

**RULES
of the
BOARD OF PARDONS**

**RE-ADOPTED
April 3, 2009**



PRESIDENT:
LIEUTENANT GOVERNOR

SECRETARY:
SECRETARY OF STATE

MEMBERS:
**CHANCELLOR
STATE TREASURER
AUDITOR OF ACCOUNTS**

RULES OF THE BOARD OF PARDONS

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CONSTITUTION OF 1897

ARTICLE VII

PARDONS

§1. Power of the Governor; recommendation of Board of Pardons; entry in register and submission to General Assembly

Section 1. The Governor shall have power to remit fines and forfeitures and to grant reprieves, commutations of sentence and pardons, except in cases of impeachment; but no pardon or reprieve for more than six months shall be granted, nor sentence commuted, except upon the recommendation in writing of the majority of the Board of Pardons after a full hearing; and such recommendation, with the reasons therefore at length, shall be filed and recorded in the Office of the Secretary of State, who shall forthwith notify the Governor thereof.

He shall fully set forth in writing the grounds of all reprieves, pardons and remissions, to be entered in the register of official acts and laid before the General Assembly at its next session.

§ 2. Composition of the Board of Pardons

Section 2. The Board of Pardons shall be composed of the Chancellor, Lieutenant Governor, Secretary of State, State Treasurer and Auditor of Accounts.

§ 3. Information from Attorney General on Board's duties

Section 3. The Board of Pardons may require information from the Attorney General upon any subject relating to the duties of said Board.

RULES OF THE BOARD OF PARDONS

RULE 1. TIME AND PLACE OF MEETING

The Board of Pardons will meet in open session to consider applications on the fourth Thursday of each month, except July and August, at such time and place as the President of the Board shall determine. The President may change the regular monthly meeting date if special circumstances so warrant.

RULE 2. APPLICATION, NOTICE, ETC.

(a) An applicant may file his/her petition personally or through a representative.

(b) In any application involving a crime subject to Rule 9 of these Rules, if the applicant served a term of incarceration as part of his/her sentence, that individual will have undergone the required psychiatric or psychological procedures of 11 Del. C. §4362(b) prior to his/her appearance before the Board of Pardons.

(c) The applicant in all applications on behalf of one in the custody of the Department of Correction shall initiate action for consideration of this Board by first filing his/her application with the Board of Pardons in accordance with the rules herein provided and a notice of his/her application with the Department of Correction for referral to the Board of Parole. A copy of this notice shall also be filed with the Board of Pardons.

(d) The applicant shall cause written notice of any application for a reprieve, pardon or commutation of sentence to be mailed to: (1) the judge who imposed the sentence on the applicant; (2) the Attorney General; (3) the Chief of Police having jurisdiction of the place where the crime occurred; and (4) the Superintendent of the Delaware State Police.

(e) The notice shall state the tentative date, time and place where the application will be made and the grounds or reasons upon which the application is based. No grounds other than those contained in such notice will be entertained by the Board.

(f) Such notices shall be mailed and written proof must be provided at least thirty-seven (37) days prior to the date of the meeting at which the matter is to be considered.

RULE 3. APPLICATION, DUTY OF SECRETARY

(a) Three (3) separate copies of every application must be filed with the Secretary of the Board.

(b) The application consists of the following items:

1. Obtain a copy of your Criminal History (for pardon petitions only). This can be obtained from the State Bureau of Identification, Division of State Police, Blue Hen Mall & Corporate Center, 655 Bay Road, Suite 1B, Dover, Delaware, 19901 or the Delaware State Police Troop in your area. Ensure that all

criminal convictions (i.e., felonies or misdemeanors for which you paid a fine, served jail time or probation) are included in your application for pardon. If you have adult charges on your record that are “Disposition Unobtainable, Disposition Unknown, Pending or Transferred to Another Court,” you must ensure that the charges are not convictions and provide documentation of the final disposition.

2. Obtain a Certified copy of your Court Docket and the Sentencing Order for each guilty charge on your record. This can be obtained by contacting the court where you were sentenced. The court will need to know your arrest date in order to locate your docket.
3. Complete the Board of Pardons Cover Sheet.
4. Provide a statement of the reason(s) for the application and the reasons why the applicant believes he/she should be considered for a pardon.
5. Provide a short history of the case, including a statement of all pending proceedings in the name of or on behalf of the applicant before any

judicial or executive body. If no such proceedings are pending, the applicant shall so state. If any such proceedings are pending, the applicant shall state the name of the body involved and the status of the proceeding (see Rule 7(a)).

