



State of New Mexico

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Governor

EXECUTIVE CLEMENCY GUIDELINES

The people of New Mexico have entrusted to the Governor the power to issue pardons and grant other forms of clemency. These guidelines are intended to provide direction for the Parole Board and the Corrections Department in making recommendations regarding clemency applications to the Governor. These guidelines are also intended to inform applicants and members of the public about the Governor's pardoning authority and the factors that she considers when exercising that authority.

I. The Governor's Authority to Issue Pardons and Other Forms of Clemency

The people of New Mexico have granted exclusive authority to the Governor to issue pardons and other forms of clemency through Article V, Section 6 of the New Mexico Constitution. That provision states that: "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 decision to pardon rests solely with the Governor and is "unrestrained by any consideration other than the conscience and wisdom and the sense of public duty of the Governor."¹

The Governor's pardoning power extends to all offenses committed under state law other than the offenses of impeachment and treason, which are constitutionally exempted. The Governor does not have authority to pardon convictions for violations of municipal ordinances² or convictions from another jurisdiction, such as convictions from other states and convictions under federal law. Although the Governor cannot commute a sentence imposed under federal law or restore an individual's rights under federal law, the Governor may restore an individual convicted under federal law to full citizenship rights under New Mexico law.³ Information regarding federal pardons can be obtained from the United States Department of Justice in Washington, D.C. Information regarding pardons in another state can be obtained from the Governor's Office in that state.

¹ Ex Parte Bustillos, 1920-NMSC-095, ¶ 11, 26 N.M. 449, 194 P. 886.

² See City of Clovis v. Hamilton, 1936-NMSC-064, 41 N.M. 4, 62 P.2d 1151.

³ See Lopez v. Kase, 1999-NMSC-011, 126 N.M. 733, 975 P.2d 346; United States v. Larranaga, 614 F.2d 239, 242 (10th Cir. 1980), disapproved on other grounds by Ball v. United States, 470 U.S. 856, 858 n.5 (1985).

The Governor's pardoning power **does not** allow her to expunge arrest or conviction records through any form of executive clemency.⁴ If you have received some form of executive clemency, the conviction remains on your record along with a record of the Governor's grant of executive clemency. If a pardoned individual is later convicted of a new offense, under New Mexico law the pardoned offense is still considered a prior conviction for purposes of sentencing laws pertaining to habitual offenders.⁵

II. The Different Forms of Executive Clemency

The only form of executive clemency available for applicants who are no longer incarcerated is a pardon to restore civil rights. Applicants who are still incarcerated may wish to apply for one of the following forms of relief: (1) a commutation of all or some of a remaining sentence imposed by a court; (2) a conditional release; or (3) a reprieve.

A. Pardon to restore civil rights following discharge from supervision

The Governor may issue a pardon restoring certain fundamental rights under New Mexico law to an individual after that individual has been discharged from supervision. The Governor can only pardon offenses under New Mexico state law; she does not have the authority to issue pardons for offenses from other jurisdictions, such as offenses under federal law, offenses under the laws of another state, or offenses under the laws of a foreign country. However, the Governor may issue a certificate restoring someone who has been convicted under the laws of another jurisdiction to full citizenship rights under New Mexico law.⁶

In New Mexico, individuals who have been convicted of a felony are barred from exercising three basic rights: (1) voting;⁷ (2) holding elective office;⁸ and (3) possessing firearms.⁹ The Governor may exercise her pardon authority to restore some or all of these rights under New Mexico law.¹⁰ However, the Governor cannot remove any disabilities or grant any rights under the laws of any other jurisdiction, including under federal law.

⁴ The Department of Public Safety has authority to expunge certain petty misdemeanor and misdemeanor arrest records. See NMSA 1978, § 29-3-8.1 (2002).

⁵ See *Shankle v. Woodruff*, 1958-NMSC-054, 64 N.M. 88, 324 P.2d 1017.

⁶ See *Lopez*, 1999-NMSC-011; *Larranaga*, 614 F.2d at 242.

⁷ See N.M. Const. art. VII, § 1; NMSA 1978, § 31-13-1(A) (2005).

⁸ See N.M. Const. art. VII, § 2(A); NMSA 1978, § 10-1-2 (1912).

⁹ See NMSA 1978, § 30-7-16 (2018).

