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EXECUTIVE CLEMENCY GUIDELINES

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1. Authority and Purpose

The Constitution of the Commonwealth of Massachusetts provides that:

The power of pardoning offences, except such as persons may be convicted of before the senate by an impeachment of the house, shall be in the governor, by and with the advice of council, provided, that if the offence is a felony the general court shall have power to prescribe the terms and conditions upon which a pardon may be granted; but no charter of pardon, granted by the governor, with advice of the council before conviction, shall avail the party pleading the same, notwithstanding any general or particular expressions contained therein, descriptive of the offence or offences intended to be pardoned.

Const. Part 2, c. 2, § 1, Art. VIII, as inserted by Article of Amendment LXXIII.

The law provides the Parole Board, acting as the Advisory Board of Pardons, a significant role in advising the Governor with respect to deciding petitions for executive clemency. The Parole Board has issued regulations governing certain aspects of how it functions in its capacity as the Advisory Board of Pardons. See 120 C.M.R. 900–902.

“The Advisory Board of Pardons is directed by the Governor’s Pardon and Commutation Guidelines in its consideration of petitions for executive clemency.” 120 C.M.R. 900.01(2). These Guidelines are therefore intended to direct the Advisory Board of Pardons in its review of petitions for executive clemency and recommendations to the Governor. These Guidelines shall be made available to the public in the interests of transparency and to provide individuals who might seek executive clemency notice of the factors and criteria that the Advisory Board of Pardons (the “Board”) and the Governor will typically examine in reviewing a petition. The Guidelines are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable by any person, including any petitioner, in any matter civil, criminal or administrative. Nor do the Guidelines place any limitations on the lawful

prerogatives of the Governor or the Governor's Council with respect to executive clemency. The Governor expressly reserves his prerogative to depart from these Guidelines in appropriate cases.

2. Types of Executive Clemency

2.1. Pardons

The Governor views the granting of a pardon as an extraordinary remedy, which has the effect of treating the petitioner as if the offense had never been committed. The grant of a pardon is mainly intended to remove the barriers that are sometimes associated with a criminal record, thereby facilitating the reintegration of the petitioner into his or her community.

2.2. Commutations

The Governor views commutation both as an extraordinary remedy and as an integral part of the correctional process. The availability of commutation of sentence is not intended to serve as a review of the proceedings of the trial court or of the guilt of the petitioner. It is intended to serve as a strong motivation for confined persons to utilize available resources for self-development and self-improvement and as an incentive for them to become law-abiding citizens and return to society.

3. General Principles

3.1. Gathering Input

In addition to observing all statutory and regulatory requirements for gathering information, the Board should make all reasonable efforts to solicit input from the following individuals if it is conducting a hearing with respect to a petition: (a) the victim(s) of the offense(s) under consideration; (b) a representative of the District Attorney's Office that prosecuted each offense under consideration or a representative of the Attorney General's Office if the offense was prosecuted by the Attorney General's Office; and (c) a representative of the primary law enforcement agency that investigated each offense under consideration.

3.2. Burden of Proof

As set forth in the Board's regulations, the burden of proving facts to the Board shall rest on the petitioner. In order to consider a fact offered by a petitioner, the Board must find that the petitioner has proven it by clear and convincing evidence.

3.3. Individualized Determinations

The Governor will address each petition for executive clemency on its own merits. As outlined below, there are a number of factors that the Governor will consider in deciding whether to grant a petition.

4. Factors

4.1. General Factors to Be Applied to Executive Clemency

4.1.1. Nature and Circumstances of the Offense

The nature and circumstances of the offense is one of two paramount considerations in deciding whether to grant clemency. The Governor will give significant consideration to the impact of the crime on the victim or victims and the impact of the crime on society as a whole. The more serious the offense, the more time that should have elapsed in order to minimize any impact clemency may have on respect for the law.

4.1.2. Character and Behavior of the Petitioner

As described in more detail below, the character and behavior, particularly post-offense behavior, of the petitioner is the second paramount consideration in deciding whether to grant clemency.

4.1.2.1. Acceptance of Responsibility

The Governor will rarely grant clemency to a petitioner who has not clearly demonstrated acceptance of responsibility for the offense for which the petitioner is seeking clemency.

4.1.2.1.1. Pending Appeals and Other Litigation

Generally, a petitioner's decision to pursue an appeal of a conviction or otherwise challenge a conviction or sentence through litigation is inconsistent with acceptance of responsibility.

4.1.2.2. Restitution to Victims

The Governor will rarely grant clemency to a petitioner who has not made full restitution to the victim(s) of the petitioner's crimes when the crimes caused economic injury to the victim(s). The Governor will give stronger consideration to petitioners who have made restitution in a prompt manner.

