

# EXECUTIVE CLEMENCY POWER IN WISCONSIN

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**O**n July 21, 2023, Governor Tony Evers announced 96 new pardons, bringing the total number of pardons granted under his administration to 1,029. In so doing, he surpassed a record previously set by Governor Julius Heil (1939–43) for the most pardons bestowed by a Wisconsin governor. Governor Evers's use of executive clemency powers marks a striking departure from his predecessor, Governor Scott Walker (2011–19), who issued no pardons during his eight-year term. Given the breadth of governors' exercise of this power, this article provides background on the source, interpretation, and use of executive clemency powers in Wisconsin.

## Background

Clemency refers to official actions to delay, lessen, or nullify the punishment for a crime. It usually takes one of three forms: reprieve, commutation, or pardon. A reprieve temporarily suspends punishment, a commutation reduces punishment, and a pardon eliminates punishment, as well as other legal consequences of a criminal conviction.<sup>1</sup>

Historically, clemency has served to counterbalance the severity of criminal justice systems. Over 200 crimes warranted the death penalty in early modern England, but monarchs pardoned convicted criminals so frequently that fewer than one in ten actually went to the gallows. In this way, the pardon power redressed the failure of the courts to take justifications or mitigating circumstances into account during sentencing.<sup>2</sup> Pardons also reaped rewards for the monarchs who granted them. They endeared subjects to their king or queen, could be sold to fill the royal coffers, and even helped populate the empire: the crown induced several thousand convicted felons to settle the American colonies in exchange for conditional pardons.<sup>3</sup>

Along with its criminals, the English monarchy transported its notions of clemency to the Americas. Royal charters granted in the seventeenth and eighteenth centuries typically authorized colonial governors to exercise the king's pardoning powers by delegation.<sup>4</sup> After declaring independence from England, the former colonists did not radically depart from this tradition. At the Constitutional Convention in 1787, delegates engaged in only minor debate over Alexander Hamilton's proposal to vest broad pardon powers in the U.S. president.<sup>5</sup>

Accordingly, article II, section 2, of the U.S. Constitution grants the president the “Power to grant Reprieves and Pardons for Offenses against the United States, except in Cases of Impeachment.”<sup>6</sup> This language was ratified on June 21, 1788, and has remained unchanged since.

At the state level, early Americans were wary of establishing any form of executive power that remotely resembled English royal governorship, with its broad grant of powers. Still, most states vested governors with clemency powers similar to those exercised by royal governors.<sup>7</sup> Today, most state constitutions grant clemency powers to governors alone, although a handful have established shared powers, whether shared between the governor and a board or the governor and the legislature.<sup>8</sup>

## Wisconsin law

Article V, section 6, of the Wisconsin Constitution vests the governor with the power to grant reprieves, commutations, and pardons to individuals who have been convicted of a crime, except in cases of treason and impeachment. (In cases of treason, the governor may suspend the execution of a sentence, whereupon the legislature must either grant a reprieve, pardon, or commutation, or direct the execution of the sentence.) The governor may also grant clemency on a conditional basis “as he may think proper.” This section constrains the governor’s clemency powers only with respect to the clemency applications process, which may be regulated under statute. Otherwise, it simply requires the governor to report to the legislature annually on “each case of reprieve, commutation or pardon granted,” including certain information about each case, such as the person’s name, the crime for which the person was convicted, and the governor’s reasons for granting clemency, among other things.<sup>9</sup> This section of the Wisconsin Constitution has not been amended since it was first ratified.

Other sections of the Wisconsin Constitution clarify the governor’s clemency powers by specifying which rights are lost upon conviction of a crime and thus which rights are restored by an act of clemency. Article III, section 2, of the Wisconsin Constitution permits the enactment of laws excluding persons convicted of a felony from the right to vote, unless restored to civil rights.<sup>10</sup> Additionally, under article XIII, section 3, of the Wisconsin Constitution, no person convicted of felony, or convicted of a misdemeanor involving a violation of public trust, is eligible to serve in “any office of trust, profit or honor in this state unless pardoned of the conviction.” Such a person may not be placed on any ballot for a state or local elective office unless pardoned. Accordingly, a pardon restores the right to vote, run for state or local elective office, and hold public office.<sup>11</sup>

In addition to these constitutional provisions, the Wisconsin Statutes establish

requirements relating to the pardon application process, as well as the enforcement of conditional pardons, under Wis. Stat. §§ 304.08 to 304.11. These statutes dictate notice requirements relating to a pardon application, specify the papers that must accompany a pardon application, and authorize the provision of a victim's statement, among various other things.

