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PARDONS AND PUBLIC SAFETY

Examining A Decade of Recidivism Data in Pennsylvania

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This report builds on the pathbreaking report of the Economy League of Greater Philadelphia titled “Pardons as an Economic Investment Strategy: Examining a Decade of Data” (April 2020).² The Economy League found that pardons awarded to Pennsylvania residents who had applied for a pardon during the years 2008-2018 had an estimated economic impact of \$16,494,815 (from the date their pardons were awarded through December 2019). In particular, it concluded that “pardons can be a powerful economic tool in the areas of the state most in need of growth” and recommended that “pardons, with continued oversight for public safety concerns, should be considered as no-cost workforce development and neighborhood investment tools.” It recommended taking steps to increase the number of pardon applicants, the percentage of applications granted, and the speed in which pardons are granted or denied.

The Economy League’s report and recommendations received wide support, including from the Commonwealth’s Attorney General, Auditor General, Secretary of Labor and Industry, and Workforce Development Board, as well as from civic and philanthropic leaders.³ Each explained why increasing the number of pardons, and reducing the time it takes to obtain them, are in the common interest of the state and the applicants’ home communities, as well as the individual applicants and their families.

Some supporters, however, did so while urging continued oversight to assure public safety.

This study assesses the “public safety concern” as a matter of historical fact. Doing so is important because this concern is likely a principal reason the pardon process takes so long, and that so few applicants successfully emerge from it. There is little logic to the notion that any decision (pro or con) by the Board will affect public safety, because the vast majority of applicants seeking pardons have completed their sentences and have not been confined for years, even decades, if ever they were. That aside, if a decade of data do not reveal legitimate “public safety concerns,” then all would seem to agree that many more pardons can and should be recommended and awarded.

Using public databases, Philadelphia Lawyers for Social Equity (“PLSE”) investigated the criminal histories of the 1,082 people who had received the pardons (who were the subjects of the Economy League report), and the 1,955 people who were denied them during the same time period – a total of 3,037 men and women. In performing this study, we excluded applicants who were in prison at the time their applications were denied. As a result, this report and analysis only consider those with criminal records who were already working and living among us as our neighbors.

This paper reports on those findings and compares their recidivism rates with that of other groups. We examine what the subsequent crimes were and whether they implicated public safety, using three different measures. Finally, we examine how much time had passed from the time the decisions had been made on their pardon applications to the date of their arrests for subsequent crime.

The decade of data evaluated in this report document very low recidivism rates among *all* applicants for pardon and a remarkably low number of crimes subsequently committed that implicate public safety. In view of those findings, this paper concludes by (1) supporting the Economy League’s recommendations that the Board of Pardons substantially increase the number of pardons applications it hears and recommends to the Governor, and (2) recommending that the Board institute a practice of automatically reconsidering in three years every application for pardon that it initially denies.

Major Findings

1. Of the 3,037 people who applied for a pardon, only 2 (0.066%) were later convicted of a crime of violence.

No Reason for Heightened Concern

of the **3,037** people

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Of the 1,082 people who received pardons, only 1 went on to commit a crime of violence (0.092%). The rate was even lower among those denied pardons: only 1 of 1,955 (0.051%). If public safety is equated with crimes of violence, there is absolutely no reason for heightened concern regarding the people who have been applying for pardons.

2. Pardon applicants *as a whole* were subsequently confined at similarly low rates: judges ordered incarceration for only 53 of 3,037 pardon applicants (1.75%).

Low Reincarceration Rate

53 of 3,037 (1.75%)

pardon applicants were confined for subsequent offenses

Judges ordered incarceration for only 4 of the 1,082 applicants who had received pardons, and 49 of the 1,955 who had been denied a pardon. The crimes of which they were convicted almost uniformly did not involve threats to public safety.

3. To the extent that the Board of Pardons has tried to predict who poses a risk to public safety when making its decisions, it has denied pardons to an enormously high percentage of applicants who could have benefitted from them.

Who Poses a Risk to Public Safety?

of the 1,461 applicants

who did not receive a hearing on their pardon applications,

**97.45% did not thereafter
commit a crime**

that resulted in incarceration

Of the 1,461 applicants who did not receive a hearing on their pardon applications, 1,415 did not thereafter commit a crime that resulted in incarceration (whether for a Crime of Violence or otherwise).

4. The data support reconsidering applicants three years after they are denied a pardon.

Offer a Second Chance for a Hearing?

2/3 of the subsequent offenses

committed by just 104 of the 1,918 disappointed applicants

happened within 3 years of the Board's adverse decision

67.31% of the subsequent offenses (70 of the total of 104 over ten years) occurred within three years of the Board denying their applications – the same as for those who received a pardon. A rule that automatically listed denied applications for rehearing three years later could further reduce recidivism by keeping alive the hope of a pardon.