6. Every applicant who at the time of his/her application is not under the custody of the Department of Correction and who desires consideration of a sentence imposed for any of the crimes delineated in 11 Del. C. §4362 shall accompany his application with three (3) copies of a current psychiatric or psychological evaluation report if a term of incarceration was served as part of the sentence.

(c) Applications must be filed with the Board of Pardons, Secretary of State's Office, 401 Federal Street, Suite 3, Dover, Delaware 19901.

(d) When a psychiatric or psychological report is required by statute (see 11 Del. C. §4362) three (3) copies shall be filed with the Secretary of the Board. Such copies shall accompany the application.

(e) It shall be the duty of the Secretary of the Board to note the filing date on every application filed with him/her.

(f) Upon receipt of the application, it shall also be the duty of the Secretary of the Board to request from the Board of Parole a report summarizing the complete record of the applicant, including an opinion as to the state of rehabilitation and of the copy of the notice required under Rule 2(c) (see 11 Del. C. §4363).

(g) It shall also be the duty of the Secretary of the Board to forthwith mail a copy of all applications and other appropriate data to each of the Board members and the Attorney General.

RULE 4. FILING OF THE APPLICATION: TIME

(a) Except for urgent reasons or in cases of reprieve, or corporal or capital punishment, no application will be heard unless the application and supporting papers have been filed at least thirty-seven (37) days before session at which they are to be considered, and unless the required notice has been given.

(b) When the application involves a reprieve, or corporal or capital punishment or other urgent reason, the President of the Board or a majority of the members may, if it is deemed necessary, call a special session of the Board for a hearing thereon at such time

and place and pursuant to such requirements as they may impose.

RULE 5. OPEN HEARINGS, QUORUM, ETC.

(a) The Board hearings shall be open to the public, and its decision shall promptly be made public. However, the Board may consider the matter and arrive at its decision in Executive Session.

(b) A quorum shall consist of a majority of the entire Board.

(c) The Lieutenant Governor shall be the President of the Board, and when present, shall preside. In his/her absence the members present shall elect a chairman.

(d) The Secretary of State shall act as Secretary of the Board.

(e) Pursuant to 29 Del. C. §10004(h), the Board reserves the right to hear individual testimony in Executive Session.

RULE 6. MATTERS CONSIDERED AT HEARINGS, ETC.

(a) The Board will hear such individuals and receive such material in support of or in opposition to an application as it considers desirable to discharge its functions to hold a full hearing.

(b) Among other matters generally deemed appropriate for Board consideration are the transcript of the trial evidence, proper affidavits, letters from the judge and the jury who tried the case, the prosecuting attorney, responsible persons in the community where the crime was committed and from persons present at the trial.

(c) Subpoena power shall be exercised in accordance with the provisions of 11 Del. C. §4361.

RULE 7. LIMITATIONS ON APPLICATIONS

(a) Except applications involving capital punishment or, as determined by a majority of the entire Board, applications which should be processed promptly for other urgent reasons, no application for a pardon or commutation of sentence shall be accepted or heard if any proceeding, whether by way of appeal, post

conviction remedy, habeas corpus or otherwise, is pending in any court, (state or federal), in relation to a case covered by the application. In the excepted applications under this Rule, the President of the Board or a majority of the members shall determine an appropriate hearing time which may be either a regular monthly meeting date or, under Rule 4(b), a special session time.

(b) No application for a pardon or commutation of sentence which includes a conviction for first degree murder shall be accepted for thirty-three (33) months or reheard for thirty-six (36) months from the date of any decision on a prior application, unless the Board agrees in advance to accelerate the time.

(c) No other application for a pardon or commutation of sentence shall be accepted for fifteen (15) months or reheard for eighteen (18) months from the date of any decision on a prior application, unless the Board agrees in advance to accelerate the time.

RULE 8. DUTY OF ATTORNEY GENERAL'S OFFICE

(a) It shall be the duty of the Secretary of the Board to notify the Attorney General that the Board, pursuant to Article 7, § 3 of the Constitution, requests that a legal representative of his/her office attend all sessions of the Board at which applications for reprieves, recommendations for pardons and commutations of sentence are to be heard.

(b) The Attorney General's representative will be expected to have available for the Board, at least three (3) days prior to the scheduled hearing, material relevant to the crime involved and the applicant's criminal record.

(c) Because the Attorney General's Office has in its possession the names and addresses of the victims of the particular offender appearing before the Board of Pardons, the Board delegates the responsibility of informing the victims of their right to address the Board to the Attorney General. The Attorney General will inform the victim and/or surviving family member(s) of the time, date and place of the applicant's hearing and ascertain whether or not he/she wishes to attend or have the Attorney General make representations to the Board on his/her behalf at the hearing. The Board of Pardons will be copied on such notification to confirm notices were sent out.