The Wisconsin Statutes also authorize the governor to take actions that have the same effect as a pardon issued under the governor's constitutional authority. Under circumstances provided for under Wis. Stat. § 973.013 (2), the governor may discharge an individual committed to the Wisconsin state prisons without following the procedures required under Wis. Stat. ch. 304, and such a discharge has the effect of a pardon.<sup>12</sup>

Beyond these constitutional and statutory provisions, clemency occurs at the discretion of the governor. Currently, the Pardon Advisory Board, reinstated by Governor Evers under 2019 Executive Order No. 30, sets criteria for obtaining clemency and processes clemency applications.<sup>13</sup> Under the criteria, only pardons are available, and any applicant for a pardon must have completed his or her sentence at least five years prior. An individual required to register as a sex offender is ineligible for a pardon, as is an individual with any pending criminal charges or cases in any jurisdiction.<sup>14</sup>

## U.S. Supreme Court interpretations

Executive clemency powers have remained unchanged under both the U.S. Constitution and the Wisconsin Constitution, but interpretations of the meaning, effect, and limits of these powers remain in flux. Does a pardon wholly eliminate the recipient's guilt before the law? Or does it simply strike down punishment and other legal consequences of a conviction without implying the recipient's innocence?<sup>15</sup> These questions guide important practical decisions, such as whether courts must take into account pardoned offenses when determining someone to be a repeat offender, or whether pardoned felons may serve in public office. In Wisconsin, reported case law has rarely addressed these questions; however, attorney general opinions have generally adhered to U.S. Supreme Court opinions, as summarized below.

Over the long arc of American history, U.S. Supreme Court decisions relating to the meaning of clemency have shifted notably.<sup>16</sup> Early decisions positioned clemency as an act of mercy—that is, forgiveness offered to those who admit guilt and show remorse. In 1833, Chief Justice John Marshall described the pardon as a private “act of grace . . . which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed.”<sup>17</sup> This position presumed the guilt of the person pardoned. It did not question the fairness of the sentence imposed on the convicted person or raise the possibility

of wrongful conviction. By contrast, later decisions positioned clemency as a means to redress the failures of the criminal justice system. In 1925, Chief Justice William Howard Taft characterized executive clemency as “afford[ing] relief from the undue harshness or evident mistake in the operation or enforcement of the criminal law.”<sup>18</sup> Decades later, Chief Justice William Rehnquist likewise described clemency as “the historic remedy for preventing miscarriages of justice,” noting that “history is replete with examples of wrongfully convicted persons who have been pardoned in the wake of after-discovered evidence establishing their innocence.”<sup>19</sup> This notion of clemency, unlike that of Chief Justice Marshall, did not presume the guilt of the person pardoned.

Supreme Court decisions have also shifted with respect to the practical effects of a pardon. Nineteenth century opinions characterized these effects as expansive. In *Ex parte Garland*, the court weighed whether a presidential pardon enabled A. H. Garland to practice law in federal courts despite a law barring persons who had taken up arms against the United States (i.e., former Confederates). Ruling in Garland’s favor, the court held that a full pardon “blots out of existence the guilt, so that, in the eye of the law, the offender is as innocent as if he had never committed the offence.”<sup>20</sup> Later decisions retreated from this expansive conception of the pardon’s effects.<sup>21</sup> In *Carlesi v. New York*, the court ruled that an individual could stand accused of a second offense on the basis of a pardoned first offense.<sup>22</sup> And in *Burdick v. United States*, the court noted that a pardon “carries an imputation of guilt; acceptance a confession of it.”<sup>23</sup> Together, these rulings suggested that a pardon does not “blot out” guilt; it eliminates the consequences of a crime but not the crime itself.<sup>24</sup>

For their part, presidents and governors have demonstrated through their actions very different interpretations of the executive clemency powers. However much these interpretations have diverged from those of the nation’s highest court, the U.S. Supreme Court has generally declined to constrain these powers. Individuals who object to an executive’s abuses of the pardon power would do better to “resort to impeachment” than to advocate for “a narrow and strained construction of the general powers of the President,” asserted Chief Justice Taft in *Ex parte Grossman*.<sup>25</sup> At the state level, courts have also affirmed the breadth of executive clemency powers, particularly in cases challenging governors’ use of commutation as a means to prevent imposition of the death penalty.<sup>26</sup> These decisions recognize a governor’s authority to wield executive clemency in ways that may seem to prevent or frustrate enforcement of state laws.<sup>27</sup>

