

FOR THE DEFENSE

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**The DUI Hotel:
Checking in for
Change**

**Expediting
Pardons**



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Expediting Pardons

On July 27, 2023, the Pennsylvania Board of Pardons (BOP) announced a new Expedited Pardon Review Process, and on June 12, 2024, another major change will go into effect. But unless you are tied into a statewide record-clearing network, you probably don't know about either.

Beginning in August 2023, the form used to apply for a pardon has a new box to check: "Expedited Pardon Review (**Must meet eligibility criteria. See instructions!**)". This was a change from the prior form which limited expedited review to "Non-Violent Marijuana Conviction(s) and/or Paraphernalia." The new program means that individuals whose crimes did not involve sex, guns or violence can expect to start moving more quickly through the pardon process. And, in December, a new law was signed that will eliminate having to file Petitions to Expunge pardoned crimes.

In short, the pardons logjam has splintered.

Origins of the New Fast Track Program

The expansion of the marijuana-only "fast track to pardons" appears to have resulted from several factors. First, in April 2020 the Economy League published its pathbreaking study *Pardons as an Economic Investment Strategy: Evaluating a Decade of Data in Pennsylvania*. That report concluded that pardons were actually "no-cost workforce development and neighborhood investment tools"¹ and recommended that more pardons be awarded, faster.² Even so, four years later, applicants are still being warned that they should expect the process to take four years.³ This expedited review program is designed to cut the time and the backlog for certain offenders.

Second, the statewide Workforce Development Board ("WDB")—the governor's private sector policy advisor on building a strong workforce development system⁴—has been calling for expediting the pardon process. In particular, its November 2021 recommendation was that "[t]he



Suzanne Sennett Smith and Carl (Tobey) Oxholm III

Commonwealth should take all requisite steps...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.”⁵ Pardons, says the WDB, are good for Pennsylvania’s workforce.

Third, the Board of Pardons itself made many other major revisions to the pardon application over the last five years. In 2018, the application was nine pages long with fourteen pages of instructions worded in dense bureaucratese. The form had to be purchased, there was a filing fee, and in addition to court records regarding the conviction, applicants had to attach two reports—a complete driving history from PennDOT and a complete criminal history from the Pennsylvania State Police—which took more time and money. The form was so difficult that, according to the Auditor General, only 16 percent of people who began a pardon application in 2017 completed it.⁶ Today, the pardon application is available online for free, it is written mostly in

plain English, and it’s only three pages long (supplemental pages are required if a petitioner has multiple convictions). The result has been a surge of pardon applications: from just over 400 in 2018 to 2,173 in 2023. Triage is now necessary if the BOP is to keep up with the workload.

And fourth, Governor Josh Shapiro and Lt. Gov. Austin Davis (who chairs the Board of Pardons) came into office with a commitment to reduce barriers to productivity and success. “[F]or far too long, Pennsylvanians have had to endure long wait times, outdated systems, and bureaucratic delays,” said the newly-elected Governor in signing his first Executive Order. “They deserve a government that works efficiently and effectively.... Pennsylvanians work hard to keep our economy moving, and the Commonwealth should work just as hard to process their applications.”⁷ This declaration was made specifically regarding applications for state-issued licenses—so why not for state-issued pardons?

It was with these new goals in mind—expand the State’s workforce and strengthen its economy, reduce barriers to individual success, make the process easier, and address the rising floodtide of pardon applications—that the new Board of Pardons met for the first time in February 2023. It was “new” because its five members included the newly-elected Lt. Governor and newly-confirmed Attorney General and had a newly-appointed Board Secretary with a long history in the Department of Corrections. They created a special Board-staff committee to study what could be done. Recommendations were solicited from people with lived experience in the criminal justice system and from the Pennsylvania Association of Pardon Projects—a network of volunteers helping low-income Pennsylvanians apply for pardons.⁸

Five months later, the Board announced its new Expedited Review Process and posted the new form on its website. “These updates to the expedited review program,” said Lt. Governor Davis, “will expand eligibility for the program to more applicants and make the process more streamlined, allowing the Board to process more applications more efficiently and provide applicants with a clear and transparent process to follow.”⁹

Eligibility for the New Program

The new instructions for the revised application’s checkbox are not much help. They simply state: “Depending on your crimes, you **may** be eligible for our expedited review. Please visit our website at bop.pa.gov for eligibility requirements.”¹⁰ For its part, that website begins by announcing the policy behind the program: “To identify potentially meritorious candidates who demonstrate minimal criminal history and a consistent period of law-abiding behavior, and who otherwise present a low risk of re-offending and/or danger to the community, such that their applications may be expedited through the normal investigative and review process.”¹¹ That takes some breaking down.

To be a “potentially meritorious candidate,” the applicant cannot have any pending charges; *and* must have a “minimal criminal history”; *and* can never, ever have been convicted of any one of 40 specified crimes, or of any crime listed within 8 chapters of the Pennsylvania Crimes Code, or of “criminal attempt, criminal conspiracy or criminal solicitation to commit” any of those crimes. Broadly stated, the crimes on the ineligible list involve what you would expect: violence, guns, sex, and children.

