



# HILLAR C. MOORE, III

DISTRICT ATTORNEY, 19TH JUDICIAL DISTRICT  
EAST BATON ROUGE PARISH

July 12, 2023

La. Department of Public Safety and Corrections  
Attn: Deputy Secretary's Office  
P.O. Box 94304  
Baton Rouge, LA 70804  
(225) 342-6744  
(225) 342-3095 (fax)

Due to the recent filing of over 50 applications for commutation filed on behalf of capital offenders, including several in East Baton Rouge Parish cases, I am submitting the instant request for public records and information.

Thank you for your consideration of this request. I understand that this request may be seen as cumbersome, however we would request expedited response due to the time constraints that we now face.

RESPECTFULLY SUBMITTED,

HILLAR C. MOORE, III  
DISTRICT ATTORNEY

A handwritten signature in black ink, appearing to read "Hillar C. Moore, III", written over a horizontal line.

Nineteenth Judicial District  
Parish of East Baton Rouge  
State of Louisiana  
222 St. Louis Street, 5th Floor  
Baton Rouge, Louisiana 70802  
Telephone: (225) 389-3453

cc: Sheryl M. Ranatza, Chairman, LA Board of Pardons and Committee on Parole  
James M. Le Blanc, Secretary, Louisiana Department of Public Safety and Corrections

## PUBLIC RECORDS AND INFORMATION REQUEST

Pursuant to La. R.S. 44:1, *et seq.* and La. R.S. 15:572, *et seq.*, and for purposes of information and understanding, and in order to afford authorized individuals a fair opportunity to participate, undersigned is respectfully requesting public records and information pertaining to actions and decisions concerning the Board's consideration, processing, review, and scheduling of the more than fifty applications for commutation of sentence recently filed on behalf of capital offenders, including, but not limited to: policies, procedures, notices, actions, orders, instructions, agendas, deliberations, decisions, records, writings, meetings, minutes, and available records of public business that is subject to the Open Meetings Law. *See* La. R.S. 44:11, *et seq.*

The matters that are the primary focus of the instant request came about in an unexpected way – in some cases almost 30 years after conviction - and they are now proceeding in an accelerated, yet unfamiliar, manner. By way of explanation regarding the nature and circumstances of this request and in order to more particularly describe the documents and information requested, I offer the following.

The governor has publicly expressed his opposition to capital punishment. His term expires January 8, 2024.

Recently, over 50 applications for commutation were filed on behalf of capital offenders, including several in East Baton Rouge Parish cases, including the capital convictions of David Bowie, Quincy Broaden, Henri Broadway, Allen Robertson, Antoine Tate, Todd Wessinger, Robert Miller, Gregory Brown, Anthony Bell, and Dacarius Holliday. The effort to seek commutation has obviously been well planned, organized, and financed. Extensive media coverage was immediately published including details on inmates who had petitions filed as well as interviews with advocates against the death penalty.

The current wave of applications for commutation of sentence have come as a surprise to several district attorneys and to many members of the public. To several of the victims' families, the news of the applications came as a shock and has caused significant confusion, particularly in light of the associated media exposure. Many family members of murdered victims had received letters from attorneys representing the inmates in advance of the disclosure of the news of the anticipated filing of the clemency applications. Based on the letters I have reviewed, they purport to offer communication and support, but they did not inform the victim's family member recipient that they might expect that a clemency application was

going to be filed on behalf of the inmate. For purposes of understanding of how a victim's family member might receive the news of the filing of applications for commutation just a short time after receiving a letter purportedly offering support and communication, Warrick Dunn has allowed that I might share the letter he received. Exh. A. (Note: Mr. Dunn's name was incorrectly listed as Warren Dunn. He is the son of Betty Smothers, a Baton Rouge Police Officer who was killed in January of 1993. One of the assailants, Henri Broadway filed an application for commutation of his sentence, on June 13, 2023, and is currently set for the board's administrative consideration on September 7, 2023.)

The state was subsequently informed that the majority of the applications for commutation of sentence filed on behalf of the capital offenders have been set in the coming months for consideration of whether the Board will set the matter for a hearing. And, it appears possible hearing dates have been scheduled prior to the end of the year. The Board is reviewing the capital filings as quickly as possible. The state was informed that it could provide input for purposes of the Board's consideration.