## Wisconsin interpretations

In Wisconsin, legal interpretations of the meaning and effect of the governor’s

clemency powers are mostly limited to attorney general opinions, which have generally followed the contours of U.S. Supreme Court decisions. For example, state attorneys general have confirmed that a pardon does not “wipe out” conviction or guilt, and consequently, a pardoned individual “will be a second offender if he commits another crime.”<sup>28</sup> As a case in point, after an individual is pardoned, information about the offense will remain available to the public through the Consolidated Court Automation Programs Case Management System, although this system will indicate that the conviction was pardoned.<sup>29</sup>

Much of the debate around clemency in Wisconsin has concerned the effect of a pardon upon an individual’s civil rights. During early statehood, the pardon possessed the power to bring someone back to life—before the law, that is. Under English common law, a convicted felon was “regarded as dead by the law,” and thus unable to bring any kind of legal action or serve as a witness.<sup>30</sup> This concept of “civil death” carried weight in a frontier state such as Wisconsin.<sup>31</sup> In 1849, state legislators enacted a law that underscored convicted felons’ marginal civil status, requiring dissolution of a marriage when either party was sentenced to life imprisonment.<sup>32</sup> Accordingly, some early pardons were granted with the goal of rendering their recipients “civilly alive” by restoring basic civil rights, such as the ability to serve as a witness.<sup>33</sup> But in *State v. Duket*, the Wisconsin Supreme Court declared that “[t]here is no such thing as civil death in this country,” and the only consequences that result from conviction of a crime are those specifically spelled out under statute.<sup>34</sup> While the pardon no longer restored someone to civil life, a felony conviction no longer carried such dire legal consequences as civil death.

Subsequent attorney general opinions reaffirmed this ruling and clarified which rights could be restored by a pardon.<sup>35</sup> For example, a pair of complementary opinions from the 1930s reasoned that a pardon restored any right lost as a direct result of a criminal conviction—but none lost as an *indirect* result. One opinion confirmed that a pardon recipient was entitled to a pension that, under statute, persons convicted of a felony were prohibited from receiving.<sup>36</sup> The other opinion concluded that a doctor could not automatically claim the right to practice medicine upon receiving a pardon. As the attorney general opined, the statute simply provided for the medical board’s authority to revoke a doctor’s license; the statute did not require the revocation itself. Accordingly, the doctor would need to seek reinstatement from the board.<sup>37</sup> Another 1936 opinion considered whether the pardon could restore an alien’s right to remain in the country but declined to offer a definitive conclusion. Whether a pardon prevented deportation, the attorney general reasoned, would depend on the conviction in question and the federal law providing for deportation.<sup>38</sup>

A pardon would take *no* effect whatsoever if the applicant circumvented or abused the application process provided under statute. According to one 1924 opinion, any form of clemency could be revoked and rendered ineffective if obtained by “false and fraudulent representations,” including “misstatements of facts.”<sup>39</sup> Under such circumstances, someone released from prison could be re-imprisoned as an escaped convict.<sup>40</sup> A 1926 opinion confirmed that a pardon “must be secured by taking the procedural steps prescribed by the statute for securing a pardon”—and by no other means.<sup>41</sup>

Other legal interpretations have contemplated the limits of the governor’s clemency powers. In *State ex rel. Rodd v. Verage*, the Wisconsin Supreme Court considered whether the governor could pardon someone imprisoned for violation of a civil court order, rather than a criminal conviction. Although declining to decide this question, the court seemed inclined to restrict the governor’s clemency powers to “cases of punishment of a criminal nature.”<sup>42</sup> Permitting the governor to release civil prisoners constituted a slippery slope that could erode the court’s own authority: “This in effect would vest in the governor a power of review of the decision not only of a trial court but of this court.”<sup>43</sup>

Outside of *State ex rel. Rodd v. Verage*, the Wisconsin Supreme Court has addressed the governor’s clemency powers only tangentially. In *State v. Catlin*, the court found Representative Mark Catlin, Jr., to be “trading on the belief” that his professional relationship with the governor would secure the success of pardon applications made on his behalf as a practicing attorney.<sup>44</sup> The court’s decision primarily concerned the professional discipline of Rep. Catlin as an attorney and only briefly touched on the “unrestricted delegation” of clemency powers to the governor. The decision simply stated, “The constitution gives the governor absolute and arbitrary power to grant or deny clemency.”<sup>45</sup>

