

Proposal to establish a Clemency Board in Virginia By: John Seay

I humbly request that the Commonwealth of Virginia create a Clemency Board separate from the Parole Board. Currently Virginia does not have a Clemency Board. The Virginia Parole Board handles all offenders eligible for parole and all offenders' clemency applications.

Other states throughout the country that have parole and clemency available have separate boards for both of these situations. The main purpose for creating a Clemency Board in Virginia is to give all the "New Law" offender's an opportunity to present themselves to such a board, in hopes of reducing their sentences and/or receiving a pardon. To have trained professionals that will be impartial, non-political, competent, able and committed to evaluating on an individual basis each offender's Clemency application, not someone who has been handling parole hearings and such. That is why other states have a board for Parole and another for Clemency; it's to ensure fairness to both the offender who is eligible for parole and the ones eligible for clemency.

Those offender's who are eligible for parole are allotted personal interviews, allowed to have a hearing where family members/supporters can attend on their behalf, a conference call if necessary and other options available that those offender's who are eligible for Clemency do not have. Parole has been abolished since 1995 (23 years) and I personally feel there's a need for a Clemency Board to be established to give those "New Law" offender's the same opportunities as those given to offender's going up for parole.

By creating a Clemency Board it will help gauge the offender's rehabilitation and to ensure public safety for all citizens of the Commonwealth. The purpose of incarceration is to rehabilitate the offender, change their thinking, habits, and address areas that need improvement, and then return the offender back to society where he or she can be a self sustaining member. The goal here is not to keep offenders that have changed their thoughts, ways, and actions, warehoused in the Department of Corrections.

Personally, I've done almost 14 years of incarceration and at no point have I been encouraged to do anything beneficial to my rehabilitation. There's only a select few who choose

to work on themselves to become better human beings and seek rehabilitation. For all “New Law” offenders’ they have to serve 85% of their time at a minimum. There comes a point where the offender feels that they are just doing time to do time, with no avenue to address their sentences other than Clemency. Again, I stress that is why creating such a Board would benefit all parties involved.

During my research I’ve found where some states charge a filing fee for each Clemency application filed. Anywhere from \$20.00 to \$100.00, and I believe this is to help offset any costs the board incurs for the services they provide. If such a board were to be created and adopt some of the steps that other states take in evaluating every clemency application, this fee would be warranted. Offenders are looking for an opportunity to present themselves to a board and be given a chance to speak and present evidence of their change.

Attached to this proposal are other states and their applicable forms of clemency, eligibility restrictions, waiver of ineligibility criteria and their application process, all to give an example of how other clemency board’s operate. One of the most common complaints from those going up for parole and filing for clemency is there’s never any recommendations on what the Department of Corrections wants the offender to work on or what the offender isn’t doing to gain a favorable decision. During my research I read where it is required to give the offender a detailed explanation why they were denied. Example; Massachusetts when relief is denied the board will state the action the prisoner should take to maximize the potential for a favorable decision in the future. I highly recommend that this be a requirement when such a board is established. This will help the offender know the specific areas on which he or she needs to focus and give them something to strive towards.

Governor’s in the following states have the sole authority to either grant or deny clemency applications: Alabama, Alaska, California, Colorado, Hawaii, Iowa, Kansas, Kentucky, Maine, Massachusetts, Michigan, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Vermont, **Virginia**, West Virginia, Wisconsin, and Wyoming. **Governors in the following states must have the according recommendation from a board or advisory group to grant clemency:** Arizona, Delaware, Florida, Louisiana, Montana, Oklahoma, Pennsylvania, and Texas.

Proposed format in reviewing/investigating all Clemency applications:

-Introduction The investigator will outline the reason for the clemency, including references to any specific collateral consequences being claimed as a result of the conviction and the number of previous clemency applications that have been filed, if any.

-Present Offense(s) The investigator will outline the present offense(s), a brief summary of the circumstances surrounding the present offense(s), and the date and type of release from incarceration, expiration of sentence date, and the offenders adjustment under supervision, if applicable.

-Victim Impact The investigator will contact the victim(s) or family members. If unable to contact either one, the investigator will use any information or documentation addressing this issue, and briefly summarize it.

-Arrest & Conviction Record The offenders arrest and conviction record will be listed in similar format to that used for "Present Offense(s)".

-Conduct since Conviction The investigator will outline and assess the offenders conduct since being convicted. The investigators assessment will cover issues such as social, employment, and financial stability, including thoroughly assessing any history of mental health or substance abuse issues, particularly related to criminality, in order to determine whether those issues have been successfully resolved. Any positive achievements of the offender are also outlined in this section.

-Official & Community Attitude The investigator will include any comments and recommendations from the law enforcement agency that arrested the offender, the prosecuting attorney, the sentencing judge, and any community member(s) with knowledge of the offender or the offense.

