composed of the Chief Justice of the Hawaii Supreme Court, the president of the Hawaii Correctional Association, and the president of the Hawaii Bar Association. Terms are staggered, with each member serving for 4 years.

Administrative location. By statute, the Paroling Authority is placed within the Department of Social Services and Housing for administrative purposes only. §26-14.

Regulations. The Paroling Authority is empowered to adopt appropriate rules and regulations to carry out the intent and purposes of its enabling legislation. §353.62.

Types of clemency. Reprieves, commutations of sentence, and pardons after conviction are the Governor's unobstructed province. Pardons before conviction, pardons for impeachment, restorations of civil rights denied due to conviction by an out-of-State tribunal are subject to legislative authorization. Art. IV,§5. The State Constitution provides that the legislature may, by general law, authorize the Governor to grant pardons before conviction, to grant pardons for impeachment, and to restore civil rights denied by reason of conviction of offenses by tribunals other than Hawaii's. Const. Art. IV, §5.

IDAHO

Overview of State System

Primary authority: Administrative panel. The State Board of Corrections is empowered by state and the State Constitution to appoint and delegate clemency authority to the State Commission of Pardons and Paroles and its director. Idaho Const. Art. 4 §7 (1980 & Supp. 1986); Idaho Code Ch. 2, §§20-201 (1979 & Supp. 1986).

In November 1986, a measure to revise the State constitutional provision concerning the pardoning power was approved by the Idaho electorate. In addition to removing outdated legislative language, this revision added the proviso that the Board of Pardons has the power to grant commutations and pardons "only as provided by statute," thus signaling increased legislative control of the clemency process in Idaho. 1986 Idaho Sess. Laws S.V.R. No. 107.

While the Commission has primary clemency authority, the Governor is empowered to grant respites or reprieves in all cases of offenses against the State, except in cases of treason or impeachment. Idaho Const. Art. 4, §7.

Administrative system: State Commission of Pardons and Paroles. Idaho's Commission of Pardons and Parole, the State's administrative body for clemency matters, was created and is generally governed by the provisions of Chapter 2, Idaho Code (1979 & Supp. 1986). The commission also acts as the advisory body to the Board of Corrections on matters of adult probation and parole. §20-210.

The State Constitution originally provided for a Board of Pardons, composed of the Governor and certain cabinet officers, to exercise clemency powers. Idaho Const. Art. 4, §7. In 1969, however, the legislature created the present system, effectively removing clemency determinations from gubernatorial control. §20-201.

Membership. The commission is composed of five members selected for their experience, knowledge, and interest in sociology, psychology, rehabilitative services, and similar disciplines. The members serve 5-year terms at the pleasure of the Board of Corrections. Not more than three members may belong to any one political party. Each year, the members of the Commission must select a chairperson and vice chairperson. Idaho Codes §20-210.

Regulations. The commission is empowered to promulgate rules and regulations in compliance with the State Administrative Procedures Act. However, Idaho statutes do not mandate that the procedural rights established in that act be used in parole hearings. Moreover, the definitional statement of the act specifically excludes the Board of Corrections from the requirements of the act. Administrative Procedures Acts §§67-5201-67-5218; Balla v. Idaho State Board of Corrections, 595 F. Supp. 1558 (1984).

Reports required. The board is required to prepare a full and complete report of all cases coming before the board or the commission. It must submit the report to the Governor when the Governor directs, but at least annually.

The report must include any related information as the Governor may request. Idaho Code §20-210.

Types of clemency. The Commission of Pardons and Paroles may remit fines and forfeitures and may grant commutations and pardons after conviction and judgment in all cases of offenses against the State. The Governor is empowered to grant respites and reprieves, not extending beyond the next session of the commission. Idaho Const. Art. 4, §7; Idaho Code §20-210.

Scope of clemency authority. The Commission of Pardons and Paroles may attach conditions to a pardon, commutation, or parole as it sees fit, providing the conditions are not immoral, illegal, or impossible to perform. State v. Storey, 712 P.2d 694 (Ct. App. 1985).

Substantive limitations--crimes not pardonable. The commission's clemency power and the Governor's authority to grant respites and reprieves do not extend to conviction for treason or conviction on impeachment. Idaho Const. Art. 4, §7.

The State Board of Corrections is not empowered to increase a defendant's sentence. Where, for example, the district court sentenced a defendant to 1 year instead of the statutory period of 5 years, the board could not increase the sentence to 5 years. Spanton v. Clapp, 78 Idaho 234, 299 P.2d 1103 (1956).

Administrative Process

Procedures for clemency review. The legislature determines by law the sessions of the Commission of Pardons and Paroles and the manner in which applications are to be made and acted on. The commission's proceedings and decisions must be reduced to writings that describe the reasons for the commission's action in each case and the dissent of any member. Such papers must be filed in the Office of the Secretary of State. Idaho Const. Art. 4, §7.

The commission meets as the State Commission of Pardons and Paroles, at such times and places as it prescribes. The commission may consider only one application for pardon or commutation from any one person in any 12-month period. §20-213.

The records produced by the commission must be kept confidential and privileged from disclosure. However, the records must be made available, upon request, to the Governor. Idaho Code §20-213A.

Forum. The State Constitution and statutes prescribe that the granting of remission of fine or forfeiture, commutation, or pardon may only occur via the decision of a majority of the commission after a full hearing in open session. Idaho Const. Art. 4, §7, Idaho Code §20-213A, Miller v. Meridith, 59 Idaho 385, 83 P.2d 206 (1938).

Notice requirements. The State Constitution and laws provide that the commission's clemency hearing must be preceded by publication of a notice of time and place of the hearing in a newspaper of general circulation at Boise, Idaho, at least once a week for 4 weeks. The notices must list the names of all persons making application for pardon or commutation and a copy of the notice must, upon the first publication, be mailed to the prosecuting attorney. §20-213.

ILLINOIS

Overview of State System

Primary authority: Governor. The Illinois Constitution vests clemency authority exclusively in the Governor. The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms and conditions as he or she sees fit. Ill. Const. Art. 5, §§12 (1971 & Supp. 1986).

The State's high court affirmed this in holding that an act allowing a judge, who has committed a prisoner to the House of Corrections, to vacate the order of commitment, thereby discharging the prisoner, was invalid as an encroachment on the Governor's clemency power. People v. La Buy, 285 Ill.141, 120 N.E. 537 (1918). The court also has held that the power to grant clemency and pardons is solely vested in the Governor, and cannot be usurped by the legislature or courts. People ex rel. Gregory v. Pate, 31 Ill.2d 592, 203 N.E. 2d 425 (1965); People v. Jenkins, 325 Ill.372, 156 N.E. 290 (1927).

Administrative system: State Prisoner Review Board. Referred to in the laws as the "Prisoner Review Board," this body, through a panel of at least three members, hears all requests for pardon, reprieve, or commutation and makes confidential recommendations to the Governor. P.A. 84-1301, 1986 Ill. Legis. Serv. Vol. 6, p.88 (West). The final discharge or commutation, however, must be made by the Governor. People v. Joyce, 246 Ill. 124, 92 N.E. 607, 20 Am. Cas. 472 191§). The board must meet to consider clemency petitions at least four times each year.

The Governor is required to decide each application for clemency and to communicate his or her decision to the Prisoner Review Board. The latter is required to notify the petitioner of the Governor's decision. Ill. Stat. ch. 38 §§1003-313(d) (1982).

Regulations. The board may promulgate rules for the conduct of its work; the board chairperson must file a copy of the rules with the Secretary of State. P.A. 84-1301, supra.

Types of clemency. The Governor has sole authority to grant reprieves, commutations of sentence, and pardons after conviction for all offenses including misdemeanors and felonies. Ill. Const. Art. 5, §§12; Wineland v. Calhoon, 287 Ill. App. 273, 4 N.E.2d 898 (1936); Rep. Atty. Gen. 1913, p.739.

Substantive limitations--crimes not pardonable. The Governor's clemency authority over all "offenses" has been interpreted to pertain to criminal matters only. Rep. Atty. Gen. 1913, p.739. Thus, the Governor is not empowered to pardon a person sentenced for civil contempt. People v. Peters, 305 Ill.223, 137 N.E.118 (1922).

The Governor may shorten a sentence, but may not change a murder conviction to a manslaughter conviction to make the parole law applicable. People v. Jenkins, supra. The Governor's par-

dons may not remit court costs, since the right to such costs is vested in those who are to receive them. Holliday v. People, 10 Ill.215 (1848).

Administrative Process

Procedures for clemency review. Individuals who apply for gubernatorial clemency must follow procedures as provided in the State's Unified Corrections Code. Ill. Stat. ch. 38sd 1003-8 to -13 (1982). Petition seeking pardon, commutation, or reprieve must be addressed to the Governor and filed with the Prisoner Review Board. The petition must be in writing and signed by either the person under conviction or by someone on the convict's behalf, and must contain a brief history of the case and the reasons for application.§1003-3-13(a). The Prisoner Review Board must, if requested and upon due notice, give each application a hearing. §1003-3-13(c).

Notice requirements. The board must provide notice of the pending application to the committing court and the State's attorney of the county of conviction. §1003-3-13(b).

Administrative hearing. Following the administrative hearing, the Prisoner Review Board must confidentially advise the Governor by a written report of its recommendations, which must be determined by a majority vote. The Governor is required to decide each application for clemency and to communicate his or her decision to the Prisoner Review Board. The latter must notify the petitioner of the Governor's decision. P.A. 84-1301, 1986 Ill. Legis. Serv. Vol. 6 p. 92 (West); to be codified at Ill. Stat. Ch 38, §1003-3-13.

Rights of applicants. A petitioner's right to apply to the Governor for pardon may not be limited by the State's parole law. People v. Nowasky, 254 Ill.146, 98 N.E. 242 1912. At the Prisoner Review Board hearing, applicants have the right to be represented by counsel, if desired. §1003-313(c).

Disposition of clemency recipients. Pardons and reprieves completely and irrevocably release an inmate from custody and supervision. People ex rel. Abner v. Kinney, 30 Ill.2d 201, 195 N.E.2d 651 (1964).

Restoration of civil rights. An executive pardon of a defendant convicted of manslaughter restores the defendant's right of citizenship which was forfeited by reason of conviction. However, such pardon does not restore a license to practice medicine, which was revoked due to the conviction. People v. Rougetti, 395 Ill.580, 70 N.E.2d 568 (1947).

Expungement of records. Simple issuance of a gubernatorial pardon does not include rights to the expungement of records and to the return of records of identification, as are entitled persons who are acquitted of a crime or who are released without being convicted. People v. Glisson, 14 Ill. Dec. 473, 69 Ill. 2d 502, 372, N.E.2d 699 (1978).

INDIANA

Overview of State System

Primary authority: Governor on advice of panel. The Indiana Constitution vests the Governor with the power to grant reprieves, commutations, and pardons after conviction, for all offenses except treason and impeachment. However, this authority is subject to the advice and consent of "officers of the State," as provided by law. The Governor also may remit fines and forfeitures in limited cases. Ind. Const. Ann. Art. 5 §17, (Burns 1977 and Supp. 1986).

In cases where conviction for treason has been obtained, the Governor may suspend the execution of the sentence until the General Assembly has been notified. The General Assembly will then act on the matter at its next scheduled meeting. The State Constitution authorizes the General Assembly to either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve where a conviction for treason or an impeachment has been obtained. Art. 5 §17.

Administrative system: The Parole Board. The Parole Board was established, by statute, to make pardon, clemency, reprieve, and remission recommendations to the Governor. Such recommendations are needed for clemency approval through the Governor. Ind. Code Ann. §11-9-1-1 et. seq. (Burns 1981 Repl. and 1986 Supp.).

Prior to the establishment of the Parole Board, the Commission on Clemency was empowered under the Indiana Code in this regard. The Commission was replaced in 1979. Ind. Code Ann. §11-7-4-1-11-7-4-5 (Burns 1986 Repl.).

Membership. The Parole Board is composed of five members appointed for 4-year terms by the Governor, not more than three of whom may be affiliated with the same political party. To qualify for membership a person must hold at least a bachelor's degree from an accredited college or university and must have the skill, training, or experience needed to analyze questions of law, administration, and public policy. Members shall devote full time to their duties and are entitled to a salary, determined by the State budget agency with the approval of the Governor. The Governor is responsible for designating one of the members to serve as chairperson. §11-9-1-1.

Administrative location. The Parole Board is an agency of the Department of Corrections. §11-9-1-1.

Types of clemency. Reprieves, commutations, pardons, and remissions of fines and forfeitures. Ind. Const. Ann. Art. 5 §17.

Reports required. The Governor must report each case of reprieve, commutation, or pardon granted, along with the names of all persons who received remissions of fines and forfeitures and the amount remitted, to the General Assembly at its next scheduled meeting. Ind. Const. Ann. Art. 5 §17.

The Parole Board is required to make an annual report to the Governor describing its operation and effectiveness for the preceding fiscal year and including any other information required by law. The board also must keep and make accessible records of its official actions and statistical information concerning its services and decisions. §11-9-1-2(a).

Substantive limitations. The Indiana Constitution and Code do not mention unpardonable crimes. Even treason and impeachment may be pardoned by the General Assembly. Const. Art. 5 §17.

Administrative Process

Applications. An application to the Governor for commutation of sentence, pardon, reprieve, or remission of fine or forfeiture must be filed with the Parole Board. The application must be in writing and signed by the person seeking gubernatorial relief or by a person on the applicant's behalf. The board may require the applicant to furnish information, on forms provided by the Parole Board, that it considers necessary to conduct a proper inquiry and hearing regarding the application. §11-9-2-1.

Procedures for clemency review. The Parole Board, upon receiving an application for commutation, pardon, reprieve, or remission of fine or forfeiture, is required to notify the parties affected, to conduct an investigation, and to conduct a hearing concerning the case. After the process is complete, the board then makes its recommendation to the Governor regarding the application. §11-9-2-2.

IOWA

Overview of State System

Primary authority: Governor. The Iowa Constitution vests clemency authority in the Governor. Iowa Const. Ann. Art. 4, §16 (1949 & Supp. 1986). However, a statutory provision prohibits the Governor from granting a pardon or sentence until he or she has presented the matter to and obtained the advice of the Board of Parole. §§248.6. For statutory provisions regarding clemency, see generally Iowa Code Ann. §§248.1 to 248.17 (1985). The Governor is not required to act on the board's advice. Op. Atty. Gen. 1934, p.372. State courts also have found that the Governor has sole authority to remit fines and forfeitures, commute sentences, and grant reprieves or pardon to individuals convicted of crimes. State ex rel. Preston v. Hamilton 206 Iowa 414, 220 N.W.1 313a; State v. Hume, 193 Iowa 1395, 188 N. 796 (1922); Hall v. Wheeler, 196 Iowa 100, 194 N.W. 268 (1923); Ex parte United States, 242 U.S. 27, 37 S.Ct. 72, 61 L.Ed. 129 (1916). Neither the judiciary nor the legislature may interfere with or encroach upon the executive's power Slater v. Olson, 230 Iowa 1005, 299 N.W.879 (1941) although the legislature may enact reasonable rules and regulations relative to the exercise of the Governor's pardoning power. Op. Atty. Gen. 1940, p.125.

Administrative system: Board of Parole. The role of the Board of Parole with regard to clemency is outlined in Chapter 248 of the State Code, "Pardons, Commutation, Remission of Fine and Forfeitures, and Restoration to Citizenship." §§248.1 et seq.

Reports required. Under the State Constitution, the Governor must report each grant of clemency made and the underlying reasons for the grant to the General Assembly at its next meeting. Statutory law mandates that the biennial report of the Governor to the General Assembly on reprieves, commutations, pardons, and remissions of fines and forfeitures cover the "2 years ending with December 31 immediately preceding the convening of the General Assembly in regular session, in odd-numbered years, and shall be filed as soon as practicable after said date."

Scope of clemency authority. The Governor's clemency authority extends only to cases concerning crimes prosecuted under State law. The Governor lacks authority to pardon Federal prisoners confined in State penitentiaries since that power is vested exclusively in the U.S. President. Op. Atty. Gen. 1909, p. 148. However, while the Governor cannot issue a pardon commuting fines or penitentiary sentences for Federal crimes, he or she may restore to the party constitutional rights lost due to Federal conviction. State ex rel. Dean v. Haubrich, 248 Iowa 978, 83 N.W.2d 451 (1957).

Types of clemency. The Governor is empowered to remit fines and forfeitures and to grant reprieves, commutations, and conditional and unconditional pardons after conviction for all offenses, except in cases of treason and impeachment. Const. Art. 4, §16; §248.13.

Substantive limitations--crimes not pardonable. Treason and cases of impeachment are exempt from the pardoning power. In cases of treason, however, the Governor may suspend execution of the sentence until the next session of the General Assembly, which may then grant a pardon, commute the sentence, direct its execution, or grant further reprieve. Const. Art. 4, §16.

Administrative Process

Clemency Review Process. A convict has the right to apply to the Board of Parole for recommendation or to the Governor for clemency at any time following conviction. The Board of Parole must periodically review all such applications and recommend to the Governor appropriate clemency measures for offenders who, by their conduct, give satisfactory evidence that they will become law-abiding citizens. The Governor is required to respond to all recommendations made by the Board of Parole within 90 days of receiving such recommendations. The Governor's response must address whether the application will be granted and the underlying reasons for such action. If the Governor does not grant the recommendation, the recommendation must be returned to the Board of Parole and may be refiled with the Governor at any time. 1986 Iowa Legis. Serv. vol. 5 p. 30 (West).

Notice requirements. Before presenting a pardon application to the board for its action where the sentence is death (Note: Death penalty was abolished in 1965 Acts 1965 (61 G.A.) ch. 435) or imprisonment for life, the Governor is responsible for publishing in two newspapers the reasons for the pardon. Both newspapers must have general circulation; one paper must be published at the capital, the other in the county of conviction. The notice must appear once a week for four successive weeks; the last publication must appear at least 20 days prior to the time the application will be presented to the board. §248.7. In interpreting this statute, the Iowa Attorney General has determined that no application for pardon may be submitted to the Parole Board for its advice unless a notice is published in the manner prescribed by law. If such notice is not published, the Board of Parole does not acquire jurisdiction to pass upon the application. However, the Governor is not required to publish notice of the pardon application unless he or she intends to extend clemency. Op. Atty. Gen. 1911-12, p.110.

Evidence. Under the Governor's direction, the board is required to take charge of all correspondence relating to the pardon of persons convicted of crimes, to carefully investigate each application, and to file its recommendation and reasons with the Governor. §248.8.

The Governor may require the judge or clerk of the court or the county attorney or attorney general by whom the case was prosecuted to furnish a copy of the minutes of the evidence taken during the trial and any other facts relevant to the clemency application. §248.9.

The Governor may take testimony relating to applications as he or she sees advisable. In giving such testimony, anyone who swears falsely or knowingly and corruptly makes any false state-

ments in an affidavit intended for use in connection with an application for or remission of fine or forfeiture is considered guilty of perjury and may be punished accordingly. §248.10.

Disposition of clemency recipients. Iowa law provides specific procedures to be followed when clemency applications are approved. When issued, pardons, commutations of sentences, remissions of fines and forfeitures, and restorations of rights of citizenship must be in duplicate. Reprieves must be in triplicate. §248.14.

When the applicant is in custody, pardons, reprieves, and commutations of sentences must be forwarded to the officer having custody of the applicant. This officer is required to retain one copy, to record the grant in the books of the office, and to execute the orders as directed. On the second copy, the officer is expected to provide written return as required by the Governor, and to return the copy to the clerk of the court of conviction. When a reprieve is granted, the third copy must be delivered to the person who sentence is reprieved. §248.15.

In cases involving remissions of fines and forfeitures and restorations of rights of citizenship when the clemency candidate is not in custody, one copy must be delivered to the candidate and one to the clerk of the court of conviction. §248.16. Upon receiving any of these executive instruments, the clerk must file and preserve them in the clerk's office. The clerk must note such filing on the judgment docket of the case in question. Remissions of fines and forfeitures are to be properly entered on the record books of the court, and indexed in the same manner as the original case. §248.17. Upon the granting of a pardon, all related papers and documents should become part of the files of the Governor's office. §248.1.

Restoration of civil rights. The Governor has the right to grant to any convict a certificate restoring all the convict's rights of citizenship. In case of application for registration, the warden or superintendent, upon the Governor's request, is expected to furnish the Governor with a statement of the convict's deportment during imprisonment and may recommend to the Governor a course of action concerning restoration. §248.12.

Upon conviction of an "infamous crime" in Iowa, an individual loses the right to vote and to hold office, the right to employment by the State, and the right to bear arms. Furthermore, the State Attorney General has ruled that a convicted felon who obtains only a certificate restoring all his or her citizenship rights may not possess a firearm without being in violation of the 1968 Federal Gun Control Act. Op. Atty. Gen. (Anderson), Oct. 23, 1973. To legally possess a firearm, a convicted felon who has received a full restoration of citizenship rights also must receive an express authorization from the Governor. Op. Atty. Gen. (Anderson), Sept. 19, 1973. However, under Iowa law, statutory prohibitions against the use or ownership of firearms by a convicted felon do not apply if the person has been pardoned. Iowa Code Ann. §724.27 (1979 and Supp. 1986).

Despite the law's sweeping prohibition against State employment of public officers, the Attorney General ruled that a public officer who was convicted of embezzlement in violation of "Embezzlement by Public Officers" (§710.2) was eligible for employment after the Governor restored citizenship to the officer. Op. Atty. Gen. (Pratt), Nov. 26, 1969.

The Governor also has power to restore a convict's right to vote if it was lost due to conviction of an infamous crime in Federal court. Op. Atty. Gen. 1911-12, p.823.

A person who has been convicted of an infamous crime and granted a certificate of restoration enjoys, in effect, a pardon. He or she is then entitled to vote and to hold office. Op. Atty. Gen. 1936, p.417.

The Iowa Attorney General has indicated that under the State's Constitution, the Governor may restore the rights of State citizenship to Iowa residents who have been convicted of crimes in other States, provided they have not been pardoned by the other States.

Revocation of pardon. A court of equity may entertain a suit to cancel for fraud a pardon granted by the Governor if the suit was instituted by the Attorney General on behalf of the people; the suit need not be instituted by the Governor. Rathbun v. Baumel, 196 Iowa 1233, 191 N.W. 297, 30 A.L.R. 216 (1922).

Special Clemency Issues and Laws

Other crimes. The Iowa penal code references certain serious "class A" felonies and indicates that a defendant convicted of such a felony is not eligible for a deferred judgment, deferred sentence, suspended sentence, or reconsideration of sentence. The only available release for a "class A" felon is release on parole if the Governor first commutes the sentence to a term of years. Iowa Code Ann. §902.1 (Supp. 1986).

Pardon for military service. A 1943 provision requires the Board of Parole to recommend to the Governor the pardon of a paroled prisoner who, during parole, and during any war, entered the military, naval, or nursing service of the United States or of any countries with which the United States may have been allied or associated during that war, and who was honorably discharged from or who died in such service. §284.4.

This provision replaced a measure enacted before World War II that made such recommendation optional on the Board's part. Code 1939, §3815, repealed.

KANSAS

Overview of State System

Primary authority: Governor. The Kansas Constitution vests the Governor with broad clemency authority in all criminal and penal cases, with certain exceptions, and, under rules, regulations, and restrictions prescribed by law. Kan. Const. Art. 1, §7 (1969); Kan. Stat. Ann., §22-3701 (1981). The Governor's authority has been upheld by the courts, which have found that the executive branch has wide authority to grant clemency to deserving individuals. The executive clemency authority in Kansas includes the power to grant parole, to commute sentences, and to remit fines and forfeitures. Jamison v. Flanner, 116 K. 624, 228 P.82 (1924); Lynn v. Schneck, 139 K. 138, 140, 30 P.2d 117 (1934). However, State statutes prescribe that all applications for gubernatorial pardon or commutation of sentence must be referred to the Kansas Adult Authority for investigation and recommendation. Kan. Stat. Ann., §22-370.

State statutory provisions empower mayors and boards of commissioners of cities to remit fines and forfeitures and to grant reprieves and pardons for all offenses, in accordance with city ordinances. Kan. Stat. Ann., §§13-515, 13-901.

Administrative system: Kansas Adult Authority. Referred to in the laws as the "Authority," Kansas' administrative body for clemency matters was created and is generally governed by the provisions of Article 37, Release Procedures, of Title 22, Code of Criminal Procedure. Kan. Stat. Ann., §§22-3701 et seq.

While the Adult Authority makes recommendations to the Governor about clemency matters, its authority in this regard is strictly limited by statute. §22-3701.

Membership. The Adult Authority is composed of five members appointed by the Governor with the advice and consent of the Senate. No more than three members may belong to the same political party. To the extent feasible, the Governor must choose members from among the following: psychiatrists, psychologists, sociologists, persons licensed to practice medicine, and persons admitted to practice law before the Supreme Court of Kansas. Adult Authority members serve 4-year terms in that capacity and members meet annually to elect one each of their group as chair and as vice chair. The Governor may remove any member of the Adult Authority for disability, inefficiency, neglect of duty, or malfeasance in office. §§22-3707, 22-3709. The Senate may reject appointment of members to the Adult Authority. Leek v. Theis, 217 K. 784, 539 P.2d 304 (1975).

Regulations. The Adult Authority is empowered to adopt appropriate rules and regulations governing the procedure for initiating, processing, and hearing applications for pardon or commutation of sentence. §22-3701 (2).

Reports required. The Governor must report to both houses of the legislature, at every regular session, each clemency action taken during the preceding year. Such reports must include a statement

of the offense of which each applicant was convicted, the time of imprisonment or amount of fine, and the condition, if any, upon which pardon was granted. §22-3703. Similarly, the Adult Authority must at the close of each fiscal year, submit to both the Governor and the legislature a report with statistical and other data of its work. The report must include research studies the Adult Authority conducts concerning sentencing, parole, or related issues. It also must contain a compilation and analysis of dispositions of criminal cases by district courts throughout the State or by executive authority. §22-3710.

Scope of clemency authority. State statute provides that the Governor may not grant or deny any application for gubernatorial clemency until having received the Adult Authority's report about the applicant, or until 120 days after the case's referral to the Adult Authority, whichever is shorter. §22-3701 (4).

Types of Clemency. Reprieves, commutations of sentence, and pardons after conviction, remission of fines and forfeitures in all criminal and penal cases, with certain exceptions. Const. Art. 1, §7; §22-3701.

Substantive limitations. The Governor may commute a sentence in any criminal case by reducing the penalty as follows: If the sentence is death, to imprisonment for life or for any term not less than 10 years; if the sentence is imprisonment, by reducing the duration of such imprisonment; if the sentence is a fine, by reducing the amount thereof; if the sentence is both imprisonment and fine, by reducing either or both. §22-3705.

In cases where the death penalty has been imposed, the Governor may only order the postponement of the execution of the sentence for a limited time. When the time period expires, the sentence of the court shall be carried out. §22-3704.

Administrative Process

Procedures for clemency review. All applications for pardon or commutation of sentence must be referred to the Adult Authority which investigates each case and submits to the Governor a report of the investigation, and all other information it may have regarding the applicant. Communication to the Governor about any given case must be made within 120 days after the case was referred to the Adult Authority. §22-3701 (4).

Also, the Governor must maintain a complete record of the applications or petitions for executive pardon, commutation of sentence, or clemency. §75-104.

Rights of applicants. State law prohibits any person acting as an agent or representative for an applicant seeking pardon or commutation of sentence from contracting for or receiving a fee contingent on the granting of the clemency application. An agent must submit an affidavit stating that any fee is not contingent upon the granting or denial of the clemency application. The application for clemency will not be considered if the person representing the applicant fails to file such an affidavit. §22-3706.

KENTUCKY

Overview of State System

Primary authority: Governor. The Governor of Kentucky is empowered to remit fines and forfeitures, commute sentences, and grant reprieves and pardons, except in cases of impeachment. In cases of treason, the Governor has the power to grant reprieves until the General Assembly, in which the power of pardoning is vested, can act on the matter. The Governor has no power to remit fees of the Clerk, Sheriff, or Commonwealth's Attorney in penal or criminal cases. Ky. Const. §77 (1973 K Supp. 1986).

Reports required. For each pardon application the Governor receives and acts on, he or she must file a statement describing the reasons for such action. These applications andstatements must always be open to public inspection. Const. §77.

