

**PROPOSED REGULATION OF THE
STATE BOARD OF PARDONS COMMISSIONERS**

LCB File No. R085-09

December 11, 2009

EXPLANATION – Matter in *italics* is new; matter in brackets ~~[omitted material]~~ is material to be omitted.

AUTHORITY: §§1-11, 13-16 and 18-31, NRS 233B.040 and 233B.050; §12, NRS 213.017, 233B.040 and 233B.050; §17, NRS 233B.040 and 233B.050 and section 1 of Senate Bill No. 238, chapter 211, Statutes of Nevada 2009, at page 774.

A REGULATION relating to clemency; prohibiting a person from applying for a pardon from a conviction for a crime unless a certain period of time has passed since the expiration of the sentence for that crime; providing for the waiver of the waiting period for applying for a pardon in certain circumstances; requiring the Secretary of the State Board of Pardons Commissioners to request the Division of Parole and Probation of the Department of Public Safety to investigate a person applying for a pardon; requiring the Chief Parole and Probation Officer to provide a recommendation concerning whether to grant a pardon to an applicant; requiring the Secretary to establish procedures and criteria for the selection of applications for clemency to be considered by the Board at a meeting; providing that the Board will not consider certain applications for clemency unless a member of the Board selects the application for the consideration of the Board; establishing procedures for the granting of certain applications for a pardon without a meeting of the Board; enacting provisions concerning the official documentation prepared when the Board grants an application for clemency; amending certain regulations concerning applications for clemency and meetings of the Board to consider applications for clemency; repealing regulations concerning certificates of good conduct issued by the Board; and providing other matters properly relating thereto.

Section 1. Chapter 213 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 18, inclusive, of this regulation.

Sec. 2. *As used in NAC 213.010 to 213.200, inclusive, and sections 2 to 18, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in NAC 213.010 and sections 3 to 8, inclusive, of this regulation have the meanings ascribed to them in those sections.*

Sec. 3. *“Clemency” means the remission or lessening of a punishment to which a person convicted of a crime was sentenced and includes the remission of a fine or forfeiture, the commutation of a punishment, the granting of a pardon and the restoration, in whole or in part, of the civil rights of a person convicted of a crime.*

Sec. 4. *“Commutation of a punishment” means the changing of the sentence of a person convicted of a crime to another sentence, resulting in a reduction or lessening of the sentence.*

Sec. 5. *“Department” means the Department of Corrections.*

Sec. 6. *“Division” means the Division of Parole and Probation of the Department of Public Safety.*

Sec. 7. *“Pardon” means the forgiveness of a crime and the penalty associated with it.*

Sec. 8. *“Secretary” means the Secretary of the Board.*

Sec. 9. *The provisions of NAC 213.010 to 213.200, inclusive, and sections 2 to 18, inclusive, of this regulation do not grant any person a right to the remission of a fine or forfeiture, the commutation of a punishment, the granting of a pardon or the restoration of any civil rights or restrict the authority granted to the Board by the Nevada Constitution, and it is not intended that the establishment of standards relating to the remission of fines or forfeitures, the commutation of punishments, the granting of pardons or the restoration of civil rights create any such right or interest in liberty or property or establish a basis for any cause of action against the State, its political subdivisions, agencies, boards, commissions, departments, officers or employees.*

Sec. 10. 1. *Except as otherwise provided in this section, a person may not submit an application for a pardon from a conviction for a:*

(a) Misdemeanor which constitutes domestic violence pursuant to NRS 33.018 until 5 years after the date on which the person is released from actual custody or is no longer under a suspended sentence, whichever occurs later.

(b) Category E felony until 6 years after the date on which the person is discharged from probation or parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

(c) Category B, C or D felony for which the person was sentenced to probation until 8 years after the date on which the person is discharged from probation, except as otherwise provided in this paragraph. If the person was sentenced to probation upon a conviction for a category C or D felony and his or her probation was revoked, the person may not submit an application for a pardon until 9 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced. If the person was sentenced to probation upon a conviction for a category B felony and his or her probation was revoked, the person may not submit an application for a pardon until 10 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

(d) Category C or D felony for which the person was sentenced to a term of imprisonment until 9 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

(e) Category B felony for which the person was sentenced to a term of imprisonment until 10 years after the date on which the person is discharged from parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

(f) Category A felony until 12 years after the date on which the person is discharged from probation or parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

2. If a person is convicted of a crime, other than a traffic offense, during the waiting period prescribed in subsection 1, the Board may require that the waiting period begin on the date of the conviction or on the date on which the person is discharged from probation or parole or released from prison because of the expiration of the term of imprisonment to which the person was sentenced.