Undersigned is aware that capital cases are particularly significant. In Louisiana, there have been many attempts to abolish the death penalty with vigorous debate by those on each side of this important issue. We respect the opinions of all sides of this issue. We believe that the death penalty is a penalty that is appropriate for certain statutorily prescribed crimes under very egregious circumstances. When we announce that we intend to seek the death penalty, it is only after careful consideration based on many meetings internally and with the victim's family, and after receiving input from defense counsel. Our decision simply allows our community, through its juror peers, to decide what is the appropriate decision for the facts proven and conduct of the defendant. We recognize that, although viable, the death penalty should be used sparingly and with great restraint. These cases are always very emotional, time consuming, costly, and difficult. Regardless of the outcome, there are generally no winners. Over my 15 years of service as the district attorney of East Baton Rouge Parish, there have been two death penalty verdicts. Offers for life were made in both cases, but not accepted. At this time, only one of those convicted remains on death row.

For crimes so serious as to carry out the death penalty, certain special procedural rules are required. As it currently stands, it takes our office several years to bring a death penalty case to trial with hundreds of motions filed in each case. There are writs, post-trial proceedings, and direct reviews in state court to the Louisiana Supreme Court and in federal court to the U.S. Supreme Court. In

addition, capital cases often involve extensive state and federal collateral review. As such, they routinely proceed for a significant amount of time (20-25 years) and often take a tremendous toll on the victims' families.

At this time, we are continuing to review the petitions and the facts and circumstances of the cases. Based on my current information, the applications are not applications for stay or reprieve from execution. In fact, to my knowledge, none of the applicants have a scheduled date of execution at this time. The instant applications are applications for commutation of sentence. Based on my appreciation of the Board's rules, such applications must be submitted in accordance with § 205, Application Filing Procedures. *See* 22 La. Admin. Code Pt V, 203. Every application must be submitted on the form approved by the Board of Pardons which is made available on the board's webpage at [www.doc.la.gov](http://www.doc.la.gov). *See* 22 La. Admin. Code Pt V, 205. And, any offender sentenced to death may submit an application within one year from the date of the direct appeal denial. *See* 22 La. Admin. Code Pt V, 203.

Here, upon review, several of the applications for commutation of sentence filed on behalf of capital offenders were not submitted within one-year of the date of the direct appeal denial. However, the Board, despite the pendency of approximately 440 other clemency applications, many of which have been fully investigated, has apparently added additional dates to its schedule for purposes of processing the capital offender commutation applications.

It also appears these matters are proceeding on an extremely accelerated basis and in a condensed time period that is prior to the end of the year and/or the expiration of this Governor's term. Based on my understanding, the clemency process generally takes at least a year, and may even require additional time. For example, in a recent case involving my office, attached correspondence informs the applicant of certain obligations associated with the clemency process and the consequences of noncompliance. Said correspondence suggests the clemency process generally takes a year from the receipt of the application. Exh. B.

As stated previously, the Board has indicated that the state may submit input for purposes of consideration. However, although the Board believes it has access to sufficient information to proceed relative to the applications, several district attorneys and victim family members do not. Due to the number of applications, the expedited nature of the situation, and the corresponding insufficiency of necessary information, the state is unable to comprehensively respond to the applications for commutation. Even as of the time of the instant request, my office

is having difficulty obtaining records that are necessary to respond to particular allegations. Specifically, the state's continued efforts to obtain information necessary for purposes of responding to the application filed on behalf of David Bowie have been unsuccessful. David Bowie was convicted of the first degree murder of John "Fish Man" Smith, Jr. in March of 1999, in East Baton Rouge Parish, and was sentenced to death. Mr. Smith was 70 years old at the time of his murder. He was punched and choked with shoelaces until blood bubbles were popping out of his nose. Unsatisfied with the shoelaces, Bowie threw Mr. Smith into the hallway, dragged him into a spare bedroom, and stuffed his nose and mouth with tissue. Bowie then put a towel in Mr. Smith's mouth and placed a rag over his face. Using the cord from an iron, Bowie looped it around Mr. Smith's neck twice, pulled it and tied it tightly, causing Mr. Smith's death. Later, Bowie shot one of his companions four times. On June 13, 2023, Bowie filed an application with the Louisiana Board of Pardons and Committee on Parole (PB) seeking commutation of his death sentence. Bowie's application is scheduled to be "administratively" reviewed on July 28, 2023.