In light of the reports issued by Pennsylvania's Auditor General and the Economy League, and the data and findings detailed below, the Board of Pardons could *substantially* increase the number of pardon applicants receiving their endorsement without any risk to public safety, while delivering the many benefits – to individuals, families and neighborhoods – that those reports document.

Pennsylvania's Pardon System

The power to pardon is vested in the Governor by the Constitution of Pennsylvania. The power extends to "all criminal cases except impeachment,"

but no pardon shall be granted, nor sentence commuted, except on the recommendation in writing of a majority of the Board of Pardons, and, in the case of a sentence of death or life imprisonment, on the unanimous recommendation in writing of the Board of Pardons, after full hearing in open session, upon due public notice.⁴

There are thus two types of clemency considered by the Board of Pardons ("the Board"): commutations, which shorten a sentence but do not affect the finding of guilt, and pardons, which forgive the offender and essentially erase the offense from the record. Commutations can be given to people in prison and those who are not (those on probation and parole). This report only considers applications for pardons from people who were already living and working in our communities at the time the Board (or the Governor) acted on their request for a pardon, that is, applicants who were not in prison.

The process that a non-incarcerated applicant⁵ must follow to obtain a pardon involves five, sometimes six, steps, each of which can result in denial:

1. Application, using a form prescribed by the Board,⁶
2. Investigation, which is conducted by the Board of Probation and Parole,⁷
3. Merit review, at which the members of the Board of Pardons decide whether to grant an applicant a public hearing (two of five votes being required),⁸
4. Public hearing, at which the members decide whether to recommend an applicant to the Governor (three of five votes being required),⁹
5. Reconsideration, which is allowed only if there has been a “change in circumstances since the application was filed, or other compelling reasons” (three of five votes being required),¹⁰ and
6. Decision by the Governor.

The crimes remain on the applicant’s (public) record unless and until a judge orders the record expunged in a separate, judicial proceeding.¹¹

Data and Methodology

This paper examines the criminal records of all those who made it at least to the third stage of the pardon proceedings, the “merit review.” The principal objective of this study is to evaluate the decisions made by government officials at each stage and to determine the quality of those decisions with respect to public safety, as measured by a pardon applicant committing a new offense that is considered by the Board to be a “crime of violence” or one that results in incarceration.

PLSE obtained from the Board of Pardons lists of all those who applied for pardons between 2008 and 2016.¹² PLSE then confirmed with the Economy League that the 1,082 people on the “pardon received” list were precisely those whom the Economy League had studied. From the people on the “pardon denied” list supplied by the Board, PLSE removed two categories of applicants: (1) all applicants who withdrew and/or had their applications administratively withdrawn¹³ and (2) all applicants who were incarcerated at the time that a final, negative decision was made on their applications.¹⁴ Finally, all summary offenses were disregarded because by definition they do not pose a public safety concern.¹⁵

A complete review of the data and methodology used in this report appears in the appendix.

Rates of Recidivism Among Other Groups

Before examining the numbers and percentages of pardon applicants, a framework needs to be provided to evaluate those data. Published studies provide the following benchmarks:

- It has been estimated that fifty percent of the U.S. male population would be arrested for a non-traffic offense in their lifetime.¹⁶
- One in three Americans have a criminal record resulting from a felony or misdemeanor conviction on a criminal offense.¹⁷

- 3 percent of the total U.S. population and 15 percent of the African-American male population have served time in prison. People with felony convictions more broadly account for 8 percent of the overall population and 33 percent of the African-American male population.¹⁸
- Recidivating events for non-sexual, non-violent offenses occur, on average, within 2.75 years of the imposition of probation or release from incarceration.¹⁹
- The average estimates of redemption times (times when the likelihood of committing another crime is the same as for committing a first-time offense) are about 5 years for violent crimes, 4 years for drug crimes, and 3 years for property crimes.²⁰
- In general, the type of prior crime tends to be related to a higher risk of re-arrest for the same crime.²¹
- The hazard of re-arrest for a violent crime is much lower (less than half) than the hazard of re-arrest for any crime; in particular, it is less than 0.1% at and after five years when the original conviction was for a non-violent offense involving drugs or property.²²
- More than half of those who return to prison within three years after release will do so within the first year of release; the first year is by far the highest risk period for recidivism following release from prison.²³

It is against these benchmarks that the recidivism rates of pardon applicants in Pennsylvania can be evaluated.

Subsequent Offenses Committed by Those Granted Pardons

Before considering crimes that cause concerns for safety, it is worth examining the number of people who were granted pardons and went on to commit a crime of any kind. These data are expressed in Table 1.

Table 1. Pardon Recipients Subsequently Committing Crimes of Any Kind

	Total	Recidiv #	Recidivism Rate
PARDONS GRANTED	1082	12	0.01109057301

12 of 1,082

**a recidivism rate of 1.1%
in a sample size of over 1000
is very low**

By any measure, not just the benchmarks reported above, a recidivism rate of 1.1% in a sample size of over 1000 is very low. (The crimes that were committed by the 12 recidivists are listed in Table 4.)

