

**The Justice Logjam in the Courthouse:  
A Data-Driven Proposal to Expedite the  
Consideration of Applications for Pardon in Pennsylvania**

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Since 2019, Pennsylvania has been at the cutting edge of pardon reform in the country. The Commonwealth’s Constitution requires all applications for pardon to be first recommended by the Pennsylvania Board of Pardons (BOP). In that process, the BOP has complete discretion to decide who gets to the Governor’s desk. As reported by the state’s Lieutenant Governor (and BOP Chair), the application itself was so difficult that 84% of the people who purchased the form were not even able to complete it.<sup>1</sup> Today, the process is free, the application is short, the instructions are written in Plain English, lawyers are not required, and a fast-track was developed for those whose only crimes were possession of marijuana or paraphernalia.

The result is that the number of applications are up – *way* up. In 2022, the BOP received 4,213 pardon applications (or 1,980 if the 2,233 submitted under the special, one-time Pennsylvania Marijuana Pardon Project are not included). In the first ten weeks of this year, it has received 410 – approximately the same number as the total it received the whole year in 2017 (430).<sup>2,3</sup>

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<sup>1</sup> “Only 16 percent of people who began a pardons application in 2017 actually completed it: More than 3,400 people paid to access the form, but only 564 submitted it to the board.” *Criminal Justice: Reforms to Improve Lives & Save Money*, Special Report of the Pennsylvania State Auditor General (June 2020) at p.24 [https://www.paauditor.gov/Media/Default/Reports/RPT\\_CJR\\_060920\\_FINAL.pdf](https://www.paauditor.gov/Media/Default/Reports/RPT_CJR_060920_FINAL.pdf)

<sup>2</sup> Information provided by email from the BOP on March 13, 2023.

<sup>3</sup> Another reason for the increase is that pardons have come to be understood as important not just to the offenders and their families, but to the economic well-being of their communities and the vibrancy of the state’s workforce. In April 2020, The Economy League issued a report on the Impact of Pardons in Pennsylvania, evaluating a decade of data, estimating pardons generated \$16.7 million, and declaring

One of the strict requirements for submitting an application is that it attach copies of five documents relating to the underlying conviction(s) for which the pardon is being requested: criminal complaint, affidavit of probable cause, criminal information/indictment, final plea or verdict, and the Sentencing Order.<sup>4</sup> The website warns: “**Avoid Rejection!** Applications for Clemency will **NOT** be accepted without the required court documents.” (Emphasis in the original)<sup>5</sup> If any of the records are not available, the applicant is instructed to “have the court provide a letter stating this.”<sup>6</sup> With the enthusiastic support of the Pennsylvania State Association of Prothonotaries and Clerks of Courts, courthouses in an increasing number of counties are developing ways by which people without the financial means to retain an attorney can obtain these records from the court – including by submitting email requests and receiving the documents in PDF format also by email.<sup>7</sup>

In many courthouses in Pennsylvania, the criminal records for the most recent prosecutions are digitized and available electronically. They can be retrieved, printed or PDFed,

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pardons to be “no-cost workforce development and community investment policies.” The Secretary of the Department of Labor and Industry called pardons “key to Pennsylvania’s economic future.” <https://economyleague.org/driving-regional-change/campaigns-projects/the-impact-of-pardons>. Later that year, the Pennsylvania Workforce Development Board (which advises the Governor) called for greatly expanding access to pardons, and in November 2021, it called on the government to “take all requisite steps, including, if necessary, promulgating new regulations, to ensure the prompt review (within one year) by the Board of Pardons of all applications for pardon from Pennsylvanians who completed their sentences five or more years ago on convictions that did not include crimes of violence and who have remained arrest-free ever since.” <https://www.dli.pa.gov/Businesses/Workforce-Development/wdb/Documents/11-9-21-WDB-Briefing-Book.pdf> at pp. 63-64 A statewide network of “Pardon Projects” has also arisen, though which neighbors are helping neighbors apply for pardons. <https://PardonMePA.org>.