Moreover, undersigned is unable to offer reasonable insight to concerned family members of victims regarding the nature and circumstances of the current proceedings or how and why they are not only happening right now, but also appear to be proceeding on an expedited basis and in a condensed timeframe. Thus, we are continuing our efforts to obtain necessary information regarding the clemency applications in order to effectively participate in certain proceedings and to communicate information, if necessary, as it becomes available. Without access to information that is available and is requested herein, it is possible the governor might take action how he deems appropriate, but without being fully informed and affording involved parties a reasonable opportunity to participate. It is also possible that such action could possibly leave concerned individuals and/or the public in general without opportunity for recourse, meaningful review, and/or even a minimal understanding of the proceedings. Therefore, it is imperative that both the Board and the district attorney be provided with all of the information that is available and that the proper historic rules that have been followed by this Board continue to be followed.

Society and my office as District Attorney, representative of the State of Louisiana, has a recognized interest in the fair administration of justice and in the enforcement of its criminal laws; thus, to act without regard for these considerations undermines the legitimate interests shared by the State and the victims of crime alike. The State should be afforded the ability to meaningfully respond to the applications for commutation and/or participate in the proceedings, not to mention relatives of a

deceased victim who have the right to notice and an opportunity to be heard. It is essential that public business be performed in an open and public manner and that the citizens be advised of and aware of the performance of public officials and the deliberations and decisions that go into the making of public policy. For these reasons, the undersigned respectfully requests to be provided with copies of public records concerning the processing and scheduling of the several clemency applications recently filed on behalf of capital offenders, in particular, but not limited to:

- documents and information concerning the timeliness of the applications
- information relating to any expedited consideration
- information concerning the apparently condensed timeline.

Stated differently, I am requesting any available information and records regarding the review procedures utilized relative to the applications as well as any information as to how these matters were scheduled for further consideration.

Additionally, as indicated previously, the state is continuing its efforts to obtain necessary information to respond to the various individual applications, including requests to the Department of Corrections, but with minimal success. Specifically, we are unable to obtain medical records for purposes of responding to claims that commutation is warranted based on alleged mental and or medical deficiency. However, it appears that the application form for commutation contemplates the release of information to the Board and it also appears, from a review of some of the claims raised in the applications, that certain records are necessary for purposes of the Board's and the Governor's consideration. Therefore, out of an abundance of caution, undersigned requests that it be informed whether custodians of records and sources of information have released information upon request of any duly accredited representative of Board. And, where authorized by law, the state, by way of the instant request, requests that it be provided with, or permitted to inspect: information supplied to the Board by or on behalf of an applicant that is not contained in the application; full and complete physical and mental health records for each EBR applicant with the exception of Frank Cosey; and full and complete disciplinary records. We specifically request that we be provided with complete copies of such records and not merely a synopsis of the records, even if the Board was provided with or only requested a synopsis. Respectfully, we would request that the aforementioned records pertaining to the cases of David Bowie, Quincy Broaden, Henri Broadway, Antoine Tate, Todd Wessinger, and Anthony Bell be provided as soon as possible as those cases are currently set for administrative review.

Again, thank you for your consideration of this request. I understand that this request may be seen as cumbersome, however we would request expedited response due to the time constraints that we now face.

RESPECTFULLY SUBMITTED,

HILLAR C. MOORE, III  
DISTRICT ATTORNEY

A handwritten signature in blue ink, appearing to read "H. Moore", is written over a horizontal line.

Nineteenth Judicial District  
Parish of East Baton Rouge  
State of Louisiana  
222 St. Louis Street, 5th Floor  
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Telephone: (225) 389-3453



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Sarah L. Ottinger

ATTORNEY AT LAW

2563 Bayou Road o Second Floor o New Orleans, Louisiana o 70119

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May 19, 2023

Warren Dunn

[REDACTED]  
[REDACTED]

Dear Mr. Dunn,

I am writing to introduce myself as the attorney representing Henri Broadway. I can imagine that it may be difficult to receive this letter out of the blue from me. I apologize if this letter adds to your grief.

I want to express my deepest sympathies for the loss of your mother. I cannot even imagine everything you have been through, and I want to be sensitive to the impact that Mr. Broadway's proceedings have on you and your family. For that reason, I have engaged a Defense Victim Outreach Specialist, Molly Martin LaBay, to establish an open line of communication with you so that you can be informed of important developments in the case, request information from us, or simply express any thoughts or concerns you have regarding this case. Ms. Martin LaBay is not an advocate for Mr. Broadway. Rather, she serves as a liaison between families of victims and defendants' legal teams to facilitate dialogue for family members who may be interested in being in communication.

Ms. Martin LaBay will be reaching out to you soon to introduce herself and to explain her role. She can share more details about how she might be available to assist you. If you would like to be in touch with Ms. Martin LaBay before you hear from her, please feel free to call her at (504) 655-1941.

