CHAPTER 638

BOARD OF PARDONS; CLEMENCY REVIEW COMMISSION

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638.01 BOARD OF PARDONS.

The Board of Pardons consists of the governor, the chief justice of the supreme court, and the attorney general. The governor in conjunction with the board may grant clemency according to this chapter.

History: *(10779) RL s 5424; 1985 c 248 s 70; 2023 c 52 art 8 s 3*

638.011 DEFINITIONS.

Subdivision 1. **Scope.** For purposes of this chapter, the terms defined in this section have the meanings given.

Subd. 2. **Board.** "Board" means the Board of Pardons under section 638.01.

Subd. 3. **Clemency.** Unless otherwise provided, "clemency" includes a pardon, commutation, and reprieve after conviction for a crime against the state except in cases of impeachment.

Subd. 4. **Commission.** "Commission" means the Clemency Review Commission under section 638.09.

Subd. 5. **Department.** "Department" means the Department of Corrections.

Subd. 6. **Waiver request.** "Waiver request" means a request to waive a time restriction under sections 638.12, subdivisions 2 and 3, and 638.19, subdivision 1.

History: *2023 c 52 art 8 s 4*

638.02 MS 2022 [Repealed, 2023 c 52 art 8 s 21]

638.03 MS 2022 [Repealed, 2023 c 52 art 8 s 21]

638.04 MS 2022 [Repealed, 2023 c 52 art 8 s 21]

638.05 MS 2022 [Repealed, 2023 c 52 art 8 s 21]

638.06 MS 2022 [Repealed, 2023 c 52 art 8 s 21]

638.07 MS 2022 [Repealed, 2023 c 52 art 8 s 21]

638.075 MS 2022 [Repealed, 2023 c 52 art 8 s 21]

638.08 MS 2022 [Repealed, 2023 c 52 art 8 s 21]

638.09 CLEMENCY REVIEW COMMISSION.

Subdivision 1. **Establishment; duties.** (a) The Clemency Review Commission is established to:

(1) review each eligible clemency application and waiver request that it receives;

(2) recommend to the board, in writing, whether to grant or deny the application or waiver request, with each member's vote reported;

(3) recommend to the board, in writing, whether the board should conduct a hearing on a clemency application, with each member's vote reported; and

(4) provide victim support services, assistance to applicants, and other assistance as the board requires.

(b) Unless otherwise provided:

(1) the commission's recommendations under this chapter are nonbinding on the governor or the board; and

(2) chapter 15 applies unless otherwise inconsistent with this chapter.

Subd. 2. **Composition.** (a) The commission consists of nine members, each serving a term coterminous with the governor.

(b) The governor, the attorney general, and the chief justice of the supreme court must each appoint three members to serve on the commission and replace members when the members' terms expire. Members serve at the pleasure of their appointing authority.

Subd. 3. **Appointments to commission.** (a) An appointing authority is encouraged to consider the following criteria when appointing a member:

(1) expertise in law, corrections, victims' services, correctional supervision, mental health, and substance abuse treatment; and

(2) experience addressing systemic disparities, including but not limited to disparities based on race, gender, and ability.

(b) An appointing authority must seek out and encourage qualified individuals to apply to serve on the commission, including:

(1) members of Indigenous communities, Black communities, and other communities of color;

(2) members diverse as to gender identity; and

(3) members diverse as to age and ability.

(c) If there is a vacancy, the appointing authority who selected the vacating member must make an interim appointment to expire at the end of the vacating member's term.

(d) A member may continue to serve until the member's successor is appointed, but a member may not serve more than eight years in total.

Subd. 4. **Commission; generally.** (a) The commission must biennially elect one of its members as chair and one as vice-chair. The chair serves as the board's secretary.

(b) Each commission member must be:

(1) compensated at a rate of $150 for each day or part of the day spent on commission activities; and

(2) reimbursed for all reasonable expenses actually paid or incurred by the member while performing official duties.

(c) Beginning January 1, 2025, and annually thereafter, the board may set a new per diem rate for commission members, not to exceed an amount ten percent higher than the previous year's rate.

Subd. 5. **Executive director.** (a) The board must appoint a commission executive director knowledgeable about clemency and criminal justice. The executive director serves at the pleasure of the board in the unclassified service as an executive branch employee.

