



RESEARCH REPORT

# How Governors Can Use Categorical Clemency as a Corrective Tool

**Lessons from the States**

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# Foreword from the American Civil Liberties Union

The United States remains in the grip of an unjust, unnecessary, and self-inflicted epidemic of mass incarceration, the machinery of which only deepens racial inequities and harms that have existed for hundreds of years. Of the more than 2 million people incarcerated in the United States, more than half—roughly 1.3 million people—are incarcerated in state prisons across the country. Moreover, the ACLU knows that there are large groups of people who have been historically, systemically overincarcerated without any justification: people sentenced to long sentences for drug crimes; people who have served decades already and have long since passed the time when they may pose a threat to anyone’s safety; people serving sentences under mandatory-minimum laws or other draconian policies that have been repealed; and people incarcerated for administrative or minor violations of probation or parole supervision.

A pressing question for states, and advocates, is whether clemency powers could be an effective and legal vehicle to correct these systemic excesses and injustices by being issued to grant release to large groups of similarly situated people. As this report shows, the resounding answer to that question is yes.

Over the past several years, the ACLU’s Campaign for Smart Justice—an unprecedented, multiyear effort to reduce the US jail and prison population by 50% and to combat racial disparities in the criminal legal system—has earned significant victories by fighting for the election of progressive prosecutors and advancing profoundly impactful ballot initiatives and pieces of legislation. However, people in state prison often fall beyond the reach of Campaign victories to date: prosecutors have limited jurisdiction over people in prison, and new laws tend to be only forward looking.

Just as the policies that fuel this crisis were all the product of a governor’s signature, governors can use that same stroke of a pen to remedy this through their clemency powers. In the United States, it has long been established that governors have the power to unilaterally end incarceration by commuting people’s sentences—freeing people with an efficiency unmatched by other government actions. Unfortunately, today, commutations tend to occur rarely and are often granted to a small handful of people. For commutations to be an effective response to mass incarceration, governors must use their commutation powers in new, transformational ways.

In order to move governors toward doing just that, the Campaign for Smart Justice launched the Redemption Campaign: Embracing Clemency in August 2020. The pivotal next step in the Campaign for Smart Justice, the Redemption Campaign is a nationwide effort to liberate 50,000 people from state prisons over the next five years by executing state-level campaigns that push governors to use their existing clemency powers to forcefully confront mass incarceration and racial injustice by granting categorical commutations to release large groups of people who are unjustifiably imprisoned.

This report from the Urban Institute is a critical foundation for the campaign. Based on a survey of historical and legal documents, state-level data, and previous clemency examples, Urban reached the following three main conclusions:

1. There is deeply rooted legal precedent for executives—governors and presidents—to wield their executive clemency powers to grant commutations to large categories of people, as opposed to just a few people on a one-by-one, case-by-case basis.
2. That precedent, combined with notable examples of individual grants of clemency, provides a clear model for governors today to use in evaluating, shaping, and executing mass commutations for people who are trapped in their state’s prisons.
3. A bold, transformational shift in how clemency is used—to a point where mass commutations are regularly achieved across the country—is a meaningful and necessary antidote to this nation’s mass incarceration crisis.

These findings confirm what the Campaign for Smart Justice observed through its work and, more importantly, learned in centering and elevating the voices, experiences, and expertise of formerly incarcerated people who had received commutations. Urban’s findings, therefore, lend further credence to two guiding principles.

The first is that governors have a responsibility to lead the fight to slash the nation’s incarcerated population by 50 percent. That bold goal requires a powerful response to decades’ worth of mass incarceration in state prisons. However, traditional case-by-case, post-conviction review processes are wholly inadequate to serve as that systemic response—these processes simply cannot tackle the enormity of the challenge before us. That means that to liberate the thousands of people trapped by unjustifiably long, overly punitive state prison sentences, a governor’s granting clemency is the best tool available to ensure timely release and a pathway to hope and healing. Second, that the power to immediately release thousands of people rests in the hands of a single actor—as opposed to being dependent upon a legislative body and process—makes it all the more important because it offers an expedient, readily deployable tool in the fight to end mass incarceration. Urban’s research also helped

reaffirm the now well-established research consensus that reducing incarceration does not undermine public safety and that it can actually drive economic justice and the stability communities need to thrive.

