

# Improving the Pardon and Commutation Process

## *Policy Recommendations for Governor Gavin Newsom*

MARCH 2019



ASIAN AMERICANS  
ADVANCING  
JUSTICE  
ASIAN LAW CAUCUS



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## **About Asian Americans Advancing Justice - Asian Law Caucus**

Founded in 1972, Asian Americans Advancing Justice – Asian Law Caucus (Advancing Justice - ALC) is the nation’s first legal and civil rights organization serving the low-income Asian Pacific American communities. Advancing Justice – ALC focuses on criminal justice reform, housing rights, immigration and immigrants’ rights, labor and employment issues, immigrant youth advocacy (ASPIRE), voting rights, and national security and civil rights.

Since the vast majority of Asians and Pacific Islanders in America are immigrants and refugees, Advancing Justice – ALC strives to create informed and educated communities empowered to assert their rights and to participate actively in American society. This perspective is reflected in our broad strategy which integrates the provision of legal services, educational programs, community organizing initiatives and advocacy.

### **Prepared by Asian Americans Advancing Justice - Asian Law Caucus on behalf of the Pardon and Commutation Reform Coalition:**

- Asian Americans Advancing Justice – California
- Asian Prisoner Support Committee
- California Coalition for Women Prisoners
- Coalition for Humane Immigrant Rights
- Council on American - Islamic Relations

- Immigrant Legal Resource Center
- Legal Services for Prisoners with Children
- PICO California
- Southeast Asia Resource Action Center
- Root and Rebound
- Youth Justice Coalition

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*“As nonprofit organizations working alongside directly-impacted community members to advance criminal justice reform, we write this report to share our policy recommendations for implementing AB 2845.”*

## Executive Summary

After passing AB 2845 in September 2018, the state of California adopted its first progressive pardon and commutation reform process since 1943. This year the Governor’s Office and the Board of Parole Hearings have the important responsibility of implementing this new law and can choose to take additional steps to significantly improve the transparency and accessibility of the pardon and commutation process.

As nonprofit organizations working alongside directly-impacted community members to advance criminal justice reform, we write this report to share our policy recommendations for implementing AB 2845. While implementing AB 2845 is an important first step to improving the pardon and commutation process, further reform is needed to ensure that these vital avenues for relief are truly accessible and transparent. Based on gathering and analyzing 100 survey results from pardon and commutation

applicants and drawing from our experiences serving directly-impacted community members seeking pardons and commutations, we provide recommendations for building on these initial reforms to further improve California’s pardon and commutation process.

In this memo we provide background information on the pardon and commutation process, a summary of AB 2845, and an analysis of major trends in the survey results. We also provide the following recommendations for this new administration to consider adopting:

- 1. Add a section in the pardon and commutation applications that allows the applicant to explain if there are urgent issues involved, such as deportation orders, and require that BPH expedite these applications.**

The Governor’s Office should ask BPH to expedite their investigation of these applications within three months of receipt from the Governor’s Office, with the flexibility of acting sooner for emergency situations.

- 2. Issue a decision regarding pardon and commutation applications within one year of receipt of the application, or sooner if the application involves an urgent issue.**

The Governor’s Office should provide a clear time frame for when a decision will be issued to increase transparency for applicants and their families.

**3. Create a notification process for applicants and their supporters that includes providing notification of receipt of the application, a filing number, status updates, and guidelines for supplementing or resubmitting an application.**

A key request from survey participants was that the Governor's Office provide notification at each step of the clemency and commutation application process to increase transparency so that applicants are not waiting indefinitely for a response. This reform could be implemented through updating the Governor's website to allow applicants to submit an application through an online portal and for supporters and applicants to check the status of an application.

**4. Allow support letters to be electronically submitted using the applicant's filing number.**

We also recommend that the application instructions inform applicants that they may submit support letters from organizations or programs, as well as from their family, friends, and community members.

**5. Designate a point person as a resource for applicants and their supporters.**

Survey participants expressed that it's often unclear who they should contact in the Governor's Office with questions or to ask for updates. This can be addressed through designating a clear point person.

**6. Ask CDCR to approve trainings in a timely manner regarding the pardon and commutation process from community groups.**

It can be challenging for community groups to get access to a state prison to provide trainings. This process should be streamlined, especially for trainings on applying for clemency and commutations.

**7. Advocate for elimination of California Supreme Court Review for clemency applicants twice convicted of a felony, and resubmit applications recently rejected by the Supreme Court.**

The Supreme Court's recent decisions in December 2018 blocking the Governor from granting clemency for ten individuals while providing no explanation for their decision raises concerns of transparency and interference with the Governor's clemency powers.

