

22 mins ago

## Second chances stalled: Advocates wait for pardons on Gov's desk to be signed



By Brandon Dorfman / CONTRIBUTOR

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**Evan Figueroa-Vargas** is a person with lived experience who built a successful career in the **Department of Behavioral Health and Intellectual disAbility Services** off a foundation of sincere engagement with the greater Philadelphia recovery community.





*Evan Figueroa-Vargas.*

He's an influential voice among organizations working to mitigate the region's ongoing overdose crisis, one who's sought out as much for his educational achievements as for his professional work ethic. Over the past decade, Figueroa-Vargas earned seats on several prominent nonprofit boards in the city, commendations from both the mayor's and state attorney general's offices, and the respect of most of his peers.

But like most justice-involved persons in Pennsylvania, an old felony record and a couple of lingering misdemeanors have impacted Figueroa-Vargas's chances for advancement and opportunity.

"At what point do you serve your prison sentence?" Figueroa-Vargas said when he spoke to **Generocity**, recounting how every job denial feels like another demand for penance. "At what point do I serve my jail sentence, my house arrest, my costs and fines, and my parole-probation?"

"At what point am I finished?" he asked.

The situation isn't academic for Figueroa-Vargas, who, almost nine months ago, lost out on what he called his "dream job" — a position within his native Kensington promoting the genuine and tangible idea that recovery is possible.

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He was a finalist for the role in question, one who had a working relationship with the employer and a unique perspective on the position due to his ties to the neighborhood, but Figueroa-Vargas' 2007 violation of the Uniform Firearms Act tanked his bid.

Reprieve can come from a state pardon for Figueroa-Vargas, a process which relieves the legal disabilities resulting from a conviction, followed by the automatic expungement of any record.

Although Pennsylvania's procedure improved under **Lt. Gov. John Fetterman** and **Board of Pardons Secretary Brandon Flood**, in many ways becoming a model for the country at-large, bottlenecks in the system remain an obstacle for hundreds of the state's justice-involved persons.

Figueroa-Vargas sits on the board of the **Pardon Project Steering Committee**, an offshoot of **Philadelphia Lawyers for Social Equity**, a nonprofit organization that provides legal assistance to low-income area residents whose criminal records are holding them back from career and social advancement.. The group's work with Fetterman and Flood has resulted in a sped-up process that brought economic and racial justice to hundreds of people in need over the past few years.

But, as noted in a recent petition dispersed by the committee, over 250 pardon applications sit unsigned on Gov. Tom Wolf's desk.

Although **statistics show the governor signs 99 percent of pardon recommendations** that come his way, all of which come under his discretion, every moment he waits puts an increased economic burden on the justice-involved population.

These hardships only increase during a pandemic for persons forced into a continuous cycle of repenting for their crimes.

"I just feel like it's an oxymoron that Secretary Flood meets with us to change the applications to make it easier for people applying, make the process quicker, and they just sit on the governor's desk," said **Rev. Michelle Anne Simmons**, a member of the Pardon Project Steering Committee and founder of **Why Not Prosper**, a nonprofit that helps formerly incarcerated women with transitional living services.



*Rev. Michelle Simmons,*

Simmons, who went through the pardon process herself with the guidance of mentor **Wayne Jacobs** after learning her prior conviction prevented her from obtaining federal student loans, respects the governor's work but feels the need to push him.

"[Pardon recommendations] could sit on his desk for two years," she explained, echoing the sentiments of a letter she sent to the governor's office. "He has no accountability to do it or he has nobody pushing him."

"And most of the people applying are Black and brown people," she added.

## **An abused process misunderstood by Americans**

Over the past few months, if not years under the shadow of the Trump administration, Americans came to understand the pardon process as tale of cronyism doled-out mostly to the wealthy and the white.

The outgoing commander-in-chief spent his final hours in office debating both a self-pardon and the same for his family, ultimately resigning himself to around 100 applications for some of the nations most notorious white-collar criminals, including **Todd Boulanger**, a lobbyist caught up in the **Abramoff scandal**; **Google** engineer **Anthony Levandowski**; and former White House aide **Steve Bannon**, who in recent weeks threatened to behead **Dr. Anthony Fauci**.

What many see as Donald Trump's misuse of his pardon power soured American's view of the process.

"I'm really upset specifically at Donald Trump because it does seem like some people ... are receiving pardons from the federal government, people that quite frankly don't even need them," Figueroa-Vargas said.

He explained that because of language barriers and how information flows even at the state level the pardon process can favor white applicants of means. "They're rich people; they don't need pardons," he continued. "Nevertheless, they're the ones that are receiving pardons."