Although the governor’s clemency powers are absolute, they are not exclusive.<sup>46</sup> As noted above, the Wisconsin Constitution authorizes the legislature to pardon or commute the sentence of someone convicted of treason whose sentence is suspended by the governor.<sup>47</sup> (No legislature has carried out this power.<sup>48</sup>) Otherwise, as one attorney general opinion put it, the governor “alone can restore a person convicted of felony to his civil rights.”<sup>49</sup> Still, the legislature has enacted laws with effects similar to those of grants of executive clemency. Most notably, Chapter 477, Laws of 1947, provided for automatic restoration of civil rights to individuals who have completed criminal sentences. But subsequent attorney general opinions emphasized the substantial differences between a governor’s pardon and restoration of rights under statute.<sup>50</sup> The latter restored only an individual’s right to vote and could not restore an individual’s right to obtain a liquor license or hold public office, among other things.<sup>51</sup>

## Trends

Wisconsin governors have granted pardons, commutations, and reprieves for myriad reasons and to a diverse range of individuals. This section summarizes notable trends in governors' philosophy and use of the executive clemency powers, as recorded in the executive clemency reports. These reports—which are required under article V, section 6, of the Wisconsin Constitution and usually published in the senate or assembly journals—provide extensive information about past governors' rationale for granting clemency.

One of the most notable trends is the recent decline of clemency granted to individuals serving criminal sentences. Currently, an individual is eligible for a pardon only if at least five years have passed since the completion of his or her criminal sentence. However, in the nineteenth and early twentieth centuries, governors granted pardons to individuals serving terms of imprisonment. In fact, some early governors—such as Governor Alexander Randall (1858–62), with 172 recorded pardons—exclusively granted clemency to individuals housed in state prisons, county jails, and other places of incarceration. Moreover, many pardon recipients were serving terms of imprisonment for violent crimes. Within a year and a half, Governor Fred Zimmerman (1927–29) pardoned over 30 individuals convicted of rape, statutory rape, or assault with intent to commit rape—a disproportionate number of sexual offenders among 128 pardon recipients.<sup>52</sup> As another example, in 1955–56, Governor Walter Kohler, Jr., (1951–57) pardoned several persons convicted of murdering (or attempting to murder) their spouses.<sup>53</sup>

In laying out their rationale for pardoning persons serving sentences for violent crimes, governors often challenged the decisions of prosecutors, judges, and juries. As an example, Governor Heil questioned a prosecutor's decision to charge a man with first-degree murder: "Maybe he should have been convicted of murder in the second degree," since he was "engaged in a drunken debauch."<sup>54</sup> In another instance, Heil pardoned an individual convicted as an accessory to armed robbery and sentenced to three to thirty years' imprisonment. Heil called this sentence "excessive," given that no one was hurt and the man made out with only \$200.<sup>55</sup> Elsewhere, governors cited mitigating circumstances or deficiencies in the legal process. Governor Vernon Thomson (1957–59), for example, pardoned a man whose counsel declined to raise the insanity defense but who was later determined to be "definitely insane at the time of the crime."<sup>56</sup>

Notably, Governor John J. Blaine (1921–27) granted a series of pardons that simultaneously challenged the criminal justice system while acknowledging (and endorsing) recipients' violent acts. In the first instance, Governor Blaine pardoned a Boscobel man who assaulted a participant in a Ku Klux Klan (KKK) demonstration. Governor Blaine depicted the demonstrators as outsiders who

“produced a state of fear and terror,” while characterizing the pardon recipient as a “peaceful, retired farmer.”<sup>57</sup> Soon after, Governor Blaine pardoned a group of men who disrupted a KKK meeting in Marinette.<sup>58</sup> The governor once again condemned the “Klan rabble,”<sup>59</sup> describing the crosses they burned as “desecrations of the emblem of Christ’s suffering and sacrifice.”<sup>60</sup> Moreover, Governor Blaine alleged that several jurors in the trial were “Klan sympathizers” who browbeat other jurors into guilty verdicts for the men, who were “not criminals but just ordinary live American boys.”<sup>61</sup> Governor Blaine granted reprieves a mere six days after sentencing, suspending the recipients’ punishments before granting them pardons soon after.<sup>62</sup> In these instances, Governor Blaine seemed to wield the executive clemency powers in protest against the application of criminal justice to ends that seemed unjust.

