

# Restore Justice Foundation

## Criminal Justice Issues and Prisoners' Rights

<https://restorejustice.org/about-us/resources/know-more/know-more-executive-clemency/>

### Policy Issue Resources

*The criminal legal and prison systems in Illinois can often feel like a jigsaw puzzle, full of interlocking laws, policies, and eccentricities that can be overwhelming even to experienced advocates. Restore Justice publishes a series of [Know More](#) posts. Each post will provide a straightforward overview of a different aspect of the Illinois criminal legal system.*

Executive clemency is a set of powers granted to the Governor by the Illinois Constitution to pardon a person who has committed a crime or to commute his or her sentence. The Illinois Constitution provides that ***The Governor may grant reprieves, commutations and pardons, after conviction, for all offenses on such terms as he thinks proper. The manner of applying therefore may be regulated by law.***

A ***pardon*** is an act of grace by the Governor that nullifies the legal consequence of a criminal conviction. There are generally two types of pardons, conditional and unconditional. An unconditional pardon immediately restores all the rights and privileges lost because of the conviction, while a conditional pardon imposes one or more terms (conditions) that must occur before the pardon is effective. A ***commutation*** occurs when the Governor only reduces the judicially imposed sentence of a person convicted of a crime. ***Reprieves*** are a temporary relief from, or a postponement of, a judicially imposed punishment. They usually occur in the context of the death penalty and are typically granted in such cases to give the Governor time to review a case and decide whether to grant a pardon or commutation.

The Executive Clemency process usually begins with a written petition being submitted by the offender to the Prisoner Review Board (PRB). The petition is then reviewed by the PRB to ensure that it is properly filled out and contains all required information. The petitioner can elect to have a public hearing, where the petitioner (if not incarcerated), his/her supporters, and anyone opposing the petition, can appear in person and speak before the PRB. After receiving and considering the petition, supporting documentation, oral testimony, and other relevant information, the PRB makes a confidential recommendation to the Governor regarding the petition. After receiving the PRB recommendation, the Governor can either grant or deny the petition, but there is no time limit for doing so.

The PRB has issued specific guidelines governing the process and procedure for requesting Executive Clemency. These [guidelines](#) can be found on their website.

The Governors Executive Clemency powers are virtually unlimited. The phrase on such terms as he thinks proper gives the Governor broad discretion. Illinois Courts have consistently held that the Governors power is absolute and not subject to limitation by Courts or the General Assembly. The only limitation imposed by the Constitution is the requirement that clemency occurs after conviction and that the General Assembly may establish (or modify) a procedure for applying.

During the 1968 constitutional convention, a discussion about the clemency provision makes clear that the legislature intended to give the governor broad clemency powers:

Mr. J. Parker: The General Assembly has the authority to act on the question of parole, but they would not have any effect on the governors exercise of his power of granting pardons . . .

Mr. Friedrich: *The governor could now and can pardon everyone in Stateville, including those on death row, and can continue to do it under this [constitution]. He has complete authority in this area.*

In 1978, Illinois joined the minority of U.S. states that chose to abolish their discretionary parole. Since then, the prison population in Illinois skyrocketed by over 500 percent, from roughly 6,000 inmates in the 1970s to over 40,000 today. And while not the only reason, the abandonment of discretionary parole was [a certain factor contributing to our states current prison crisis](#).

Another contributing cause to this crisis includes the enactment of more punitive sentencing schemes, such as life without parole (LWOP), defacto LWOP, extended-term sentencing, consecutive sentencing Truth-In-Sentencing (TIS), and a host of other sentencing enhancements. As a result of these unwise and extremely harsh sentencing practices, individuals are spending longer periods of time (usually 20 years or more) in prison without any hope of earning parole or time off for good behavior (Good-Time).

At the core, parole is a period of supervised, early release from prison. It is an alternative to incarceration that when done right can reduce prison costs and reduce crime. Yet there is no shortage of myths surrounding parole in Illinois, from the assumption that it doesn't work to the belief that Illinois already has parole in the form of determinate sentencing and mandatory supervised release (MSR).

Surprisingly (or maybe not), these myths are often held by the legislators who vote on parole bills.