(b) The executive director may obtain office space and supplies and hire administrative staff necessary to carry out the commission's official functions, including providing administrative support to the board and attending board meetings. Any additional staff serve in the unclassified service at the pleasure of the executive director.

History: *2023 c 52 art 8 s 5; 2024 c 123 art 8 s 27*

638.10 CLEMENCY APPLICATION.

Subdivision 1. **Required contents.** A clemency application must:

(1) be in writing;

(2) be signed under oath by the applicant; and

(3) state the clemency sought, state why the clemency should be granted, and contain the following information and any additional information that the commission or board requires:

(i) the applicant's name, address, and date and place of birth, and every alias by which the applicant is or has been known;

(ii) the applicant's demographic information, including race, ethnicity, gender, disability status, and age, only if voluntarily reported;

(iii) the applicant's convicted crime for which clemency is requested, the date and county of conviction, the sentence imposed, and the sentence's expiration or discharge date;

(iv) the names of the sentencing judge, the prosecuting attorney, and any victims of the crime;

(v) a brief description of the crime and the applicant's age at the time of the crime;

(vi) the date and outcome of any prior clemency application, including any application submitted before July 1, 2024;

(vii) to the best of the applicant's knowledge, a statement of any past criminal conviction and any pending criminal charge or investigation;

(viii) for an applicant under the department's custody, a statement describing the applicant's reentry plan should clemency be granted; and

(ix) an applicant statement acknowledging and consenting to the disclosure to the commission, board, and public of any private data on the applicant in the application or in any other record relating to the clemency being sought, including conviction and arrest records.

Subd. 2. **Required form.** (a) An application must be made on a commission-approved form or forms and filed with the commission by commission-prescribed deadlines. The commission must consult with the board on the forms and deadlines.

(b) The application must include language informing the applicant that the board and the commission will consider any and all past convictions and that the applicant may provide information about the convictions.

Subd. 3. **Reviewing application for completeness.** The commission must review an application for completeness. An incomplete application must be returned to the applicant, who may then provide the missing information and resubmit the application within a commission-prescribed period.

Subd. 4. **Notice to applicant.** After the commission's initial investigation of a clemency application, the commission must notify the applicant of the scheduled date, time, and location that the applicant must appear before the commission for a meeting under section 638.14.

Subd. 5. **Equal access to information.** Each board and commission member must have equal access to information under this chapter that is used when making a clemency decision.

History: *2023 c 52 art 8 s 6*

638.11 THIRD-PARTY NOTIFICATIONS.

Subdivision 1. **Notice to victim; victim rights.** (a) After receiving a clemency application, the commission must make all reasonable efforts to locate any victim of the applicant's crime.

(b) At least 30 calendar days before the commission meeting at which the application will be heard, the commission must notify any located victim of:

(1) the application;

(2) the meeting's scheduled date, time, and location; and

(3) the victim's right to attend the meeting and submit an oral or written statement to the commission.

(c) The commission must make all reasonable efforts to ensure that a victim can:

(1) submit an oral or written statement; and

(2) receive victim support services as necessary to help the victim submit a statement and participate in the clemency process.

Subd. 2. **Notice to sentencing judge and prosecuting attorney.** (a) At least 60 calendar days before the commission meeting at which the application will be heard, the commission must:

(1) notify the sentencing judge and prosecuting attorney, or their successors, of the application;

(2) provide a copy of the application to the judge and attorney; and

(3) solicit the judge's and attorney's written statements on whether to grant clemency.

(b) Unless otherwise provided in this chapter, "law enforcement agency" includes the sentencing judge and prosecuting attorney or their successors.

Subd. 3. **Notice to public.** At least 30 calendar days before the commission meeting at which the application will be heard, the commission must publish notice of an application in a qualified newspaper of general circulation in the county in which the applicant's crime occurred.

History: *2023 c 52 art 8 s 7*

638.12 TYPES OF CLEMENCY; ELIGIBILITY AND WAIVER.

Subdivision 1. **Types of clemency; requirements.** (a) The board may:

(1) pardon a criminal conviction imposed under the laws of this state;

(2) commute a criminal sentence imposed by a court of this state to time served or a lesser sentence; or

(3) grant a reprieve of a sentence imposed by a court of this state.

