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Chairman Phil Mendelson Councilmember Charles Allen

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Councilmember Anita Bonds Councilmember Jack Evans

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Councilmember David Grosso Councilmember Kenyan R. McDuffie

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Councilmember Robert C. White Jr

A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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To establish a Clemency Board to advance local control over the clemency process by reviewing applications for pardons and commutations for District of Columbia Code offenders.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Clemency Board Establishment Act of 2017".

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Clemency” means the power of the President of the United States to modify an individual’s criminal sentence through either commutation or pardon.

(2) “Commutation” means a reduction in a sentence or fine imposed on an individual.

(3) “Pardon” means the removal of collateral consequences associated with the punishment imposed on an individual, usually granted to restore an individual’s civil rights or to relieve an individual of other outstanding sanctions.

Sec. 3. Establishment; purpose and duties.

(a) There is established as an independent agency in the District of Columbia the Clemency Board to review the applications of District of Columbia Code offenders and determine which applications to recommend to the President of the United States for clemency.

(b) The Board shall:

(1) Develop criteria for and an application for clemency and publicize the application procedure;

(2) Review applications and make a determination within six months of their receipt;

(3) Consider both cases of actual innocence and cases of those who are remorseful and can show they have been rehabilitated;

(4) Give special consideration to applicants who are terminally ill, elderly, or no longer present a danger to the community;

(5) Develop criteria for the consideration of an applicant’s background, including from outside organizations;

(6) Endeavor to conduct hearings with applicants;

(7) Allow applicants to have access to an attorney or non-attorney representative during the hearing;

(8) Track and publish the number of applications it grants and denies, in addition to the success of those applications before the President, in an annual report to the Council and on the Board’s website;

(9) Refrain from issuing public opinions containing personally identifiable information regarding the disposition of any application; and

(10) Send successful applications to the President of the United States.

Sec. 4. Composition.

(a) The Board shall be comprised of 9 members, to be appointed pursuant to § 1-523.01(e), of which 5 shall constitute a quorum.

(b) The membership of the Board shall consist of the following representatives:

(1) The Mayor shall appoint individuals with the following qualifications:

(A) One member with a background in returning citizen affairs;

(B) One representative of mental health professionals; and

(C) One member with a background in victim’s rights.

(2) The Mayor shall request the designation of a representative from the following:

(A) The United States Attorney’s Office for the District of Columbia;

(B) The Office of the Attorney General for the District of Columbia;

(C) The Public Defender Service for the District of Columbia; and

(D) The Superior Court of the District of Columbia.

(3) The Council of the District of Columbia shall appoint 2 members, one public member and the Chairperson of the Council Committee with jurisdiction over the judiciary and public safety, or his or her designee.

(c) The Board shall select the chairperson from among its members.

(d) All Board members shall have equal voting power, and applications shall be approved by a simple majority.

(e) Board members shall serve for four-year staggered terms, with no term limit.

(f) Of the members initially appointed under this section, 5 shall be appointed for a term of 4 years, and 4 shall be appointed for a term of 3 years. The terms of the members first appointed shall begin on the date that a majority of the first members are sworn in, which shall become the date for all subsequent appointments.

(g) The Board shall employ at least one full time staff member to manage board operations, gather application materials, and prepare materials for Board review.

Sec. 5. Clemency eligibility.

(a) All District of Columbia Code offenders are eligible to apply.

(b) Applicants must have already exhausted all other remedies available under law.

(c) In addition to the application requirements developed by the Board, pardon applicants must:

(1) Wait three years from the end of incarceration and any subsequent parole, probation, or supervised release for a nonviolent crime before applying, or five years from the end of incarceration and any subsequent parole, probation, or supervised release for a violent crime before applying;

(2) Have complied with the terms and conditions of their sentence or other order imposed by the court;

(3) Have not had further convictions, pending criminal cases, or pending civil cases that are relevant to the initial conviction;

(4) Describe evidence of rehabilitation; and

(5) Describe how the receipt of a pardon would help them achieve their goals and contribute to the community.

(d) In addition to the application requirements developed by the Board, commutation applicants must:

(1) Have complied with the terms and conditions of their sentence or other order imposed by the court;

(2) Describe evidence of rehabilitation;

(3) Describe how commutation would help them achieve their goals and contribute to the community;

(4) Be given special consideration if the sentencing scheme or any mandatory minimum sentence for the crime they committed was lessened after they were initially convicted of the crime.

Sec. 6. Confidentiality of proceedings.

(a) Proceedings of the Board shall be closed to the public and shall not be subject to § 1-207.42, Open Meetings Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq*.), when the Board is discussing clemency applications.

(b) Persons other than Board members who attend any Board meeting which, closed to the public pursuant to (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq*.), shall not disclose what occurred at the meeting to anyone who was not in attendance, except insofar as disclosure is necessary for that person to comply with a request for information from the Board. Board members who attend closed meetings shall not disclose what occurred with anyone who was not in attendance (except other Board members), except insofar as disclosure is necessary to carry out the duties of the Board. Any party who discloses information pursuant to the Act shall take all reasonable steps to ensure that the information is disclosed, and the person to whom the information is disclosed, are as limited as possible.

Sec. 7. Confidentiality of information.

(a) Except as permitted by this section, information and records of the Board shall not be disclosed voluntarily, pursuant to a subpoena, or in response to a request for discovery in any adjudicative proceeding, nor shall they be introduced into evidence in any administrative, civil, or criminal proceeding.

(b) Board information and records may be disclosed only as necessary to carry out the Board’s duties and purposes.

(c)Information and records presented to the Board shall not be immune from subpoena or discovery, or prohibited from being introduced into evidence, solely because the information and records were presented to the Board, if the information and records have been obtained through other sources.

Sec. 8. Rules.

The Mayor, pursuant to subchapter I of the District of Columbia Administrative Procedure Act, effective October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501, *et seq.*), shall issue rules to implement the provisions of this chapter. The proposed rules shall be submitted to the Council for a 45-day period of review, excluding days of Council recess. If the Council does not approve or disapprove the proposed rules, by resolution, within the 45-day review period, the proposed rules shall be deemed approved.

Sec. 9. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

Sec. 10. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.