

The Redemption Campaign

Annual Report of Trends in Clemency 2022



ACLU

Overview

The criminal legal landscape is, by design, enormously complex and notoriously difficult to change. While we have a number of tools available to correct the failed policies of the past, one in particular merits additional analysis: clemency. Clemency is a key way for us to fix the unjust outcomes that have become a hallmark of the criminal legal system and to reverse the harms of years of failed mass incarceration policies. In 2022, we saw a number of encouraging clemency decisions, yet there remains a need for our elected officials to do more with their clemency authorities to reverse decades of injustice. The harmful policy decisions of the past have created the mass incarceration crisis. There are too many people serving decadeslong sentences that would be considered outrageous today.

This report evaluates the progress made in 2022 by executives and advocates to advance the

use of clemency as a tool for good governance, justice, and redemption. It also identifies the ways in which governors and the president can do even more to capitalize on the full powers of clemency to correct injustice, offer second chances, and heed the will of people to reverse our reliance on over-incarceration.

“ We are a nation of second chances—and that means giving another chance even to Oregonians who have committed crimes that are incredibly hard to forgive.”

— Governor Kate Brown (OR),
April 26, 2022.

Success Stories

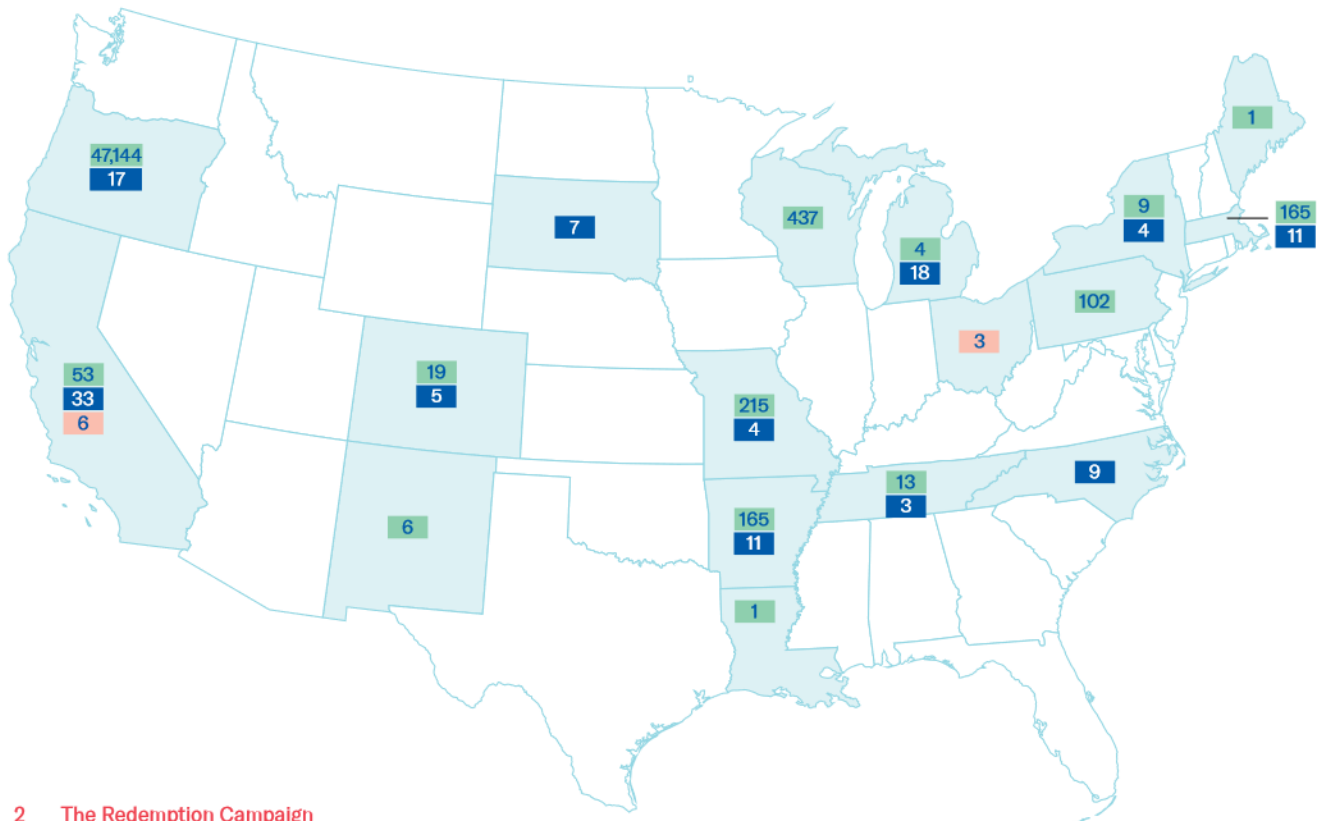
Throughout 2022, we saw significant strides in the use of clemency as a tool to correct failed policies and offer second chances to people. Elected officials stepped up to right the wrongs of our flawed criminal legal system, advocates spoke out about their experiences, and thought leaders worked together to drive meaningful conversation about the power of clemency.