(b) A pardon, after being granted and filed with the district court of the county in which the conviction and sentence were imposed, will also seal all records wherever held related to the arrest, indictment or information, trial, verdict, and pardon.

(c) A grant of clemency must be in writing and has no force or effect if the governor or a board majority duly convened opposes the clemency. Every conditional grant of clemency must state the terms and conditions upon which it was granted, and every commutation must specify the terms of the commuted sentence.

(d) A granted pardon sets aside the conviction and purges the conviction from an individual's criminal record. The individual is not required to disclose the conviction at any time or place other than:

(1) in a judicial proceeding; or

(2) during the licensing process for peace officers.

Subd. 2. **Pardon eligibility; waiver.** (a) Except as provided in paragraphs (b) and (c), an individual convicted of a crime in a court of this state may apply for a pardon of the individual's conviction on or after five years from the sentence's expiration or discharge date.

(b) An individual convicted before August 1, 2023, of a violation of section 609.19, subdivision 1, clause (1), under the theory of liability for crimes of another may apply for a pardon upon the sentence's expiration or discharge date if the individual:

(1) was charged with a violation of section 609.185, paragraph (a), clause (3), and:

(i) thereafter pled guilty to a violation of section 609.19, subdivision 1, clause (1);

(ii) did not cause the death of a human being; and

(iii) did not intentionally aid, advise, hire, counsel, or conspire with or otherwise procure another with the intent to cause the death of a human being; or

(2) was charged with a violation of section 609.19, subdivision 2, and:

(i) thereafter pled guilty to a violation of section 609.19, subdivision 1, clause (1);

(ii) did not cause the death of a human being; and

(iii) was not a major participant, as defined in section 609.05, subdivision 2a, paragraph (c), in the underlying felony or did not act with extreme indifference to human life.

(c) An individual may request the board to waive the waiting period if there is a showing of unusual circumstances and special need.

(d) The commission must review a waiver request and recommend to the board whether to grant the request. When considering a waiver request, the commission is exempt from the meeting requirements under section 638.14 and chapter 13D.

(e) The board must grant a waiver request unless the governor or a board majority opposes the waiver.

Subd. 3. **Commutation eligibility.** (a) An individual may apply for a commutation of an unexpired criminal sentence imposed by a court of this state, including an individual confined in a correctional facility or on probation, parole, supervised release, or conditional release. An application for commutation may not be filed until the date that the individual has served at least one-half of the sentence imposed or on or after five years from the conviction date, whichever is earlier.

(b) An individual may request the board to waive the waiting period if there is a showing of unusual circumstances and special need.

(c) The commission must review a waiver request and recommend to the board whether to grant the request. When considering a waiver request, the commission is exempt from the meeting requirements under section 638.14 and chapter 13D.

(d) The board must grant a waiver request unless the governor or a board majority opposes the waiver.

History: *2023 c 52 art 8 s 8; 2024 c 123 art 4 s 17*

638.13 ACCESS TO RECORDS; ISSUING SUBPOENA.

Subdivision 1. **Access to records.** (a) Notwithstanding chapter 13 or any other law to the contrary, upon receiving a clemency application, the board or commission may request and obtain any relevant reports, data, and other information from state courts, law enforcement agencies, or state agencies. The board and the commission must have access to all relevant sealed or otherwise inaccessible court records, presentence investigation reports, police reports, criminal history reports, prison records, and any other relevant information.

(b) State courts, law enforcement agencies, and state agencies must promptly respond to record requests from the board or the commission.

Subd. 2. **Issuing subpoena.** The board or the commission may issue a subpoena requiring the presence of any person before the commission or board and the production of papers, records, and exhibits in any pending matter. When a person is summoned before the commission or the board, the person may be allowed compensation for travel and attendance as the commission or the board considers reasonable.

History: *2023 c 52 art 8 s 9*

638.14 COMMISSION MEETINGS.

Subdivision 1. **Frequency.** The commission must meet at least four times each year for one or more days at each meeting to hear eligible clemency applications and recommend appropriate action to the board on each application. One or more of the meetings may be held at a department-operated correctional facility.