We now proceed to consider crimes that generate concerns for public safety.

Subsequent Convictions for Crimes of Violence

Crimes against people that involve force or violence, or that create in the victim the fear of being harmed, are clearly the kinds of crimes that generate a “public safety concern.” The Pennsylvania Code itself contains a definition of “crime of violence” that include both:

(i) Murder of the third degree, voluntary manslaughter, rape, sexual assault, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) (relating to aggravated assault), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i),(ii) or (iii) (relating to robbery) or kidnapping.

(ii) An attempt to commit murder of the third degree, voluntary manslaughter, rape, sexual assault, involuntary deviate sexual intercourse, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1), robbery as defined in 18 Pa.C.S. § 3701 (a)(1)(i),(ii) or (iii) or kidnapping.

(iii) An offense committed while in visible possession of a firearm for which sentencing was imposed under 42 Pa.C.S. § 9712 (relating to sentences for offenses committed with firearms).²⁴

The criminal records of all 3,037 pardon applicants were examined to determine how many had committed offenses of these types after their pardon applications had been resolved. The results of this examination are set forth in Table 2.

Table 2. Crimes of violence subsequently committed by all pardon applicants

	Totals	Crime of Violence #	Crime of Violence Rate
PARDONS GRANTED	1082	1	0.0009242144177
PARDONS DENIED	1955	1	0.0005115089514
TOTAL ALL	3037	2	0.0006585446164

The data are that only two crimes of violence, total, were committed by all 3,037 pardon applicants over the ten-year time period of the Economy League study, including those who were denied a pardon.

2 of 3,037

**this is 66/100^{ths} of 1%
- a tiny percentage**

This is 66/100^{ths} of 1% - a tiny percentage. In fact, the crime of violence rate for those who were denied pardons was just 1 in almost 2,000 – *half* of that for those who received pardons.

Public Safety Concerns as Measured by Subsequent Incarceration

A second way of assessing risk to public safety is by considering convictions where the punishment was incarceration – that is, where a judge considers the offender and the offense together, not just the offense, and determines that the offender should be removed from society.

Here, the key criterion could have been the crime, or what the judge came to understand was the motivation for the crime. It also could have been the offender’s prior record and the judge’s assessment that lesser penalties were not sufficiently harsh. The judge’s objective is not necessarily related to public safety – for example, imprisonment for a short period could have been intended to teach the offender a lesson; or the culmination of many minor crimes none of which was a crime of violence; or for a crime that might soon be decriminalized. Imprisonment could also have been the result of a statute that required incarceration where a judge had no discretion over the sentence (for example, “three strikes” or mandatory minimum sentence laws).

The results of our examination of subsequent crimes that resulted in confinement are set forth in Table 3.

Table 3. Subsequent Crimes Resulting in Confinement

	Totals	Confined #	Confinement Rate
PARDONS GRANTED	1082	4	0.003696857671
PARDONS DENIED	1955	49	0.02506393862
TOTAL ALL	3037	53	0.01745143233

53 of 3,037

1.7% might be considered recidivist risks

Even with these expanded parameters, the number of all pardon applicants, granted and denied, who might be considered recidivist risks to public safety totaled only 53 individuals out of 3,037, or 1.7%.

The Crimes Subsequently Committed by Pardon Applicants, And Their Frequency

A third measure of the risk to public safety could be the range and aggregate number of subsequent crimes for which pardon applicants were convicted – that is, counting not the total number of *individuals*, but the total number of *offenses* (since one individual could be convicted of multiple crimes in a single incident). The following tables list all the crimes for which all the pardon applicants were convicted, and the number of times those crimes were committed, examining first those applicants who were granted pardons (in Table 4) and then those who were denied pardons (in Table 5).

**Table 4. All crimes committed by all successful pardon applicants
(listen in alphabetical order)**

Statute	Name of Crime	# Offenses
18 § 3125 §§ A7	Aggravated Indecent Assault, Complainant Less Than 13 Years Old	1
18 § 903	Conspiracy - Theft By Unlawful Taking-Movable Prop	1
23 § 6114 §§ A	Contempt For/ Violation of Order or Agreement	1
18 § 911 § § B3	Corrupt Organizations- Employee	1
18 § 901 §§ A	Criminal Attempt - Theft By Deception-False Impression	1
18 § 5503 §§ A4	Disorderly Conduct – creating a hazardous or physically offensive condition by any act which serves no legitimate purpose	2
75 § 3802 §§ D2*	Driving Under the Influence (DUI): Controlled Substance - Impaired Ability - 1st Offense	1
75 § 3802(D)(1)(i*)	DUI: Controlled Substance - Schedule 1 - 1st Offense	1
18 § 4 117 §§ A2,	False/Fraudulent/Incomplete Insurance Claim	1
18 § 3126 §§ A7	Indecent Exposure Person Less 13 Yrs Age	2
35 § 780-113 §§A16	Intentional Possession of a Controlled Substance By Person Not Registered	3

