

LCB File No. R085-09

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

**CHAPTER 213 OF NAC IS HEREBY AMENDED BY ADDING THERETO
THE PROVISIONS SET FORTH AS SECTIONS 1 TO 17, INCLUSIVE,
OF THIS REGULATION.**

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PARDONS, REMISSIONS OF FINES, COMMUTATIONS OF PUNISHMENTS; STATE BOARD OF PARDONS COMMISSIONERS

NAC 213.010“Board” defined. *(NRS 233B.040, Article 5, Section 14 of the Nevada Constitution)*
As used in NAC 213.010 to 213.210, inclusive, unless the context otherwise requires, “board” means the state board of pardons commissioners.

New Section 1: “Pardon” defined. (NRS 233B.040, Article 5, Section 14 of the Nevada Constitution) As used in NAC 213.010 to 213.210, inclusive, unless the context otherwise requires, “pardon” means the forgiveness of a crime and the penalty associated with it.

New Section 2: “Clemency” defined. (NRS 233B.040, Article 5, Section 14 of the Nevada Constitution) As used in NAC 213.010 to 213.210, inclusive, unless the context otherwise requires, “clemency” means the remission or lessening of a sentence.

New Section 3: “Commutation of Sentence” defined. (NRS 233B.040, Article 5, Section 14 of the Nevada Constitution) As used in NAC 213.010 to 213.210, inclusive, unless the context otherwise requires, “commutation of sentence” means the remission or lessening of a sentence.

New Section 4: “Division” defined. (NRS 233B.040, Article 5, Section 14 of the Nevada Constitution) As used in NAC 213.010 to 213.210, inclusive, unless the context otherwise requires, “division” means the Division of Parole and Probation, of the Department of Public Safety.

New Section 5: “Department” defined. (NRS 233B.040, Article 5, Section 14 of the Nevada Constitution) As used in NAC 213.010 to 213.210, inclusive, unless the context otherwise requires, “department” means the Department of Corrections.

New Section 6: “Secretary” defined. (NRS 233B.040, Article 5, Section 14 of the Nevada Constitution) As used in NAC 213.010 to 213.210, inclusive, unless the context otherwise requires, “secretary” means the Secretary to the State Board of Pardons Commissioners.

New Section 7: Advisory Nature of Regulations. (NRS 233B.040, Article 5, Section 14 of the Nevada Constitution) These regulations create no enforceable rights in persons applying for a pardon or other clemency, nor do they restrict the authority granted to the Pardons Board by the Nevada Constitution.

New Section 8: Selection of Cases for Review. (NRS 233B.040, Article 5, Section 14 of the Nevada Constitution)

1. The secretary of the board shall establish procedures and criteria for the selection of applications to be considered by the Board. The criteria used by the secretary shall be made available for inspection at the primary office of the secretary and placed on the pardons board web site. 2. Except as provided for in subsection 5, a member of the board may place an application for review on a hearing agenda notwithstanding the criteria established by the secretary, the regulations of the board, or the recommendation or absence of a recommendation from the director of the department of corrections or the chief parole and probation officer. 3. A request for placement of an applicant on an agenda by a member of the board shall be made to the secretary not less than 50 days prior to the date of the scheduled meeting unless the member of the board, for good cause, prescribes a shorter time. 4. Members of the Board of Parole Commissioners and the Director of the Department of Corrections are encouraged to provide to the secretary of the board, the names of inmates who may merit pardons board consideration. 5. The Governor may deny an application that has been placed on an agenda, and remove it from consideration prior to a meeting of the Board.

NAC 213.020 Meetings. *(NRS 233B.040, Article 5, Section 14 of the Nevada Constitution)*

1. The board will meet semiannually *or more often*.
2. Meetings will be held ~~[on the second Tuesday of September]~~ *during the second week of November* and ~~[March]~~ *second week in May as fixed 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.

NAC 213.030 Chairman. *(NRS 233B.040, Article 5, Section 14 of the Nevada Constitution)*

The governor is the chairman of the board.