We recommend that the Governor's Office promptly resubmit these applications, and ask for an administrative order from the California Supreme Court that explains their prior rare decision to reject grants for these applications. We also recommend that the Governor support a ballot measure to amend the California Constitution to remove this requirement of Supreme Court review.

**8. Adopt a policy of presumptively granting pardon applications supported by a Certificate of Rehabilitation (COR).**

Individuals who are able to obtain a COR from a court must go through a rigorous review process. Applications for a pardon supported by a COR should be granted by the Governor without a second investigation by the Board of Parole Hearings.

**9. Establish an Independent Pardon and Commutation Commission.**

An independent panel should be established to ensure that pardon and commutation applications are prioritized and investigated. Pardon and commutation applications are important decisions for the Governor's Office to make as they affect whether people will be deported, can obtain employment, can vote if they live in another state, and can remove other barriers to reintegration. Pardons and commutations deserve a designated commission.

**Background on pardons and commutations in California**

From the 1980's to the 2000's, misguided "tough on crime" policies spurred a prison boom in California that led to an almost tripling of the number of state prisons from 12 to 33. California's prisons became overcrowded and rife with inhumane conditions. In 2011, the Supreme Court held that the state fell below

the constitutional standard of care for the prison population and ruled for the state to comply by reducing its prison population from 181 percent to 137.5 percent of design capacity within two years.<sup>1</sup>

As of December 2017, of the 130,263 people incarcerated in state prisons, 5,119 are sentenced to Life Without the Possibility of Parole (LWOP) and 27,431 are sentenced to Life.<sup>2</sup> People serving LWOP and Life sentences spend decades in prison, and after exhausting all state appeals, rely on clemency as their main form of relief. Pardons and commutations are key avenues for the Governor of California to recognize the harm caused by the mass incarceration crisis and to underscore the value of redemption and rehabilitation.

In California, individuals who were convicted of a crime and can show they have rehabilitated may apply for a gubernatorial commutation or pardon. A commutation reduces a sentence post-conviction. A pardon restores specified rights, such as the ability to obtain a professional license. A pardon may also allow for an immigrant to reopen their deportation case if the order was based on the state criminal conviction.

Currently, the Governor may forward applications for pardons and commutations to the Board of Parole Hearings (BPH) to review and make recommendations. The Governor retains exclusive authority to grant pardons and commutations; and the Legislature can establish the clemency application process.

*"Despite the urgent need for pardons and commutations in many deserving cases, there is little transparency around the review process."*

# Summary of AB 2845

Governor Brown's legacy in addressing mass incarceration and deportation in California went beyond granting a record number of pardons and commutations. On September 27, 2018, Governor Brown signed AB 2845 into law to begin reforming California's pardon and commutation process. Effective January 1, 2019, AB 2845 takes initial steps to increase the transparency and accessibility of the pardon and commutation process in the following ways:

- Establishes a one-year timeline for the Board of Parole Hearings (BPH) to review and issue recommendations on pardon applications supported by a Certificate of Rehabilitation (COR), which is a court order declaring that a person convicted of a crime is rehabilitated.
- Requires BPH to consider expediting their review of urgent pardon and commutation applications, such as when an applicant is facing deportation.
- Requires BPH to notify applicants when they receive a pardon or commutation application, and when they issue a recommendation to the Governor.
- Allows for individuals to apply for a COR in the county where they reside or where they were convicted.
- Makes COR applications available on county court websites.
- Clarifies that individuals are eligible for a commutation, pardon, or a COR regardless of immigration status.
- Makes pardon and commutation applications available on the Governor's website.
- Expands "Ban the Box" employment protections to ensure that when conducting a background check in connection with an application for employment, an employer may not consider convictions that have been pardoned or received a COR.

AB 2845 was co-sponsored by a coalition of community-based organizations with expertise in criminal justice reform and immigrant rights: Asian Americans Advancing Justice – California, Asian Prisoner Support Committee, California Coalition for Women Prisoners, Coalition for Humane Immigrant Rights, Council on American - Islamic Relations, Immigrant Legal Resource Center, Legal Services for Prisoners with Children, PICO California, Southeast Asia Resource Action Center, Root and Rebound, and Youth Justice Coalition.

Despite the urgent need for pardons and commutations in many deserving cases, there is little transparency around the review process. Individuals who apply for a pardon or commutation do not receive notice if the application was received, if it is being reviewed, and if/when a decision is made.

Prior to passage of AB 2845, there also was no statutory requirements for how long the BPH had to review and issue recommendations to the Governor on commutation and pardon applications. In many cases, individuals who submit pardon or commutation applications never hear back from BPH or the Governor's Office after submitting their applications.