Categorical commutations are also broadly supported by the public. People feel that communities are better served by releasing people who are not a threat to safety. An ACLU-commissioned Bully Pulpit Interactive poll found that a majority of voters—62 percent—believe that reducing the prison population would strengthen communities by reuniting families and saving taxpayer dollars that can be reinvested into the community. And overall, 80 percent of voters—86 percent of Democrats, 81 percent of Independents, and 73 percent of Republicans—support achieving those population reductions by a governor’s issuing broad, categorical commutations to release some people.

In sum, issuing categorical commutations is possible, supported by historical precedent, and demanded by the public. Furthermore, it presents governors an opportunity to positively affect the lives of thousands of their constituents and be key, positive players in justice reform. As the Urban Institute’s research has confirmed, we can, and must, replace the architecture of mass punishment with a roadmap to redemption by using clemency as a corrective tool.

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# Executive Summary

Governors in most states have executive clemency authority that allows them to change the terms of someone's criminal justice system involvement, including by issuing pardons or by granting commutations to adjust the sentences of people in prison. Though many clemency deliberations are independent case-by-case assessments, in some cases, governors can also extend clemency eligibility categorically to groups of people in prison to mitigate structural issues or accomplish larger reform goals. In this report, we provide a high-level overview of state executive categorical clemency and offer examples of how state governors have used this strategy as a corrective tool to address problems in the criminal justice system.

# How Governors Can Use Categorical Clemency as a Corrective Tool

Policymakers have increasingly prioritized addressing mass incarceration in recent years. The United States has the highest imprisonment rate in the world (Walmsley 2018), yet evidence overwhelmingly shows that imprisonment largely fails to advance public safety goals,<sup>1</sup> while creating lasting negative consequences for people, families, and communities.<sup>2</sup> Furthermore, the US criminal justice system perpetuates systemic racism,<sup>3</sup> particularly harming Black, Latinx, and Native American people (The Sentencing Project 2018).<sup>4</sup> A majority of US states have engaged in criminal justice reform efforts in recent years (Harvell et al. 2016; Porter 2020). In particular, reducing the number of people in US prisons (i.e., decarceration) has been a central goal of efforts led by governments<sup>5</sup> as well as advocates and activists.<sup>6</sup> Many strategies to reduce prison populations or otherwise adjust sentencing practices are based on policy reforms, such as legislation and ballot initiatives. However, it can take years for such strategies to effect change, and even when enacted, many reforms do not apply retroactively to people who have already been sentenced.

In many states, governors can use executive clemency authority to consider sentence adjustments or release for people in prison.<sup>7</sup> Governors often grant executive clemency as an act of compassion or mercy extended on a case-by-case basis. However, they can also use clemency as a corrective tool to advance larger reform goals by broadening eligibility categorically to groups of people. In this report, we provide a high-level overview of state executive categorical clemency and examples of how governors have used it to address problems in the justice system and advance or reinforce reform and decarceration goals.

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## BOX 1

### Methodology

Our research team used the following methods to compile the information in this report:

- reviews of academic journal and law review articles
  - web searches for relevant news coverage
  - reviews of research documents and other materials published by government agencies and nongovernmental organizations, including legal assistance providers, research institutions, and advocacy organizations
  - telephone interviews with four experts in executive clemency
-

# Executive Categorical Clemency

Executive clemency refers to the authority held by the president and most governors to modify the terms of someone's criminal justice system involvement, including through pardons or sentence commutation. If someone is in prison, clemency can result in their release, a sentence reduction leading to earlier release, or a sentence modification (e.g., commuting a death penalty sentence to life without parole, or granting or expediting eligibility to be considered for parole). Many states' governors have authority to use executive clemency to address problems in the justice system and advance state reform goals,<sup>8</sup> and categorical clemency is one way they can exercise this power. Categorical clemency refers to clemency eligibility or grants issued to certain groups based on shared circumstances, as opposed to eligibility or grants issued on an individualized case-by-case basis. Governors can offer eligibility or grants to groups based on various criteria, including their offenses, personal characteristics, and experiences. They can also base categorical clemency eligibility on determinations about systemic policy issues.