35 § 780-113(a)(30)	Manufacture, Delivery, or Possession With Intent to Manufacture or Deliver	1
35 § 780113 §§ A19	Purchase/Receipt Of Controlled Substance by Unauthorized Person	1
18 § 3925 §§ A	Receiving Stolen Property	1
18 § 2701 §§ A1	Simple Assault	2
18 § 3922 §§ A1	Theft By Deception-False Impression	1
18 § 3921 §§ A	Theft By Unlawful Taking-Movable Prop	1
35 § 780-113 §§ A32	Use/Possession Of Drug Paraphernalia	1
	TOTAL # crimes committed (not # offenders)	23
	(6 individuals were convicted of multiple offenses) ²⁵	

These data show that the 12 pardon-winners who were later convicted of offenses committed 17 different kinds of offenses, only one of which was a crime of violence.

Table 5. All crimes committed by all unsuccessful pardon applicants (listed in alphabetical order)

Statute	Name of Crime	# Offenses
18 § 4106 §§ A1II	Access Device Issued to Another Who Did Not Auth Use	1
75 § 3743 §§ A	Accident Involving Damage to Attended Vehicle/Prop	2
75 § 3742 §§ A	Accidents Involving Death Or Personal Injury	2
18 § 2702 §§ A1	Aggravated Assault	1
75 § 3735.1 §§ A	Aggravated Assault By Vehicle While DUI	1
18 § 3502 §§ A4	Burglary - Not Adapted for Overnight Accommodation, No Person Present	2
18 § 903	Conspiracy - Receiving Stolen Property	3
18 § 903	Conspiracy - Retail Theft-Take Merchandise	1
23 § 6114	Contempt For Violation of Order or Agreement	1
18 § 3503 §§ A1II	Criminal Trespass-Break Into Structure	2
18 § 902 §§ A	Criminal Solicitation - Patronizing Prostitutes	1
18 § 7512 §§ A	Criminal Use of Communication Facility	2
18 § 5503 §§ A1	Disorderly Conduct- Engage In Fighting	5
18 § 2506 §§ A	Drug Delivery Resulting In Death	2
75 § 3802 §§ D2	Driving Under the Influence (DUI): Controlled Substance - Impaired ability - 1st offense	7
75 § 3802 §§ D1	DUI: Controlled Substance - Schedule 2 or 3 - 1st Offense	3

75 § 3802 §§ D1**	DUI: Controlled Substance or Metabolite- 2nd Offense	1
75 § 3802 §§ A1*	DUI: General Impairment/Incapable of Driving Safely - 1st Off	14
75 § 3802 §§ A1**	DUI: General Impairment/Incapable of Driving Safely - 2nd Off	2
75 § 3802 §§ B***	DUI: High Rate of Alcohol (BAC .10 - <.16) 3rd Off	1
75 § 3802 §§ C*	DUI: Highest Rate of Alcohol (BAC .16+) 1st Off	11
75 § 3802 §§ C**	DUI: Highest Rate of Alcohol (BAC .16+) 2nd Off	3
18 § 4304 §§ A1	Endangering Welfare of Children - Parent/Guardian/Other	3
18 § 4905 §§ A	False Alarm To Agency Of Public Safety	1
18 § 2903 §§ A	False Imprisonment	1
18 § 6106 §§ A2	Firearm not to be carried without license-No criminal violence	3
18 § 2709 §§ A4	Harassment - Communicating Lewd, Threatening, Etc. Language	4
18 § 2709 §§ A7	Harassment - Communicating Repeatedly in Another Manner	1
18 § 5105 §§ A5	Hinder Apprehension/Prosecution-False Info To Law Enforcement	1
18 § 5105 §§ A1	Hinder Apprehension/Prosecution-Harbor Or Conceal	1
35 § 780-113 §§ A16	Int Possession of Controlled Substance By Person Not Registered	10
18 § 4952 §§ A1	Intimidation of Witness/Victim - Refraining From Reporting to Law Enforcement	1
35 § 780-113 §§ A30	Manufacture, Delivery, or Possession with Intent to Manufacture or Deliver	2
18 § 6111 §§ G4II	Materially False Written Statement - purchase, delivery, transfer of firearm	2
18 § 5101	Obstructing the Administration of Law/Other Government Function	1
18 § 5902 §§ E	Patronizing Prostitutes	1
18 § 907 §§ A	Possession of Instrument Of Crime With Intent	4
18 § 5123 §§ A.2	Possession of Controlled Substance, Contraband by Inmate	1
18 § 6105 §§ A1	Possession of Firearm Prohibited	1
35 § 780-113 §§ A31	Possession of Marijuana- Small Amt Personal Use	2
18 § 907 §§ B	Possession of Weapon	1
18 § 3925 §§ A	Receiving Stolen Property	2
18 § 2705	Recklessly Endangering Another Person	7
18 § 5104	Resist Arrest/Other Law Enforce	3
18 § 3929 §§ A1	Retail Theft-Take Merchandise	13
18 § 4953 §§ A	Retaliation Against Witness or Victim	1
18 § 2701 §§ A1	Simple Assault	12