Scope of clemency authority. In granting a pardon, the Governor may attach any condition,subsequent or precedent, that is not illegal, immoral, or impossible to perform. The Governor also may expressly reserve the right to revoke a conditional pardon by executive order, without notice to the convict. Commonwealth ex rel. Meredith v. Hall 277 Ky. 612, 126 S.W.2nd 1056 (1939).

The Governor has power to pardon infractions of State law but lacks power to remit fines for infractions of Municipal Ordinance. Op. Atty. Gen. 61-742.

Substantive limitations--crimes not pardonable. Impeachment and treason; for the latter, the Governor may grant reprieves pending legislative action. Const. §77.

Restoration of civil rights. If any of a certain class of officers or deputies, defined in the statutes, is convicted of bribery, forgery, perjury, or felony in a court of record, his or her office will be vacated by the conviction and a pardon will not entitle the officer to reinstatement. §61.040. However, a county judge or executive who has been convicted and sentenced in a Federal court on charges of fraud may legally continue in office pending an appeal to the circuit court. Op. Atty. Gen. 68-166. In the case of other public officers, the office does not become vacant until conviction procedures relating to appeal have been exhausted or abandoned. Op. Atty. Gen. 78-838.

A Governor's pardon or other type of rehabilitative action or law is not conclusive of rehabilitation of a convicted felon and does not automatically qualify that person for a vehicle dealer's license since it is the licensing authority's role to decide whether the applicant has been rehabilitated. Op. Atty. Gen. 80-388.

Administrative Process

Revocation of pardon. A pardon secured by deception and fraud may be set aside by the courts, although they have no authority to interfere with the exercise of the Governor's constitutional authority to grant pardons, even in cases of the grossest abuse in the Governor's exercise of the pardoning power. Adkins v. Commonwealth, 232 Ky. 312, 23 S.W.2d 277 (1929).

Special Clemency Issues and Laws

Capital cases. The Governor has the power to commute a death sentence to a life term without parole. Hamilton v. Ford 362 Fed. Supp. 739 (1973).

Other crimes--dueling. Under an early provision of the Kentucky Constitution still in effect, the Governor has the power, after 5 years from the time of the offense, to pardon any person who participated in a duel as principal, second, or otherwise, and to restore to that person all the rights, privileges, and immunities to which he or she was entitled before the duel. Const. §240.

LOUISIANA

Overview of State System

Primary authority: Governor on advice of panel. While the Governor, acting alone, may grant reprieves, the recommendation of the Board of Pardons is needed for commutations, pardons, and the remission of fines and forfeitures. However, first offenders without a previous felony conviction are pardoned automatically upon completion of sentence without a recommendation of the Board of Pardons and without action by the Governor. La. Const. 1974, Art. 4, §5 (E)(1) (1977 & Supp. 1986). First offenders are defined by law as those never previously convicted in any jurisdiction of a felony. La. Stat. Ann. §15-572 (1981).

The authority of the Governor to grant reprieves is unlimited and absolute, except in cases of treason. State ex rel. Melerine v. Trist, 238 La. 853, 116 So.2d 691 (1960); Op. Atty. Gen. April 10, 1953. While the power of the Governor to commute sentences is subject to the recommendation of the board, it is nonetheless a function of the executive branch of government that cannot be limited or controlled by other branches of the State government. State v. Chase, 329 So.2d 434 (1976); Richey v. Hunter, 407 So.2d 427 (App. 1981).

Membership. The membership and powers of the Board of Pardons and other relevant matters are generally regulated under Title 15, Chapter 5, Part I "Reprieve and Pardon," of Louisiana's code of criminal procedure. La. Stat. Ann. §§15:572 through 15:5741 (1981 & Supp. 1987).

Administrative system: Board of Pardons. The Board of Pardons consists of five members appointed by the Governor and subject to confirmation by the Senate. Board members serve terms concurrent with that of the appointing Governor. The Governor is responsible for designating the board chairperson. §15:572.1; Const. 1974, Art. 4 §5(E)(2).

Board members are full-time public officials and are prohibited from holding any other public office or employment or engaging in any private business or employment that conflicts with their duties as board members. §15:572.1(F). Members receive an annual salary as determined by the Governor, and are reimbursed for travel and other expenses incurred in the discharge of their duties. §§15:572.2, 15:574.1. Board offices are based in Baton Rouge, but meetings may be held at other locations in the State. §15:572.1 (B).

Scope of clemency authority. Clemency authority, as vested under the State Constitution, extends to the pardon of all felonies, including those in violation of Federal, other State, or foreign laws, although a pardon from Louisiana does not mitigate or otherwise affect the direct penalty imposed by another jurisdiction. Op. Atty. Gen. No.79-787, March 13, 1980. The pardoning power also includes the authority to pardon for contempt of court and for violation of city ordinances. State ex rel. Van Orden v. Sauvinet, 24 La. Ann. 119, 13 Am. Rep. 115 (1872) Op. Atty. Gen. 1936-38, p.676.

Types of clemency. The Governor alone may grant reprieves and, with the recommendation of the Board of Pardons, may grant commutations, pardons, and remissions of fines and forfeitures for offenses against the State. La. Const. Art. 4, §5 (E) (1).

Substantive limitations--crimes not pardonable. Treason.

Other limitations. The Governor lacks authority to grant furloughs to prison inmates and to suspend law relating to commutation of sentence. Op. Atty. Gen. 1942-44, pp.1130, Louisana 1914-1916, p.727. Also, according to Louisiana caselaw, the authority to remit fines and forfeitures does not include the power to remit forfeited bail bonds. State v. United Bonding Insurance Co. of Indianapolis, Ind., 244 La. 716, 154 So.2d 374 (1963); Summit Fidelity and Surety Co. v. Police Jury of Rapides Parish 244 La. 713 154 So.2d 373 (1963).

Administrative Process

Notice requirements. Before considering any application for pardon and at least 30 days prior to the hearing on the application, the board must provide written notification of the date and time for which the hearing is scheduled to the following: the district attorney and sheriff of the parish in which the applicant was convicted; the victim(s) physically or psychologically injured by the applicant; the spouse or next of kin of a deceased victim whose death the applicant was responsible for; and any other interested persons. Persons notified of the hearing must be given reasonable opportunity to attend the meeting and to be heard.§15:572.4. The requirement of written notice to the victim and/or the victim's spouse or next of kin was added to existing notice requirements in 1986 (Acts 1986, No. 402, §1). With regard to notice to the district attorney, see also §15:574.

A 1986 provision requires that, before a clemency application is considered, notice of intent to apply for clemency must be published on 3 separate days within a 30-day time period in the official journal of the parish governing authority of the parish of conviction. §15:572.4 (c).

Evidence. In addition to the testimony or evidence presented by those notified of the clemency hearing as required by law, the board may request that the Department of Corrections and the Department of Public Safety provide it with records pertaining to the clemency applicant's crime of conviction; past criminal record; social history; prison record; physical, mental, or psychiatric condition; as well as any other records or reports the Board requests. §15:572.5.

Rights of applicants. By law, there is no legal right to appeal a decision of the board or Governor regarding clemency. §15:572.6. Nor are the rulings of the board on an application for rehearing subject to judicial revision. State v. Mehojovich, 119 La.791, 44 So. 481 (1907).

Restoration of civil rights. Under the section of the State Constitution prohibiting cruel, excessive, or unusual punishment, full rights of citizenship are restored following completion of

sentence. La. Const. Art. 1, §20 (1977). However, this provision restores only the basic rights of citizenship, such as the right to vote, work, or hold public office. In contrast, a gubernatorial pardon restores privileges as well as rights, such as the privilege of holding a liquor license. State v. Tucker, 355 So.2d 917 (1978).

MAINE

Overview of State System

Primary authority: Governor. The Governor has the power to remit all forfeitures and penalties and to grant reprieves, commutations, and pardons, after conviction, except in cases of impeachment, and in accordance with conditions, restrictions, and limitations that have been deemed proper, and subject to regulations concerning applications for pardon that are provided by law. The power to grant reprieves, commutations, and pardons includes offenses of juvenile delinquency. Const. Me. Art. 5, Pt. 1 (1985 & Supp. 1986).

The Constitution vests the power to grant reprieves, commutations, and pardons with the Governor and Council. The legislature is powerless to interfere with such powers. Baston v. Robbins 153 Me. 128, 135 A2d 279 (1957).

The State Parole Board advises the Governor concerning applications for pardon, reprieve, or commutation only when the Governor requests its advice. Me. Rev. Stat. Ann. Title 34-A §5210 (4) (1983 & Supp. 1986).

Administrative system: State Parole Board. Maine's five-member State Parole Board was established in 1983. The Governor appoints the board members for 4-year terms. The board serves at the pleasure of the Governor and advises the Governor on request. Me. Rev. Stat. Ann. Title 34-A, §§5201 through 5203, (1983 & Supp. 1986) The Parole Board's existence does not deprive the Governor of the power to grant pardons or commutations to any person sentenced to a correctional facility. §5002.

Administrative location. The State Parole Board is within the Department of Corrections. §5201.

Reporting requirements. The secretary of the Parole Board is required to send an annual report of the board's work to the Commissioner of the Department of Corrections who must, in turn, send the report to the Governor for submission to the legislature. §5208.

Scope of clemency. The chief executive, acting for the public welfare and benefit of the convict, has complete discretion in exercising any power of clemency and may exercise the clemency power for whatever reason is deemed appropriate. State v. Hunter 447 A2d 797 (1982).

The constitutional powers of the Governor cannot be altered, changed, increased, or lessened through action of the legislature. State v. Simon, 149 Me. 256, 99 A2d 922 (1953). Although the legislature has general amnesty power, its power does not extend to the commutation of sentences; the power to commute is exclusively and explicitly granted to the executive. Bassie v. State, 488 A2d 477 (1985).

Types of clemency. Remissions, reprieves, commutations, and pardons. Const. Supra.

Substantive limitations--crimes not pardonable. Impeachment. Ibid.

Administrative Process

Procedures for clemency review. The Parole Board is required to hold hearings, conduct investigations, and collect records to determine the facts and circumstances pertaining to an offender as it learns of each application for pardon. All information obtained is confidential. Based on its findings, the board makes recommendations to the Governor regarding action on the application. §5210.

Notice requirements. Written notice on all petitions to the Governor for pardon or commutation must be given to the Attorney General and the district attorney for the county where the case was tried. The Governor also may require the judge and prosecutor's office to furnish the Governor or the Parole Board with a concise record of the hearing and any other facts bearing on the propriety of granting pardon or commutation. §2161.

Applicants for pardon must provide the Governor and executive council with certified copies of indictment, record of conviction, and sentence in addition to giving written notice to the county attorney and publishing a petition for pardon in the newspaper. Gerrish v. State of Maine, 89 F. Supp. 244 (D.C. Me. 1950).

Special Clemency Issues and Laws

In the case of indigent individuals convicted of first or second degree homicide, copies of the official trial records and other specified documents, certified by the Official Court Reporter, must be furnished for free by the clerk of the court to the Secretary of State, for use in any pardon hearing before the Governor. Me. Rev. Stat. Ann. §454 (198 & Supp. 1986).

State liability for wrongful imprisonment. The State of Maine has waived its sovereign immunity from claims for wrongful imprisonment, and is liable for damages if an individual proves by clear and convincing evidence that he or she was convicted of a criminal offense, was actually incarcerated, and was granted full gubernatorial pardon. The pardon must be accompanied by the Governor's written finding that the person was innocent of the crime of conviction; the Governor's refusal to make such a finding is final and not reviewable by the courts.

Claims against the State for wrongful imprisonment are heard in the Superior Court of Maine, and must be initiated within 2 years after the date of the pardon. No claim or award arising out of a single conviction may exceed $100,000, including court costs, interest, and all other costs, which are payable from the award. The State Attorney General is authorized to settle any claim after legal action has been initiated. Me. Rev. Stat. Ann. Title 14, §§8201 through 8204 (1986 Supp.).

MARYLAND

Overview of State System

Primary authority: Governor. According to the Maryland Constitution, the Governor has full clemency authority under rules and regulations prescribed by law. Md. Const. Ann. Art. II §20 (1981).

Administrative system: State Parole Commission. The Parole Commission, which assists the Governor in exercising clemency authority, is generally governed by the provisions of the Maryland Code Article 41, §§4-502 et seq. (1986). The Parole Commission's duties include reviewing and making recommendations to the Governor concerning clemency applications. Art. 41, §4-504.

Membership. The commission consists of seven members who are appointed for 6-year terms by the Secretary of Public Safety and Correctional Services with the approval of the Governor and advice and consent of the Senate. Each member must be a resident of the State and must have training and experience in law, sociology, psychology, psychiatry, education, social work, or criminology.

The Secretary, with the approval of the Governor, may remove a member of the commission for disability, neglect of duty, or misconduct in office after providing the member with written notice of the allegations and holding a public hearing on the charges. Art. 41,§4-502.

Reports required. When required by the legislature, the Governor must report to either branch of that body the petitions, recommendations, and reasons that influenced his or her decisions pertaining to the exercise of clemency power. Md. Ann. Code Art. II §20.

Types of clemency. The State of Maryland permits grants of reprieve, pardon, and remission of fines and forfeitures for offenses against the State. Md. Ann. Const. Art. II, §20. Courts have ruled that any existing power to remit forfeitures is vested in the Governor by the above-mentioned code section. State v. One 1967 Ford Mustang, 266 Md. 275, 292 A. 2d 64 (1972). The power to commute death sentences also is permitted by statute. See Notice requirements below.

Substantial limitations--crimes not pardonable. The Governor is not constitutionally empowered to grant reprieves or pardons in cases of impeachment. The Governor also is not authorized to remit principal or interest of any debt due the State. Md. Ann. Code Art. II, §20.

Administrative Process

Notice requirements. The Constitution requires that, before granting a pardon, the Governor must give notice in one or more newspapers of the application for clemency, and the date on or after which the Governor's decision will be given. Const. Art. II §20.

Upon provision of constitutionally required notice, the Governor may commute any death sentence into confinement for a time period that the Governor deems appropriate. Also, on giving such a notice, the Governor may grant conditional pardon to any convict on any conditions the Governor sees fit to prescribe. Md. Ann. Code Art. 41, §4-603.

Revocation of pardon. Neither the constitution nor statutory laws mandate that the Governor hold a hearing prior to revoking a conditional pardon. Wright v. Herzog, 182 Md. 316, 34A. 2d 460 (1943). Courts have ruled, however, that the mere authority of the Governor to impose conditions on a pardon and to revoke the conditional pardon does not permit the Governor to revoke a pardon arbitrarily or based solely on rumor. State v. Swenson, 196 Md. 222, 76 A.2d 150 (1950). Nevertheless, an opportunity for hearing does not mean that the grantee of a conditional pardon who is accused of violating its conditions, is entitled to a trial in any strict or formal sense. State v. Swenson, supra; Warden of Md. Penitentiary v. Palumbo 214 Md. 407, 135 A. 2d 439 (1957).

MASSACHUSETTS

Overview of State System

Primary authority: Governor on advice of panel. Under the Massachusetts Constitution, clemency authority is vested in the Governor, subject to the advice of council. Mass. Const. Pt. 2, C. 2, §1, Art. VIII, as amended by Art. 73(1978). Hereinafter, Const. Art. 8. The Constitution requires concurrent action of the Governor and advisory council before pardon can be granted. In re Opinion of the Justices (1912) 98 N.E.101, 210 Mass. 609; Ladetto v. Commissioner of Correction (1977) 369 N.E.2d 967.

The Governor may, however, refuse to pardon a convict despite a recommendation for pardon by the advisory council. 1 Op. Atty. Gen. 1895, p.199. The Governor also may refuse to refer to the advisory council a petition for pardon or for commutation of the death penalty. 3 Op. Atty. Gen. 1906, p.5. The Governor is not required to recommend a pardon after the application has been investigated and considered during a period of the respite; in such cases, the Governor retains complete discretion to recommend or not to recommend a pardon. Op. Atty. Gen. Sept. 15, 1966, p.73.

The State Constitution indicates that if the offense is a felony, the general court has the power to prescribe the terms and conditions upon which a pardon may be granted. Const. Art. 8.

Administrative system: Parole Board. Generally, the laws concerning the exercise of clemency authority and the operation of the "council" or administrative body that advises the Governor in this regard are found in the Massachusetts penal/corrections code. Mass. Gen. Laws Ann. Ch. 127 §§152 to 169 (1978 & Supp. 1986).

The operations and administrative processes of the Governor's advisory council are generally those of the Massachusetts Parole Board, since the advisory council is Parole Board sitting in special session. Ch. 127 §154. However, the provisions of Chapter 127, as fully cited above, discuss Parole Board functions as they relate to pardoning authority. For example, a provision relating to the duty of Parole Board agents to aid parolees and discharged prisoners does not distinguish parolees from those who have been pardoned. The same provision indicates that Parole Board employees are responsible for obtaining information for use by the Parole Board concerning inmates; thus, it seems that the employees also are responsible for investigations relevant to clemency applications. 127 §158.

Membership. The Parole Board is composed of seven members, appointed for 5-year terms by the Governor, with the advice and consent of an advisory committee. Whenever a vacancy occurs in the membership of the board, the Governor may appoint a panel of five persons who must, within 60 days, submit to the Governor a list of six to nine individuals who possess exceptional qualifications and aptitude for carrying out the duties required of a

Parole Board member. If the Governor does not appoint a panel, he or she may fill a vacancy on the Parole Board by appointing someone who possesses the required qualifications and aptitude in the administration of criminal justice or in the behavioral sciences. The Governor may designate one of the members as the board chairperson, who serves at the will of the Governor. Board members are required to devote full time to their duties and are prohibited from any office or activity that would constitute a conflict of interest. Mass. Gen. Laws Ann. Ch. 27 §4 (1981 & Supp. 1986).

Regulations. The Parole Board is authorized to make rules relative to its proceedings, including the calling of meetings. 127 §154.

Reports required. At the end of each calendar year, the Governor is required to transmit to the general court, by filing with the clerk of either branch, a list of pardons granted with the advice and consent of the advisory council during that calendar year. This transmission must be accompanied by information as to the advisory council's action concerning each pardon and a list of any revocations of pardons made under this section. 127 §152. The Governor's report to the general court should include in the list of pardons any cases of prisoners who received sentence commutations. 8 Op. Atty. Gen. 1926, p.6.

Scope of clemency authority. In Kennedy's Case (1883) 135 Mass. 48, the court said, "The power of pardoning offences, as conferred on the executive authority by the Constitution of the Commonwealth, is exceedingly comprehensive, extending to all offences except those of conviction by the Senate upon impeachment. It is only limited in its exercise by the provision that pardons shall not be granted before conviction. Perkins v. Stevens, 24 Pick. 277. This power includes that of mitigating the sentence, as by diminishing its duration where imprisonment has been ordered, or by commutation, so that a milder punishment is inflicted. It also includes the right to grant conditional pardons, either to take effect upon the performance of some precedent condition, or to become void by a failure to comply with some subsequent condition."

Under the Massachusetts Constitution, the Governor may grant a pardon after a verdict of guilty and before sentence, and while exceptions allowed by the presiding judge are pending in the Massachusetts Supreme Court for argument. Com. v. Lockwood 109 Mass. 323, 12 Am. Rep. 699 (1872); see also Op. Atty. Gen. May 6, 1959, p.115.

Types of clemency. The word "pardon," as used in the applicable law, includes any exercise of the pardoning power except a respite from sentence. 127 §152. In vesting the "power of pardoning offenses," the Massachusetts Constitution also applies to conditional pardon, to commutation and respite of sentence, and to absolute pardons. In re Opinion of the Justices, 98 N.E. 101, 210 Mass. 609 (1912). The commutation of a sentence is an exercise of the pardoning power and is a pardon upon condition; however, it is not commonly referred to as a pardon. 8 Op. Atty. Gen. 1926, p.6.

Crimes not pardonable. Massachusetts law prohibits the pardoning of impeachable offenses. Const. Art. 8. Under judicial interpretations of the constitutional clemency authority, civil contempts are not within the Governor's pardoning power since the punishment is considered to be remedial and for the benefit of the complainant. However, the Governor, with the advice of the council, has the power to pardon for criminal contempt of court. In re Opinion of the Justices, 17 N.E.2d 906, 301 Mass. 615, (1939); Ex parte Grossman, 45 S.Ct. 332, 267 U.S. 87,69 L.Ed. (1925) 527, 38 A.L.R. 131. Also, if a State officer is convicted for contempt before the House of Representatives or the Senate, such contempt would come within the scope of the Governor's pardoning power with the advice and consent of the council. Op. Atty. Gen. Oct. 9, 1951, p.32.

Under the Commonwealth Constitution, the general court has the power to prescribe the terms and conditions upon which a pardon may be granted if the crime is a felony and with the proviso that the pardon recipient cannot plead the fact of a pardon at trial. Const. Art. 8.

Administrative Process

Procedures for clemency review. Clemency applications, together with all statements and signatures, must be filed with the Parole Board, acting as the advisory Board of Pardons, prior to their presentation to the Governor. Upon receipt by the board, the items become public record, and the Advisory Board of Pardons must process each petition in accordance with the applicable law. 127 §152).

Initial responsibility for pardons is vested in the Governor; thus, responsibility for making preliminary determinations rests with the Governor alone. The Governor cannot be compelled by the courts, through a writ of mandamus, to submit to the board a petition for respite on the grounds of the applicant's insanity because only the Governor has the duty to make the initial determination. Juggins v. Executive Council to the Governor 154 N.E.72, 257 Mass. 386, (1926).

Statutory timetable. Within 10 weeks of the original receipt of any petition, the advisory council is required to transmit the original petition to the Governor, together with the council's conclusions and recommendations and with any recommendations the council received. If, however, the council determines that a particular case requires a hearing on its merits, the council need not submit its recommendations at the end of 10 weeks, but rather must notify the Governor of its intention to hold a hearing. The deadline for the hearing and a subsequent report to the Governor is 6 months after the original receipt of the petition by the board. 127 §154.

Forum. A public hearing is held when the applicant is confined under sentence for a felony. The hearing must be held as soon as is practicable after the petition has been filed with the council. Any action taken by the council on the petition must be taken by a rollcall vote of a quorum of members, and a majority is needed for the approval or disapproval of a petition. Within

3 days after the council's vote, a certified copy of the rollcall must be filed for public inspection with the State secretary. 127 §152.

Notice requirements. When the petitioner is serving a sentence in State prison and the Governor has referred the petition to the board's executive council, the board's secretary must notify the Attorney General and the district attorney who prosecuted the case. They or their representatives may be present at the hearing on the petition, may examine the petitioner's witnesses, and may present a case against the petitioner. 127 §153. Similarly, when the board receives a pardon petition directly from an imprisoned applicant, it must forward a copy of the petition to the Attorney General, the Commissioner of Correction, the Chief of Police of the municipality in which the crime was committed, and, if the petitioner was sentenced in the Superior Court, the district attorney in whose district sentence was imposed, or, if the petitioner was sentenced in a district court, the justice of the court in which sentence was imposed. The board is required to forward a copy of all other petitions it receives, upon receipt, to the Attorney General, the chief of police, and the district attorney or the justice of the district court, as the case may be; however, the board need not forward the copies if the petitioner was convicted of a misdemeanor and is not confined. Within 6 weeks of receiving a copy of a petition, the appropriate officials may make written recommendations to the board concerning the petition. However, failure by any or all of these officials to make recommendations does not arrest the pardoning procedure in the case. 127 §154.

Evidence. Agents employed by the Parole Board obtain information for the board concerning prisoners sentenced to serve in Commonwealth correctional institutions, particularly information of the details of their offenses, previous character, and history. For this purpose, the agents may require police authorities to provide any facts in their possession relative to such prisoners, providing such communication will not be detrimental to the public interest. 127 §158.

If the board decides to hold a hearing in the case of a petitioner who is confined under sentence for a felony, the Attorney General and the district attorney must be notified of the hearing and they or their representatives must be given the opportunity to appear, to examine the petitioner's witnesses, and to be heard. Board members may summon witnesses and administer oaths in taking testimony at these hearings. The fees paid to witnesses before the board must be the same as for witnesses in civil actions before the courts, and must be paid from the appro appropriation for Parole Board expenses. 127 §154.

Privacy. If the board determines that making public certain facts stated in its report to the Governor will cause undue or unmerited hardship or injury to the petitioner or others, the portion of the report that contains the facts may be submitted separately from the conclusions and recommendations, and without publicity. However, in all cases, a statement containing the facts of the crime or crimes for which a pardon or commutation is sought, the sentence or sentences received, together with all conclusions and recommendations must be made public when the re-

port is submitted. A copy of the statement, a statement of the majority recommendation of the board signed by all members concurring, and a certified copy of the petition with all statements and signatures appended must be retained by the board as a permanent record open to public inspection at any reasonable time for a period of 10 years from the date the original petition was filed with the board. 127 §154.

Payment for obtaining clemency. Massachusetts law expressly prohibits the acceptance of any payment, gift, or other compensation for assistance in obtaining a pardon, except for proper legal services. 127 §166. Those representing pardon applicants must first file in the office of the State secretary a written statement that such person is acting with the written consent of the prisoner, and that no compensation other than legal fees has been received or promised. This statement must also contain a detailed description of services and fees. The receipt of any additional fee for legal services different from that disclosed in the statement necessitates filing, in the same form and manner as the original statement, an additional statement describing the additional fees and services. These statements are kept as permanent records in the office of the State secretary and are open to public inspection. 127 §167.

Violation of these provisions is a criminal offense, punishable by a fine not to exceed $5,000, or by imprisonment not to exceed 2 years, or both. 127 §168. The laws against receiving compensation for assistance with clemency applications, except as provided, and the penalties for violation must be printed on clemency application forms. 127 §169.

Standards of evidence. The board does not review the trial court proceedings or consider any questions regarding the applicant's trial. It may consider only questions concerning the propriety of extending clemency. 127 §154.

Disposition of clemency recipients. A pardon does not necessarily result in the prisoner's release. For example, the power to pardon does not in itself contain authority to release someone who was committed as insane. 8 Op. Atty. Gen. 1927, p. 327. In one particular case, an individual who was found not guilty of murder by reason of insanity and was consequently committed to a State hospital for life applied for pardon on the grounds that his sanity was restored. The court ruled that the person had committed no offense for which he might be pardoned and that as a result, he could not apply for a pardon on such grounds. 5 Op. Atty. Gen. 1920, p.591. Similarly, the Governor may pardon a prisoner and the Board of Parole may provide an inmate with a permit to be at liberty, but neither will necessarily free that person from quarantine or other isolation if he or she is suffering from a communicable disease such as tuberculosis or venereal disease. 8 Op. Atty. Gen. 1928, p.456.

As noted earlier, statutes concerning the procedures and services upon release from incarceration do not distinguish between those released after serving sentence or on parole and those released after receiving a pardon. Thus, statutory measures requiring that the Parole Board assist released prisoners

or notify local officials of discharge and other related provisions appear to apply equally to both pardon and parole recipients. 127 §§160 to 165.

A prisoner who is held on a sentence calling for both imprisonment and the payment of a fine and who is pardoned by the Governor may not be confined after the effective date of the pardon, even if the fine is not paid. Op. Atty. Gen. Sept. 12, 1936, p.83.

Expungement of records and restoration of civil rights. A 1983 amendment to Massachusetts clemency law added procedures for sealing records and for removing the disqualifications of a felony conviction from any public or private examination, appointment, or application for employment or other benefit. These procedures are automatic upon grant of pardon.

Automatic upon grant of pardon. Upon approval of a petition for pardon, the Governor directs the proper officers to seal all records relating to the offense for which the person received the pardon. The sealed records will not disqualify a person in any examination, appointment, or application for employment or other benefit, public or private, including, but not limited to licenses, credit, or housing. In addition, such sealed records are not admissible as evidence or for use in any court proceeding or hearing before any board, commission, or other agency, except in imposing sentence in subsequent criminal proceedings. On job applications, in employment interviews, and in any circumstances where a person is asked whether he or she has been convicted of an offense, a person who has received a pardon for an offense may answer in the negative. The Attorney General and the person pardoned may enforce this provision by instituting legal actions. 127 §152.

Under earlier case precedents, however, procedures for restoration of civil rights upon grant of a pardon may not remove all of the detrimental effects of a felony conviction. For example, under Massachusetts domestic relations law, a sentence of imprisonment for more than 5 years is grounds for divorce. If such a divorce is granted, a pardon does not restore marital rights. Mass. Gen. Laws Ann. Ch. 208, §2 (1958 & Supp. 1986).

