



**TEXAS BOARD  
OF  
PARDONS AND PAROLES**

**Number: BPP-DIR. 143.300**

**Date: March 28, 2018**

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**Supersedes: June 28, 2016**

## **BOARD DIRECTIVE**

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**SUBJECT: CLEMENCY FOR CAPITAL CASES**

**PURPOSE:** To provide guidance for the voting members and staff of the Board of Pardons and Paroles (Board) to process a clemency application for offenders who received a sentence of death.

**AUTHORITY:** Texas Constitution, Article IV, Section 11  
Texas Code of Criminal Procedures, Article 48.05 and 56.02(a)(16)  
Texas Government Code Section 508.115  
Texas Administrative Code Title 37, Part 5, Chapter 143, Sections 143.21 – 143.24, 143.43, 143.57.

**DISCUSSION:** An offender who is convicted and sentenced to death may request clemency from the Governor. The Texas Constitution authorizes the Governor to grant clemency upon the recommendation and advice of a majority of the Board. The Governor may on his own grant a one-time 30-day reprieve.

**DEFINITIONS:** Conditional Pardon – an act of clemency granted by the Governor that allows an offender to be released but remain subject to conditions of release.

Commutation of Sentence to a Lesser Penalty – an act of clemency granted by the Governor that allows an offender's sentence to be reduced to a sentence less than death.

Reprieve of Execution – an act of clemency granted by the Governor that allows an offender delay(s) of execution in 30-day increments due to grounds that arise and may require judicial process.

Trial Officials – the sheriff, chief of police, prosecuting attorney and judge in the county and court of conviction and release.

**PROCEDURES:**

The Board's Clemency Section (BCS) receives a "pen packet" from Texas Department of Criminal Justice (TDCJ)-Correctional Institutions Division (CID), Classification and Records sometime after the offender is received on death row. Once the pen packet is received, a clemency file is created and maintained by the BCS.

- I. File and Notebook - The BCS Clemency Administrator is responsible for creating a file and/or notebook that contains all appropriate documents.
  - A. The Clemency Administrator shall compile and deliver clemency notebooks to the Board Members, Governor and General Counsel. As additional information is received, the Clemency Administrator shall send it to the Board Members, Governor and General Counsel as a supplement to the original clemency notebook.
  - B. When the Order of Execution or Death Warrant is received, the Clemency Administrator shall contact the Board's Director of Institutional Parole Offices to request an Institutional Parole Officer (IPO) prepare an executive clemency case report.
  
- II. Application, Interview and Hearing - The Clemency Administrator (CA) shall receive clemency applications or requests for capital cases. All capital case applications requesting clemency must be in writing and signed by the offender or his attorney or in cases where the offender is unable to sign due to a mental or physical impairment, by a person acting on his behalf. A capital case application with an attorney's electronic signature meets the requirements prescribed by this Directive.
  - A. Application - An offender, or his attorney, is required to submit an application no later than the 21st calendar day before the scheduled execution date to the address in Texas Administrative Code Title 37, Part 5, Chapter 143, Section 143.43. The offender or his attorney must submit supplemental information no later than the 15th calendar day before the execution is scheduled. The offender may request a Conditional Pardon, Reprieve or Commutation of Sentence.
  - B. Interview - If the clemency application includes a request for a Board interview, the Clemency Administrator shall contact the Presiding Officer (Chair) who shall designate at least one member of the Board to conduct the requested interview.
    1. The assigned Board Member shall conduct the interview and make arrangements for the interview date and time with the Chair's Executive Assistant.
    2. The interview shall occur at the confining TDCJ-CID Unit. Attendance shall be limited to the convicted person, designated Board Member(s), and TDCJ IPO and unit staff.

3. The Clemency Administrator shall also contact the Huntsville Institutional Parole Office for staff assignment of interview and accommodations for the Board Member(s).
  - C. Hearing – If the clemency application includes a request for a hearing, the Board may grant the request and follow the procedures outlined in the Texas Administrative Code §143.43(g) – (j).
  - D. Notice - The Clemency Administrator shall send a letter to the trial officials and TDCJ Victim Services notifying them that the offender has requested clemency and soliciting their input.
  - E. General Counsel’s Synopsis - The Board’s General Counsel shall complete a synopsis within six workdays of receiving the petition.
- III. Board Members Vote – The Board Members shall vote two days before the execution date at 1 p.m. unless determined otherwise by the Chair. If a Board Member is on leave and out of the country, the member shall not be required to vote.
- A. The Board Members shall submit their votes by facsimile or hand delivery to the BCS. Upon receipt of all votes, the Clemency Administrator shall notify the Chair who will cast final vote.
  - B. The Clemency Administrator shall notify the Board Members, Governor, Lieutenant Governor, trial officials who submitted a response to the notice and TDCJ Victim Services of the final vote. If the vote is to recommend clemency, the Clemency Administrator shall notify all trial officials as required by Government Code Section 508.115.
- IV. Each Board Member shall return their clemency notebook to the BCS after the Clemency Administrator notifies them of the Board’s final decision.

**SIGNED THIS, THE 28<sup>TH</sup> DAY OF MARCH, 2018.**

**DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)**

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*\* Signature on file.*