Importantly, states have authority to determine their own clemency structures and processes, meaning decisionmaking structures vary from state to state. This variation impacts the level of clemency authority a governor has. In some states governors have exclusive clemency authority, whereas in others a separate entity, such as a parole board, makes clemency determinations. Others use a mixed model in which authority is shared between the governor and another entity.<sup>9</sup> Although structures vary, governors in many states have broad clemency authority that enables them to extend categorical clemency eligibility, and governors in other states can work with clemency granting entities to propose new clemency processes and criteria to determine eligibility for categorical clemency consideration.<sup>10</sup>

## Categorical Clemency Eligibility Based on Offense Categories

Governors can extend categorical clemency eligibility to groups of people based on their offenses, sometimes in conjunction with larger reform efforts. Recently, several governors have exercised their executive clemency power to apply reforms and other legal changes retroactively. Such actions are designed to ensure that people do not continue to be imprisoned for convictions that are no longer eligible for prison sentences, or carry criminal records for behavior that is no longer criminalized.

One example of categorical commutation eligibility resulted from the retroactive application of Oklahoma’s 2016 drug and property offense reforms. In 2016, State Question 780 asked Oklahoma voters whether they would approve of recategorizing certain felonies, such as drug possession and minor property crimes, as misdemeanors, and it passed by a 16 percent margin. In 2019, House Bill 1269 established an accelerated, single-stage commutation docket to review the sentences of people in prison for offenses that had been reclassified as misdemeanors, effectively applying the law retroactively.<sup>11</sup> This process, which featured collaboration between the governor, legislature, and Pardon and Parole Board, allowed 527 people to have their sentences commuted and 462 people to be released from state prisons in 2019.<sup>12</sup> Oklahoma’s referendum, state legislative action, and subsequent commutations released hundreds of people from state prison who had been convicted of offenses that were recategorized.

In addition to commutations, governors can grant pardons to groups of people who have been convicted of specific types of offenses. For example, in 2019, Governor J. B. Pritzker pardoned 11,017 low-level marijuana convictions a day before an Illinois law legalizing marijuana use (House Bill 1438) took effect.<sup>13</sup> According to state officials, approximately 116,000 convictions for possession of 30 grams or less of marijuana were eligible to be pardoned under the law at the time it was enacted.<sup>14</sup> Similarly, in 2019, several years after Washington legalized recreational marijuana, Governor Jay Inslee created an expedited pardon petition process for people convicted of a single minor marijuana possession offense, saying, “[We] should not be punishing people for something that is no longer illegal.”<sup>15</sup> Colorado has also followed suit. In October 2020, Colorado governor Jared Polis issued an executive order that pardoned more than 2,700 convictions of possession of an ounce or less of marijuana that were issued before the state legalized personal marijuana use in 2012 through Amendment 64.<sup>16</sup> The executive order followed legislation passed in June 2020 designed to make Colorado’s cannabis industry more equitable, including by granting streamlined pardon powers to the governor for people convicted of possession of up to two ounces of marijuana.<sup>17</sup>

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## BOX 2

### Offering Release Consideration for People Sentenced Under Felony Murder Laws

Some governors take a more limited approach to respond to concerns about offense-specific sentencing policy. As of January 2020, Pennsylvania governor Tom Wolf had commuted life sentences for 19 people—more than his four predecessors combined—including several sentenced under the state’s felony murder law. This law holds all parties involved in certain felony offenses that lead to a death culpable regardless of their role or intent, and dictates a life sentence without the possibility of parole.<sup>a</sup> Several states have reformed or abolished felony murder laws because of concerns about

disproportionality and unfair application, whereas others are still considering reform.<sup>b</sup> While the Pennsylvania state legislature considers broader reform to felony murder laws, Governor Wolf is using executive clemency to provide relief to some people sentenced under that law who would otherwise face life in prison.<sup>c</sup>