Through Ms. Martin LaBay, we hope to respectfully give you the chance, should you choose, to communicate any questions or concerns, or anything at all that you would like to convey. We are also reaching out to your siblings and grandmother. If you know of other family members who would like to be in touch with us, please let us know, and we will also reach out to them. Thank you for taking the time to read this letter.

Sincerely,



Sarah Ottinger

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Telephone: (504) 258-6537  
Email: soringe1010@gmail.com

EXHIBIT

A

tabbles



JOHN BEL EDWARDS

Governor



# State of Louisiana

BOARD OF PARDONS AND PAROLE

September 28, 2021

[REDACTED]

Re: [REDACTED]  
Pardon Application Reviewed on September 27, 2021

[REDACTED]

The Louisiana Board of Pardons has reviewed your application for clemency and has granted your request for a hearing.

Before your case can be heard, you must provide a copy of the required advertisement and a **notarized affidavit from the official journal** of the parish where the offense occurred. The official journal for East Baton Rouge Parish is:

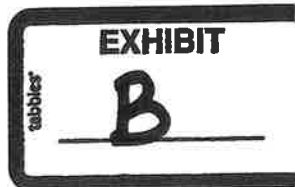
**The Advocate 10715 Rieger Rd.  
Baton Rouge, LA 70809 Ph: (225) 383-1111  
Email: [legal.ads@theadvocate.com](mailto:legal.ads@theadvocate.com)**

This proof must be received in this office within 90 days from the date of this letter. This advertisement must run 3 days within a 30-day period. No exceptions can be granted under the existing Rules of the Louisiana Board of Pardons. Failure to provide this information within the allotted time will result in your case being closed without further notice.

The advertisement must read as follows:

**"I, (applicant's name), (DOC number), have applied for clemency for my conviction of (crime). If you have any comments, contact the Board of Pardons (225) 342-5421."**

Post Office Box 94304 • Baton Rouge, Louisiana 70804-9304 • [www.doc.la.gov](http://www.doc.la.gov)  
(225) 342-6622 • [paroleboard@corrections.state.la.us](mailto:paroleboard@corrections.state.la.us)  
An Equal Opportunity Employer



JOHN BEL EDWARDS  
Governor



# State of Louisiana

## BOARD OF PARDONS AND PAROLE

July 14, 2023

Honorable Hillar C. Moore III  
District Attorney  
19<sup>th</sup> Judicial District  
Baton Rouge, LA 70808

RE: Capital Clemency Applications Public Records and Information Request

Dear Mr. Moore,

We are in receipt of your public records request addressed to the La. Department of Public Safety & Corrections (LDPSC) dated July 12, 2023, and hear the concerns of the East Baton Rouge Parish District Attorney's Office and the victims' families regarding the submission of clemency applications by fifty-six capital inmates. Due to the size of the public records requested concerning timelines of the applications, any expedited consideration and condensed timelines we have elected to share all related documents with your staff via Google Drive.

In reference to your office's request for medical and mental health records for these applicants, we view the LDPSC as the custodian of those records. We have and will continue to share all documents that have been submitted to our Board and as of this letter all information that has been submitted to the Board has been shared with your office via Google Drive. As additional information comes in it will be made available to your office.

I would like to elaborate on the administrative review process by explaining the typical manner in which we receive and process clemency applications. Our normal process for administrative review of applications is that if the application is received prior to the 16th day of the month, the application is set for review the following month. Fifty-one of the now fifty-six applications submitted were received on June 13, 2023, so our normal process would be to conduct administrative review of all of those applications in July 2023. Generally, the board receives/reviews an average of thirty-five applications each month. Due to the volume of these capital filings, considering all of them in July was not deemed feasible or appropriate. Even though we are unable to review all the capital filings in July, I believe it is important to process the applications as quickly as possible. Furthermore, we are not required by law to notify District Attorneys or victims during the administrative review process but decided to as our Board felt it important to have involvement from all

Post Office Box 94304 • Baton Rouge, Louisiana 70804-9304 • [www.doc.la.gov](http://www.doc.la.gov)  
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Honorable Hillar Moore

July 14, 2023

Page 2

its stakeholders as early in this process as possible. It is also important to point out that part of this administrative review includes a determination of eligibility for consideration at a public hearing.

Sincerely,

A handwritten signature in black ink, appearing to read "Francis M. Abbott III". The signature is written in a cursive style with a horizontal line at the end.

