



# Members Brief

An informational brief prepared by the LSC staff for members and staff of the Ohio General Assembly

Author: Lisa Sandberg, Attorney  
Reviewer: Andrea Holmes, Division Chief

Volume 135  
October 30, 2024

## The Governor’s Clemency Authority

This brief explains the Governor’s power to grant commutations, pardons, and reprieves as well as the requirements the Governor and the Adult Parole Authority must fulfill when recommending a commutation, pardon, or reprieve.

### Contents

Commutations, pardons, and reprieves .....	1
Communication to the General Assembly .....	2
Governor’s conditions .....	2
Sealing of records.....	3
Governor’s notification to victim .....	3
Adult Parole Authority’s role .....	4
Notification of victim.....	5

### Commutations, pardons, and reprieves

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.<sup>1</sup>

- 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, except when granted upon the convict’s acceptance or performance of conditions precedent.<sup>2</sup>

<sup>1</sup> 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.”

<sup>2</sup> R.C. 2967.01(C).

- A **pardon** is the remission of penalty by the Governor. A pardon may be conditional or unconditional.<sup>3</sup>
- 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.<sup>4</sup>

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 *pardons* and to establish prerequisites to the Governor’s exercise of the power to grant them.<sup>5</sup> The Constitution does not authorize the General Assembly to regulate the manner of applying for *commutations* and *reprieves*. Ohio courts have held that statutory provisions that attempted to regulate commutations and reprieves were unconstitutional.<sup>6</sup>

While the General Assembly may constitutionally regulate the manner of applying for pardons, the General Assembly “may not interfere with the discretion of the Governor in exercising the clemency power.” The Governor’s exercise of discretion in using the clemency power also is not subject to judicial review.<sup>7</sup>

---

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.

---

## Communication to the General Assembly

---

The Governor may impose conditions for a pardon or commutation.

---

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.”<sup>8</sup>

### 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.”<sup>9</sup> A pardon or commutation upon conditions precedent or subsequent imposed by the Governor does not take effect until the conditions are

---

<sup>3</sup> R.C. 2967.01(B).

<sup>4</sup> R.C. 2967.01(D).

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

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

<sup>7</sup> *Sheward*, 71 Ohio St.3d at 518.

<sup>8</sup> Ohio Const., Art. III, Sec. 11.

<sup>9</sup> R.C. 2967.02(B).

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.<sup>10</sup>

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.<sup>11</sup>

## Sealing of records

In the case of an unconditional pardon, the Governor may include as a condition of the pardon that records related to the conviction be sealed as if the records are related to an offense that is eligible to be sealed. The Governor may issue a writ for the records related to the pardoned conviction or convictions to be sealed. But, this writ cannot seal records related to the pardon that are required by law to be kept by the Governor's office and does not have any impact on the Governor's office or on reports required to be made under law. Other than those records that the Governor's office is required to keep, no records of the Governor's office related to a pardon that have been sealed are subject to public inspection unless directed by the Governor. The records may be inspected or information in the records may be disclosed pursuant to the Sealing Law or as the Governor may direct. A disclosure of records sealed under a writ issued by the Governor is not a criminal offense.<sup>12</sup>

Any person who is granted an absolute and entire pardon, a partial pardon, or a conditional pardon by the Governor may apply to the court for an order to seal the person's official records in the case. The person may file the application at any time after the Governor grants an absolute and entire pardon or a partial pardon or at any time after the person meets all of the conditions to the pardon.<sup>13</sup> These pardoned convictions must still be eligible for sealing under the Sealing Law.<sup>14</sup>

## Governor's notification to victim

Prior to granting a pardon, commutation of sentence, or reprieve to an offender convicted of or found guilty of an offense of violence, or adjudicated a delinquent child for a delinquent act that would be an offense of violence if committed by an adult, the Governor, or the Governor's designee, must notify the victim, victim's representative, and victim's attorney, if applicable, that the offender or delinquent child has applied for a pardon, commutation of sentence, or reprieve. The Governor must notify the victim, victim's representative, and victim's attorney, if applicable, regarding the application not less than 30 days prior to issuing a decision. The Governor must also inform the victim, victim's representative, and victim's attorney, if applicable, that the

---

<sup>10</sup> R.C. 2967.04.

<sup>11</sup> R.C. 2967.08.

<sup>12</sup> R.C. 2967.04(C).

<sup>13</sup> R.C. 2953.33(A)(3).

<sup>14</sup> R.C. 2953.32; see also *State v. Cain*, 2024-Ohio-2969.

victim, victim's representative, and victim's attorney may submit a written statement concerning the application.<sup>15</sup>

## Adult Parole Authority's role

The Revised Code requires that all applications for pardon, commutation of sentence, or reprieve of a sentence be made in writing to the Adult Parole Authority (APA). (Due to Ohio court cases, however, it is unclear if this can apply to commutations and reprieves.)<sup>16</sup> The APA's duties must be performed in accordance with rules and regulations prescribed by the Director of Rehabilitation and Correction.<sup>17</sup> 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."<sup>18</sup> At this time, the Ohio Administrative Code does not contain any rules pertaining to the form of the application for pardon, commutation, 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.<sup>19</sup>

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.<sup>20</sup>

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.<sup>21</sup>

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

---

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

---

---

<sup>15</sup> R.C. 2930.162.

<sup>16</sup> R.C. 2967.07; see also *Sheward*, 71 Ohio St.3d at 523 and *Coleman*, 115 Ohio App.3d at 218.

<sup>17</sup> 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.

<sup>18</sup> R.C. 2967.03.

<sup>19</sup> [Department of Rehabilitation and Correction – Clemency](#), which is accessible by searching the keyword "Clemency" on the Department's website, [drc.ohio.gov](http://drc.ohio.gov).

<sup>20</sup> R.C. 2967.07.

<sup>21</sup> R.C. 2967.03.

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.<sup>22</sup>

### **Notification of victim**

At least 60 days before 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 or the victim's representative'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 or the victim's representative has requested notification. It also must notify, at least 60 days before making its recommendation, the prosecuting attorney and the judge of the court of common pleas in which the indictment against the offender was found of the pendency of the pardon or commutation.<sup>23</sup>

---

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

---

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

---

<sup>22</sup> R.C. 2967.03.

<sup>23</sup> R.C. 2930.16(C)(2)(a), 2967.03, and 2967.12.