3. With the consent of a member of the Board, the Secretary may waive the waiting period prescribed in subsection 1.

Sec. 11. *1. Upon receiving an application for a pardon from a person who meets the minimum qualifications set forth in section 10 of this regulation, the Secretary shall request that the Division investigate the applicant as the Secretary deems necessary and appropriate. If the investigation reveals serious negative information which indicates that the Board is unlikely to grant a pardon to the applicant, the Secretary may reject the application for consideration by the Board.*

2. After the Division has completed the investigation required by subsection 1, the Chief Parole and Probation Officer shall provide to the Board a written recommendation regarding whether to grant a pardon to the applicant.

Sec. 12. 1. *The Secretary shall establish procedures and criteria for the selection of applications for clemency to be considered by the Board at a meeting. The Secretary shall:*

(a) Post the procedures and criteria on the Internet website maintained by the Board; and

(b) Make the procedures and criteria available for public inspection at the primary office of the Secretary.

2. Except as otherwise provided in subsection 4, a member of the Board may select an application for clemency for the consideration of the Board at a meeting notwithstanding the procedures and criteria established by the Secretary pursuant to subsection 1, any regulation of the Board or the recommendation or absence of a recommendation from the Director of the Department or the Chief Parole and Probation Officer. A member of the Board who wishes to select an application for the consideration of the Board must inform the Secretary of the selection not less than 50 days before the date of the meeting at which the Board will consider the application, unless the member demonstrates good cause for a shorter period of time.

3. Members of the State Board of Parole Commissioners and the Director of the Department may provide to the Secretary the names of inmates who may merit consideration for clemency.

4. Before a meeting of the Board, the Governor may remove from consideration any application for clemency that has been selected for the consideration of the Board.

Sec. 13. *Except as otherwise provided in subsection 2 of section 12 of this regulation, the Board will not consider an application for clemency if the applicant is required to register as an offender convicted of an offense against a child or a sex offender pursuant to NRS 179D.010 to 179D.550, inclusive, as a result of the conviction for which the applicant is*

seeking clemency, unless the applicant is no longer required to register as an offender convicted of a crime against a child or a sex offender pursuant to NRS 179D.490.

Sec. 14. *Except as otherwise provided in subsection 2 of section 12 of this regulation, the Board will not consider an application for the remission of a fine or forfeiture or the commutation of a punishment submitted by a person on parole unless, pursuant to NRS 176.033, the person has served one-half of the period of his or her parole or 10 consecutive years on parole in the case of a person sentenced to life imprisonment and:*

1. The Division has provided the person a favorable recommendation for a modification of sentence pursuant to NRS 176.033 and the State Board of Parole Commissioners has refused to file a petition for a modification of sentence pursuant to NRS 176.033; or

2. The State Board of Parole Commissioners has filed a petition for a modification of sentence pursuant to NRS 176.033 and the court has denied the petition.

Sec. 15. *Except as otherwise provided in subsection 2 of section 12 of this regulation, the Board will not consider an application for clemency if other forms of judicial or administrative relief are reasonably available to the applicant.*

Sec. 16. *If an application for clemency is selected for the consideration of the Board at a meeting, the Secretary shall notify, in accordance with NRS 213.010, any victim of the crime for which clemency is sought.*

Sec. 17. *1. If a person has applied for a pardon for the sole purpose of restoring his or her civil rights, the Board may grant the pardon and restore, in whole or in part, the civil rights of the applicant without a meeting if the following conditions are satisfied:*

(a) The offense for which the pardon is sought:

(1) Did not result in physical injury to a victim;

(2) Did not involve the use or threatened use of force or violence; and

(3) Was not a sexual offense.

(b) The applicant has never been convicted of:

(1) An offense that resulted in physical injury to a victim;

(2) An offense involving the use or threatened use of force or violence; or

(3) A sexual offense.

(c) There is no objection from the court in which the judgment was rendered.

(d) There is no objection from the district attorney of the county in which the person was convicted.

