



Advisory Committee on the Prerogative of Mercy Policies and Procedures Manual

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Preface

The purpose of this manual is to act as an operational guide for the Advisory Committee on the Prerogative of Mercy (ACPM).

It specifies the internal procedures, rules, and processes established to govern its operations and is published on the Deputy Governor's website to assist members of the public understand the functions of the ACPM.

The Advisory Committee on the Prerogative of Mercy (ACPM) is a body established under sections 39 and 40 of the Cayman Islands Constitution Order 2009 Constitution. Its function is to advise HE the Governor on decisions to grant prisoners, or other applicants, mercy in the form of pardon, respite, a substitute sentence, or remission. Although, the Governor is bound to consult the committee when making these decisions, the choice of whether to exercise these powers is at the sole discretion of the Governor.

Under the 1972 Constitution, the Governor exercised very similar powers. What is new in the 2009 Constitution is the provision that he must consult the ACPM whenever they are exercised.

It is important that both prisoners and the public, in general, understand how the ACPM relates to other bodies dealing with parole, or conditional release from prison, given the power of the Governor under section 39 of the Constitution to "remit the whole or any part of any sentence."

There is a potential for misunderstanding on this matter since the enactment of the Prison Law, 1975 remission of sentences in the form of parole has been granted by the Governor, acting on the advice of the Parole Board. On this basis, prisoners are routinely advised of the earliest day they can apply for parole by the Prison authorities. It is important that the ACPM is not viewed as an appellant body for those who are not granted parole.

The ACPM is entirely separate from any other body established to administer parole or conditional release from prison. This is clear from several references in sections 39 and 40 of the 2009 Constitution:-

The essential function of this committee is to grant "mercy," which implies an extraordinary action in contrast to the more frequent or routine decisions about parole.

The presence of the Chief Medical Officer implies, decisions made about prisoners, on occasion may depend heavily on their unusual medical condition and go well beyond routine decisions about parole.

Acting on the advice of the committee, the Governor may set aside a sentence imposed by the courts. The presence of the Attorney General implies that this is a very unusual action in relation to the two other branches of government and must be exceptional rather than routine.

It is **not** the Committee's function to:

- ◆ Erase or expunge convictions.
- ◆ Assist persons obtain visas/waivers for travel.
- ◆ Allow the appeal or retrial of court cases.
- ◆ Act as an appeals body to the Parole Board
- ◆ Circumvent a decision made under the Immigration Law
- ◆ Set aside a Deportation order or, allow a Prohibited Immigrant to return

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Part A:
Constitutional Guidelines

1. Constitutional Guidelines

The Constitutional guidelines for the Advisory Committee on the Prerogative of Mercy (ACPM)) are found in Sections 39 and 40 of the Cayman Islands Constitution Order 2009 (the Constitution) as follows:

1.1 Section 39 Powers of pardon, etc.

39.-(1) The Governor may, in Her Majesty's name and on Her Majesty's behalf -

- (a) grant to any person concerned¹ in or convicted of any offence against any law in force in the Cayman Islands a pardon, either free or subject to lawful conditions;
- (b) grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;
- (c) substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
- (d) remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

(2) In the exercise of his or her powers under this section the Governor shall consult the Committee established by section 40, but he or she shall decide whether to exercise any of those powers in any case in his or her discretion, whether the members of the Committee concur in his or her decision or otherwise.

1.2 Section 40 Advisory Committee on the Prerogative of Mercy

40.(1) There shall be in and for the Cayman Islands an Advisory Committee on the Prerogative of Mercy, which shall consist of the Attorney General, the Chief Medical Officer and four other members, of which two shall be appointed by the Governor acting after consultation with the Premier and two shall be appointed by the Governor acting after consultation with the Leader of the Opposition.

(2) The Committee shall not be summoned except by the authority of the Governor or Acting Governor, acting in his or her discretion; and the Governor shall preside at all meetings of the Committee.

(3) No business shall be transacted at any meeting of the Committee unless there are at least three members present, of whom one shall be the Attorney General or Acting Attorney General.

