



**TEXAS BOARD
OF
PARDONS AND PAROLES**

Number: BPP-DIR. 143.300

Date: July 25, 2023

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Supersedes: March 7, 2022

BOARD DIRECTIVE

SUBJECT: CLEMENCY FOR CAPITAL CASES

PURPOSE: To provide guidance to the voting members and staff of the Texas Board of Pardons and Paroles for processing clemency applications for offenders who receive a sentence of death.

AUTHORITY: Texas Constitution Article 4, Section 11
Texas Government Code Section 508.115
Texas Administrative Code Title 37, Part 5, Chapter 143, Sections 143.41, 143.42, 143.43, and 143.57
Texas Code of Criminal Procedure Article 48.01

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 Texas Board of Pardons and Paroles (Board). The request must meet the requirements identified in the above Texas Administrative Code rules. The Governor may on their own grant a one-time 30-day reprieve.

DEFINITIONS: Application – a formal request by the offender or the offender’s attorney for the Board to recommend the Governor grant clemency.

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.

PROCEDURE:

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

- I. File and Notebook – The BCS Clemency Administrator (CA) is responsible for creating a file and/or notebook that contains all appropriate documents.
 - A. When the Order of Execution or Death Warrant is received, the CA shall contact the Board's Director of Institutional Parole Operations to request an Institutional Parole Officer (IPO) prepare an Executive Clemency Case Report (ECCR).
 - B. When the ECCR is received, the CA shall compile and deliver clemency notebooks to the Governor and General Counsel. The Board Members shall receive notification of the electronic file location in OnBase. As additional information is received, the CA shall send it to the Board Members, Governor, and General Counsel as a supplement to the original clemency notebook.

- II. Application, Interview, and Hearing – The CA shall receive clemency applications which may include other capital case related requests. All capital case applications requesting clemency must be in writing and signed by the offender or their attorney or, in cases where the offender is unable to sign due to a mental or physical impairment, by a person acting on the offender's behalf. A capital case application with an attorney's electronic signature meets the requirements prescribed by this directive.
 - A. Application – An offender or their attorney is required to submit five (5) copies of the application no later than the 21st calendar day before the scheduled execution date to the address in Title 37, Part 5, Chapter 143, Section 143.43, Texas Administrative Code. The offender or their attorney must submit supplemental information no later than the 15th calendar day before the execution is scheduled. The offender may request a Reprieve or Commutation of Sentence.
 - B. Interview – If the clemency application includes a request for a Board interview, the CA shall contact the Presiding Officer (Chair) who shall designate at least one (1) member of the Board to conduct the requested interview.
 1. The assigned Board Member shall conduct the interview on the date and time as notified by the Chair's Executive Assistant.
 2. The interview shall occur at the confining TDCJ CID unit. Attendance shall be limited to the offender, designated Board Member(s), and IPO and TDCJ unit staff.
 - C. Hearing – If the clemency application includes a request for a hearing, the Board may grant the request and follow the procedures outlined in Title 37, Part 5, Chapter 143, Section 143.43(g) – (j), Texas Administrative Code.

- D. Notice – The CA shall send a letter to the trial officials and TDCJ Victim Services notifying them the offender has requested clemency and soliciting the victim’s input.
 - E. General Counsel’s Synopsis – The Board’s General Counsel shall complete a synopsis within six (6) workdays of receiving the application.
- III. Board Members Vote – The Board Members shall vote on whether to conduct a hearing 10 days before the execution date at 1 p.m. and vote on whether to recommend clemency two (2) days before the execution date at 1 p.m., unless determined otherwise by the Chair. If a Board Member is both on leave and out of the country, the member shall not be required to vote.
- A. The Board Members shall use the voting sheet provided by the BCS to record their vote and submit their vote electronically by completing and sending the E-Voting Sheet to the BPP-Clemency Votes mailbox. Upon receipt of all votes, the CA shall notify the Chair, who will cast the final vote.
 - B. The CA shall notify the offender or their attorney, or the person acting on the offender’s behalf, 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 CA shall notify all trial officials as required by Section 508.115, Government Code.

SIGNED THIS, THE 25TH DAY OF JULY, 2023

DAVID GUTIÉRREZ, PRESIDING OFFICER (CHAIR)

**Signature on file.*