(e) The Board has not received a written request for notice concerning a meeting to consider an application for clemency from a victim of a crime committed by the person.

2. The Secretary shall identify applications that meet the criteria set forth in subsection 1 before requesting the investigation required by section 11 of this regulation. If the Secretary determines that an application meets the criteria set forth in subsection 1, the Secretary shall submit to the Division a notice of the intent to act on the application without a meeting of the Board. During the investigation, the Division shall provide notice of the intent to act on the application without a meeting of the Board to the court in which the applicant was convicted and to the district attorney of the county in which the applicant was convicted.

3. If the court in which the applicant was convicted and the district attorney of the county in which the applicant was convicted do not object to the Board taking action on the application without a meeting, the Secretary shall provide to the members of the Board the application, the results of the investigation required by section 11 of this regulation and any other material deemed relevant by the Secretary.

4. Within 30 days after receiving the information described in subsection 3, the Governor and Attorney General shall determine whether to grant the pardon and restore, in whole or in part, the civil rights of the applicant. Within 45 days after receiving the information described in subsection 3, the Justices of the Supreme Court shall determine whether to grant the pardon and restore, in whole or in part, the civil rights of the applicant.

5. If a majority of the members of the Board, with the Governor being in the majority, agree to grant the pardon and restore, in whole or in part, the civil rights of the applicant, the Secretary shall prepare the documents described in section 18 of this regulation to reflect the action taken by the Board.

6. As used in this section, “sexual offense” has the meaning ascribed to it in NRS 179D.097.

Sec. 18. 1. *If the Board grants clemency:*

(a) The Secretary shall prepare two official documents which:

(1) Describe the fine, forfeiture, sentence or punishment that is the subject of the Board’s action, the action taken by the Board and the consequences of that action, including, without limitation, any limitations or conditions on the action; and

(2) Are signed by the Secretary of State and attested with the Great Seal of the State of Nevada;

(b) Each member of the Board who voted in favor of the action shall sign the official documents prepared by the Secretary; and

(c) A member of the Board who voted against the granting of clemency may sign the official documents prepared by the Secretary to affirm that the official documents reflect the action taken by the Board.

2. Except as otherwise provided in this subsection, the Secretary may not prepare an official document if the Board refuses to grant clemency. If the Board has refused to grant clemency and instructs the Secretary to prepare an official document reflecting that action, the Secretary shall prepare an official document reflecting the Board's refusal to grant clemency.

3. If a member of the Board who voted in favor of granting clemency is no longer a member of the Board or is unable to sign the official documents prepared by the Secretary pursuant to subsection 1 and a majority of the members of the Board who voted in favor of the action are no longer members of the Board, the current Governor, Attorney General and Chief Justice of the Supreme Court may sign an instrument of clemency certifying the action of the Board based on the transcripts and minutes taken at the meeting of the Board.

4. The Secretary shall:

(a) Keep at the primary office of the Secretary one official document prepared and signed pursuant to subsection 1.

(b) Provide to the person to whom clemency was granted one official document prepared pursuant to subsection 1.

5. The Secretary may certify a copy of an official document prepared pursuant to subsection 1.

Sec. 19. NAC 213.010 is hereby amended to read as follows:

213.010 ~~[As used in NAC 213.010 to 213.210, inclusive, unless the context otherwise requires,]~~ "Board" means the State Board of Pardons Commissioners.

Sec. 20. NAC 213.020 is hereby amended to read as follows:

213.020 1. The Board will meet semiannually ~~[.]~~ *or more often.*

2. Meetings will be held ~~[on the second Tuesday of September and March]~~ *during the second week of November and the second week of May on a date determined by the Board,* unless otherwise designated by the Board.

3. Upon the recommendation of any member of the Board or the Executive Secretary of the Board, and with the consent of the Governor, a special meeting of the Board may be held.

Sec. 21. NAC 213.040 is hereby amended to read as follows:

213.040 1. ~~[A.]~~ *A person seeking clemency, or any person acting on behalf of such a person, must submit an application to the Board in accordance with the instructions prescribed by the Secretary. An application for clemency may be obtained from the Secretary at 1677 Old Hot Springs Road, Suite A, Carson City, Nevada 89706. In addition, an application for the commutation of a punishment may be obtained from the wardens of institutions and facilities of the Department in accordance with the instructions prescribed by the Secretary.*

2. *Except as otherwise provided in subsection 3, an* application for a pardon, the remission of a fine or forfeiture or the commutation of a punishment must be submitted to the ~~[Executive]~~ Secretary ~~[of the Board]~~ not less than ~~[60]~~ **90** days before a semiannual meeting of the Board.