(4) The office as a member of the Committee of any member appointed by the Governor under subsection (1) shall become vacant if the Governor, acting after consultation with the Premier and the Leader of the Opposition, revokes his or her appointment as a member of the Committee.

(5) Subject to subsection (3), the Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of any business by the Committee shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

(6) Subject to this section the Committee may be free to regulate its own proceedings.

¹ Section 53(a) of the 1993 Constitution Order explains concerned person as “concerned in the commission of any offence”

Part B:
**Composition, Appointments, Powers and
Functions of the ACPM**

2.1 Composition

The ACPM consists of :-

- (a) The Governor as Chairman;
- (b) The Attorney General;
- (c) The Chief Medical Officer;
- (d) Two members appointed by the Governor, acting after consultation with the Premier;
- (e) Two members appointed by the Governor, acting after consultation with the Leader of the Opposition.

2.2 Appointments

Apart from the Attorney General and Chief Medical Officer, all Committee members are appointed by the Governor for a period of between 2 to 4 years, duration should be staggered to ensure continuity of the work of the Committee.

2.3 Vacancies

The office of a member of the Advisory Committee on the Prerogative of Mercy shall become vacant -

- (a) at the expiration of between 2 to 4 years from the date of his or her appointment or such earlier time as may be specified in the instrument by which he or she was appointed;
- (b) if he or she resigns office by writing under his or her hand, addressed to the Governor;
- (c) If the Governor, acting after consultation with the Premier and the Leader of the Opposition, revokes his or her appointment, as a member of the Committee.

The Committee shall not be disqualified for the transaction of business by reason of any vacancy in its membership, and the validity of the transaction of any business by the Committee shall not be affected by reason only of the fact that some person who was not entitled to do so took part in the proceedings.

2.4 Functions

The Committee shall advise the Governor on:-

- The granting to any person concerned in or convicted of any offence against any law in force in the Cayman Islands a pardon, either free or subject to lawful conditions;
- The granting to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;
- The substitution of a less severe form of punishment for that imposed by any sentence for such an offence; or
- Remitting the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

2.5 Definition of Terms

- Pardon (concerned or convicted)
 - Free
 - Subject to lawful conditions
- Respite from the execution of any sentence
 - Indefinite
 - Specified

- Substitute a less severe form of punishment
- Remission of sentence, penalty or forfeiture
 - Whole
 - In part

2.6 Policies

- All categories of crimes and persons are covered by pardon, respite, substitute sentence or remission.
- There are no set time limits for when an application can be made to the ACPM and if denied there is no restriction on when a further application can be made.
- A pardon given by the Governor, on the advice of the ACPM, does not expunge a criminal record.
- Early release on compassionate grounds may be considered on the basis of a prisoner's medical condition or as a result of tragic family circumstances. Only prisoners who have not reached the date on which they will be released automatically or become eligible for parole may apply for early release on compassionate grounds. The fundamental principles underlying early release is that the release of the prisoner will not put the safety of the public at risk
- All decisions of the Governor, after consultation with the ACPM, will be published on the Deputy Governor's website, but prior notification shall be given to the victims of the crime where applicable.
- In the case of a critical emergency the Governor can suspend the procedure as detailed in section 4.1 and 4.3 and call a meeting of all interested parties to the decision making process.

Part C:
Administrative Matters

3.1 Calling of Meetings

Only the Chairman of the ACPM may call meetings, for normal business five business days notice should be given. The Chairman can waive the notice period.

3.2. Agendas

There shall be a standard format for the creation of an agenda for any meeting which should normally include the following: Confirmation of Previous Minutes

1. Matters Arising
2. New Business
3. Action List
4. Next Meeting

The agenda shall be created by a Secretary for the approval of the Chairman a minimum of five business days prior to any meeting. Agendas shall be distributed to Committee members by e-mail or fax a minimum of three business days prior to the said meeting, except in cases where the Chairman has waived the right to the meeting notice period.

3.3 Meetings

The ACPM may regulate its own procedure, which may include meeting by teleconference or other electronic means of communication. All meetings of the ACPM will be held in private. The Committee will endeavour to meet a minimum of once per annum.

