

SPECIAL DIRECTIVE 19-03

TO: ALL DEPUTY DISTRICT ATTORNEY PERSONNEL

FROM: JACKIE LACEY 
District Attorney

SUBJECT: PETITIONS FOR CLEMENCY: OFFICE PROCEDURE FOR
COMMUTATIONS AND PARDONS. NEW LPM SECTIONS 17.08-
17.08.05.

DATE: FEBRUARY 14, 2019

Clemency is defined as an act of mercy or leniency. As a legal definition, it is the umbrella term encompassing grants of amnesty, pardon, reprieve or commutation of a criminal sentence by a president or state governor. This Special Directive (SD) sets forth the Office policy for handling applications for pardons and commutations made to the Governor's Office. The Legal Policy Manual is modified to include the following sections under Chapter 17, Post-Conviction Proceedings.

17.08 PETITIONS FOR CLEMENCY: PARDONS AND COMMUTATIONS

A petition for clemency involves a request for reprieve, pardon or commutation. The authority to grant a reprieve, pardon or commutation is conferred upon the Governor by Section 8 of Article V of the California Constitution. The process for application is set forth in Penal Code sections 4800 et seq.

17.08.01 PARDONS

Pardons may be granted two ways; after obtaining a Certificate of Rehabilitation or through a "direct" or "traditional" pardon. The effect of a pardon is to restore the civil and political rights of citizenship. For example, an individual granted a pardon is eligible for licensing in certain fields, able to serve on a jury and, depending on the underlying charge, may regain firearm rights.

Applicant Requests for Certificates of Rehabilitation are processed in Department 100 of the Clara Shortridge Foltz Criminal Justice Center which is staffed by deputies from Central Trials 13. Applicant Requests for Certificates of Rehabilitation received by outlying offices shall be forwarded to the Head Deputy of Central Trials 13. Applications for pardon via Certificate of Rehabilitation will not generally be considered unless the applicant has been discharged from probation or parole for at least 10 years without further criminal activity during that period. Additional eligibility requirements are set forth in Penal Code section 4852.03 et seq.

Applications for Certificates of Rehabilitation are assigned to a District Attorney Investigator who investigates and provides a report to the court. At a hearing, pursuant to Penal Code section 4852.13, the court determines whether the petitioner has demonstrated “his or her rehabilitation and his or her fitness to exercise all of the civil and political rights of citizenship.” The Office is represented at these hearings by the Department 100 calendar deputy. If the petitioner has made this showing, the court will make an order declaring that the petitioner has been rehabilitated. The petitioner will then be given a Certificate of Rehabilitation and may apply for a pardon.

If an individual is not eligible to obtain a Certificate of Rehabilitation, he or she can apply for a “traditional” or “direct” pardon via an application available on the Governor’s website.

17.08.02 COMMUTATIONS

An inmate currently serving a sentence for a conviction by a California court can petition to have his or her sentence reduced or eliminated by applying for a commutation of sentence. Penal Code §§ 4804 et seq. govern these applications. There are two types of notifications the Office receives regarding applications for commutation of sentence: Notice of Intent to Apply for Executive Clemency (Notice of Application) and Notice of Investigation.

17.08.03 NOTICE OF APPLICATION FOR COMMUTATION OF SENTENCE

Penal Code §§ 4804 and 4805 require that applicants give notice to the District Attorney of the county in which they were convicted of their intention to file an Application for Commutation of Sentence. The Governor’s website provides a form entitled “Notice of Intent to Apply for Executive Clemency” (Notice of Application) to be filled out by the applicant and mailed to the District Attorney’s Office. If the applicant uses the State’s pre-printed form to give notice, there is a place on the form for the Office to acknowledge receipt and return the form to the Governor’s Office. The Office has also received the Notice of Application via e-mail and letter that do not utilize the pre-printed form provided by the Governor’s Office. In addition to providing the Office with a Notice of Application, the applicant is required to sign a declaration under penalty of perjury on another preprinted form that he or she has mailed the Notice of Application to the appropriate District Attorney’s Office.

Notices of Application are often mailed directly from the inmate to the deputy who tried the case or the Branch or Area office where the case was tried. If the Notice of Application is received by the deputy or the Branch or Area office where the case was tried, the acknowledgment shall be signed and the form mailed to the Governor’s Office at the address provided on the form. The Notice of Application and the acknowledgment form shall be uploaded into the case’s eFolder under “section X. Post-Conviction, subsection 9. Clemency Petitions.” A copy of the Notice of Application and acknowledgment form shall also be e-mailed to the Parole Division using the e-mail address clemencyreq@da.lacounty.gov. When a Notice of Application is initially received by the Parole Division, receipt shall be acknowledged and mailed to the Governor. A copy shall

be forwarded to the trial deputy or the supervisor of the Branch or Area office or special unit that handled the case.

17.08.04 NOTICE OF INVESTIGATION

After the Governor's Office receives an Application for Commutation, a determination is made as to which applications will be investigated by the Board of Parole Hearings (BPH). When an investigation by BPH is opened, the Parole Division receives the Notice of Investigation via e-mail from BPH. Upon receipt of the Notice of Investigation, the Parole Division shall contact the trial deputy and the trial deputy's current supervisor advising that a letter in support of or in opposition to the Application for Executive Clemency shall be written by the trial deputy, if the trial deputy remains in the Office. The trial deputy shall write the letter irrespective of current title, grade or assignment. If the writing of the letter places an unreasonable burden on a trial deputy, the trial deputy's Head Deputy shall confer with the Head Deputy of the Parole Division regarding the writing of the letter. A response date for the letter is included in the Notice of Investigation. The response time for the letter is 30 days. If a shorter time-frame is provided, an extension may be requested through BPH. A copy of the letter shall be scanned and e-mailed to the Head Deputy of the Parole Division at clemencyreq@da.lacounty.gov. The Head Deputy of the Parole Division shall forward the letter to the Governor's Office and upload the letter into the case's eFolder under "section X. Post-Conviction, subsection 9 Clemency Petitions."

After completing the letter, the trial deputy is not required to appear or argue further in support of his or her position. The Parole Division shall be responsible for appearing on any subsequently required hearings.

17.08.05 VICTIM NOTIFICATION

Penal Code § 4805(c) states: "The district attorney *shall* make reasonable efforts to notify the victim or victims of the crime or crimes related to the application and the victims' families." Victims or their families are entitled to submit a recommendation for or against commutation of sentence. Marsy's Law (California Constitution article I, § 28, section (b)) also requires that victims be notified, if previously requested, of any parole or post-conviction activity or release.

Upon receipt of the Notice of Investigation, reasonable efforts to contact the victims or their next of kin shall be made. The victim shall be advised of his or her right to submit a recommendation for or against commutation. Copies of victim letters shall also be forwarded to the Parole Division using the clemencyreq@da.lacounty.gov e-mail. Victims or their next of kin shall also be notified as to whether commutation was granted or denied.

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