



Commutations and Pardons

“The criminal code of every country partakes so much of necessary severity, that without an easy access to exceptions in favor of unfortunate guilt, justice would wear a countenance too sanguinary and cruel.”

- Alexander Hamilton, Federalist Paper, No. 74

This *issue brief* outlines the commutation and pardon authority of the Governor and state legislature in Colorado. It provides an overview of the application process to seek clemency for a crime, and data on the number of pardons and commutations since 2017.

Clemency Powers in Colorado

The Colorado Constitution grants the Governor the power of clemency, which allows the granting of mercy or lenience to a person convicted of a crime. The power is exercised through commutation and pardons. Commutation is the reduction of a criminal sentence, and a pardon is the full forgiveness of a crime. The Governor has the sole power to grant commutations and pardons after conviction, while the state legislature has authority to regulate the process.

Governor Authority

Article IV, Section 7 of the Colorado Constitution grants the Governor exclusive powers of clemency. Specifically, it states that the Governor has the power to grant “reprieves, commutations, and pardons” except in cases of treason and impeachment. Regulations may be enacted for the process of applying for pardons. Governors are also constitutionally required to annually inform the legislature of the prison sentences commuted and the executive pardons, including the rationale behind them.

Legislative Authority

Over the years, the General Assembly has passed legislation to establish regulations and procedures for pardons and commutations. The following highlights some of the clemency policy changes made by this body.

- **Commuting certain offenses.** Going back to 1872, the General Assembly authorized the Governor to commute capital cases to imprisonment for life or at least 10 years of hard labor. This was increased to at least 20 years of hard labor in 1977.

More recently, in 2020, Colorado repealed the use of the death penalty. As a result, Governor Polis commuted the sentences for the three offenders on

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death row to life imprisonment. Another piece of legislation from 2020 allows the Governor to grant pardons to a class of defendants who were convicted of possession of up to two ounces of marijuana. After this, the Governor issued Executive Order C2020 004, which granted pardons to individuals convicted of possession of one ounce or less of marijuana.

- **Applications.** The General Assembly first codified clemency applications in 1879 by requiring them to have a certificate from the Department of Corrections (DOC) showing the conduct of the applicant, as well as evidence of former good character.

Legislation enacted in 1977, 1979, and 2012 require applications to be submitted to the sentencing judge, prosecuting district attorney, and the current district attorney for comment, with comments due within 14 days. The Governor must make reasonable efforts to locate the sentencing judge and prosecuting attorney. The General Assembly exempted low-level marijuana offenses from this application process through the 2020 legislation referenced earlier.

- **Collateral consequences.** In 2013, the General Assembly clarified the effects of a pardon, including waiving all collateral consequences of the conviction (that is, consequences that are not directly related to the sentence for a crime like having a criminal record, which can affect employment and other opportunities in

the future), unless the Governor limits the scope of the pardon.

Application Process

To apply for a clemency action, offenders in the DOC must work with their case managers to obtain a *clemency application*. Applicants must meet specified *eligibility criteria*. Upon completion, the DOC reviews and submits the application to the Director of Executive Clemency, who convenes the Executive Clemency Advisory Board. The application also goes to the sentencing judge and the attorney who prosecuted the offender to provide comment.

After receiving comment, the Executive Clemency Advisory Board reviews the application and makes a recommendation to the Governor. The Governor takes the recommendations under advisement and may, or may not, take action in granting clemency.

Frequency of Use

Clemency numbers have not been consistently reported to the legislature or documented elsewhere over the years. The Senate Journal has reports dating back to 2017, and since that time, 250 individuals have received clemency. Of those, 36 were reported as commutations and 214 were reported as pardons. Most of these pardons occurred in 2018, when Governor Hickenlooper pardoned 133 individuals. Not including 2018, the average number of clemency actions stands at about 20 per year since 2017.