(d) In the event there are no witnesses to be notified, the Attorney General shall inform the Board of Pardons in writing.

RULE 9. PSYCHIATRIC EXAMINATIONS REQUIRED BY 11 DEL. C. §4362

(a) When the Board of Pardons considers for recommendation to the Governor, for pardon or commutations of sentence, any person who has been incarcerated for an act causing death (Subpart B, Subchapter II, Chapter 5, Title 11); sexual offenses (Subpart D, Subchapter II, Chapter 5, Title 11); kidnapping and related offenses (Subpart E, Subchapter II, Chapter 5, Title 11); arson and related offenses (Subpart A, Subchapter III, Chapter 5, Title 11); burglary in the first degree; burglary in the second degree (Subpart B, Subchapter III, Chapter 5, Title 11); robbery (Subpart C, Subchapter III, Chapter 5, Title 11); offenses relating to children and incompetents (Subchapter V, Chapter 5, Title 11); cruelty to animals; abusing a corpse; unlawful use of an incendiary device, bomb or other explosive device; abuse to children (Chapter 9, Title 16); and distribution of a controlled substance to a person under age eighteen (§ 4761, Chapter 47, Title 16); or for an

attempt as provided by statute to commit any of these crimes, there shall be furnished to each member of the Board of Pardons and to the Governor, in case recommendation for a pardon or commutation of sentence be made, a copy of the report of the psychiatrist and/or psychologist who have examined such person, as provided in Subsection (b) of this section.

When the Board of Pardons considers for recommendation to the Governor, for pardon or commutation of sentence, any person who has been incarcerated for the crime of murder, voluntary manslaughter, rape, kidnapping, abducting a child, poisoning with intent to harm, robbery, burglary in the first degree, burglary in the second degree, mayhem, arson, assault with intent to murder, to rape or to rob, as such crimes were set forth by statute prior to July 1, 1973, or for an attempt as provided by statute to commit any of the said crimes, there shall be furnished to each member of the Board of Pardons, and to the Governor, in case recommendations for a pardon or commutation of sentence be made, a copy of the report of the psychiatrist and/or psychologist who have examined such person, as provided in 11 Del. C. §4362(b).

(b) Prior to consideration by the Board of Pardons of any application for a pardon or a commutation of sentence made by any person who has been incarcerated for any of the crimes stated in Subsection (a) of this section, such person shall be examined by a psychiatrist or by a psychologist within a twelve (12) month period immediately preceding consideration of such person's case by the Board of Pardons. The Commissioner of the Department of Correction or the Commissioner's designee may request the Director of the Delaware Psychiatric Center to cause examination and studies to be made.

(c) Any psychiatrist or psychologist who, pursuant to Subsection (b) of this section, examines any applicant for a pardon or a commutation of sentence shall furnish each member of the Board of Pardons a report containing his/her respective findings, opinions as to the mental and emotional health of the applicant, and opinions as to the probability of the applicant again committing any crime if released. If the Board of Pardons recommends a pardon or commutation of sentence, a copy of any report submitted to the Board by any psychiatrist or psychologist shall be provided to the Governor.

(d) If examination and clinical studies as provided in this section cannot be made at the correctional institution, the prisoner may be transferred, under adequate security safeguards, to the Delaware Psychiatric Center for such examination and studies.

RULE 10. WAIVER OF RULES

A majority of the entire Board in any particular application may waive any of the above mentioned rules when in its sole discretion, good cause is shown for the adoption of other procedures. This is to exclude any waiver of Rule 2(b) and Rule 9 as outlined in 11 Del. C. §4362(b).

RULES OF THE BOARD OF PARDONS

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Amended September 7, 1905
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Amended June 4, 1925
Amended June 6, 1935
Amended September 2, 1937
Amended February 7, 1939
Amended March 2, 1953
Amended November 17, 1966
Amended October 23, 1970
Amended September 16, 1971
Amended February 15, 1973
Amended June 21, 1973
Amended May 15, 1975
Amended March 17, 1977
Amended June 23, 1977
Amended October 26, 1978
Amended September 27, 1979
Amended September 23, 1982
Amended December 2, 1982
Amended March 22, 1984
Amended November 18, 1993
Amended October 24, 1996
Amended October 2, 1997
Amended July 13, 2000
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<http://pardons.delaware.gov>

**ISSUED BY THE
SECRETARY OF STATE
DOVER, DELAWARE**