<sup>a</sup>“Commutation of Life Sentences (1971 - Present),” Pennsylvania Board of Pardons, as of January 7, 2020, <https://www.bop.pa.gov/Statistics/Pages/Commutation-of-Life-Sentences.aspx>; An-Li Herring, “Prison Sentences Being Commuted Amid Concerns Over PA’s Harsh ‘Felony-Murder’ Law,” WESA 90.5, September 10, 2019, <https://www.wesa.fm/post/prison-sentences-being-commuted-amid-concerns-over-pas-harsh-felony-murder-law#stream/0>.

<sup>b</sup> Cheryl Corley, “Juvenile Justice Groups Say Felony Murder Charges Harm Children, Young Adults,” NPR, November 14, 2019, <https://www.npr.org/2019/11/14/778537103/juvenile-justice-groups-say-felony-murder-charges-harm-children-young-adults>.

<sup>c</sup> Herring, “Prison Sentences Being Commuted Amid Concerns Over PA’s Harsh ‘Felony-Murder’ Law.”

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## Categorical Clemency Eligibility Based on Personal Characteristics and Experiences

In addition to granting clemency based on offenses, governors also grant clemency based on mitigating personal characteristics or experiences. These include factors that may not have been accounted for earlier in the justice system process (e.g., victimization experiences), may be subject to new legal requirements (e.g., people convicted as minors), or may be new characteristics to consider (e.g., elderly people in prison). Executive clemency allows governors to take such characteristics into account and provide categorical eligibility to be considered for relief.

For example, survivors of violence, particularly **survivors of human trafficking and gender-based violence**, often face criminalization and incarceration.<sup>18</sup> In 2020, Texas governor Greg Abbott created a clemency application for survivors of human trafficking and domestic violence and launched a public awareness campaign to inform survivors that they can apply to receive a full pardon.<sup>19</sup> If granted, the pardon allows for release and criminal-record clearing, mitigating some of the barriers to reentry that people with commuted sentences often face.<sup>20</sup>

Another category of people who have received targeted consideration for clemency comprises **people convicted as youth**. In 2007, Colorado governor Bill Ritter established the Juvenile Clemency Advisory Board to review clemency requests from people tried and sentenced as adults when they were minors.<sup>21</sup> In the years since, Colorado governors have granted commutations and pardons to several people convicted as minors,<sup>22</sup> particularly since 2016, when the US Supreme Court retroactively extended its 2012 ruling that automatic life-without-parole sentences for youth are unconstitutional.<sup>23</sup> The state then passed legislation providing new sentences of 40 years to life to most people convicted

as minors (including those convicted of felony murder), legislation that the Colorado Supreme Court affirmed in 2018.<sup>24</sup>

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### BOX 3

#### The Story of Cyntoia Brown-Long

High-profile cases involving disproportionate punishment in conjunction with mitigating factors have raised broader awareness about how clemency can be used as a corrective tool, and spurred government leaders to respond. Cyntoia Brown-Long was serving a life sentence in Tennessee for the murder and robbery of a man who solicited her for sex in 2004, when she was being trafficked at 16 years old; she would not have been eligible for parole until her late 60s. In late 2017, Brown-Long's name and clemency case went viral after celebrities including Rihanna and Kim Kardashian West shared her story.<sup>a</sup> Facing immense public pressure, the Tennessee Board of Parole announced it would hold a hearing on Brown-Long's case—a rare move, considering less than two percent of clemency applicants in Tennessee had their cases heard by the parole board in FY 2017–2018 (BOP 2018). In early 2019, Governor Bill Haslam commuted Brown-Long's sentence to a summer 2019 release and 10 years of supervised parole.<sup>b</sup> Brown-Long is now an advocate for criminal justice reform, noting, "There's nothing special about me...I can't tell you how many Cyntoia Browns [are] still in prison."<sup>c</sup>

