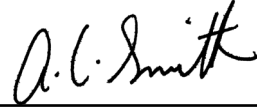




Department of  
Rehabilitation & Correction

|                                                                                                             |                                                                                                  |
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| SUBJECT:<br><b>Clemency Procedure: Death Penalty Cases</b>                                                  | PAGE <u> 1 </u> OF <u> 7 </u><br><br>NUMBER: <b>105-PBD-01</b>                                   |
| RULE/CODE REFERENCE:<br>ORC 2967.01, 2967.03, 2967.04, 2967.06,<br>2967.07, 2967.08, 2967.12, 2930, 5120.01 | SUPERSEDES:<br>105-PBD-01 dated 06/12/2014                                                       |
| RELATED ACA STANDARDS:<br>2-1010, 2-1011                                                                    | EFFECTIVE DATE:<br><b>October 1, 2021</b>                                                        |
|                                                                                                             | APPROVED:<br> |

## I. AUTHORITY

Ohio Revised Code 5120.01 authorizes the Director of the Department of Rehabilitation and Correction, as the executive head of the department, to direct the total operations and management of the department by establishing procedures as set forth in this policy.

## II. PURPOSE

The purpose of this policy is to establish a standard procedure for considering clemency in death penalty cases.

## III. APPLICABILITY

This policy applies to the Ohio Parole Board and to other employees of the Ohio Department of Rehabilitation and Correction (ODRC) who are responsible for collecting and providing information, scheduling hearings, providing notices, and performing other related tasks relevant to death penalty clemencies. This policy also applies to incarcerated individuals under sentence of death and to the attorneys representing them.

## IV. DEFINITIONS

The definitions for the below listed terms can be found at the top of the policies page on the ODRC Intranet at the following:

### [Definitions Link](#)

- **Business Days**
- **Calendar Days**
- **Commutation**
- **Death Row**
- **Executive Clemency**
- **Executive Session**
- **OnBase**
- **Pardon**
- **Parole Board**

- **Quorum**
- **Reprieve**
- **Roberta’s Law (SB160) Victim**
- **Victim**
- **Victim Representative**

## **V. POLICY**

It is the policy of the ODRC to fulfill its duties related to executive clemency in a manner that is expeditious and fair to the incarcerated individual sentenced to death and to all parties involved, and in a manner that conforms to the requirements of ORC sections 2967.03 through 2967.07, 2967.12 and 2930.

## **VI. PROCEDURE**

### **A. Policy Notification**

All individuals committed to the ODRC with a sentence of death shall be given a copy of this policy by an institution employee designated by the managing officer.

### **B. Background Information**

1. The Parole Board chair/designee shall request a report upon an individual’s admission to the ODRC under a sentence of death.
2. The report shall include the following:
  - a. A complete arrest record (juvenile and adult),
  - b. Prior institutional and parole and/or probation supervision history, when applicable,
  - c. Social history, and
  - d. Details of the offense.
3. If an individual was supervised by the Adult Parole Authority (APA) at the time of the commission of the offense for which the death sentence was imposed, a copy of the APA unit file shall be forwarded to the Bureau of Records Management (BORM) by the supervising unit to be scanned to OnBase.
4. When a clemency interview and hearing date have been established, the Parole Board chair/designee shall contact the case manager at the institution where the individual is incarcerated thirty (30) days prior to the scheduled interview date to request an institutional summary report (ISR). The ISR shall include a complete record of the individual’s work history, participation in programming, and disciplinary infractions while incarcerated under the sentence of death.

### **C. Scheduling of a Clemency Hearing**

1. The Parole Board chair/designee shall schedule a death penalty clemency hearing as follows:

- a. Upon receipt of notice from the Ohio Supreme Court of the execution date of an incarcerated individual for which the appeals process has been exhausted,
  - b. Upon receipt of notice from the Ohio Supreme Court of the execution date of an individual who has waived all future appeals, or
  - c. Upon its own initiative.
2. The death penalty clemency hearing shall be scheduled on a date that is satisfactory to the Governor's Office and that allows sufficient time for the Governor to review the report and other materials received from the Parole Board prior to the scheduled execution date. The Parole Board chair/designee shall schedule a clemency hearing to be held during normal business hours at a location to be determined by the Parole Board.