<sup>4</sup> <https://www.bop.pa.gov/Apply%20for%20Clemency/Pages/How-to-Obtain-an-Application.aspx>

<sup>5</sup> Id.

<sup>6</sup> Id.

<sup>7</sup> This process was originally developed during Covid to reduce the number of people coming into the courthouse. The processes were quickly identified as eliminating confusion, avoiding the trauma suffered by individuals who were being required to return to the place of their worst experiences in life, while enabling efficiencies within the clerks’ offices.

and provided to the requester with minimum effort. The older the record, the more likely it will be available only in a physical file and located in some secure storage facility that is apart (even remote) from the courthouse. That requires a staff member to leave their post in the office at exactly the same time as there are staff shortages (due to Covid, budget restrictions and other causes) and this increasing demand for service that is of such clear importance not just to the individuals requesting the records, but to the community at large.

### Context

The Board of Pardons began its first “accelerated review program” in September 2019, with applications seeking clemency for convictions involving the possession of marijuana and/or paraphernalia.<sup>8</sup> In September 2022, the BOP implemented a pilot project using electronic applications that was designed to expedite that process even more. 627 people received pardons from Governor Tom Wolf through these two programs.<sup>9</sup>

Now faced with surging numbers of pardon applications from around the Commonwealth, the BOP is exploring other types of cases to expedite, and other ways of simplifying the application process. A special task force has been created to explore the subject and come up with recommendations.

One area should be considering whether the records are even necessary for the BOP’s consideration. At present, the requirement is waived if the case was disposed by a Magisterial

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<sup>8</sup> <https://www.bop.pa.gov/Apply%20for%20Clemency/Pages/Expedited-Review-Program.aspx>

<sup>9</sup> “Wolf’s clemency total includes 232 people who qualified for relief under a cannabis-specific pardon program that the state facilitated late last year, as well as another 395 that were part of a separate expedited review process for nonviolent marijuana-related offenses.”  
<https://www.marijuanamoment.net/pennsylvania-governor-touts-hundreds-of-marijuana-pardons-as-he-leaves-office/>

District Judge more than seven years ago.<sup>10</sup> The question arises whether a similar waiver or exception can be made for other kinds of cases.

### **Method**

As a result of the factors identified above, the Court of Common Pleas of Philadelphia County’s Office of Judicial Records has (since early 2020) limited to 15 per week the number of clients whose criminal records can be requested by Philadelphia Lawyers for Social Equity (PLSE).<sup>11</sup> PLSE offers free criminal record-clearing services to Philadelphia residents whose household family incomes are at or below 200% of the federal poverty line.<sup>12</sup> As of February 20, 2023, PLSE had 841 clients with at least one conviction whose records have not yet been requested from the Philadelphia Court of Common Pleas. A significant number of these are individuals who came to PLSE as a result of “the Promise” – a unique anti-poverty effort of the City of Philadelphia, the United Way of Greater Philadelphia and Southern New Jersey and others.<sup>13</sup>

With the encouragement of both the Court and the Promise, the “court summaries” of each of the 843 were obtained from the public website<sup>14</sup> and then examined for a variety of data. The data points included the client’s name, date of birth, and the “creation date” – the date they

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<sup>10</sup> “Note that Magisterial District Judges are only required to keep this data for seven years. If your case was handled there and is more than seven years old, no documents are available, so there is no need to get a letter stating such.” <https://www.bop.pa.gov/Apply%20for%20Clemency/Pages/How-to-Obtain-an-Application.aspx>

<sup>11</sup> <https://plsephilly.org>

<sup>12</sup> <https://aspe.hhs.gov/topics/poverty-economic-mobility/poverty-guidelines>

<sup>13</sup> <https://thepromisephil.org>

<sup>14</sup> <https://ujportal.pacourts.us/CaseSearch>

were accepted as a client of PLSE.<sup>15</sup> The creation dates spanned from March 16, 2019, to February 14, 2023. The vast majority (721, or 88.5%) were in 2022, but the fact that so many have been accepted in the first 6 weeks of 2023 (117) demonstrates the rising demand.