<sup>a</sup> Natalie Neysa Alund, "#FREECYNTOIABROWN goes viral following Rihanna's Instagram post," *The Tennessean*, November 21, 2017, [tennessean.com/story/news/2017/11/21/freecyntoiabrown-goes-viral-rihanna-kimkardashian/884742001/](https://tennessean.com/story/news/2017/11/21/freecyntoiabrown-goes-viral-rihanna-kimkardashian/884742001/); Kimberlee Kruesi, "Cyntoia Brown granted clemency from life sentence after Kim Kardashian West pushes for release," *The Globe and Mail*, January 7, 2019, <https://www.theglobeandmail.com/world/article-cyntoia-brown-granted-clemency-after-kim-kardashian-pushes-for-release/>.

<sup>b</sup> Christine Hauser, "Cyntoia Brown Is Granted Clemency After 15 Years in Prison," *New York Times*, January 7, 2019, <https://www.nytimes.com/2019/01/07/us/cyntoia-brown-clemency-granted.html>.

<sup>c</sup> "Cyntoia Brown-Long to Lester Holt on her release from prison: 'There's nothing special about me,'" *NBC News*, October 14, 2019, <https://www.nbcnews.com/news/us-news/cyntoia-brown-long-lester-holt-her-release-prison-there-s-n1065296>.

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In addition, several state and national organizations advocate for granting clemency to **older people**, noting their lower recidivism rates and higher medical risks and health care costs. For example, in New York, roughly one in five people in prison are serving either life sentences or "virtual life sentences," which are sentences that are likely longer than the number of years remaining in their lives.<sup>25</sup> This has inspired calls for the governor to grant clemency to older people in prison.<sup>26</sup> Some advocates call for clemency to be applied based on both age and time served—for example, to people who have reached the age of 50 and have served at least 25 years in prison.<sup>27</sup> Most recently, the COVID-19 pandemic has led to widespread demands that elderly people and others who are most vulnerable to severe health consequences be released.<sup>28</sup>

Governors can also extend clemency eligibility to **people who face systemic discrimination in the justice system based on their identity**. For example, in February 2020, California governor Gavin Newsom issued an executive order to initiate a new clemency effort designed explicitly to remedy systemic inequities regarding the criminalization of lesbian, gay, bisexual, transgender, and queer (LGBTQ+) people.<sup>29</sup> The order stated that pardons would be considered for people convicted under laws directly criminalizing LGBTQ+ people (such as a sodomy law repealed in 1975) and those convicted for offenses like vagrancy and loitering that have been applied disproportionately to arrest, convict, and incarcerate LGBTQ+ people.<sup>30</sup> Although this new initiative was first applied through a posthumous pardon issued to civil rights champion Bayard Rustin,<sup>31</sup> it offers a framework for using gubernatorial clemency power to address systemic, categorical discrimination in the justice system.

## Categorical Clemency Eligibility Based on Systemic Policy Issues

Governors also use clemency categorically in response to problems with the criminal justice system itself that are not necessarily related to the offenses or personal characteristics of the people being considered. A key example concerns people facing the **death penalty**. Governors have granted clemency to people with death sentences for reasons ranging from moral opposition to proven errors and racial disparities in the death penalty's application, commuting death sentences to other types of sentences. Several governors have granted clemency to people on death row in tandem with enacting legislation to repeal the death penalty. For example, Colorado governor Jared Polis in 2020, Illinois governor Pat Quinn in 2011, and New Jersey governor Jon Corzine in 2007 granted clemency to every person facing the death penalty in their respective states in conjunction with signing repeal bills.<sup>32</sup> Maryland governor Martin O'Malley took similar action in 2015, applying the state's 2013 repeal of the death penalty retroactively to the four people who had received a death sentence before the repeal and were still on death row.<sup>33</sup> Governors in several other states have granted clemency to several or all people on death row in the past few decades, both before and after the US Supreme Court revived the constitutionality of the death penalty in 1976.