18 § 4904 §§ B	False Statement Under Penalty of perjury	3
18 § 2706 §§ A1	Terroristic Threats With Intent To Terrorize Another	1
18 § 3921 §§ A	Theft by Unlawful Taking- Movable Property	6
18 § 3928 §§ A	Unauthorized Use Motor/Other Vehicles	1
18 § 4904 §§ A1	Unsworn Falsification to Authorities	3
35 § 780-113 §§ A32	Use/Possession Of Drug Paraphernalia	10
	TOTAL # Crimes Committed (NOT # offenders)	170
	(73 individuals were convicted of multiple offenses)	

These data show that, among the 1,955 who did not receive a pardon, the 105 who were subsequently convicted of criminal activity engaged in a much wider range of offenses (53 different crimes). Only one committed a crime of violence.

Summarizing both data sets, the crimes with the greatest frequency (set at the very low bar of 10 or more occurrences within 10 years) are collected in Table 6. There were only 6 such crimes.

Table 6. Crimes committed with greatest frequency (all pardon applicants)

Statute	Name of Crime	# Offenses
75 § 3802 §§ A1*	DUI: General Impairment/Incapable of Driving Safely - 1st Off	14
18 § 2701 §§ A1	Simple Assault	14
18 § 3929 §§ A1	Retail Theft-Take Merchandise	13
35 § 780-113 §§ A16	Intentional Possession of a Controlled Substance by a Person Not Registered	13
35 § 780-113 §§ A32	Use/Possession Of Drug Paraphernalia	11
75 § 3802 §§ C*	DUI: Highest Rate of Alcohol 1st Off	11

Simply put, these crimes raise no public safety concern.

**Recidivism of Applicants Who Were Either Denied A Public Hearing,
Or Had Their Applications Denied at a Public Hearing**

At the merit review,²⁶ the five members of the Board of Pardons review all candidates for pardon who have been fully investigated, and vote on whether each deserves to have his or her application presented at a public hearing. Only two of five members need to vote in favor of the applicant to grant a hearing. Those who do not get to a hearing receive either 1 affirmative vote, or none.

It is very possible that, at this stage in the pardon process, concerns about public safety determine which applicants receive hearings. Public safety concerns are even more likely to be a factor later, at

the public hearing, when the members of the Board vote whether or not to recommend an applicant to the governor. The candidates who are not recommended receive two or fewer affirmative votes.

Accordingly, we examined how many applicants did not receive a majority (3 or more) of the votes of the Board at either time (merit review or public hearing) and thereafter went on to commit a crime that implicated public safety. These findings are contained in Table 7.

Table 7. Recidivism of Applicants Receiving 2 or Fewer Board Votes

	Totals	Crime of Violence #	Crime of Violence Rate	Confined #	Confinement Rate
PARDONS DENIED by BOP - Total	1918	1	0.0005213764338	49	0.02554744526
>Denied a hearing	1461	1	0.0006844626968	46	0.03148528405
>Denied at hearing	394	0	0	3	0.007614213198
>Denied at reconsideration	63	0	0	0	0

These data show that of the almost 2,000 applicants whose applications were not supported by at least two of the five members of the Board, just 2.55% subsequently committed a crime that a judge thought warranted incarceration.²⁷ This is only one-third the likelihood that any adult will commit a felony (8%).²⁸ The vast majority of those who did commit a crime and went to prison (46 of 49) did so after being denied a hearing.

The Board’s Ability to Reconsider Applications It Has Denied

As a final point of inquiry, we examined how quickly the individuals committed another offense after having their applications for pardon denied – an offense of *any* kind,²⁹ not just one that could implicate public safety concerns. Table 8 reports how many months passed between the date of the Board’s final action on an individual’s pardon application and the date of their arrest for a crime for which they were subsequently convicted.