-Evaluation and Recommendation The last section of the report will outline the investigators recommendation regarding clemency, with his or her object reason(s) for supporting the recommendation to grant or deny the offenders request. When the report is completed, it is forwarded to the board responsible for making the final decision or making a recommendation to the Governor. The offender shall be notified in writing of the Governor's

final decision. It's highly recommended that the offender be given in writing what action the offender can take to maximize the potential for a favorable decision in the future if denied.

The following States allow the Offender to attend a hearing or represent themselves before the board: California, Connecticut (personal interviews), Delaware (public hearing), Kansas (personal interview if required from the board), Louisiana (prisoner may attend hearing but may be denied due to crime or institutional record), Maine (personal interview with member of the board), Ohio (interview at the prison), Pennsylvania (public hearing if 2 out of 5 board members approve, offenders will not attend but may designate another person to appear on his or her behalf, 15 minutes will be allotted for each side for argument), Utah (20 minutes to speak on one's behalf), Wisconsin (highly recommended that the prisoner attends the hearing).

The following States give a detailed explanation for denial: Connecticut, Delaware, and Kansas (a full report is done), Louisiana (prisoner will be notified in writing of the reason(s) for denial), Massachusetts (states what action the prisoner should take to maximize the potential for a favorable decision in the future), and Wisconsin.

Certain factors to be considered by the investigator and board:

- Whether offenders release would be compatible with public safety and the mutual interests of society and the offender.
- Whether offender's character, conduct, vocational training and other developmental activities during incarceration reflect the probability that the offender will lead a law abiding life in the community and live up to all conditions placed upon the offender, if pardoned or granted release.
- Facts and circumstances of the offense(s), involving mitigating and aggravating factors, along with sentencing information.
- Prior criminal history and information regarding adjustment to previous probation or parole, if any.
- Offender's institutional adjustment such as offender's response to available programs, religious services, changes in attitude towards self and others, proof of stable adjustment, and employment during incarceration.

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- Offender's institutional adjustment such as offender's response to available programs, religious services, changes in attitude towards self and others, proof of stable adjustment, and employment during incarceration.

- Impressions gained when interviewed by the investigator or member of the Board. Other information provided by offender's attorney, family, and supporters. Any letters from Correctional Officers, Counselors, of Administrators where offender is being currently housed.
- Offender's home plan, does the offender have a stable home environment, financial assistance that is available, employment obtained or options for, and transportation. Offender should in detail explain his or her plans upon release, addressing all of the above mentioned factors.

Clemency Board ought to be made up of people separate and apart from members of The Virginia Parole Board. To eliminate the possibility of creating a monopoly decision making body over whom should be granted clemency and those whom parole should be granted.

The principles of a sound Clemency Board Member is that he or she should be impartial, non-political, competent, able and committed to give the time necessary for full consideration of each case presented.

The Clemency Board shall have complete and reliable information concerning the Offender, his or her background and the situation which will confront his or her release.

The Clemency Board shall be able to mitigate in fairness, mercy, and/or consider as extenuating the offenders individual vocational training, mental adjustment, time served, programs completed, family and community ties, sentence originally imposed, any spiritual achievements, institutional record, and employment during incarceration.

The Clemency Board and Governor should consider the use of clemency to reduce criminal cost, and to mitigate the punishment of some prisoners by permitting them to return to society and become part of the work force, paying his or her taxes. During the offenders period of rehabilitation, if the person has conducted himself or herself with sobriety and industry, has exhibited good moral character and conformed to the rules, this offender should be considered for clemency. Often when an offender has been rehabilitated, he or she remains incarcerated well beyond the necessary time needed after this transformation has occurred.

By creating a Clemency Board, the members can differentiate on a case by case basis those that are prepared and those that are not prepared to reenter society by thoroughly examining the offenders files, evidence presented, letters of support and institutional records. After all information provided and that is made available has been considered, make a fair and impartial recommendation to the Governor. If an unfavorable decision is given to the Offender, give the Offender in writing what action(s) the offender should take to maximize the potential for a favorable decision in the future.

The United States of America is a country of second chances and there are plenty of men and women who are seeking that second chance from within these prison walls. Those who have become better human beings simply ask that a Clemency Board be established to give those deserving a realistic opportunity to seek a second chance to live amongst those in society. The goal here should be to give people deserving a second chance to live a law abiding life in society. As human beings we are all fallible but some are redeemable. Thank you for your time in considering this proposal and the positive effects this board can bring about.

Sincerely, 

John Lewis Seay #1186157
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Burkeville, VA 23922

CC:

Ralph Northam – Governor of Virginia

Harold Clarke – Director of Virginia Department of Corrections

Adrienne Bennett – Chairman of Virginia Parole Board

Robert “Bobby” Scott – Congressman

Mark R. Warner – U.S. Senator for Virginia

Tim M. Kaine – U.S. Senator for Virginia