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California Anti-Death Penalty Coalition
Universal Clemency in California: Frequently Asked Questions

What is universal clemency?
Universal clemency means commuting every death sentence, which is different from a grant of clemency to one person based on individual factors. Universal clemency is an action taken by the governor based on concerns regarding the use of the death penalty in all cases, to correct an injustice that applies across the system.

Who supports universal clemency?
Clemency California Campaign is led by the California Anti-Death Penalty Coalition, a diverse coalition of faith, racial justice, civic, legal, and labor organizations, as well as murder victims' family members and families affected by the death penalty.

What sentence will a person get if universal clemency is granted?
If a death sentence is commuted, the Governor's Office has indicated all individuals will be resentenced to life without the possibility of parole (LWOP).

If a sentence is changed to LWOP, will the Board of Parole Hearings review the case under the new regulations?
No. The Board of Parole Hearings recently began reviewing some individuals sentenced to LWOP to determine if they are a good candidate for resentencing or clemency. This process explicitly excludes people sentenced to LWOP as a result of a grant of clemency.

What is the process for achieving universal clemency?
According to the California Constitution, the governor has the authority, on his own, to commute the sentences of anyone on death row who does not also have a separate felony conviction, from a separate case. For anyone with a separate felony conviction (about 70% of people), the governor must submit his request to the California Supreme Court. In those cases, a majority of the court must vote to approve the governor's request before his term ends on January 4, 2027.

If clemency is granted while a case is pending in court, what happens?
No one who has a case in active litigation should lose their attorney.

If the case is on appeal. The California Supreme Court can either transfer the appeal to the Court of Appeal or keep it. We expect most cases will be transferred to the Court of Appeal. Either way, the appeal will go ahead on all the issues in the case other than the death penalty.

If a habeas petition pending in state or federal court. The penalty phase issues will go away, but the individual can keep fighting the conviction, special circumstances, and LWOP sentence.

What about people who are waiting for counsel to be appointed?

The death sentence would still be commuted. The case would then be treated like an LWOP case for appointment of counsel procedures.

If someone is waiting for an attorney to be appointed for the direct appeal, once the sentence is reduced to LWOP, the appeal will go to the court of appeal for the county where they were convicted. Because the person will not have to wait for an attorney who is qualified to take death penalty cases, they will get counsel much faster.

If they are waiting for an attorney for a habeas petition, see below.

If someone receives clemency, will they lose the right to habeas counsel?

If someone does not yet have habeas counsel and their sentence is converted to LWOP, they would no longer have an automatic right to habeas counsel.

That said, the majority of people sentenced to death do not have habeas counsel and have been waiting a very long time for habeas counsel to be appointed. Currently, 70% of people sentenced to death (391 individuals) are waiting for an attorney to be assigned, or for funding for the attorney to work on their case. There are far more people waiting for habeas counsel than the Habeas Corpus Resource Center can take and there are very few other available attorneys.

Once a sentence is converted to LWOP, the individual will have the same right as other people sentenced to LWOP to pursue claims under laws like SB 1437 (felony murder reform) and the Racial Justice Act, which provide a right to counsel. Since the case would no longer be a death penalty case, they would not be limited to attorneys who are trained to handle death penalty issues.

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If someone has habeas counsel now, we believe that anyone with a habeas petition pending will keep their habeas attorney and will be able to keep fighting their remaining claims.

Will there be a new legal office to work on LWOP cases?
There is no current proposal for a new legal office to work on LWOP cases.

Will people newly sentenced to LWOP move to the end of the line, behind other people with LWOP who are seeking counsel?
There is no single list for people with LWOP to get counsel (unlike people sentenced to death). Whether someone gets counsel and when depends on their legal claims and county of conviction. Some statutes for postconviction relief, like felony murder reform and the RJA, include a right to counsel. There is no automatic right to habeas counsel. The California-based Innocence Projects will also consider LWOP cases, but they will not take death penalty cases.

What if someone doesn't want clemency?
An individual sentenced to death cannot object to or block clemency in their case. The decision is up to the Governor.

Does an individual or their attorney need to do anything to get universal clemency?
No. Universal clemency is based on circumstances that apply to everyone sentenced to death. It does not require a petition or any action by the individual.

How does universal clemency relate to the legal challenge to the death penalty based on racial discrimination?
They are entirely separate. Civil rights advocates have filed a legal case challenging California's death penalty under the state constitutional based on racial bias. The California Supreme Court transferred the case to the Sacramento Superior Court to be heard. This process will take many months – possibly more than a year. We expect this case will continue even if Governor Newsom grants universal clemency.

How will someone know if their sentence has been commuted?
When the Governor grants clemency, his office sends notice to the person whose sentence was changed, and also to CDCR. It may take several weeks for the process to be complete and for the notice to be sent to the individual. The Governor also posts clemency orders on his website.

Where does a person go with questions?
They should call their attorney or CAP-SF, (415) 495-0500.

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