Subd. 2. **When open to the public.** All commission meetings are open to the public as provided under chapter 13D, but the commission may hold closed meetings:

(1) as provided under chapter 13D; or

(2) as necessary to protect sensitive or confidential information, including (i) a victim's identity, and (ii) sensitive or confidential victim testimony.

Subd. 3. **Recording.** When possible, the commission must record its meetings by audio or audiovisual means.

Subd. 4. **Board attendance.** The governor, attorney general, and chief justice, or their designees, may attend commission meetings as ex-officio nonvoting members, but their attendance does not affect whether the commission has a quorum.

Subd. 5. **Applicant appearance; third-party statements.** (a) An applicant for clemency must appear before the commission either in person or through available forms of telecommunication.

(b) The victim of an applicant's crime may appear and speak at the meeting or submit a written statement to the commission. The commission may treat a victim's written statement as confidential and not disclose the statement to the applicant or the public if there is or has been an order for protection, harassment restraining order, or other no-contact order prohibiting the applicant from contacting the victim. At the request of the victim, the commission may treat a victim's written statement as confidential and not disclose the statement to the public.

(c) A law enforcement agency's representative may provide the agency's position on whether the commission should recommend clemency by:

(1) appearing and speaking at the meeting; or

(2) submitting a written statement to the commission.

(d) The sentencing judge and the prosecuting attorney, or their successors, may provide their positions on whether the commission should recommend clemency by:

(1) appearing and speaking at the meeting; or

(2) submitting their statements under section 638.11, subdivision 2.

History: *2023 c 52 art 8 s 10; 2026 c 118 art 4 s 2*

638.15 COMMISSION RECOMMENDATION.

Subdivision 1. **Grounds for recommending clemency.** (a) When recommending whether to grant clemency, the commission must consider any factors that the commission deems appropriate, including but not limited to:

(1) the nature, seriousness, and circumstances of the applicant's crime; the applicant's age at the time of the crime; and the time that has elapsed between the crime and the application;

(2) the successful completion or revocation of previous probation, parole, supervised release, or conditional release;

(3) the number, nature, and circumstances of the applicant's other criminal convictions;

(4) the extent to which the applicant has demonstrated rehabilitation through postconviction conduct, character, and reputation;

(5) the extent to which the applicant has accepted responsibility, demonstrated remorse, and made restitution to victims;

(6) whether the sentence is clearly excessive in light of the applicant's crime and criminal history and any sentence received by an accomplice and with due regard given to:

(i) any plea agreement;

(ii) the sentencing judge's views; and

(iii) the sentencing ranges established by law;

(7) whether the applicant was convicted before August 1, 2023, of a violation of section 609.19, subdivision 1, clause (1), under the theory of liability for crimes of another and, if so, whether the applicant:

(i) was charged with a violation of section 609.185, paragraph (a), clause (3), and:

(A) thereafter pled guilty to a violation of section 609.19, subdivision 1, clause (1);

(B) did not cause the death of a human being; and

(C) did not intentionally aid, advise, hire, counsel, or conspire with or otherwise procure another with the intent to cause the death of a human being; or

(ii) was charged with a violation of section 609.19, subdivision 2, and:

(A) thereafter pled guilty to a violation of section 609.19, subdivision 1, clause (1);

(B) did not cause the death of a human being; and

(C) was not a major participant, as defined in section 609.05, subdivision 2a, paragraph (c), in the underlying felony or did not act with extreme indifference to human life;

(8) whether the applicant's age or medical status indicates that it is in the best interest of society that the applicant receive clemency;

(9) the applicant's asserted need for clemency, including family needs and barriers to housing or employment created by the conviction;

(10) for an applicant under the department's custody, the adequacy of the applicant's reentry plan;

(11) the amount of time already served by the applicant and the availability of other forms of judicial or administrative relief;

(12) the extent to which there is credible evidence indicating that the applicant is or may be innocent of the crime for which they were convicted; and

(13) if provided by the applicant, the applicant's demographic information, including race, ethnicity, gender, disability status, and age.

(b) Unless an applicant knowingly omitted past criminal convictions on the application, the commission or the board must not prejudice an applicant for failing to identify past criminal convictions.