“Minimal criminal history” is defined as just one conviction and at least ten years since the applicant’s “last contact with the criminal justice system.” There are a few exceptions to the ten-year rule: review is possible after just five years if the one and only conviction was for misdemeanor retail theft or one of three marijuana-related misdemeanor possession offenses—a list that is *much* shorter than what had been allowed under the 2019 expedited marijuana program.

The qualifying marker of “law-abiding behavior” requires a very high level of purity. Generally, the clock starts from the end of the maximum sentence that was imposed, not when the sentence actually ended (for example, if probation or parole was terminated early). But any subsequent “contact with the criminal justice system” re-starts the good-conduct clock, including “a non-traffic summary *citation*” (not conviction). “An arrest” also re-starts the clock “unless the charges were dismissed by the prosecutor or court and are otherwise eligible for expungement under Pennsylvania’s Clean Slate Law.”¹² Also, if someone is subject to a Protection From Abuse (PFA) Order, the clock only starts when the PFA Order expires.

If the applicant has “MORE THAN ONE criminal case,” they are eligible for expedited review only after fifteen years from their last contact with the criminal justice system. This is a harsh rule given generally accepted criminology research that ten years is the better marker after which not to expect recidivism.¹³ The fifteen year rule disproportionately punishes people whose crimes originated in addiction—where a single conviction is a remote outlier, and where the medical literature is nearly uniform in documenting seven years “clean,” measured from the date of last use, is when recidivism will be rare, not the end of the maximum sentence.¹⁴

Implementation

Because it has so many exclusions and requires that so much time have passed, the new Expedited Pardon Program might be dismissed as modest. In fact, it might have quite a major reach.

Speaking at “Pardons 2024”, a CLE program hosted by Philadelphia Lawyers for Social Equity on December 13, 2023, BOP Secretary Shelley Watson reported that she had personally reviewed the several thousand pardon applications that have not yet been listed for their Merit Review and

identified “over 700” that will qualify for accelerated review. That is a stunning number—and a clear indicator that there is a huge need in Pennsylvania to free thousands, if not tens of thousands of Pennsylvanians from the “paper prison” keeping them from achieving their potential.

How will the new system work? BOP Secretary Watson has confirmed that they are creating a “second list” only for those who qualify. Nothing more needs to be done for applications that have already been filed—pending pardon applications will be put on the list if they qualify.¹⁵ Eligible applicants will be sent the same four-page “Expedited Review Questionnaire” that has been in use since 2020. That form has seven areas of inquiry: Personal Status, Employment or Other Means of Support, Educational Background, Military Service, Community Involvement, Drug & Alcohol Use and Treatment Information, and Contributing Conditions and Reasons for Clemency. One could easily wonder why ANY of these questions need be asked, or answered, if the goal is really to get people back to work and to contributing to their families and communities at their highest and best levels ... but that is a question for another day.

Then what? It’s not exactly clear. No promise has been made about how quickly these cases will get to the public hearing that Pennsylvania’s Constitution requires. The Board appears to be headed towards scheduling them for a quick Merit Review, jumping the line of those on the “regular list,” but it has only scheduled three Merit Reviews for pardon applicants over the coming year.¹⁶ We will just have to wait to see.

The BOP has also now on-boarded five new staff who are assigned to reduce the backlog. The new staff will, in many ways, just be replacing the ten temporary staff that Governor Wolf had assigned to the Board of Pardons in August 2022 for that same purpose, but they are permanent. Meanwhile, the surge of pardon applications has not just continued, but increased.

Automatic Expungements

One of the most common misunderstandings is that a pardon erases a criminal record—in fact, it just forgives the crime. Pardon recipients still must go to court and file Expungement Petitions for every case in which they were convicted—something that the Board has estimated fewer than thirty percent do. But this, too, is changing.

Late in the evening on December 13, the General Assembly passed “Clean Slate 3.0”, now known as Act 36 of 2023.¹⁷ The Governor signed it two days later. It achieves some major goals important to people with criminal records, sealing some lower-level drug felonies and reducing the time before which misdemeanors and summary offenses can be automatically sealed.¹⁸ But a very important amendment made by the Senate Judiciary Committee provides that criminal records “shall be expunged when ... a person has been granted an

unconditional pardon.”¹⁹ This new law, which goes into effect on June 12, 2024, requires the BOP to transmit information about pardoned crimes to the Administrative Office of the Pennsylvania Courts (AOPC) “on a quarterly basis” and the AOPC is then required to share the information with the courts in which the convictions occurred. The local court is required in turn to Order the convictions expunged and “promptly” notify the state’s “central repository” (the Pennsylvania State Police), and the central repository is required to notify all criminal justice agencies which have received the criminal history record information to be expunged.²⁰

This appears to be a very straightforward process, requiring nothing more from the applicant or their attorney. Everyone’s fingers are crossed that this new system will work.