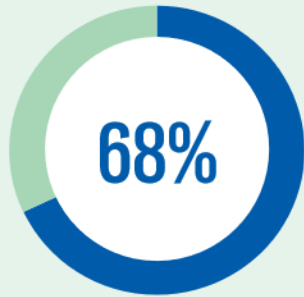
- President Biden provided pardons to thousands of Americans who were convicted of federal marijuana possession offenses, and commuted the sentences of 75 people.
- Gov. Brown pardoned more than 47,000 marijuana possession offenses, forgave approximately \$14 million in fines, and commuted the death sentences of every person on death row in Oregon.
- ACLU and the Princeton School of Public and International Affairs hosted a clemency forum examining clemency from the perspective of a Governor, an Attorney General, and a person who was granted clemency.

State Clemency Actions

Every pardon or commutation represents a second chance for an individual, for a family, and for a community. Below are encouraging findings we identified through available data.

Key

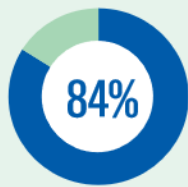




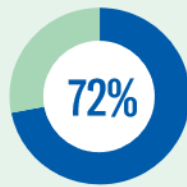
Support clemency, including majorities of Democrats, Independents, and Republicans.

A Majority of Voters in the United States Support Clemency

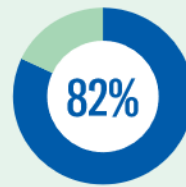
Here are key findings from a national Bully Pulpit Interactive poll.



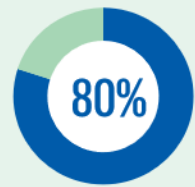
Support the release of those **incarcerated under a statute that has since changed.**



Support the **release of those who are elderly.**



Of crime victims support clemency.



Of law enforcement families support clemency.

“Superstars” of Clemency in 2022

Examples of notable pardons and commutations¹

Gov. Kate Brown	Oregon (47k+)
Gov. Tom Wolf	Pennsylvania (580) ²
Gov. Tony Evers	Wisconsin (437)
Gov. Mike Parsons	Missouri (215)
Gov. Asa Hutchinson	Arkansas (165)

Clemency has a long history of being a normal part of what states and the federal government can do to correct injustices and give people second chances. George Washington exercised his clemency authority in 1795 to pardon those who participated in the Whiskey Rebellion.³

Drug-related pardons and commutations made up the vast majority of clemency determinations in 2022. Gov. Kate Brown in Oregon pardoned more than 47,000 marijuana-related offenses,⁴ Gov. Tom Wolf implemented a marijuana conviction pardon program in Pennsylvania,⁵ and governors commuted individual cases for drug-related offenses. This included Michigan Gov. Gretchen Whitmer, who commuted the sentence of Michael Thompson, who had been in prison for 25 years for selling 3 pounds of marijuana.⁶

Advancing Racial Justice

Clemency is a tool to reduce racial disparities in our prison population. According to data from Aliza Kaplan of Lewis and Clark College, two

- 1 These numbers are estimates derived from a multitude of sources including official press releases, numbers reported by the media, and numbers reported in formal filings to state legislatures.
- 2 These numbers are based on information provided to the ACLU by the Pennsylvania Board of Pardons and Paroles, and includes expedited pardons and pardons related to the Governor’s marijuana pardon project.
- 3 Colleen Shogan, “The History of the Pardon Power: Executive Unilateralism in the Constitution,” *The White House Historical Association*, December 2, 2020, <https://www.whitehousehistory.org/the-history-of-the-pardon-power>
- 4 KGW, “Governor Kate Brown Pardons About 45,000 People for Marijuana Offenses,” *KGW Online*, November 21, 2022, <https://www.kgw.com/article/news/local/marijuana/governor-brown-pardons-marijuana-offenses/283-c792af20-b685-454f-b46c-ef7b861f1cb>
- 5 A.J. Herrington, “Pennsylvania Governor Launches Program To Pardon Marijuana Convictions,” *Forbes*, September 2, 2022, <https://www.forbes.com/sites/ajherrington/2022/09/02/pennsylvania-governor-launches-program-to-pardon-marijuana-convictions/?sh=7335ea9541a1>
- 6 Michael Thompson, “I Spent 25 Years in Prison for Marijuana Charges. Biden’s Pardon Is Not Enough,” *Time*, December 1, 2022, <https://time.com/6237385/biden-marijuana-pardon-prison-reform-michael-thompson/>

thirds of the commutations granted by Gov. Kate Brown in Oregon were to people of color.⁷

Year over Year

2022 saw fewer commutations than 2021 at the state level, dropping from 214 known commutations down to 114 in 2022. However, pardons went from approximately 2,744 to 48,086 at the state level.

