

**STATE OF NEW MEXICO**  
**EXECUTIVE CLEMENCY GUIDELINES**

**I. PURPOSE**

These executive clemency guidelines have been formulated to provide direction for the Parole Board and Corrections Department in determining eligibility and making recommendations to the governor.

**II. PARDONING AUTHORITY**

The pardoning authority in this State is vested exclusively in the Chief Executive, as stated in Article V, Section 6 of the Constitution of New Mexico:

“Subject to such regulations as may be prescribed by law, the governor shall have power to grant reprieves and pardons, after conviction for all offenses except treason and in cases of impeachment.”

The power to pardon listed in Article V, Section 6 is an absolute power to grant release at the sole discretion of the governor unrestrained by any consideration other than his conscience, wisdom and sense of public duty. The pardoning power extends to all offenses committed under State law, with the constitutional exceptions of impeachments or treason, but does not include convictions for violations of municipal ordinances.

The governor may, in his discretion, refer requests for executive clemency to the Parole Board for investigation and recommendation including victim impact statement. It should be noted that no form of executive clemency allows arrest records nor records of pardoned offenses to be expunged.

**III. FORMS OF EXECUTIVE CLEMENCY**

Forms of executive clemency available for applicants still incarcerated are pardon, commutation of sentence, conditional release, and reprieve. For applicants no longer incarcerated, only pardon to restore civil rights and the right to bear arms will be considered.

**A. Full Pardon**

When the governor grants a pardon, the pardoned person is restored to the rights of citizenship he or she enjoyed prior to conviction. Any prison term that has not been completed is void. Applicants seeking restoration of the right to bear arms must specifically request this when applying for a pardon; otherwise, it will not be considered. Applicants must then wait an additional year to apply for the right to bear arms. **Section 30-7-16 NMSA 1978 provides that it is unlawful for a person convicted of a felony to**

**receive, transport or possess any destructive device or firearm for ten years after conviction.** The governor may, in appropriate cases; release a person from the provisions of this section if the conviction is a New Mexico conviction, but not a conviction under the laws of the United States or another state. (See AG Opinion #92-09)

A full pardon directed at providing outright release from incarceration will be considered in cases of wrongful conviction only after all appeals have been exhausted, and when new facts have been presented which so clearly attest to wrongful conviction as to be uncontested by prosecuting authorities involved in the original action. An affidavit from prosecuting authorities and the presiding judge certifying its validity must accompany the request for pardon on these grounds.

### **B. Commutation of Sentence**

A commutation of sentence is a reduction in the punishment that was imposed by the Court. The governor may, at his discretion, reduce a sentence, either in part or all, allowing the applicant to be released by the Parole Board before his or her regular date of discharge.

Commutation of sentence will normally be considered only in cases of unusual meritorious service.

Examples of unusual meritorious service includes saving the life of a Corrections Department member or inmate, assistance in stopping an insurrection which threatens the administration's control of an institution, and risk of life or serious bodily harm in attempting to secure or securing the release of a hostage.

Requests for clemency for unusual meritorious service must be accompanied by an affidavit from the supervising authorities certifying as to the validity of the meritorious service. A recommendation for commutation by the supervising authorities will also be required.

### **C. Conditional Release**

A conditional release is a form of executive clemency by which an inmate is released by the governor from incarceration subject to parole conditions. This release is automatically voided upon a breach of the conditions of parole and the individual is subject to re-arrest and return to Corrections Department custody to continue serving his or her sentence. Conditional release will be considered only in cases of extreme personal hardship.

Situations of personal hardship, which may merit executive clemency consideration, include:

1. An illness, which may result in death within two to four months. Recommendations by supervising administrative and medical authorities and the Adult Parole Board will be required.
2. A medical hardship of a magnitude that it causes extreme physical limitations and/or acute pain and suffering to the inmate and cannot be adequately treated by prison medical staff. In determining if an inmate's illness constitutes an added burden to the institution, medical authorities, must be specific about the limitations placed on them by the inmate's illness and also provide specific information on the future care of the inmate should clemency be granted.
3. Sexual offenders, multi-felony offenders, and violent offenders will not be considered for conditional release.

Normal hardships of imprisonment such as job and reputation loss, separation from or illness in the family, and financial problems **are not** "extreme personal hardships" that merit consideration.

#### **D. Reprieve**

A reprieve is a form of temporary relief, that is, a postponement of punishment. A reprieve does not affect the sentence but merely delays or defers the execution of the sentence to the time specified.

