

CLEMENCY & PAROLE

A GUIDE BY SURVIVED & PUNISHED NY

INTRODUCTION

There are two ways to help you get your sentence reduced or eliminated and potentially come home sooner. While you are still incarcerated, you can apply for clemency in the form of a sentence commutation, and you can apply for parole at the time which was specified when you were sentenced. These kinds of relief are not mutually exclusive. You can apply for both, depending on the timing, which will be described below. Once you have been released, there are two kinds of pardons which you may be able to apply for. Pardons clear your record and set the conviction aside. This guide is designed to walk you through the options available to you and to explain the processes for relief.

OPTIONS AVAILABLE WHILE IN STATE CUSTODY

COMMUTATIONS[I]

A commutation is a reduction of the sentence you are currently serving. The reduction is granted by the Governor. The reduction may allow you to be released immediately, may set a new date for your release, or make you eligible to apply for parole. To apply for a commutation:

1. You must have been sentenced to serve more than one year;
2. You must have served at least half of your minimum prison term.
3. You must not be eligible for parole within one year of the date of your application for commutation.

Application Process

1) Write a letter asking for relief

There is no application form for a commutation. Instead, write a letter describing your need for a commutation and send the letter to the Executive Clemency Bureau (see address below).

You have the burden of proving why your sentence should be commuted. There are three common arguments. First, you can argue that you have:

- made exceptional strides in self-development and improvement;
- made responsible use of available rehabilitative programs;
- addressed identified treatment needs;
- AND the commutation is in the interest of justice, consistent with public safety and the rehabilitation of the applicant.

Second, if you are terminally ill, you can argue that you are suffering from a terminal illness and should be released from prison. In addition, you can argue that you have a severe and chronic disability which would be substantially mitigated by release from prison.

Third, you can argue that further incarceration would be unjust in some specific way (for example, that your sentence is too harsh for the crime committed), and would constitute gross unfairness because of the basic inequities involved.

The letter should also include examples of your positive accomplishments while incarcerated and examples of rehabilitation (program completion, education, community involvement, volunteer service, employment). For any accomplishments you list, provide proof through letters, certificates of completion, or degrees you earned. In your letter, include your Social Security number, Departmental Identification Number, NYSID number, or FBI number.

2) Request Letters of Support

You also have the option of including letters of support from friends, family, and other community members. These letters should be sent in with your letter. The letters should include an explanation of any support that they plan to offer you upon release that strengthens your case for commutation, such as housing with a family member or an offer of employment.

3) Submit Application and Letters

When you are done gathering support and drafting your letter, submit it to the Executive Clemency Bureau.

New York State
Department of Corrections and Community Supervision
Executive Clemency Bureau
The Harriman State Campus – Building 2
1220 Washington Ave
Albany, NY 12226-2050

Effect of Commutation

If you receive a commutation, your sentence will be shortened by an amount determined by the Governor. You will be given a release date (which could be the next day or within several months), or the ability to apply for parole. If you do not receive a commutation, you may apply again one year from the date of denial, unless you are authorized to do so sooner.

PAROLE[III]

Requirements:

The Parole Board must consider a number of factors when determining whether to grant you parole[iii]:
Institutional record.

- Performance, if any, as a participant in a temporary release program.
- Release plans and supports available to you upon release.
- Any deportation order issued by the United States government.
- Statements by the victim or a representative of the victim.
- The length of the determinate sentence for a felony.
- The seriousness of the offense, considering the type of sentence, length of sentence and recommendations of the sentencing court, the state, and your counsel from trial. The Parole Board also considers the pre-sentence probation report, as well as any mitigating and aggravating factors and activities following arrest prior to your current confinement.
- Prior criminal record (including the nature and pattern of your offenses, age at the time of commitment of any prior criminal offense, adjustment to any previous periods of probation, community supervision and institutional confinement).

