

NEBRASKA PARDONS BOARD

POLICY AND PROCEDURE GUIDELINES

001 AUTHORITY:

The Nebraska Pardons Board was created through Article IV, Section 13, of the Nebraska Constitution. The Board is comprised of the Governor, the Secretary of State, and the Attorney General. The Board is not governed by the Nebraska Administrative Procedures Act, and its constitutional powers cannot be limited or modified by any act of the legislature or of the Nebraska courts. The Board has the power to remit fines and forfeitures, grant respites, grant reprieves, grant pardons, and grant commutations in all cases of conviction for offenses against the laws of the State of Nebraska, except for treason and cases of impeachment. Reference to the Pardons Board is contained in Nebraska Statutes 83-170 and 83-1, 126.

002 DEFINITIONS:

002.01 **COMMUTATION:** A reduction of sentence or penalty to one which is less severe.

002.02 **CRIMES AGAINST A PERSON:** Murder, manslaughter, motor vehicle homicide, assault, terroristic threats, kidnapping, false imprisonment, sexual assault, robbery, abuse of a child or vulnerable adult, incest, and any crime involving violence against a person, regardless of the offense for which the applicant was ultimately convicted.

002.03 **PARDON:** An exemption from all penalties incurred as a consequence of a crime.

002.04 **REMITTANCE:** The elimination or reduction of a fine, or the return of the money or property forfeited as a penalty for a crime.

002.05 **REPRIEVE/RESPITE:** Delay in or temporary relief from punishment.

003 POLICIES:

These policy and procedure guidelines are designed to assist members of the Pardons Board in the exercise of the authority vested in them. The guidelines are not binding on the Board or any member thereof, and may be modified in whole or in part at any time.

003.01 It is the policy of the Board to meet and consider pending applications at a time set at the convenience of the Board. If the Board determines that an application merits a hearing, the Board will schedule the application for a hearing at a quarterly meeting designated for hearings on applications.

003.02 It is the policy of the Board to consider all applications for commutation, pardon, reprieve, respite, or remittance, if the applicant has filed a written application with the Secretary of State, or a designee, in the form prescribed by the Board (except in cases involving treason or impeachment, or where the applicant is sentenced to death and has previously submitted an application which has been denied and the Board has voted not to

consider further applications). Applications may be considered with or without hearing. The Board will act upon applications when it has conducted such investigation (including any hearing) as it deems necessary, and it is prepared to evaluate the merits of the application. The Pardon Board may request a written report or recommendation for the Parole Board in connection with any application.

003.03 It is the policy of the Board to act upon applications only at meetings held pursuant to the Nebraska Public Meetings Act, Nebraska Statutes 84-1409 through 84-1414.

004 PROCEDURES:

004.01 **APPLICATION:** Any person who has been convicted of an offense against the laws of the State of Nebraska, except for treason or cases of impeachment, may submit an application to the Pardons Board on the form prescribed by the Board. Applications which are not completed in full and according to the instructions on the form may not be accepted for consideration. Applications may be submitted to the Board's administrative office or to the Secretary of State at the Nebraska State Capitol during normal business hours. The Secretary of State will accept applications from applicants under sentence of death at other locations and outside normal business hours.

004.02 **ACTION WITHOUT HEARING:** The Board may grant or deny any application, in whole or in part, without a hearing. It is the Board's general policy, however, not to grant applications for pardons or commutations of sentences without a hearing. The Board's decision will be by majority vote. The applicant will be notified of the Board's action. If the application is granted, in whole or in part, the sentencing court and any agency having custody of the applicant shall be notified of the Board's action.

004.03 **HEARING:** The Board may, in its discretion, grant a hearing to the applicant. Such hearing will be informal and not governed by the Rules of Evidence. The purpose of any such hearing is to afford the members of the Board the opportunity to question the applicant or others, or to hear such statements and review such information as the Board believes may be helpful to it in the exercise of its authority. Time, place, duration, and substance of any such hearing are matters completely within the discretion of the Board.

004.03.01 **Notification of victims.** If the Board grants a hearing to an applicant who is seeking a pardon or commutation for a crime against a person, as defined herein, the Board will attempt to contact the victim of the crime, or the victim's family, to offer the victim or a member of the victim's family the opportunity to present information to the Board. The Board will, in all cases, give notice to any victim or other person who has requested notice.

