

THE **FIX**
Clemency
ACT

Fair and Independent Experts in Clemency

(FIX Clemency) Act

Congresswoman Ayanna Pressley (MA-07)

Background

The United States Constitution vests the President with clemency power, but the current process for reviewing clemency applications, created by Congress, is inherently flawed, severely burdensome, and contributes to America's mass incarceration crisis.

In 1865, the 38th Congress created the Office of the Clerk of Pardons, which transformed into the Office of the Pardon Attorney, to assist the process. Because the clemency process is within the Department of Justice, it is highly susceptible to capture by law enforcement and prosecutorial interests. The review structure also includes redundant levels of scrutiny by Department of Justice staff who can unilaterally reject a pardon application.

An estimated 2.3 million people are incarcerated in the United States, which is more people per capita than any other nation. Black, Latinx, and Indigenous people are disproportionately represented in our nation's jails and prisons due to centuries of racist laws and biased administration. The criminal legal system locks up far too many people for far too long. America's reliance on incarceration destabilizes families, ravages communities, and reproduces generational trauma.

Clemency is a powerful tool to reduce our prison population and rectify the injustices created by the criminal legal system. Currently, there are over 15,000 pending clemency petitions waiting to be reviewed. Democratic and Republican Presidents, alike, have circumvented the Department of Justice process because of its inefficiency and bias. Policymakers, legal advocates, academics, and people who are involved with the legal system agree that it is past time for structural reform that centers justice and equity.

The FIX Clemency Act would take the clemency process out of the Department of Justice and create a U.S. Clemency Board (Board) that is made up of individuals appointed by the President with relevant expertise, including an individual who is formerly incarcerated. The Board would be responsible for reviewing applications requesting a pardon, commutation, remission of a fine or forfeiture, or restoration of civil and political rights. All recommendations by the Board will be transmitted directly to the President and included in an annual report to Congress. Additionally, the legislation requires the National Institute of Justice to research disparities in charging and plea bargaining practices by federal prosecutors and report on the psychological impact of incarceration.

THE FIX CLEMENCY ACT SPECIFICALLY:

- Establishes an independent Board comprised of 9 experts to recommend individuals for clemency directly to the President;
- Requires the Board to publish an annual report outlining activities and recommendations disaggregated by relevant characteristics, including age, gender identity, and type of offense;
- Grants the Board authority to review all relevant information related to an application being considered;
- Protects applicants for clemency from greater prosecution;
- Eliminates the Office of the Pardon Attorney of the Department of Justice;
- Allows adequate representation for applicants for clemency;
- Directs the National Institute of Justice to study charging and plea bargaining practices of United States Attorneys and the psychological development of people who are incarcerated.