In addition to the lack of transparency, very few applications have been granted in California over the past several decades. From 1991 to 2010, three California governors granted a total of just 28 pardons and 14 commutations. Governor Jerry Brown changed this trend in his last two terms by prioritizing using his pardon and commutation power, and granting 1,332 pardons and 283 commutations, including a significant number of immigrants who were seeking pardons to stop their deportation.<sup>3</sup>

## Survey Analysis

### Methodology

To better understand how to implement AB 2845 and improve the pardon and commutation process, we collected 100 survey responses from pardon and commutation

applicants. These responses included four responses from family members of applicants.

Ninety commutation applicants and three family members of commutation applicants responded to the survey by mail in December 2018. Six California pardon applicants, and one family member of a pardon applicant responded to the survey online between December 2018-January 2019. All pardon applicants are immigrants who also faced immigration detention after serving time in prison or jail. See Appendix to find all survey results.

### Major Trends

Profile of Commutation and Pardon Participants

- The average number of years participants have been incarcerated is 16.2 years.

Experience with the Pardon and Commutation Process

- 87% of participants and their supporters first heard about the pardon and commutation process through word of mouth, other incarcerated people, or through researching on their own. 12% heard about the pardon and commutation process through outside resources such as an attorney, clergy, or community based organizations.
- 1% of participants heard about the pardon and commutation process directly from the Board of Parole Hearings at a workshop.
- 85% of participants did not receive a filing number after they submitted their application.

*"76% of participants expressed confusion or experienced difficulties while filling out the application."*





- 76% of participants expressed confusion or experienced difficulties while filling out the application.
- 52% of participants completed their pardon or commutation application *pro se* (on their own without an attorney).

#### Recommendations to improve the Pardon and Commutation Process

- 60% requested a filing number.
- 56% requested a way to receive status updates.
- 44% requested a timeframe for when applicants can expect to hear about the final status of their pardon or commutation application.
- 19% requested a notice of receipt letter.
- 16% requested guidelines for a how to complete an application, including whether and how to include attachments to the application.

- 5% requested assistance for those living with learning disability, or for English language learners.

## Recommendations for Improving the Pardon and Commutation Process

Our analysis of the survey results and our experience serving low-income incarcerated and formerly incarcerated community members provide the basis for the following recommendations. “Participants” refers to participation in the survey, and “applicants” refers to participation in the pardon or commutation process.

### 1. Create a process for flagging applications involving urgent issues, such as deportation orders, and expedite these applications

The Trump administration’s intense focus on ramping up immigration arrests has resulted in more immigrants seeking pardons to obtain potential relief from deportation. Immigrants who have served their sentence, rehabilitated, and earned release face the risk of being detained by Immigration and Customs Enforcement and permanently separated from their families and communities through deportation.

While AB 2845 requires BPH to consider expediting applications involving urgent issues, including deportation orders, it does not actually require that these

*“For nine months, I had no idea what was going on, only that I haven’t received a rejection letter. It was more nerve wracking than anything. I was living in limbo but it was not as bad as the days that led up to my check-in with ICE.”*

—VANNA IN, PARDON APPLICANT AUGUST 2018

applications be expedited. It also does not provide a clear timeline as to how quickly an application involving an urgent issue should be expedited.

We recommend that the Governor’s Office ask BPH to expedite their investigation of applications involving urgent issues to within three months of receipt from the Governor’s Office, with the flexibility of acting sooner for emergency situations. We also recommend that the pardon and commutation application forms be revised to include a box that applicants can check if their application involves an urgent issue and a section for the applicant to explain the urgent issue and provide a timeline as to when the application will need to be granted to address this issue. The form also should include instructions for attaching supporting documents. To further expedite an application, we recommend that the Governor’s Office include an online portal for those who are able to submit an application electronically (see #4 for more details on website recommendations).

**2. Set a timeline of one year to issue a decision on pardon and commutation applications not involving urgent issues**

Traditionally, applicants who are not granted a pardon or commutation are not “denied” a grant from the Governor’s Office; rather, these pending applications are supposed to be kept on file as they theoretically can be granted at a later date. This current process can keep applicants waiting indefinitely,

not knowing next steps they should take. We recommend issuing a notice of a grant or “decline to grant” within one year so that applicants and their supporters can have set expectations regarding the process, and can decide whether they should resubmit their applications at a later point with additional supporting materials. For emergency situations as described in #1, we recommend issuing a notice of a grant or “decline to grant” within three months, with the flexibility of responding sooner.