Francis M. Abbott III, Executive Director  
Louisiana Board of Pardons & Committee on Parole

Cc: Malcolm Myers, Deputy Secretary, LDPSC  
James M. Le Blanc, Secretary, LDPSC



**HILLAR C. MOORE, III**

**DISTRICT ATTORNEY, 19TH JUDICIAL DISTRICT  
EAST BATON ROUGE PARISH**

July 17, 2023

Louisiana Board of Pardons  
Post Office Box 94304  
Baton Rouge, LA 70804

RE: David Bowie, DOC # 337635

Please see attached my objection to David Bowie's application for clemency. Not only is petitioner Bowie not deserving of the grace of clemency, as the facts of his case show, but his application is untimely in accordance with this Board's policies and directives, and the La. Admin Code title 22, Pt V, § 213 and § 203.

Thank you for your time and consideration of my position in this matter.

Respectfully,

Hillar C. Moore, III  
District Attorney

To: Louisiana Board of Pardons  
From: Hillar C. Moore, III, District Attorney, 19th Judicial District  
Re: David Bowie, #337635

Petitioner David Bowie was convicted of the first degree murder of John “Fish Man” Smith, Jr., and was sentenced to death. The jury found four aggravating factors: (1) Petitioner Bowie was engaged in the perpetration or attempted perpetration of an armed robbery when he attempted to rob Mr. Smith of the money from his safe, to which the victim refused, and stole Mr. Smith’s vehicle after he was killed; (2) Petitioner Bowie knowingly created a risk of death to more than one person when later that night he shot Kathy Armstead Fort, who helped Mr. Smith in his small fish-selling business and was often in Smith’s home, four times after telling his friend Michael Owens that “he had to get rid of the [women,]” and that he “had to do something with them...;” (3) The crime was committed in an especially heinous, atrocious, or cruel manner: Mr. Smith was hit by Mr. Sterling, at the direction of petitioner Bowie, three times. Fort overheard petitioner Bowie tell Sterling to hit the victim with his “best shot,” and then heard the impact. Petitioner Bowie then choked the victim with shoelaces, causing the victim to urinate on himself and had “blood bubbles popping out of his nose.” Unsatisfied with the shoelaces, petitioner Bowie grabbed the victim and propelled him from his bedroom into the hallway and dragged the victim into the spare bedroom. Petitioner Bowie grabbed tissue from a bathroom and shoved it into the victim’s nose and mouth, then

put a towel in the victim's mouth and placed a rag over his face. Using the cord from an iron in the spare bedroom, petitioner Bowie looped the cord twice around the victim's neck, pulled the cord and tied it tightly, causing the victim's death; and (5) Mr. Smith was 70 years old (over the age of 65) at the time he was murdered.

Petitioner Bowie's claims in mitigation revolved around his "extensive history of trauma and exposure to drugs at a young age." However, petitioner Bowie claims he was raised by his grandmother, Virginia Bowie, for most of his youth. He considered his grandmother to be his mother, and stated that she "ran a strict but fair household." Petitioner Bowie's grandmother was a minister and cleaned houses.

Petitioner Bowie also claimed he has "borderline intellectual function." However, when he was assessed prior to trial, Dr. Merrill found no neuropsychological impairments or mental disease, and when petitioner Bowie was assessed in 1994 by someone other than Dr. Merrill, his intellect was found to be in the normal range. Dr. Hope, who testified for the State at trial, found petitioner Bowie had a learning disability which "highly correlated with criminal behavior." Petitioner Bowie started skipping school and experimenting with drugs and alcohol in sixth grade. He was arrested in ninth grade for selling cocaine and was sent to the Department of Youth Services. He never returned to school. In spite of petitioner Bowie's claimed "intellectual disability," he passed his GED exam while incarcerated.

Petitioner Bowie has a long criminal history of drug charges, beginning when he was a juvenile, for possession and distribution of cocaine. Petitioner Bowie had been drinking and using cocaine when he killed Mr. Smith.

Petitioner Bowie's application for clemency is scheduled for review by this board on July 28, 2023. It is the State's contention that petitioner Bowie's application is untimely, and his reliance on this board's directive 208 and policy 207 do not apply to him because he has not received a death warrant, and thus, is not a "condemned felon" in accordance with this board's rules and La. Admin Code title 22, Pt. V, § 213. Consideration of petitioner Bowie's application for clemency would be in violation of this board's own rules and the La. Admin Code.

