



Janet T. Mills
GOVERNOR

STATE OF MAINE
OFFICE OF THE GOVERNOR
1 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0001

January 19, 2022

Hon. John L. Martin
Maine House of Representatives
1 State House Station
Augusta, Maine 04330

Dear Representative Martin:

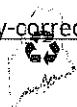
I am pleased to provide the following comments on LD 1187, *RESOLUTION, Proposing an Amendment to the Constitution of Maine Amending the Pardon Powers of the Governor.*

The Governor views the exercise of the pardon power as an extraordinary event, one that reverses the culmination of efforts undertaken by three separate and distinct branches of our government. The power to erase a violation of law enacted by the legislature and proven beyond a reasonable doubt by a prosecutor in open court should not be taken lightly or without serious consideration given to the circumstances presented by the individual petitioner, the views of the victims and the impact on the greater community.

Article V, Part 1, Section 11 of the Maine Constitution, like its federal counterpart, expressly designates the pardon power exclusively to the Governor and permits regulation only as to the manner of applying for a pardon. Title 15, Chapter 307 codifies certain practices that must be followed once the Governor has issued a pardon or commutation so that necessary parties are notified of the governor's act.

By Executive Order 6 FY 19/20 issued on March 15, 2019 (attached) Governor Mills, consistent with longstanding tradition, has established the Board on Executive Clemency to guide her decisions on pardons of convictions and commutations of sentences. The Board consists of four individuals appointed by the Governor to review petitions for clemency and make recommendations to the Governor. The Board is aided in their work by the Department of Corrections who provides administrative support as well as in depth investigations regarding the petition. The Board has a website explaining the process.¹ If the Board votes to grant a petitioner a hearing the Department will collect all available documents regarding the person's history, interview the petitioner, and seek the views of any victims, law enforcement, and other community members. Board rules require the petitioner to advertise their hearing in a local newspaper prior to the public hearing. The Board will then hold a public hearing at

¹ <https://www.maine.gov/corrections/adult-community-corrections/pardon-board>



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which the petitioner makes their case for clemency and members of the public are invited to comment as well. The Board then makes a recommendation to the Governor, who may agree or disagree.

LD 1187 appears to seek to enshrine in the constitution the process currently followed by this Governor, but would also place limitations on the Governor's pardon power by requiring the Board meet first and it essentially eliminates the pardon power in the last six months of a gubernatorial term. We do not believe that it is necessary in all cases to require the Board first hold a hearing before the Governor may issue a pardon or commutation and we are concerned that this limitation on the last six months unnecessarily would harm deserving petitioners.

There are instances where a person makes emergency pleas for clemency due to sudden illness or an impending adverse action that only a pardon can solve. For instance, in the immigration context, a pardon may save a deserving person from deportation, but deportation may come with little no warning and without regard to the months remaining in a gubernatorial term.

The Board holds hearings quarterly and Governor Mills has granted pardons to 30 individuals. One of those pardons was granted posthumously and after extensive research by the Governor and her Legal Counsel, but without hearing by the Board – the rest have been decided only after notice and hearing.

The Governor believes that L.D. 1187 is neither necessary nor beneficial to providing a fair process for the granting of clemency in appropriate cases.

Please let me know if you have any questions.

Sincerely,



Tim Feeley
Deputy Legal Counsel
Office of Governor Mills

Cc: Joint Standing Committee on State and Local Government
Fern Larochelle, Chair of the Governor's Board on Executive Clemency



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OFFICE OF
THE GOVERNOR

NO. 6 FY 19/20
DATE March 15, 2019

**AN ORDER ESTABLISHING THE
GOVERNOR'S BOARD ON EXECUTIVE CLEMENCY**

WHEREAS, *Me. Const. Art. V, Pt. 1, §11* confers upon the Governor the authority to grant certain reprieves, commutations and pardons (clemency) upon such conditions, and with such restrictions and limitations as may be deemed proper and subject to such regulations as may be provided by law; and

WHEREAS, the exercise of this authority should be informed by proper investigations and reports; and

WHEREAS, the exercise of this authority should be further informed by the advice and counsel of citizens learned in matters of criminal justice; and

WHEREAS, the exercise of this authority should be consistent with *15 M.R.S. §§2161-67*;

NOW THEREFORE, I, Janet T. Mills, Governor of the State of Maine, pursuant to authority conferred by *Me. Const. Art. V, Pt. 1, §1 and §12*, do hereby Order the following.

I. PURPOSE

The Governor's Board on Executive Clemency (Board) is hereby established. The purpose of the Board is to investigate, evaluate and advise on petitions for executive clemency.

II. MEMBERSHIP

The Governor shall appoint the members and a chair of the Board, and they shall each serve at the Governor's pleasure. All such members shall be Maine citizens who have knowledge of the criminal justice system and the interests served by conferring clemency in appropriate cases.

III. PROCESS

At the Governor's direction, the Board shall adopt operating guidelines for reviewing and assessing clemency petitions. The Board shall meet at the call of the chair and approximately every four months. The Board may perform such other tasks and duties as the Governor may request from time to time, provided that the final decision to grant clemency remains solely with the Governor.

IV. ACCESS AND CONFIDENTIALITY

Information related to the clemency process shall be treated as follows:

- A. **Petitions.** From petitions for which the Board has granted a hearing, the identity of the petitioner and the convictions or sentences for which the petitioner seeks clemency are not confidential.
- B. **Hearings.** Absent exceptional circumstances, hearings on clemency petitions shall be open to the public.
- C. **Warrants.** Warrants granting clemency are not confidential; provided that a warrant may be redacted to protect sensitive personal or statutorily confidential information before the warrant is disclosed. Legal counsel shall pre-approve any disclosures to ensure this protection.
- D. **Other.** All other records, proceedings and deliberations of the Board are confidential pursuant to *1 M.R.S. §402(2)(F), (3)(J)* and *§403(6)*, and any other applicable provision of Maine law. Records created and collected by the Department of Corrections to assist the Board and Office of Governor shall otherwise remain at all times records of the Department.

V. AGENCY SUPPORT

The Department of Corrections shall staff, inform and advise the Board on all petitions. The Board may also seek information and counsel from the Office of Attorney General, law enforcement and other pertinent government officials.

VI. COMPENSATION

Members of the Board shall serve without compensation. Reimbursement allowed by law for members' necessary expenditures incurred by their service shall be administered by the Governor's Office.

VII. OTHER

This Order supersedes *Executive Order 25 FY 11/12*; provided that the confidentiality of records and proceedings of prior Boards shall be governed by the provisions of *Section IV* above.

VIII. EFFECTIVE DATE

The effective date of this Order is March 15, 2019.



Janet T. Mills, Governor