4.1.2.3. Substantial Assistance to Law Enforcement

The Governor will strongly consider granting clemency to a petitioner who has provided substantial assistance to law enforcement in the investigation or prosecution of other more culpable offenders. The Governor will not consider any claimed substantial assistance of a petitioner unless it is verified by a written statement from a District Attorney or from the Attorney General describing the nature, extent, timeliness, and completeness of the petitioner's assistance and any injury suffered or danger or risk incurred by the petitioner or his or her family resulting from the petitioner's assistance.¹

4.1.2.4. Military, Public, or Charitable Service

The Governor will give stronger consideration to a petitioner who has contributed to society through service in the military or other public service, or through charitable work.

4.1.3. Prior Petitions

Absent compelling circumstances, the Governor will not grant clemency to a petitioner whose prior petition the Governor has denied within the periods set forth in 120 C.M.R. 901.13 and 120 C.M.R. 902.12.

4.2. Special Factors for Pardons

Absent compelling circumstances, a petitioner seeking a pardon should demonstrate both good citizenship and a verified, compelling need as set forth below.

4.2.1. Good Citizenship

4.2.1.1. Ongoing Incarceration, Parole or Probation Supervision

The Governor will rarely grant a pardon to a petitioner who is still serving a sentence, be it in a correctional facility, on parole in the community or under the supervision of a probation department. Generally, the Governor will grant a pardon only if the petitioner has demonstrated the ability to maintain good citizenship over a significant period of time without the structure provided by government supervision. Petitioners still serving sentences who seek clemency should generally seek a commutation before seeking a pardon.

¹ The Governor expects that in many cases the Board would designate a written statement made under this paragraph as confidential pursuant to 120 C.M.R. 900.02(3).

4.2.1.2. Behavior While Not Incarcerated or Under Parole or Probation Supervision

The Governor will rarely grant a pardon to a petitioner who has not demonstrated good citizenship, without the structure provided by government supervision, over a period of at least five years for misdemeanors and ten years for felonies. This period begins on the first day that the petitioner is not incarcerated and not under the supervision of either the Parole Board or the Probation Department. Good citizenship means more than refraining from committing new offenses, as evidenced by a lack of guilty findings or admissions to sufficient facts. Good citizenship means leading a responsible and productive life and contributing to one's community in a positive manner. In determining whether a petitioner has demonstrated good citizenship, the petitioner should disclose and the Board should make all reasonable efforts to investigate and verify, among other things: (a) whether the petitioner has been the subject of any civil lawsuit, including any restraining order, during the period of claimed good citizenship; (b) the circumstances surrounding any criminal charge that resulted in a nolle prosequi, dismissal, or finding of not guilty.

4.2.2. Compelling Need

4.2.2.1. Lack of Alternative Remedy

A petitioner has not demonstrated a compelling need for purposes of these Guidelines if the need can be met by means other than a pardon. For example, if sealing the petitioner's record of conviction pursuant to G.L. c. 276, § 100A will satisfy the petitioner's articulated need, the petitioner has not demonstrated a compelling need for a pardon.

4.2.2.2. Employment

A petitioner claiming a compelling need in order to secure employment should provide documentary evidence that his or her conviction is preventing employment and an explanation why sealing the petitioner's record is insufficient to satisfy the petitioner's claimed need.

4.2.2.3. Licensing

A petitioner claiming a compelling need in order to obtain a license from a governmental entity should provide proof that his or her conviction is preventing the issuance of that license in the form of a denial of a licensing application based on the conviction and other documentary evidence that the issuance of a pardon will likely result in the issuance of the license.

4.2.2.3.1. Firearm Licensing

The Governor will rarely issue a pardon in order to enable a petitioner to receive a firearms identification card, license to carry firearms or license to possess a machine gun if the petitioner has: (a) experienced a history of emotional or mental health problems; or (b) has, within fifteen years of the petition been convicted of or received a continuance without a finding, as an adult, for any of the following crimes: (i) any "violent crime" as that term is defined in G.L. c. 140, § 121; (ii) assault and battery; (iii) indecent assault and battery or rape; (iv) any crime involving the use of a firearm; (v) a civil rights violation; (vi) violation of a restraining order; (vii) stalking; (viii) any crime of domestic violence; or (ix) any other crime that otherwise involves conduct that similarly demonstrates a lack of suitability to possess a firearm.

A petitioner claiming a compelling need in order to obtain a firearm license should provide proof that the issuance of a pardon will likely result in the issuance of the firearm license in the form of a letter from the licensing authority stating that the license would be granted if the pardon were issued.