On occasion, governors’ pardons did not challenge the judicial process or question recipients’ guilt but rather extended mercy to incarcerated individuals for whom the consequences of conviction were especially dire. For example, many governors granted pardons or commutations to facilitate release from prison for the purposes of expediting medical treatment for the recipient or reuniting the recipient with an ailing spouse.<sup>63</sup> Governors also granted pardons to prevent deportation upon the recipients’ impending release from prison, particularly in cases in which an individual would be deported to a country from which he or she had emigrated as a small child<sup>64</sup> or in which deportation meant the individual’s separation from his or her spouse and dependent children.<sup>65</sup>

In addition to granting pardons to incarcerated individuals, past governors also granted conditional pardons—that is, pardons that could be revoked if the recipients did not fulfill certain conditions. For example, in 1850, Governor Nelson Dewey (1848–52) pardoned a convicted thief on condition that he leave the state for five years.<sup>66</sup> Revocation appears to have been no empty threat. During Prohibition, Governor Blaine granted a conditional pardon to bootlegger Harry Barry after personally investigating the Barry home and witnessing the “deplorable condition” of his wife and six young children.<sup>67</sup> But Barry subsequently resumed selling moonshine, and Governor Blaine revoked his pardon, whereupon a warrant was issued for his arrest.<sup>68</sup> Before conditional pardons petered out in the early 1980s, conditions for a pardon might be receiving an honorable discharge from the U.S. Army,<sup>69</sup> not being convicted of any other crime for a period of two years,<sup>70</sup> or refraining from possessing or using firearms.<sup>71</sup>

Past governors also more frequently reduced sentences by way of commutations. In fact, by the early twentieth century, applications for commutations vastly outnumbered pardon applications, accounting for as many as 90 percent of all clemency applications in the early 1930s.<sup>72</sup> Most commonly, governors

granted commutations to shorten sentences they considered unproductive. For example, Governor Thomson commuted the sentences of various persons on parole, finding, as he put it in one instance, that “further supervision would serve no useful purpose.”<sup>73</sup> Likewise, Governor Gaylord Nelson (1959–63) commuted the sentences of several individuals whom he judged to be “rehabilitated,” which meant their remaining imprisonment or supervision served no purpose.<sup>74</sup> In another instance, Governor Patrick Lucey (1971–77) noted that imprisoning a man for nonsupport was counterproductive because it prevented him from working and making his child support payments.<sup>75</sup>


In a handful of instances, commutations were granted in recognition of legislative enactments modifying punishments for certain crimes. Governor Leonard J. Farwell (1852–54) granted one of the first commutations on December 28, 1853, to Patrick McDonald, whose sentence was converted from capital punishment to life imprisonment.<sup>76</sup> As Governor Farwell explained, the legislature had recently repealed the statute requiring capital punishment for persons convicted of first-degree murder.<sup>77</sup> Governor Lucey offered a similar rationale in granting commutations to various individuals convicted of marijuana possession. The legislature had recently enacted legislation authorizing conditional discharge of persons charged with drug possession as a first offense, and Governor Lucey shortened the sentences of previously convicted persons “in keeping with legislative intent.”<sup>78</sup>

Although the volume of pardons and commutations has fluctuated over time, reprieves have remained rare. In a handful of instances, Wisconsin governors delayed punishment in anticipation of impending court decisions. For example, before Governor Farwell commuted the sentence of Patrick McDonald to life imprisonment, as described above, he granted McDonald a reprieve while the state supreme court considered possible errors in his trial.<sup>79</sup> Governor Blaine stands apart from other governors, granting a record-setting 15 reprieves in 1925–26, most of which were intended “to give the Executive time in which to investigate the reasons set forth in the application for executive clemency.”<sup>80</sup> In other words, the governor was buying time to decide on pardons.

A recent trend in the use of executive clemency powers is the increase in the number of pardons to restore civil rights. Starting in the early twentieth century, governors began to grant an increasing number of pardons to individuals who had already completed their sentences, because restoration of civil rights, such as the right to vote, did not occur automatically under statute. For example, in 1945–47, Governor Walter S. Goodland (1943–47) granted 160 of 190 pardons to restore civil rights.<sup>81</sup> During the 1947 legislative session, the legislature enacted a statute to provide for automatic restoration of civil rights.<sup>82</sup> Although Governor Oscar Rennebohm (1947–51) said that this statute had “diminished” the number

of requests for pardons to restore civil rights,<sup>83</sup> his assessment was premature. Throughout the 1950s, Governor Kohler continued to grant pardons to restore civil rights, especially for purposes related to immigration status.<sup>84</sup> Today, Governor Evers grants pardons exclusively to restore civil rights, as discussed below.