Not knowing if the Governor’s Office can expedite their application can cause an extra layer of stress for applicants who face imminent deportation. Vanna, a Cambodian community member who faced deportation, shared his experience going through the pardon application process: *“For nine months, I had no idea what was going on, only that I haven’t received a rejection letter. It was more nerve wracking than anything. I was living in limbo.”*

Lastly, per AB 2845, BPH should notify pardon applicants of their recommendation within one year if the applicant is applying for a pardon after obtaining a Certificate of Rehabilitation. We recommend that BPH also issue recommendations for direct pardon and commutation applications within one year.

*“To address this concern of the Supreme Court blocking the Governor from pardoning individuals and providing no explanation for the basis for their decision, we recommend that the Governor support a ballot measure to eliminate this requirement of Supreme Court review.”*

### **3. Create a Notification Process for Applicants and their Supporters that includes Notification of Receipt Letter, Filing Number, Status Updates, and Guidelines for Supplementing an Application**

#### **3a. Notification of Receipt Letter**

In response to our survey, 19% of applicants specifically requested notification that their application was received. For example, Billy, a commutation applicant shared his experience that there was a lack of communication from the Governor’s Office during the application process: *“It was frustrating. I had no idea if the application was submitted, or if it was done properly because I got no response.”*

Applicants do not know whether or not they should re-submit duplicate applications, costing extra time and unnecessary paperwork for all. To address this concern, we recommend that the Governor’s Office mail applicants a notice of receipt letter within two weeks of receiving an application.

#### **3b. Filing Number**

Only 15% of survey participants reported receiving a filing number. We recommend issuing filing numbers to all pardon and commutation applicants to better track the status of each application, assist in correspondences with BPH or the Governor’s Office, and for supporters with incarcerated loved ones to access updates online (see next paragraph). We recommend that the Governor’s Office send applicants their filing number at the same time as the notification of receipt letter.

### **3c. Status Updates**

To streamline information, we recommend centralizing updates on a website where applicants and supporters can obtain updates on an application’s status through an online portal using the applicant’s filing number. We request that status updates provide specific information regarding the application’s progress. For example, instead of listing the status of an application as “pending,” we recommend providing detailed updates such as whether BPH has issued a recommendation, whether an interview has been scheduled, whether an application is pending the Governor’s review etc. For those currently incarcerated who cannot access updates online, we recommend periodically mailing specific updates that match an applicant’s online status. All updates should be given within expected timeframes as mentioned in recommendation #2.

### **3d. Supplementing or Resubmitting an Application**

We recommend that the Governor’s Office provide clear instructions if supplemental materials are needed to make a determination regarding an application, or alternatively, if the Governor’s Office would prefer the applicant to resubmit their application at a later point. If applications are incomplete, the Governor’s Office should notify the applicant of missing application components within one month of the application’s submission.

In addition, per recommendation #2, if the Governor’s Office issues a “decline to grant” notice for an application, we suggest that the Governor’s Office notify the

*“Pardon and commutation applications are important decisions for the Governor’s office to make as they affect whether people will be deported, can obtain employment, can vote if they live in another state, and can remove other barriers to reintegration. They deserve a designated commission.”*

applicant about the reason for declining. Applicants want to know whether there is anything they can do to improve their likelihood of receiving a pardon or commutation (e.g. if an applicant needs to provide more support letters, program acceptance letters, COR etc.).

Importantly, during this time of transition between administrations, Governor Newsom should issue clear instructions to individuals who submitted applications under Governor Brown, which have not yet been granted, if they need to re-submit their application to the new administration or if the previously submitted application remains pending. This notice should be issued within six months of the new administration taking office.

#### **4. Revisions to the Website and Application**

##### **4a. Clarify the Standard for Granting Pardons and Commutations**

We recommend removing vague language describing the standard for granting pardons and commutations

as “exemplary” from the Governor’s website, the instructions for the applications, and the application forms. This should be replaced with language that focuses on specific actions such as rehabilitation, leadership, and community service. “Exemplary” is not a standard for granting pardons and commutations under California law. Rather, pursuant to California Penal Code 4852.05, the standard is that, “[t]he person shall live an honest and upright life, shall conduct himself or herself with sobriety and industry, shall exhibit a good moral character, and shall conform to and obey the laws of the land.” “Exemplary” language is vague, sets a higher bar than required by law, and can discourage qualified applicants from applying.

The website should also clarify that individuals are eligible for a commutation, pardon, or a COR regardless of immigration status pursuant to AB 2845. Especially in emergency situations such as those facing deportation, the Governor’s Office should reduce any barriers for immigrants to apply for a pardon.





*“One of the most important powers granted to Governor by the California Constitution is the ability to change people’s lives by granting pardon and commutations in recognition that they have rehabilitated.”*

As mentioned in recommendation #1, we suggest that the website and application state the time frame of issuing a grant or a “decline to grant” within one year or 3 months for emergency situations.

