Title 16. Practice, Procedure, and Courts

Chapter III. Post-Prison Transfer Board, Department of Corrections

Subchapter A. Generally

Part 21. Executive Clemency

Subpart 1. Generally

16 CAR § 21-101. Generally.

Any person sentenced to death may apply for executive clemency; Ark. Const. art. VI, § 18.

16 CAR § 21-102. Definitions.

As used in this part:

(1) "Commutation" means a permanent change of sentence or punishment, such as changing a death sentence to a sentence of life without parole or reducing the term of years;

(2) "Executive clemency" or "clemency" means the process through which the Governor considers requests for commutation, pardon, and remission of fines and forfeitures;

(3) "Executive Clemency Coordinator" means the Division of Community Correction employee assigned to administering responsibilities in the clemency process;

(4) "Institutional release officer" means a Division of Community Correction employee at secured facilities who coordinates Institutional Release Services;

(5) "Institutional Release Services" means the section of the Division of Community Correction responsible for scheduling inmates to be seen by the Post-Prison Transfer Board;

(6) "Pardon" means removal of a criminal record from public record; and

(7) "Remission of fines and forfeitures" means the reduction or removal of a fine or forfeiture.

16 CAR § 21-103. Procedure.

(a) **Applications.**

(1) **Obtaining an application.**

(A) A person who is incarcerated may request an application from the unit's institutional release officer.

(B) A person who is not incarcerated may request an application from the Office of Institutional Release Services or from the Department of Corrections website.

(2) **Required information.** The application must include the following information in order to be accepted:

(A) The following information about the applicant:

(i) Name;

(ii) Address;

(iii) Date of birth;

(iv) Race;

(v) Sex;

(vi) Division of Correction number, if applicable;

(vii) PID number;

(viii) Social Security number;

(ix) Phone number;

(x) Whether the applicant is currently on probation or suspended imposition of sentence; and

(xi) Whether the applicant is required to register as a sex offender;

(B) The following information about criminal convictions:

(i) The full name under which the applicant was convicted as well as any potential aliases;

(ii) For every offense:

(a) The name of the offense;

(b) The county of conviction;

(c) The date of the offense;

(d) The court docket number;

(e) The assessed sentence; and

(f) The facts of the crime;

(iii) Whether the sentences have been completely discharged;

(iv) Whether any restitution was ordered in any of the convictions;

(v) The status of any assessed fines, fees, court costs, and restitution;

(vi) Information about any victims of the applicant's crimes;

(vii) Information about any accomplices to the applicant's crimes; and

(viii) Any other information as required by the current clemency application from the Office of Institutional Release Services or from the Department of Corrections website;

(C)(i) The grounds upon which the pardon, commutation, or remission of fine or forfeiture is sought.

(ii) The following are grounds on which an application may be filed:

(a) To correct an injustice which may have occurred during the person's trial;

(b) To reduce an excessive sentence;

(c) Due to a life-threatening medical condition as defined by Arkansas Code § 12-29-404; or

(d) Because the person's institutional adjustment has been exemplary and the ends of justice have been achieved;

(D) A narrative explanation of why the Governor should grant the relief requested;

(E) A narrative explanation of what the applicant has done to demonstrate rehabilitation; and

(F) Information about:

(i) Familial relationships, including:

(a) Marital status;

(b) Information about former and current spouses; and

(c) Information about children;

(ii) Any military service;

(iii) Educational information; and

(iv) Employment information, including current and prior employment.

(3) **Required documentation.** The following must be attached to the application:

(A) A certified copy of the sentencing order, or commitment order if the sentence was prior to 2012;

(B) The felony information or probable cause affidavit;

(C) The incident report from the arresting agency;

(D) Letters of recommendation;

(E) For sealed records, a copy of the order to seal; and

(F) For applications for restorations of firearms, the recommendation of the chief law enforcement officer in the applicant's county of residence.

(4) **Eligibility.**

(A) An application for clemency will be considered as having been duly filed once it is received at the current mailing address of the Division of Community Correction, Institutional Release Services, Clemency Department.

(B) Once a person has submitted an application for clemency, that person is ineligible to submit another application until a decision has been made on the initial application.

(C) Any person who files an application for clemency and is denied in writing without prejudice by the Governor is subject to a waiting period pursuant to Arkansas Code § 16-93-207.

(D)(i) Any person whose application was denied without prejudice by the Governor may petition the Post-Prison Transfer Board for a waiver of the waiting period no sooner than twelve (12) months after the date of the filing of the application that was denied.