For years, pardon applications proved a complicated process filled with barriers for even the most privileged people.

As Pardon Project Steering Committee member **Paula Budnick** explained to Generocity, the expectation was that traversing the pardon system could take years, placing an undue burden on justice-involved individuals without the means to move their applications forward.

"There was a lot of footwork," said Budnick, who applied for a pardon before much of PLSE's advocacy. "And I consider myself pretty fortunate and pretty privileged."

Budnick, whose conviction dates back to the 1970s before the advent of electronic records, enjoyed a successful career undeterred by her past. When she applied for a pardon in 2017, the system made her jump through several hoops that people of means might find difficult, but that would prove near-impossible for low-income persons.

According to her, it took considerable legwork to dig her paperwork out of the annals of the courthouse, along with several meetings with a parole officer and the Board of Pardons.

Even with a successful career and certain afforded privileges, Budnick's prior conviction stalled her forward progress in the professional landscape. A few years earlier, the proud and determined Penn alumna sought employment with her alma mater, hoping to give back by working with prospective students. A question about criminal history on the online application ended her candidacy before it ever began.

"I just abandoned the whole project," said Budnick, recalling the scenario that became the ultimate catalyst to push her to seek a pardon. "Now, imagine if I didn't have this career, this illustrious, unbelievable career, and I just I wanted to work cleaning offices. I can't do that. I wouldn't be able to take the trash out at **McDonald's**. I wouldn't be able to do any of that because I have to check that box."

The American pardon process is as misunderstood as the Constitution itself, seen by the public as a pay-to-play system for undeserving industrialists or the latest exploit in the reality show that is **Joe Exotic**.

Those who can benefit from the practice, low-income justice-involved persons who served their time, are too often the people for whom society puts up blinders. Although the likes of **Fetterman**, **Flood**, advocacy groups such as

PLSE, and others continue to improve the system, pardons remain too far out of reach for those that need them the most.



*Tobey Oxholm,*

“There are three ways you get [a conviction] erased from your record,” said PLSE Executive Director **Tobey Oxholm**, who described, in detail, the uphill battle low-income justice-involved persons face.

According to him, people over the age of 70 with a decade free from involvement in the criminal justice system and those deceased for more than three years can have their records expunged — neither situation is helpful when it comes to employment.

“And the third way you can get a conviction erased by a judge is if you’ve been pardoned by the governor,” he continued. “This has been the way it’s been in Pennsylvania since the mid-1800s.”

## An economic benefit to low-income communities

In September of last year, Simmons [put pen to paper praising Gov. Wolf](#) for his handling of COVID-19, ongoing work with criminal justice reform, and support for the **Black Lives Matter** movement. She thanked Fetterman and Flood for giving families hope for a better life and the possibility to escape poverty. In detail, she told the governor how the Pardon Project Steering Committee enriches every person's life with whom it comes in contact, helping to reform and rebalance those persons once written off by society.

And then she lambasted the governor as shameful for failing to review and sign the hundreds of pardon recommendations sitting on his desk.

"You are heaping despair on [those persons waiting on your signature]," Simmons wrote to Wolf. "Some[one] who came to one of our meetings got her pardon recommendation in September 2019 and you still have not signed it, and she is a wonderful person. Do you have any idea of the hurt this has caused her and her family?"

Simmons clarified that she respects the governor and his position, and appreciates the work he's done to date, but every minute he waits to sign a pardon places people in economic jeopardy.

She told Generocity that in June, 49 people went before the Board of Pardons, all of whom continue to wait for Gov. Wolf's approval.

"Within that six month time people could have gotten a job and come out of poverty, started making a living wage," she observed.

The Pardon Project Steering Committee supports the notion of pardons as a tool for lifting both individuals and their communities out of poverty, an idea promoted in their recent [change.org](#) petition pushing the governor to clear the backlog of recommendations from his office.

According to the now century-old **Economy League of Greater Philadelphia** (<http://economyleague.org/>), a nonprofit think tank focused on the region's most significant problems such as racial equity and millennial health — the latter which is part of their new **Well City Challenge** (<http://economyleague.org/driving-regional-change/impact-labs/well-city-challenge>) — the concept is not without merit, as backed up by years of data.

Last year, the group released a report titled "[Pardons as an Economic Investment Strategy: Evaluating a Decade of Data in Pennsylvania](#) (<http://economyleague.org/driving-regional-change/campaigns-projects/the-impact-of-pardons>)," which determined the average length of time from application to pardon and placed a dollar amount on the process itself.