#### **4b. Create an Online Portal to Submit Applications**

To increase efficiency, we recommend that the Governor’s Office allow applications to be submitted through an online portal for individuals who are able to submit their applications online. Creating an online portal can also expedite urgent pardon or commutation applications.

#### **4c. Provide Clear Application Guidelines**

To increase transparency regarding the pardon and application process, we recommend posting a chronology of steps of the pardon and commutation process on the Governor’s and BPH’s website. Applicants and their supporters describe the process as opaque and difficult to navigate, so an explanation of the steps, including interviews and investigations, and the role of BPH and the Governor’s Office in each step, can shed more light for applicants and their supporters. To create greater understanding, include information about why various avenues exist in the application process (e.g. what



warrants a BPH investigation ordered by the Governor’s Office). This chronology should also include the notification process and timeframe stated in recommendation #2 and #3.

Lastly, we recommend providing a sample list of documents to demonstrate what applicants can submit to support their application on the website and application.

Linda, a commutation applicant shared that, *“I wanted to include much more than what was asked for. I only answered the questions and now wish I had done more.”*

A sample list could include support letters, parole plan, program acceptance letters, job offer letters, declaration of remorse and accountability for crime, and other helpful supporting documents.

#### **4d. Support Letters**

We recommend that the Governor’s Office provide instructions as to how the applicant may submit support letters from organizations or programs with whom they have ties.

In particular, we suggest providing an option to electronically submit support letters using the applicant’s filing number.

#### **5. Accessibility**

For applicants living with learning disabilities, we recommend providing a list of resources for both inside and outside prison to assist with the pardon and commutation process. In addition, we recommend making the application accessible in multiple languages.

#### **6. Improve Access to Trainings and Information for Applicants and Their Supporters**

To streamline information for those in state prison, we recommend that the Governor’s Office issue timely approval to community groups who offer pardon and commutation workshops. Eighty-seven percent of participants heard about the pardon and application process without access to professional or community resources and did not learn about the process from the Governor’s Office or BPH. Community-led workshops can provide baseline knowledge for all applicants, and provide more equity for applicants who cannot afford legal representation.

We also recommend providing a point of contact at the Governor’s Office for applicants and their supporters for questions and updates. Applicants and their supporters have expressed confusion as to who to contact to check the status of applications, so combined with making the

information available online, having a designated point of contact will create more transparency in the pardon and commutation process.

### **7. Resubmit applications recently rejected by the Supreme Court, and Advocate for elimination of California Supreme Court Review for clemency applicants twice convicted of a felony**

In December 2018, the California Supreme Court blocked ten clemency applications recommended by Governor Brown. This was the first time since 1930 that the California Supreme Court denied applications that the Governor was inclined to grant. At the time of this decision, the California Supreme Court did not have a full bench of justices. Pursuant to Article V, section 8 of the California Constitution, a person with “twice-convicted of a felony” must obtain a recommendation by the California Supreme Court in order for the Governor to grant a pardon or commutation. According to an Administrative Order issued on March 28, 2018 issued by the California Supreme Court, the Court’s role is to check whether a Governor’s proposed decision to grant a pardon or commutation “represents an abuse of power,” and not to determine the merits of a case.<sup>4</sup>

Because the justices did not provide clarification regarding the basis for their decision to deny the ten clemency applications, we recommend that the Governor’s Office resubmit the ten applications that were blocked in December 2018.

Moreover, because Governor Brown appointed Judge Joshua Groban on January 3, 2019, the applications can now be reconsidered by a full bench.

Borey “PJ” Ai, a Cambodian refugee and survey participant, received 36,000 signatures in support of his pardon and a pardon recommendation from BPH, but became one of the ten who received a denial from the California Supreme Court. Like other participants in the survey, Ai requested more transparency in the pardon and commutation process. Because the California’s Supreme Court’s role in checking the Governor’s “abuse of power” remains vague, and because of the lack of communication about its decision-making process, we also suggest that the Governor’s Office ask for an administrative order from the California Supreme Court that explains their historic clemency denials from December 2018.

In addition, to address this concern of the Supreme Court blocking the Governor from granting clemency to individuals and providing no explanation for the basis for their decision, we recommend that the Governor support a ballot measure to eliminate this requirement of Supreme Court review.