New Section 9: Effect of Governors vote. (NRS 233B.040, Article 5, Section 14 of the Nevada Constitution) A motion for favorable action may not succeed unless a majority of the members of the board vote in favor of the motion, and the governor is one in the majority. If the governor votes against a motion for favorable action, the motion fails.

NAC 213.040 Submission of Applications; Form to be used; Time limit. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)*

1. 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. The governor may prescribe a shorter period for a special hearing of the board.
3. *A person seeking a pardon, reprieve, commutation of sentence or remission of fine shall submit an application in accordance with the instructions established by the Executive Secretary. Applications may be obtained from the Executive Secretary at 1677 Old Hot Springs Rd., Suite A, Carson City, NV 89711. Application forms for commutation of sentence may also be obtained from the wardens of institutions and facilities of the Department of Corrections in accordance with instructions set forth by the Executive Secretary.*

NAC 213.050 Applications: Contents. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)* An application must include:

1. The name of the person making the application;
2. The court rendering judgment;
3. The amount of the fine or forfeiture, or the kind or character of the punishment;
4. The type of clemency or pardon being sought;
5. 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.]~~ *Any other information deemed necessary by the Executive Secretary.*

NAC 213.060 Service before hearing. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)*

Notice served pursuant to NRS 213.020 must include:

1. ~~[A request for the recommendations of the district judge, the district attorney, the director of the department of corrections and, when applicable, the chairman of the board of county commissioners; and]~~ *To the district judge who adjudicated the case or his successor, an offer to provide comments and a recommendation to the Pardons Board;*
2. *To the district attorney who prosecuted the case or his successor, a request for a statement of facts and any information affecting the merits of the application pursuant to NRS 213.040;*
3. *When applicable, a recommendation from the chairman of the board of county commissioners for cases in which the applicant has requested the remission of a fine or forfeiture; and*
4. An invitation for them to testify before the board at the hearing.

New Section 10: Time eligibility for filing application for pardon; criteria waived; availability of judicial relief. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)*

1. *No application for pardon should be filed prior to completing a waiting period of at least:*
 - a. *5 years from the date a person is released from actual custody or from the date when he is no longer under a suspended sentence, whichever occurs later, for a misdemeanor conviction of a crime which constitutes domestic violence pursuant to NRS 33.018;*
 - b. *6 years from the date of the release of the applicant from probation, parole or prison confinement for a category E felony;*
 - c. *8 years from the date of the release of the applicant from probation for a category B, C, or D felony;*
 - d. *9 years from the date of the release of the applicant from parole or prison confinement for a category D or C felony;*
 - e. *10 years from the date of the release of the applicant from parole or prison confinement for a category B felony;*
 - f. *12 years from the date of the release of the applicant from probation, parole or prison confinement for a category A felony;*
2. *Applicants who incur Misdemeanor or other convictions (excluding traffic tickets) during the general waiting period before applying for a pardon may be required to begin the general waiting*

period following conviction or when imposed, upon the completion of any period of probation, parole, jail or prison confinement.

3. The Executive Secretary may, with the consent of a member, waive the minimum time requirement.

4. No petition for commutation of sentence, including remission of fine, should be filed if other forms of judicial or administrative relief are reasonably available, except upon the consent of a member.

New Section 11: Applications from persons required to comply with sex offender registration pursuant to NRS 179D. (NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)

An application from a person required to register as a sex offender pursuant to NRS 179D will not be considered unless the applicant has satisfied the requirements of NRS 179D.490 and is no longer required to register as a sex offender.

New Section 12: Investigation of pardon applications; notification of victims; recommendations to the Pardons Board. (NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)

1. Upon receipt of an application for pardon from a person who meets the minimum qualifications set forth in New Section 10, the secretary shall request an investigation to be made of the matter as he or she may deem necessary and appropriate, using the services of the Division of Parole and Probation. The secretary may reject the application from further consideration if, during the course of the investigation, serious negative information is discovered that would make the granting of a pardon unlikely.