#### **D. Clemency Hearing Notification**

1. The Parole Board shall provide all notifications as mandated in ORC section 2967.12, Notice of Pendency of Pardon, Commutation, and Parole. The Office of Victim Services (OVS) shall provide notice of hearings to qualified victims, victims' family members, or victims' representatives.
2. The Parole Board chair/designee shall direct a Parole Board staff member or designated institutional staff to notify the incarcerated individual in person and in writing that a clemency recommendation will be made to the Governor and of the scheduled date of the clemency hearing.

#### **E. Interview**

1. The incarcerated individual shall be notified by a Parole Board staff member or by designated institutional staff, in person and in writing, that the incarcerated individual may participate in an interview with the Parole Board prior to the scheduled clemency hearing. The individual shall indicate, in writing, receipt of the notice and their intention whether to participate in the interview. A copy of the notice shall be forwarded to the incarcerated individual's attorney of record. An interview with the individual shall be scheduled up to ten (10) calendar days prior to the scheduled clemency hearing, if possible.
2. If the incarcerated individual indicates their intention is to participate in an interview, then the Parole Board chair/designee shall reserve locations so that all Parole Board members can participate through video-conferencing.
3. There shall be no recording or transcription of the interview. A counsel for the incarcerated individual may be present at the institution with the individual during the interview. The interview may be observed via video-conference at an ODRC and/or APA site(s) only, to be determined by the Parole Board chair/designee. Only designated case attorneys from the Prosecutor's Office of the county of indictment, the Attorney General's Office, and the incarcerated individual's counsel/co-counsel as well as representatives from the Governor's Office shall be permitted to observe the interview. The observers shall be located at a separate location from the Parole Board members. Out-of-state sites may be approved by the Parole Board chair/designee if designated case

attorneys are located outside of the state of Ohio. However, those who are approved to observe from an out-of-state site must agree in writing that a recording or transcription of the interview shall not be made by any means.

4. Only the Parole Board members and the incarcerated individual shall participate in the interview. If the incarcerated individual needs an interpreter to participate in the interview, that person shall also be permitted to participate. The observers, whether located at the institution with the incarcerated individual or at a video-conferencing site, shall not be permitted to either question the incarcerated individual or present arguments to the Parole Board. The presentation of arguments in support of or in opposition to clemency shall be reserved for the clemency hearing.

#### **F. Submission of Materials**

1. All submissions to the Parole Board shall be made either electronically or in paper form no later than 4:00 pm on the day the materials are due to the Parole Board. Parties choosing to submit materials in paper form shall provide three (3) copies. Timeframes for submitting the below required materials shall occur as follows:
  - a. Trial transcripts and judicial decisions from the Attorney General's Office in neutral format, thirty (30) calendar days prior to the incarcerated individual's interview,
  - b. Application on behalf of the incarcerated individual, fifteen (15) calendar days prior to the scheduled hearing. If the individual's counsel intends to present oral argument at the hearing in support of clemency, counsel shall submit a written application summarizing the arguments to be presented fifteen (15) calendar days prior to the scheduled hearing. In the event the individual is not seeking clemency, and counsel does not intend to make oral arguments at the hearing and/or submit an application in support of clemency, written notification indicating same shall be submitted by counsel fifteen (15) calendar days prior to the hearing.
  - c. State's response, seven (7) calendar days following submission of the application.
2. Parties submitting the application or written notification referenced in section VI.F.1.b and response shall be responsible for providing copies to the opposing party.
3. Requests from media for copies of these documents shall be directed to the party who provided the information.

#### **G. Clemency Hearing Attendance and Participation**

1. The following parties shall be permitted to attend and participate in the clemency hearing:
  - a. Incarcerated individual's attorney,
  - b. Incarcerated individual's family and supporters,
  - c. Prosecutor of the county of indictment and or their representatives,
  - d. Case attorneys from the Attorney General's Office,
  - e. Family of the victim/victim's representative,
  - f. Any additional participant at the discretion of the Parole Board chair/designee.