For each individual client, we used their court summary and date of birth to collect the following data :

- the arrest date of their most recent conviction,
- their age at the time of their last conviction,
- how many years it has been since their last conviction,
- whether they had more than one conviction,
- whether their most recent conviction was for a crime of violence, and
- whether they had a conviction for violence before their most recent conviction.

We specially identified “Crime of Violence” as a key factor because it is of particular concern to the BOP. We used the definition the BOP has given that term that appears in the BOP’s governing regulations:

(i) Murder of the third degree, voluntary manslaughter, rape, sexual assault, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i),(ii) or (iii) (relating to robbery) or kidnapping.

(ii) An attempt to commit murder of the third degree, voluntary manslaughter, rape, sexual assault, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1), robbery as defined in 18 Pa.C.S. § 3701 (a)(1)(i),(ii) or (iii) or kidnapping.

(iii) An offense committed while in visible possession of a firearm for which sentencing was imposed under 42 Pa.C.S. § 9712 (relating to sentences for offenses committed with firearms).”

37 Pa. Code § 81.202. Summary convictions were excluded from the evaluation because Pennsylvania law allows a judge to expunge them without first having to be pardoned by the Governor.<sup>16</sup> Traffic violations were also excluded because the courts do not expunge or pardon those offenses.

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<sup>15</sup> Date of acceptance as a client of PLSE is typically within thirty days of intake, which can be either through a face-to-face clinic in a neighborhood, referral from a community agency, or online.

<sup>16</sup> 42 Pa. C.S. § 9122(b)(3).

## **Method**

During data analysis, names were removed to protect the privacy of our clients. The remaining data were exported to RStudio where overall summary information and aggregated summary information was computed.

This first paper will report on larger questions that we think will be of use to the Court of Common Pleas in allocating staff and to the Board of Pardons in considering whether to exempt other kinds of cases from the records requirement. The data were collected in ways that will allow other questions to be posited and the responsive data summarized. For that reason, subsequent reports are anticipated.

## **Results**

In this section, we report on cohorts of data, specifically clients whose most recent convictions were (1) ten or more years ago, (2) twelve or more years ago, (3) fifteen or more years ago, and (4) twenty or more years ago. We examine these data first generally and then add in the additional factor of whether the record includes a crime of violence.

### **A. General**

To get a sense of who is applying for a pardon, we calculated the age of the client at the time of their intake for the 841 clients in this report. 10 clients (1.2%) were under the age of 25. 170 (20.2%) clients were between 25 and 35 years old at the time of their intake. 281 (33.4%) clients were between 35 and 45. 379 clients were over 45 (45.1%) and 257 (30.6%) were over 50 years of age. In total, then, 78.5% of the clients we have waiting to receive their records from the court are 35 years of age or older, and 69.4% are less than 50 years of age. These are people who are in the prime of their work- lives and being held back by their past.

Overall, 481 of the 841 clients (57.3%) had more than one conviction. The average number of years since their last conviction is 15.8 and the median is 13.8. Put another way, half of the clients whom we will be helping to file pardon applications did their crime almost 14 years ago – which will be over 16 years ago by the time their applications come up for a hearing.

The data were aggregated to show the same summary information for all clients that were convicted for the last time 10 or more years ago, which included 578 (68.7%) of the 841 clients. 320 of those 578 -- 55.4% of this cohort and 38.0% of the total 841 – had more than one conviction. For those whose most recent conviction was at least 10 years ago, the average number of years since the last conviction is 19.9 and the median is 17.4. The average age of the offender at the time of their last conviction is 28 and the median is 26.

For 499 (59.3%) of the total of 841 clients, their most recent conviction was 12 or more years ago. Of these 499, 267 had more than one conviction. This percentage (53.5%) is almost identical to that of the 10+ year cohort (55.4%). The average number of years since the last conviction for this group is slightly longer - 21.3 years – than for the 10+ cohort, but the median is 19.2, 2 years older. The mean and the median did not change for the age of the offender at the time of the last conviction.