4.3. Special Factors for Commutations

4.3.1. Lack of Alternative Remedy

Commutation is not a substitute for parole or a mechanism to appeal adverse decisions of the Parole Board. The Governor will rarely grant a commutation to a person who is seeking release from a correctional institution and for whom the Parole Board has denied an application for parole. The Governor is more likely to consider a petition for commutation from a person who is not yet parole eligible.

4.3.2. Behavior in Correctional Institutions

The Governor will give strong consideration to a request to commute a sentence of a petitioner who has made exceptional strides in self-development and self-improvement, and would be a law abiding citizen upon release from custody.

The Governor will closely examine any record of misconduct by the petitioner while serving the sentence for which the petitioner is seeking commutation. The Governor is unlikely to commute the sentence of a petitioner who has been found in violation of any institutional rule or policy within one year of the petition. The Governor is also unlikely to commute the sentence of a petitioner who has been found to have committed, within ten years of the petition, a "Category 1" offense as that term is defined in 103 C.M.R. 430.24 in a Department of Correction facility or a like offense in a county facility.

The Governor will also closely examine any record of good conduct by the petitioner while the petitioner is serving the sentence for which he or she is seeking commutation, including voluntary participation in recommended rehabilitative programs, substance abuse treatment programs and work, vocational, and educational programs.

4.3.3. Medical Release

The Governor will give strong consideration to a request to commute a sentence when the petitioner has served a significant portion of his or her sentence and is suffering from a terminal illness or a severe and chronic debilitating medical condition and who, as a result of that illness or condition, would not pose a public safety risk.

4.3.3.1. Terminal Illness

A petitioner who claims that he or she has a terminal illness must include as part of his or her petition a written diagnosis from at least one licensed physician who is employed by the Department of Correction or a Sheriff's Department, or a vendor providing clinical services to the Department of Correction or a Sheriff's Department, and the opinion(s) of that/those physician(s) as to the petitioner's life expectancy.

4.3.3.2. Severe and Chronic Debilitating Medical Condition

A petitioner who claims that he or she has a severe and chronic debilitating medical condition must include as part of his or her petition a written diagnosis from at least one licensed physician who is employed by the Department of Correction or a Sheriff's Department, or a vendor providing clinical services to the Department of Correction or a Sheriff's Department, and the opinion(s) of that/those physician(s) regarding the nature, extent and expected duration of the medical condition.

4.3.3.3. Medical Treatment Plan

A petitioner who seeks medical release must include as part of his or her petition a detailed medical treatment plan setting forth how the petitioner will receive care upon his or her release to the community.

4.4. Special Factors for Clemency Relating to Sentences for First Degree Murder

The Governor is unlikely to consider a petition seeking commutation of a sentence for first degree murder unless the petitioner has already served fifteen years of his or her sentence, the minimum amount of time it takes for a person serving a sentence for second degree murder to become eligible for parole.

5. Procedure for Recommendations Submitted to the Governor

The Advisory Board of Pardons should include in its report and recommendation to the Governor all information specified in the applicable regulations, a list of persons or entities whose input was solicited, as well as the reasoning for the recommendation, making specific reference to these Guidelines.

5.1. Additional Information

5.1.1. From the Advisory Board of Pardons

The Governor, at any time while a recommendation is pending before him, may: (a) return a petition to the Board for further action or investigation; or (b) otherwise request further information from the Board.

The Board, at any time while a recommendation is pending before the Governor, may advise the Governor of new information, not previously known to the Board, and may, based on that new information, withdraw or amend its recommendation.

5.1.2. From the Petitioner

The Governor, at any time while a recommendation is pending before him, may request further information directly from the petitioner. A petitioner's failure to provide information in response to such a request may result in the denial of his or her petition.

5.2. Timelines

Whenever the Board recommends that the Governor deny a petition and the Governor does not take any action with respect to the recommendation within 90 days after the later of: (a) the date of its submission to the Governor; or (b) the date of any additional submission pursuant to 5.1.1, the Board and the petitioner shall presume that the Governor concurs in that adverse recommendation. After the 90 day period has elapsed, the Board shall advise the petitioner and close the case.

Whenever the Board recommends that the Governor grant a petition and the Governor does not take any action with respect to the recommendation within one year after the later of: (a) the date of its submission to the Governor; or (b) the date of any additional submission to the Governor pursuant to 5.1.1, the Board and the petitioner shall presume that the Governor disagrees with that positive recommendation and will not grant the petitioner executive clemency. After the one year period has elapsed, the Board shall advise the petitioner and close the case.



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