Table 8. Time to Recidivism Following Denial of Pardon Application

	0-3 mos	3-6 mos	6-12 mos	TOTAL <1 year	1-3 yrs	3-5 yrs	5+ yrs	Total
# Unsuccessful pardon applicants subsequently committing a crime	10	7	13	30	40	19	15	104 (of 1,918) ³⁰

The largest amount of criminal activity by disappointed pardon applicants in any one year occurred within the first year after their applications were denied (30 of 104, or 28.8%). Two-thirds of those who went on to commit crimes did so within three years of the pardon denial (70 of 104, or 67.3%). This is strikingly similar to the rate for those who did receive a pardon and went on to commit another crime, 66.6% of whom (8 of 12) recidivated within three years. Both of these rates are fully consistent with the data as found by Pretenky et al., that recidivating events for non-sexual, non-violent offenses occur, on average, within 2.75 years of the imposition of probation or release from incarceration;³¹ with the recent (December 2019) comprehensive analysis of recidivism conducted in Oregon;³² and as found by the Pennsylvania Department of Corrections with regard to people being re-arrested and or re-incarcerated following release from Pennsylvania prisons.³³

There are two possible implications of the data: a significant number of pardon applicants recidivate due to despondency over their petition being denied, which an automatic rehearing would eliminate; and any concerns for public safety would be further minimized if the applicant did not recidivate after their initial denial, which, given the passage of additional time, would make them stronger candidates the second time around.

After three years, 1,921 of the 1,955 unsuccessful pardon applicants, or 98.26%, had not committed another crime, and would not later do so. These data suggest that the Board could re-hear in three years every application that it had denied and have an extremely high degree of confidence that those who had not committed another crime by that point would likely not do so. Moreover, just keeping alive the applicant's hopes for a fresh start for those intervening three years might well incentivize good behavior and further reduce the incidence of crime. Such a rule would therefore further the objective of reducing public safety concerns.

CONCLUSION

The April 2020 Economy League study concluded that pardons could provide a powerful, no-cost economic investment in communities across Pennsylvania, especially in areas most in need of growth, and recommended increasing both the number of applicants and the rate of approval by the Board of Pardons, and reducing the time the process takes. Within just a few months, Pennsylvania's Auditor General, Secretary of Labor and Industry, Workforce Development Board and others had joined the call. The only note of caution sounded in response to these recommendations was "public safety."

Examining the same decade of data as the Economy League and considering all 3,037 individuals who had applied for a pardon, this study has conclusively demonstrated that there is no "public safety concern" when evaluating whether pardon applicants should be granted the full and final release from the criminal justice system that only a pardon can provide. Moreover, the data would clearly support a new procedure by which the Board automatically reconsidered in three years any pardon application it had initially declined to support, incentivizing an even lower rate of recidivism than already exists.

Had all 3,037 individuals who applied been granted pardons instead of just the 1,082, the additional revenues found by the Economy League could have been \$46,328,783, not just \$16,494,815.

With More Pardons Granted

additional revenues found by the Economy League could have been

\$46,328,783

not just \$16,494,815

That possibility, without more, is reason alone for the Board of Pardons to consider seriously the findings and recommendations made in this study.

August 31, 2020

APPENDIX

Data and Methodology

This paper examines the criminal records of all those who made it at least to the third stage of the pardon proceedings, the “merit review.” The principal objective of this study is to evaluate the decisions made by the government officials at each stage and to determine the quality of those decisions with respect to public safety, as measured by a pardon applicant committing a new offense that is considered to be a “crime of violence” (as that term is defined in the Pennsylvania Code) or one that results in incarceration (as determined by a judge), or as aggregated over time.

As noted in the text, PLSE obtained from the Board of Pardons lists of all those who applied for pardons between 2008 and 2016. The applicants were grouped according to the manner in which their applications were finally decided, with those receiving pardons separated from those who did not. PLSE confirmed with the Economy League that the 1,082 people on the “pardon received” list were precisely those whom the Economy League had studied. From the people on the “pardon denied” list supplied by the Board of Pardons, PLSE then removed two categories of applicants: (1) all applicants who withdrew and/or had their applications administratively withdrawn and (2) all applicants who were incarcerated at the time that a final, negative decision was made on their applications.

The public records of every person, on both lists, were then reviewed, using the public electronic database maintained by the Administrative Office of the Pennsylvania Courts.³⁴ If a particular search resulted in more than one person with a criminal record, personally identifying data were used to narrow the search. Court summaries and individual dockets were then examined to obtain: the date of arrest for the subsequent crime (if any), the specific criminal code section violated, confirmation of conviction, and whether the punishment included incarceration.

Summary offenses were not included because by definition they do not pose a safety risk.³⁵ No public criminal records on the public database could be found for 387 individuals who were denied pardons. There are five possibilities for this: (1) the record could have been sealed which, in Pennsylvania, is possible for certain non-violent misdemeanors that are at least 10 years old with the individual not having committed a subsequent offense³⁶; (2) the offender was a juvenile; (3) the record was so old that it was never included in the public electronic database;³⁷ or (4) the record was destroyed pursuant to the Supreme Court’s Record Retention Policy.³⁸ None of these reasons would explain the absence of a public record given the time period of this study.³⁹ Accordingly, whatever the nature of the offense for which they were seeking a pardon, the 387 were considered not to have committed another crime after the Board denied their pardon requests.^{40 41}

The crimes committed by the pardon applicants (successful and not) were then analyzed as to whether they implicated public safety by reference to three metrics:

- (1) if they fit the Pennsylvania Code’s definition of “crime of violence,”
- (2) if a judge sentenced them to prison for the crime(s), and

(3) the range and aggregate number of subsequent crimes.