For 377 (44.8%) of the total 841, their most recent conviction was 15 or more years ago. In this group, 190 (50.4%) clients had more than one conviction, slightly lower than both the 10+ and 12+ cohort. The average number of years since the last conviction is 23.9 and the median is 22.4. The average age at the time of the last conviction is 27 and the median is, again, 26.

Finally, the data were aggregated to show the same summary information for all clients that were convicted for the last time 20 or more years ago, or 235 (27.9%) of our 841 clients. 110 (46.8%) clients in this cohort had more than one conviction. This percentage is significantly lower than those of previous cohorts. The average number of years since the last

conviction is 28 and the median is 26.2. The average age at the time of the last conviction is 26 and the median is 25.

Across all convictions, these data suggest a relationship between the number of years since the last conviction and whether there was more than one conviction. As the number of years since the last conviction increases, the probability of having more than one conviction decreases.<sup>17</sup>

These data also suggest that, in general, the last crimes being committed were when the clients were in their late 20s – between 25 and 28 years old. This may be a corollary to the above finding: the older the individual, the less likely to commit an offense. This is, in fact, what published studies have shown: people “age out of crime.”

## **B. Crimes of Violence**

In this section, we now consider those who committed a Crime of Violence (COV) as defined above. This might help the Board of Pardons refine the underlying court records that it does (or does not) need to see and/or help identify individuals who would be less suitable for an accelerated review.

For 100 of the total 841 clients (11.8%), their most recent conviction was for a Crime of Violence (COV). 78 (9.3%) of the total 841 clients had at least one COV conviction prior to their last conviction.

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<sup>17</sup> Performing a one-way ANOVA test with the “more than one conviction” variable and the “number of years since last conviction” variable returns a p-value of 0.0003 which confirms a statistically significant relationship between them. Therefore, with an increased number of years since the last conviction, it is less likely there will be more than one conviction.

Therefore, in total, 162 of the 841 clients have at least one COV conviction on their record. This is 19% of the total. Said another way, means 81% of these potential applicants for a pardon do not have any COV conviction at all on their record.

As done before, the data were aggregated into cohorts. For the 10+ years cohort: 80 (13.8%) of the 578 clients had a COV as their last conviction and 54 (9.3%) had a previous COV conviction. 12 (2.1%) of the 578 clients had at least one prior COV conviction as well as a COV as their most recent conviction.

For the 12+ years cohort: 68 (13.6%) of the 499 clients had a COV as their last conviction and 44 (8.8%) had a previous COV conviction. 8 (1.6%) of the 499 clients had at least one prior COV conviction as well as a COV as their most recent conviction.

For the 15+ years cohort: 54 (14.3%) of the 377 clients had a COV as their last conviction and 32 (8.5%) had a previous COV conviction. 8 (2.1%) of the 377 clients had at least one prior COV conviction as well as a COV as their most recent conviction.

For the 20+ years cohort: 41 (17.4%) of the 235 clients had a COV as their last conviction and 22 (9.4%) had a previous COV conviction. 6 (2.6%) of the 235 clients had at least one prior COV conviction as well as a COV as their most recent conviction.

### **C. General Observations**

In the course of this study, we noted that a majority of the convictions that were not COVs were either for misdemeanors or involved drugs or alcohol. A significant number of the

convictions were for low-level marijuana offenses. These will be further explored in supplemental reports.

We also intend to examine the data using the lens of the age of the client at the time they will be applying to the Board of Pardons. For example, we will look to see what kinds of crimes were committed by those who are today 50 years old, or 45, or 40; what their recidivism was; and whether that analysis can produce any recommendations.

### **Summary and Recommendations**

The opportunity that motivated this data collection and analysis was the expressed intent of the Board of Pardons to expedite the review of more pardon applications. The backlog that exists is not just with applications that have been submitted to the BOP, but with applications that cannot yet be submitted because of record production issues experienced by the Court of Common Pleas.

The time period utilized in this study is a long one: 47 months. The number of ex-offenders is significant: 841. Assuming that this sample size is representative of the people who are deciding to apply for a pardon, the data show that, for the vast majority of potential applicants – 88.2% – their most recent crime was committed more than 10 years ago and did not involve a Crime of Violence. Of those who have been convicted of a Crime of Violence, more than half of them (54%) committed that crime 15 or more years ago. Indeed, for almost half of the total number of all clients (44.8%), their most recent offense was 15 or more years ago.