~~[2.]~~ 3. The Governor may prescribe a shorter period for a special hearing of the Board.

Sec. 22. NAC 213.050 is hereby amended to read as follows:

213.050 1. An application must include:

~~[1.]~~ (a) The name of the person making the application;

~~[2.]~~ (b) *If the application is filed on behalf of another person, the name of the person in whose favor the application is made;*

(c) The court rendering judgment;

~~[3.]~~ (d) The amount of the fine or forfeiture, or the kind or character of the punishment;

~~[4.]~~ (e) The type of clemency or pardon being sought;

~~[5.]~~ (f) The grounds for the application;

~~[6.] The date of the meeting when the application will be considered; and~~

~~—7. A statement indicating whether a personal hearing is requested, and if requested, the name of those persons who will appear on the applicant's behalf.] and~~

(g) *Any other information deemed necessary by the Secretary.*

2. An application for clemency must relate to a violation of the laws of this State. A person may not apply for clemency if the offense for which clemency is sought was a violation of the laws of another state, the United States, a district, commonwealth, territory or insular possession of the United States or a foreign country.

Sec. 23. NAC 213.060 is hereby amended to read as follows:

213.060 Notice served pursuant to NRS 213.020 must include:

1. ~~[A request for the recommendations of]~~ *An offer to* the district judge ~~[.]~~ *who adjudicated the case involving the applicant, or the successor of that district judge, to provide comments and a recommendation to the Board;*

2. *A request for a statement of facts and any information affecting the merits of the application pursuant to NRS 213.040 from* the district attorney ~~[, the Director of the Department of Corrections and, when applicable,]~~ *who prosecuted the case involving the applicant or the successor of that district attorney;*

3. *If the application is for the remission of a fine or forfeiture, a request for a recommendation concerning whether to remit the fine or forfeiture from* the chairman of the board of county commissioners ~~[; and]~~

~~—2.]~~ *of the county in which the applicant was convicted; and*

4. An invitation for ~~[them]~~ *the district judge, the district attorney and, when applicable, the chairman of the board of county commissioners* to testify before the Board at the hearing.

Sec. 24. NAC 213.070 is hereby amended to read as follows:

213.070 Any person *whose application for clemency has been considered by the Board and* who has been denied favorable action by the Board may not reapply ~~[to the Board]~~ *for clemency* unless:

1. ~~[He]~~ *The person* shows a substantial change of circumstance ~~[; and]~~ *that merits consideration by the Board; or*

2. The ~~[application was previously approved by the Executive Secretary of the Board.]~~ *Board provided instructions to the person at a previous hearing and the person has demonstrated that he or she has complied fully with the instructions.*

Sec. 25. NAC 213.080 is hereby amended to read as follows:

213.080 The Board will not accept the application of a prisoner for a pardon or the commutation of a punishment if ~~[he]~~ *the prisoner* is eligible for parole ~~[before the next semiannual meeting of the Board and has not been heard or, if he has been heard, has been denied parole]~~ *, or becomes eligible for parole on a date less than 1 year after the date of the next meeting of the Board,* unless the ~~[application shows a special merit and has been previously approved for a hearing by the Executive Secretary of]~~ *applicant shows extraordinary circumstances that merit consideration by* the Board.

Sec. 26. NAC 213.090 is hereby amended to read as follows:

213.090 1. The application of an inmate who is ~~otherwise eligible for a hearing before~~ *selected for consideration by* the Board must be accompanied by a recommendation by the

Director of the Department ~~of Corrections~~ to the ~~Executive~~ Secretary . ~~of the Board.~~

2. ~~The Secretary of the Board~~ *Except as otherwise provided in section 12 of this regulation, the Secretary* has the final approval in placing an application on the agenda. ~~Upon~~ *Except as otherwise provided in section 17 of this regulation, upon* such approval, the applicant will be granted a hearing at a regularly or specially called meeting of the Board.