The restoration to public office of convicted felons who were later pardoned is not necessarily automatic, according to precedents established before the 1983 amendment. However, a provision to restore to office individuals whose pardons specifically order restoration was not expressly repealed. Mass. Gen. Laws Ann. Ch.279, §30 (1981). However, this law does not apply to State senators because under the Commonwealth Constitution, the Senate alone determines the qualifications of its members. Op. Atty. Gen. June 9, 1977, p.172. Similarly, the eligibility for appointment or reinstatement as a police officer after his or her felony conviction has been pardoned depends upon the specifics of the particular case since police officials have discretion not to appoint or rehire. See generally, Essex County Retirement Board v. Contributory Retirement Appeal Board, 342 Mass. C 322 173 N.E.2d 627 (1961); Commissioner of Metropolitan District Commission v. Director of Civil Service, 348 Mass. 184, 203 N.E.2d 95 (1964).

Revocation of pardon. The Governor, with the advice and consent of the board, may revoke any pardon at any time upon determining that a misstatement of a material fact was knowingly made at the time of the filing of the written petition of the petitioner; that a pardon was procured by fraud, concealment, or misrepresentation; or that the law has otherwise not been complied with. Upon such revocation, the Governor may issue a warrant to all proper officers to take into custody the person who had been wrongly pardoned and return him or her to the institution where he or she was imprisoned when the pardon was granted.

The person whose pardon is revoked is to have the same standing in the penal institution to which he or she is returned as would have been the case if the pardon had not been granted. However, the time during which the person was not incarcerated due to the pardon is omitted when determining the remainder of the sentence to be served. 127 §152.

If a prisoner who has been conditionally pardoned violates the conditions of pardon, the board is required to have the person arrested and detained. The warden of the institution in which the prisoner was confined prior to the pardon is responsible for receiving and detaining the prisoner until the Governor and council can examine the case. The officer who makes the arrest is required to provide written notice of the event to the Governor and board. 127 §155. Upon receipt of such notice, the Governor and board must examine the case. If, according to the prisoner's own admission or other evidence, the prisoner did violate the conditions of pardon, the Governor, with the advice and consent of the board, must order the prisoner to be remanded and confined for the unexpired term of his or her sentence. Such confinement, if the prisoner is under any other sentence of imprisonment at the time of said order, is to begin upon the expiration of that sentence. In computing the remaining sentence to be served, the time between the conditional pardon and subsequent arrest may not be counted as part of the sentence that has been served. If it appears to the Governor and council that the prisoner has not broken the conditions of the conditional pardon, he or she must be discharged. 127 §156.

If a prisoner receives a pardon or commutation of punishment, the officer to whom the warrant for such purpose is issued must, upon execution of the warrant, properly validate the warrant, return it to the secretary's office, and file a copy of the warrant in the office of the clerk of the court of conviction. 127 §157.

Special Clemency Issues and Laws

Capital cases. The Governor, with the advice and consent of the board, may respite the execution of a death sentence for stated periods to investigate and consider the facts of the case to determine whether or not to pardon the prisoner. Mass. Gen. Laws Ann. Ch. 279, §63 (Supp. 1986). If the execution is respited or stayed by process of law, the death sentence is to be executed within the week after the expiration of the respite or stay. 279 §59.

In a court case concerning clemency power in capital cases, it was found that commutation of sentence merely lessens the sentence, but does not change the fact of conviction. In this case, a man who was convicted of murder and sentenced to death received a reduction in sentence to life imprisonment after his first trial. The reduction in sentence, however, was not an acquittal in any form and would not effect the conduct of the second trial, held after the original conviction had been reversed. Commonwealth v. Arsenault, 361 Mass. 287 280 N.E.2d 129, (1972).

Youthful offenders. If a death sentence is imposed on a child under age 17 and if, before that child reaches age 17, the Governor pardons the child and commits him or her to the care of the Department of Youth Services, that department assumes control over the youth, subject to applicable laws. 127 §152.

MICHIGAN

Overview of State System

Primary authority: Governor. The Michigan Constitution vests full clemency authority with the Governor in all criminal and penal cases, with certain exceptions, and under the rules and regulations prescribed by law. Mich. Const. Art. V, §14 (1983 & Supp. 1986). However, all clemency applications must be referred to the Parole Board for investigation and recommendation. Mich. Stat. Ann. §28.2313, (1983 & Supp. 1986) The board's recommendations, though, are only advisory to the Governor. §28.2314.

Court rulings have upheld the Governor's authority in finding that the power of pardon and commutation of sentence is vested exclusively in the Governor, and that any law restricting such power would be unconstitutional. People v. Freleigh, 334 Mich. 306 (1952) People v. Garcia, 118 Mich. App. 676.

Courts also have ruled that neither the Supreme Court nor any other court may exercise the commutation power. People v. Allen, 79 Mich. App. 100 (1977). In one case determining that an order to reduce the original life sentence after the prisoner, convicted of armed robbery, had served some 16 years was found invalid as infringing upon the Governor's exclusive power to commute sentences. People v. Fox, 312 Mich. 577 (1945).

Administrative system: Bureau of Pardons and Paroles. Referred to in the laws as the Parole Board, Michigan's administrative body for clemency matters was created and is generally governed by the provisions of Chapter 293A, Penal Institutions, Pardon, Probation and Parole, of Criminal Procedure-- Corrections Title. Mich. Stat. Ann. §28.2301 et seq. While the Parole Board makes recommendations to the Governor regarding clemency, its authority in this regard is strictly limited by statute. §28.2314.

Membership. The Parole Board is composed of seven members who are appointed by the Director of the Department of Corrections. The Director also designates the chairperson of the board. The chairperson of the Parole Board is responsible for the administration and operation of the board. §§28.2301, 28.2302.

Reports required. Under the State Constitution, the Governor must inform the legislature annually of each reprieve, commutation, and pardon granted as well as the reasons for the grants. Art. V, §14§.

Types of clemency. Reprieves, commutations of sentence, and pardons after convictions in all criminal and penal cases, with certain exceptions. Const. Art. V, §14.

Substantive limitations. The Constitution does not enable the Governor to grant clemency in cases of conviction on impeachment. Also, the Governor's clemency authority does not include the power to remit fines and forfeitures. Art. V, §14.

All applications for pardons, reprieves, and commutations must be filed with the Parole Board. Upon receipt of an application for reprieve, commutation, or pardon, the board is required to deliver the original application to the Governor, and to retain a copy in its file, pending investigation and hearing. §§28.2313, 28.2314.

Notice requirements. Within 10 days after receipt of any application for clemency, the board must forward to the sentencing judge and to the prosecuting attorney of the county having original jurisdiction of the case, or their successors in office, copies of the application, the supporting affidavits, and a brief summary of the case. In cases where a commutation application is based on physical or mental incapacity, the board is to direct the Office of Health Care to evaluate and report to it on the prisoner's condition.

MINNESOTA

Overview of State System

Primary authority: Administrative panel that includes the Governor. The Minnesota Constitution provides that an administrative panel that includes the Governor collectively exercises the clemency authority under the rules and regulations prescribed by law. The Governor, in conjunction with the panel, has the authority to grant reprieves and pardons after conviction, except in cases of impeachment. Minn. Const. Art. 5, §7 (1976); Minn. Stat. Ann. §638.01.

Administrative system: Board of Pardons. Referred to in the laws as the Board of Pardons, Minnesota's administrative body for clemency matters was created by Article 5, Section 7 of the State Constitution, and is generally governed by the provisions of Chapter 638, Board of Pardons, Code of Criminal Procedure. Minn. Stat. Ann. §§638.01 et seq. (West 1981 & Supp. 1987).

Membership. The Board of Pardons is composed of the Governor, the Attorney General, and the Chief Justice of the Supreme Court. Art. 5, §7.

Regulations. The Board of Pardons may adopt such rules as seem necessary and proper to carry out the intent and purposes of its enabling legislation. Furthermore, the board may issue warrants to any proper officers to carry into effect any pardon, commutation, or reprieve. §§638.03, 638.07.

The Attorney General has determined that there is no limitation on the authority of the Board of Pardons to act on the applications of convicts committed to the Youth Conservation Commission. Op. Atty. Gen. 328-B-1, July 31, 1953.

Types of clemency. The board's authority extends to reprieve and commutation of sentence for any offense against the laws of the State. §638.01. The board may also grant a "pardon extraordinary." A pardon extraordinary has the effect of restoring the beneficiary's civil rights and of setting aside, nullifying, and purging the recipient's conviction. The beneficiary of such a pardon may never be required to disclose the conviction at any time or place other than in a judicial proceeding. §638.02.

Reprieves and pardons after conviction for an offense against the State, except in cases of impeachment, are the Governor's domain, when acting in concert with the Board of Pardons. Art. 5, §7; §638.01.

Substantive limitations--crimes not pardonable. Under the State Constitution, the authority to grant reprieves and pardons after conviction does not extend to cases of impeachment. Art. 5 §7. However, the statutory provision regulating clemency authority indicates that this authority may be exercised with regard to any person convicted of any offense against the laws of the State. §638.01.

Administrative Process

Criteria for application. Any one person who was convicted of a crime in a Minnesota State court, has served the sentence imposed by the court, and has been discharged of the sentence may petition the Board of Pardons for the granting of a pardon extraordinary. §638.02.

Standards for granting. If the Board of Pardons determines that a petitioner has been convicted of no criminal acts other than the act on which the conviction was founded, and is of good character and reputation, the board has discretion to grant a pardon extraordinary. §638.02.

Procedures for clemency review--upon application. All applications for pardon or commutation of sentence must be filed with the clerk of the Board of Pardons. The board must keep a record of every petition it receives, and of every pardon, reprieve, or commutation of sentence it grants or refuses, including the reasons for its actions. The Commissioner of Corrections or a designee is required to act as the board secretary. The secretary is responsible for the board's records and must perform such duties as the board directs. The records and files of the board must be open to public inspection at all reasonable times. Minn. Stat. Ann. §§638.06, 638.07.

The petitioner's application must include the name under which he or she was indicted and every alias he or she has ever used; the date and terms of sentence and the names of the offense imposed; the name of the county, the trial judge, and the county attorney who participated in the trial; the petitioner's age, birthplace, parentage, occupation, and residence during the 5 years immediately preceding conviction; and a statement of any other arrests, indictments, and convictions. §638.05.

The petitioner's application must include a succinct statement of the evidence adduced at his or her trial. The statement must be endorsed by the trial judge or the county attorney who tried the case, with notification that the statement is substantially correct. If a statement and endorsement are not furnished, the applicant must specify the reason for the omission. §638.05.

Notice requirements. The clerk of the board must, immediately on receipt of any clemency application, mail notice of the application and of the time and place of the hearing to the judge of the court where the applicant was sentenced and to the attorney who prosecuted the applicant, or the prosecuting attorney's successor. §638.06.

Appeal/reconsideration. Once an application for pardon or commutation has been heard and denied on its merits, no subsequent application may be filed without the consent of two members of the board, expressed by endorsement on the application. §638.06.

Restoration of civil rights. State statute provides that whenever a pardon extraordinary is granted, it has the effect of restoring such recipient to all civil rights. §638.02.

The Attorney General has found that where the board granted freedom to a prisoner through commutation on condition, its jurisdiction over the convict is not completely terminated. Thus, the Governor lacks the power to restore the convict's civil rights before final disposition of the convict's sentence. Op. Atty. Gen. 68-H, May 18, 1943.

However, the Attorney General has determined that a person convicted of an infamous crime may not serve as a juror, even after a restoration of civil rights. Op. Atty. Gen. 260a-11, Oct. 8, 1959.

Expungement of records. When a pardon extraordinary is granted, it has the effect of setting aside and nullifying the conviction. It also has the effect of purging the recipient, who may never thereafter be required to disclose the conviction at any time or place, except in a subsequent judicial proceeding. §638.02.

Revocation of pardon. Courts have found that a convict who has received a conditional pardon cannot, for an alleged nonperformance of the condition, be reincarcerated without first being afforded a hearing to show whether he or she has performed the condition or has a legal excuse for nonperformance. State v. Wolfer, 53 Minn. 135, 54 N.W.1065 (1893). The hearing need not, however, be in the nature of a formal or jury trial. The prisoner is not entitled to a jury trial as a matter of right, except on the question of identity. Guy v. Utecht 216 Minn. 255, 12 N.W.2d 753 (1944).

MISSISSIPPI

Overview of State System

Primary authority: Governor. In all criminal and penal cases, with certain exceptions, the Governor has full clemency authority, under the rules and regulations prescribed by law. Miss. Const. Art. 5, §124 (1972 & Supp. 1986). The State Parole Board has exclusive responsibility for investigating clemency recommendations on the Governor's request. Miss. Code Ann. §47-7-5 (1972 & Supp. 1986).

The Governor's authority has been upheld by the courts, which have found that the executive branch has the sole authority to grant pardon, and that the power to pardon includes the power to commute sentences in criminal cases, and that this power may not be infringed upon by legislative enactment. Whittington v. Stevens, 221 M 598, 73 So.2d 137 (1954). Courts also have ruled that the State Constitution contains no limitation or restriction that would preclude the Governor from granting suspended sentences on conditions the Governor determines to be both advisable and expedient. Pope v. Wiggins, 220 M1, 69 So.2d 913 (1954).

Courts have determined, however, that the legislature may provide for the commutation of sentence of convicts for good behavior. Whittington v. Stevens, supra. Similarly, courts have found that a municipality charter empowering the mayor, with the consent of the board of aldermen, to remit fines and annual penalties, does not interfere with the Governor's clemency power. Allen v. McGuire, 100 M 781, 57 So.217.

Administrative system: State Parole Board. Referred to in the laws as the State Parole Board, Mississippi's administrative body for clemency matters was created and is generally governed by the provisions of Chapter 7, Probation and Parole, of Title 47 Prisons and Prisoners; Probation and Parole. Miss. Code Ann. (1972 & Supp. 1986).

Membership. The State Parole Board is composed of five members appointed by the Governor and confirmed by the Senate. Board members serve for a period of 4 years. One member must be appointed from each of the congressional districts. The Governor also designates one of the board members as its chairperson whose annual salary as chairperson is established by the legislature. Other board members receive per diems, mileage, and expenses while attending meetings of the board. §47-7-5.

Types of clemency. Reprieves, pardons, and remission of fines, except in cases of treason and impeachment, are the Governor's exclusive province. Art. 5, §124.

Substantive limitations. The State Constitution prohibits the granting of pardon before conviction. In cases of treason, the Governor has only the power to grant reprieves, by and with consent of the Senate; however, the Governor may respite the sentence until the end of the next session of the legislature. As regards forfeiture, the Governor is empowered only to stay the

collection until the end of the next session of the legislature, and, by and with the consent of the Senate, to remit forfeitures. Art. 5, §124.

Reports required. At the close of each fiscal year the board must submit to the Governor and to the legislature a report of its work, with statistical and other data. §47-7-15.

Administrative Process

Clemency review process. On request by the Governor to investigate a clemency application, the State Parole Board gains exclusive responsibility to investigate the case and must submit to the Governor its recommendation, and all other information the board may have regarding the applicant. §47-7-5. After a study of the evaluation report about offenders in the custody of the Department of Corrections compiled by the Division of Community Services, the board on its own, is required to recommend to the Governor those cases the board believes would merit some type of executive clemency. §47-7-9.

Notice requirements. In cases of felony, after conviction, no pardon shall be granted until the applicant has published for 30 days, in a newspaper in the county where the crime was committed, the petition for pardon, setting forth the reasons why such pardon should be granted.

Procedures upon grant of clemency. By legislative amendment effective July 1, 1976, responsibility for the supervision of offenders granted executive clemency is transferred from the board to the Division of Community Services of the Department of Corrections. §47-7-5.

Scope of clemency authority. To effect the release of a crippled or incapacitated prisoner, only the Governor may grant clemency, as held in a case in which the administrative commutation by the Board of Supervisors of a prisoner was ruled unconstitutional as an encroachment upon the pardoning power of the Governor. Whittington v. Stevens, 221 M 598, 73 So.2d 137 (1954).

MISSOURI

Overview of State System

Primary authority: Governor. The Missouri Constitution vests the Governor with clemency authority in all criminal and penal cases, with certain exceptions and under rules and regulations prescribed by law. Mo. Const. Art. IV, §7 (1978). The Board of Probation and Parole assists the Governor by investigating and making recommendations on all clemency applications. Mo. Rev. Stat. §217.800 (Cum. Supp. 1984).

Administrative system: State Board of Probation and Parole. Referred to in the laws as the "Probation and Parole Board," Missouri's administrative body for clemency matters was created and is generally governed by the provisions of Chapter 217, Department of Corrections and Human Resources, of Title XIII, Correctional and Penal Institutions. Mo. Rev. Stat., §§217.005 et seq. (Cum. Supp. 1984).

While the Probation and Parole Board is mandated to make recommendations to the Governor about clemency, its authority in this regard is strictly limited by statute. §§217.655, 217.800. Yet, in the Governor's exercise of power, he or she has discretion to appoint a board of inquiry to report and make recommendations concerning commutations and capital cases. §552.070.

Membership. The Probation and Parole Board is composed of five members appointed by the Governor and confirmed by the Senate to serve 6-year terms. Members of the board must be persons of recognized integrity and must possess suitable qualifications and experience. Not more than three members of the board may belong to the same political party. Members may be appointed to succeed themselves and the Governor must fill any vacancies for the remainder of any unexpired terms. Members of the board are required to devote full time to the duties of their office. The Governor shall designate one member of the board as chairperson. §217.665.

Administrative location. The Probation and Parole Board is established as a section of the Division of Corrections, but is subject to the orders of the director of the Division of Corrections. §§217.655, 549.300. The board office and headquarters may not be located on the site of any correctional institution. §217.680.

Regulations. The State Board of Probation and Parole is empowered to adopt appropriate rules and regulations to carry out the intent and purposes of its enabling legislation. §§217.040, 217.690.

The board may, with the written consent of the Governor, accept from the Federal Government or any of its agencies, the advisory services, funds, equipment, and supplies that are made available to Missouri for the purposes of carrying out its duties as prescribed by law. §549.281.

Reports required. At the close of each fiscal year, the board is required to submit to the Governor and to the General Assembly, a report of its activities of the preceding year. Such communication must include the number of reports requested and completed. §217.685.

Types of clemency. Reprieves, commutations of sentence, and pardons after conviction, remission of fines and forfeitures in all criminal and penal cases, with certain exceptions. Const. Art. IV, §7.

Substantive limitations--crimes not pardonable. The State Constitution clearly delineates the Governor's clemency authority as excluding the power to parole and the authority to grant reprieves, commutations, and pardons for convictions for treason and convictions on impeachment. Art. IV, §7.

The power to remit fines and forfeitures as well as the power to pardon is confined to criminal and penal cases after judgment or conviction and does not extend to administrative revocation of license. Theodoro v. Department of Liquor Control, 527 S.W.2d 350 (1975).

Administrative Process

Procedures for clemency review. All applications for pardon, commutation of sentence, or reprieve must be filed with or referred to the Probation and Parole Board for investigation. The board investigates each case and submits to the Governor its recommendation, a report of the investigation, and all other information the board may have regarding the applicant. §217.800.

Special Clemency Issues and Laws

Other State officials with clemency powers. Mayors have the authority under State law to remit fines and forfeitures and to grant reprieves and pardons for offenses arising under city ordinances. However, this authority does not extend to remitting any costs that have accrued to any city officer due to prosecution under the city laws or ordinances. §§77.360, 79.220.

Release for health reasons. Whenever an inmate is afflicted with an incurable disease, or when confinement will greatly endanger or shorten the inmate's life, the Governor may, upon receiving the approved certification of the institution's physician, grant a commutation to or pardon the inmate. §§210.280, 217.250.

Capital cases. Whenever a death sentence has been imposed, the Governor may appoint a board of inquiry to gather information, whether or not admissible in a court of law, bearing upon whether or not a person condemned to death should be executed or reprieved or pardoned. §552.070.

State law prohibits the execution of a death sentence if, as a result of mental disease or defect, the condemned inmate lacks the capacity to understand the nature and purpose of the punishment to be imposed. Whenever the warden of any correctional institution has reasonable cause to believe that an inmate in his or her custody and sentenced to death has a mental disease or

defect, the warden must immediately notify the Governor of the inmate's condition. On receiving such notification, the Governor must order a stay of execution of the sentence in order to have the mental condition of the inmate determined.

If the court, after such inquiry, certifies to the Governor and to the warden that the convict does not have a mental disease or defect, the Governor must fix a new date for the execution.

The Governor also must issue a warrant to the warden, who must then proceed with the execution as ordered. §552.060.

MONTANA

Overview of State System

Primary authority: Governor on advice of panel. The Governor may grant reprieves, commutations, and pardons and may restore citizenship and suspend and remit fines and forfeitures subject to procedures provided by law and recommendation by the Board of Pardons. The Governor may independently grant respites after conviction of criminal offenses against the State. Mont. Code Ann. §46-23-315 (1985).

Administrative system: Board of Pardons. The Board of Pardons was established by statute as a quasi-judicial body within the Department of Institutions and is responsible for executive clemency and parole as provided in Chapter 23 of Title 46, "Criminal Procedure." All applications for executive clemency are made to the board. It is incumbent on a majority of the board to investigate, approve, and recommend each such application before the action of the Governor becomes final. §46-23-301. After consultation with the Department of Institutions and with approval of the Board of Pardons, the Governor may commute sentences of juvenile offenders. §53-30-212 (1-6). Members are required to have specialized academic training and work experience. Mont. Code Ann. §2-15-2302 (1985).

Membership. The Board of Pardons is composed of three members and an auxiliary member, at least one of whom must have particular knowledge of Native American culture and problems. The auxiliary member must attend any meeting when a regular board member is unable to do so. At such meeting, the auxiliary member has all the rights and responsibilities of a regular board member. Board members are compensated as provided by legislative appropriation. §2-15-2302.

Reports required. The Governor must communicate to the legislature at each regular session each case of remission of fine or forfeiture, reprieve, commutation, or pardon granted since the last previous report, stating the name of the convict, the crime of conviction, the sentence and its date, the date of remission, commutation, pardon, or reprieve, along with the reason for granting and any objections of board members. §46-23-3.16.

Types of clemency. Reprieves, commutations, pardons, restorations of citizenship, and suspension and remission of fines and forfeitures. Const. Art. VI §12.

Administrative Process

The Board of Pardons must produce a written decision within 30 days after hearing any case. If the board decides to recommend executive clemency, a copy of the decision and supporting documents must be immediately transmitted to the Governor. §46-23-307. In most cases, the board also must publicize any order for hearing in clemency cases at least once a week for 2 weeks and obtain proof of publication from the publisher or managing agent of the newspaper used. §§46-203-303 to 46-23-304.

Statutes also specify that publication is not required when the applicant is in imminent danger of death or is within 10 days of completion of the term of imprisonment. §46-23-305. The board must provide for a record of the clemency hearing. §46-203-306. The Secretary of State is required to keep a register of all applications for pardon and for commutation of any sentence, with a list of the official signatures and recommendations in favor of each application, and to affix the great seal, with the Secretary's attestation to commissions, pardons, and other public instruments which require the Governor's official signature. §2-15-401.

The Deputy Secretary of State is responsible for performing all duties of the office in the absence of the Secretary. §2-15-402.

Although records of the board's acts and decisions are available to the public, all social records pertaining to the parties involved, including the presentence report and the supervision history obtained by the Department of Institutions, are confidential. §46-203-108.

Special Clemency Issues and Laws

Other State officials with clemency powers. The Mayor has power to grant pardons and remit fines and forfeitures for offenses against city or town ordinances upon determining that public justice will thereby be served. §7-4-4305.

If a Board of Pardons majority favors a recommendation for executive clemency, it must pass an order to notify interested parties of the Board's position. §46-23-302.

Juvenile offenders. The general provisions governing the Board of Pardons and the granting of executive clemency do not apply to probation in juvenile courts or parole from State juvenile institutions. §46-23-102. However, statute prescribes special provisions for commutation of a sentence to State prison and the transfer of prisoners to juvenile correctional facilities. §53-30-212.

NEBRASKA

Overview of State System

Primary authority: Executive panel that includes the Governor. The Nebraska Constitution vests a panel consisting of the Governor, the Attorney General, and the Secretary of State with clemency authority to grant respites, reprieves, pardons, and commutations and to remit fines and forfeitures, except in cases of treason and impeachment. Neb. Const. Art. IV, §13 (1983). This panel, the Board of Pardons, is created and formalized by State statute. Neb. Rev. Stat. §83-1, 126 (1981).

In cases of treason, the Governor has the independent authority to suspend the execution of the sentence until the case is reported to the Legislature at its next session, when the legislature must act upon the matter. Const. Art. IV, §13.

If a person has been convicted of a felony and granted a pardon by the appropriate Nebraska authority, the Board of Pardons may empower the Governor to expressly authorize such person to receive, possess, or transport in commerce a firearm. Neb. Rev. Stat. §83-1, 130.

Administrative system: State Board of Pardons. Referred to in the laws as the "Board of Pardons," Nebraska's executive body for clemency matters is vested with broad clemency authority. Statute provides that the Board of Pardons has the responsibility to exercise the pardon authority, as defined in §83-170, for all criminal offenses except treason and cases of impeachment. §§83-1, 127.

While discharging its duties, the Board of Pardons or any of its members has the power to issue subpoenas and compel the attendance of witnesses and the production of documents pertinent to its inquiry. Any person who knowingly testifies falsely, submits any false affidavit or deposition, fails to appear when subpoenaed, or fails or refuses to produce material pursuant to the subpoena is subject to the same orders and penalties to which a person before the District Court is subject. §83-1, 128.

All actions of the Board of Pardons require a majority vote and are filed in the office of the Secretary of State. §83-1, 130. The Board of Pardons is required to consult with the Board of Parole concerning applications for the exercise of pardon authority. §83-1, 127.

Membership. The Board of Pardon is composed of three members. The Governor acts as board chairperson and the Secretary of State acts as board secretary, with responsibility for keeping board records. §83-1, 126.

Regulations. The Board of Pardons is empowered to adopt appropriate rules and regulations to carry out the intent and purposes of its enabling legislation. §83-1, 127.

Scope of clemency authority. An offender who has been granted a reprieve may be committed by the Board of Pardons to the Department of Correctional Services. §83-1, 131.

Types of clemency. Remission of fines and forfeitures and granting of respites, reprieves, pardons, and commutations is the province of the Board of Pardons. Const. Art IV, §13. The Governor has sole authority to suspend the execution of sentence, in case of treason, until the next session of the legislature. Const. Art IV, §13.

Substantive limitations--crimes not pardonable. The Board of Pardons has no clemency authority in matters of impeachment or treason. Const. Art. IV, §13.

Statute also provides that a person is guilty of a felony if he or she threatens or attempts to threaten a member of the Board of Pardons to influence the latter's decision, opinion, recommendation, or vote regarding the outcome of any clemency application that may come before the board. §831, 133.

Administrative Process

Procedures for clemency review upon application by applicant. Any person desiring the Board of Pardons to exercise its pardon authority must file a written application with its secretary. The application must state the specific relief requested and such other information the board prescribes. §83.1, 129.

By administrative body. The application must be considered with or without a hearing by the board at its next regular meeting or within 30 days, whichever is earlier. §83-1, 129.

After considering the application, and after investigations, the Board of Pardons must either grant or deny the relief requested, or grant such other relief as may be justified. §83-1, 130.

Administrative hearing. If a hearing is held, it must be conducted in an informal manner, but a complete record of the proceedings must be made and preserved. §83-1, 129.

Restoration of civil rights. Any person sentenced to be punished for any felony and whose sentence has not been reversed or annulled, is deemed incompetent to be an elector or juror or to hold any office of honor, trust, or profit within the State, unless the convict receives clemency from the Board of Pardons, in which case the convict is restored to his or her civil rights and privileges. §29-112.

Individuals convicted of crimes and imprisoned in States other than Nebraska may have their rights restored only by a general pardon from the clemency authority in the State where they were incarcerated. §29-113.

Special Clemency Issues and Laws

Other State officials with clemency powers. State statute empowers the Mayor to remit fines and forfeitures and to grant reprieves and pardons for all offenses arising under the ordinances of the city. §17-117.