The only element in common to all of the clients is that they are going to be applying for a pardon, and therefore have a desire to clean up their past so that they can pursue their futures. Every published study of which we are aware makes the likelihood of recidivism extraordinarily low for both of these groups. The only study conducted of applicants for a pardon in

Pennsylvania confirmed that recidivism is very low: only 0.666% of those applying for a pardon over a ten-year period were subsequently convicted of having committed a Crimes of Violence.<sup>18</sup>

The first question, then, is whether the Board of Pardons really needs to obtain the underlying court records for all applicants, or whether some combination of time-plus-crime could create another exception to the requirement. For example, were the Philadelphia Court of Common Pleas not required to produce copies of records of people who committed non-violent crimes ten or more years ago (with no subsequent conviction), the number of requests being submitted to the Court would be cut by 59.2%.<sup>19</sup>

When these 841 clients do get their records from the court and submit their applications to the Board of Pardons, the demands on the BOP's staff and the pardon system will increase by almost 40%. This inevitable fact suggests that some new time-plus-crime criteria be developed to allow the staff of the BOP and the Parole Auditors for the Department of Corrections (which investigates the applicants on behalf of the BOP) to limit the amount of data required in the application and the depth or breadth of the investigation of applicants.

Eliminating the requirement for attaching old court records to pardon applications would reduce the burden on the courts, reduce the delay in submitting pardon applications, reduce the amount of time needed to conduct an investigation into those applicants, and accelerate the hearings and decisions that result in the elimination of what has been termed

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<sup>18</sup> *Pardons and Public Safety: Examining A Decade Of Recidivism Data*, by Ryan Allen Hancock, J.D. and Carl Oxholm III, J.D., M.P.P. Reviewing the criminal records of the same individuals who were studied by The Economy League in their ten-year study of the economic impact of pardons (referenced supra at n.2), this study found that of 3,3037 people who applied for a pardon, only 2 (0.066%) were later convicted of a crime of violence. That number was lower for the 1,082 who received pardons: only 1 (0.092%) went on to commit a crime of violence. Thus, the report concluded that there was no "public safety risk" presented by individuals who applied for a pardon over a decade. <https://plsephilly.org/pardon-recidivism-study>

<sup>19</sup> As noted above (on page 9), 498 of those whose most recent conviction was 10 or more years ago had no COV in their record. That represents 59.2% of the total population under study (841).

“paper prisons”<sup>20</sup> which preclude individuals from pursuing their potential. This is not only a benefit for them and their families, but also for society at large.

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<sup>20</sup> Collen Sheen, *America’s Paper Prisons: The Second Chance Gap*, Michigan Law Review (December 2020) <http://michiganlawreview.org/americas-paper-prisons-the-second-chance-gap>. See, also, the *National Inventory of Collateral Consequences of Conviction* published by the American Bar Association in 2016: “Research confirms that, nationwide, a past conviction history raises well over 40,000 barriers to employment, education, housing, loan borrowing, professional licensing, voting among numerous other post-punishment punishments.” Report available at <https://niccc.nationalreentryresourcecenter.org/>

## *Endnotes*

Isabella Falzone is a co-author of the report *Costs and Fees Charged To Indigent Criminal Defendants In Philadelphia County* (January 2021), <https://www.plsephilly.org/wp-content/uploads/2021/05/PLSE-Costs-and-Fees-Report-January-2021.pdf>

The Pennsylvania Board of Pardons Clemency Application Packet (Revised 1-1-2022) (form and instructions) may be accessed at:

[https://www.bop.pa.gov/Apply%20for%20Clemency/Documents/Application%20Packet\\_Revision%201-1-22.pdf](https://www.bop.pa.gov/Apply%20for%20Clemency/Documents/Application%20Packet_Revision%201-1-22.pdf)

The de-identified underlying data used in this report may be obtained by writing [info@plsephilly.org](mailto:info@plsephilly.org).