The frequency of these crimes was then evaluated, in terms of both total numbers and percentages/recidivism rates, by reference to the stage in the process where their pardon applications had been finally determined, and how much time had elapsed thereafter before the applicants were arrested for another crime of which they were thereafter convicted.

END NOTES

¹ Ryan Allen Hancock is one of the founders of Philadelphia Lawyers for Social Equity (“PLSE”) and the author of “The Double Bind: Obstacles to Employment and Resources for Survivors of the Criminal Justice System,” *University of Pennsylvania Journal of Law and Social Change* 15 (April 1, 2012). Carl (Tobey) Oxholm III is the Executive Director of PLSE.

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² Economy League, *Pardons as an Economic Development Strategy: Evaluating a Decade of Data in Pennsylvania* (Apr. 2020), <http://economyleague.org/pardonimpact>

³ These leaders are quoted on the Economy League’s website: <http://economyleague.org/pardonimpact>. The recommendation of the Pennsylvania Workforce Development Board can be found at: <https://www.dli.pa.gov/Businesses/Workforce-Development/wdb/Documents/8-12-20-PA-WDB-Briefing-Book.pdf>, Recommendation 4 at pp. 33, 77.

⁴ Constitution of the Commonwealth of Pennsylvania, Article 4, Section 9(a). The pardon power was originally granted to William Penn by King James II in the original Charter of March 4, 1681; and it appeared in the first Constitution (then called the “Frame of Government”) of Pennsylvania, adopted on September 28, 1776. The Board of Pardons was added by constitutional amendment in 1872. Since then, amendments have been adopted that changed its composition and size, as well as required unanimous votes in cases of commuting sentences of death or life in prison. This last amendment, ratified in 1997, resulted when the Governor commuted the life sentence of Reginald McFadden who had received a 4-1 vote in favor of clemency from the Board of Pardons. Within ninety days of release, McFadden attacked 3 people, robbing all, raping 2, and murdering 2 – events that not only decided the election for governor and caused amendment of the state constitution, but contributed to the greatly reduced number of pardons and commutations over the next twenty years.

⁵ Applicants who are currently under carceral control – in prison, or on probation and parole – must seek a commutation (shortening) of their sentence, which is different from a pardon. Those who are in prison must follow a different procedure in submitting applications for clemency, which includes both

kinds of relief, and requires going through the Department of Corrections. This paper focuses almost exclusively on people who were not in prison when their applications were decided. The only incarcerated applicants included are those who were granted pardons and released from prison, and therefore at liberty to commit a new offence.

⁶ According to data provided on June 25, 2020, by the Board for this study, 51 pardon applications were “administratively withdrawn” as a result of failure to complete the form, respond to communications from the Board of Pardons, or appear for the public hearing.

⁷ 37 Pa Code § 81.226(a); 61 Pa. Cons Stat § 6142 (2016).

⁸ According to data by the Board for this study (supra n.6), 93 applications were “withdrawn” at the request of the applicants.

⁹ 37 Pa Code §§ 81.261-81.263.

¹⁰ 37 Pa Code § 81.271(a).

¹¹ Once presented with a pardon, a judge must expunge the conviction from the record. *Commonwealth v. C.S.*, 517 Pa. 89, 534 A.2d 1053 (1987).

¹² Supra at n. 6. Among the 1,082 successful pardon candidates studied, the earliest request was filed on January 1, 2008, and the latest pardon granted was on November 29, 2015. The total number of persons denied pardons and studied in this report is not identical to that reported by the Economy League, because we considered all applications that were denied through December 2019.

¹³ Supra at notes 6, 8.

¹⁴ According to data by the Board for this study (supra n. 6), 364 people were confined at the time of disposition of their applications, and they were therefore removed from the study. As noted above in note 5, this was not done for those who did receive pardons because, unlike those who did not, the 23 incarcerated applicants who were pardoned were released from prison and again able to commit a crime.

¹⁵ Under Pennsylvania law, a summary offense is the most minor type of criminal offense in Pennsylvania, and is often called a “non-traffic citation.” Summary offenses are those for which a person can be jailed for up to 90 days and fined up to \$300 - like disorderly conduct, obstructing a highway, retail theft (under \$150), defiant trespass, underage drinking, and public drunkenness. Summary offenses can also be expunged by a judge without a pardon once five years have passed without further arrest.

¹⁶ Christensen R. Institute for Defense Analysis, editor. Task Force Report: Science and Technology. Washington, DC: U.S. Government Printing Office; 1967. Projected percentage of U.S. population with criminal arrest and conviction records: 216–228.