In granting pardons to restore civil rights, governors typically acknowledged pardon recipients' guilt but emphasized their success in attaining stable, law-abiding lives. Often, governors cited an individual's service in the U.S. Armed Forces,<sup>85</sup> participation in church and community groups, and academic success, as evidence of their positive readjustment.<sup>86</sup> Governors also emphasized how a pardon opens up opportunity to solidify this adjustment—for example, by making a recipient eligible for employment opportunities, such as promotion at a life insurance company,<sup>87</sup> service as a police officer,<sup>88</sup> and licensure as a court reporter.<sup>89</sup> Governors also granted pardons to facilitate personal opportunities for the recipients. As an example, Governor Lee Sherman Dreyfus (1979–83) pardoned an individual so the individual could pursue adoption of a child.<sup>90</sup> For his part, Governor Tony Earl (1983–87) granted pardons to enable recipients to possess firearms for hunting purposes,<sup>91</sup> hold public office,<sup>92</sup> or vote in states that barred convicted felons from doing so.<sup>93</sup>

Governor Evers has continued this trend. The governor expressed his philosophy of the executive clemency powers in a February 2020 press release announcing a series of pardons: "I believe in second chances. Each of these individuals has earned a pardon by paying their debt to society, making amends, and contributing to their communities."<sup>94</sup> As a case in point, one of the first individuals to receive a pardon from Governor Evers "sought a pardon to secure better employment, specifically a career in law enforcement."<sup>95</sup> The press release announcing this pardon cited the recipient's stable employment, educational achievements, and in-person apology to his victim. Subsequent press releases have followed a similar pattern, characterizing recipients as law-abiding citizens, many of whom committed their crimes as teenagers or young adults and have since started families and established successful careers.<sup>96</sup> In this respect, Governor Evers seems to adhere to the philosophy of Chief Justice Marshall, viewing the pardon as an act of forgiveness that does not deny or negate the recipient's guilt but acknowledges his or her remorse and rehabilitation.<sup>97</sup> 

## NOTES

1. For a useful description of forms of clemency, see Michael A. Foster, “Presidential Pardons: Overview and Selected Legal Issues,” CRS Report no. R46179 (Washington DC: Congressional Research Service, Jan. 14, 2020) 3–5, <https://crsreports.congress.gov>.
2. Kathleen Dean Moore, *Pardons: Justice, Mercy, and the Public Interest* (Oxford: Oxford University Press, 1989), 17–18.
3. Moore, *Pardons: Justice, Mercy, and the Public Interest*, 19.
4. Christen Jensen, *The Pardoning Power in the American States* (Chicago: University of Chicago Press, 1922), 3–4.
5. Foster, *Presidential Pardons: Overview and Selected Legal Issues*, 2–3.
6. “Article II: Executive Branch,” National Constitution Center, accessed May 5, 2023, <http://www.constitution-center.org>.
7. Jensen, *The Pardoning Power in the American States*, 10.
8. For example, Ariz. Const. art. V, § 5, vests the governor with executive clemency powers but authorizes the legislature to enact restrictions and limitations on such powers by law. Under Ariz. Rev. Stat. § 31-402, the governor may not grant clemency unless it is first recommended by an executive clemency board. As another example, Ga. Const. art. IV, § 2, vests the executive clemency powers in a state board of pardons and paroles whose members are appointed by the governor. And as a final example, R.I. Const. art. IX, § 13 provides that the governor exercises the pardoning power with the advice and consent of the senate.
9. These reports are reproduced in the senate journals.
10. As originally ratified, this section excluded from the right to vote “any person convicted of treason or felony . . . unless restored to civil rights.” Wis. Const. art. III, § 2 (1849). C. S. Jordan, M. Frank, and C. Minton, *The Revised Statutes of the State of Wisconsin: Passed at the Second Session of the Legislature, commencing January 10, 1849* (Southport [i.e. Kenosha]: C.L. Sholes, 1849), 23, accessed via HathiTrust, <https://www.hathitrust.org/>.
11. Note that under current Wisconsin law, the right to vote is automatically restored upon completion of the term of imprisonment or probation for the crime that led to the disqualification, per Wis. Stat. § 304.078 (3).
12. Discharges under this section are restricted to an individual who has served the minimum term of punishment prescribed by the law for the offense for which he or she was sentenced, except that if the term was life imprisonment, five years must elapse after release on parole or extended supervision before the Wis. Dept. of Corrections may recommend that the governor discharge the individual.
13. See also 2021 Exec. Order No. 130.
14. Wisconsin Governor Tony Evers, “Pardon Information,” last accessed May 20, 2025, <http://www.evers.wi.gov>.
15. Foster, *Presidential Pardons: Overview and Selected Legal Issues*, 11.
16. For a helpful discussion of debates surrounding clemency as an act of mercy or justice, see Kathleen Ridolfi and Seth Gordon, “Gubernatorial Clemency Powers: Justice or Mercy?” *Criminal Justice* (Fall 2009), 26–40.
17. *United States v. Wilson*, 32 U.S. 150, 160 (1833).
18. *Ex parte Grossman*, 267 U.S. 87, 120–21 (1925). Justice Holmes echoed Taft in 1927, stating that “[a] pardon in our days is not a private act of grace.” *Biddle v. Perovich*, 274 U.S. 480, 10 (1927).
19. *Herrera v. Collins*, 506 U.S. 390, 412–13, 15 (1993).
20. *Ex parte Garland*, 71 U.S. 333, 380–81 (1866).
21. Foster, *Presidential Pardons: Overview and Selected Legal Issues*, 12.
22. *Carlesi v. New York*, 233 U.S. 51 (1914).
23. *Burdick v. United States*, 236 U.S. 79, 94 (1915).
24. Foster, *Presidential Pardons: Overview and Selected Legal Issues*, 11.
25. *Ex parte Grossman*, 267 U.S. at 121.
26. When Oregon Governor Robert Holmes commuted a convicted murderer’s death sentence to a life sentence, the family of the victim challenged the commutation on the grounds that governor’s “conscientious scruples” about capital punishment should not guide his hand in granting clemency. The Oregon Supreme Court affirmed the governor’s commutation. *Eacret v. Holmes*, 215 Or. 121, 124, 333 P.2d 741 (1958).
27. Solie M. Ringold, “The Dynamics of Executive Clemency,” *American Bar Association Journal* 52, no. 3 (March 1966): 240–243.