Using aggregated data points from across the state, including the **U.S. Census 2017 American Community Survey five-year estimates**, the **Pennsylvania Uniform Crime Reporting System**, and specific statistics from the **Board of Pardons**, the **Lenfest Foundation** (<http://lenfestfoundation.org/>) grant-funded project determined several key findings linking economic prosperity and justice to the pardon process itself.

Researchers learned that over the 10 years beginning in 2008, approved pardons equated to an estimated \$16 million in real-world wages. The study also found that the pardon procedure could take upward of three years during that same time frame, resulting in lost earnings and growth potential for an already vulnerable population.



*Nick Frontino.*

“You get a pardon and within two years you’re able to earn 25 percent more than you had been before the pardon,” said Economy League Managing Director **Nick Frontino** (<http://economyleague.org/about-us/our-staff>).

Frontino, a part of the team that worked on the pardon study, told Generocity that the 25% number comes from research-based out of the **University of Michigan**. “The longer you have to wait for that pardon, the longer you’re missing out on a bump of 25 percent in wage and earnings.”

But not all pardons are created equal, as proved by the data.

According to the Economy League study, between 2007 and 2017, low-income pardon applicants were less likely to have their filings granted when compared to both the state average and that of their high-income counterparts.



Researchers found that while approved pardons benefited individual earning power for high-income candidates, the same process impacted entire impoverished communities' economic prosperity. As Frontino explained it, low-income earners receiving a bump in wages will spread the additional money throughout the community purchasing food, household items, and other goods and necessities. High-income earners are more likely to put cash into savings and investments, attaining personal wealth.

In other words, the pardon rate was less for low-income justice-involved persons even though that demographic (and communities) had more to gain from the practice on the whole.

Reasons behind the disparities are varied, as evidenced by the data collected by researchers. Frontino and his team ascertained that officials approved fewer pardons in high-arrest counties over the 10-year study period. Limited data, which was only available for the year 2017, showed that while pardon approvals remained relative among different racial groups, white persons applied almost three times as frequently as their minority counterparts. As noted by the Economy League in the study, minorities are incarcerated at five times the rate of white people in contact with the criminal justice system.

Frontino shared several ways to improve the system, all of which were included in the report. He told Generocity that if officials want to make a broader, more enduring impact, they should find a way to invite more people to apply for pardons, increase awareness of the pardon process in low-income communities and communities of color, and reduce the time it takes to finalize a pardon.

On that last point, Frontino gave credit to the Board of Pardons' current transformation and reform efforts.

"I know that there have been some administrative efforts to reduce that processing time," he said. "But that type of process improvement is something that will need to be continuous going forward if the Commonwealth is to expand the impact of pardons as an economic development tool."

## A second-chance reformer leading the charge

According to multiple news reports, **Corry Sanders** is the prototypical example of a justice-involved person who turned his life around. After pleading no contest to felony drug charges almost 30 years ago, the McKeesport, PA native became a church deacon, opened up a barbershop in the region's business district, and took a leadership role on the **McKeesport Business Authority** board of directors. He counsels children, teaching them to avoid the mistakes of his past.

Despite his efforts, redemption doesn't come easy for the justice-involved in Pennsylvania.

In 2016 Sanders won a seat on the McKeesport City Council, only to have it stripped away several months later when Allegheny County Common Pleas Judge **Joseph James** ruled him ineligible to serve due to his prior conviction.

"[Sanders] put in for a pardon and was denied," Flood recalled, noting that the one-time councilman-elect was successful on his second try going through the Board of Pardon's reconsideration procedure. "Now he can lawfully run for and hold public office and I believe he fully intends to. I believe he intends to run for mayor."



*Brandon Flood.*

"[The collateral consequences of a conviction] include one's ability to lawfully hold public office," the secretary reiterated.

Flood is the man behind the curtain at the Pennsylvania Board of Pardons, and the first name brought up in any conversation about the department.

Advocates at PLSE, numbers-crunchers at the Economy League, and even Fetterman himself, praise the secretary for his efforts to improve the process, which he's sped up and expanded over the past few years. Under his tenure, efforts to modernize the procedure, which include a transition away from the archaic, paper-only applications of the past 100 or so years, resulted in what Flood refers to as a "good problem," a 400% increase in filings.

"Anytime that anybody is willing to step outside of the office and put boots on the ground to kind of see exactly what it is that is happening and what the people who are closest to the problem... I have to say, I think that speaks volumes," said Figueroa-Vargas, who called the secretary an amazing person.

Flood brings a unique perspective to pardon reform in Pennsylvania, having sat on both sides of the transaction. He spent his younger years as a self-described "career criminal," a period he referred to as a "desired vocation" to which he was resigned. Somewhere along the way, the future secretary took a turn and caught the politics bug.