3.3.1 Sub Committee Meetings

The Committee may create Sub Committees, consisting of a minimum of one member and include any other member or non-member as the Committee chooses, to assist in the completion of the work of the Committee. The Sub Committee will be chaired by one member of the Committee and will act only on the direction of the Committee as a whole. All minutes of the Sub Committee shall be circulated to all Committee members once they have been approved by the Sub Committee.

3.4 Chairman

The Governor or Acting Governor shall preside at all meetings of the Committee; no other member can assume this position.

3.5 Quorum

No business shall be transacted at any meeting of the Committee unless there are at least three members present, one of whom shall be the Attorney General.

3.6 Reports

The Committee may, from time to time, publish reports on its activities.

3.7 Decision Making

All members of the Committee will be given an equal opportunity to offer input on the matter at hand. Members shall have the option of recording their dissenting opinions. .

The Governor shall consult the Committee but he or she shall decide whether to exercise any of those powers in any case, in his or her discretion, whether the members of the Committee concur with the decision or otherwise

3.8 Spokesperson

The Chairman will act as the official spokesperson for the ACPM.

3.9 Confidentiality

No matters related to the business of the ACPM shall be discussed outside of the meetings unless agreed by the Chairman.

All members of the ACPM have signed a confidentiality agreement with the Chairman.

3.10 Concerns

If a member of the public has concerns regarding the behaviour of a member of the Committee, as it pertains to their role on the ACPM, those concerns must be directed to the Chairman. If a member of the Committee has concerns regarding the behaviour of another member of the Committee as it pertains to their role on the Committee those concerns must be directed to the Chairman.

3.11 Conflicts of Interest

If at any time there is a conflict of interest between an item of business before the ACPM and a member of the ACPM, that member shall excuse themselves from the portion of the said meeting, investigations, any further discussions, or follow up on the matter. Members shall inform the Chairman of their intention and shall excuse themselves from the relevant part of the meeting.

3.12 Independence




The ACPM is a wholly independent body that is not subject to the direction or control of any other person or authority.

3.13 Analytical/Administrative Support




Analytical and administrative support for the Committee is provided by a Secretary, whom shall at all times, ensures the decisions of the Committee are followed up and implemented.

Part D:
Process

4.1 Process for Prisoners Requesting Pardon, Respite, Remission or Substitute sentence Prisoners

| Process Step | Procedure to be Followed |
|---|---|
| <div style="border: 1px solid black; border-radius: 15px; padding: 10px; text-align: center; width: fit-content; margin: 0 auto;"> <p>1. Request for Pardon, Respite, Remission, or Substitution of Sentence</p> </div> <div style="text-align: center; margin: 10px 0;">  </div> | <ul style="list-style-type: none"> • Prisoner completes prescribed form (ACPM 1) and passes to the Director of Prisons. • Director to advise prisoner on alternatives where appropriate e.g. Parole • Director of Prisons records dates and time of receipt and delivers original application along with a copy of the Prisoner's Profile and commitment warrants to the Secretary of the ACPM within 5 working days. • Requests are recorded by the Secretary and a written response sent informing applicant of expected time-frame for review by the Committee. • The Secretary vets the applications and may request additional information from the relevant agencies as applicable. |
| <div style="border: 1px solid black; border-radius: 15px; padding: 10px; text-align: center; width: fit-content; margin: 0 auto;"> <p>2. Processing Applications Collection of Information</p> </div> <div style="text-align: center; margin: 10px 0;">  </div> | <ul style="list-style-type: none"> • Secretary may request the following additional information where applicable- <ul style="list-style-type: none"> ○ Department of Community Rehabilitation to provide a social background report and Victim report. ○ Department of Counseling Services to provide a counselling report. ○ RCIPS to provide CRO /Traffic and/or Intelligence reports. ○ Prison to provide a psychological risk assessment and prison report including drug trend data. ○ Judicial Department to provide court reports. ○ Immigration to provide details of immigration status, if applicant is a foreign national, including local Caymanian connections. ○ Children and Family Services (CFS) to provide family background reports. |
| <div style="border: 1px solid black; border-radius: 15px; padding: 10px; text-align: center; width: fit-content; margin: 0 auto;"> <p>3. Pre Vetting</p> </div> <div style="text-align: center; margin: 10px 0;">  </div> | <ul style="list-style-type: none"> • Secretary to compile summary of data for each application • Documentation is circulated to the ACPM Member:- 5 days before the date of the meeting. |
| <div style="border: 1px solid black; border-radius: 15px; padding: 10px; text-align: center; width: fit-content; margin: 0 auto;"> <p>4. Review and Recommendation by ACPM</p> </div> | <ul style="list-style-type: none"> • Secretary to record recommendations of committee and provide a written response within 14 days of meeting. • Secretary to inform relevant agency and victim of the decision in writing • Secretary to prepare certificates for signature and present to applicant where applicable. • Secretary to forward to gazette for publication. |