### **8. Pardon Applications Supported by a COR Should Be Presumptively Granted**

Currently, pardon applications supported by a Certificate of Rehabilitation (COR) can be sent by the Governor’s Office to the Board of Parole Hearings for a second investigation and recommendation. However, a second investigation

by BPH is not necessary given how rigorous the process is for obtaining a COR from a court. To apply for a Certificate of Rehabilitation, an applicant must meet the exacting criteria required by CA Penal Code §§ 4852.01 to 4852.21. The applicant must wait a minimum period of rehabilitation and have resided in California for at least five years. The applicant must also prove to a court that they “live an honest and upright life, shall conduct himself or herself with sobriety and industry, shall exhibit a good moral character, and shall conform to and obey the laws of the land.” The courts may review the trial record, a probation officer report, prison or jail records, probation or parole reports, and reports of any law enforcement agencies concerning the conduct of applicant. The District Attorney also has the opportunity to conduct their own investigation and can provide the court with their assessment of the applicant’s merits for a COR. If the court decides to grant a COR after this thorough review process, the court is finding that the applicant has been fully

rehabilitated, which makes the applicant a strong candidate for a pardon. We recommend that the Governor considering granting pardon applications supported by a COR without sending the application to BPH for a second investigation.

## 9. Establish an Independent Pardon and Commutation Commission

Pardon and commutation applications are important decisions for the Governor’s Office to make as they affect whether people will be deported, can obtain employment, can vote if they live in another state, and can remove other barriers to reintegration. They deserve a designated commission.

The primary responsibility of the Board of Parole Hearings is to conduct parole suitability hearings. Investigating and making recommendations on pardons and commutation applications is a secondary duty that burdens BPH’s already limited resources. The Governor’s Office should establish a separate and independent pardon and commutations panel to ensure that pardon and commutation applications are prioritized and investigated. The panel should review, investigate, and make recommendations regarding pardon and commutation applications to the Governor. The panel should be made of experts in community-based reentry services, community-based risk assessment issues, and immigration law.







## Conclusion

One of the most important powers granted to Governor by the California Constitution is the ability to change people's lives by granting pardon and commutations in recognition that they have rehabilitated. However, prior to Governor Brown, for decades, Governors failed to execute this important responsibility. The pardons and commutation process also has not been transparent or accessible.

With the recent passage of AB 2845, for the first time in over 70 years in California's history, initial progressive reform has been made to the pardon and commutation process. The Governor's Office should take this opportunity to not only implement AB 2845 to the fullest extent, but also to take additional innovative strides to reform the pardon and commutation process by adopting these recommendations.

Individuals who have demonstrated their rehabilitation and commitment to our communities should not face additional barriers to living a life that is free from indefinite imprisonment, imminent deportation, and/or barriers to employment. Participants in the survey emphasized the need for more transparency, clarity, accessibility, and efficiency in the pardon and commutation process.

We urge Governor Newsom to adopt these recommendations promptly and thereby honor the path of redemption and rehabilitation that many current and formerly incarcerated individuals have taken to contribute to our communities and our state.

## Appendix

### Survey Results

For each response to the survey question, the number of participants who replied accordingly is in parentheses following the responses. For some responses, applicants replied with more than one answer. Some responses may not add up to the total number of participants due to questions that participants left blank.

### Commutation Survey Results (93 responses)

#### 1. Where are participants incarcerated?

Central California Women's Facility (CCWF) (56), California Institution for Women (CIW) (27), California State Prison Solano (3), San Quentin State Prison (3), California Health Care Facility, Stockton (2), Pelican Bay State Prison (1), Centinela State Prison (1).

#### 2. What are the sentences of participants?

Life without the possibility of parole (LWOP) (47), Indeterminate life sentence (Life) (32), Determinate (11), Enhancement (1), No response (2).

#### 3. How long have participants been incarcerated?

Participants have served an average of 17 years in prison.

#### 4. How did participants learn about the commutation process?

Other incarcerated individuals (50), Prison Law Library (14), Word of Mouth (13), Outside Resources or Workshop (6), Attorney (4), Self-taught (4), BPH (1).

#### 5. Did participants have any difficulties getting help with putting commutation or pardon application together? If "yes" explain why:

Yes (47). For the responses that marked "yes," participants reported Unclear Guidelines\* (24), Resource Access\*\* (13), Difficulties with Questions (8), Language Access (1), Fear of Retaliation (1).

No (36), No but received support (8).

\*Participants who marked Unclear Guidelines were not sure about which attachments to include, what was required for the application, and/or how to submit the application.

\*\*Participants who marked Resource Access had difficulty making copies, collecting records and attachments, and needing outside support to gather all of the necessary materials for the application.

#### 6. Who helped you with the application and how long did it take to put application packet together?

Completed by self (51), Other incarcerated individuals (15), Friend (9), Professional (5), Family (3). Of the 66 participants who responded to the time it took them to complete a commutation application, it took an average of two months.

#### 7. Were you given a filing number for application?

No (79), Yes (13).