2. When an application for Pardon is accepted for consideration at a meeting of the Pardons Board, when applicable, the secretary shall notify the victim or victims of the crime for which clemency is sought in accordance with NRS 213.010.

3. Upon the completion of an investigation by the division, the Chief Parole and Probation Officer shall provide a written recommendation to the board.

New Section 13: Expedited review and approval of certain applications for pardon; notice to district attorney; notice to court. NRS 213 (SB238 of the 2009 session) (NRS 233B.040, NRS 233B.050, Section 1 of Senate Bill 238 of the 2009 Session, Article 5, Section 14 of the Nevada Constitution)

1. The Board may take action without a meeting, to grant pardons and restore the civil rights, in whole or part, of applicants whose offense:

a. Did not result in physical injury to a victim, and the applicant does not have any prior convictions for offenses that resulted in the physical injury to a victim;

b. Did not include the use of force or violence or the threat of use of force or violence, and the applicant does not have any prior convictions for offenses that included the use of force or violence or the threat of use of force or violence; and

c. Was not sexual in nature and the applicant does not have any prior convictions for offenses that were sexual in nature.

2. The Board will not take action without a meeting on an application if the Board has received a written request for notice concerning a meeting to consider an application for clemency from a victim of crime committed by the applicant, or if during the course of the background

investigation, a victim of the crime is identified, unless the victim states in writing that they have no objection to the applicant receiving a pardon.

3. The secretary shall identify those cases that appear to meet the minimum criteria set forth in subsections 1 and 2 prior to requesting an investigation in accordance with subsection 1 of New Section 9. The secretary will provide to the division notification documents relative to the intent to act without a meeting when requesting an investigation on a case that may be considered by the board without a meeting. During the investigation process, the division shall provide notice of intent to act without a meeting on an application to the court in which the judgment was rendered and to the district attorney of the county wherein the person was convicted.

4. If the court in which the judgment was rendered and the district attorney of the county wherein the person was convicted do not object to action being taken without a meeting, the secretary shall forward a qualifying application with the result of the investigation and other relevant material for circulation amongst the members of the board for review and consideration for approval. The Governor and Attorney General each shall act within 30 days of receipt of the documents for consideration. The members of the Supreme Court shall act collectively within 45 days of receipt of the documents.

5. If a majority of the members, with the governor being one in the majority, agree to approve the application and restore the civil rights of an applicant, upon delivery of written approval, the secretary shall prepare an instrument of pardon reflecting the action of the Board.

New Section 14: Offenses occurring in other jurisdictions. (NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution) Applications for pardons or clemency shall relate only to violations of laws of the State of Nevada. Applications relating to violations of laws of other States or the Federal Government will be rejected without consideration.

New Section 15: Effect of a commutation of sentence. (NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)

1. A commutation of sentence reduces a period of incarceration or allows for earlier eligibility for parole; it does not imply forgiveness of the underlying offense, but simply remits a portion of the punishment; It has no effect upon the underlying conviction and does not reflect upon the fairness of the sentence originally imposed.

2. A commutation of sentence does not create a right or expectation of release on parole, and should not be used to establish the basis for a cause of action against the State.

NAC 213.070 Requirements for reapplication. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)*

1. Any person ~~[who]~~ whose case was considered by the board and ~~[has been]~~ denied favorable action ~~[by the board]~~ may not reapply ~~[to the board]~~ unless:

*~~[1.]~~ a. He shows a substantial change of circumstance **that merits additional consideration;**
~~[and]~~ or*

*~~[2.]~~ b. ~~[The application was previously approved by the executive secretary of the board.]~~
The board provided instructions during a previous hearing that have been fulfilled by the applicant and the applicant has demonstrated full compliance with the instructions.*

NAC 213.080 Applications of prisoners eligible for or denied parole. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)* The board will not accept the

application of a prisoner for a pardon or the commutation of a punishment if he is eligible *for release on parole to the community within 12 months from the date of the next meeting of the board*, ~~[before the next semiannual meeting of the board and has not been heard or, if he has been heard, has been denied parole unless the application shows a special merit and has been previously approved for a hearing by the executive secretary of the board.]~~ *applicant has sufficiently demonstrated extraordinary circumstances that merit consideration.*

NAC 213.090 Recommendation of director; approval of executive secretary. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)*

1. The application of an inmate ~~[who is otherwise eligible]~~ *selected* for a hearing before the board must be accompanied by a recommendation by the director of the department of corrections to the executive secretary of the board.