Not only is petitioner Bowie's application untimely, the State has not been provided with his mental health and medical records for the State's review. Without a complete application, the State cannot adequately respond to petitioner Bowie's application, as is its right. It is only today, July 17, 2023, at 2:26 p.m., that I received, via email from petitioner Bowie's attorney, documentation including letters of support from family members, certified police reports, and a 2009 mental health evaluation. To receive petitioner Bowie's application piecemeal is concerning to say the least. All applications for clemency must be thoroughly investigated by all parties, because once a decision is made by the board of pardons and the governor, there is no right to appeal and the decision is final.



Petitioner Bowie's application for clemency was filed in accordance with 02-208-DIR of the Louisiana Board of Pardons. This directive states in pertinent part:

A. An offender, or his attorney, is required to submit an application no later than the 21st calendar day before the scheduled execution date. The offender or his attorney may submit supplemental information no later than the 15th calendar day before the execution is scheduled. The offender may request a Reprieve (Stay of Execution) or Commutation of Sentence.

The District Attorney's Office is unaware of any execution date for petitioner Bowie. Thus, this directive does not apply to his current situation and is not a ground in which to seek relief via clemency.

Petitioner also requests clemency under 02-207-POL of the Louisiana Board of Pardons, which states in pertinent part:

The Board will consider recommending to the Governor a reprieve of execution of death sentence upon receipt of a written application in behalf of a condemned felon. Notwithstanding any provision to the contrary by Board policy, in any case in which the death sentence has been imposed, the Governor may at any time place the case on the agenda and set a hearing for the next scheduled meeting or at a specially called meeting of the Board.

6) The Board shall consider and decide application for reprieve from execution (which may include a recommendation to commute the sentence to life imprisonment);

This policy applies to death row inmates who are "condemned," meaning they have received a death warrant. Again, the District Attorney's Office is unaware of any execution date for petitioner Bowie. Thus, this directive does not apply to his current situation and is not a ground in which to seek relief via clemency.

La. Admin Code title 22, Pt V, § 213 mirrors the pardon board's directive 208 and policy 207 in that it applies to capital cases in which a death row inmate receives a death warrant (is a condemned felon) and is requesting a stay of execution. In such a situation, and after conclusion of a hearing, the board may recommend to the governor a reprieve from execution which MAY include a recommendation for a commutation of sentence to life imprisonment. *See* 22 LA ADC Pt V, § 213 (L)(1). Again, petitioner Bowie is not a "condemned felon" for purposes of this Board's directive 208, policy 207, or title 22 § 213.

La. Admin Code title 22, Pt V, § 203 entitled "Eligibility for Clemency Consideration," states in pertinent part:

**E. Capital Cases.** Any offender sentenced to death may submit an application within one year from the date of the direct appeal denial. See also § 213, Capital Cases.

In order to be eligible to submit a clemency application under title 22 § 203, petitioner Bowie must have filed his application within one year of his sentence becoming final on direct review. The United States Supreme Court denied petitioner Bowie's writ of certiorari on October 15, 2002. *Bowie v. Louisiana*, 537 U.S. 951, 123 S.Ct. 416. Because his sentence became final on that date, his application would be untimely in accordance with § 203.

La. Admin Code title 22, Pt V, § 213, subsection M states:

Each of the provisions of **this policy** are subject to waiver by the board when it finds that there exists good and adequate cause to suspend said

provisions and adopt a different procedure which it finds to be better suited to the exigencies of the individual case before it. (Emphasis added.)

This subsection of § 213 does not apply to §203 in any way. Subsection M clearly applies to the “exigencies” that come with having a signed death warrant. This does not give the Board carte blanche to change its policies to fit the current narrative. Petitioner Bowie is not a “condemned felon,” and more than one year has elapsed since his sentence became final on direct review; thus, he is not eligible, at this time, to file for clemency under La. Admin Code title 22, Pt. V, § 213 or § 203. If this Board recommends clemency to the governor, it will be in direct violation of its own directives, policies, and the La. Admin Code.

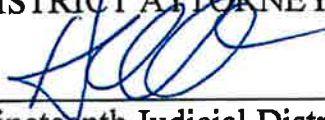
Even if it were proper for this Board to hear petitioner Bowie’s claims, the proposed timeline creates significant concern. Petitioner Bowie was convicted by 24 jurors in March of 1999 for a crime committed in January of 1996. Since that time, petitioner Bowie has appealed his sentence and conviction to the highest state and federal courts for consideration of both procedural and substantive claims relating to his conviction for one of the most heinous, atrocious, and cruel crimes in Louisiana. The process of painstakingly reviewing these claims takes years by those trained in such a process. Petitioner Bowie filed his application for clemency on June 13, 2023, and is scheduled for an administrative hearing on July 28, 2023. To force any review (procedural or substantive) of these claims in such a compressed

timeframe, absent a complete investigation and review of all pertinent records, is without precedent and creates the potential for an injustice that is not subject to further review. There were 440 pending applications for pardon/clemency at the time the instant application was filed, and 197 of those applications were fully investigated and were only awaiting a hearing date. It is unconscionable to think that this Board would place more resources in investigating and considering an application for pardon or clemency in an armed robbery case than in a first degree murder case resulting in the death penalty.