Being in Harrisburg, the epicenter of all things political in the state, he decided to make a go of it. Flood immersed himself in the details through an internship in the State House, even working on executive clemency issues with the [legislative Black Caucus](#).

His efforts caught the attention of Braddock's favorite son, and, in April 2019, Fetterman appointed Flood to his current position.

"I was actually awaiting the governor to sign my own pardon, but had a relationship with the lieutenant governor, and he didn't know about that part of my background," the secretary said, recalling his appointment. "Once I explained everything to him and I shared all my background, he was the one who put two and two together and said 'who better to serve as ambassador of second chances, who better to transform executive clemency?'"

Flood understands the power of the pardon and what it represents for Pennsylvanians, in particular Black and brown men who are overrepresented among the state's justice-involved population. Presenting people with the option to expunge their criminal records allows them to beat the odds against recidivism, find economic prosperity for themselves and their communities, and attain some semblance of racial justice in a society that treats them as second class citizens. Such philosophical underpinnings are what drive the secretary toward continuous improvement every day.

And from a practical, working standpoint, he's made good on his promises.

In addition to modernizing the office, the secretary sped up processing times, developed separate procedures for simple offenses such as cannabis crimes, and increased the number of applications received, all under the shadow of a global pandemic. Flood's Board of Pardons is a place of opportunity.

Although Flood continues to push the Board of Pardons to its limits, the office remains short on resources, mired in processes built on centuries-old law and staffed by a bare-bones operation of six — this last unchanged since the 1980s. According to Flood the confluence of these factors contributes to the logjam of applications stuck in the governor's office.

"There's a lot of back and forth between our shop and the governor's office," Flood told Generocity. "But again, we have limited personnel."

"We have a good problem on our hands," he continued. "We have increased the volume of applications received and processed."

## **A sincere politician with passion for the people**

Asked about empathy in the criminal justice system, Figueroa-Vargas compared the situation to the ongoing COVID-19 pandemic and ensuing economic recession that followed. When quarantines and stay-at-home orders

led to lost wages and growing food insecurity, much of the country eschewed bootstrap economics — the notion of individual responsibility — for a collective approach to the problem. People increased giving to nonprofit organizations, food banks, and emergency health and wellness foundations and agreed on the need for, if not the means of, government stimulus.

Americans received help because society understood as a whole one basic fact — people in need are victims of circumstance.

“The same thing applies to people who have come into contact with the criminal justice system as a result of addiction,” said Figueroa-Vargas, who made clear he wasn’t sidestepping responsibility for his past mistakes. His story began with a motorcycle accident and a Percocet prescription, not a desire to break the law.

“I think when we begin to educate the community and society as a whole about how addiction works on people who have mental health challenges, I think people stop to show sympathy and start to show empathy and start to put themselves in the shoes of others and understand the long-lasting impact of a criminal conviction,” he added.

The law in Pennsylvania leaves little room for empathy for justice-involved persons.

Besides the economic pitfalls that accompany a criminal record, felony convictions in the state include the loss of a whole host of rights that most people take for granted. Including the aforementioned inability to hold public office, the law prevents persons convicted of a felony from serving on a jury, owning a firearm, and voting while incarcerated, among several other things.

Felony convictions place a 10-year moratorium on adopting a child and prevent parents from volunteering at their own child’s school.

A pardon and the expungement of records that follow can change all of that, but for too long, the justice-involved lacked a champion, a person in Pennsylvania to rally their cause.

Then, Fetterman took up the call.

*Lt. Gov. John Fetterman. (Photo from Fetterman's Twitter profile)*

The former mayor of Braddock, with his casual work attire, love of **Sheetz** convenience stores, and propensity for calling out the shenanigans of his political opponents, made executive clemency and second chances the centerpiece of his tenure upon assuming the role from his predecessor, **Mike Stack**. And along with Flood, he set out on reinventing the Board of Pardons.

The two men modernized, digitized, and electrified the office. In addition to the changes ushered in by Flood, Fetterman waived all pardon applications fees and ensured applicants could complete the process without an attorney.

Then the lieutenant governor embarked on a comprehensive inventory of every prisoner, working with PLSE to ensure that there was nobody behind bars who didn’t belong there.

“If you’re a convicted murderer, people assume you’re **Hannibal Lecter** and that’s just not the case,” Fetterman said. “We need to make sure that the people that belong in prison are in prison, but the people that don’t, shouldn’t be. Why would we want to keep them in there another day?”

“The only process to address that is pardons and the Board of Pardons,” he continued.

What separates the lieutenant governor's Board of Pardons from other government reform projects is the idea that it's more than a policy shop, it's a person-first experiment in second chances.