Capital cases. According to statute, whenever an application for exercise of the pardon authority is filed with the secretary of the Board of Pardons by an offender who is under a sentence of death, the sentence may not be carried out until the board rules on the application. If the board denies the relief requested, it may set the time and date of execution and may refuse to accept for filing further applications from such offender. §83-1, 132.

NEVADA

Overview of State System

Primary authority: Panel that includes the Governor. The Nevada Constitution vests the Governor with clemency authority to suspend the collection of fines and forfeitures and to grant reprieves for a period not exceeding 60 days for all offenses, except in cases of impeachment. The Governor is also empowered, upon conviction for treason, to suspend the execution of the sentence until the next meeting of the legislature, when the legislative body must act on the matter. Nev. Const. Art. 5, §13 (1985). However, the State Constitution empowers a majority of a panel consisting of the Governor, the justices of the Supreme Court, and the Attorney General to remit fines and forfeitures, to commute punishments, and to grant pardons, after convictions, with certain exceptions, under prescribed rules and regulations. Nev. Const. Art. 5, §14. Nevertheless, the clemency panel's authority is not unbounded. The State Constitution empowers the legislature to pass laws authorizing district courts to suspend the execution of sentences, to fix the conditions for the sentences imposed, and to determine the length of the sentence to be served within the minimum and maximum periods authorized. Const. Art. 5, §14.

Administrative system: State Board of Pardons Commissioners. The clemency panel referred to in the State Constitution was created and formalized by statute, and is called the State Board of Pardons Commissioners. The board is required to meet at least twice a year to consider clemency applications. Nev. Rev. Stat. §213.005 (1985).

Membership. The board is composed of the Governor, the justices of the Supreme Court, and the Attorney General. §213.010.

From and after the first Monday in January 1987, any member of the board whose annual salary as a justice of the Supreme Court is set by subsection 1 of NRS 2.050 receives no salary as a member of the board. Any member of the board whose annual salary as a justice of the Supreme Court is set by subsection 2 or 3 of NRS 2.050 is entitled to receive, as a member of the board, an annual salary that, when added to his or her salary as a justice, equals the salary set by subsection 1 of NRS 2.050. §213.015.

The executive secretary of the State Board of Parole Commissioners is the secretary of the board and performs such duties as the board requires without additional compensation. §213.017.

Reports required. The State Constitution requires the Governor to communicate to the legislature, at the beginning of every session, every case of fine or forfeiture remitted and every reprieve, pardon, or commutation granted. Such communication must include the name of the convict, the crime of conviction, the sentence, its date, and the date of each clemency action. Const. Art. 5, §13.

Scope of clemency authority. The State Constitution does not empower the Governor or the Board of Pardons Commissioners to grant clemency in cases of impeachment. Const. Art. 5, §§13 and 14 State statute specifies that remission of fines or forfeitures does not include remittance or discharge from liability on any bail bond. §213.070.

Types of clemency. Remission of fines and forfeitures, reprieves, commutation of punishments, pardons, pardons with restoration of civil rights (please see infra.), after conviction, in all criminal and penal cases, except convictions on impeachment. Const. Art 5, §§13 and 14.

Substantive limitations--crimes not pardonable. Impeachment. Also the State Constitution prescribes that, except as provided by law, neither the Governor nor the Board of Pardons Commissioners, may commute a sentence of death or a sentence of life imprisonment without possibility of parole to a sentence that would allow parole. Const. Art. 5, §14.

Administrative Process

Procedures for clemency review upon application. Any person intending to apply to have a fine or forfeiture remitted, punishment commuted, or a pardon granted must prepare written notice of the application and four copies. The notice and copies must specify the court in which the judgment was rendered, the amount of the fine or forfeiture, or kind or character of punishment, the name of the person on whose behalf the application is made, the grounds on which the application is based, and the time when it is made.

Two of the copies must be served upon the district attorney and one upon the district judge of the county where the conviction was had. The remaining copy must be served upon the director of the Department of Prisons and the original must be filed with the clerk of the board. In cases of fines and forfeitures, a similar notice must also be served on the chairperson of the Board of County Commissioners of the county where the conviction was had.

The notice must be served at least 30 days before submitting the application, unless a member of the board prescribes a shorter time. §213.020.

The district attorney receiving notice of a clemency application must transmit to the board a written statement of facts surrounding the commission of the offense for which the applicant is incarcerated. The district attorney must also forward a copy of the notice of the application to the victim(s) of the clemency applicant if the victim so requests in writing and provides his or her current address. If a current address is not provided, the district attorney cannot be held responsible if a victim fails to receive a copy of the notice. §213.040.

By administrative body. If the board remits a fine or forfeiture, commutes a sentence, or grants a pardon, it must give written notice of its action to the victim(s) of the person granted clemency, if the victim so requests in writing and pro-

vides his or her current address. If a current address is not provided, the board may not be held responsible if the victim fails to receive such notice. §213.095.

Administrative hearing. The Nevada Administrative Procedure Act §233B.010 provides that a public body must keep written minutes of each of its meetings, including the date, time, and place of the meeting, those members of the body who were present and those who were absent, the substance of all matters discussed, and, at the request of any member, a record of each member's vote and any information that any member of the body requests to be included in the minutes. Minutes of public meetings are public records and must be made available for inspection by the public within a reasonable time after the adjournment of the meeting. §241.035.

Disposition of clemency recipients. Whenever clemency is granted by the board, there must be served upon the director of the Department of Prisons or other officer having the person in custody an order to discharge the inmate on a day specified in the order and on the conditions and restrictions imposed. §213.100.

Restoration of civil rights. A pardon may or may not include restoration of civil rights. If the pardon includes restoration of civil rights, it must be so stated in the instrument or certificate of pardon. When granted upon conditions or restrictions, they must be fully set forth in the instrument. In any case where a convicted person has received a pardon without immediate restoration of his or her civil rights and has not been convicted of any offense greater than a traffic violation within 5 years after such pardon, that person may apply to the State Board of Pardons Commissioners for a restoration of civil rights and a release from penalties and disabilities resulting from the crime of which of conviction.

If the board refuses to grant such restoration and release, the applicant may, after notice to the board, petition the district court in which the conviction was obtained for an order directing the board to grant such restoration and release. §213.090.

Special Clemency Issues and Laws

Capital cases. The execution of a judgment of death may be stayed only by the Governor or State Board of Pardons Commissioners, as authorized by the Constitution of Nevada, when an appeal from such judgment is taken to the Supreme Court of Nevada; or, by a judge of the district court of the county in which the State prison is situated, for the purpose of a sanity or pregnancy investigation as provided in §§176.425 to 176.485. §176.415.

NEW HAMPSHIRE

Overview of State System

Primary authority: Governor. According to the New Hampshire Constitution, the Governor has full clemency authority in all criminal and penal cases, with certain exceptions, under rules and regulations prescribed by law. Before granting clemency, however, the Governor must consult the Council for Pardon or Commutation of Sentence for advice. N.H. Const. Pt. 2, Art. 52 (1970).

Administrative system: Governor's Council. Referred to in the laws as the council, the panel for advising the Governor in the executive part of the government is created by the State Constitution, and is generally governed by the provisions of Pt.2 Art. 60 to Art. 66. While the council provides advice to the Governor regarding clemency, its authority in this regard is strictly limited by statute. N.H. Rev. Stat. Ann. §§4:21 to 4:28 (1970 & Supp. 1986).

Membership. The council is composed of five elected members, one from each of the five counties of the State. In each county, residents who are qualified to vote for senators are entitled to vote for one councilor. Const. Pt.2, Art. 60. If a councilor-elect refuses to accept the office, or in case of death, resignation, or removal of a councilor out of the State, the Governor may issue a precept for the election of a new councilor. Pt. 2. Art. 62.

Types of clemency. Pardons, commutations of sentences, and respites after conviction, with certain exceptions. §§4:21 to 4:25. By judicial interpretation, the Governor has, as the State Chief Executive, the power to grant reprieves, apart from statute. However, the granting of a reprieve does not preclude a subsequent execution of the sentence. Ex parte Howard, 17 N.H. 545 (1845).

Substantive limitations: crimes not pardonable. The Constitution does not authorize the Governor to grant clemency in cases of conviction on impeachment before the Senate, nor may the Governor remit fines and forfeitures in criminal or penal cases, or exercise clemency authority before conviction. Const. Pt. 2, Art. 52.

Administrative Process

All petitions for pardon, commutation of sentence, or respite must be referred to both the Governor and the council. The council is required to investigate each case and to submit its advice to the Governor. §§4:21, 4:23 to 4:25. In pardon applications where the petitioner is serving a sentence in the State prison, the Board of Prison Trustees is required to make a report concerning the petition before the application is referred to the council. §4:22.

NEW JERSEY

Overview of State System

Primary authority: Governor. The New Jersey Constitution vests full clemency authority in the Governor in all criminal and penal cases, with certain exceptions and under the rules and regulations prescribed by law. N.J. Const. Art. V, §2, cl. 1 (1985).

Courts have upheld the Governor's authority in finding that the exercise of executive clemency is exclusively the Governor's province, and that the Governor's denial of executive clemency is not reviewable by any court. State v. Mangino, 17 N.J. Super. 587, 86 A.2d (1952), State v. Robinson, 140 N.J. Super. 459, 356 A.2d 449 (1976) rev. on other grounds 148 N.J. Super. 278, 372 A.2d 634. Only the Governor has the power to commute a death sentence and the Supreme Court lacks comparable power. State v. Butler, 32 N.J. 166, 1 6 A.2d 8 (1960), cert. denied 60 S.Ct. 1074, 362 U.S. 984, 4 L.Ed.2d 1019. In addition, the power to remit fines vests solely with the Governor, and the judicial system is not the proper branch of government to grant remission of forfeitures. In re Borough of West Wildwood, 42 N.J. Super. 282,126 A.2d. (1956). Kutner Buick, Inc. v. Strelecki, III N.J. Super. 89, 267 A.2d 549 (1970).

Administrative system. The State Constitution provides that a commission or other body may be established by law to aid and advise the Governor in the exercise of executive clemency. Const. Art. V, §2, cl. 1. Thus, except in capital cases, the Governor has discretion to refer to the State Parole Board for investigation and recommendation applications for commutation of sentence, for suspension or remission of fine or forfeiture, or for restoration of civil rights or privileges. N.J. Stat. Ann. §2a: 167-6, 167-7 (West 1985).

Types of clemency. Reprieves, commutations of sentence, and pardons after conviction, remission of fines and forfeitures in all criminal and penal cases, with certain exceptions. Const. Art. V, §2, cl. 1. By judicial interpretation, the Governor's pardoning power includes the power to pardon for criminal contempt. Such power does not apply to civil contempt. In re Borough of West Wildwood, 42 N.J. Super. 282, 126 A.2d 233 (1956); In re Caruba, 142 N.J. Eq. 358, 61 A.Wd 290 (1948), cert. denied 69 S.Ct. 69, 35 U.S. 846, 93 L.Ed. 396. For information on restoration of civil rights, see Administrative system above, and Restoration of civil rights below.

Substantive limitations--crimes not pardonable. The State Constitution does not empower the Governor to grant pardons or reprieves in cases of convictions on impeachment and convictions for treason. Const. Art. V, §2, cl. 1.

Restoration of civil rights. Unless pardoned or restored by law to the right to vote, people convicted of the following crimes are barred from suffrage: blasphemy, treason, murder, piracy, arson, rape, sodomy, or the infamous crime against nature committed with mankind or with beast, robbery, conspiracy, forgery,

perjury or subornation of perjury, larceny of the value of $200.00 or more, bigamy, and burglary. N.J. Stat. Ann. §19:4-1 (West 1985).

NEW MEXICO

Overview of State System

Primary authority: Governor. In all criminal and penal cases, with certain exceptions, the Governor has full clemency authority, under the rules and regulations prescribed by law. N.M. Cons. Art. V, §6 (1985).

The Governor's authority has been upheld by the courts, which have found that the executive branch has the sole power to grant clemency to deserving individuals. Thus, the State Supreme Court has ruled that Code 1915, section 5087 (since repealed), which provided for issuance of pardons only on recommendation of the Board of Penitentiary Commissioners, constituted a plain invasion of rights and duties of the executive and, therefore, is unconstitutional and inoperative. Furthermore, the High Court ruled that the Governor is vested with the ultimate power and right to pardon. That authority is unrestrained by any consideration other than the Governor's conscience, wisdom, and sense of public duty. There may be, however, regulations by law of the manner of its exercise. Ex arte Bustillos, 26 N.M. 449, 194, p.886 (1920).

Types of clemency. Reprieves and pardons, after conviction, for all offenses, except convictions for cases involving treason or impeachment. N.M. Const. Art. V, §6 For information on restoration of civil rights, see "Restoration of civil rights" below.

Scope of clemency authority. Specifically the State Supreme Court has ruled that the Governor's clemency authority extends to the offense of criminal contempt. State v. Magee Publishing Co., 29 N.M. 455, 224 p.1028, 38 A.L.R. 142 (1924).

Substantive limitations--crimes not pardonable. Treason and impeachment.

Other limitations. In capital offense cases, the Governor's power to grant reprieves is not limitless. For example, the Attorney General has ruled that prisoners sentenced to death may not be reprieved for an indefinite period. 1921-22 Op. Atty. Gen. 80. Also, by the Attorney General's interpretation, the pardon powers of the Governor do not extend to a person adjudged to be a ward of the court, since that person has not been convicted of a crime. 1943-44 Op. Atty. Gen. 4315.

Furthermore, the Governor does not have the authority to apply the benefits of an act that retroactively grants time credits to inmates for the time they appealed. Such an act is neither a pardon nor a reprieve. 1968 Op. Atty. Gen. 68-57.

The Governor does not have the power to pardon juveniles sentenced to reform school who had merely been adjudged juvenile delinquents but not convicted in criminal court. 1933-34 Op. Atty. Gen. p.60. However, inmates at the State industrial school, who were minors but had been convicted and sentenced in criminal court, may be pardoned by the Governor, who also has the

power to commute the sentence of a juvenile sentenced to the penitentiary or to confinement in reform school. 1941-42 Op. Atty. Gen. 4072; 1914 Op. Atty. Gen. 32.

The Governor does not have the authority to reinstate a driver's license that had been revoked by the courts. 1939-40 Op. Atty. Gen. 31.

Administrative Process

Revocation of pardon. The Governor is empowered to revoke a pardon that he or she has issued prior to the pardon's delivery to and acceptance by the applicant. Op. Atty. Gen. 70-89.

Restoration of civil rights. When the Governor is presented with a certificate showing the completion of a sentence by the bearer of the certificate, the Governor has the discretion to grant that individual a pardon or a certificate restoring full rights of citizenship. N.M. Stat. Ann. Art. 13, §31-13-1.

The Attorney General has ruled that "pardon" restores one to customary civil rights which ordinarily belong to a citizen of the State. Such rights include the right to vote and the right to hold office. 1970 Op. Atty. Gen. §70-85.

Subsequent conviction after pardon. A gubernatorial pardon of an offense does not prevent the court from employing the same felony convictions again for the purpose of imposing another sentence under the Habitual Criminal Act, if subsequent to the pardon, the person commits another felony. Shankle v. Woodruff, 64 N.M. 88, 324 P.2d 1017 (1958).

NEW YORK

Overview of State System

Primary authority: Governor. The New York Constitution provides that in all criminal and penal cases, with certain exceptions, the Governor has full clemency authority under rules and regulations prescribed by law. N.Y. Const. Art. 4, §4 (McKinney 1969 & Supp. 1987).

The Governor's authority has been upheld by the courts, which have found that the Chief Executive has unlimited power to grant reprieves, commutations, and pardons, and that discretion conferred on the Governor cannot be limited by either statute or decision. People ex rel. Page v. Brophy, 268 A.D. 309, 289 N.Y.S. 362, appeal dismissed, 277 N.Y. 673, 14 N.E.2d 384 (1938); People ex rel. Depew v. New York State Board of Parole, 189 Misc. 321, 70 N.Y.S. 2d 446 (1947); Vanilla v. Moran, 188 Misc. 325, 67 N.Y.S. 2d 833, 75 N.E. 2d 265, affirmed 298 N.Y. 796, 83 N.E.2d 696 (1947); People v. Larkman, 187 Misc. 135, 64 N.Y.S.2d 277 (1946).

Courts also have ruled that the Governor has a constitutional prerogative to grant reprieves, commutations, and pardons, irrespective of legislative enactments, that the only person authorized to grant pardon is the Governor, and that the Appellate Division of the Court has no authority to do so by judicial determination. Sherwood v. Murphy, 123 N.Y.S.2d 300 (1953); People ex rel. Monastra v. Damon, 33 A.D.2d 944, 306 N.Y.S.2d 714 (1970). Courts also have found that the Chief Executive's exercise of discretion and powers to grant commutation, unless illegal or impossible conditions are attached, is not subject to judicial review. Sturnialo v. Carey, 90 Misc.2d 275, 394 N.Y.S.2d 137 (1977).

Reports required. The State Constitution imposes upon the Governor the duty to report to the legislature about clemency matters. The Governor must communicate annually to the legislative body of each case of reprieve, commutation, or pardon. The Governor's communication must state convict's name, crime of conviction, sentence and its date, and the date of the commutation, pardon, or reprieve. N.Y. Const. Art. 4, §4, N.Y. Executive Law, §17 (McKinney).

Types of clemency. Reprieves, commutations of sentence, and pardons after conviction. N.Y. Const. Art. 4, §4. Commutation enables an 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. People ex rel. Atkins v. Jennings, 248 N.Y. 46, 161 N.E. 326 (1928).

Crimes not pardonable. The State Constitution does not empower the Governor to grant reprieves, commutations, and pardons in cases of convictions for treason and impeachment. The Constitution prescribes that, with regard to convictions for treason, the Governor has only the power to suspend the execution of the sentence until the case can be reported to the legislature at its next meeting. At that meeting, the legislature must

either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. N.Y. Const. Art. 4, §4.

Administrative Process

Procedures for clemency review. A formal application for executive clemency is not required. A written request for executive clemency will suffice to cause a review and determination of eligibility. Applications for executive clemency may be made only by either the subject of the application; those having authority, express or implied, either from the subject of the application or from a relative or family member; or someone else presumed to represent the applicant. N.Y. Guidelines for Review of Executive Clemency Applications.

Standards for granting. A pardon is most commonly available to permit a judgment of conviction to be set aside where there is overwhelming and convincing proof of innocence that was not available at the time of conviction. Pardons also may be granted to relieve a disability imposed upon a judgment of conviction for an offense; to prevent an alien's deportation from the United States; or to permit an alien's reentry into the United States. N.Y. Guidelines.

Absent an exceptional and compelling circumstance, a commutation of a sentence will be considered only if the applicant's term or minimum period of imprisonment is more than 1 year and if the applicant has served at least half of the minimum period of imprisonment. To receive a commutation, the applicant must not become eligible for release on parole within 1 year from the date of his or her application for executive clemency. Commmutation also will be available if the inmate is not eligible for release on parole in the discretion of the Board of Parole. N.Y. Guidelines.

Evidence. An applicant for a pardon must demonstrate a specific and compelling need for such relief. Where the application is for removal of a disability imposed by a judgment of conviction, or to prevent deportation from or to permit reentry into the United States, the petitioner has the additional burden of demonstrating a substantial period of good citizenship.

Anyone may submit a recommendation supporting or opposing a pending clemency application. The applicant should submit all supporting materials within 30 days of applying. N.Y. Guidelines.

Timetable for review of applications. Applications for executive clemency are reviewed at intervals throughout the year. An eligible applicant who has been notified that his or her application for clemency has been denied may reappear after 1 year from the notification date, unless authorized to do so sooner. N.Y. Guidelines.

Forum. Formal hearings are ordinarily granted only if the application is for a commutation of a death sentence.

Appeal/reconsideration. By judicial interpretation, gubernatorial commutation is a matter of grace and not of right. Thus, courts have found that commutations granted in similarly situated cases provide no assistance to a defendant seeking an order that directs the Governor to consider his or her clemency petition. Sturnialo v. Carey, 90 Misc.2d 275, 394 N.Y.S.2d 137 (1977).

Disposition of clemency recipients. The Governor's clemency authority is not unlimited. Courts have found that even if the Governor reduces a prisoner's minimum sentence, the prisoner will not be entitled to be released at the expiration of the new mimimum sentence fixed by the Governor if the State Parole Board refuses to grant relief. People ex rel. Von Moser v. New York State Parole Board, 179 Misc. 397, 39 N.Y.S.2d 200, affirmed 266 A.D.896, 42 N.Y.S.2d 728 (1943).

Courts have also ruled that a Governor's commutation of a determinate to an indeterminate sentence does not entitle the prisoner to an immediate discharge. Such an act of clemency enables the prisoner only to apply to the State Board of Parole for relief. People ex rel. Atkins v. Jennings, 248 N.Y. 46, 161 N.E.326 (1928).

Revocation of pardon. State statute provides that if an inmate who is discharged from imprisonment by conditional pardon or conditional commutation of sentence violates the conditions, the pardon or commutation becomes void. Consequently, the inmate is remanded to the place of his or her former imprisonment and confined for the unexpired term of his or her sentence. N.Y. Exec. Law, Ch. 800 Art. 2-A, §18.

Restoration of civil rights. A pardon only exempts a person who has received and accepted the pardon from further punishment for the crime of which that person was convicted. Such a clemency act does not obliterate the judicial finding of guilt for the pardoned offense. People ex rel. Prisament v. Brophy, 287 N.Y. 132, 38 N.E.2d 468, 139 A.L.R. 667, cert. denied 63 S.Ct. 62, 317 U.S. 625, 87 L.Ed.506 (1941). Thus, for example, where an attorney was guilty of willful conversion of funds, courts have ruled that a pardon from the Governor does not vacate or modify the order of disbarment. In re Finn, 256 A.D.288, 10 N.Y.S.2d 29 (1939). Absent exceptional or 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, N.Y. Correction Law §§700-705, a certificate of good conduct, N.Y. Correction Law §703-a, §703-b, or relief pursuant to the provisions of Article 23-A of the N.Y. Correction Law.

Expungement of records. Courts have ruled that a pardon has no retroactive effect upon a judgment of conviction that remains unreversed and has not been set aside. The pardon merely relieves the offender of all unenforced penalties annexed to the conviction. People v. Larkman, 187 Misc. 135, 64 N.Y.S.2d 277 (1946). The Attorney General has determined that a pardon would not remove the disability of a city charter provision prohibiting individuals who have been convicted from becoming police officers. 1959, Op. Atty. Gen. 11.

Subsequent conviction after pardon. A pardon issued to a defendant that pertains to a prior conviction and merely states that the defendant was represented as a fit object of mercy does not erase that conviction. Such conviction could be made on the basis of a stiffer sentence as a third felony offender upon conviction for a new offense. People v. Larkman, supra.

NORTH CAROLINA

Overview of State System

Primary authority: Governor. The North Carolina Constitution vests clemency authority with the Governor in all criminal and penal cases, with certain exceptions, and under the rules and regulations prescribed by law. N.C. Const. Art. III, §5 (1984).

Courts have ruled that the power to pardon or discharge a convict during the term of imprisonment is the exclusive prerogative of the Governor. State v. Lewis, 226 N.C. 249, 37 S.E.2d 691 (1946). However, by judicial interpretation, the Governor's power to exercise clemency after conviction does not conflict with or exclude the power of the General Assembly to pass an amnesty act in the event of the abolition or oblivion of the offense. State v. Bowman, 145 N.C. 452, 59 S.E.74, 122 Am.St.R. 464 (1907).

Scope of clemency authority. Where the Governor is empowered to grant a pardon, it may be subject to any conditions, restrictions, or limitations the Governor considers proper and necessary. N.C. Gen. Stat. Ch. 147, §147-23 (1983).

Thus, for example, the Governor may grant a pardon upon the conditions that the prisoner pay the costs of trial and remain of good character. In re Williams, 149 N.C. 436, 63 S.E.108, 22 L.R.A.238 (1908).

Types of clemency. Reprieves, commutations, and pardons, after conviction. Art. III, §5. See also "Restoration of civil rights" below.

Substantive limitations--crimes not pardonable. The Governor may not exercise the clemency authority in cases of impeachment. Art. III §5.

Administrative Process

Revocation of pardon. Upon receiving information that a pardoned convict has violated the conditions of pardon, the Governor must cause the alleged violator to be arrested. The individual must then be detained until the case is examined by the Governor. If it appears by the person's own admission or by evidence that he or she violated the conditions of pardon, the Governor must order the violator remanded and confined for the unexpired term of his or her sentence. N.C. Gen. Stat. Ch. 147, §147-24.

Restoration of civil rights. A convict who is granted an unconditional pardon or who has satisfied all conditions of a conditional pardon is entitled to the return of his or her forfeited rights of citizenship. When a convict's rights are restored, the agency, department, or court having jurisdiction over the convict is required to immediately issue a certificate or order specifying the restoration of citizenship rights. N.C. Gen. Stat. Ch. 13 §§13-1, 13-2.

NORTH DAKOTA

Overview of State System

Primary authority: Administrative panel that includes the Governor. The North Dakota Constitution vests full clemency authority in the State Board of Pardons (of which the Governor is an ex officio member) in all criminal and penal cases, with certain exceptions, under the rules and regulations prescribed by law. N.D. Const. Art. V, §6; N.D. Cent. Code §15-55-05 (1985). However, in cases of conviction for treason, the Governor has the independent power to suspend the execution of the sentence until the next regular session of the legislature. Const. Art. V, §6.

The board's authority has been upheld by the courts, which have found that the power of the Board of Pardons to pardon or commute is exclusive and that the courts have no authority to act in clemency matters. However, a trial court may suspend the execution of sentence to allow the opportunity for an appeal for executive clemency. Courts also have ruled that the enactment of a statute that extinguishes any prison sentence that has been imposed due to the repeal of criminal statute is an invalid exercise of the pardoning power by the Legislature. Ex parte Hart, 29 N.D.38, 148 N.W.568. Ex parte Chambers, 69 N.D.309, 285 N.W.862.

The State Constitution provides that upon conviction for treason, the Governor has the power to suspend the execution of sentence until the case is reported to the Legislative Assembly at its next regular session. Const. Art. V, §6. Likewise, State statute empowers the Governor to grant reprieve in cases where capital punishment has been imposed. However, such reprieves may be for only the time necessary to secure a meeting of the Board of Pardons to consider such clemency applications. N.D. Cent. Code §12-55-28.

Administrative system: State Board of Pardons. Referred to in the laws as the Board of Pardons, North Dakota's administrative body for clemency matters was created by Article V, Section 6 of the State Constitution, and is generally governed by the provisions of Chapter 12-55, Reprieve, Commutation, Pardon, and Parole, of Part IX, Paroles and Modifications of Sentences, of Title 12, Corrections, Parole,and Probation. N.D. Cent. Code §12-55-01 et seq.

Membership. The Board of Pardons is composed of five members: the Governor, who is an ex officio board member, the State Attorney General, the Chief Justice of the State Supreme Court, and two qualified electors who are appointed by the Governor. Art. V, §6.

The ex officio board members do not receive additional compensation for their services on the board. The two qualified electors appointed by the Governor each receive mileage expenses and $15 for each day they are necessarily employed in attendance at board sessions. §12-55-02.

Regulations. The Legislative Assembly may regulate the manner in which petitioners apply for the remission of fines, pardons, commutations and reprieves. Art. V, §6.

Reports required. The State Constitution requires the Governor to communicate to the Legislative Assembly, at each regular session, each case of remission of fine, reprieve, commutation, or pardon granted by the Board of Pardons. Such communication must state the name of the convict, the crime of conviction, the sentence and its date, and the date of the remission, commutation, pardon, or reprieve, with the reasons for granting clemency. Art. V, §6.

Types of clemency. Commutations of sentence, reprieves, pardons after conviction, and remission of fines and forfeitures may be granted by the Board of Pardons. Art. V, §6. Pardons may be absolute or conditional; the latter must specify the terms and conditions on which they are granted. §12-55-12. The Governor may grant reprieves in capital cases; however, such reprieves may extend for only the time necessary to secure a meeting of the board to consider applications for clemency. §12-55-28.

Similarly, upon a conviction for treason, the Governor has the power to suspend the execution of the sentence until the case is reported to the Legislative Assembly at its next regular session. §12-55-29.

Substantive limitations. The State Constitution does not enable the board to grant clemency in cases of conviction for treason and impeachment. In cases of treason, only the Legislative Assembly, at its regular meeting, has the power to pardon, to commute the sentence, to grant a further reprieve, or to direct the execution of the sentence. §12-55-29. The power to remit fines and forfeitures, to grant reprieves, to commute sentences, and to pardon is confined to cases after conviction only. Art. V, §6.