Based on the foregoing, not only does petitioner Bowie not deserve the grace of being granted clemency, his application is untimely and must be dismissed as such.

RESPECTFULLY SUBMITTED,

HILLAR C. MOORE, III  
DISTRICT ATTORNEY



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Nineteenth Judicial District  
Parish of East Baton Rouge  
State of Louisiana  
222 St. Louis Street, 5th Floor  
Baton Rouge, Louisiana 70802  
Telephone: (225) 389-3453

## Moore, Hillar

---

**From:** Tracey Barbera  
**Sent:** Monday, July 17, 2023 5:13 PM  
**To:** Sheryl Ranatza; Francis Abbott  
**Cc:** Moore, Hillar  
**Subject:** David Bowie, DOC # 337635  
**Attachments:** 1943\_001.pdf

Please see the attached objection to David Bowie's clemency application.

Respectfully,

Tracey Ewing Barbera  
First Assistant District Attorney  
East Baton Rouge Parish District Attorney's Office  
Nineteenth Judicial District  
222 Saint Louis Street, 5<sup>th</sup> Floor  
Baton Rouge, Louisiana 70802  
Office: (225)389-5173



Jeff Landry  
Attorney General

## State of Louisiana

DEPARTMENT OF JUSTICE  
CIVIL DIVISION  
P.O. BOX 94005  
BATON ROUGE  
70804-9005

July 18, 2023  
OPINION 23-0083

Francis M. Abbott  
Executive Director  
Louisiana Board of Pardons &  
Committee on Parole  
P.O. Box 94304  
Baton Rouge, LA 70804

83 PARDON & PAROLE

La. R.S. 15:572.4  
La. R.S. 49:951

La. R.S. 49:961  
La. R.S. 49:962

LAC 22:V.213(M) does not permit the Board to waive the one-year eligibility period contained in LAC 22:V.203.

Dear Mr. Abbott:

You requested the opinion of this office regarding the administrative rules for the Louisiana Board of Pardons and Parole (the "Board"). Specifically, you asked whether the waiver provision contained in LAC 22:V.213 ("Rule 213") may be used to waive the provisions contained in LAC 22:V.203(E) ("Rule 203").

Rule 203 establishes the eligibility requirements for clemency consideration. Rule 203(E) provides, "Any offender sentenced to death may submit an application within one year from the date of the direct appeal denial. See also §213, Capital Cases."

Rule 213 sets forth the procedural requirements for an offender to submit an application to the Board for the Board's consideration of a recommendation to the governor for a stay of execution of a death sentence. Rule 213 also sets forth the hearing procedures pursuant to which the Board considers the applications. Rule 213(M) purportedly permits the Board to waive any procedural requirements regarding the application or hearing procedures contained in Rule 213:

Each of the provisions of this policy are subject to waiver by the board when it finds that there exists good and adequate cause to suspend said provisions and adopt a different procedure which it finds to be better suited to the exigencies of the individual case before it.

The Rule 213(M) waiver applies to "the provisions of this policy," i.e., the procedures for consideration of clemency applications in capital cases, as set forth in Rule 213. Rule 203 provides eligibility requirements for clemency applications and touches upon an array of application types not limited to capital cases. Although Rule 203(E) cross-references Rule 213 to direct the reader to that rule's procedural requirements, this does not subject Rule 203(E)'s one-year eligibility requirement to waiver by virtue of Rule 213(M). However, even assuming *arguendo* that the eligibility period provided in Rule 203(E) falls

within the reach of Rule 213(M)'s waiver authority, such a waiver would be contrary to law for the reasons set forth below. See La. R.S. 49:955, La. R.S. 49:961, and La. R.S. 15:572.4.