He populated the department with people who understand empathy because they experienced the need for it themselves. Along with Flood there's **Naomi Blount**, who served 37 years of a mandatory life sentence without parole for a crime for which she was exonerated, and **George Trudel**, sentenced to the same for a crime he didn't commit. Both now usher others through the pardon and commutation process because of Fetterman's passion.

Speaking exclusively to Generocity, the lieutenant governor talks about the Board of Pardons as if it is the true culmination of his life's work.

"One of the things that has remained a real North Star for me personally and also in my capacity as lieutenant governor is the commutations and pardons process," he said. "I wish there was an opportunity. I would gladly do that for the rest of my life."

While Fetterman's zeal for the job, combined with the work he puts into it, doesn't make him a target of advocates' ire regarding the logjam of pardon recommendation languishing in Harrisburg, his public embrace of the position forces him to answer questions about it.

With upward of 250 applications remaining unsigned, keeping justice-involved persons and the communities they live in from achieving economic prosperity, the pressure is on for answers.

"Unfortunately, that's just the way it is," said Fetterman, speaking matter-of-factly about a procedure that's seen myriad improvements in recent years but still relies on the approval of one man at the top.

"One thing I can say is the governor fully supports a second chance and has signed virtually every one because he believes in a second chance too," he continued. Fetterman reiterated that the pardon logjam has decreased over the past 18 months as applicant wait times become shorter. "The governor doesn't have to respond but the governor does, always."

"The governor is absolutely a very, very strong believer in a second chance," he reiterated.

The Governor's Office went further, telling Generocity in a statement that it's not accurate to say that 250 pardons are awaiting signature.

According to a spokesperson, the Board of Pardons votes on recommendations, which are then processed by department staff and sent through a legal review before making their way to the governor's desk. At that time, Wolf considers each case individually, factoring in victims' rights, chances of recidivism, and the burden a record places on justice-involved persons looking to turn their lives around.

"Gov. Wolf has made Pennsylvania a national leader in criminal justice reforms through smart and fair improvements to our criminal justice system," read the statement from his office, before going on to list several of the governor's criminal justice reform accomplishments in the past few years.

The governor's spokesperson noted the administration's role in passing various reforms, including Justice Reinvestment 2, which addressed the high cost of incarceration in the state, the first-in-the-nation Clean Slate Bill, which to date has helped seal almost 35 million cases automatically without the cost of filing petitions in court, and the Fair-Chance hiring policy for state agencies known as "banning the box."

"Last year the governor expanded his administration's commitment in making Pennsylvania a national leader in criminal justice reforms with the signing of HB 440," the statement continued. "House Bill 440 expanded on the

state's historic Clean Slate law by removing an obligation to pay any outstanding court-ordered financial obligations before eligible cases can be sealed. Any restitution owed for convictions committed is not waived. The bill also requires that when a person receives a pardon, that record is automatically sealed and if they receive a not-guilty verdict the record is expunged."

"The governor will continue to further Pennsylvania's role as a national model for commonsense, bipartisan criminal justice reforms," the statement read.

But nowhere in the response from Wolf's office was there a timeframe for signing the pardons.

Meanwhile, Evan Figueroa-Vargas and others in the justice-involved community wait for an opportunity to partake in a hiring process unburdened by their past convictions. They wait to earn a fair wage that brings economic investment to not only their families but entire neighborhoods. They wait for an empathetic society to understand that they've long paid for their crimes, but with every question on a hiring application and denial from the public square, they're forced to do so again.

And they wait to chaperone their children on school trips, as if they were any other parent in the state.

"My son started preschool and I was invited as one of the chaperones and self-disclosed that I was a convicted felon and they disqualified me from being able to chaperone not only my child but other kids," said Figueroa-Vargas. "That absolutely broke my heart."

"I never in one million years thought that I wouldn't be able to chaperone my son on the school bus as a result of [my] conviction," he said.

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*Join Penn Law School's Criminal Record Expungement Project in a conversation about pardons, expungements, overpolicing, and race. Panelists are: DeRay McKesson of Campaign Zero; Brandon Flood, Secretary of the Pennsylvania Board of Pardons; and Akeem Sims, the inaugural J. Gordon Cooney Fellow at Philadelphia Lawyers for Social Equity; and moderated by PLSE Staff Attorney Taylor Pacheco. They will be discussing the role pardons and expungements play in the criminal justice system, how overcriminalization affects communities of color, and the barriers to full citizenship faced by those with records. The conversation takes place Tuesday, February 2, 12-1:15 pm via Zoom. Register [here](#).*

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