Subd. 2. **Recommending denial of commutation without hearing.** (a) At a meeting under section 638.14, the commission may recommend without a commission hearing that the board deny a commutation application without a board hearing if:

(1) the applicant is challenging the conviction or sentence through court proceedings;

(2) the applicant has failed to exhaust all available state court remedies for challenging the conviction or sentence; or

(3) the commission determines that the matter should first be considered by the parole authority.

(b) A commission recommendation to deny an application under paragraph (a) must be sent to the board along with the application.

Subd. 3. **Considering public statements.** When making its recommendation on an application, the commission must consider any statement provided by a victim or law enforcement agency.

Subd. 4. **Commission recommendation; notifying applicant.** (a) Before the board's next meeting at which the clemency application may be considered, the commission must send to the board:

(1) the application;

(2) the commission's recommendation on whether the board should grant or deny clemency;

(3) the commission's recommendation on whether the board should or should not hold a hearing on the application;

(4) any recording of the commission's meeting related to the application; and

(5) all statements from victims and law enforcement agencies.

(b) No later than 14 calendar days after its dated recommendation, the commission must notify the applicant in writing of its recommendations under this subdivision.

History: *2023 c 52 art 8 s 11; 2024 c 123 art 4 s 18*

638.16 BOARD MEETINGS.

Subdivision 1. **Frequency.** (a) The board must meet at least two times each year to consider and vote on clemency applications.

(b) If the commission recommends that an application receive a hearing, the board must hold a hearing on the application unless all the board members decline a hearing.

(c) If the commission recommends that an application not receive a hearing, the board must not hold a hearing on the application unless at least one board member requests a hearing.

Subd. 2. **When open to the public.** All board meetings are open to the public as provided under chapter 13D, but the board may hold closed meetings:

(1) as provided under chapter 13D; or

(2) as necessary to protect sensitive or confidential information, including (i) a victim's identity, and (ii) sensitive or confidential victim testimony.

Subd. 3. **Executive director; attendance required.** Unless excused by the board, the executive director and the commission's chair or vice-chair must attend all board meetings.

Subd. 4. **Considering statements.** (a) Applicants, victims, law enforcement agencies, and the public may submit oral or written statements at a board meeting only if the application is subject to a hearing under subdivision 1.

(b) The board must take into account any statements provided to the commission when considering a clemency application.

History: *2023 c 52 art 8 s 12*

638.17 BOARD DECISION; NOTIFYING APPLICANT.

Subdivision 1. **Board decision.** (a) At each meeting, the board must render a decision on each clemency application considered at the meeting or continue the matter to a future board meeting. If the board continues consideration of an application, the commission must notify the applicant in writing and explain why the matter was continued.

(b) If the commission recommends no hearing and denial of an application and no board member requests a hearing on the application, it is presumed that the board concurs with the commission's recommendation and that the application has been considered and denied on the merits.

Subd. 2. **Notifying applicant.** The commission must notify the applicant in writing of the board's decision to grant or deny clemency no later than 14 calendar days from the date of the board's decision.

History: *2023 c 52 art 8 s 13*

638.18 FILING COPY OF CLEMENCY; COURT ACTION.

Subdivision 1. **Filing with district court.** After clemency has been granted, the commission must file a copy of the pardon, commutation, or reprieve with the district court of the county in which the conviction and sentence were imposed.

Subd. 2. **Court action; pardon.** (a) For a pardon, the court must:

(1) order the conviction set aside;

(2) include a copy of the pardon in the court file;

(3) order all records wherever held relating to the arrest, indictment or information, trial, verdict, and pardon sealed and prohibit the disclosure of the existence of the records or the opening of the records except under court order or pursuant to section 609A.03, subdivision 7a, paragraph (b), clause (1), (7), or (8); and

(4) send a copy of the order and the pardon to the Bureau of Criminal Apprehension and all other government entities that hold affected records.

(b) Consistent with section 609A.03, subdivision 8, the court administrator shall send a copy of the expungement order to each government entity whose records are affected by the order, including but not limited to the Department of Corrections, the Department of Public Safety, and law enforcement agencies.