Parole Process[iv]

1) Prepare the parole packet

- The parole packet should include:
- Cover Letter (overview of everything in the packet and a brief but compelling summary of the argument for parole)
- Table of Contents
- Personal Statement (discuss your remorse and responsibility for the offense)
- Resume
- Supporting Documents
 - o Legal Documents (institutional and case records, Parole Board report, COMPAS/case plan)
 - o Awards and achievements while incarcerated (include certificates and letters of certification)
 - o Letters of support from prison officials discussing good behavior
 - o Letters from organizations and institutions that will provide you support post-incarceration, including service providers and programs that you will participate in
 - o Letters from friends and family discussing the types of support they will provide
 - o Psychological Evaluations

2) Parole interview[v]

Your interview is conducted by a panel of two or three members of the Parole Board, usually as a video conference. You cannot have an attorney with you. Each interview typically lasts from a few minutes to about 45 minutes. If you are granted parole, the Parole Board will determine the conditions of release and has the authority to revoke your parole if you break any of those conditions.

The most crucial factors at your parole interview are to (i) take full responsibility for the crime, (ii) express genuine remorse for the harm caused, (iii) convince the panel that you have been rehabilitated—that you will not be a danger to society if released—and (iv) demonstrate that you have a workable release plan in place and that you understand the location/organization to whom you will be paroled as well as your transitional needs and how they will be addressed. Most importantly, you must be, and come across as, entirely truthful. If the panel does not believe that you are telling the truth, you almost certainly will be denied parole.

3) The Board Makes a Decision[vi]

The Board uses the risk-needs assessment done periodically by Department of Corrections and Community Supervision to determine the impact that your release may have on public safety.[vii] The Board has 2 weeks from the hearing to make a decision. You will be sent a Parole Board Decision Notice. If your release is approved, the Parole Board Decision Notice includes the release date and conditions of supervision upon release.[viii]

If your release is denied, the notice should detail the reasons for denial and a notice of the date when you are next eligible for a parole interview, which cannot be more than two years after the denial date.[ix]

4) Appealing

a) Administrative appeal

If you wish to appeal the denial of your request for parole, you must file an administrative appeal with 30 days from notice of denial.[x] If you do not file within 30 days of the Board's decision, you waive the right to appeal that decision.

Draft a notice of appeal with your name and state identification number, the date of your hearing, and the place where the hearing occurred. You can submit a form, but you are not required to use the form.[xi] When appealing, you may request a copy of the hearing transcript, but there will be a copying fee of 25 cents per page.[xii]

After filing, you will receive a letter of acknowledgement with the date that all of your documentation for appeal is due.[xiii] You will have four months to gather all of your documentation for an appeal.[xiv] The documentation can be a brief drafted by an attorney or a letter you write explaining what the Board did wrong.[xv] When you appeal, you can be represented by counsel. The appeal may only be submitted in writing. Oral arguments are “expressly prohibited.”[xvi] If four months pass and you do not submit your information, you waive the right to an appeal.[xvii]

b) Article 78

If the administrative appeal is denied, the next step is an Article 78 petition to the New York Supreme Court. The Supreme Court will review your initial hearing and determine if you should be granted parole OR send your case back to the Parole Board to give you another hearing. The New York Supreme Court will only grant parole if the Parole Board acted improperly (for example, if the Board focused only on the crime, but not the other factors). The Board does not have to give every factor equal weight or even mention all of them, but the Board must consider multiple factors in determining whether or not to grant you parole. [xviii]

OPTIONS AVAILABLE UPON RELEASE

PARDON[XIX]

Pardons are for those who have completed their sentences, but would like to have their convictions removed entirely from their records. There are two types of pardons: a standard pardon and a pardon available to those who were convicted at 16 and 17 years old.

Standard Pardon

A standard pardon is most often granted to:

- Set aside a conviction when overwhelming evidence and convincing proof of innocence becomes available;
- Relieve a disability that is imposed because of a conviction (such as ineligibility to receive specific occupational licenses for someone who has been convicted for the first time); or
- Prevent deportation from or permit re-entry into the United States.

Unless there are exceptional and compelling circumstances, a standard pardon is not considered if the applicant has other administrative remedies available to them, such as a certificate of good conduct or a certificate of relief from disabilities, pursuant to the provisions of Article 23 of the Corrections Law. For applications under (2) and (3), the applicant should demonstrate evidence of rehabilitation.