Reprieve is an act of executive clemency extended to a prisoner to afford him or her an opportunity to procure some amelioration of the sentence imposed. If such relief is not secured prior to the time specified in the grant for clemency, then the original sentence and punishment are given full force and effect.

Reprieve is generally reserved for emergency situations, and the governor on its individual merit will consider each case immediately.

As with other forms of executive clemency, the governor may request the Parole Board (the attorney general, or corrections secretary) for a recommendation.

#### **E. Pardon to restore civil rights following discharge from supervision**

A pardon restores the rights of citizenship a convicted felon enjoyed prior to conviction, excluding the right to bear arms unless otherwise stated. However, the pardon only removes the disabilities imposed by the State of New Mexico, such as the right to vote and hold public office; this pardon does not remove disabilities imposed by the federal statute, and although a pardon restores citizenship rights, it does not allow for the police, prosecutors, or court records to be expunged.

Inasmuch as a pardon restores citizenship rights, proof of ability to act as a responsible person is a condition for favorable consideration. To assist the recommending authorities

in the evaluation process, applicants should include any significant achievements, such as employment and educational accomplishments; provide evidence of good citizenship and details about charitable and civic activities or other contributions made to the community. These guidelines apply to all applicants requesting a pardon.

Ordinarily, pardon requests for misdemeanors, DWI, multiple felony convictions, sexual offenses and violent offenses or physical abuse involving minor children will not be granted. However, this does not preclude anyone from applying to the governor for clemency.

1. Pardon to restore lost civil rights will be considered only after the applicant has been released from supervision, in accordance with the time frames referenced below.
2. The applicant must be self-supporting and show evidence of support. Due regard will be given to consistent employment history, lack of criminal record since discharge; including municipal, state and federal offenses.
3. The applicant must remain arrest free for the following periods of time before the application can be considered.
  - a. An applicant originally convicted of a fourth-degree felony, who received a satisfactory discharge from supervision, will be eligible (5) five years after discharge. An unsatisfactory discharge from supervision will require an additional (2) two years for a total of (7) seven years following discharge.
  - b. An applicant originally convicted of a third-degree felony, who receives a satisfactory discharge from supervision, will be eligible (6) six years from discharge. An unsatisfactory discharge from supervision will require an additional (2) two years for a total of (8) eight years following discharge.
  - c. An applicant originally convicted of a second-degree felony, who receives a satisfactory discharge from parole supervision, will be eligible (7) seven years from discharge. An unsatisfactory discharge from supervision will require an additional (2) two years for a total of (9) nine years following discharge.
  - d. An applicant originally convicted of a first-degree felony, who receives a satisfactory discharge from parole supervision, will be eligible (8) eight years after discharge. An unsatisfactory discharge from supervision will require an additional (2) two years for a total of (10) ten years following discharge.

#### **IV. PROCEDURES TO BE FOLLOWED WITH EXECUTIVE CLEMENCY APPLICATIONS**

1. Copies of this policy shall be provided upon request.
2. Applicants will address their requests to the governor and identify the type of clemency (i.e., pardon, commutation of sentence, conditional release) for which they wish to be considered, along with their reasons for such consideration.
3. The governor may refer requests for executive clemency to the Parole Board for investigation and recommendation.
4. The Parole Board will examine the request to determine if it meets the criteria for consideration set forth in these guidelines. If it does not, the board will notify the applicant and the governor, and no further action will be taken. If the applicant meets the criteria of these guidelines, the Parole Board, in turn, will call for a field investigation by the Corrections Department.

In cases where the applicant is still incarcerated, a request for appropriate reports and case materials will be directed to the Warden of the facility or institution holding the applicant to await action by the Chief Classification Officer.

5. The Parole Board may also request the sentencing judge and/or prosecuting attorney involved in the particular case to provide pertinent input, including a recommendation for or against executive clemency.
6. The Parole Board will review the reports from the Corrections Department and all other material available to them, then submit a summary report with their recommendation to the governor.
7. After reviewing all the reports, other materials and recommendations provided, the governor will decide whether to grant executive clemency or not.
8. The decision of the governor is final.
9. If an applicant is denied executive clemency, the applicant is not eligible to reapply until (4) four years following the date of the application. When a change of administration takes place, applicants who were denied clemency by the former administration are eligible to reapply (2) two years after the date of the original application.

10. The governor may exercise discretion in reviewing clemency applications earlier or later than these guidelines permit.

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