We think its important that people have answers. For that reason, Restore Justice has put together a [primer on parole](#) as it relates to Illinois. Some of the topics it touches on include:

In 2018, the Illinois General Assembly voted to restore limited parole for those under the age of 21 at the time of their offense. Signed by

Governor Pritzker on April 1, 2019, [House Bill 531](#), also known as the Youthful Parole Bill, is the first step to modernize our states criminal justice system by creating new opportunities for parole for young people facing extreme sentences. However, once becoming law, the Youthful Parole Bill will apply only prospectively i.e., to those who are sentenced after the bills effective date. This means the bill will have no impact on those already serving extreme sentences as youth. Because of this, and political challenges present in retroactivity via legislative action, in the near future, a more robust and proactive use of executive clemency is necessary.

Learn more about the Youthful Parole Bill [here](#).

To alleviate the disproportionate impact of harsh sentencing laws enacted in the 90s, the Governor could systematically review groups or categories of individuals for clemency consideration. Generally speaking, most of these individuals were convicted and sentenced for offenses committed in the 1990s and before the effective date of the [Youthful Parole Bill](#).

On January 11, 2003, then Illinois Governor, George Ryan, granted executive clemency to every person on death row. Citing numerous flaws in our criminal justice system, including the wrongful convictions and sentencing to death of 13 innocent people, Governor Ryan commuted the sentences of the 164 people who were sentenced to death in Illinois.

This is the second time an Illinois Governor has granted mass or blanket commutations to a group or class of prisoners. In 1994, then-Illinois Governor Jim Edgar granted clemency to four women who were convicted of murdering abusive husbands or lovers. Governor Lee Cruce of Oklahoma commuted the sentences of 22 men on death row in 1915. In 1970, Arkansas Governor Winthrop L. Rockefeller commuted the death sentences of 15 men. And, in 1986, the five people sentenced to death in New Mexico were granted executive clemency by Governor Toney Anaya.

According to the [Illinois Prison Project](#), Clemency is grossly underused in Illinois, especially for commutations. Only about [1,200 clemency petitions](#) for commutation and pardon are filed each year, and only one or two [commutations](#) have been awarded annually. Most of those petitions are rather filed on behalf of people in the community to seek to clear their record of old convictions.

#### ***What can be done? How would the Governor do it?***

The Governor could set up a commission to study and issue a report on the feasibility of granting executive clemency to the classes or groups who were disproportionately impacted by the harsh sentencing laws enacted in the 90s. This commission, which would include members of the PRB, would be tasked with creating a plan that would identify those who would most benefit from executive clemency and that would have a significant impact on reducing the prison population.

The Governor could then commute their sentences by:

#### ***The role of the PRB?***

The role of the PRB would be the traditional role that it has always played in the clemency process, which includes but is not limited to:

Armentrout, Mitchell. (2019, January 11). *Rauner grants 30 clemency requests before leaving office*, The Chicago Sun-Times. Retrieved from: <https://chicago.suntimes.com/2019/1/11/18413139/rauner-grants-30-clemency-requests-before-leaving-office>

Pratt, Gregory. (2016, December 12). *Rauner clears clemency backlog, approves just 3 percent of petitions*, The Chicago Tribune. Retrieved from: <https://www.chicagotribune.com/news/local/breaking/ct-rauner-clemency-backlog-denials-met-20161212-story.html>

Sfondeles, Tina. (2016, December 12). *Rauner says hes cleared Blago clemency petition backlog*, The Chicago Sun-Times. Retrieved from: <https://chicago.suntimes.com/2016/12/12/18364609/rauner-says-he-s-cleared-bлаго-clemency-petition-backlog>

The Associated Press. (1994, May 14). *Edgar: Clemency for battered women not a political*, The Times of Northwest Indiana. Retrieved from: [https://www.nwitimes.com/uncategorized/edgar-clemency-for-battered-women-not-a-political/article\\_54caf022-7a60-5e21-8587-c274e73d7a71.html](https://www.nwitimes.com/uncategorized/edgar-clemency-for-battered-women-not-a-political/article_54caf022-7a60-5e21-8587-c274e73d7a71.html)

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