The Authority Note for Rule 213, states that the Board promulgated Rule 213 pursuant to La. R.S. 15:572.4, La. R.S. 15:574.12, and La. R.S. 44:1 *et seq.* None of these statutes support the waiver provision in Rule 213(M). The legislature may confer upon administrative agencies the power to “fill up the details” of a law by prescribing administrative rules and regulations. *Adams v. State Dep't of Health*, 458 So.2d 1295, 1298 (La. 1984). However, administrative agencies are limited to ascertaining the facts upon which the laws are to be applied and enforced. *State v. Taylor*, 479 So.2d 339, 341 (La. 1985). An administrative board or agency may not exceed the statutory authority set forth by the legislature. It may be permissible for the Board to waive certain requirements set forth in rule by the Board; however, the procedures for waiving the rule must be themselves adopted and adequately set forth in rule. The broad and ill-defined waiver in Rule 213(M) ostensibly empowers the Board to repeal portions of its own rules and enact new ones at will, on an ad-hoc basis, and without any notice to the public. Such a result is impermissible under Louisiana law.

The Administrative Procedure Act (the “APA”), La. R.S. 49:950, *et seq.*, expressly provides for public access and notice to agency decision-making in the promulgation and repeal of rules. The APA defines a “rule” as follows:

“Rule” means each agency statement, guide, or requirement for conduct or action, exclusive of those regulating only the internal management of the agency and those purporting to adopt, increase, or decrease any fees imposed on the affairs, actions, or persons regulated by the agency, which has general applicability and the effect of implementing or interpreting substantive law or policy, or which prescribes the procedure or practice requirements of the agency. “Rule” includes, but is not limited to, any provision for fines, prices or penalties, the attainment or loss of preferential status, and the criteria or qualifications for licensure or certification by an agency. A rule may be of general applicability even though it may not apply to the entire state, provided its form is general and it is capable of being applied to every member of an identifiable class. The term includes the amendment or repeal of an existing rule but does not include declaratory rulings or orders or any fees.

La. R.S. 49:951(8) (emphasis added).

Explicitly included in the APA definition of a rule is the repeal of an existing rule. Thus, in enacting *or repealing* a rule, agencies must adhere to the procedures set forth in the APA. The APA not only provides the public with notice and access to agency decision-making, the APA also provides for legislative oversight and gubernatorial veto of proposed rules prior to enactment or repeal. The waiver provision contained in Rule 213(M) circumvents the requirements of the APA. Rule 213(M) permits the Board to waive—essentially



repeal—any requirement set forth in Rule 213 and adopt new procedures or rules without public notice or legislative or gubernatorial oversight. A waiver in rule may be permissible in some circumstances, provided that the requirements and procedures for the waiver are properly set forth in the rule. The waiver in Rule 213(M) does not set forth the policies the Board must follow to waive the provisions in Rule 213, nor does the rule provide any means of notice to the public of the waivers granted by the Board.

In extraordinary circumstances, the APA permits the adoption of an emergency rule as an alternative to the ordinary rulemaking provisions contained in La. R.S. 49:961. However, an emergency rule may only be adopted for the following reasons:

- (a) To prevent imminent peril to the public health, safety, or welfare.
- (b) To avoid sanctions or penalties from the United States.
- (c) To avoid a budget deficit in the case of the medical assistance program.
- (d) To secure new or enhanced federal funding.
- (e) To effectively administer provisions of law related to the imposition, collection, or administration of taxes when required due to time constraints related to congressional, legislative, or judicial action.

La. R.S. 49:962(A)(1).

In the matter at hand, however, there exists no factual basis for the Board to engage in emergency rulemaking. Even to the extent that the nature of the Board rules at issue here demonstrate that your request concerns death row inmates, the carrying out of the death penalty upon lawfully convicted and sentenced individuals does not satisfy any of the five reasons set forth by the legislature in La. R.S. 49:962(A)(1). No exigency exists where there are currently no warrants issued for execution and where it has been officially reported that the drugs needed to carry out a lethal injection are not available.<sup>1</sup>

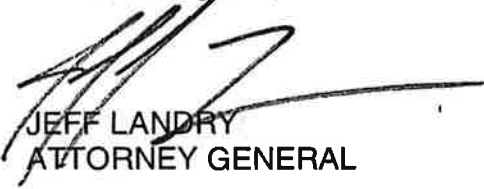
Considering the foregoing, it is the opinion of this office that Rule 213(M) does not permit the Board to waive the one-year eligibility period contained in Rule 203.

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<sup>1</sup> See *Hoffman, et al. v. Jindal, et al.*, 2022 WL 16571312 (M.D. La. 2022).

We trust this adequately responds to your request. However, if our office can be of further assistance, please do not hesitate to contact us.

With best regards,



JEFF LANDRY  
ATTORNEY GENERAL