(ii) A waiver will only be considered if the applicant alleges, and provides supporting documentation for, one (1) of the following grounds:

(a) Discovery of new material evidence relating to guilt or punishment;

(b) Substantial deterioration in the applicant's physical or mental health; or

(c) Other meritorious circumstances justify a waiver of the waiting period.

(E) Any person whose application was denied with prejudice by the Governor is not eligible to petition the board for a waiver of the waiting period and is barred from filing any subsequent application for pardon, commutation, or remission of fines and forfeitures while the Governor who issued the denial with prejudice serves as Governor.

(b) **Application review.**

(1) All exhibits or supporting documentation to be considered by the board shall be attached to the clemency application.

(2) Upon receipt of an application, Institutional Release Services will review the application and any documentation to ensure compliance with the requirements set out by this part.

(3) If the application is deficient, Institutional Release Services will notify the applicant.

(4) If the application is complete, Institutional Release Services will forward the application to the board for screening and recommendation.

(c) **Board recommendation.**

(1) Upon receipt of an application from Institutional Release Services, at least five (5) board members will individually screen the application.

(2) Following the screening process, the board may vote to schedule a hearing.

(3) All death penalty applications require a hearing.

(4) Board members may request supplemental information or take other reasonable actions to ensure a complete and thorough investigation is conducted prior to making a decision.

(5) If a hearing is scheduled:

(A)(i) The Executive Clemency Coordinator will notify the victim or victims of the crime or the victim's or victims' next-of-kin of the scheduled hearing if he or she filed a request for notice with the prosecuting attorney pursuant to Arkansas Code § 5-4-607.

(ii) The Executive Clemency Coordinator will ask the institutional release officer to schedule a hearing at least thirty (30) days from the date notice of the hearing was given to the victim, victims, or victim's next of kin.

(B) The board shall consider:

(i) The statements of the applicant and their spokesperson;

(ii) The applicant's file;

(iii) Reports from law enforcement;

(iv) Any presentence reports; and

(v) Any documentary evidence presented by the applicant or other interested persons, including the victim or victims of the crime or the victim's next-of-kin.

(C) If the applicant is not incarcerated in Arkansas, his or her appearance before the board is not required.

(d) **Post-recommendation procedure.**

(1) The board shall submit to the Governor for final action:

(A) Its nonbinding recommendation;

(B) A report of the investigation; and

(C) All other information that the board possesses regarding the applicant.

(2) Upon finalization of the board's decision, the clemency application will be returned to Institutional Review Services.

(3) There is no appeal of the board's recommendation or the Governor's decision.

(4) A person denied clemency may reapply as authorized by Arkansas Code § 16-93-207.

(e) **Additional requirements for death sentences.**

(1)(A) When the Governor sets an execution date, Institutional Release Services shall send a certified letter to the inmate and the inmate's attorney of record informing them that any applications for clemency must be filed no later than sixty (60) days prior to the scheduled execution date.

(B)(i) The application date deadline as calculated by the board shall be specified in the certified letter.

(ii) This date shall be determined by counting back sixty (60) days from the scheduled date of execution, with the day preceding the scheduled date of execution being day one (1).

(C) Late applications shall not be considered unless the sixtieth day is a Saturday, Sunday, or holiday, in which case the application will be accepted the next business day.

(2) At least thirty (30) days before the execution date, the board shall conduct a mandatory hearing with the applicant who has submitted a clemency application.

(3) The applicant or applicant's attorney shall notify the board three (3) business days before the scheduled hearing of the number of witnesses and supporters to provide testimony at the scheduled hearing.

(4) The time allocated for all presentations and/or testimony by the applicant, applicant's attorney, and/or witnesses and supporters at the scheduled hearing shall not exceed four (4) hours.

(5)(A) Tape recordings of the clemency hearing will not be transcribed but will be sent directly to the Governor with the application file and supporting evidence.

(B) The applicant is responsible for providing recorders and/or stenographers, should a transcript be desired.

(6)(A) Upon conclusion of the hearing process, the board will determine if the application is with or without merit and shall vote on whether to recommend the clemency application.

(B) If the board recommends that the application is with merit, it may specify the nature and terms of the commutation being recommended.

(7) The board’s decision will be available within seventy-two (72) hours after the completion of the hearing.

(8) The board may make an exception to this part in the interests of justice.