

Clemency 101

How Sentences Can Be Pardoned or Commuted

BY KENNY LO, BETSY PEARL, AKUA AMANING MAY 4, 2020

What is clemency?

Clemency is a mechanism for granting a person convicted of a criminal offense relief from a court-ordered sentence or punitive measure. There are two main methods through which clemency can be given—pardon or commutation of sentence. A pardon exempts a convicted individual from any remaining punishment or future consequences stemming from a conviction. Commutations reduce an individual's sentence, either fully or partially. Clemency is usually requested through a petition or an application process and can be granted for any number of reasons.

Who has the power to grant clemency?

In general, state constitutions vest the power to grant clemencies in the governor, but the clemency process is different for each state. In most cases, the governor grants clemency with either approval or advice from a state clemency board. Some states, such as Alabama and Connecticut, grant clemencies through an independent board appointed by the governor.

For convictions under federal law, the U.S. Constitution gives the president broad and virtually unlimited power to grant clemency relief. Applications are usually submitted through the Department of Justice and reviewed by the president, but the president may also issue a pardon or commutation independently. Since being sworn into office, President Donald Trump has received more than 8,000 petitions for clemency—either pardon or commutation—yet he has granted only 35.

Why is clemency needed?

Clemency is an important tool for checking the unjust outcomes produced by the criminal justice system. The U.S. Supreme Court has called clemency the “fail safe” of the judicial system, since it empowers chief executives to correct injustices on a case-by-case basis. For example, a president or a governor might pardon a person who was wrongfully convicted of a crime or commute the sentence of a person whose prison term far exceeded the severity of their offense.



How are jurisdictions using clemency?

Several states have recently increased the use of clemency—which had been more common prior to the proliferation of tough-on-crime platforms in the mid-1980s—as part of the overall criminal justice reform movement.

 **Oklahoma** Gov. Kevin Stitt (R) granted pardons or commutations to more than 1,000 people in his first year in office. In 2020, in response to the COVID-19 pandemic, Stitt commuted the sentences of more than 450 people.

 **Washington** Gov. Jay Inslee (D) similarly granted commutations to more than 1,100 people to contain the spread of the coronavirus in state correctional facilities.

 Gov. Andy Beshear (D) of **Kentucky** issued commutations for more than 500 individuals at high risk for serious complications or death if they contracted COVID-19.

Pardons and commutations are not a replacement for comprehensive criminal justice system reform, but the power of clemency can be used to address systemic failures in the absence of legislative change. Most recently, President Barack Obama launched an initiative in 2014 to grant clemency to people serving lengthy prison sentences based on outdated “tough on crime” laws. In all, President Obama pardoned or commuted the sentences of more than 1,900 people, most of whom would have received a much lighter penalty had they been charged with the same offense today.

“Clemency alone won’t solve all the problems of the criminal justice system. But granting people relief from extreme sentences—if they are provided the support to re-enter society as I was—can help make amends for a punitive culture.”

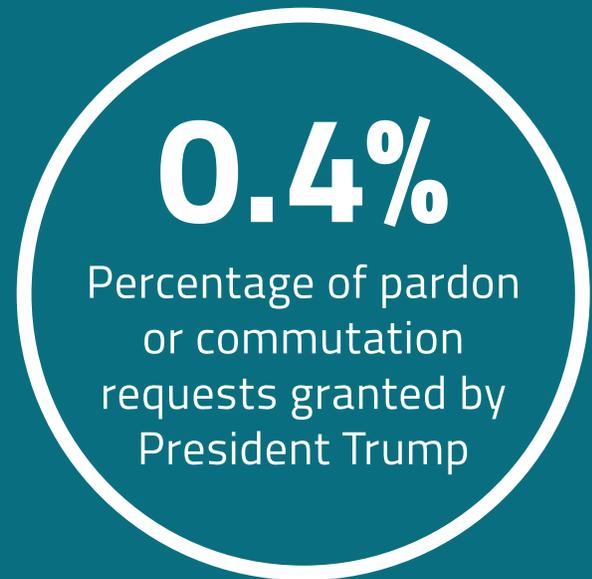
—JASON HERNANDEZ, OBAMA CLEMENCY RECIPIENT

What are the concerns and controversies?

The president has virtually unlimited authority to grant clemency for federal crimes, which can raise concerns about misuse of power. Throughout history, presidents have created controversy by granting clemency to divisive public figures and have been scrutinized for using their powers of clemency to benefit their personal contacts and political allies.

Academics and advocates have also expressed concern about the underutilization of clemency as a tool to provide sentencing relief. In recent decades, the numbers of pardons and commutations have dwindled. Most modern presidents and governors have shied away from using their powers of clemency, in part to protect against attacks from political opponents. At the same time, clemency has become one of the few remaining avenues for remedying unjust sentences, as many jurisdictions have restricted the use of parole. As Rachel Barkow, professor at the New York University School of Law, has noted, “[T]he question of how to reinvigorate clemency has become an urgent one.”

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Read more

“50-State Comparison: Pardon Policy & Practice” |

A resource from the Restoration of Rights Project containing detailed state-by-state analyses of the pardon policy and practice in each U.S. jurisdiction

Criminal Justice Policy Foundation Clemency

Guide | A database on clemency eligibility and application procedures for all 50 states, Washington, D.C., and the federal justice system

ABA Capital Clemency Resource Initiative

Clearinghouse | A clearinghouse providing educational, practical, and historical materials relating to clemency in death penalty cases

 This fact sheet will be periodically updated to account for new policy developments.

For a full list of sources, please see the web version of this fact sheet, available at www.americanprogress.org/?p=481939.