¹⁷ Report in Support of Resolution 109B, American Bar Association (adopted January 28, 2019), at p 2. https://www.americanbar.org/content/dam/aba/administrative/house_of_delegates/resolutions/2019-midyear/2019-midyear-109b.pdf

¹⁸ Shannon, SKS et al., “The Growth, Scope, and Spatial Distribution of People With Felony Records in the United States, 1948-2010,” (September 2017) <https://link.springer.com/article/10.1007/s13524-017-0611-1>

¹⁹ Pretenky, RA., Lee, AFS, Knight, RA, and Cerce, D, “Recidivism Rates Among Child Molesters and Rapists: A Methodological Analysis.” *Law and Human Behavior* 21 no. 6 (1997): 635-659.

²⁰ Blumstein, A, Extension of Current Estimates of Redemption Times: Robustness Testing, Out-of-State Arrests, and Racial Differences Alfred Blumstein, et al. (December 2019) <https://www.ncjrs.gov/pdffiles1/nij/grants/240100.pdf>.

²¹ *Id.* at 90.

²² *Id.* at 54-55.

²³ Pennsylvania Department of Corrections, “Recidivism Report 2013,” available on the DOC’s website: <https://www.cor.pa.gov/About%20Us/Statistics/Documents/Reports/2013%20PA%20DOC%20Recidivism%20Report.pdf> The report also found that “approximately 6 in 10 (59.9%) people who are released from prison are re-arrested or reincarcerated within three years of release from prison.”

²⁴ 37 Pa. Code § 81.202. Definitions (“crime of violence”).

²⁵ For example, the individual who committed the one crime of violence (aggravated assault on a minor) was also convicted of the two counts of indecent exposure, so he accounts for 3 of the 22 total offenses.

²⁶ See n. 8, *supra*.

²⁷ During this ten-year period, Pennsylvania’s Governors denied pardons to 37 applicants who had been recommended to them by the Board of Pardons. Of those, only 1 (2.7%) subsequently committed a crime. This is almost precisely the recidivism rate of those who were denied positive recommendations by the Board (2.6%).

²⁸ *Supra*, n. 18.

²⁹ See Tables 4 and 5.

³⁰ This total does not include the 37 individuals whose pardon applications were recommended by the Board but thereafter denied by the Governor.

³¹ Supra at n. 19.

³² Among those on probation, “on average, 74 percent of individuals who are arrested and 75 percent of individuals who are convicted at some point within fifteen years of release recidivate in this way within three years.” State of Oregon Criminal Justice Commission, State of Oregon, “Recidivism with Extended Follow-Up Periods and Hazard Analysis” (December 2019), at ii. The study analyzed fourteen years of data and consisted of 218,147 observations. “In general, Oregon’s 3-year recidivism metric provides a good approximation of longer-term recidivism rates, while also satisfying policy-makers’ and analysts’ need to understand changes in recidivism in the medium term.... The probability of not being rearrested by three years is very similar to the probability of not being rearrested by five years.... ” Id. at ii, iii.

³³ Supra at n. 23.

³⁴ <https://ujportal.pacourts.us>

³⁵ The definition of “summary offense” appears at n. 15.

³⁶ Act 56 of 2018, P.L. 402, signed into law on June 28, 2018, effective (as to petitions) in 180 days (365 days as to automatic sealing)

³⁷ The AOPC website includes specifics on how far back records go for each county:
<https://ujportal.pacourts.us/RefDocuments/CPCMScaseLoad.pdf>

³⁸ <http://www.pacourts.us/assets/files/setting-850/file-173.pdf?cb=36cae5>

³⁹ In response to a request, the AOPC checked 30 (randomly selected) of the 387 names for which we could not find records, and was able to find 28. The reason could be that the name provided by the Board was not the same as appears on the docket. If the sample was representative, 361 of the 387 would have records that are covered by a reason that would indicate no public safety concern; and there would be an open question only as to 26. That number is not material to any finding in this report.

⁴⁰ We considered the possibility that the record had been sealed on a misdemeanor conviction for which the judge might have incarcerated the offender, but sealing is not permitted for crimes involving felonies, Crimes of Violence, or any misdemeanors involving sex, guns, or violence. Furthermore, the research for this study was conducted over the period July 1-July 17, 2020, and then verified through August 8-10, 2020. Only 11 pardon applications were denied by the Board earlier than July 17, 2010, which would have been more than ten years before the data gathering for this report was done: 10 in 2009 and 1 on May 5, 2010. For all these reasons, it is highly unlikely that a sealed record would have involved a crime that posed a public safety concern.

⁴¹ There is an additional reason that a record might not be found for those who succeeded in obtaining a pardon: with the pardon, the original conviction is completely forgiven and could be expunged (erased) from the record.