Administrative Process

The Board of Pardons must hold at least three regular meetings in each calendar year. It may hold other special meetings when it determines such meetings are necessary for the proper performance of its duties. The board's regular meetings are to be held on the fourth Monday of March, the second Monday of August, and the first Monday in December of each year. The board may meet in executive session for only those portions of its meetings dealing with information that is specifically privileged by State or Federal law. §12-55-03. Four members of the board constitute a quorum at regular board meetings. If a special meeting is called in case of an emergency, the Governor, the Chief Justice of the Supreme Court, and the Attorney General constitute a quorum. §12-55-04.

The three ex officio members of the Board of Pardons and the Parole Board must jointly appoint a clerk for the Board of Pardons, who also serves as clerk for the Parole Board. The clerk's duties include keeping a record of every pardon, parole, reprieve, or commutation of sentence granted or refused, and the reasons assigned for each. §12-55-06. The Board of Pardons may legally compel any person or officer to appear before it.

§12-55-10. Every pardon or commutation of sentence must be in writing, except when granted at a special meeting of the board. Clemency grants have no force and effect unless they are granted by a vote of four members of the board. §12-55-11. The board is required to possess a seal with which it attests every pardon, parole, reprieve, or commutation it grants. §12-55-05.

NORTHERN MARIANA ISLANDS

Overview of Clemency System

Primary authority: High Commissioner (Governor). The High Commissioner of the Trust Territory has pardon authority. Trust Terr. Code Ch. 61, §1501 (1) (1984). Also, misdemeanants may be pardoned by District Administrators. §1501 (2); see Special Clemency Issues and Laws below.

Scope of clemency authority. Under the Trust Territory Code, any person convicted of a crime in the Trust Territory may be pardoned or paroled by the High Commissioner upon such terms and conditions as the Commissioner determines. Trust Territory v. Yamashiro, 4 TTR 95 (1968). No further substantive limitations are addressed in the Code.

Procedures for clemency review. Petitions for pardon or parole from sentences in criminal cases should be directed to the High Commissioner of Trust Territory or to the District Administrator. Trust Territory v. Helgenberger, 3 TTR 257 (1967).

Special Clemency Issues and Laws

Other officials with clemency powers. Any person sentenced in any district of the Trust Territory to imprisonment for not more than 6 months or to pay a fine of not more than $100, or both, may be pardoned or paroled by the local District Administrator upon such terms and conditions as the District Administrator determines. §1501 (2).

OHIO

Overview of State System

Primary authority: Governor. The Governor has full clemency authority in all criminal and penal cases, with certain exceptions and under rules and regulations prescribed by law. Ohio Const. Art. III, §11 (1982). However, all clemency applications must be referred to the Adult Parole Authority for investigation and recommendation. Ohio Rev. Code Ann. §2967.07 (Page 1982 & Supp. 1985).

The Governor's authority has been upheld by the courts, which have found that the power to pardon, except in cases of treason and impeachment, is vested in the Governor exclusively, and cannot be exercised by any other authority. Jiha v. Barry, 3 N.P. (n.s.) 65, 16 O.D. 33.

However, the Governor's clemency authority is not unlimited. Courts have found that Ohio law prohibiting a pardon recommendation for those convicted of first degree murder, unless innocence is established beyond a reasonable doubt, is valid and constitutional and does not abridge the Governor's executive authority. State v. Schiller, 70 O.S. 1, 70 N.E.505; State v. Jones, 5 N.P. 390, 8 O.D. 645. Similarly, laws that confer upon the courts the power to suspend the imposition of sentence and grant probation do not infringe on the Governor's constitutional prerogatives. State ex rel Gordon v. Zangerle, 136 O.S. 371, 16 O.O. 536, 28 N.E.2d 190.

Administrative system: Adult Parole Authority. Referred to in the laws as the "Authority," Ohio's administrative body for clemency matters was created and is generally governed by the provisions of Chapter 2967, Pardon, Parole, Probation, of Title 29 Crimes-Procedure. Ohio Rev. Code Ann. §§2967.01 et seq. (Page 1982 & Supp. 1985).

While the Adult Authority makes recommendations to the Governor regarding clemency, its authority in this regard is strictly limited by statute. The Adult Authority may recommend to the Governor the pardon, commutation, or reprieve of sentence of any convict or prisoner, or grant a parole to a prisoner if, in its judgment, there is reasonable ground to believe that such a clemency grant would further the interests of justice and is consistent with the welfare and security of society. §2967.03.

Regulations. The legislature is empowered to adopt appropriate rules to regulate the manner of applying for pardons. Art. III, §11. However, courts have found that the legislature's power to regulate the manner of applying for pardons is limited to such regulations as will assist the Governor in the discharge of his or her duty. Licavoli v. State, 20 O.O. 562, 34 N.E.2d 450 (1935).

Reports required. Under the State's Constitution, the Governor must report to the General Assembly, at every regular session, each case of reprieve, commutation, or pardon granted, stating

the name and crime of the convict, the sentence, its date, and the date of the commutation, pardon, or reprieve, with the reasons for the action taken. Art. III, §11.

Types of clemency. Reprieves, commutation of sentence, and pardons after conviction in all criminal and penal cases, with certain exceptions. Const. Art. III, §11.

By the Attorney General's interpretation, the Governor, by virtue of the above constitutional provision, may issue a pardon that releases a person from payment of a fine, the cost of prosecution, and imprisonment. 1943 O.A.G. No. 3402. The Governor may also grant a conditional commutation (and subsequent parole). In one case, a special condition on the prisoner's commutation and parole prohibiting him from entering the State for 40 years was upheld as constitutional in that the prisoner voluntarily waived his constitutional freedoms by agreeing to this condition which he himself had first suggested. Carchedi v. Rhodes, 560 F. Supp. 1010 (1982).

Substantive limitations. The Constitution does not empower the Governor to grant a pardon or commutation of sentence in cases of conviction for treason, and conviction on impeachment. Upon conviction for treason, the Governor may only suspend the execution of the sentence and report the case to the General Assembly at its next meeting, where the General Assembly may either grant pardon, commute the sentence, direct its execution, or grant a further reprieve.

Administrative Process

Procedures for clemency review. All applications for pardon, commutation of sentence, or reprieve are referred to the Adult Parole Authority. Upon the filing of such applications, or when directed by the Governor in any case, the Adult Authority conducts a thorough investigation into the propriety of granting clemency. The trial judge and prosecuting attorney of the trial court in which the applicant was convicted furnishes, at the request of the Adult Authority, a summarized statement of the facts proved at the trial and all other relevant facts, together with a recommendation for or against clemency and the reasons for the recommendation. Other state and local officials may be required to furnish information upon request. Following its investigation, the Adult Authority provides the Governor with a brief statement of the facts of the case, together with its nonbinding recommendation for or against granting clemency, its reasons for the recommendation, and the records relating to the case. §§2967.03, 2967.07.

Revocation of pardon. The courts have ruled that a full, unconditional pardon issued by the Governor is irrevocable and unimpeachable. Thus, in a case in which a prisoner received a pardon based on a certificate from a physician to the penitentiary that the prisoner was in imminent danger of death, the pardon could not be impeached by proof that the physician's certificate was obtained by the false representations of the prisoner. Knapp v. Thomas, 39 O.S. 377.

Restoration of civil rights. Without the restoration of civil rights inherent in the grant of a pardon, the legal disabilities placed on felony convicts under Ohio law include the loss of the rights to hold public office, vote, or serve on a jury. See generally, State ex rel. Corrigan v. Barnes, 30 App.3d 40, 443 N.E.2d 1034. (1982); Richardson v. Ramirez, 418 U.S. 24, 41 L.Ed.2d 551, 94 S.Ct 2655, (1982); 1962 OAG No. 3242.

OKLAHOMA

Overview of State System

Primary authority: Governor on advice of panel. The Governor has full clemency authority in all criminal and penal cases, with certain exceptions, as regulated by law and subject to the favorable recommendation of the Board of Pardon and Parole. Okla. Const. Art. 6, §10 (1983). Okla. Stat. Ann. Title 57, §332.2 (West 1983 & Supp. 1987).

The Governor has no power to grant a pardon or parole absent a favorable recommendation of the Pardon and Parole Board. Op. Atty. Gen. 76-216 (May 5, 1976).

This executive authority has been upheld by the courts, which have found that any law attempting to place this authority in the judiciary would be unconstitutional. Ex parte Swain, 88 Okla. Cr. 235, 202 P.2d 223 (1949); Ex parte Hines, 289 P.2d 972 (1955); Ex parte Barrett, 75 Okla. Cr. 414, 132 P.2d 657 (1943); Ex parte Crump, 10 Okla. Crim. 133, 135 P.428 (1913); Ex parte Clendenning, 22 Okla. 108, 1 Okla. Cr. 227, 97 P.650 (1908).

However, the Governor's clemency authority is not without boundary. Courts have ruled that although the judiciary has no power of control over the functions of the executive department of the government, it has the power to review the validity of a pardon where the Governor has attempted to revoke the pardon. Ex parte Crump, 10 Okla. Cr. 133, 135 P.428, 47 L.R.A. (N.S.) 1036 (1913). Similarly, a State law that allows the trial court to suspend judgment and sentence after appeal has been affirmed as constitutional. White v. Coleman, Okla. Crim, 475 P.2d 404 (1970).

Administrative system: Pardon and Parole Board. Referred to in the laws as the "Board," Oklahoma's administrative body for clemency matters was created by Const. Art. 6, §10. It is generally governed by the provisions of Chapter 7, Pardons and Paroles, of Title 57, Prisons and Reformatories. Okla. Stat. Ann. §§332.15 et seq. (West 1983 & Supp. 1987). While the board makes advisory recommendations to the Governor concerning clemency, its authority in this regard is strictly limited and its recommendations are not binding. Title 57, §332.2.

Membership. The Board of Pardon and Parole is composed of five members: three to be appointed by the Governor, one by the Chief Justice of the Supreme Court, and one by the Presiding Judge of the Criminal Court of Appeals. An attorney member of the board is prohibited from representing persons charged with felony offenses. The members appointed by the Governor hold their offices during the Governor's term. Const. Art. 6, §10.

Reports required. The Governor must report to the legislature at each regular session; each case of reprieve, commutation, parole, or pardon granted, stating the name of the convict, the crime of conviction, the date and place of conviction, and the date of the clemency action. Const. Art. 5, §10.

Types of clemency. Reprieves, commutations of sentence, pardons, and parole after conviction, in all criminal and penal cases, with certain exceptions. Const. Art. 6, §10. Conditional pardons may be granted, provided that none of the conditions are illegal, immoral, or impossible to perform. In re Edwards, 79 Okla. Cr. 259, 154 P.2d 105 (1945); Ex parte Edwards, 78 Okla. Cr. 213, 146 P.2d 311 (1944); Ex parte Barrett, 75 Okla. Cr. 414, 132 P.2d 657 (1943); Ex parte Smith, 65 Okla. Cr. 893, 87 P.2d 1106 (1939); Ex parte Horinge, 11 Okla. Cr. 517, 148 P. 825 (1915).

Substantive limitations--crimes not pardonable. The Constitution does not empower the Governor to grant clemency in cases of conviction for treason and conviction on impeachment. Art. 6, §10. Also, by judicial interpretation, the Governor is not constitutionally authorized to remit penalties on delinquent taxes. Holliman v. Cole, 168 Okla. Cr. 473, 34 P.2d 597 (1934).

Other limitations. The Governor has the power to grant post-conviction reprieves or leaves of absence not to exceed 60 days without the action of the board. Const. Art. 6, §10.

Administrative Process

The Pardon and Parole Board meets only on the call of the chairperson. When clemency application is made to the Governor, the board examines its merits and makes recommendations to the Governor. Title 57, §332.2.

OREGON

Overview of State System

Primary authority: Governor. Under the Oregon Constitution, the Governor is solely responsible for the exercise of clemency authority, subject to regulations provided by law. Or. Const. Art. V, §14 (1985).

An administrative system to assist the Governor in the review and processing of clemency applications is not provided by law. However, Oregon's statutes concerning criminal procedures do contain provisions outlining the scope and procedures of executive clemency authority. Or. Rev. Stat. §144.640 to 144.670 (1985).

Reports required. The Governor must report each case of reprieve, commutation, or pardon to the Legislative Assembly at the next regular session. The Governor's report must state the reason for granting, the name of the applicant, the crime for which the applicant was convicted, the sentence and its date, and the date of the commutation, pardon, or reprieve. The Governor is required to communicate a similar statement of particulars for each case of remission of a penalty or forfeiture, with the amount remitted. Const. Art. V, §14; §144.660.

Types of clemency. Oregon law permits the granting of reprieves, commutations and pardons, after convictions for all crimes, and remissions, after judgment, of all penalties and forfeitures. §144.640. References throughout the penal code indicate that the Governor also may grant conditional pardons. See, for example, §144.380.

Substantive limitations. Treason is not a pardonable offense. Although "other crimes" may be subject to clemency under the statutes, the State's Constitution limits the Governor's authority in cases of treason. For a conviction of treason, the Governor can only suspend execution of the sentence until the case is reported to the Legislative Assembly at its next meeting, when the legislature must either grant a pardon, commute the sentence, direct the execution of the sentence, or grant a further reprieve. Const. Art. V, §14.

Administrative Process

Notice of application. When an application for a pardon, commutation, or remission is made to the Governor, a copy of the application, signed by the applicant and stating fully the grounds of the application, must be served upon the district attorney of the county where the conviction was had; the district attorney of the county in which the correctional facility is located if the person applying is housed in a correctional facility within the State of Oregon; the State Board of Parole; and the Assistant Director for Corrections. Proof by affidavit of the service must be presented to the Governor. §144.650 (1) and (2).

Evidence. Upon receiving a copy of the clemency application, any of the persons or agencies receiving notice must provide to the Governor, as soon as possible, any relevant information and records that the Governor requests and also may provide such further information and records relating to the case as the person or agency considers relevant to the issue of pardon, commutation, or remission. §§144.650 (3).

Time limits. Following receipt by the Governor of an application for pardon, commutation, or remission, the Governor may not grant relief for at least 30 days. Upon the expiration of 180 days, if the Governor has not granted the pardon, commutation, or remission applied for, the application is considered to have lapsed. Any further proceedings for pardon, commutation, or remission in the case must follow further application and notice. §144.650 (4).

Procedure upon grant of clemency. When the Governor grants a reprieve, commutation, or pardon, or remits a fine or forfeiture, the Governor also must file all the papers presented to the Governor in the office of the Secretary of State, where they are maintained as public records. §144.670.

PENNSYLVANIA

Overview of State System

Primary authority: Governor on advice of panel. The Pennsylvania Constitution vests the Governor with clemency authority in all criminal and penal cases, with certain exceptions and under rules and regulations prescribed by law. Pa. Const. Art. IV, §9 (1983). However, all clemency applications for pardon and commutation must be referred to the Board of Pardons for recommendation. Const. Art. IV, §9; 71 Pa. Const. Stat. Ann. §299 (Purdon 1983).

The Governor's clemency authority has been upheld by the courts, which have found that the Governor has exclusive power concerning pardons and commutations, subject to the requirement that no pardon or commutation can be granted except upon recommendation of the Board of Pardons. Singleton v. Shafer, 313 F. Supp. 1094 (1970).

Courts also have ruled that actions by the Board of Pardons do not fall under the purview of the courts and that the judicial branch has no power to reconsider a sentence or to modify or diminish its extent after its imposition. Commonwealth ex rel. Cater v. Myers, 194 A.2d 185, 412 Pa. 67, 1963, cert. denied 86 S.Ct. 704, 376 U.S. 933, 11 L.Ed.2d 653; Commonwealth v. Gaito, 277 Pa. Super. 404, 419 A.2d 1208 (1980) Commonwealth ex rel. Mayloy v. Keeper of Philadelphia County Prison, 57 Pa. 291 (1868); Schoeppe v. Commonwealth. 65 Pa. 51 (1870); Commonwealth v. Gillespie, 25 Pa. (153, 10 Pa. D. 393 (1901).

Administrative system: State Board of Pardons. Referred to in the laws as the Board of Pardons, Pennsylvania's administrative body for clemency matters was created by Art. IV, §9 of the Commonwealth Constitution and is generally governed by the provisions of Title 98, Administrative Code. 71 Pa. Const. Stat. Ann. §§299 et seq. (Purdon 1983).

While the Board of Pardons is empowered to hear applications for clemency and to make recommendations to the Governor concerning clemency, its authority in this regard is strictly limited by the Commonwealth Constitution and statutes. Art IV, §9; Pa. Admin. Code Art. IV, §909.

Membership. The Board of Pardons consists of the Lieutenant Governor (who presides as chairperson), the Attorney General, and three members appointed by the Governor and confirmed by two-thirds of the elected members of the Senate. Board members serve 6-year terms. The three members appointed by the Governor must be Pennsylvania residents and must be recognized leaders in their fields. One must be an attorney, one a penologist, and the third a doctor of medicine, psychiatrist, or psychologist. Const. Art. 4 §9. Whenever the Governor nominates someone to fill a position for which Senate confirmation is required, the Governor must submit information to the Senate on the nominee, including party registration, offices held in political parties during the past 10 years, any public offices held during the past 10 years, and

such other information as is agreed upon by the Governor and the Senate Committee on Rules and Executive Nominations. 71 Pa. Const. Stat. Ann §67.1 (g).

Regulations. The Board of Pardons is empowered to adopt appropriate rules and regulations to carry out the intent and purposes of its enabling legislation. While the board must adhere to the practice and procedure provided by law, emergency procedures may be used in capital cases. 71 Pa. Const. Stat. Ann. §299.

Types of clemency. Pennsylvania law permits the granting of reprieves, and the remission of fines and forfeitures for which the Governor has full and complete clemency authority. Const. Art. IV, §9. The power to commute sentences and grant pardons may be exercised by the Governor only on the express written recommendation of a majority of the Board of Pardons. Const. Art. IV, §9. Under well-established case law, the Governor may pardon either before or after trial or sentence. Hatzfield v. Gulden, 7 Watts 155, 31 Am. Dec. 750 (1838); Commonwealth v. Ahl, 43 Pa. 53 (1862); York County v. Dalhousen, 45 Pa. 372 (1863); Commonwealth v. Hitchman, 46 Pa. 357 (1863).

Administrative Process

Operations. The Board of Pardons must provide the Governor with written recommendations concerning each application, along with its reasons for the decisions. A copy of the report must be filed in the office of the Lieutenant Governor in a docket kept for that purpose. Art. 4, §9, Pa. Admin. Code §909. Whenever the board requests information or advice, relative to any application for pardon or commutation of sentence, from the judicial officers who prosecuted, or tried and sentenced the applicant, it is the duty of such judicial officers to promptly comply with the board's request. 71 Pa. Const. Stat. Ann. §299a.

Revocation of pardon. Pardons obtained by fraud may be revoked according to longstanding case law. Commonwealth v. Holloway, 44 Pa. 210, 84 Am. Dec. 431 (1863); Commonwealth v. Kelly, 9 Phila. 586, 29 L.I.412 (1872).

PUERTO RICO

Overview of Clemency System

Primary authority: Governor. Under the Commonwealth Constitution and Puerto Rican law, the Governor alone has clemency authority. P.R. Laws Ann. Const. Art. IV, §4; Title 3, §1 (1) (1982).

Scope of clemency authority. A convict enjoys a pardon not as a party of any right recognized to him or her by the existing juridical order, but by the grant of grace by the executive power. Reynolds v. Delgardo, Warden, 91 P.R.R. 294 (1964), People v. Albizu 77 P.R.R. 843 (1955).

Types of clemency. Clemency authority extends to the suspension of the execution of sentence, the granting of pardons, commuting of punishment, and the total or partial remission of fines and forfeitures for crimes against the laws of Puerto Rico. Const. Art. 4, §4; Title 3, §1.

The power to grant a pardon may be exercised by granting a total and absolute pardon, or a conditional pardon. People v. Albizu, 77 P.R.R. 843 (1955). In a conditional pardon, the only limitation to which the executive is subject is that the conditions imposed must not be illegal, immoral, or impossible to perform.

Reports required. The Governor is responsible for maintaining a register of all applications for pardons, reprieves, or commutations of sentence, as well as a list of the official signatures and recommendations in favor of each application. Title 3, §10 (1).

Substantive limitations--crimes not pardonable. The Governor's clemency authority does not extend to matters of impeachment. Const. Art. IV, §4. The Governor cannot grant a total pardon to a convict for a violation of the laws of the United States, since such power is exclusively within the province of the President of the United States. 1960 Op. Sec. Jus. No. 33.

Administrative Process

Procedural rules. The Secretary of Justice must investigate and report upon all applications for pardon submitted to the Secretary by the Governor for that purpose. Upon request, the courts must report to the Secretary of Justice in relation to the sentence and background of any such applicant. Title 3, §80.

Revocation of pardon. Puerto Rico's Constitution does not limit the Governor's power to grant conditional pardons, and does not require, as a matter of due process of law, either a prior hearing for revocation or a judicial determination for recommitment. The test to determine whether a revocation of a pardon by the Governor is justified is whether or not said action is arbitrary; i.e., the reasonability of the action. Reynolds v. Delgado, Warden, 91 P.R.R. 294, (1964).

Restoration of civil rights. Since the executive authority of one State cannot pardon judgments pronounced by another jurisdiction, exoneration of legal impediment resulting from a conviction can only be exercised by the executive authority of the jurisdiction where such impediment was established. Thus, the Governor of Puerto Rico can only exonerate a convict from legal impediment of a local character arising as a consequence of a conviction pronounced by a Federal court. 1960 Op. Sec. Jus. No. 33. A pardon restores to a convict ordinary civil rights lost upon conviction such as the right to vote, to serve on a jury, or to hold public office; it neither restores nor automatically reinstates the convict to an office forfeited due to the conviction. 1958 Op. Sec. Jus. No. 52.

While Puerto Rico's Constitution restores the civil rights of convicts who have served their terms (making executive intervention unnecessary), only a pardon restores these rights before the end of the term. 1958 Op. Sec. Jus. No. 26.

RHODE ISLAND

Overview of State System

Primary authority: Governor on advice of panel (equal exercise by the Governor and the General Assembly). The State Constitution provides that the Governor, with the advice and consent of the Senate, exercises pardoning power, except in cases of impeachment. R.I. Const. Amend. II (1976). The State Constitution also empowers the Governor to grant reprieves after conviction in all cases except those involving impeachment. However, such reprieves last only until the end of the next session of the General Assembly. R.I. Const. Art. 7, §4 (1976).

Types of clemency. Reprieves and pardons. See Const. Art. 7, §4 and R.I. Gen. Laws §§13-10-1 and 13-10-2 (1981). Only the General Assembly can restore civil rights to a person sentenced to imprisonment for more than 1 year. §13-6-2. Without such a restoration, these convicted felons are prohibited from holding any public office and from voting.

Substantive limitations. Neither the Governor nor the legislature has the authority to grant clemency in cases of impeachment. Const. Art. 7, §4, and Const. Amend. II.

Administrative Process

Procedures for clemency review. Clemency petitions are presented to the Governor, who prescribes the rules and regulations governing the pardon application process. §13-10-1.

SOUTH CAROLINA

Overview of State System

Primary authority: Administrative panel (Governor in capital cases only). The State Constitution provides that with respect to clemency, the Governor has exclusive authority only to grant reprieves and to commute death sentences to life imprisonment. S.C. Const. Art. IV, §14 (1976); see also 1981 Op. Atty. Gen. 81-86, p.111. In all other cases, clemency authority is vested in the Parole and Community Corrections Board. S.C. Const. ibid.; S.C. Code Ann. §24-21-920 (Law Co-op 1976). The board considers all petitions for reprieves or commutations referred to it by the Governor and makes recommendations to the Governor regarding such petitions. The Governor may act on petitions without reference to the board. The Governor may or may not adopt the board's recommendations when requested, but must submit to the General Assembly the reasons for not following the recommendations. S.C. Code Ann. §24-21-910 (Law Co-op 1976).

Administrative system: Parole and Community Corrections Board. Referred to in the laws as the "Board," South Carolina's administrative body for clemency matters was created and is generally governed by the provisions of Chapter 21, Probation, Parole and Pardon, of Title 24, Corrections, Jails, Probations, Paroles and Pardons. S.C. Code Ann. §§24-21-11 et seq. (1977 & Supp. 1986).

Membership. The board is composed of seven members who serve 6-year terms. Six of the seven members are appointed from each of the congressional districts and one member is appointed at large. Board members are appointed by the Governor, with the advice and consent of the State Senate. A chairperson is elected annually by a majority of the board members and may serve consecutive terms. §24-21-10.

Any member of the board who is guilty of misconduct or persistent neglect of duty, or who is otherwise unable to properly discharge his or her duties is subject to removal by the Governor. Before removing any such officer, the Governor must give written notice of the specific charges and provide an opportunity to be heard. §24-21-11.

Board members do not draw salaries, but are entitled to per diems as authorized by law, and to expenses incurred in the discharge of official duties. §24-21-12.

Types of clemency. Reprieves and commutations of life imprisonment in capital cases are the Governor's province. Const. Art. IV, §14.

By law, "all other" types of clemency, presumably meaning commutation of sentence and pardon, are within the board's domain. §24-21-920.

Administrative Process

Criteria for application. The following statutory guidelines are to be used by the board to determine when an individual is eligible for pardon consideration: (1) Probationers must be considered upon the request of the individual any time after discharge from supervision; (2) Persons discharged from a sentence without benefit of parole must be considered upon the request of the individual any time after discharge; (3) Parolees are to be considered upon request of the individual after the completion of 5 years of successful supervision. If the maximum term of parole is less than 5 years, the request for pardon should be submitted and considered any time after the date of discharge; (4) Prior to parole eligibility, an inmate is to be considered for pardon only "when he can produce evidence comprising the most extraordinary circumstances." §24-21-950.

In addition to these guidelines, consideration is to be given to any inmate afflicted with a terminal illness where life expectancy is 1 year or less. §24-21-970. After a pardon application has been considered but denied, the applicant must wait 1 year for reapplication. §24-21-960.

Procedures for clemency review. The board must hold regular meetings at least four times each year, and as many extra meetings as the chairperson, or the Governor acting through the chairperson, may order. The chairperson may direct board members to meet as three-member panels to hear matters relating to pardons and must periodically rotate membership on such panels on a random basis. At panel meetings, any unanimous vote is considered the final decision of the board. Nonunanimous votes by these panels are referred to the full board to decide by majority vote. §24-21-20. An order of pardon must be signed by at least two-thirds of the board members. Upon the issue of such order by the board, the Supervisor of Parole must issue a pardon order providing for the release of the prisoner from custody. §24-21-930. The board also issues a certificate of pardon stating that the individual is absolved from all legal consequences of the crime and conviction and that all legal rights are restored. §24-21-1000.

Disposition of clemency recipients. When the Governor commutes a death sentence, the prisoner is not then eligible for parole, work-release credits, good-time credits, or any other credit that would reduce the mandatory term of imprisonment. §16-3-20.

Revocation of pardon. Once granted, a pardon may not be revoked unless it was obtained fraudulently. Pardons obtained by fraud are void. §24-21-980.

Restoration of civil rights. A pardon fully restores all civil rights lost as a result of conviction. These rights include the right to register and vote; serve on a jury; hold public office; testify without the introduction of the fact of conviction unless convicted for a crime indicating a lack of veracity; not have his or her testimony excluded in a legal proceeding if convicted of perjury; and be licensed for any occupation requiring a license. §24-21-990.

SOUTH DAKOTA

Overview of State System

Primary authority: Governor. The Governor has full clemency authority in all criminal and penal cases, with certain exceptions and under rules and regulations prescribed by law. S.D. Const. Art. IV, §3 (1979). By executive order, the Governor may delegate to the Board of Pardons and Paroles the authority to hear and make recommendations concerning applications for pardon, commutation, reprieve, or remission of fines and forfeitures. S.D. Codified Laws Ann. §24-14-1 (1979). The Governor is not bound to follow the Board's recommendations, however. §24-14-5. The Governor's authority has been upheld by the courts, which have found that the power to grant pardons, commutations, and reprieves is held by the executive branch of government. State v. Oban 372 NW.2d 125 (1985).

