



The Governor's Clemency Authority

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The Ohio Constitution gives the Governor the power, after conviction, to grant commutations, pardons, and reprieves for all crimes and offenses – except treason and cases of impeachment – upon such conditions as the Governor may think proper.¹

- A **commutation** is the substitution by the Governor of a lesser for a greater punishment. After commutation, the commuted prison term is the only one in existence. A commutation may be stated in terms of: commuting from a named offense to a lesser included offense with a shorter prison term; commuting from a stated prison term in months and years to a shorter prison term in months and years; or commuting from any other stated prison term to a shorter prison term. A stated prison term may be commuted without the consent of the convict.²
- A **pardon** is the remission of penalty by the Governor. A pardon may be conditional or unconditional.³
- A **reprieve** is the temporary suspension by the Governor of the execution of a sentence or prison term. The Governor may grant a reprieve without the consent of and against the will of the convict.⁴

This authority is "subject, however, to such regulations, as to the manner of applying for commutations and pardons, as may be prescribed by law." The General Assembly's authority includes the authority to prescribe a regulatory scheme governing the manner and procedure of applying for *commutations* and *pardons* and to establish prerequisites to the Governor's exercise of the power to grant them.⁵ The Constitution does not authorize the General Assembly to regulate the manner of applying for *reprieves*. Ohio courts have held that statutory provisions that attempted to regulate reprieves were unconstitutional.⁶

While the General Assembly may constitutionally regulate the manner of applying for commutations and pardons, the General Assembly "may not interfere with the discretion of the Governor in exercising the clemency

The Governor's constitutional clemency authority comprises commutations, pardons, and reprieves. It is subject to only limited regulation by the General Assembly and the Governor's discretion is not subject to judicial review.



power." The Governor's exercise of discretion in using the clemency power also is not subject to judicial review.⁷

Communication to the General Assembly

The Constitution requires the Governor "to communicate to the General Assembly, at every regular session, each case of reprieve, commutation, or pardon granted . . . with the Governor's reasons therefor."⁸

Governor's conditions

The Revised Code states, "The [G]overnor may grant a pardon after conviction, may grant an absolute and entire pardon or a partial pardon, and may grant a pardon upon conditions precedent or subsequent."⁹ A pardon or commutation upon conditions precedent or subsequent imposed by the Governor does not take effect until the conditions are accepted by the convict or prisoner, and the acceptance is indorsed upon the warrant, signed by the convict or prisoner, and attested by one witness.¹⁰ The term "partial pardon" is not defined and does not appear elsewhere in the Revised Code or in the Ohio Administrative Code.

The Governor may grant a reprieve of a sentence for a definite time to a person under sentence of death, with or without notices or application.¹¹

Adult Parole Authority's role

The Revised Code provides that all applications for pardon, commutation of sentence, or reprieve of a sentence (due to Ohio court cases, it is unclear if this can apply to reprieves) must be made in writing to the Adult Parole Authority (APA).¹² The APA's duties must be performed in accordance with rules and regulations prescribed by the Director of Rehabilitation and Correction.¹³ The APA "may exercise its functions and duties in relation to the pardon, commutation of sentence, or reprieve of a convict upon direction of the [G]overnor or upon its own initiative."¹⁴ At this time, the Ohio Administrative Code does not contain any rules pertaining to the form of the application for pardon, commutation of sentence, or reprieve or the procedures for filing an application. The Department of Rehabilitation and Correction includes a link to the application for executive clemency as well as the instructions and guidelines for the application on its website.¹⁵

After receiving an application, the APA must conduct a thorough investigation into the propriety of granting a pardon, commutation, or reprieve and report in writing to the Governor a brief statement of the facts in the case, together with its recommendation for or against granting a pardon, commutation, or reprieve, the grounds for the recommendation, and the records or minutes relating to the case.¹⁶

The Governor may impose conditions for a pardon or commutation.

The Adult Parole Authority must investigate the propriety of granting a pardon or commutation, but its recommendation to the Governor is advisory only.




The APA may investigate and examine, or cause the investigation and examination of, inmates at state correctional institutions with regard to their fitness to be at liberty without being a threat to society. It may recommend to the Governor the pardon, commutation of sentence, or reprieve of a sentence of any convict or prisoner if in its judgment there is reasonable ground to believe that granting a pardon, commutation, or reprieve would further the interests of justice and be consistent with the welfare and security of society.

The APA may require the trial judge and prosecuting attorney of the trial court in which a person was convicted to furnish a summarized statement of the facts proved at the trial and of all other facts concerning the propriety of recommending a pardon or commutation, together with a recommendation for or against a pardon or commutation, and the reasons for the recommendation.

Notification of victim

Prior to making its recommendation, at the request of the victim of the offense, the APA must notify the victim of the pendency of the pardon or commutation and of the victim's right to submit a statement regarding the impact of the offender's release. If the offender is incarcerated for aggravated murder, murder, or a first, second, or third degree felony offense of violence, or is under a sentence of life imprisonment, the APA must notify the victim regardless of whether the victim has requested notification. It also must notify the prosecuting attorney and the judge of the court of common pleas of the county in which the indictment against the offender was found of the pendency of the pardon or commutation.¹⁷

The APA's recommendation is advisory. The Governor is not required to accept it. 

In certain circumstances, the Adult Parole Authority must notify victims of a pending pardon or commutation.

Endnotes

¹ Ohio Constitution, Article III, Section 11. In the case of a conviction for treason, the Governor may suspend the execution of the sentence and report the case to the General Assembly at its next meeting, at which time the General Assembly is required to "either pardon, commute the sentence, direct its execution, or grant a further reprieve."

² R.C. 2967.01(C).

³ R.C. 2967.01(B).

⁴ R.C. 2967.01(D).

⁵ Ohio Const., Art. III, Sec. 11. *State ex rel. Maurer v. Sheward*, 71 Ohio St.3d 513, 519 (1994).

⁶ *Sheward*, 71 Ohio St.3d at 523 and *Coleman v. Ohio Adult Parole Authority*, 115 Ohio App.3d 212, 218 (1996).

⁷ *Sheward*, 71 Ohio St.3d at 518.

⁸ Ohio Const., Art. III, Sec. 11.

⁹ R.C. 2967.02(B).

¹⁰ R.C. 2967.04.

¹¹ R.C. 2967.08.



¹² R.C. 2967.07; see also *Sheward*, 71 Ohio St.3d at 523 and *Coleman*, 115 Ohio App.3d at 218.

¹³ R.C. 5120.01 and Ohio Administrative Code 5120:1-1-15. The APA is in the Division of Parole and Community Services of the Department of Rehabilitation and Correction. R.C. 5149.02.

¹⁴ R.C. 2967.03.

¹⁵ www.drc.ohio.gov/clemency.

¹⁶ R.C. 2967.07.

¹⁷ R.C. 2930.16, 2967.03, and 2967.12.

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