2. Counsel for the incarcerated individual, as well as counsel for the state, must notify the Parole Board chair/designee of those individuals who will be presenting to the Parole Board at the hearing, and in which format the presentation will occur (i.e., live speaker, videotaped statement, etc.) no later than two (2) business days prior to the hearing date. Presenters shall only be permitted to present to the Parole Board through one (1) format and shall not be permitted to present to the Parole Board both through a video-taped or other pre-recorded statement and a live presentation.
3. Attendance by observers at the hearing is at the sole discretion of the Parole Board chair/designee.
4. Attendance at the clemency hearing by members of the generally recognized professional news media is permitted at the discretion of the ODRC Office of Communications.

#### **H. Hearing Protocol**

1. The clemency hearing shall be conducted with at least a majority of the Parole Board members present.
2. All participants and observers must be seated in the hearing room prior to the beginning of the hearing. Persons arriving after the hearing has begun may be excluded from the hearing. Any person whose behavior or decorum causes disruption in the hearing shall be asked to leave the hearing room.
3. The Parole Board shall hear arguments for and against clemency. The order in which arguments are presented shall be determined by the Parole Board chair/designee, but most generally shall occur in the following order:
  - a. Incarcerated individual's attorney and other presenters,
  - b. Incarcerated individual's family and/or supporters,
  - c. Prosecutor and/or their representative of the county of indictment and other presenters,
  - d. Case attorneys from the Attorney General's Office,
  - e. Family of the victim/victim's representative, and
  - f. Any additional presenters approved at the discretion of the Parole Board chair/designee.
4. All presentations shall be given from the designated table/podium. Submissions in the form of video or audio statements shall only be permitted if the presenter is not also intending to present live to the Parole Board at the hearing. Time limitations may be placed on presenters at the discretion of the Parole Board chair.
5. After hearing the presentation of a participant, the Parole Board members shall receive an opportunity to individually ask questions of the participant.
6. The Parole Board chair shall allow for breaks as necessary including a sufficient break for lunch when appropriate.

7. Upon conclusion of all presenters, the Parole Board chair shall adjourn the hearing and the Parole Board members shall move into executive session for the purposes of deliberation. Deliberations may be continued to the next business day if time does not permit for the deliberations to occur within normal business hours.
8. In the event that the hearing cannot be concluded within normal business hours, the Parole Board chair shall continue the hearing to the next business day. However, if the hearing can be concluded within a reasonable time beyond normal working hours the Parole Board chair may permit the hearing to proceed to conclusion.

#### **I. Parole Board Deliberation and Recommendation**

1. During deliberations, the Parole Board members shall consider all available relevant information including any statement that the incarcerated individual gave at the time of the interview and any oral arguments and written documentation provided.
2. The Parole Board members shall deliberate in executive session and shall vote for either a favorable or unfavorable recommendation in regard to granting clemency. Parole Board members shall sign a vote sheet(s) reflecting their individual votes.
3. A report of the clemency hearing and recommendation shall be written by a Parole Board member assigned by the Parole Board chair. The report shall include any dissenting opinion.
4. Within six (6) business days after the clemency hearing has concluded or as otherwise directed by the Governor's Office, the Parole Board shall send the written clemency report and recommendation to the Governor's Office. Upon delivery of the clemency report and recommendation to the Governor's Office, the Parole Board shall notify by e-mail the managing officer of the institution where the individual is incarcerated, the individual's counsel, the prosecutor of the county of indictment or their representative, the OVS, and the Office of the Attorney General of its recommendation. The managing officer/designee shall notify the incarcerated individual in person of the recommendation.
5. A press release shall be prepared by the Office of Communications and the report shall be made available to the news media after the written clemency report and recommendation have been delivered to the Office of the Governor.

#### **J. Significant New Information Not Already Considered**

1. If the Parole Board is made aware of significant new information or circumstances not considered in its initial recommendation and report, or in the event an application is received on behalf of the incarcerated individual who previously indicated an intention not to apply for clemency after the initial report and recommendation, then the Parole Board may supplement and/or amend its initial recommendation and report as appropriate.

2. At the discretion of the Parole Board chair/designee, or at the direction of the Office of the Chief Legal Counsel for the Governor, a hearing may be convened to consider significant new information or to consider the application received on behalf of the incarcerated individual who previously indicated an intention not to apply for clemency after the Parole Board's initial recommendation. If such a hearing is convened, then it shall be conducted in accordance with the procedures set forth in this policy and a subsequent report and recommendation shall be provided to the Governor.