Opportunities

As encouraged as we are by the accomplishments seen throughout the past year, 2022 was not without its challenges.

Expand Use of State-level Clemency

Only 20 of 40 states with reported clemency data performed any pardons in 2022.

- As encouraged as we are by the use of clemency activity across the country, there were no reported pardons performed in half of the states for which we have data. Our research shows widespread support for clemency, and elected officials in many of these states have an opportunity to use their executive power to correct the injustices of the past.

Only 10 of 40 states with reported clemency data performed any commutations in 2022

- As we recently saw in Arkansas, Oregon, and other states, there is ample

opportunity to use the power of clemency to commute sentences that are unjust or no longer sensible. Thousands of individuals are incarcerated with sentences that are longer than would today be deemed appropriate by today's standards.

Both of the above findings could be the result of political fears of performing pardons in an election year. However, it is normal for governors to exercise this power, and voters support its use. In fact, 61% say they **would be more likely to vote for a gubernatorial candidate who supports a plan for clemency.**⁸

Federal Clemency

While President Biden's pardon of federal marijuana possession charges was a significant step forward, there are still deep disparities in federal drug sentencing laws that can be remedied by clemency. This includes providing pardons and commutations for people harmed by the long-standing crack and powder cocaine sentencing disparity, which has disproportionately targeted Black people.⁹

Additionally, clemency must be considered for the 5,620 people who are, as of January 2023, released from federal facilities on CARES Act home confinement.¹⁰

7 Noelle Crombie, "Gov. Kate Brown Ends Term with Flurry of Commutations, Pardons; Calls Clemency a Chance 'To Save Lives,'" *The Oregonian*, January 14, 2023, <https://www.oregonlive.com/politics/2023/01/gov-kate-brown-ends-term-with-flurry-of-commutations-pardons-calls-clemency-a-chance-to-save-lives.html>

8 Danny Franklin and Jessica Reis, "Majority of Voters in the United States Support Clemency," *BPI Media*, August 2020, <https://www.aclu.org/report/bpi-memo-majority-voters-united-states-support-clemency>

9 United States Sentencing Commission, "Quick Facts: Crack Cocaine Sentencing Offenses," last accessed March 2023, https://www.ussc.gov/sites/default/files/pdf/research-and-publications/quick-facts/Crack_Cocaine_FY20.pdf

10 Frequently Asked Questions Regarding Potential Inmate Home Confinement in Response to the COVID-19 Pandemic," Federal Bureau of Prisons, last accessed March, 2023, <https://www.bop.gov/coronavirus/faq.jsp>.

What comes next?

For 2023, we are focused on driving progress toward three goals:

1. Encourage governors to exercise their executive power to pardon those who have fallen through the cracks of recent sentencing reforms. For example, in states that have repealed mandatory minimum sentences, legalized marijuana use, overturned “three strike” laws, or banned juvenile life without parole, governors should use their clemency authorities to ensure people that were sentenced under these laws have a second chance.
2. Remind officials that the use of widespread clemency for entire groups of people who meet certain criteria as well as routine application-based clemency is good governance and corrects for injustices in our carceral system.
3. Increase administrative support for implementing federal clemency programs, encourage more leadership in clemency

from President Biden, such as the use of his clemency authorities to reduce the sentences of people impacted by the long-standing and racially biased crack and powder cocaine disparity.¹¹

“Clemency is very serious. It’s a powerful tool.”

– Governor Bill Lee (TN),
December 22, 2022

¹¹ Sophia Cai, “Garland Orders End to Cocaine Sentencing Disparities,” *Axios*, December 16, 2022, <https://www.axios.com/2022/12/16/doj-garland-end-sentencing-disparities-crack-powder-cocaine>

About the Redemption Campaign

The [Redemption Campaign](#) launched in 2020, the ACLU’s first-of-its-kind nationwide effort to release 50,000 people from state and federal prisons by executing state and federal level campaigns that push the President and governors to use their existing clemency powers in new and transformational ways. Through the campaign, the ACLU has worked with state and federal stakeholders to confront mass incarceration and racial injustice by granting commutations to large groups of people who are unjustifiably imprisoned.

[Click here](#) for more information on the Redemption Campaign.

