

## **Pardon Power in Tennessee**

**The Governor's Pardon Power** – The pardon power in Tennessee is exclusively reserved for the Governor of Tennessee. The Governor's pardon power is derived from Article 3, Section 6 of the Tennessee Constitution which says, "He shall have power to grant reprieves and pardons, after conviction, except in cases of impeachment."

**Types of Clemency Power** - Tennessee's governor possesses four different types of clemency powers from criminal convictions or sentences:

- (1) a reprieve, which postpones the execution of the sentence, *see Ricks v. State*, 882 S.W.2d 387, 391 n.10 (Tenn. Crim. App. 1994);
- (2) a pardon, which exempts an inmate from the punishments inflicted by the criminal law, *see Collins v. State*, 550 S.W.2d 643, 655 (Tenn. 1977);
- (3) a commutation, which reduces or shortens the sentence that an inmate is required to serve as a result of his criminal conviction, *see Carroll v. Raney*, 953 S.W.2d 657, 659 (Tenn. 1997); and
- (4) an exoneration, which is the complete and unconditional removal of an inmate's criminal record and the automatic restoration of citizenship rights, *see Tenn. Code Ann. § 40-27-109* (2006).

TENN. OP. ATT'Y GEN., No. 11-31 (Apr. 11, 2011).

### **Limitations on Governor's Pardon Power**

**Legislative Restrictions** – "The vestiture of the power to grant reprieves and pardons in the chief executive is exclusive of all other departments of the state, and the Legislature cannot, directly or indirectly, take it from his control, and vest it in others, or authorize or require it to be exercised by any other officer or authority. It is a power and a duty intrusted to his judgment and discretion, which cannot be interfered with, and of which he cannot be relieved." *State v. Dalton*, 109 Tenn. 544, 72 S.W. 456, 457 (1903)

**Judicial Restrictions** – "The Governor's authority to commute a sentence is limited only by the language of the Constitution and neither the legislature nor the courts may regulate or control the Governor's power to commute a sentence." *Lemay v. State, Dep't of Correction*, 29 S.W.3d 483, 485 (Tenn. 2000).

**Additional Clemency Powers Granted Through Statute** – While the Legislature is forbidden to limit/restrict the Governor’s Pardon Power as granted by the Tennessee Constitution, nothing in the Constitution prohibits the Legislature for granting the Governor more clemency powers. This is exactly what the Legislature did when it passed Tennessee Code Annotated section 40–27–101, *et al.* Since this type of clemency relief is outside the constitutionally derived powers and is purely a creature of statute, the legislature is free to regulate or restrict its exercise as the General Assembly deems proper. Some examples of the additional clemency powers include:

- TENN. CODE ANN. § 40-27-101 (West 2013) (“The governor has power to grant reprieves, commutations and pardons in all criminal cases after conviction, except impeachment, subject to the regulations provided in this chapter.”)
- TENN. CODE ANN. § 40-27-104 (West 2013) (“The governor has the discretion to remit a portion of the imprisonment of a convict in the penitentiary upon the written recommendation of the board of probation and parole.”)
- TENN. CODE ANN. § 40-27-105 (West 2013) (“Upon application for a pardon by a person sentenced to capital punishment, if the governor is of opinion that the facts and circumstances adduced are not sufficient to warrant a total pardon, the governor may commute the punishment of death to imprisonment for life in the penitentiary.”)
- TENN. CODE ANN. § 40-27-106 (West 2013) (“The governor may, likewise, commute the punishment from death to imprisonment for life, upon the certificate of the supreme court, entered on the minutes of the court, that in its opinion, there were extenuating circumstances attending the case, and that the punishment ought to be commuted.”)
- TENN. CODE ANN. § 40-27-109 (West 2013) (“(a) After consideration of the facts, circumstances and any newly discovered evidence in a particular case, the governor may grant exoneration to any person whom the governor finds did not commit the crime for which the person was convicted. No person may apply for nor may the governor grant exoneration until the person has exhausted all possible state judicial remedies.  
(b) Exoneration granted pursuant to subsection (a) shall as a matter of law be unconditional, shall without application having to be made therefor expunge all records of the person's arrest, indictment and conviction, and shall automatically restore all rights of citizenship to the person.

(c)(1) The governor has the authority to review and reconsider any pardon the governor has previously granted for the purpose of determining whether the recipient of the pardon qualifies for and merits the granting of exoneration in lieu of a pardon. If the governor so determines, the governor shall have the authority to convert any pardon previously granted into exoneration as defined by this section.

(2) Nothing in this section shall be construed as preventing the governor from granting exoneration to a person who applied for a pardon if the person qualifies under subsection (a) and if the governor determines the person merits exoneration.”)

- TENN. CODE ANN. § 40-27-110 (West 2013)“(a) This section shall be known and may be cited as the “Victims of Crime Executive Clemency Notification Act.”

(b) Prior to any reprieve, commutation, pardon, exoneration, or any other form of executive clemency being made public, the governor shall notify or cause to be notified the attorney general and reporter and the district attorney general of the judicial district in which the conviction occurred of the impending clemency action.

(c)(1) Prior to notice of the clemency action being made public, the district attorney general, through the victim-witness coordinator, shall notify the victim or victims of the offense for which the person is receiving clemency, or the victim's representative, of the impending grant of clemency.

(2) If notice is required by this section, the district attorney general, through the victim-witness coordinator, shall contact the victim or victim's representative by telephone, electronic mail, facsimile or by other means intended to ensure that the victim receives immediate notification; provided, that the victim or victim's representative has provided the district attorney general's office with contact information necessary to accomplish such immediate notification.”)

**Effect of Pardon – Forgiveness not Forgetfulness** – “Upon our review of these cases and other legal authority, we agree with our neighbor state of Florida that, “while a full pardon restores one's civil rights and remits all punishment associated with the conviction, it does not obliterate the fact of the commission of the crime and the conviction thereof; nor does it wash out the moral stain. In other words, it involves forgiveness and not forgetfulness.” *Randall*, 791 So.2d at 1244 (quotation marks and citations omitted). *State v. Blanchard*, 100 S.W.3d 226, 231 (Tenn. Crim. App. 2002).