28. 19 Wis. Op. Att’y. Gen. 139 (1930).
29. For a succinct overview of pardon versus expungement, see Katie Bender-Olson, “Pardons,” Wisconsin Legislative Council (June 2022).
30. Harry David Saunders, “Civil Death—A New Look at an Ancient Doctrine,” *William & Mary Law Review* 11 (1969–1970): 989.
31. Benjamin J. Rosenthal, “Restoration of the Civil Rights of Convicted Criminals” (Note), *Wisconsin Law Review* (1951): 383.
32. Wis. Stat. ch. 79, § 7 (1849). Jordan, Frank, and Minton, *The Revised Statutes of the State of Wisconsin: Passed at the Second Session of the Legislature, Commencing January 10, 1849*, 394. This statute was later repealed under Ch. 323, Laws of 1909.
33. Rosenthal cites two pardons given by Governor Coles Bashford in 1869 with the purpose of restoring the recipients’ ability to serve as witnesses. See Wis. Senate Journal (1869) 35; Wis. Senate Journal (1870) 23. Rosenthal, “Restoration of the Civil Rights of Convicted Criminals,” 383. One U.S. Supreme Court decision concerns presidential pardons made on a similar basis, suggesting some lingering adherence to the notion of civil death at the federal level. See *Boyd v. United States*, 142 U.S. 450 (1892).
34. *State v. Duket*, 90 Wis. 272, 278 (1895).
35. “The conviction of a person of a felony does not take away from him his citizenship of the United States.” 22 Wis. Op. Att’y. Gen. 821 (1933). See also 14 Wis. Op. Att’y. Gen. 192 (1925); 25 Wis. Op. Att’y. Gen. 213 and 708 (1936).
36. 26 Wis. Op. Att’y. Gen. 381 (1937).
37. 22 Wis. Op. Att’y. Gen. 943 (1933).
38. 25 Wis. Op. Att’y. Gen. 479 (1936).
39. 13 Wis. Op. Att’y. Gen. 625–26 (1924).
40. *Id.*
41. 15 Wis. Op. Att’y. Gen. 198–200 (1926).
42. *State ex rel. Rodd v. Verage*, 177 Wis. 295, 320 (1922).
43. *Id.* at 308.
44. *State v. Catlin*, 2 Wis. 2d 240, 251 (1957).
45. *Id.* at 249.
46. E. E. Brossard, “Restoration of Civil Rights,” *Wisconsin Law Review* 3 (May 1946): 281–82.
47. Wis. Const. art. V, § 6.
48. Only two prosecutions for treason against the state have occurred in the United States, against Thomas Wilson Dorr (Rhode Island) and John Brown (South Carolina). J. Taylor McConkie, “State Treason: The History and Validity of Treason Against Individual States,” *Kentucky Law Journal* 101, no. 2 (2013): 281–336.
49. 15 Wis. Op. Att’y. Gen. 135 (1926).
50. Language providing for automatic restoration of civil rights was created under Wis. Stat. § 57.078 (1947) and currently exists under Wis. Stat. § 304.078.
51. 60 Wis. Op. Att’y. Gen. 453 (1971); 63 Wis. Op. Att’y. Gen. 75 (1974).
52. J. K. Kyle, “Governor’s Total 129 in 17 Months,” *Capital Times*, May 20, 1928, 1.
53. Wis. Senate Journal (1957) 73.
54. Wis. Senate Journal (1943) 137.
55. Wis. Senate Journal (1943) 134.
56. Wis. Senate Journal (1959) 39.
57. “Blaine Attacks Klan in Shields Pardon Message,” *La Crosse Tribune and Leader Press*, October 2, 1925, 1.
58. “Anti-Klan Rioters Freed by Governor Pending an Inquiry,” *La Crosse Tribune and Leader Press*, November 10, 1926, 1.
59. Wis. Assembly Journal (1927) 110.
60. Wis. Assembly Journal (1927) 109–10.
61. Wis. Assembly Journal (1927) 111–12.
62. Wis. Senate Journal (1927) 111, 253.