Administrative system: Board of Pardons and Paroles. Referred to in the laws as the "Board," South Dakota's administrative body for clemency matters was created and is generally governed by the provisions of Chapter 24-13, Board of Pardons and Paroles, of Title 24, Penal Institutions, Probation and Parole. S.D. Codified Laws Ann. §§24-13-1 et seq. (1979).

While the board makes recommendations to the Governor concerning clemency, its authority in this regard is strictly limited and is purely advisory. §24-14-5.

Membership. Board members serve 4-year terms and are eligible for reappointment. The Governor, the Attorney General, and the Supreme Court each appoints one member, whose term expires on the third Monday in January of the fourth year after appointment. §24-13-2.

The Board of Pardons and Paroles appoints its own executive director, who must by law have relevant experience, interest in parole and rehabilitation work, and practical knowledge of criminology and related subjects. §24-13-9.

Administrative location. The Board of Pardons and Paroles is administered under the direction and supervision of the Board of Charities and Corrections but retains the quasi-judicial, quasi-legislative, advisory, other nonadministrative, and special budgetary functions that are exercised independently of the Board of Charities and Corrections. §24-13-3.

Regulations. The Board of Pardons and Paroles promulgates procedural rules for the effective enforcement of the law and for the exercise of its powers and duties. §24-13-7.

Reports required. The Board of Pardons and Paroles must submit records, information, and reports as required by the Board of Charities and Corrections, but also must report at least annually. §24-13-3.

Types of clemency. Included are reprieves, commutations of sentence, and pardons after conviction, remission of fines and forfeitures in all criminal and penal cases, with certain exceptions. Const. Art. IV, §3. The pardoning power necessarily includes the power to suspend sentences in whole or in part. State v. Oban 372 NW.2d 125 (1985). See also "Restoration of civil rights" below.

The statutory provisions also refer to "exceptional pardons," which may be granted 5 years after release to inmates convicted of not more than one felony that was not punishable by life imprisonment. The notice requirements of application for pardon are not needed to apply for an exceptional pardon. §§24-14-8, 24-14-9.

Constitution does not enable the Governor to grant clemency in cases involving treason or impeachment. Also, the power to pardon as well as the power to remit fines and forfeitures is confined to criminal and penal cases after conviction. Art. IV, §3.

Administrative Process

Procedure for clemency review. The Board of Pardons and Paroles meets in open session at the State penitentiary at least every 2 months primarily to hear applications for parole and, upon request of the Governor, to make recommendation for pardon, commutation, reprieve, or remission of fines or forfeitures. §24-13-6. At the first meeting in each year, the board selects one of its members as chairperson, who determines the board's meeting schedule. No recommendation for the commutation of a death sentence, sentence of life imprisonment, or for a pardon, other than an "exceptional pardon," can be made by less than the unanimous vote of all members of the board. §24-13-4.

The board can legally compel the presence of any person before it and require the production of papers, records, and exhibits in evidence. Any board member may administer oaths to witnesses. §24-13-8. The executive director of the board, upon request of the Governor, transmits to the Governor a copy of the board's recommendation for any pardon, commutation, reprieve, or remission of a fine or forfeiture, together with related papers and exhibits. §24-13-10.

Notice requirements. Those applying for all forms of clemency must provide notice of the application to the prosecuting attorney at least 30 days before the application is considered. §24-14-3. Except for "exceptional pardon" (available to those free at least 5 years after a single conviction for a felony not carrying a life sentence) applicants who are exempt from the additional notice requirement, all other clemency applicants must have notice of their application published in a newspaper of general circulation in the county in which the crime was committed between 1 and 2 weeks prior to a hearing on the application. If there is no such newspaper, the applicant must post notice on the county courthouse door within the same time period. The notice must contain the name of the applicant, the offense of conviction, the date of conviction, and the term of imprison-

ment. An affidavit from the newspaper publisher or person posting the notice certifying that the notice was published or posted must accompany the clemency application. §24-14-4.

Other procedural rules. Any person aggrieved by a clemency application may appear before the Board to present testimony as to why a recommendation for clemency should not be granted. §14-14-6.

Assistance in pardon procurement. Officers or other persons employed at the State penitentiary are prohibited by law from assisting directly or indirectly in procuring a pardon of any convict. Any person violating this prohibition is subject to immediate removal. §24-1-26.

Restoration of civil rights. A pardon granted to any person sentenced to life imprisonment does not restore that person to the rights of any previous marriage or to custody of any children of such marriage. §25-1-40.

By recent amendment to the State laws, a person convicted of a violent crime who receives a pardon is nonetheless prohibited from carrying a firearm for 15 years, unless otherwise specified in the pardon. 1986 S.D. Sess. Laws 203 (S.B.96).

TENNESSEE

Overview of State System

Primary authority: Governor. The Tennessee Constitution vests the Governor with sole clemency authority. Tenn. Const. Ann. §6, (1980). According to long-standing court decisions, this constitutional power is absolute, and any attempts by the legislature to vest such authority in other governmental bodies have been declared invalid. State v. Dalton, 109 Tenn. 544, 72 S.W.456 (1902); Fite v. State ex rel. Snider, 114 Tenn. 646, 88 S.W.941 (1905). Thus, while the legislature has provided an administrative system to assist the Governor in exercising clemency authority, the Governor can exercise that authority without any prior administrative recommendation. Smith v. Thompson, 584 S.W.2d 253 (Tenn. Crim. App. 1979).

Administrative system: Board of Paroles. While the Governor of Tennessee is autonomous with regard to clemency, one of the duties of the State Board of Paroles is to consider and make nonbinding recommendations concerning all requests for pardons, reprieves, and commutations. The board has the discretion to make these recommendations based upon its application of the Governor's guidelines and criteria for clemency decisionmaking. Tenn. Code Ann. §40-28-104 (1982).

The board also is empowered, on the Governor's request, to collect the records, investigate, and report to the Governor the facts, circumstances, criminal records, and the social, physical, mental, and psychiatric conditions and histories of prisoners under consideration by the Governor for pardon or commutation of sentence. Tenn. Code Ann. §40-28-106(c) (1982). Nothing in these provisions concerning the board is intended to modify or abridge the pardoning power of the Governor in any way. Tenn. Code Ann. §40-28-128 (1982).

The Tennessee Board of Paroles is subject to a sunset provision, which terminates the board unless the board is reestablished by the legislature by June 30, 1987. Tenn. Code Ann. §40-29-208 (1985).

Membership. The Board of Paroles is composed of five full-time members who are appointed by the Governor. The board is autonomous in structure, and functions separately from other State agencies, subject, however to the administrative and financial requirements applicable to all State departments and agencies. Tenn. Code Ann. §40-28-103(a) (1982).

Reports Required. The Governor must see that official records of the reasons for granting pardons or commuting punishment are maintained, and must preserve on file all documents on which he or she acted, and must submit those documents to the General Assembly when called on to do so. Tenn. Code Ann. §40-27-107 (1982).

The Parole Board must make such reports concerning its work as may be requested by the Governor. The board also must forward a written list of the names of all persons receiving recommendations for executive clemency of any sort to the appropriate standing committee of the General Assembly. §40-28-107(a), (c).

Scope of clemency authority. The statutory provisions generally regulating the Governor's clemency powers are found in Chapter 27, "Executive Clemency," of Title 40 of the Tennessee Code. Tenn. Code Ann. §§40-27-101 through 40-27-109 (1982).

Types of clemency. The laws regulating executive clemency powers specifically refer to the Governor's authority to grant reprieves, commutations, and pardons in all criminal cases after conviction, except impeachment. §40-27-101. Pardons may be full or conditional, the latter with such restrictions and limitations as the Governor deems proper. §40-27-102. Under long-standing case law, the pardoning power is broad and includes convictions for contempt of court. Sharp v. State, 102 Tenn. 9, 49 S.W. 752 (1899). See also "Restoration of civil rights" below.

State law also provides the Governor with the authority to remit a portion of the imprisonment of a convict in the penitentiary, on the written recommendation of the Board of Paroles. §40-27-104. However, no such written recommendation is needed for the Governor to commute the sentences of imprisoned convicts. Smith v. Thompson, 584 S.W.2d 253 Tenn. Crim. App. (1979). Tennessee also has specific statutory provisions concerning commutations of death sentences. See "Special Clemency laws and Issues" below.

Exoneration is another clemency option under Tennessee law, which allows that after considering the facts, circumstances, and any newly discovered evidence concerning a particular case, the Governor may exonerate any person if the Governor finds the person did not commit the crime for which he or she was convicted. However, no person may apply for exoneration and the Governor may not grant exoneration until the person has exhausted all possible State judicial remedies.

Gubernatorial exonerations differ from pardons in that the former are unconditional as a matter of law, which means that the records of the exonerated person's arrest, indictment, and conviction are automatically expunged and all rights of citizenship are automatically restored. The Governor has the authority to review and reconsider any pardon previously granted to determine whether the recipient of such pardon qualifies for the granting of exoneration in lieu of a pardon. After such review, the Governor may convert any pardon previously granted into an exoneration. §40-27-109.

Administrative Process

The Governor appears to have full discretion concerning the administration of clemency in that the guidelines and criteria for application and/or recommendation are not regulated by law. State law does specify that the Governor has the authority to issue warrants for the enforcement of clemency decisions. §40-27-102.

Notice requirements. The executive director of the Board of Paroles is required to notify the district attorney and trial judge of the county in which the case was tried of board hearings on applications for executive clemency. Responses to this notification are to be included in the applicant's record. §40-28-126. Whenever any convict is released from a penitentiary by reason of pardon, parole, or the expiration of the term of imprisonment, the warden of that institution must immediately provide written notification to the sheriff of the county of conviction, the chief of police of the municipality to which the convict will return, and the district attorney general of the judicial circuit to which the convict will return. The written notification must clearly state the name of the convict, the offense of conviction, the date of the conviction, the date and reasons for release, the date of expiration of parole, and, when a conviction is based on a morals charge, the nature of the charge. This information is to be kept in the confidential files of the sheriff and chief of police.

Restoration of civil rights. According to Tennessee law enacted in 1858, a gubernatorial pardon for the offense of manslaughter automatically restores all rights of citizenship. §40-27-108. Also, as noted earlier, an exoneration by the Governor automatically restores these rights. §40-27-109(b).

Those whose pardons do not restore full rights of citizenship and who were convicted before July 1, 1986, may have those rights restored by State circuit courts under procedures provided in Chapter 29, Title 40 of the State Code of Criminal Procedure. Tenn. Code Ann. §§40-29-101 through 40-29-105 Supp. (1986). These procedures include notice requirements to the state District Attorney General and U.S. attorney of the petition for a restoration hearing. §40-29-103.

A measure enacted in 1986 changed the procedures for felons convicted of "infamous crimes" after July 1, 1986. Under the new law, those receiving a pardon are among those eligible to seek restoration of civil rights, except if the pardon contains special conditions concerning the right to vote, or if the applicant was convicted of first degree murder, aggravated rape, treason, or voter fraud. Individuals convicted of these crimes after July 1, 1986, are ineligible to register and vote in Tennessee, according to the new law. Those who are eligible for restoration of citizenship are to be issued a certificate of restoration (a form prescribed by the State Coordinator of Elections) by the pardoning authority, which is the Governor. §40-29-105.

Special Clemency Issues and Laws

Capital cases. When considering pardon applications in capital cases, if the Governor determines that the facts and circumstances adduced do not warrant a total pardon, he or she may commute the punishment of death to imprisonment for life in the penitentiary. §40-27-105. The Governor also may commute the punishment from death to imprisonment for life when the State Supreme Court certifies that, in its opinion, there were extenuating circumstances attending the case, and that the punishment

should be commuted. §40-27-106. A commutation is effective immediately if it is clear that the Governor issuing the commutation intended it to be and never does or says anything inconsistent with that intention. Smith v. Thompson, 584 S.W.2d 253 (Tenn. Crim. App. 1979).

TEXAS

Overview of State System

Primary authority: Governor on advice of panel. The State Constitution provides that in all criminal cases, except treason and impeachment, the Governor has the power upon the written recommendation of the Board of Pardons and Paroles to remit fines and forfeitures and to grant reprieves, pardons, and commutations. With the advice and consent of the legislature, the Governor may grant reprieves, commutations of punishment, and pardons in cases of treason. The Governor has the independent authority to grant one reprieve in any capital case for a period not to exceed 30 days and to revoke conditional pardons. Tex. Const. Art. 4, §11 (Vernon 1984).

Texas courts have ruled that the clemency power is vested in the Governor to the extent that only the Governor can remit fines imposed that remain uncollected and discharge convicts from further penal service. The Governor lacks power to direct that the courts ignore the crime or the conviction. Jones v. State, 141 Tex. Crim. 70, 147 S.W.2d 508 (1941). Furthermore, the Attorney General has determined that neither the Board of Pardons and Paroles nor the Governor has the authority to restore a Texas driver's license suspended by the State Department of Public Safety because the Legislature has not provided a method of restoration. Op. Atty. Gen. 1956, No. S-190.

Administrative system: State Board of Pardons and Paroles. Referred to in the statutes as the "Board of Pardons and Paroles," Texas' administrative body for clemency matters was created under the State Constitution, and is generally governed by the provisions of Chapter 48, Pardon and Parole, under the Miscellaneous Proceedings Title. Tex. Code Crim. Proc. Ann. Art. 48.01 et. seq. (Vernon 1984). The board's main role is to provide recommendations and advice to the Governor regarding reprieves, commutations, pardons, and remission of fines and forfeitures after conviction in criminal and penal cases. Const. Art. 4, §11.

Membership. The Board of Pardons and Paroles is by law a State agency. The board consists of six members appointed by the Governor with the advice and consent of the Senate. Board members must be resident citizens of Texas and must have been residents for at least 2 years immediately preceding their appointment. Members hold office for staggered terms of 6 years, with terms expiring on January 31 of odd-numbered years.

The members of the board are full-time State employees, whose salaries are determined by legislative appropriation. The Governor designates biennially one member to serve as chairperson and one member to serve as vice chairperson.

The board meets at the call of the chairperson or as may otherwise be determined by majority vote of the board. Art. 4218.

Reports required. At the close of each fiscal year the board must submit to the Governor and to the legislature a report of its work with statistical and other data.

Scope of clemency authority. State and Federal courts have determined that the Governor of Texas has the authority to commute death sentences to life imprisonment while a case is still on appeal. Cherry v. State of Tex., 361 F. Supp. 1284 (D.C. 1973); Whan v. State, 485 S.W.2d 275 (Cr. App. 1972), cert. denied 93 S.Ct. 1906, 41 U.S. 934.

Types of clemency. Included in this category are reprieves, commutations of punishment and pardons after conviction, and remission of fines and forfeitures in all criminal and penal cases with certain exceptions. Const. Art. 4, §11.

Substantive limitations--crimes not pardonable. The State Constitution does not empower the Governor to grant clemency in cases of conviction on impeachment. Const. Art. 4, §11. The Attorney General has determined that the Board of Pardons and Paroles lacks authority to recommend and the Governor lacks power to grant a posthumous full pardon. Op. Atty. Gen. 1965, No. C-471.

Administrative Process

Procedures for clemency review. On the Governor's request, the board must investigate and report to the Governor with respect to any person being considered for pardon, commutation of sentence, reprieve, or remission of fine or forfeiture. Board decisions are made by majority vote.

All board minutes and decisions, including those relating to pardon and clemency, are matters of public record and subject to public inspection at all reasonable times. Tex. Code Crim. Proc. Ann. Art. 41.18.

Evidence. The board has the power to issue subpoenas requiring the attendance of witnesses and the production of such records, books, papers, and documents as it determines is necessary for investigation of the case of any person before it. These subpoenas are served by law enforcement officers in the same manner as those in State criminal courts, and any person who testifies falsely, fails to appear when subpoenaed, or refuses to produce subpoenaed materials is subject to the same orders and penalties to which a person before a court is subject. Any State criminal court may, at the request of the board, use its contempt powers to compel the attendance of witnesses, the production of evidence, and the giving of testimony before the board. Tex Code Crim. Proc. Ann. Art. 42.18.

UTAH

Overview of State System

Primary authority: Panel that includes the Governor. Clemency authority is exercised collectively by the Governor, the Supreme Court Justices, the Attorney General, and others who constitute a Board of Pardons. A majority of the board, including the Governor, may remit fines and forfeitures, commute punishments, and grant pardons after conviction in all cases except those involving treason and impeachment, subject to laws concerning application for pardon. Const. Utah Art. VII, §12 (1971 ex Supp. 1986). Combs v. Turner, 25 Utah 2d 397, 483 P.2d 437 (1971).

In case of conviction for treason, the Governor has the authority to suspend execution of the sentence until the case is reported to the legislature at its next regular session. The legislature will then either pardon, commute, or direct execution of the sentence. Const. Art. VII §12.

Membership. The Board of Pardons consists of three full-time and three pro-tempore members who are appointed by the Governor with the advice and consent of the Senate. Board members must be Utah residents. Full-time members serve 6-year terms. Utah Code Ann. 77-27-2 (1982) ex supp. 1986).

Types of clemency. The types of clemency specifically defined by Utah law are pardons, which are acts "of grace by an appropriate authority exempting a person from punishment for a crime;" commutations, which are changes "from a greater to a lesser punishment after conviction;" and reprieves or respites, which are temporary suspensions "of the execution of the sentence." §77- 271(1),(3),(5). See Procedures for clemency review below, concerning remission of fines and forfeitures.

Substantive limitations--crimes not pardonable. Treason and impeachment are not subject to clemency authority. However, the Governor has limited authority to temporarily suspend execution of a sentence in treason cases. Const. Art. VII, §12.

Administrative Process

Procedures for clemency review. No fine or forfeiture may be remitted and no commutation or pardon may be granted until after a full hearing before the board in open session. Utah Code Ann. §77-27-2. (1982 ex supp. 1986).

Reports required. A verbatim record of proceedings before the Board of Pardons must be maintained by a certified shorthand reporter or suitable electronic recording device, except when the board dispenses with a record in a particular hearing or a portion of the proceedings. §77-27-8(1). When the hearing involves the commutation of a death sentence, a certified shorthand reporter, in addition to mechanical means, must record all proceedings except when the board dispenses with a record for the purposes of deliberations in executive session. §77-27-8(2).

The determinations and decisions of the board in cases involving approval or denial of any action--paroles, pardons, commutations, or terminations of sentence, orders of restitution, or remission of fines, forfeitures, and restitution--are final and are not subject to judicial review. This provision does not prevent or interfere with the obtaining or enforcement of a civil judgment. §77-27-5(2).

VERMONT

Overview of State System

Primary authority: Governor. The Governor has the power to grant pardons and remit fines in all cases, with certain exceptions. Vt. Const. Ch. II, §20 (1985). The pardoning power vested in the Governor is exclusive, cannot be delegated, and is not reviewable by the courts, except regarding questions of validity. In re St. Amour, 127 Vt. 576, 255 A.2d 667 (1969), and Doe v. Salmon, 135 Vt. 443, 378 A.2d 512 (1977).

Administrative system: State Parole Board. Referred to in the laws as the "Board," Vermont's administrative body for clemency matters was created and is generally governed by the provisions of Subchapter 2, "Parole Board," Chapter 7 of Title 28, Public Institutions and Corrections. [Vt. Stat. Ann. Title 28 §§451 et seq. (Supp. 1985). The Parole Board's authority regarding clemency matters is strictly limited. On request of the Governor, the board investigates and makes advisory recommendations concerning clemency applications. Title 28, §453.

Membership. The Parole Board is composed of five members appointed for 5-year terms by the Governor and confirmed by the Senate. The Governor also designates the board's chairperson. Title 28, §451.

Types of clemency. The Governor may grant pardons, remissions of fines, and reprieves. Vt. Const. Ch. II, §20.

Substantive limitations--crimes not pardonable. The Governor may not grant pardons or reprieves in cases of convictions on impeachment or treason. Const. Ch. II, §20. Also, a full pardon does not vacate a suspension of the license to operate a motor vehicle if the suspension was imposed by the Commissioner of Motor Vehicles. Title 23, §§671 and 672.

Administrative Process

Procedures for clemency review. Pardon applications from those serving sentences for felonies must be in writing and must include the reasons for the application. Title 28, §809. If the Governor believes the reason stated in the application, if proven true, would constitute cause for granting the pardon, the Governor must, within a reasonable time, designate a time and place for a hearing of the case. Title 28, §807.

Notice requirements. The Governor must provide notification of the clemency application and hearing to the State's attorney of the county in which the applicant was convicted, and must notify the applicant of the hearing date. Title 28, §809.

Administrative hearing. The Governor determines the rules and methods of procedure for clemency hearings. When a decision has been made, it must be communicated in writing to the applicant and to the State's attorney and, at the direction of the Governor, may be published in one or more newspapers published in

the State. Title 28, §809. Records of pardons granted are open to public inspection when it is not detrimental to the public interest. Doe v. Salmon, 125 Vt. 443, 278 A.2d 512 (1977).

Disposition of clemency recipients. Whenever a person is conditionally pardoned, the Commissioner of Corrections must be furnished with a copy of the conditional pardon signed by the Governor. Until the recipient of such pardon is excused from performing the conditions imposed, the Governor remains the sole and exclusive judge concerning violations of the conditions of the pardon. Title 28, §810.

VIRGINIA

Overview of State System

Primary authority: Governor. Under the Virginia Constitution and the Virginia State Code, clemency authority is vested solely in the Governor. Va. Const. Art. V, §12 (1979); Va. Code Ann. §53.1-229. See generally Va. Code Ann. §§53.1-229 through 53.1-231 (1982).

Administrative system: Parole Board. The Governor has exclusive clemency authority and may request the Virginia Parole Board to investigate and report on cases under consideration. The board also may present cases it deems appropriate for clemency action to the Governor. §53.1-231.

Reports required. The Governor must report to the General Assembly, at each regular session, the specifics and reasons for the granting of each remission, reprieve, pardon, and commutation. Const. Art. V, §12.

Types of clemency. Remissions of fines and penalties; reprieves and pardons after conviction; removal of political disabilities; and commutations of the death penalty. Const. Art. V, §12.

Substantive limitations--crimes not pardonable. The Virginia Constitution gives the Governor the power to grant reprieves and pardons "except when the prosecution has been carried on by the House of Delegates." This implies that matters of impeachment are not pardonable. Const. Art. V §12.

Special Clemency Issues and Laws

Capital cases. The Governor has specific legal authority to commute the death penalty, as conferred by both the Constitution and statute. Const. Art. V, §12; §53.1-230. Virginia courts have ruled that the effect of a commutation is to substitute a sentence of life imprisonment for the death penalty, a substitution the Governor is empowered to make without the defendant's consent.

In Lewis v. Commonwealth 218 Va. 31, 235 S.E.2d 320 (1977) the constitutionality of Virginia's death penalty was challenged, but the question found moot because after commutation of a death sentence, the penalty substituted is the only sentence to be considered on appeal.

VIRGIN ISLANDS

Overview of Clemency System

Primary authority: Governor. Under the territorial Organic Acts, the Governor has sole clemency authority. V.I. Code Ann. Title 3, §11 (Supp. 1985).

Originally, the Governor of the Virgin Islands was appointed by the President of the United States V.I. Code Ann. Title 3, 11 (1967) and, while having many of the same functions as a State Governor, had a quasi-gubernatorial position peculiar to the Virgin Islands. Virgo Corporation v. Paiewonsky, D.C.V.I., 5 V.I. 328 (1966). In 1968, the Organic Acts were amended to provide for the popular election of the Governor and, thus, to increase his or her autonomy in relationship to the United States, including clemency authority. Under earlier law, the Governor, in addition to other clemency powers, could "grant respites for all offenses against the laws of the United States applicable in the Virgin Islands until the decision of the President can be ascertained." §11 (1967). This language in regard to respites is not contained in the current law.

Reports required. Requirements for gubernatorial reports to the Congress and U.S. Secretary of the Interior generally concern financial matters. However, the Governor may also be required by Congress to make unspecified other reports, which could include accounting for the exercise of clemency authority. §11.

Types of clemency. Pardons, reprieves, and remission of fines and forfeitures for offenses against local laws. §11. As explained by the territorial Attorney General, an executive pardon absolves the offender from all guilt, and a commutation of sentence continues the established guilt of the offender but reduces the punishment imposed by the court. Under the executive pardoning power, the Governor has authority to commute sentences and may thus reduce the suspension of a motor vehicle operator's license to whatever period he or she sees fit. 1 V.I. Op. Atty. Gen. 96.

Substantial limitations. As determined by a territorial court in 1982, the Governor's clemency authority is limited to offenses against local laws. Thus, the Governor of the Virgin Islands was unable to pardon an individual whose name was deleted from the ballot in a general election on the grounds that his past imprisonment for a felony disqualified him from holding public office, since the crime for which he was convicted had not been committed in the Virgin Islands. (Moorhead v. Government of the Virgin Islands, Terr. Ct. St. C., 18 V.I. 237 (1982).

WASHINGTON

Overview of State System

Primary authority: Governor. The Governor is empowered to remit fines and forfeitures and to grant reprieves, commutations, and pardons under the regulations and restrictions prescribed by law. Const. Art. III, §§9 and 11 (1985). The Governor's constitutional pardoning power may not be withdrawn by the legislature. In re Costello, 22 Wash. 2d 697, 157 P.2d 713 (1945).

Administrative system: Clemency and Pardons Board. Washington's administrative body for clemency matters was created as a board within the office of the Governor, and is generally governed by the provisions of Chapter 9.94 A, Sentencing Reform Act of 1981, of Title 9, Crimes and Punishments. Wash. Rev. Code Ann. §§9.94A.250 et seq. (1985). The authority of the board regarding clemency matters is strictly limited by statute. The board reviews clemency petitions for commutation of sentences and pardoning of convicts in extraordinary circumstances such as serious health problems, senility, and outstanding meritorious acts. The board investigates cases and makes recommendations to the Governor. §9.94A.2G0.

Membership. The Clemency and Pardons Board is composed of five members appointed for 4-year terms by the Governor and confirmed by the Senate. The board elects a chairperson from among its members. Board members receive no compensation, except for travel expenses. §9.94A.250.

Regulations. The Clemency and Pardons Board is empowered by statute to adopt bylaws governing its operations. §9.94A.250.

Reports required. The Governor is required to report to the legislature at its next meeting each case of reprieve, commutation, or pardon and the reasons for such clemency. The Governor also must report to the legislative body each case of remission of fines and forfeitures, including the amount remitted and the reasons for the remission. Const. Art. III, §11.

Scope of clemency authority. The Governor may revoke conditional pardon without notice and hearing. In re Costello, supra. The Governor may also, upon recommendation from the Clemency and Pardons Board, grant an extraordinary release for reasons of serious health problems, advanced age, outstanding meritorious acts, or other extraordinary circumstances. §9.94A.150.

Types of clemency. Remission of fines and forfeitures, reprieve, commutation, and pardon. Const. Art. III, §11. See also "Restoration of civil rights" below.

Substantive limitations--crimes not pardonable. The Governor may not pardon reform school inmates who are not convicted of law violations. In re Mason, 3 Wash. 609, 28 p. 1025 (1892).

Administrative Process

Procedures for clemency review. In addition to the investigations and recommendations of the Clemency and Pardons Board, the Department of Corrections may be required, per the Governor's request, to assist the Board of Prison Terms and Paroles in investigating pardon applications. This board, upon request of the Governor, reviews evidence presented in support of clemency applications and makes recommendations to the Governor. §9.95.2G0

Disposition of clemency recipients. The Secretary of Corrections has the duty to exercise supervision over convicts who have received conditional pardons from the Governor to ensure their compliance with the conditions imposed. §9.95.2G0.

Restoration of civil rights. Whenever the Governor pardons a person convicted of an "infamous" or serious crime, the Governor has the discretionary power to restore that person's civil rights in the manner prescribed by law. §9.96.010. Also, whenever the Governor decides to restore civil rights to a person convicted of an infamous crime in any Washington superior court, the Governor must execute and file in the office of the Secretary of State an instrument stating that the person's civil rights are restored. §9.96.020.

Expungement of records. An unconditional pardon restores the beneficiary's civil rights and remits any penalty that has not yet been paid, but does not obliterate the offense. State v. Cullen, 14 Wash.2d 105, 127 P.2d 257 (1942).

Special Clemency Issues and Laws

Capital cases. The Governor has the power to commute death sentences to life imprisonment at hard labor upon such conditions and restrictions as the Governor thinks proper. §10.01.120.