16 or 17 When Convicted Pardon Requirements[xx]

If you were convicted of a non-violent crime at 16 or 17, then you may apply for a special pardon. To be eligible you must meet the following criteria:

- At least 10 years have passed since you were either convicted of the crime or released from a period of incarceration for that crime. You have been conviction-free since that time.
- You were not convicted of a sex offense.
- You are currently a New York State resident.
- You have paid your taxes.
- You are a productive member of the community (currently working or in school or applying for work or school or legitimately unable to work).

PARDON APPLICATION PROCEDURE

1) Application Form

To apply for a standard pardon, fill out an [application form](#) and submit it to the Executive Clemency Bureau (Appendix A). For a 16 or 17 year old when convicted pardon, fill out an [application form](#) and submit it to the Executive Clemency Bureau. (Appendix B).

2) Other application materials

You should also write a letter describing your need for pardon (including jobs you have lost because of your criminal record, for example, or any other type of discrimination you have faced) and any personal accomplishments you have had since incarceration (jobs, education, community service, program completions). When including a description of your accomplishments, be sure to include proof of those accomplishments. You may also include letters of support from friends, family, and other members of the community. If you are requesting a pardon to prevent deportation, you must submit copies of documents or hearing notices from the U.S. Immigration and Customs Enforcement.

3) Submit Application

All of these items should be sent to the Executive Clemency Bureau:

New York State
 Department of Corrections and Community Supervision
 Executive Clemency Bureau
 The Harriman State Campus – Building 2
 1220 Washington Ave
 Albany, NY 12226-2050

OR

Scan and email your application package to the following address: PardonsAndCommutations@doccs.ny.gov. [View more information](#) about the clemency review process.

EFFECT OF 16 OR 17 WHEN CONVICTED PARDON

If you receive this pardon, public access to your criminal history will be restricted, so it will not be available to private employers, landlords, or other companies that seek this information.

ENDNOTES

[i] Id.

[ii] Adapted from, https://download.pli.edu/WebContent/chbs/221886/221886_Chapter09_Domestic_Violence_2018.pdf

[iii] 9 NYCRR §8002.2 (2018).

[iv] See Sanctuary for Families, Domestic Violence 2018: Survivors as Defendants, Respondents, and Parole or Clemency Applicants (2018)

[v] 9 NYCRR §8002.2 (2018).

[vi] 9 NYCRR §8002.3 (2018).

[vii] 9 NYCRR §8002.2 (2018).

[viii] 9 NYCRR §8002.3(b) (2018).

[ix] Id.

[x] 9 NYCRR §8006.1(b) (2018).

[xi] 9 NYCRR §8006.1(d) (2018).

[xii] 9 NYCRR §8006.1(e) (2018).

[xiii] 9 NYCRR §8006.1(f) (2018).

[xiv] 9 NYCRR §8006.2(a) (2018).

[xv] 9 NYCRR §8006.2(b) (2018).

[xvi] 9 NYCRR §8006.2(c) (2018).

[xvii] 9 NYCRR §8006.2(f) (2018).

[xviii] In the matter of Niki Rossakis v. New York State Parole Board (N.Y. 2015).

[xix] Adapted from, <http://www.ny.gov/services/apply-clemency#how-to-apply>

[xx] Id.

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Survived & Punished (S&P) is a national coalition that includes survivors, organizers, victim advocates, legal advocates and attorneys, policy experts, scholars, and currently and formerly incarcerated people. S&P organizes to de-criminalize efforts to survive domestic and sexual violence, support and free criminalized survivors, and abolish gender violence, policing, prisons, and deportations. S&P has affiliates in New York City, Chicago, and California statewide. It was founded in 2016 by organizers from the Stand With Nan-Hui defense campaign, California Coalition for Women Prisoners, Love & Protect (then known as Chicago Alliance to Free Marissa Alexander), and the national Free Marissa Now Mobilization Campaign.

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For information about Survived & Punished NY's #FreeThemNY campaign, visit <http://freethemny.com>