#### 8. For every application submitted, did your family member or person who helped you receive phone call(s) or updates from BPH or Governor's Office?

No (83), Yes (5). Of those that marked "yes," four stated that a friend or family member had initiated communication with BPH or the Governor's Office.

#### 9. Did anyone help you contact BPH and ask for status of your application(s)? If yes, what was the status of your application(s)?

No (72), Yes (19). Of those that marked "no," four did not know if BPH/Governor's Office could be contacted. Of those that marked "yes," one received an updated response. The California Coalition for Women Prisoners supported this person and they received a filing number.

**10. What was your application process like?**

**Difficult (45):** extremely frustrating, hard, scary, stressful, telling personal truth, emotionally draining, getting resources/material together, trying to figure out what's impactful, navigating how to put application together, a lot of work to do and unsure if doing application correctly.

**Confusing (38):** confusing, intensive, frustrating, time consuming, not knowing status of application, unsure how to fill out application, no idea if Governor received application, lack of communication from Governor's Office.

**Easy (10):** fine, simple process: no problems due to being assisted by others with application. Application was simple, to fill out because of examples provided at Prison Law Library.

**11. After you submitted the application, did you get an interview by BPH?**

Total received interviews (27): CIW (18), CCWF (6), Men's prisons (3).

**12. How long afterward was the interview after you submitted the application?**

8 months - 1 year (9), over 1 year (8), 1-3 months (5), 4-7 months (4).

**12a) How long did the interview take?**

Over one hour (13), 50 minutes - one hour (6), 30 - 45 minutes (3).

**12b) What kind of questions were asked during interview?**

Nature of the crime (21), Rehabilitation: education, self-help, prison programs (17), Childhood/upbringing (17), Prison behavior write ups (5), Family/marriage (4), Parole plans (4), Prior convictions (4), medical history (4), History of substance abuse (3), Why one deserves a commutation and support received upon parole (1).

**12c) What was your take away from the interview?**

Participant felt that investigator had interest in what applicant shared (7), Comfortable with interviewer and interviewer was a good listener (7), Felt rushed and investigator did not spend enough time with applicant (3).

**12d) What did the interviewer tell you regarding next steps?**

A report takes 2-3 weeks to send to the Governor's Office (6), If "denial" letter is not received, it is good news (6), Recorded interview will be reviewed by others (4), Applicants should find housing and submit acceptance letters from programs (2).

**13. Have you received a decision on the applications you submitted?**

No, have not received a decision on application (91).

**13a. When was the date you received a decision and how was it conveyed to you?**

Commutations granted by Governor 8/18 and 11/18, both by phone through Governor's legal team (2).

**14. What would applicant like to see with BPH or Governor's Office to make commutation process better especially being incarcerated with very few resources available?**

Receive a filing number (58), Get update on status of application through mail or website (52), Set timeline date how long commutation should take (40), Better communication and transparency in the commutation process (32), Notice or letter of receipt confirming application is received (18), Set guideline and criteria of a completed application and examples of applications that have been granted (15), Applicants with learning disability and mental health should get assistance in applying (5), Receive a notice whether commutation was granted or not (5).

**15. What would your loved ones or person helping you with your application like to see happen with BPH to make the pardon and commutation process better?**

Regular updates (34), Clear guidelines (12), Representative (8), Website (7), Filing number (5), Emailing support letters (3), Access to support letters (2).

Participants who asked for **regular updates** requested a notice of receipt as to whether or not an application is accepted/rejected, with seven suggestions to put updates on a website, and five suggestions to include a filing number.

Participants who asked for **clearer guidelines** requested a timeframe for the application process, which attachments to include, and where to find more information.

Participants who asked for a **representative** requested a contact person that loved ones can call for additional questions.

Participants who asked for **emailing support letters** requested this method instead of sending support letters through physical mail.

Participants who have been incarcerated for decades may have lost touch with loved ones or supporters and have **no access to support letters**.

**16. How can the participant be supported while waiting on the outcome of the application?**

Regular updates (50), Other (9), Spiritual and emotional support (6), Clear guidelines (5).

**Regular updates** include having a website, notice of receipt, status updates, timeframes, and whether or not new applications should be submitted with a new governor.

**Clear guidelines** include resources on criteria and attachments, how to prepare for interviews and what to expect after interviews.

**Spiritual and emotional support** include needing prayer or family and friends to be with applicants during the process of applying

**Other** includes creating a resource packet for those who get interviewed and commuted.

**Pardon Survey Results (seven responses)**

**1. Where were applicants incarcerated?**

San Quentin State Prison (3), Solano State Prison (1), Mule Creek State Prison (1), Federal Correctional Institute, Terminal Island (1), East Mesa County Jail (1).

