

# Prisoners: 'There are always two narratives in every case'

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In all, the clinic has represented 78 defendants who petitioned for either a pardon or commutation; 46 so far have been granted and 17 are pending. The rest have been rejected.

According to data provided by Brown's office, she has granted 1,144 commutations and 60 pardons since taking office; 963 commutations were related to the pandemic.

Most clemency applications last year were rejected; Brown approved about 6% of all pardon and commutation petitions combined, her spokesperson said.

## 'I was so stunned'

Brown said she has not spoken with any of the victims or their families in the cases before her and relies on district attorneys' offices to talk to them instead.

The governor said she reads letters from victims and loved ones that are forwarded by district attorneys' offices.

"I am well aware that this is incredibly difficult for victims and their families," she acknowledged.

Rosemary Brewer, executive director of the Oregon Crime Victims Law Center, said on several occasions she has asked Kevin Gleim, a lawyer for the governor who handles the commutation process, whether he or Brown would take time to talk with victims' relatives about why the governor had granted clemency in particular cases.

Gleim declined, she said.

Brewer said the news of the juvenile commutations in particular was difficult for victims' families because many first learned about it in an Oregonian report last October.

Brewer pointed out that the rights of crime victims are enshrined in the Oregon Constitution, which guarantees crime victims "a right to justice, a right to a meaningful role in the criminal and juvenile justice systems, a right to due dignity and respect, and a right to fair and impartial treatment." The Constitution says those rights "shall be protected at each stage of the criminal justice system."

"For whatever reason," she said, "the governor has decided that these commutations take precedence over the rights of victims or even a thought for victims frankly."

By law, district attorneys are required to be notified when a person seeks clemency. The governor's office then asks the district attorneys for police reports and other information in cases it plans to review. If a case moves ahead, prosecutors are given a chance to respond and include victims' statements as well.

Marion County District Attorney Paige Clarkson said she hired an extra staffer to help her office respond to the flood of clemency submissions to Brown in the past two years.

Clarkson said the applications submitted by Kaplan's clinic paint defendants in a sympathetic light, often shading the truth or misstating the facts of the crime.

Kaplan rejected Clarkson's characterization of her clinic's work.

"There is not one right story when a case has not gone to trial," especially in cases settled in plea negotiations, Kaplan said. "There are always two narratives in every case."

When Clarkson staff delivers news about the governor's clemency decisions in a case, the victims often ask: why?

In a recent case, a victim asked Clarkson's staff to ask Brown if she needed to change her name or move. "Do I need to worry about my safety," the woman asked, according to Clarkson.

"I do not have answers for them," she said.

Ellen Pelker learned last year that the sentence of her daughter's killer, James Anderson, would likely be commuted just as she was tuning in to a remote hearing, known as a murder review, before the Oregon Board of Parole and Post-Prison Supervision.

At a murder review hearing, the board determines if a defendant should eventually get parole.

Anderson's lawyer announced that Anderson appeared to be among the group of juveniles whose sentences were commuted by Brown. That meant his case would go to the parole board for a different type of hearing that would decide his fate.

During juvenile hearings, a defendant's rehabilitation is the focus of the board's deliberations, though state rules say it can also consider the premeditation or deviancy of the crime. The board will review letters of support and letters from victims in mak-

ing release decisions.

Anderson's hearing is scheduled for March 16.

"I was so stunned," said Pelker, who lives in Aurora.

In 1996, Anderson, then 17, drove Mariah Pelker-Ingram, his former girlfriend, to a wooded area of Woodburn, where he had already dug a grave. He stabbed her and beat her with a shovel.

Mariah was reported missing; a month passed before her remains were found by authorities.

Pelker-Ingram, Pelker's only child, was three months' pregnant. She was 17. Pelker and authorities suspect Anderson didn't want to take care of the baby.

The teen's death destroyed her father, said Peggy Wilson, her paternal aunt. Wilson, a psychotherapist who lives in Houston, said her brother, James Ingram, was unable to cope with his grief and later experienced homelessness. He died in July.

"There was nothing to console him," she said.

Pelker said Brown's decision to show Anderson mercy baffles her.

"I just don't understand," Pelker said. "There was never any explanation."

Brown last year first began to consider using her authority to address juveniles serving time under Oregon's Measure 11, the mandatory sentencing law first passed in 1994.