WEST VIRGINIA

Overview of State System

Primary authority: Governor. Under both the State Constitution and applicable statutes, the clemency authority in West Virginia is vested solely in the Governor. W. Va. Const. Ann. Art. 7, §11 (1982); W. Va. Code Ann. §5-1-16 (1979). The courts have ruled that clemency authority in all cases of felony where the necessity for clemency exists is vested exclusively in the Governor. The Governor is the sole judge of such necessity; his or her conclusions are not reviewable by the courts and are bindding. State ex rel. Stafford v. Hawk, 47 W. Va. 434, 34 S.E.918 (1900) While the legislature may regulate this authority, it may not confer the clemency power upon any other person or tribunal. State ex rel. Hallanan v. Thompson, 80 W. Va. 698, 93 S.E.810 (1917); State ex rel. Coole v. Sims 133 W. Va. 619, 58 S.E.2d 784 (1950). The Attorney General, too, has concluded that the Governor has the exclusive power of pardon, which may be exercised entirely within the discretion and under the direction of the Governor. 51 Op. Atty. Gen. 182 (1965).

Reports required. Both the Constitution and the law require the Governor to communicate to the legislature at each session the particulars of every case of fine or penalty remitted, punishment commuted, and reprieve or pardon granted, with the Governor's reasons. Const. Art. 7, §11; §5-1-16. By statute, the Governor also is required to record in the Journal of Executive Proceedings the cases in which clemency authority is exercised. §5-1-16.

The communication of information required by the State Constitution need not be transmitted by the Governor, and it may be considered by the legislature only during plenary session. 46 Op. Atty. Gen. 142 (1955).

Types of clemency. West Virginia law provides for the remission of fines and penalties; commutation of capital punishment; and reprieves, pardons, and paroles after conviction. §§5-1-16, 5-1-17. Pardons may be conditional with the assent of the person sentenced. §5-1-16.

Substantive limitations--crimes not pardonable. According to the State Constitution, the Governor has clemency authority except where the prosecution was conducted by the House of Delegates. (This implies that matters of impeachment are not pardonable.) §5-1-16; Const. Art. 7 §11.

Administrative Process

Procedures for clemency review. Petitions for pardon may originate in any manner from any source (even from the Governor) and may be processed in any way deemed proper. 51 Op. Atty. Gen. 182 (1965).

Restoration of civil rights. According to the State Attorney General, a pardon restores only those rights of citizenship that are expressly lost by law upon conviction.

Special Clemency Issues and Laws

State liability for unjust imprisonment. The courts have ruled that the Governor's pardon of a person who was convicted of a crime and imprisoned does not alone furnish a sound basis for a legislative finding of a moral obligation by the State to compensate that person for injuries to his or her person or reputation on the ground of alleged innocence of the crime of conviction. State ex rel. Coole v. Sims 133 W. Va. 619, 58 S.E.2d 784 (1950).

Capital cases. In cases where the Governor exercises the power to commute capital punishment, the Governor may issue an order to the warden of the penitentiary requiring the warden to receive and confine the person whose punishment is commuted. To carry into effect any commutation of punishment, the Governor may issue the warrant to any proper officer, who must obey and execute the warrant. §5-1-16.

WISCONSIN

Overview of State System

Primary Authority: Governor. Wisconsin's Constitution vests the Governor with the power to grant reprieves, commutations, and pardons, after conviction, for all offenses except treason and cases of impeachment. Wis. Const. Art. 5, §6 (1986). The Governor may grant pardons any time after conviction and regardless of term of sentence or other penalties imposed. 27 Op. Atty. Gen. 623 (1938).

Reports Required. The Governor is required to annually communicate to the legislature each case of reprieve, commutation, or pardon granted, including the name of the convict, the crime of conviction, the sentence and its date, and the date and the reasons for granting clemency. Const. Art. 5, §6.

Scope of clemency authority. Upon the recommendation of the Department of Health and Social Services, the Governor may, without complying with procedural steps outlined in Chapter 57, Title 7, discharge absolutely, or upon such conditions as the Governor thinks proper, any inmate who has served the prescribed minimum term of punishment. Wis. Stat. Ann. §973.013 (West 1985).

Types of clemency. Reprieves, commutations, and pardons, after conviction, for all offenses, except treason and cases of impeachment. Const. Art. 5, §6.

Substantive limitations--crimes not pardonable. Treason and impeachment. Upon conviction for treason, the Governor is empowered only to suspend the execution of the sentence until the case can be reported to the legislature at its next meeting, when the legislature must either pardon or commute the sentence, direct the execution of the sentence, or grant a further reprieve. Const. Art. 5, §6.

Unless the procedural provisions of §§57.08, 57.09, and 57.10 of Chapter 57, Title 7 are met, the Governor may not pardon any convict serving a sentence of 1 year or more, except within 10 days before the time when the convict would be otherwise entitled to discharge. 18 Op. Atty. Gen. 556 (1929). Also, a pardon may be granted to an alien when the sentence prescribes a fine, but when the penalty has been paid into the public treasury, it may not be restored through a gubernatorial pardon. 17 Op. Atty. Gen. 544 (1928).

Administrative Process

Procedures for clemency review. All applications for pardon of any convict sentenced to 1 year or more, except applications made within 10 days before the time when the convict would be otherwise entitled to discharge, must follow procedural rules provided by law, and additional regulations the Governor may from time to time prescribe, when the legislature failed to do so. Wis. Stat. Ann. §57.08; 17 Op. Atty. Gen. 544 (1928).

By application. An application for pardon must be accompanied by a notice of application and certification of proper service and publication; a certified copy of the trial docket entries, the indictment, or information; a sworn statement by the applicant of the facts and reasons for clemency application; and written statements by the judge and the district attorney who tried the case, if obtainable, indicating their views regarding the application. Wis. Stat. Ann. §57.10 (Supp. 1986).

Notice requirements. The notice of the pardon application must state the name of the convict, the crime of conviction, the date and term of sentence, and the date, if known, of the hearing by the Governor. The notice must be served at least 3 weeks before the hearing of the application, on the judge who participated in the trial of the convict, the district attorney who participated in such trial, and the victim or, if the victim is dead, an adult member of the victim's family, if those persons can be found. The notice must be published in a newspaper of general circulation in the county where the offense was committed at least once a week for 2 successive weeks before the hearing. If there is no such newspaper, the notice must be conspicuously posted on the county courthouse door for 3 weeks before the hearing and published in a neighboring county's newspaper once a week for 2 consecutive weeks before the hearing. Wis. Stat. Ann. §57.09 (1957 and Supp. 1986). Also, if the Governor reopens the case of an application for pardon that was once denied, the Governor must follow the same statutory requirements concerning notice and publication that are prescribed for original applications. 14 Op. Atty. Gen. 577 (1925).

Disposition of clemency recipients. When a convict is granted a pardon or a commuted sentence, the officer to whom the warrant is issued must, after executing it, make immediate return to the Governor. The officer must also file with the clerk of the court of conviction a certified copy of the warrant and return. §57.12.

Restoration of civil rights. Upon completing his or her term of imprisonment, a convicted felon is restored to his or her civil rights, including the right to vote. However, without a pardon from the Governor, that person is constitutionally disqualified from the office of notary public. Op. Atty. Gen. (March 27, 1974) 61 Op. Atty. Gen. 260 (1972).

Revocation of pardon. If the Governor determines that a conditionally pardoned convict has violated any of the imposed conditions, the Governor may issue a warrant remanding the person to the institution from which he or she was discharged. That individual must be treated as though no pardon had been granted, except that he or she loses any applicable good time that had been earned. Wis. Stat. Ann. §57.11 (1957 & Supp. 1986).

WYOMING

Overview of State System

Primary authority: Governor. The Governor has full clemency authority in all criminal and penal cases, with certain exceptions and under rules and regulations prescribed by law. Wyo. Const. Art. 4, §5 (1977).

The Governor's authority has been upheld by the courts, which have found that commutations are matters within the constitutional prerogative of the executive department and do not concern the court. Kennedy v. State, 595 P.2d 577 (Wyo. 1979).

Reports required. The State Constitution requires the Governor to report to the legislature at each regular session each case of reprieve, commutation, pardon, and remission of fine granted, stating the name of the convict, the crime of conviction, the sentence and its date, and the date of the remission, commutation, pardon, or reprieve with the reasons for granting. Const. Art. 4, §5.

Types of clemency. The State Constitution empowers the Governor to remit fines and forfeitures and to grant reprieves, commutations, and pardons after conviction for all offenses except in cases involving treason or impeachment. Const. Art. 4, §5. This authority extends to cases involving both juveniles and adults. Wyo. Stat. §§25-3-06, 25-4-103 (1977 & Supp. 1986). The legislature may regulate the manner of applying for the remission of fines, pardons, commutations, and reprieves. Art. 4 §5. See also Restoration of civil rights below.

Substantive limitations--crimes not pardonable. The Constitution does not empower the Governor to grant clemency in case of convictions on impeachment. Also, upon conviction for treason, the Governor may only suspend the execution of sentence until the case is reported to the legislature at its next regular session, when the legislature must either grant a pardon or commute the sentence, direct the execution of the sentence, or grant further reprieve. Const. Art. 4, §5.

Administrative Process

Procedures for clemency review. Any person convicted of a felony may apply to the Governor for a pardon. The application must contain the name of the applicant, the offense of conviction, the date of the conviction, the sentence imposed, the sentence served, any subsequent arrests, criminal charges, convictions or sentences, and other pertinent information such as parole and work release rewards. §7-13-805(a) (Supp. 1986).

Notice requirements. At least 3 weeks before the Governor reviews an application for clemency, he or she must give notice of the application to the district attorney of the county where the applicant was indicted. §7-13-805(b). Within 10 days after receiving the notice, the district attorney must forward to the

Governor a statement stating the time of the trial and conviction, the date and term of the sentence, the crime of conviction, and any extenuating circumstances. §7-13-806.

However, if a physician certifies to the Governor that the applicant for pardon is in imminent danger of death and the warden of the penitentiary recommends that the Governor pardon the person, the notice requirements of §§7-13-804 to 7-13-806 do not apply. §7-13-807.

Procedures upon grant of clemency. It is incumbent on the Governor, immediately upon granting any pardon, to notify the secretary of the State Board of Parole of the clemency action taken. §7-13-106.

Restoration of civil rights. When a convicted felon has completed his or her sentence or probation period, that individual may apply to the Governor for a certificate that restores the rights lost pursuant to Wyo. Stat. §§6-1-104, 6-10-106. §7-13-107 (Supp. 1986).

Special Clemency Issues and Laws

Capital cases. If a convict sentenced to death appears to be insane, the sheriff must notify a district court judge to summon a jury of 12 impartial persons to inquire into the prisoner's sanity at a time and place fixed by the judge. The sheriff also must give immediate notice to the prosecuting attorney. §7-13-901. The judge, the clerk of the court, and the prosecuting attorney are required to attend the inquiry. The finding must be in writing and signed by the jury. If the convict is found insane, the judge must suspend the execution until the sheriff receives a warrant from the Governor directing the execution. §7-13-902.

Expungement of records. According to judicial interpretation, if a court, under its inherent powers, expunges the criminal record of someone who was not pardoned and whose conviction was without error only for the purpose of restoring civil rights, it amounts to an encroachment on the power of the executive branch. Stanton v. State, 686 P.2d 587 (Wyo. 1984).

Section III

CLEMENCY SURVEY RESULTS: ISSUES AND CONCERNS

This section of the Guide discusses the clemency authority in the United States as it is actually practiced, based on a National Governors' Association survey of the 56 States and territories profiled in the Guide. The survey was designed to generate information on the day-to-day operations of State clemency processes and to complement the State profiles by providing another view of clemency in the United States. Also discussed in this section are the results of a short followup survey of the States concerning clemency-related investigations conducted at the request of officials from other States.

The Clemency Survey comprises three parts. Part I, Organizational Issues, sought quantifiable information on the clemency applications, received and approved by clemency type, and on who, in practice, is involved in the clemency decisionmaking process. Part II, Clemency Use and Impact Assessment, elicited more specific information on the clemency investigation process and underlying reasons for granting clemency, the proportion of annual prison releases made through clemency, the types of crimes clemency recipients committed, and sentence reductions for individuals released in various offense categories. Part III, Operational Issues, sought objective data relating to clemency staffing and budgets, and subjective information concerning the clemency decisionmaking process, policy goals, and emerging issues relating to clemency. Appendix C contains a copy of the survey instrument.

While the primary purpose of the survey was to generate useful, quantifiable information for the Guide and to identify important issues for clemency decisionmakers, the findings also were a useful check on the accuracy of the profiles. Readers may note certain differences between survey results and profile findings. For example, while State law may allow a Governor to grant pardons, commutations, remissions of fines and forfeitures, and reprieves, in practice only grants of pardon and commutation are made. Or, while State law may authorize a Governor to establish a clemency advisory body, the Governor may not actually do so.

Of the 56 surveys mailed to the States and territories, 36 were returned in time for inclusion in this section. In reviewing the responses, it is essential to consider the differences in State reporting practices. While some States maintain detailed records of information the survey sought, others kept only partial records or none at all. Thus, the findings must be interpreted in light of this limitation. Another limitation results from States using different terms to describe the various types of clemency. For example, what one State may call "conditional pardon" may be considered "commutation" in another. Therefore, the basis for comparing feedback on the number and types of clemency applications received and granted is not as solid as desired. However, the numbers do provide a general framework for States to use to compare their practices.

Survey Findings

The survey responses revealed differences in the implementation of the clemency process throughout the United States. Although in Section II of the Guide, States and territories are categorized into three broad groups based on their primary clemency authority (Governor, board, or combination), striking differences occur in the way the clemency authority is actually carried out, the number of applications received and granted, the reasons for granting clemency, the number of people involved in the clemency process, and State clemency policies and philosophies.

Organizational Issues

Of the 36 states that responded to the survey, all offer pardons, 23 offer reprieves, 35 offer commutations, and 18 offer remissions of fines and forfeitures. Some states offer additional types of clemency; for example, the Florida clemency authority is empowered to grant the specific authority to own and possess a firearm, automatic restoration of civil rights, restoration of Florida civil rights, and restoration of resident rights. Minnesota offers a pardon extraordinaire and expungement of records. North Dakota's pardoning authority will restore good time, remove mandatory sentences, and transfer inmates to a Federal medical facility. Table 2 offers a look at which States offer what types of clemency.

While most States use their authority to grant pardons and commutations rather sparingly, there is great variation in the numbers of applications States receive, review, and grant. Between 1981 and 1986, Georgia and South Carolina granted more pardons than any other respondent--664 and 659, respectively, while North Dakota and Minnesota granted 1 pardon and Rhode Island, which currently does not use its clemency authority, granted none. During the same time period, Wyoming granted more than 593 commutations, followed by Georgia with 196. On the low end of the scale were Arkansas, Hawaii, Minnesota, and North Dakota, granting two commutations each, and Rhode Island and Virginia which granted none. The number of pardon applications received between 1981 and 1986 ranged from 238 in South Carolina to 3 in Minnesota and 0 in Rhode Island.

In 1986, each State granted an average of 21 pardons and 13 commutations. See Table 3 for more information on the number of pardons and commutations granted and applications received in 1986. Also included in Table 3 is the annual average number of inmates released on parole, as provided by the States. Table 4 provides information on clemency applications and grants for the years 1981 through 1986.

Table 2. Types of clemency available in each State according to survey results[1]

State	Pardon	Reprieve	Commutation	Remission	Other
Alaska	●		●	●	
Arkansas	●		●		
California	●	●	●		
Colorado	●	●	●		
Delaware	●	●	●	●	
Florida	●	●	●	●	●
Georgia	●	●	●	●	●
Hawaii	●		●		
Idaho	●	●	●	●	
Kentucky	●		●	●	
Louisiana	●		●	●	●
Maine	●		●		
Maryland	●	●	●	●	
Massachusetts	●		●		
Minnesota	●	●	●		●
Missouri	●	●	●	●	
Montana	●		●		
Nebraska	●	●	●	●	●
Nevada	●		●		●
New Hampshire	●	●	●		
New Jersey	●		●	●	●
New York	●	●	●		
North Carolina	●	●	●	●[2]	
North Dakota	●	●	●	●	●
Ohio	●	●	●		
Oregon	●	●	●	●	
Pennsylvania	●		●		
Rhode Island	●	●			
South Carolina	●		●		
South Dakota	●	●	●	●	
Tennessee	●	●	●		●
Vermont	●				
Virginia	●	●	●	●	●
Washington	●	●	●	●	●
West Virginia	●	●	●	●	●
Wyoming	●	●	●	●	●

NOTES: 1. Survey results may differ from information in Section II since Section II is based on existing clemency law and court rulings, and survey results are based on respondents' understanding of and experience with the law.

2. Fines not paid may be pardoned, not "remitted."

Table 3. Pardon and commutation applications received, recommended, and granted in 1986, and the average number of inmates paroled annually[1]

State	Applications received		Applications recommended for approval		Applications approved		Average annual parole releases
	Pardon	Commutation	Pardon	Commutation	Pardon	Commutation	
Arkansas	86	190	37	18	42	1	1,745
California	213		192	0	49	0	0
Colorado					6	9	1,907
Delaware	59	9	46	0	18	1	441
Florida					57	4	1,453
Georgia					127	27	9,000
Hawaii	16	1	16	1	16	1	213
Idaho	4	172			1	7	240
Louisiana		1,493	40	133	NA[2]	NA[2]	
Maine					0	0	
Maryland	167		28		27	118[3]	0
Massachusetts	100	35	47	2	32	2	1,313
Minnesota	3	24			0	0	1,270
Missouri	168	7	8	0	8	0	1,737
Montana	11[4]		7	1	7	1	299
Nebraska	17	51	12	3	11	3	
Nevada	10	157	10	11	8	8	
New Hampshire	18				2		188
New Jersey	14	70			4	5	
New York	1[5]	264[5]					
North Carolina	37	272	12	3	12	3	
North Dakota	3	0	0	0	0	0	239
Ohio	56	312	6	36	4	5	
Pennsylvania	31	83	14	20	2 – 9[6]	1 – 7[6]	3[10]
Rhode Island[7]							411
South Carolina	238				180	4	1,135
South Dakota[8]	13	180	6	6	5	2	
Vermont	16		7		6		160
Virginia					2		2,500
Washington	75	0	2	0	2	0	
West Virginia	212[9]				3	13	490
Wyoming	45		40		40	123	165

NOTES:
1. Information for Table 3 (and others) was not provided by every respondent. Thus, only States that furnished information in the format requested appear in the table.
2. Data not available.
3. Includes Christmas commutations.
4. Montana received a total of 11 clemency applications in 1986, but did not break down the figure further.
5. Indicates the number of applications accepted for review.
6. Final outcome was unavailable.
7. Rhode Island does not currently use its clemency process.
8. Information provided pertains to fiscal year 1986.
9. West Virginia received a total of 212 clemency applications in 1986, but did not break down the figure further.
10. Via commutation.

Table 4. Pardon and commutation applications received, recommended for approval, and granted, 1981 through 1986 (unless specified otherwise)

State	Applications received		Applications recommended for approval		Applications approved	
	Pardon	Commutation	Pardon	Commutation	Pardon	Commutation
Arkansas[1]	271	190			113	2
California	1,261	NR[2]	113		290	0
Colorado					54	98
Delaware	278	129	215	28	178	18
Florida					411	22
Georgia					664	196
Hawaii	117	2	80	2	80	2
Idaho[3]	20	313			10	23
Louisiana		6,848	219	502	NA[4]	NA[4]
Massachusetts	675	262	358	23	315	12
Maryland[5]	600		214		227	503[6]
Minnesota	19	113			1	2
Missouri	826	159	102	114	102	114
Montana	71[7]		45	4	42	3
Nebraska	115	175	83	19	75	11
Nevada	46	657	44	41	40	29
New Hampshire	96				16	
New Jersey	59	186	16	11	31	36
New York	1[8]	1,489[8]				
North Carolina[9]	138	734	29[10]	6[10]	51	6
North Dakota	17	35	1	3	1	2
Ohio[11]	165	859	22	83	21	17
Pennsylvania	301	682	124	128	44 – 51	11 – 18
Rhode Island[12]						
South Carolina	788				659	13
South Dakota	91	1,106	38	63	35	28
Tennessee					26	188
Vermont	81		22		15	
Virginia					67	
Washington	537	5	5	5	5	5
West Virginia					43	28
Wyoming	91		65		72	593[13]

NOTES:
1. Data is for 1983–1986.
2. No record kept.
3. Data is for 1984–1986.
4. Data not available.
5. Data was not provided for 1984.
6. Includes Christmas commutations.
7. Indicates total applications received.
8. Applications accepted for review.
9. Data is for 1984–1986.
10. Data is for 1985–1986.
11. Data is for 1984–1986.
12. Rhode Island does not use its clemency procedures.
13. 1981 data incomplete.

Clemency Use and Impact Assessment

Responses to the survey question pertaining to the underlying reasons for clemency grants and the offenses of individuals receiving favorable clemency action varied. Many States did not provide this information, some provided portions of the information, and others failed to provide information clearly.

Between 1981 and 1986, the most common reasons for granting clemency were illness, evidence of rehabilitation, and a combination of reasons. Least likely to be a factor in a grant of clemency were applicant's race and age, laws requiring an automatic review of inmates, and law enforcement needs. See Table 5 for a breakdown of the responses to reasons for granting clemency.

Table 6 reveals the approximate percentage of individuals receiving favorable clemency action for capital offenses, crimes against persons, property crimes, drug-related offenses, and others. Responses varied greatly to this question, with 89 percent of clemency grants in New York being for drug-related offenses (resulting from changes in laws that would have negated the sentences if in effect when these individuals were convicted), 100 percent of clemency grants in Montana for crimes against persons, 80 percent of grants in Nevada for capital offenses, and 82 percent in Missouri for property crimes. While few States were able to provide average estimated sentence reductions for individuals released in these offense categories, those who did respond provided a range of answers shown in Table 7.

Twenty-three States reported that a hearing board sits to review applications and 12 said such a board was not involved in the clemency process. In some States, investigations into clemency applications are conducted by corrections departments, while in others the responsibility is delegated to the parole board or the Governor's staff. Twenty-six States said they have formal criteria to use in making clemency decisions, while 9 said they do not. See Table 8 for more details on these three issues.

Operational Issues

While many States were unable to separate the clemency budget from the Governor's budget, the largest amount of money spent annually on clemency appears to be in Georgia, whose FY 87 clemency budget is $2.6 million. The number of staff who work on clemency issues also varies from State to State, with Georgia in the lead. See Tables 9 and 10 for more information on clemency budgets, staffing, and salary levels.

Difficult aspects of the clemency decisionmaking process. Difficult aspects fell into four main categories: practical concerns regarding clemency decisions, philosophical concerns regarding clemency decisions, victims' rights, and public opinion.

Table 5. Reasons underlying decisions to grant clemency, 1981–1986

State	Due to automatic review	Applicant characteristics			To remedy unjust imprisonment	After legislative change	Evidence of rehabilitation	To aid law enforcement	Combination of reasons	Other
		Age	Race	Illness						
Alaska		1		[1]			1–2	1	[1]	To make eligible for parole nonparole eligible sentences
Arkansas									2	
California							290			
Colorado				5				1		Prevent inmates' return to the State
Florida				13			All[2]			
Georgia				1,308	196					
Idaho				1					6	
Hawaii							80		80	Job requirement For admission to medical school
Louisiana									378	
Maryland					1					
Massachusetts				3	2		327	327	327	
Minnesota									2	To make eligible for parole
Missouri							213		3	
Montana							2			
Nebraska				1	1		84			
Nevada		1		6	1		21		29	
New Jersey				7						Christmastime reward of model inmates
New York				4		21			31	
North Carolina[3]				2	5			3		Pardons of witnesses in Federal court vote-buying case
North Dakota				2			14			
Ohio[4]							51		51	
Pennsylvania				1			56		56	
South Carolina	14									
South Dakota				1			[5]		63	
Vermont										Time since offense; social behavior since conviction; employment, benefit to society
Virginia				4	2	4			57	
Washington									5	
West Virginia				32		45[6]				Crowding with award of extra good time
Wyoming		6		1			59		8	Crowding

NOTES:
1. The response was "a few."
2. Except for automatic restorations of civil rights.
3. Data are for 1985–1986.
4. Data are for 1984–1986.
5. Almost all.
6. Good-time law.

Table 6. Approximate annual percentage of individuals receiving favorable clemency action for specific offense categories

State	Capital offenses	Crimes against persons	Property crimes	Drug related	Other
Arkansas			<1		
California		10	10	75	5
Colorado		25	75	80[1]	
Hawaii		10	70	10	10
Idaho	28.5	28.5	28.5	14.5	
Massachusetts[2] (commutations)	61.4	4.0	4.0		30.6
Massachusetts (pardons)	.5	14.5	37.5	10.5	37
Missouri		18	82		
Montana		100			
Nevada		18	1	1	
New York	80	9	2	89	
North Carolina		5	15	5	75
Ohio		52	25	15	8
Pennsylvania		10	80	5	5
Vermont		13	60	27	
West Virginia		38.4	25.9	13.4	22.1
Wyoming	10	30	30	25	5

NOTES: 1. Most of the offenses are drug related in addition to being property crimes or crimes against persons.

2. Massachusetts broke down its percentages for commutations and pardons—thus, the two entries.

Table 7. Average estimated sentence reduction (in years) for individuals released in specific offense categories

State	Capital offenses	Crimes against persons	Property crimes	Drug related	Other
Arkansas			.5		
Idaho[1]					
Massachusetts	From life to 23 yrs.	From 3–5 yrs. to 2 yrs.	From 3–5 yrs. to 2 yrs.		Time served[2]
Nebraska	From life to 35–60 yrs.				
Nevada	10+	7	N/A[3]	N/A[3]	
New York		5	.7	6.5	
North Carolina		3.5	1	.5	
North Dakota	30	5 – 7	2.5	3.0	
Ohio		9		7 months	6[4]
South Carolina[4]					

NOTES:
1. Idaho provided the following average sentence reductions for specific offenses: Murder II—a consecutive escape commuted to concurrent with the murder reduced from 15 years to 9 years; robbery—a consecutive aggravated assault commuted to concurrent with the robbery; involuntary manslaughter—reduced from 7½ years to 4½ years; grand theft—reduced from 3 years to 2 years 9 months; issuing account-closed check—3-year sentence reduced to 2 years 11 months; (1) delivery of cocaine and (2) possession with intent to deliver—(1) commuted from fixed to indeterminate 5 years and (2) changed from consecutive to concurrent.
2. For carrying a firearm without a license, and criminal contempt of court.
3. Addressed by Parole Board.
4. For forgery.

Table 8. Data on hearing boards, clemency investigatory bodies, and clemency guidelines

State	Does a hearings board sit to review applications in your State?	Who investigates clemency requests?	Is your State's clemency procedure governed by regulations, administrative procedures, or formal criteria for evaluating clemency applications?
Alaska	yes	Parole Board staff	no
Arkansas	yes	Department of Corrections	yes
California	yes	Board of Prison Terms	yes
Colorado	yes	Governor's staff	no
Delaware	yes		yes
Florida	yes	Parole and Probation Commission	yes
Georgia	no[1]	State parole officers	yes
Hawaii	no	State parole officers	yes
Idaho	yes	Commission for Pardons and Parole staff, with assistance of social workers	yes
Louisiana	yes	Board of Pardons staff	yes
Maine	yes	Department of Corrections	yes
Maryland	yes	Division of Parole and Probation	yes
Massachusetts	yes	Board of Pardons (Parole Board)	yes
Minnesota	no	Secretary to the Board of Pardons	yes
Missouri	yes	Probation and parole field officers	yes
Montana	no	Board of Pardons staff; field service	yes
Nebraska	yes	Administrative assistant, Board of Pardons	yes
Nevada	yes	Prison staff; parole officers[2]	yes
New Hampshire	no	Attorney General solicits views of prosecutor and sentencing judge; The Commissioner of Corrections prepares a report if the individual is in custody	no
New Jersey	yes	State Parole Board executive clemency investigator	yes
New York	yes[3]	Executive Clemency Bureau and Division of Parole staff	yes
North Carolina	no	Legal counsel; Parole Commission	no
North Dakota	yes	Clerk of Pardon Board and clerk's staff	yes
Ohio	yes	Ohio Parole Board	yes
Oregon	no	Governor's legal counsel	yes
Pennsylvania	yes	Department of Correction; Board of Parole	yes
Rhode Island	no	N/A	no
South Carolina	yes	Probation and parole field officers	yes
South Dakota	yes	Board of Pardons and Paroles staff prepares report; Board conducts interviews	no
Tennessee	yes	Data not provided	yes
Vermont	no	Probation and parole officers	yes
Virginia	no	Parole board; Secretary of Commonwealth	yes
Washington	yes	Board members; assigned staff	no
West Virginia	no	Probation and parole board	no
Wyoming	no	Attorney General's Office	no

NOTES:
1. Parole board is sole decisionmaker.
2. Inmate applications are investigated by prison staff and community applications are investigated by parole officers.
3. While grants of clemency rest within the sole discretion of the Governor, the Governor utilizes a committee in the Executive Chamber to examine applications and the Governor rarely grants clemency without first seeking the opinion of the Board of Parole.
4. Not applicable because Rhode Island currently does not use its clemency authority.