004.03.02 **Subpoena power.** The Board, or any member of the Board, has the power to issue subpoenas, compel his attendance of witnesses and the production of books, papers, and other documents pertinent to the subject of an inquiry, and to administer oaths and take the testimony of person under oath.

Subpoenas issued by the Board, or any member of the Board, may be served by any sheriff, constable, police officer, parole officer, or other peace officer in the same manner as subpoenas are served in district court. Any person who knowingly testifies falsely, submits any false affidavit or deposition, fails to appear when subpoenaed,

or fails or refuses to produce such material pursuant to the subpoena, shall be subject to the same orders and penalties to which a person before the district court is subject. Any district court in Nebraska, upon application by the Board, may compel the attendance of a witness, the production of material, and the giving of testimony before the Board, by an attachment for contempt or otherwise in the same manner as production of information may be compelled before the district court. When a person is subpoenaed anywhere within Nebraska, that person shall be entitled to the same fees (if claimed) as a witness in the district court, and mileage as provided by statute for state employees.

004.03.03 Presentation of information, testimony, and argument. The Board may hear testimony, whether or not offered under oath, and may receive written statements and other information which the Board deems useful in the exercise of its authority. The order of presentation of testimony or other information will be set in the discretion of the Board. Ordinarily the applicant, or a representative of the applicant, will first present testimony, statements, or other information in support of the application, followed by the presentation of those appearing in opposition to the application. Correspondence received by any Board member shall be shared with the other members through Pardon Board staff. If the applicant has not fulfilled the sentence imposed by the sentencing court, the county attorney from the county wherein the crime was committed, shall be requested to appear before the Board to present information concerning the nature and seriousness of the crime committed and any reasons or information as to why the application should not be granted. In the event the county attorney shall decline to make a presentation, the presentation shall be made by the staff of the Nebraska Attorney General's Office unless otherwise directed by a majority vote of the Board.

04.03.04 Record. When the Board conducts a hearing concerning an application before it, a complete record of the proceedings shall be made and preserved. The record may be made by audio tape, video tape, or any other means acceptable in Nebraska courts.

004.04 ACTION FOLLOWING HEARING: The Board's decision will be by majority vote. The Board may, after a pardon has been granted for a felony offense, empower the Governor to expressly authorize such person to receive, possess or transport in commerce, a firearm. The applicant will be notified of the Board's action. If the application is granted, in whole or in part, the sentencing court, and any agency having custody of the applicant, shall be notified of the Board's action.

004.05 SPECIAL PROCEDURES IN DEATH PENALTY CASES: When the Board is notified by the Attorney General that an execution date has been set by the Nebraska Supreme Court for a prisoner, the Board's staff shall prepare a file concerning the prisoner and begin to gather documentation for the file as if an application for clemency had been filed. If an individual who has been sentenced to death submits an application to the Board, for exercise of the pardon authority, a stay of execution shall be immediately issued by the Secretary of the Board and delivered to the Warden of the Penitentiary, pursuant to Neb. Rev. Stat. 83-1,132, and shall remain in force until the Board rules upon the application. The Board will meet within five days of the filing of any such application and will consider the application and determine whether or not a hearing should be granted. If the Board determines that a hearing should be granted, the hearing will be held within 30 days of the filing of the application. At any such hearing, a representative of the applicant shall receive three hours for presentation of information and argument to the Board. The presentation may include a sworn statement of the applicant made by videotape, audiotape, or affidavit. The applicant's representative may reserve part of the three hour

allotment for rebuttal. Following the presentation of the applicant's representative, the State shall receive three hours for presentation of information and argument to the Board. The State shall allot a portion of its time to representatives of the victim(s) who may wish to make a presentation to the Board. Representatives of the applicant, the State, the victim, and the general public may submit other written commentary, including letters, affidavits, or information, to the Board for its consideration prior to or on, the date of the hearing. If the application is denied the stay issued shall be lifted, and if the execution date has expired, the Board shall issue a warrant to the Warden of the Nebraska State Penitentiary, establishing a new execution date. The Board shall also determine, by motion and vote, whether or not any additional applications from the prisoner will be accepted by the Board.

005 PREPARATION OF DOCUMENTS:

OO5.01 The Attorney General shall prepare, with such assistance from the Board's staff as he shall request, all forms and documents necessary to enable the Board to carry out its duties and responsibilities.

Dated March 17, 1992
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