Subd. 3. **Court action; commutation.** For a commutation, the court must:

(1) amend the sentence to reflect the specific relief granted by the board;

(2) include a copy of the commutation in the court file; and

(3) send a copy of the amended sentencing order and commutation to the commissioner of corrections and the Bureau of Criminal Apprehension.

History: *2023 c 52 art 8 s 14*

638.19 REAPPLYING FOR CLEMENCY.

Subdivision 1. **Time-barred from reapplying; exception.** (a) After the board has considered and denied a clemency application on the merits, an applicant may not file a subsequent application for five years after the date of the most recent denial. This paragraph applies if an application is denied according to section 638.17, subdivision 1, paragraph (b).

(b) An individual may request permission to reapply before the five-year period expires based only on new and substantial information that was not and could not have been previously considered by the board or commission.

(c) If a waiver request contains new and substantial information, the commission must review the request and recommend to the board whether to waive the time restriction. When considering a waiver request, the commission is exempt from the meeting requirements under section 638.14 and chapter 13D.

(d) The board must grant a waiver request unless the governor or a board majority opposes the waiver.

Subd. 2. **Applying for pardon not precluded.** An applicant who is denied or granted a commutation is not precluded from later seeking a pardon of the criminal conviction once the eligibility requirements of this chapter have been met.

History: *2023 c 52 art 8 s 15*

638.20 COMMISSION RECORD KEEPING.

Subdivision 1. **Record keeping.** The commission must keep a record of every application received, its recommendation on each application, and the final disposition of each application.

Subd. 2. **When open to public.** The commission's records and files are open to public inspection at all reasonable times, except for:

(1) sealed court records;

(2) presentence investigation reports;

(3) Social Security numbers;

(4) financial account numbers;

(5) driver's license information;

(6) medical records;

(7) confidential Bureau of Criminal Apprehension records;

(8) the identities of victims who wish to remain anonymous and confidential victim statements; and

(9) any other confidential data on individuals, private data on individuals, not public data, or nonpublic data under chapter 13.

History: *2023 c 52 art 8 s 16*

638.21 LANGUAGE ACCESS AND VICTIM SUPPORT.

Subdivision 1. **Language access.** The commission and the board must take reasonable steps to provide meaningful language access to applicants and victims. Applicants and victims must have language access to information, documents, and services under this chapter, with each communicated in a language or manner that the applicant or victim can understand.

Subd. 2. **Interpreters.** (a) Applicants and victims are entitled to interpreters as necessary to fulfill the purposes of this chapter, including oral or written communication. Sections 546.42 to 546.44 apply, to the extent consistent with this section.

(b) The commission or the board may not discriminate against an applicant or victim who requests or receives interpretation services.

Subd. 3. **Victim services.** The commission and the board must provide or contract for victim support services as necessary to support victims under this chapter.

History: *2023 c 52 art 8 s 17*

638.22 LEGISLATIVE REPORT.

Beginning February 15, 2025, and every February 15 thereafter, the commission must submit a written report to the chairs and ranking minority members of the house of representatives and senate committees with jurisdiction over public safety, corrections, and judiciary that contains at least the following information:

(1) the number of clemency applications received by the commission during the preceding calendar year;

(2) the number of favorable and adverse recommendations made by the commission for each type of clemency;

(3) the number of applications granted and denied by the board for each type of clemency;

(4) the crimes for which the applications were granted by the board, the year of each conviction, and the individual's age at the time of the crime; and

(5) summary data voluntarily reported by applicants, including but not limited to demographic information on race, ethnicity, gender, disability status, and age, of applicants recommended or not recommended for clemency by the commission.

History: *2023 c 52 art 8 s 18*

638.23 RULEMAKING.

(a) The board and commission may jointly adopt rules, including amending Minnesota Rules, chapter 6600, to:

(1) enforce their powers and duties under this chapter and ensure the efficient processing of applications; and

(2) establish a process for expedited review of applications requesting clemency for a nonviolent crime.

(b) A rule adopted under paragraph (a), clause (2), must specify the types of nonviolent crimes eligible for expedited review and the level of support needed from the sentencing judge or successor, the prosecuting

attorney or successor, and any victims of the crime for the board to consider the application under the expedited review process.

(c) The time limit to adopt rules under section 14.125 does not apply.

History: *2023 c 52 art 8 s 19*