**2. How long have participants been incarcerated?**

The average pardon applicant was incarcerated for 13 years.

**3. What are the sentences of participants?**

Life (5), Determinate (1), Jail Time (1).

**4. When was the most recent release date from jail or prison?**

2016 (3), 2011 (1), 2001 (1), 2000 (1), 1998 (1).

**5. Was the applicant detained by ICE, and if so how long?**

Yes, all seven pardon applicants were held in ICE detention. The average amount of time spent in ICE detention is 9 months.

**6. How did participants learn about the pardon process?**

Word of mouth (4), Research (2), Attorney (2).

**7. Did participants have any difficulties getting help with putting the pardon application together? If “yes” explain why:**

No (4). Those who replied “no” all had legal and/or community support.

Some difficulty (2). For one family member, it was difficult to obtain information while their partner was in ICE detention; for another, it took time to understand the pardon process.

Yes (1). Writing the pardon statement was difficult.

**8. Who helped you with the application and how long did it take to put application packet together?**

Attorney (6), Completed by self (1).

Participants took an average of 8 months to finish the pardon application, with a median of 3 weeks.

**9. Were you given a filing number for application?**

No (6), Yes (1).

**10. Did anyone help you contact BPH and ask for status of your application(s)? If yes, what was the status of your application(s)?**

Yes (5), No (2). For the those who answered yes - three had an attorney or the applicant initiate first with BPH or Governor's Office, one received a notice that application was on the Governor's desk, and one received a notification when the pardon was granted.

**11. What was your application process like?**

Difficult (3), one applicant stated they needed patience with gathering support letters. Nerve-racking (2) in one case, due to uncertainty of which part of the deportation defense process to focus on (local jurisdictions for COR or pardon application), and, in the other case, due to being in limbo and not understanding the process. Easy (1), after receiving help with attorneys.

Time Consuming (1), especially without any guidance for the first time, but the application itself was easy.

**12. After you submitted the application, did you get an interview by BPH?**

No (6), One applicant did not respond to question.

**13. Have you received a decision on the applications you submitted?**

Yes, pardon granted (4), No decision yet (2), Denied by Supreme Court (1).

**14. When was the date you received a decision and how was it conveyed to you?**

Those who received a grant for the pardon application waited two months, three months, and eight months. The participant who had their application denied by the CA Supreme Court received this decision after seven months.

**15. What would applicant like to see with BPH or Governor's Office to make pardon process better, especially being incarcerated with very few resources available?**

Get update on status of application through mail or website (4).

Set timeline date how long pardon should take (4).

Expedite application for those facing deportation (2).

Receive a filing number (2).

Notice or letter of receipt confirming application is received (1).

Guidelines for when one needs to re-submit (1).

**16. How can the participant be supported while waiting on the outcome of the application?**

Transparency (3): being more informed about the process.

Community Support (3): having the larger community contact the governor, to fight for more time before deportation, to gain more campaign awareness, and to add letters of support to applicant's supplemental packet.

Support for other immigration issues (1): getting a work permit.

## Notes

1. CDCR Fact Sheet, "Three-Judge Panel and California Inmate Population Reduction," May 23, 2011, available at: <https://www.cdcr.ca.gov/News/docs/2011-05-23-Three-Judge-Panel-Background.pdf>.
2. CDCR Report, "Offender Data Points: Offender Demographics For the 24-month period, ending December 2017," available at: <https://sites.cdcr.ca.gov/research/wp-content/uploads/sites/9/2018/07/Offender-Data-Points-as-of-December-31-2017-1.pdf>.
3. See Ben Christopher, "Gov. Jerry Brown's Pardons Set a Record for Modern California History," *Times of San Diego*, Dec. 26, 2018, available at: <https://timesofsandiego.com/politics/2018/12/26/gov-jerry-browns-pardons-set-a-record-for-modern-california-history/>, and Bob Egelko, "Gov. Jerry Brown sets record for pardons, commutations in California," *San Francisco Chronicle*, Dec. 24, 2018, available at: <https://www.sfchronicle.com/politics/article/Gov-Jerry-Brown-sets-record-for-pardons-13487741.php>.
4. CA Supreme Court Administrative Order, "Procedures for Considering Requests for Recommendations Concerning Applications for Pardons or Commutations," March 28, 2018, available at: [https://www.courts.ca.gov/documents/admin-order\\_2018-03-28\\_proc\\_con\\_req\\_rec\\_apps\\_pardon\\_commutation.pdf](https://www.courts.ca.gov/documents/admin-order_2018-03-28_proc_con_req_rec_apps_pardon_commutation.pdf).





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