

## Reforming the Reform: The D.C. Clemency Board Needs Better Regulations

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When it passed, the [Clemency Board Establishment Act of 2018](#) gave the District the opportunity to create its own, local Clemency Board and ensure that applications from people convicted of D.C. Code offenses have a direct route to the President's desk. Currently, the [path to clemency](#) is winding and almost always results in a dead end: people must complete a complex [application](#) form designed exclusively for people with federal convictions, submit it to the Office of the Pardon Attorney at DOJ, which passes their recommendation for a commutation or pardon to the Deputy Attorney General, who passes their recommendation to the White House attorney, who then puts the grant on the president's desk for signature. Of the 2,822 clemency grants issued by five presidents since 1989, [only one](#) single person with a D.C. conviction has been granted relief. This statistic is even more troubling when we consider that 96% of people serving felony sentences for D.C. convictions are Black. Our lack of access to clemency is not only a statehood issue and an administration of justice issue, but a racial justice issue.

D.C. now has the opportunity to take another step toward local control of its criminal legal system, to set its own process and priorities for evaluating clemency applications, and to add commutations and pardons back to the set of legal tools at our disposal for granting relief from extreme sentences and ending the mass incarceration of Black people. While the new law does not empower the Mayor to grant clemency herself, it creates a direct path to the President and expands eligibility for clemency to people convicted under the D.C. Code. But the Clemency Board regulations proposed last month by the Mayor's Office of General Counsel will prevent us from achieving those goals.

The hope the law gives, of an operational D.C. Clemency Board that streamlines the application process, is threatened by the current proposed regulations. The proposed regulations, which could go into effect as early as September 13, 2021, would reduce the D.C. Clemency Board into a letter-writing committee. People would still be required to complete the current process of filing federal paperwork and applying to the Office of the Pardon Attorney. Then, if they wish, they could file a second application asking the D.C. Clemency Board to send a letter of recommendation on their behalf to the Office of the Pardon Attorney, adding an additional layer of bureaucracy rather than replacing the current complicated and confusing process. While a supporting letter is better than nothing, this was hardly the independent process envisioned by the statute.

The D.C. Clemency Board has not been without support as it sought to draft regulations. Clinic students at the Howard University School of Law drafted an application form and regulations that embodied the legislative intent for the new D.C. Clemency Board. The students' drafts aimed to create an application process that prisoners and returning citizens could fill out without lawyers showing why they deserved clemency or pardon based on the criteria set by Board, whether rehabilitation, health or innocence. Once the Board made its decision, the Board and its staff would help the deserving applicant to complete any additional paperwork required by the current occupant of the White House counsel, and submit their recommendation for clemency to the President and Office of the Pardon Attorney. This process allowed our city to gear commutation to our community's needs, make it more likely that people would actually apply and that the Board will find deserving applicants. It would simplify the process and more effectively get applications before the President.

Local advocates have pushed for years to create an effective new path to clemency for people convicted under D.C. law. The Office of the Pardon Attorney has been a roadblock to DC petitioners. People seeking clemency should not have to file federal DOJ applications with the Office of the Pardon attorney first before the DC Board will even consider their application. We should not allow a process that is failing our community to be made even worse. The D.C. Clemency Board must propose new regulations that follow the intent of the statute and open a direct path to the President.