63. Wis. Senate Journal (1953) 39–40; Wis. Senate Journal (1943) 129, 143.
64. Wis. Senate Journal (1953) 40; Wis. Senate Journal (1973) 176.
65. Wis. Senate Journal (1953) 42.
66. Wis. Assembly Journal (1851) 820.
67. Wis. Senate Journal (1927), 145.
68. “Blaine Gives Order For His Rearrest,” *Wisconsin State Journal*, August 19, 1925, 1. Months later, Barry’s wife was also arrested for violating liquor laws. “Mrs. Harry Barry is Jailed for Booze,” *Capital Times*, October 3, 1925.
69. Wis. Senate Journal (1973) 184–5.
70. Wis. Senate Journal (1979) 10.
71. Wis. Senate Journal (1983) 18.
72. “La Follette Urges Change in State System of Pardons,” *Wisconsin State Journal*, January 4, 1933, 7.
73. Wis. Senate Journal (1959) 41.
74. Wis. Senate Journal (1963) 12–13.
75. Wis. Senate Journal (1973) 189.
76. See Wis. Stat. ch. 133, § 2 (1849). Jordan, Frank, and Baker, *The Revised Statutes of the State of Wisconsin: Passed at the Second Session of the Legislature, Commencing January 10, 1849*, 682.
77. Wis. Assembly Journal (1854) 74. See Ch. 103, Laws of 1853.
78. Wis. Senate Journal (1973) 178. See also Wis. Senate Journal (1973) 175. See Ch. 219, Laws of 1971.
79. Wis. Assembly Journal (1853) 757.
80. Wis. Senate Journal (1927) 251–4.
81. Wis. Senate Journal (1947) 377–427; Wis. Senate Journal (1949) 259–82. Note that Governor Goodland died on March 12, 1947.
82. Ch. 477, Laws of 1947.
83. Wis. Senate Journal (1951) 90.
84. See, for example, Wis. Senate Journal (1955) 1677.
85. Wis. Senate Journal (1959) 38; Wis. Senate Journal (1963) 16.
86. Wis. Senate Journal (1963) 16; Wis. Senate Journal (1983) 15.
87. Wis. Senate Journal (1943) 126.
88. Wis. Senate Journal (1973) 194.
89. Wis. Senate Journal (1983) 14.
90. Wis. Senate Journal (1981) 145.
91. The enactment of Ch. 141, Laws of 1981, in March 1982 generally prohibited possession of a firearm by anyone convicted of a felony, regardless of the date of the crime. Governor Earl’s subsequent executive clemency reports included various pardons for persons who sought pardons in order to lawfully possess firearms for hunting purposes. See, for example, Wis. Senate Journal (1983) 15.
92. Wis. Senate Journal (1983) 16.
93. Wis. Senate Journal (1983) 15.
94. Office of the Governor, “Gov. Evers Grants Pardons to 17 More Individuals,” news release, February 19, 2020.
95. Office of the Governor, “Gov. Evers Takes Action on Pardon Advisory Board Recommendations,” news release, October 7, 2019.
96. See, for example, Office of the Governor, “Gov. Evers Grants 18 Pardons, Brings Total Pardons Granted to 192,” news release, May 5, 2021.
97. *United States v. Wilson*, 32 U.S. 150, 160 (1833).