4.2 Process for Pardoning for Non - Prisoners

| Process Step | Procedure to be Followed |
|---|--|
| <div style="border: 1px solid black; border-radius: 15px; padding: 10px; text-align: center; width: fit-content; margin: 0 auto;"> <p>1. Request for Pardon, Respite, Remission, or Substitution of Sentence</p> </div> <div style="text-align: center; margin: 10px 0;">  </div> | <ul style="list-style-type: none"> • Request for Pardons should be submitted to Secretary of the ACPM on the prescribed form (ACPM 2) and sent direct to the Secretary. |
| <div style="border: 1px solid black; border-radius: 15px; padding: 10px; text-align: center; width: fit-content; margin: 0 auto;"> <p>2. Processing Applications Collection of Information</p> </div> <div style="text-align: center; margin: 10px 0;">  </div> | <ul style="list-style-type: none"> • Secretary may request the following additional information where applicable- <ul style="list-style-type: none"> ○ Department of Community Rehabilitation to provide a social background report and Victim report. ○ Department of Counseling Services to provide a counselling report. ○ RCIPS to provide CRO/Traffic and/or Intelligence reports. ○ Prison to provide a psychological risk assessment and prison report including drug trend data. ○ Judicial Department to provide court reports. ○ Immigration to provide details of immigration status, if applicant is a foreign national, including local Caymanian connections. ○ Children and Family Services (CFS) to provide family background reports. |
| <div style="border: 1px solid black; border-radius: 15px; padding: 10px; text-align: center; width: fit-content; margin: 0 auto;"> <p>3. Pre Vetting</p> </div> <div style="text-align: center; margin: 10px 0;">  </div> | <ul style="list-style-type: none"> • Secretary to compile summary of data for each application • Documentation is circulated to the ACPM Members:- 5 days before the date of the meeting. |
| <div style="border: 1px solid black; border-radius: 15px; padding: 10px; text-align: center; width: fit-content; margin: 0 auto;"> <p>4. Review and Recommendation by ACPM</p> </div> | <ul style="list-style-type: none"> • Secretary to record recommendations of committee and provide a written response within 14 days of meeting. • Secretary to inform relevant agency and victim of the decision in writing • Secretary to prepare certificates for signature and present to applicant where applicable. • Secretary to forward to gazette for publication. |



Application to the Advisory Committee of Prerogative Mercy

Governor's Office, Government Administration Building, 5th Floor
PO BOX 101, Grand Cayman, KY1-9000, Cayman Islands

This Application Form must only be used to request the Governor to:-

1. grant to any person concerned in or convicted of any offence against any law in force in the Cayman Islands a pardon, either free or subject to lawful conditions;
2. grant to any person a respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence;
3. substitute a less severe form of punishment for that imposed by any sentence for such an offence; or
4. remit the whole or any part of any sentence passed for such an offence or any penalty or forfeiture otherwise due to Her Majesty on account of such an offence.

APPLICANT INFORMATION

To be completed by all applicants (Please TYPE or PRINT in blue or black ink.)

| | | |
|----------------------|----------------|-------------|
| LAST Name | FIRST Name | MIDDLE Name |
| Date of Birth | Place of Birth | Nationality |
| Country of Residence | | |
| Prison: | Prison Number: | |

Residential Address:

| | | |
|---------|-------------|--------|
| Address | District | |
| Tel: | Postal Code | Email: |

Reason for Requesting Clemency

1. Pardon, either free or subject to lawful conditions

Please state reasons for the request:-

2. Respite, either indefinite or for a specified period, from the execution of any sentence passed on that person for such an offence.