In particular, Brown wanted to focus on offenders serving mandatory minimum sentences but who did not benefit from 2019's landmark juvenile justice bill. That law aims to keep young offenders accused of the most serious crimes out of the adult court system.

The law sets stringent parameters for judges to keep them in the juvenile system, where the focus is rehabilitation. The law did not apply retroactively.

Brown said youths have "a unique capacity for growth" and should be given a chance to "become positive members of our society."

"Measure 11," she said, "removed many avenues for young people to demonstrate their capacity for change and reformation."

Brown said she is using clemency as it was intended: to correct injustice, which includes not only reviewing what she sees as harsh sentences in old juvenile cases but also addressing the overrepresentation of Black and Latino people in Oregon's prisons.

"While it is not a replacement for comprehensive criminal justice reform," Brown said, "the power of clemency can be used to address systemic failures while we work to make lasting change."

## Panel to help with juvenile case-by-case reviews

For now, lawyers for the families and the district attorneys who are suing Brown said the governor has agreed not to release prisoners while a Marion County Circuit Court judge decides whether the lawsuit can move forward. A decision is expected next month.

Meanwhile, Brown's office outlined how the governor will make a case-by-case review of what it says is an estimated 140 prisoners who committed crimes as juveniles and meet the following criteria: sentenced before 2020, are not serving a sentence for a crime committed as an adult and have served half of their sentence by the end of this year.

This group is in addition to a separate group the governor commuted who also committed crimes as juveniles. That group of 72 can petition for release after they have served at least 15 years.

Brown's spokesperson, Liz Merah, said a small group of "community members with varied backgrounds in law, law enforcement and adolescent development" will take part in the review of each case and advise the governor.

The group is made up of a retired judge, a juvenile lawyer, a psychologist, a police officer and the leader of a nonprofit organization that helps people transition from prison to the community, Merah said. Brown's lawyers will also review those cases.

They will gather information about each case from police, prosecutors and the prison system, as well as input from victims.

Merah in an email said the governor's office expects "only a small percentage will be approved."

Their fate will rest with the governor, who said she will consider their growth and whether they have the capacity to contribute to the community.

Said Brown: "I will be the final decider."

*'WHILE IT IS NOT A REPLACEMENT FOR COMPREHENSIVE CRIMINAL JUSTICE REFORM, THE POWER OF CLEMENCY CAN BE USED TO ADDRESS SYSTEMIC FAILURES WHILE WE WORK TO MAKE LASTING CHANGE.'*

Kate Brown | governor of Oregon

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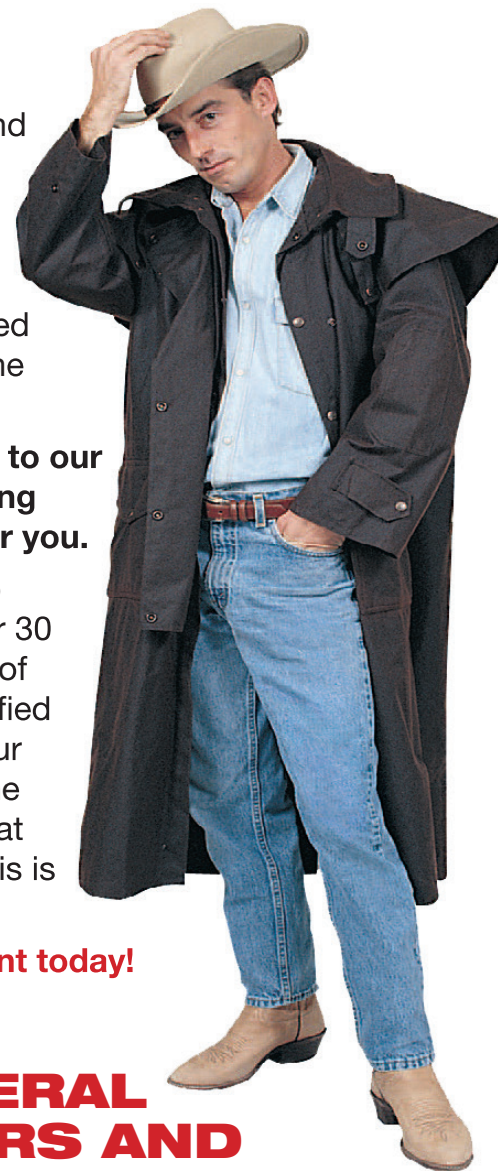
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