Table 9. States' average annual clemency budgets

State	Average operating budget for clemency[1]
Arkansas	Parole Services 1986: $441,078
Colorado	Out of Governor's budget. Volunteer board gets expenses.
Delaware	None
Georgia	FY 87: $2.6 million; FY 88 estimate: $3.3 million
Hawaii	$4,200
Idaho	Commission for Pardons and Parole: $20,000
Louisiana	$248,791
Missouri	$17,401
Nebraska	$400
New York	$5,000[2]
North Dakota	$850
Oregon	Included in Governor's budget.
Pennsylvania	$50,000
South Dakota	Minimal. Costs incurred through parole process.
Washington	Board's travel to meetings.

NOTES: 1. Many respondents were unable to provide budget information as requested. However, in order to provide as much information as possible in Table 9, whatever budgetary information the respondents provided was included.

2. Plus items included in the Parole Division budget.

Table 10. Clemency staffing arrangements and salary levels

State	Number of employees					Average salary levels (in dollars)				
	Administrative	Legal	Investigatory	Clerical	Other	Administrative	Legal	Investigatory	Clerical	Other
Arkansas	8	1	55	17		$24,000	$ 37,000	$17,500	$13,390	
California	1[1]	2[1]	6[1]	1[1]						
Colorado	.10	.02	.10	.10	7 part-time vol. board members					expenses
Delaware	3	1		1	5 board members					
Georgia	47	1	262	145		$38,000	$ 40,000	$30,500	$16,500	
Idaho	2			1					$14,300	
Louisiana		[2]	[3]	3	2 board members					$30,000
Maryland	<2		<2	<1	<2 commissioners					
Massachusetts	1				7 advisory board mem.	$31,100				$43,000
Minnesota	<1			<1		$45,000			$21,000	
Missouri	3	1	3	1		$32,100	$ 40,000	$21,492	$13,560	
Montana	2			1		$31,000			$15,000	
Nebraska	.3			.5		$ 6,430			$ 6,398	
New Jersey		3	1	1						
New York	1		1	1		$45,000		$34,000	$16,000	
North Carolina	1	1	1	1.5						
North Dakota	1		5	1		$36,000		$11,400	$12,000	
Ohio	3	3	Parole Board	Parole Board						
Oregon		.1			.3					
Pennsylvania	2	3	Parole Board	2	2	$30,000	$10,000		$20,000	$10,000
South Carolina	2		[4]	[4]						
South Dakota	.5	.1	.5	1		$30,000	$ 40,000	$25,000	$15,000	
Vermont	2	0	1	1		$30,700		$22,500	$12,000	
Virginia	1	3	1	1						
Washington	.2	.05				$24,000	$ 69,000			
West Virginia	.5			.10		$23,200				
Wyoming	2.5	<1	<1	2.5		$32,500			$13,500	

NOTES:
1. Part-time employees.
2. Department of Corrections attorney assists.
3. State agencies and Department of Corrections assist.
4. Any field officer may be called on.

Most responses fell under the first two categories. Some of the most common practical concerns dealt with predicting future criminality, assessing risk to the public, assessing conflicting accounts of what occurred during the offense, a lack of staff to ensure thorough investigations, the need to review large volumes of requests--many which lack merit--lack of articulated policy, and the difficulty in verifying rehabilitation.

Philosophical concerns included determining how many years served is sufficient, deciding which cases are extraordinary enough to warrant clemency, and striving for fairness while applying subjective criteria to applicants.

Concerns about victims included determining whether victims' rights are being protected, considering victims' input but not being overwhelmed by their views, and determining the proper level of victim involvement in the clemency decisionmaking process.

All these issues are related to another common difficult aspect--dealing with public opinion. Certainly if a pardoned offender commits a murder soon after being released from prison, public opinion is likely to be strongly critical. According to one respondent, it is important to try to balance protection of the public with the need to recognize an inmate's efforts toward rehabilitation.

Policy goals. As reported, the most common policy goals underlying the clemency process were: protecting the public, granting clemency only to individuals whom clemency will help in some practical, material way (e.g., getting a job), rewarding rehabilitation, and granting clemency only in exceptional cases. Other States mentioned victims' rights, preventing prison and jail crowding, following the Governor's strict view of punishing criminals, making punishment equitable statewide, and arriving at consistent decisions based on sound, pertinent facts.

Emerging issues. The most commonly reported emerging issues pertaining to clemency related to prison overcrowding, the death penalty, political/public opinion concerns, victims' rights, and terminally ill inmates/inmates with AIDS.

Prison crowding was mentioned most often, with some States clarifying their views about it. According to one State, "Executive clemency applications should be considered on the individual merits of each case and not on the basis that another space is needed in the prison." On the other side of the issue, another State predicted that "increased numbers at the State institutions will probably make clemency decisions more liberal in the future."

With regard to the death penalty--especially in light of a 1987 Supreme Court ruling that racial discrimination was not a factor in one State's death-row population--several States predicted an increasing and unavoidable involvement in highly controversial death-row situations.

With regard to inmates with AIDS and other contagious diseases, States recognized the need to weigh the danger to the inmate population by keeping infected persons incarcerated versus danger to the general public imposed by releasing such individuals.

Some States reported issues specific to their own situations. For example, one State explained that a new administration has taken over, following 8 years of the most conservative clemency philosophy ever. Thus, "Any gubernatorial philosophy that is more liberal will emerge as a new issue and have an impact on the clemency decisionmaking process in the State."

In Idaho, a Model II State, in 1986 the public voted to grant the legislature the power to pass laws regarding how clemency would be granted. A major bill that would have given final clemency authority to the Governor was defeated. Alaska intends to consider the need for formal regulations and procedures to guide the clemency decisionmaking process. Louisiana identified a need to address an increase in the number of aged and infirm individuals who have been incarcerated and still have more time to serve (i.e., life sentences).

South Dakota is using conditional pardons barring the recipient from returning to the State and is questioning the impact of this practice on other States. In West Virginia, officials are concerned about the impact of a new Jail and Prison Authority. In Arkansas, lifers have no parole eligibility and can only become eligible for release via clemency. And in New Jersey, where drunk driving penalties were recently upgraded, officials are seeing an increasing number of requests for clemency to restore driver's licenses.

Conclusion

Despite the many operational and adminstrative ways States implement the clemency authority, it is clear from the survey responses that the States do share a number of common concerns. It is hoped that the survey results and this Guide will highlight areas of common interest and will facilitate networking among States so they may share successful and unsuccessful clemency strategies to facilitate efficient and effective clemency operations.

Section IV

THE CLEMENCY INVESTIGATIVE PROCESS

Requests for clemency always pose a problem in ensuring that there is sufficient information to reach a decision. Whether a sentence is being commuted or a pardon is being considered, the Governor wants to make sure that a complete and thorough investigation has been conducted. In some States, an existing mechanism such as a Probation and Parole Board conducts the investigation. In other States, the investigation is coordinated, and sometimes actually conducted, by the Governor's office staff.

The clemency investigative process varies from State to State, both in methodology and in thoroughness. This does not present much of a problem for petitioners requesting commutations of sentence, because these people are usually in the custody of the State, and have been since they were incarcerated. Reports on the individual's character and behavior are a part of the general record maintained by State personnel.

An individual petitioning for a pardon usually has not been in the custody of State authorities since serving a sentence and/or paying a fine. In some instances, the individual is not living in the State, or may have lived in several States since release. The investigative process must seek indepth information on the individual from all places of residence.

Typical Elements of a Clemency Investigation

While the level of investigative detail varies from State to State and case to case, there are certain general elements in the process that are worth consideration. The elements discussed are by no means exhaustive or prescriptive, but are offered as suggestions and examples.

Pardons. Since pardons are usually granted to people who are not incarcerated, the investigation normally reviews information concerning the trial, the official transcript, and the records to assess the petitioner's behavior while incarcerated, and assesses the petitioner's actions since release.

The subsequent arrest record of the petitioner is a major concern. This is usually given a great deal of weight and, if recent and serious, could automatically preclude a favorable recommendation. Minor traffic offenses may not be considered serious unless they are multiple offenses that may show a disregard for authority and the rights of others.

Another assessment sometimes considered is the financial condition of the petitioner. Does this person have a bank and/or savings account?

Another point of consideration is the petitioner's employment history. Does the individual have a consistent employment record? What does the employer say about character and work habits? Also, community activities may be reviewed. Who are the person's associates and what do they say about the petitioner's

character and community service? Neighbors and associates usually give a clear picture of a person's behavior. Has the petitioner attempted to advance in education? If so, what grades have been earned? What does the teacher say about the person's character? Does the petitioner have a military record?

Finally, the petitioner's future plans, if a pardon is granted, may be of importance. How will the pardon help accomplish those plans and goals?

Commutation. A commutation of sentence substitutes a new lesser punishment for the original sentence. Because the petitioner is in the custody of the State, this investigation is somewhat different from that of a pardon. In most States, the parole process and/or the sentencing structure addresses most sentence reduction activity. One major exception, however, is the request for commutation of a death sentence. Investigation reports in capital cases are far more extensive than other clemency applications.

Because most of the information is a part of the State's record, investigations on petitioners for commutation may be easier to conduct. Some areas of investigation are: disparity of sentence; prison adjustment; prior record; release plan; concerns of victims; and public opinion.

In the area of disparity of sentence, the executive takes care not to give the appearance of second guessing the court. The courts usually make every effort to keep sentences for similar offenses within certain acceptable limits. However, when it becomes clear that a sentence is disparate, it is usually too late for the court to correct. The recourse is for the executive to commute the sentence in order to clear the disparity.

Good prison adjustment is considered a sign of rehabilitation. The ability to accept authority and regulations is some evidence that an inmate can function in society. A poor prison adjustment may indicate continuous behavior problems that could create concerns after commutation.

Checking prior criminal records may indicate whether the petitioner has learned from past mistakes and could return to society and lead a law-abiding life.

Finally, the petitioner's release plans and how the release will effect others is of interest to the investigator. Lack of a good release plan may be an indicator of future problems. Furthermore, this lack could also cause the sentence to be misunderstood by the public and undermine the objective of the commutation. Careful planning by the petitioner may demonstrate an understanding of past mistakes and a strategy for getting on with life.

Interstate Requests for Clemency Investigations

To assess the impact of interstate requests for clemency investigation, a followup to the original survey was mailed to the States to elicit information about clemency-related investigations conducted at the request of officials from other States. Requesters of such investigations are usually seeking background

information on a clemency applicant who previously lived in the State or confirming background information provided by the clemency applicant.

The number of interstate requests for clemency investigations received annually varied among the 28 States. Twelve States said they do not receive such requests, 7 receive 5 or less requests per year, and 4 States receive 10 requests annually. The remaining 5 respondents do, however, receive a larger number of interstate requests each year--from 25 to 616 requests annually.

Of the States that conduct investigations in response to interstate requests, the level of comprehensiveness of such investigations varied. Eight States said they usually conduct "indepth, detailed, and thorough" investigations, eight perform "somewhat detailed" investigations, and one carries out investigations that are "general in nature."

When questioned about how often they receive out-of-state requests, 4 answered "routinely," 7 said "rarely," 4 said "occasionally," and 10 said "never."

Limitations placed on the release of confidential information (e.g., medical, psychiatric, or juvenile records) varied, with most States requiring a signed release by the clemency applicant. (See Table 11 for specific limitations on interstate requests for information, and for specifics of each State's response to the followup survey.)

In requesting information from another State, inquiries that are specific about the information needed are more likely to be productive than general requests. For example, a letter could well list those elements used in pardon investigations within the State. A sample inquiry asks: "John Doe has applied for a pardon in this State. Please give the following information on him:

- Employment history in your State;
- Arrest record;
- Civil actions against him for financial reasons and/or family support;
- Other information that would influence the decision. Information like this helps the investigators focus on concerns of the inquirer.

Table 11. Interstate requests for clemency investigations

State	No. requests received annually	No. of corresponding investigations	How often do you receive out-of-State requests?				How comprehensive are your investigations?				Limitations placed on release of confidential information
			Annually	Occasionally	Rarely	Never	In-depth	Somewhat detailed	General	Minimal	
Arkansas	10	All			•		•				Any information considered to be public information is released on request.
California	33	33	•					•			Very restrictive in all cases.
Colorado	5	5			•			•			Confidential information is not released without consent of person under investigation.
Georgia	616	All	•					•			Any report by the Georgia State Board of Pardons and Paroles is confidential. The Department of Corrections requires a signed release to provide information pertaining to medical or psychiatric records. The judge decides whether to release juvenile records. A signed release is required where information is provided. Delinquency records are destroyed when the individual reaches age 25.
Hawaii	1	1		•				•			Requires written consent of clemency applicant.
Idaho	5	5		•					•		Psychiatric records may not be released for someone no longer under the custody of the Department of Corrections. Juvenile records may or may not be used.
Kentucky	0										
Maine	5	All		•			•				There are no limitations provided the clemency petitioner acknowledges and signs a waiver for release of required information.
Maryland	Unknown	All		•			•				No information other than that which is a matter of public record is released unless a signed release from the clemency applicant is on file.
Massachusetts	25	All		•				•			Individual under investigation must sign the Cory Release, which permits the release of all information.
Missouri	10	10		•			•				This is not usually called for.
Nebraska	0					•					Any confidential information can be released to criminal justice or law enforcement agencies, including Governors or clemency boards. Available information regarding juvenile records would be provided.
Nevada	1	All			•		•				Confidential information may not be released without appropriately signed releases. Juvenile records can be released only with a court order.
Ohio	0										
Oregon	0					•					Records that are confidential by law would not be disclosed in connection with a clemency investigation.
Pennsylvania	5	All					•				Juvenile records are not released. Psychiatric records are sent only to criminal justice agencies.
Rhode Island	0										
Tennessee	0					•					
Texas	61	All	•				•				Confidential information is not released without a signed release from the person under investigation.
West Virginia	0					•					Depending on the context of the request, a summary of the medical and psychiatric records of adult offenders may be released to State officials. Juvenile records may be released by court order only.
Wyoming	0					•					Signed waivers must be submitted in order for confidential information to be released.

Conclusion

Clemency decisions, whether the responsibility of the Governors, the Governor and a board, or a separate board, can become a major political and media event. However, the petitioner for a pardon or commutation should receive all reasonable and fair consideration that an objective and thorough investigation can ensure. Each case requires an investigative response that will fairly represent the facts and provide a framework for an equitable evaluation and decision.

As a final step, after all the data have been collected and the final decison is imminent, one last check with appropriate law enforcement officials to confirm there are no outstanding criminal charges against the petitioner is essential to prevent public relations problems or political embarrassments. Charges may have been filed during the time the investigation was conducted and the petitioner's application was awaiting action by the Governor, pardon board, or other decisionmaking authority.

Appendix A

GLOSSARY OF TERMS

Amnesty. A general pardon extended by the chief executive to groups of persons, excusing them for their criminal offenses. A grant of amnesty is usually motivated by political reasons and may be limited or conditioned.

Capital cases. Cases involving crimes punishable by the death penalty.

Clemency. A generic term covering several forms of legal processes, including pardon, commutation, reprieve, and amnesty. The power of clemency is usually vested in the chief executive.

Commutation. A reduction of a sentence; a substitution of a lesser for a greater punishment.

Contempt of court. Any person acting in a way that is calculated to embarrass, hinder, or obstruct the court in the administration of justice, or that is calculated to lessen its authority or dignity, may be held in contempt of court.

Ex parte. On one side only; by or for one party; done for, on behalf of, or on the application of one party only.

Ex rel. By or on the information of; used in case title to designate the person at whose instance the government or public official is acting.

Exoneration. To clear from accusation or blame.

Expungement of records. A procedure whereby a court orders the annulment and destruction of records of an arrest or other court proceedings.

Furlough. A temporary release from prison.

Impeachable offense. An offense for which a public official may be charged with wrongdoing while in office.

Pardon. An act of grace and forgiveness that either totally or partially relieves the person pardoned from some of the ramifications of the punishment the law originally inflicted on that individual. Pardons may be unconditional or conditional; the latter type imposes some condition(s) on the recipient, which, if violated, result in the revocation of the pardon.

Parole. The release of a prisoner from imprisonment, but not from the legal custody of the State, for rehabilitation outside of prison walls under such conditions and provisions for disciplinary supervision as the board of parole may determine.

Probation. A legal act allowing a person convicted of an offense to go at large under suspension of sentence, but usually under the supervision of a probation officer.

Remission of fines and forfeitures. Clemency in which the executive authority refrains from exacting fines and forfeitures imposed.

Reprieve. A respite; a postponement of the execution of a sentence, usually granted in order to provide the executive authority with an opportunity for final action on an application for a pardon or commutation. A reprieve does not lessen the severity of the sentence; it merely allows a period of grace after the sentence has begun.

Respite. See Reprieve.

Restitution. An act of making good, or of giving the equivalent for any loss, damage, or injury.

Restoration of civil rights. Often included in a pardon, this process restores rights lost on conviction to the individual; e.g., the right to vote, to serve as a juror, to bear arms, or to hold public office.

Sovereign immunity. A doctrine precluding the institution of a suit against the sovereign (government) without the sovereign's consent.

Treason. Attempting by overt acts to overthrow the government of the State to which the offender owes allegiance, or to kill or personally injure the sovereign or his or her family.

Appendix B

STATE CLEMENCY CONTACTS

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Appendix C

EXECUTIVE CLEMENCY SURVEY

Introduction

The National Governors' Association was awarded a grant by the National Institute of Corrections to conduct a study of the executive clemency decisionmaking process in the States and Territories. The objectives of this study are to examine the constitutional and legal authority, procedures, fiscal implications, organizational structures, and decisionmaking models of the executive clemency process; to explore the roles played by clemency officials from the criminal justice and correctional system; and to disseminate the finding of this project and foster an exchange of ideas about the clemency process.

Purpose of Survey

To assist NGA in this project, please complete the attached survey regarding your State's/Territory's clemency process. The results of this survey effort will provide invaluable information that we will incorporate into the two major products of the product:

- A Guide to Executive Clemency--This publication will examine each State and Territory's legal and constitutional authority regarding clemency, and the impact of and key issues regarding executive clemency (as indicated by the States in their responses to this survey).

- Regional Seminars--These seminars will be conducted with invitations to individuals responsible for the clemency process for the Governors. These seminars will explore alternative clemency management processes, usage of clemency, emerging clemency issues, and other special emphasis topics as identified in your survey responses.

Completing the Survey

Our legal research indicates that there are a variety of clemency decissionmaking systems employed and we recognize that every question may not be applicable, in whole or in part, to your State's/Territory's procedures. In such cases, please indicate N/A, for not applicable or provide clarification or explanation on a separate page(s). doing this will require a response to all questions, but will ensure that no questions were inadvertently not answered.

Response Deadline

Please complete and return the survey by March 16, 1987.

Assistance or Questions

If you have questions or need clarification of any element of this survey please contact:

Nolan Jones
Staff Director
Committee on Criminal Justice
and Public Protection
National Governor's Association
(202) 624-5360

CLEMENCY SURVEY

I. ORGANIZATIONAL ISSUES

I.1 What agency/department/office in your State has primary responsibility for processing general clemency (i.e., pardons, commutations, reprieves) applications?

Agency Name: _____

Address: _____

_____

Contact person: _____

Telephone: (_____) _____

I.2 What types of clemency are available in your State? (check all that apply)

_____ a. Pardon
_____ b. Reprieve
_____ c. Commutation
_____ d. Remission of fines or forfeitures
_____ e. Other (please specify) _____

_____

_____

I.3 Please fill in the table below with data pertaining to general clemency applications:

	Number of Applications Received--By Clemency Type	Number of Applicatons Recommended for Approval--By Clemency Type	Number of Applications Approved--By Clemency Type
1981			
1982			
1983			

1984 _____

1985 _____

1986 _____

Comments (if any): _____

_____

I.4 Do any other offices/agencies/departments in your State process clemency applications prior to review and action by final authority?

_____ yes _____ no

If yes,

Agency Name: _____

Address: _____

_____

Contact person: _____

Telephone: (_____) _____

Briefly describe the role and function of this department: _____

_____

_____

_____

_____

II. CLEMENCY USE AND IMPACT ASSESSMENT

II.1 How many clemency applications were granted for each of the following categories for years 1981 to 1986?

a. Granted as a result of automatic review of certain types of cases (i.e. death penalty cases)

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

b. Granted on basis on applicant characteristics

1. Age (minor or over 60 at time of conviction)

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

2. Race (e.g., disproportionate sentence due to race)

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

3. Serious illness or medical condition (including mental disability/illness)

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

c. Granted to remedy unjust imprisonment (i.e., recantation by witnesses)

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

d. Granted after legislative changes (e.g., repeal of criminal law/ reduction in sentence severity)

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

e. Granted with evidence of rehabilitation

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

f. Granted to aid law enforcement

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

g. Granted for a combination of reasons

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

h. Granted for other reasons (please specify) _____

_____

_____

1981	_____	1984	_____
1982	_____	1985	_____
1983	_____	1986	_____

II.2 Does a hearings board sit to review applications in your State?

_____ yes _____ no

II.3 Who investigates clemency requests (i.e., prepares reports for review, conducts necessary interviews, etc.)?

_____

II.4 What is the average number of persons released per year under the following conditions?

_____ a. Supervised release (parole)

_____ b. Unconditional release

_____ c. Sentence reduction (including commutations from death to life imprisonment)

_____ d. Other (please specify) _____

_____

_____

_____

II.5 Please provide approximate annual percentage of individuals receiving favorable clemency action for the following offenses:

Percent

_____ a. Capital offenses
_____ b. Crimes against persons
_____ c. Property crimes
_____ d. Drug-related offenses
_____ e. Other (please specify) _____

Total: 100 percent

II.6 What was the average estimated sentence reduction for individuals released in the following offense categories? (NOTE: In computing sentence reduction, please use your State's historical and/or presumptive sentence to estimate the expected time to be served were clemency not granted.)

_____ a. Capital offenses
_____ b. Crimes against persons
_____ c. Property crimes
_____ d. Drug-related offenses
_____ e. Other (please specify) _____

_____

III. OPERATIONAL ISSUES

III.1 Please describe staffing required to conduct all aspects of the clemency process:

Type of Employee	Number of Full-Time Equivalent Staff	Average Salary Levels
Administrative	_____	_____
Legal	_____	_____
Investigative	_____	_____
Clerical	_____	_____
Other: (please specify)	_____	_____

_____

_____

III.2 Please describe major staff reductions or increases, if any, for the years 1981 through 1986. _____

_____

III.3 What is your State's average operating budget for processing clemency applications, excluding salaries (e.g., office equipment, supplies etc.)?

_____

_____

III.4 Is the clemency procedure or policy in your State governed by regulations, administrative procedures, or formal criteria for evaluating clemency applications? _____ yes _____ no

If yes, please submit a copy of the regulations/procedures/evaluation criteria when returning your completed survey.

III.5 What do you consider the most difficult aspects of the clemency decision-making process?

III.6 Are there any broad policy goals underlying clemency decisions in your State? _____ yes _____ no

If yes, what are they? _____

III.7 In your opinion, what are the current and emerging issues likely to impact the clemency decisionmaking process in your State?

Please return completed surveys (and clemency procedures, if applicable) by March 23, 1987 to:

Nolan Jones
Staff Director
Committee on Criminal Justice and
Public Protection
National Governors' Association
444 North Capital Street NW.
Washington, DC 20001

Phone: 202-624-5360

GUIDE TO EXECUTIVE CLEMENCY AMONG THE AMERICAN STATES

THE NATIONAL GOVERNOR'S ASSOCIATION CENTER FOR POLICY RESEARCH

MARCH 1988

This project was supported by grant number GM-1 from the National Institute of Corrections, U.S. Department of Justice. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the U.S. Department of Justice.

Addendum to Clemency Survey

In followup to the Survey on Executive Clemency you recently submitted to NGA, please complete the following questions regarding clemency-related investigations your office conducts at the request of an official from another State.

1. How many requests for clemency investigations from other States do you receive annually? _____

2. For how many of these requests do you actually conduct requests? _____

3. In your opinion, how often does your office receive out-of-State requests?

   _____ Routinely _____ Occasionally

   _____ Rarely _____ Never

4. How would you describe the comprehensiveness of the investigations you perform for other States?

   _____ Indepth, detailed, thorough _____ Minimal
   _____ General in nature _____ Somewhat detailed

5. What limitations, if any, does your State place on the release of confidential information such as medical or psychiatric records or closed records such as juvenile records?

   _____

   _____

Please return by July 31, 1987, to:

Nolan E. Jones, Staff Director
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National Governors' Association
444 North Capitol Street, Suite 250
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Appendix D

SELECTED READINGS

The following recommended readings are suggested in addition to those referenced in Chapter I of the Guide.

Galvin, J. "Prisons and Sentencing Reform." Crime and Delinquency V 29, N 4 (October 1983).

Joyner, C.C. "Rethinking the President's Power of Executive Pardon." Federal Probation, V 43, N 1 (March 1979).

Lufler, H.S., Jr. Executive Clemency in Wisconsin--Who Receives Clemency and Seeks Access to the Process. Sponsored by the Wisconsin Council on Criminal Justice, Madison, Wisconsin. Publication date unknown.

Martin, S.E. "Commutation of Prison Sentences--Practice, Promise, and Limitation." Crime and Delinquency, V 29, N 4 (October 1983).

"Matter of Life and Death--Due Process Protection in Capital Clemency Proceedings." Yale Law Journal, V 90, N 4 (March 1981).

Renninger, P. Study of Recidivism Among Individuals Granted Executive Clemency in Pennsylvania, 1968-1981. Pennsylvania Commission on Crime and Delinquency (1982).

Rideau, W., and B. Sinclair. "Life--No Rhyme, No Reason." Angolite, V 7, N 5 (September/October 1982).

Sandhu, R.K., and L.K. Jones. Pardon, Parole and Probation-M-Bibliography. Vance Bibliographies (1979).

Sebba, L. "Clemency in Perspective." from Criminology in Perspective--Essays in Honor of Israel Drapkin by S.F. Landau and L. Sebba. Heath Lexington Books (1977).

Stafford, S.P. Clemency--Legal Authority, Procedure, and Structure. Sponsored by the U.S. Department of Justice. National Center for State Courts (1977).

Strauss, W.A., and L.M. Baskir. "Controlling Discretion in Sentencing--The Clemency Board as a Working Model." Notre Dame Lawyer, V 51, N 5 (July 1976).

"Voters Against the Prison Construction Budget." Prison and Jail Overcrowding in New York State (1982).

*U.S.GOVERNMENT PRINTING OFFICE:1988-202-046:82208

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Please complete and mail this self-addressed, postage-paid form to assist the National Institute of Corrections in assessing the value and utility of its publications.

1. What is your general reaction to this document?

   _____Excellent _____Good _____Average _____Poor _____Useless

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Developing or implementing new programs	___	___	___
Modifying existing programs	___	___	___
Administering ongoing programs	___	___	___
Providing appropriate liaisons	___	___	___

3. Do you feel that more should be done in this subject area? If so, please specify what types of assistance are needed.

4. In what ways could the document be improved?

5. How did this document come to your attention?

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   _____ Jail
   _____ Probation
   _____ Parole
   _____ Community corrections
   _____ Court
   _____ Governor
   _____ Legislative body
   _____ Professional organization
   _____ College/university
   _____ Citizen group
   _____ Other government agency
   _____ Other (please specify)

   _____ Federal _____ State _____ County _____ Local _____ Regional

8. OPTIONAL:

   Name: _____ Agency _____

   Address: _____

   _____

   Telephone Number: _____

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