Please state reasons for the request:-

3. Substitution a less severe form of punishment for that imposed by any sentence for such an offence

Please state reasons for the request:-

4. Remission of the whole or any part of any sentence passed for such an offence or any penalty or forfeiture.

Please state reasons for the request:-

| |
|--|
| |
|--|

Conviction Information

| | |
|----------------------------|------------------------------|
| Current Offense (s) | |
| Date of offense (s) | Date of conviction(s) |
| Arresting agency | Court case number |
| Length of Sentence: | |

| | |
|--|---|
| Parole Eligibility Date: | |
| Sentence End Date: | |
| Did you appeal your case? | If yes, appellate case number and status of case |
| Details of any current/previous parole applications | |

Prior Convictions:

List **all prior convictions**, including any in other countries.
 Offense(s): Date of offense(s): Country of conviction(s): Sentence(s):

| Offense | Date of offense | Country of conviction | Sentence |
|---------|-----------------|-----------------------|----------|
| | | | |
| | | | |
| | | | |
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Current Attorney Information

Name, address, email, telephone number of attorney, if represented.

DECLARATION

I understand, and agree, this application may be submitted to the Advisory Committee for the Prerogative of Mercy, law enforcement or other agencies for investigation and recommendation.

I certify that the forgoing is true and correct. I understand that any willful omission or misstatement of facts may result in denial of my application

(Applicant's signature)

(Date)

OFFICIAL USE ONLY

| | |
|----------------------------------|--|
| Date Application Received | |
| Date sent to ACPM | |
| Decision | |
| Date Applicant Informed | |

4.4. Request for Pardon

ACPM 2



**Application to the Advisory Committee of the Prerogative of Mercy
for a PARDON**

**Governor's Office, Government Administration Building, 5th Floor
PO BOX 101, Grand Cayman, KY1-9000, Cayman Islands**

This Application Form must only be used to request the Governor to:-

Grant to any person concerned in or convicted of any offence against any law in force in the Cayman Islands a pardon, either free or subject to lawful conditions;

APPLICANT INFORMATION

To be completed by all applicants (Please TYPE or PRINT in blue or black ink.)

| | | |
|-----------------------------|-----------------------|--------------------|
| LAST Name | FIRST Name | MIDDLE Name |
| Date of Birth | Place of Birth | Nationality |
| Country of Residence | | |

Current Residence:

| | | |
|----------------|--------------------|---------------|
| Address | District | |
| Tel: | Postal Code | Email: |

Reason for Requesting a Pardon, either free or subject to lawful conditions

Please state reasons for the request:-

| |
|--|
| |
|--|

Conviction Information

| | |
|--|---|
| Offense(s) | |
| Date of offense(s) | Date of conviction(s) |
| Arresting agency | Court case number |
| Length of Sentence: Parole Eligibility Date: Sentence End Date: | |
| Did you appeal your case? | If yes, appellate case number and status of case |
| Details of any current/previous parole applications | |

Prior Convictions:

List all prior convictions, including any in other countries.

Offense(s): Date of offense(s): Country of conviction(s): Sentence(s):

| Offense | Date of offense | Country of conviction | Sentence |
|---------|-----------------|-----------------------|----------|
| | | | |
| | | | |
| | | | |

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|--|--|--|--|
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| | | | |

Current Attorney Information

| |
|--|
| Are you currently represented by an attorney? |
| If yes, please provide name, address, email, telephone number. |

PLEASE SUBMIT AT LEAST TWO CHARACTER REFERENCES WITH YOU APPLICATION

DECLARATION

I understand, and agree, this application may be submitted to the Advisory Committee for the Prerogative of Mercy, law enforcement or other agencies for investigation and recommendation.

I certify that the forgoing is true and correct. I understand that any willful omission or misstatement of facts may result in denial of my application

_____ (Applicant's signature)

_____ (Date)

OFFICIAL USE ONLY

| | |
|----------------------------------|--|
| Date Application Received | |
| Date sent to ACPM | |
| Decision | |
| Date Applicant Informed | |