2. *Except as otherwise provided in New Section 8*, ~~[F]~~ the secretary of the board has the final approval in placing an application on the agenda. 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.

NAC 213.100 Effect of new criminal code. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)* 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.

NAC 213.110 Commutation of sentence of life without possibility of parole. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)* 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 *unless the offense was committed prior to July 1, 1995 and at least [until 7] 19* calendar years have been served by the applicant.

NAC 213.120 Death penalty. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)* ~~[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 board.]~~

1. No application for clemency *or pardon* from an inmate serving a sentence of death shall be considered unless all appelland remedies available to the inmate are exhausted.

New Section 16: Official Documents *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)*

1. The secretary shall prepare an instrument reflecting any favorable action of the board. Each instrument of pardon or clemency shall delineate the details of the sentence(s) being acted upon, and the result based on the official action taken by the board. Unless otherwise instructed by the Board, no order shall be prepared when clemency is denied.

2. Each member voting in favor of the action shall sign two original documents reflecting the action of the board. A member who voted against the action may, at his or her discretion, sign the document affirming that the document reflects the action of the board. One original document will be retained in the office of the secretary, and one original document will be provided to the applicant.

3. In the event a member who voted in favor of action is no longer serving or is unable to sign an instrument of pardon or clemency, and a majority of the members to include the Governor who voted in favor of the action no longer hold a position on the board, the sitting Governor, Attorney General and the Chief Justice of the Supreme Court may sign an instrument of pardon or clemency certifying the action of the board based on the transcripts and voting minutes taken at the hearing.

4. Each instrument of pardon or clemency shall be attested with the Great Seal of Nevada and signature of the Secretary of State.

5. The secretary of the board may certify a copy of an original instrument of pardon or other official record of clemency.

New Section 17: Applications from individuals on parole. (NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)

Except as otherwise provided in New Section 8, applications from individuals on parole will not be considered unless the applicant has met the minimum requirements as set forth in NRS 176.033(2); and

- 1. The applicant has received a favorable recommendation for a modification of sentence from the Division of Parole and Probation but the request was denied by the Board of Parole Commissioners;*
- 2. A petition for modification of sentence submitted by the Board of Parole Commissioners was denied by the court; or*
- 3. A member requests an applicant's case be placed on the agenda for consideration.*

~~[NAC 213.130 Certificates of good conduct: Purposes. 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.]~~

~~[NAC 213.140 Certificates of good conduct: Eligibility:~~

- ~~—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.]~~

~~[NAC 213.150 Certificates of good conduct: Applications:~~

- ~~—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.]~~

~~[NAC 213.160 Certificates of good conduct: Pardons. The issuance of a certificate of good conduct does not limit or affect the manner of applying to the governor for a pardon.]~~

~~[NAC 213.170 Certificates of good conduct: Registration of convicted persons. 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.]~~

~~[NAC 213.180 Certificates of good conduct: Professional licenses. 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.]~~

NAC 213.190 Hearings to be informal. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)* 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.]~~

NAC 213.200 Testimony; presence of applicant; affidavits, depositions. *(NRS 233B.040, NRS 233B.050, Article 5, Section 14 of the Nevada Constitution)* The board may:

1. Require all testimony to be given under oath.
2. Require the presence of the applicant.
3. Accept for consideration any affidavits or depositions taken and certified by a district judge, county clerk or notary public.

~~[NAC 213.210 Notification of desire to testify. 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.]~~