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### BOX 4

#### Historical Use of Clemency to Advance Reform

Recent examples align with a longer history of states using clemency power to advance reform and decarceration. A National Governors Association survey of 36 states' self-reported clemency grants

between 1981 and 1986 found that several states reported making grants in relation to legislative changes (NGA 1988). States have also used clemency as a tool to reduce prison overcrowding. A 1980 report found that at least 10 states had “used clemency on a regular basis as a means of prison population control.”<sup>a</sup> For example, from 1979 to 1980, Maryland’s governor granted pardons and commutations to 1,142 people in prison, avoiding a potential court order to reduce the prison population.<sup>b</sup> Furthermore, the National Governors Association survey found that West Virginia and Wyoming reported “crowding” as a reason for clemency decisions (NGA 1988).

Although cross-state data on executive clemency grants are limited, sources suggest an overall decline in recent decades (Barkow 2009; BOP 2017; Kaplan and Mayhew 2019). Today, though some states (e.g., Arkansas, Connecticut, Nebraska) use clemency more often, they are in the minority.<sup>c</sup> Clemency use varies significantly across states and within states over time, shaped by factors such as changes in administration, shifts in clemency approval structures and policies, and high-profile events.<sup>d</sup> Some experts note some states have a “culture of clemency” that can be reinforced and influenced by structural factors, and note that a governor’s ideology and perception of political risk can have a significant impact.<sup>e</sup> However, as the examples of categorical clemency in this report illustrate, a growing number of governors are using their executive clemency authority categorically to address injustice.

<sup>a</sup> Findings summarized in NGA (1988, 3).

<sup>b</sup> See NGA (1988, 3). See appendix for a glossary of clemency definitions.

<sup>c</sup> Maggie Clark, “Governors’ Pardons Are Becoming a Rarity,” *Governing*, February 8, 2013, <https://www.governing.com/news/state/sl-governors-balance-politics-with-pardons.html>.

<sup>d</sup> See, for example, Notterman (2019a, 2019b).

<sup>e</sup> Mindy Fetterman, “Move Is on to Make End-of-Year Pardons Less Random,” *Stateline*, Pew Charitable Trusts, January 6, 2016, <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/01/06/move-is-on-to-make-end-of-year-pardons-less-random>.

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## Conclusion

Executive clemency, which many governors can use to extend compassion and mercy and advance reform goals, is a fundamental part of checks and balances in most state criminal justice systems. The historical record demonstrates that governors have used clemency to address various systemic policy issues, and recent examples show how they can extend clemency eligibility categorically to groups of people. Executive categorical clemency can provide targeted relief in anticipation of broader reforms and can also be applied retroactively to ensure policy changes are extended to people convicted or sentenced before reform. Lastly, clemency grants can be paired with supports for people who receive them, such as reentry planning or record clearing processes, to facilitate their long-term success. For example, efforts to strengthen reentry supports and mitigate the collateral consequences of felony convictions can complement clemency initiatives by improving access to education, housing, and employment for people returning home from prison (Weissman 2018).

# Appendix. Glossary of Mechanisms for Granting Executive Clemency

There are different kinds of executive clemency that many governors can use alone or in conjunction with clemency, pardon, and parole boards depending on the state's decisionmaking structures. Common kinds of executive clemency include the following:

- When **amnesty** is granted, legal remembrance of the offense is eliminated (Aksikas and Andrews 2016), often before prosecution occurs.<sup>34</sup> Amnesty has historically been authorized by the president after wars, rebellions, or civil disorders (NGA 1988), and has also been used for immigration offenses. (Though less common, governors can also grant amnesty at the state level [NGA 1988].) Notable examples include former president Jimmy Carter granting amnesty in 1977 to some people who evaded the draft for the Vietnam War,<sup>35</sup> and former president Ronald Reagan signing the Immigration Reform and Control Act of 1986, which made undocumented immigrants who arrived in the US before 1982 eligible for amnesty.<sup>36</sup>
- **Commutation**, or the modification or reduction of a sentence, can be granted by a president or governor. A president or governor can choose to commute a sentence for many reasons, including because an incarcerated person is of old age or has an illness, and/or because of a determination that the sentence is harsher than in similar cases. When a person's sentence is commuted the conviction remains on their record, so they may still face associated consequences, such as lacking the right to vote because of felony disenfranchisement. They may also be liable for any fines or restitution that were imposed.<sup>37</sup>
- A president or governor can issue a **pardon** to essentially forgive a person charged with or convicted of a crime. Pardons are typically granted *after* a person has completed their sentence, but it is possible for a person to be pardoned while serving a sentence or even before being convicted (e.g., when former president Gerald Ford pardoned former president Richard Nixon).<sup>38</sup> A pardon usually requires that a person accept responsibility for the crime they were convicted of, so some people refuse to submit a petition for pardon because they wish to maintain their innocence. Pardons can be issued on an absolute, limited, conditional, or unconditional basis, meaning a pardon can have conditions attached, restore a limited number of rights, or restore all rights. However, a pardon does not usually remove the offense from a person's record because accepting the pardon "[carries] an imputation of guilt" (NGA 1988, 4).

- Some governors have the ability to issue a **pardon of innocence or an exoneration** that removes an offense from a person's criminal record and subsequently restores their rights. For example, the governor of Tennessee has the power to exonerate a person, resulting in the restoration of their citizenship rights and expungement of their criminal records. In addition, the governor of North Carolina can issue a pardon of innocence if a convicted person is later found innocent (Novak 2016).
- A **remission** is a reduction or full removal of fines or restitution imposed on a person. Remissions usually cannot interfere with the rights of third parties, meaning that if a person already paid a fine and it is still with the courts, it is possible that they can be refunded, but if they paid restitution to a victim, they may not be able to get that payment back (Novak 2016).
- Presidential or gubernatorial **reprieves or respites** temporarily postpone punishments for someone convicted of an offense. Reprieves can be used to delay the beginning of incarceration or shorten the period of incarceration. They can also be used when a person is facing the death penalty.<sup>39</sup> Common reasons for reprieves to be granted are when new evidence is discovered, an appeal was filed late, there was an error in the process, a governor or president is opposed to the death penalty, or the imposed sentence was harsher than similar cases.<sup>40</sup> Reprieves expire, but they can lead to commutations or other outcomes, including preventing executions in some cases.

# Notes

- <sup>1</sup> See, e.g., Roodman (2017), Nagin, Cullen, and Jonson (2009), and Harding and coauthors (2019).
- <sup>2</sup> See, e.g., Mauer and Chesney-Lind (2002).
- <sup>3</sup> See, e.g., the list of studies compiled by Radley Balko in <https://www.washingtonpost.com/graphics/2020/opinions/systemic-racism-police-evidence-criminal-justice-system/>.
- <sup>4</sup> Roxane Daniels, “Since you asked: What data exists about Native American people in the criminal justice system?,” Prison Policy Initiative, April 22, 2020, <https://www.prisonpolicy.org/blog/2020/04/22/native/>.
- <sup>5</sup> See, e.g., the [Illinois State Commission on Criminal Justice and Sentencing Reform](#). The congressionally created [Justice Reinvestment Initiative](#), run through the Department of Justice, has also facilitated [several states](#) achieving significant reductions in their prison populations.
- <sup>6</sup> See, e.g., Movement for Black Lives 2020 policy platform (available at <https://m4bl.org/policy-platforms/end-jails-prisons-detention/>), the [ACLU Campaign for Smart Justice](#), and [Just Leadership USA](#).
- <sup>7</sup> “Clemency” is a broad term that encompasses various specific release mechanisms—such as pardons, commutations, or exonerations—that vary from state to state. See the appendix for a glossary of clemency types.
- <sup>8</sup> See, e.g., Simon (2016).
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