

Pardon power varies widely

By NBC's Pete Williams

Most states give their governors broad latitude in granting pardons. Some don't trust them with that authority at all. And the rest allow a governor to grant pardons only with the recommendation of other state officials.

Mississippi's raging controversy over last-minute pardons by outgoing governor Haley Barbour has generated calls for limiting the ability to grant pardons in that state. A survey of the clemency power reveals that states vary widely in the degree of authority placed in the hands of the nation's chief executives.

The US Constitution gives the president virtually unlimited authority. A president can grant pardons for federal crimes, even before a person is charged, tried, or convicted -- most vividly demonstrated when Gerald Ford granted Richard Nixon "a full, free, and absolute pardon" for any crimes Mr. Nixon may have committed during the Watergate scandal of the early 1970's.

In 1977, President Jimmy Carter issued a blanket amnesty, a form of pardon, to anyone who evaded the draft during the war in Vietnam.

Only one restriction is placed on the president. No pardons can be given in cases of impeachment. Congress alone controls that process.

Most state constitutions, 37 in all, give their governors broad powers to grant pardons for those convicted of state offenses. Nearly all follow the federal model and deny a governor the power to pardon officials who were subject to state impeachment proceedings.

In five states -- Alabama, Louisiana, Oklahoma, Pennsylvania, and Texas -- a governor can issue pardons only upon the recommendation of a state pardon board.

Florida is a hybrid: a governor may grant pardons, but only with the approval of at least two members of his cabinet.

But seven states -- Delaware, Georgia, Idaho, Nebraska, Nevada, South Carolina, and Utah -- put the authority exclusively in the hands of a state pardon or clemency board, not the governor.

The pardons granted in Mississippi as Haley Barbour walked out the door of the governor's office are in doubt because of an unusual requirement of that state's constitution.

It provides that clemency cannot be granted until the person seeking it arranges to have the pardon application published "for thirty days" in a newspaper in the country where the crime was committed. The attorney general in Mississippi asked a state judge to put a stop to the pardon process there until his office verifies that sufficient notices were actually published.

A judge has halted the granting of Barbour's pardons for inmates not yet released. And law enforcement officers are hunting down those who had already served their time when the pardons were issued. The judge will sort out which pardons turned out to be validly granted.

So far, Mississippi officials say it appears that five of the most controversial pardons, including four men convicted of murder, did not meet that requirement. All five had worked at the governor's mansion under a program granting privileges to trusted inmates.

Two other states, Idaho and Maryland, impose similar requirements that pardon applications must be published before they can be granted.

The roots of the clemency power in the United States stretch back to England, where the king or queen could grant pardons, and the earliest state constitutions included the authority in some form.