3. ~~The Board may review an application notwithstanding the recommendation or absence of a recommendation by the Director and the approval or disapproval of the Executive Secretary of the Board.~~

~~—4.]~~ A list of all applicants who are denied a hearing and the reason for the denial must be available for the Board's consideration.

Sec. 27. NAC 213.100 is hereby amended to read as follows:

213.100 An application for the commutation of a punishment submitted by a person serving a sentence prescribed under a previous criminal law which is longer than now prescribed under current law will be considered on the merits of the case alone and not *solely* because , under the new law , the punishment has been reduced.

Sec. 28. NAC 213.110 is hereby amended to read as follows:

213.110 The Board will not consider an application for the commutation of a sentence of life without the possibility of parole to life with the possibility of parole ~~until 7]~~ *unless:*

1. *The crime committed by the applicant is not murder of the first degree;*
2. *The applicant committed the crime before July 1, 1995; and*
3. *Nineteen* calendar years have been served by the applicant.

Sec. 29. NAC 213.120 is hereby amended to read as follows:

213.120 *1. Except as otherwise provided in subsection 2 of section 12 of this regulation, the Board will not consider an application for a pardon or the commutation of a punishment submitted by a person sentenced to the death penalty unless the person has exhausted all available judicial appeals.*

2. If a death penalty is being considered, the presence of the Governor is required and any judgment must be made by a majority of the *members of the* Board.

Sec. 30. NAC 213.190 is hereby amended to read as follows:

213.190 Hearings before the Board will be informal in nature , and regular rules of evidence or other formalities do not apply. ~~[The hearing will be general in nature so that the Board is able to establish the true facts.]~~

Sec. 31. NAC 213.130, 213.140, 213.150, 213.160, 213.170, 213.180 and 213.210 are hereby repealed.

TEXT OF REPEALED SECTIONS

213.130 Certificates of good conduct: Purposes. (NRS 233B.040, 233B.050) The Board may issue to a person who has been convicted of a crime a certificate of good conduct:

1. To remove a legal disability incurred through conviction;
2. To furnish evidence of good moral character where it is required by law; or

3. Upon proof of the person's performance of outstanding public services or if there is unusual and compelling evidence of his rehabilitation.

213.140 Certificates of good conduct: Eligibility. (NRS 233B.040, 233B.050)

1. A person is not eligible for a certificate of good conduct until 5 years have elapsed following an unrevoked release from custody, the suspension of a sentence or the payment of a fine.

2. If the person has been convicted under the laws of another state or jurisdiction he is not eligible for a certificate until he has been a resident of this State for 5 years.

213.150 Certificates of good conduct: Applications. (NRS 233B.040, 233B.050)

1. An application for a certificate of good conduct must be made by the person requesting it or his authorized representative.

2. The application and the official records relating to the case will be reviewed by the Executive Secretary of the Board and a decision will be made as to whether the application will be submitted to the Board. The applicant will be notified of the decision.

3. If the decision is favorable, the Division of Parole and Probation of the Department of Public Safety will proceed with an investigation of the case. When the final report of the investigation is available, the case will be studied by the Board and a final determination will be made as to whether a certificate of good conduct will be granted.

4. All communications regarding an application for a certificate of good conduct must be addressed to: Executive Secretary, State Board of Pardons Commissioners, 1445 Hot Springs Road, Suite 108-B, Carson City, Nevada 89711.

213.160 Certificates of good conduct: Pardons. (NRS 233B.040, 233B.050) The issuance of a certificate of good conduct does not limit or affect the manner of applying to the Governor for a pardon.

213.170 Certificates of good conduct: Registration of convicted persons. (NRS 233B.040, 233B.050) The granting of a certificate of good conduct by the Board relieves the person of the liability to register as a convicted person pursuant to NRS 179C.100 if he has had his civil rights restored.

213.180 Certificates of good conduct: Professional licenses. (NRS 233B.040, 233B.050) The issuance of a certificate of good conduct does not limit the lawful discretion or power of any licensing board, body or authority either to grant or refuse a license. The final determination as to licensing, employment or the right to practice a profession is at the discretion of the licensing body or in accordance with the law.

213.210 Notification of desire to testify. (NRS 233B.040, 233B.050) Any person wishing to testify for or against the applicant whose name is not listed on the application shall notify the Executive Secretary of the Board of his desire to testify 10 days before the hearing.