

120 CMR: PAROLE BOARD

120 CMR 900.00: EXECUTIVE CLEMENCY: GENERALLY

Section

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900.01: Advisory Board of Pardons: General Provisions

(1) The Advisory Board of Pardons shall review petitions for executive clemency, conduct hearings, and make recommendations to the Governor regarding petitions for executive clemency.

(2) The Advisory Board of Pardons shall be directed by the Governor's Executive Clemency Guidelines in its consideration of petitions for executive clemency. The petitioner must prove the merits of the petition by clear and convincing evidence, as defined in 120 CMR 100.00: *Definitions*.

(3) An Advisory Board member shall abstain from voting on petitions for executive clemency on the basis of personal involvement in the case which may present the appearance of impropriety or might prevent that member from making an impartial recommendation.

(4) Upon receipt of a petition for executive clemency, the Advisory Board of Pardons shall notify interested parties pursuant to M.G.L. c. 127, § 154.

(5) A petition for executive clemency shall be reviewed administratively by the Advisory Board of Pardons for compliance with relevant Massachusetts General Laws and the Governor's Executive Clemency Guidelines. If the petition does not substantially comply with the criteria set by statute and the Governor's Executive Clemency Guidelines, the Advisory Board of Pardons shall forward the petition to the Governor with a recommendation that the petition be denied and a statement of the reasons therefor. The Advisory Board of Pardons shall notify the petitioner of its recommendation.

(6) If a petition is deemed to be in compliance after the administrative review, the Advisory Board of Pardons shall conduct a preliminary investigation and prepare a case summary concerning the petitioner's criminal, social, and institutional histories, and any other facts deemed relevant to the merit of the petition.

(7) The Advisory Board of Pardons shall review the petition, case summary, any supporting documentation, and investigatory materials. After such review, the Advisory Board of Pardons may recommend denial of the petition or approve the scheduling of a hearing on the merits of the petition. Where investigation reveals that the petition does not substantially comply with the criteria set by statute and the Governor's Executive Clemency Guidelines, the Advisory Board of Pardons shall forward the petition to the Governor with a recommendation that the petition be denied and a statement of the reasons therefor.

900.02: Notice of Hearing

(1) Where the Advisory Board of Pardons determines a petition merits a hearing, the Advisory Board of Pardons will notify the Governor, in writing, of its intention to hold a hearing.

(2) The Advisory Board of Pardons shall also notify the following parties of the hearing:

(a) the Attorney General of the Commonwealth;

(b) the Chief of Police of the municipality in which the crime was committed, if such can be ascertained;

(c) the District Attorney in whose district sentence was imposed;

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- (d) the Secretary of Public Safety and Security; and
- (e) if the petitioner is incarcerated in a state facility, the Commissioner of Correction; or if the petitioner is incarcerated in a county facility, the county Sheriff, or his or her designee.

(3) Victims shall be notified of a hearing as provided in 120 CMR 400.00: *Victim Input and Notification of Parole Hearings and Decisions*.

### 900.03: Hearing Process

(1) The burden shall be on the petitioner to show, by clear and convincing evidence, that executive clemency relief is appropriate. *See* 120 CMR 100.00: *Definitions*.

(2) The hearing process shall be a public proceeding as outlined in 120 CMR 301.06(2).

(3) At an executive session scheduled after the hearing, the Advisory Board of Pardons shall determine, by a majority vote, what recommendation to make to the Governor. Dissenting Advisory Board members may submit minority opinions for consideration by the Governor.

(4) The Advisory Board of Pardons shall submit its recommendation and supporting documents to the Governor expeditiously after forming a recommendation. The Advisory Board of Pardons shall not disclose its recommendation, either verbally or in writing, until after such recommendation is submitted to the Office of the Governor.

### 900.04: Refiling of a Petition for Executive Clemency

(1) When the Advisory Board of Pardons submits their recommendation to the Governor, the Advisory Board of Pardons shall deem the petition denied from the date of express denial by the Governor, or when the Governor does not render a decision within the timeframe established by the Governor's Executive Clemency Guidelines. The Advisory Board of Pardons shall not accept another petition from the petitioner within one calendar year from the date of the denial.

(2) The Advisory Board of Pardons may waive the refiling restrictions in 120 CMR 900.04(1) if the petitioner demonstrates a material and compelling change in circumstances.

### 900.05: Documents as Public Records

(1) The petition for commutation of sentence or pardon of offenses and all supporting documentation shall be public records upon filing of the petition with the Office of the Governor.

(2) Any supporting documentation or testimony presented at a commutation or pardon hearing shall become a public record upon completion of the hearing. Any documents or testimony submitted subsequent to a hearing, and the Advisory Board of Pardons recommendation to the Governor, shall become public records upon receipt by the Governor of the Advisory Board of Pardons recommendation.

(3) Notwithstanding 120 CMR 900.05(1) and (2), the Advisory Board of Pardons may designate any information as confidential, and such information shall be transmitted to the Governor under seal. Information designated confidential shall not be considered a public record. *See* M.G.L. c. 127, § 154.

## REGULATORY AUTHORITY

120 CMR 900.00: M.G.L. c. 27, §§ 4 through 7; c. 127, §§ 152 through 169.