The Future

Thanks to these systemic changes the future for pardons in Pennsylvania is much brighter for those who have changed and deserve a second chance. Although the new expedited process is not anywhere near as broad as had been sought, it is still a major improvement. Once it is tested, it can be expanded. The biggest challenge for the BOP is keeping up with the surge of applications and there are already too many for just three Public Hearings a year.²¹ The hope is this new Program will send the qualifying applications right to Merit Review and then to a consent agenda at a Pardon Hearing. That would be a major reform indeed. 🙏

NOTES:

¹ <https://www.economyleague.org/sites/default/files/2023-11/impactofpardons-final.pdf> at 28.

² As a reminder, “pardons” in Pennsylvania forgive a crime and “blot out all evidence of the crime”. They are only awarded to people who have completed their sentences. They are very different from “commutations” which modify or shorten a sentence. Commutations allow people an early release from incarceration, parole or probation.

³ <https://www.bop.pa.gov/application-process/Pages/Frequently-Asked-Questions.aspx>.

⁴ <https://www.dli.pa.gov/Businesses/Workforce-Development/wdb/Pages/default.aspx>.

⁵ <https://www.dli.pa.gov/Businesses/Workforce-Development/wdb/Documents/11-9-21-WDB-Briefing-Book.pdf> at 63.

⁶ Criminal Justice: Reforms to Improve Lives & Save Money, https://www.paauditor.gov/Media/Default/Reports/RPT_CJR_060920_FINAL.pdf at 24.

⁷ <https://www.governor.pa.gov/newsroom/governor-shapiro-signs-executive-order-to-improve-commonwealth-licensing-permitting-and-certification-processes-by-establishing-standard-response-times-and-money-back-guarantee/>.

⁸ <https://pardonmepa.org/>.

⁹ https://www.latrobebulletinnews.com/news/state/lt-gov-austin-davis-working-to-streamline-pardons-process/article_f7e6058a-b3a0-54d4-8779-ed50cb6c3377.html.

¹⁰ <https://www.bop.pa.gov/Apply%20for%20Clemency/Documents/Application%20Packet%20-%20Revised%2072123.pdf> at 3.

¹¹ <https://www.bop.pa.gov/Apply%20for%20Clemency/Pages/Expedited-Review-Program.aspx> Last reviewed on December 21, 2023.

¹² But note that the Clean Slate Law clearly does not expunge anything, and depending on the disposition, eligibility for sealing under Clean Slate Law can be up to ten years. See 18 Pa. C.S. Section 9122.2.

¹³ Shawn D. Bushway, Resetting the Record: The Facts on Hiring People with Criminal Records (Rand Corporation, January 2024) https://www.rand.org/pubs/research_briefs/RBA2968-1.html.

¹⁴ See, e.g., Recovery/remission from substance use disorders: an analysis

of reported outcomes in 415 scientific reports, 1868–2011. White W.L. [US] Great Lakes Addiction Technology Transfer Center, Philadelphia Department of Behavioral Health and Intellectual Disability Services and Northeast Addiction Technology Transfer Center, 2012. At pp. 29-30.

¹⁵ The Secretary has confirmed that there will not be a penalty if the box is checked in error: the application will simply not be included in the expedited program.

¹⁶ <https://www.bop.pa.gov/Board-Information/Pages/Board-Meeting-Dates.aspx>.

¹⁷ <https://www.legis.state.pa.us/cfdocs/billInfo/billInfo.cfm?sYear=2023&slnd=0&body=H&type=B&bn=0689>

¹⁸ Among other things, it makes clear that “[e]xcept if required by Federal law, criminal history record information that has been expunged or provided limited access may not be used by any individual or noncriminal justice agency for employment, housing or school matriculation purposes.” 18 Pa.C.S. § 9122.5(a.1).

¹⁹ Codified at 18 Pa.C.S. § 9122(a)(2.1). Note that the change in law only applies to “unconditional” pardons. While not frequent, the BOP sometimes recommends, and the Governor sometimes imposes, conditions on the pardon – e.g., the person not reoffend within a specified time.

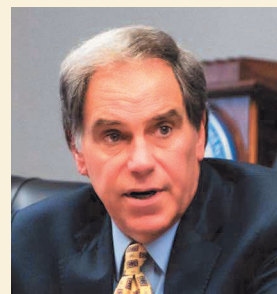
²⁰ 18 Pa.C.S. § 9122(a.1).

²¹ It’s also too much to expect of the Board members. Their annual compensation is the lowest paid to any such board – less than that paid to a member of the Athletic Commission or Milk Marketing Board, half of that paid to a member of the Securities Commission, a quarter of that paid to a member of the Liquor Control Board, and an eighth of that paid to a member of the Environmental Hearing Board. Surely their work – enabling a final exit from the criminal justice system for thousands of Pennsylvanians – is worth so much more to all of us.

About the Authors



A long-time member of PACDL, **Suzanne Sennett Smith** offers criminal defense, pardons, and record clearing legal services through her firm Fresh Start Law, PLLC, and is one of the founders of the Pardon Project of York County.



Tobey Oxholm is the founder and Director of The Pardon Project, an initiative of Philadelphia Lawyers for Social Equity, and the author of *Redefining Pardons: On the Leading Edge of National Reform* in the December 2020 edition of *For The Defense*.

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