¹⁰ Please note that **applicants seeking to restore the right to bear arms** must specifically request this when applying; otherwise the applicant will not be considered for the restoration of that right. Applicants must then wait an additional year to apply for the right to bear arms. Section 30-7-16 provides that it is unlawful for a person convicted of a felony to receive, transport, or possess any destructive device or firearm for ten (10) 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 does not have authority to do so for a conviction under federal law or the laws of another state. See Att'y Gen. Op. 92-09 (1992).

Ordinarily, pardon requests for applicants convicted of misdemeanors, DWI offenses, 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 for a pardon.

An applicant for this form of executive clemency must remain arrest-free for the following periods of time to be eligible to apply for relief:

1. An applicant convicted of a fourth-degree felony is eligible five (5) years after discharge from supervision. An unsatisfactory discharge from supervision will require an additional two (2) years for a total of seven (7) years following discharge.
2. An applicant convicted of a third-degree felony is eligible six (6) years after a discharge from supervision. An unsatisfactory discharge from supervision will require an additional two (2) years for a total of eight (8) years following discharge.
3. An applicant convicted of a fourth-degree felony is eligible seven (7) years after a discharge from supervision. An unsatisfactory discharge from supervision will require an additional two (2) years for a total of nine (9) years following discharge.
4. An applicant convicted of a first-degree felony is eligible eight (8) years after a discharge from supervision. An unsatisfactory discharge from supervision will require an additional two (2) years for a total of ten (10) years following discharge.

The Governor will not normally consider a case in which an individual has successfully completed a suspended or deferred sentence. That is because that individual has already been restored to full citizenship rights in New Mexico by operation of law.¹¹ However, if for some reason a completed suspended or deferred sentence causes a serious impairment to an individual's liberty or constitutional rights that can be remedied through a pardon, the Governor will consider granting a pardon. An applicant seeking this type of pardon should explain what important interest or right has been impaired and should specifically describe how the Governor has authority to remove this impairment with a pardon.

B. Commutation of sentence

The Governor may commute the sentence of an individual who is currently being punished for an offense under New Mexico law. A commutation of sentence is a reduction in the punishment that was imposed by a court, but it does not relieve the individual of other legal

¹¹ See NMSA 1978, § 31-13-1(A)(1) (2005); NMSA 1978, § 31-20-9 (1963); United States v. Reese, 2014-NMSC-013, 326 P.3d 454; N.M. Att'y Gen. Op. 88-03 (1988).

consequences of the offense. The Governor may, at her discretion, reduce some or all of the remainder of a sentence. This would allow the applicant to be released by the Parole Board before their regular date of discharge. The Governor also has authority to impose conditions on an individual who receives a commutation that the individual must fulfill to maintain the commutation.

Commutation of sentence will normally be considered only in cases of unusual meritorious service. Examples of unusual meritorious service include: saving the life of an inmate or Corrections Department employee; assistance in stopping an insurrection which threatens the administration's control of an institution; and risking 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 the validity of the claim of meritorious service. The supervising authorities must also recommend commutation.

Substantially changed conditions with respect to the sentence imposed on an individual, such as a significant alteration of sentencing laws or the partial or complete decriminalization of formerly criminal activities, may also provide a basis for the Governor to commute in part or in full an individual's sentence imposed under New Mexico law. If there are specific changed conditions which the Governor decides warrant consideration as part of a clemency initiative, the Office of the Governor may decide to issue further guidance regarding applications for clemency based on those changed conditions.

The Governor also has discretion to grant a full pardon to an individual whose entire remaining sentence has been commuted and restore that individual's citizenship rights. 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 that affidavit's validity must accompany any request for a full pardon on these grounds.

C. Conditional release

The Governor's pardon power permits her to grant a conditional release in situations of extreme personal hardship. A conditional release releases an inmate from incarceration subject to parole conditions. A conditional release is automatically voided upon a breach of the conditions of parole and the individual is subject to re-arrest and return to the Corrections Department's custody to serve the remainder of the sentence.

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

the Governor's consideration. Situations of extreme personal hardship that may merit the Governor's consideration of a conditional release include:

1. An illness which may result in death within two to four months. In all such cases, recommendations by supervising administrative and medical authorities and the Parole Board will be required.
2. A medical hardship of such 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 describing whether an inmate's illness constitutes an added burden to the institution, medical authorities must be specific about the limitations caused by the inmate's illness and provide specific information on the future care of the inmate should clemency be granted.

Individuals convicted of a serious violent offense and/or a sexual offense will not be considered for conditional release.

D. Reprieve

A reprieve is a form of temporary relief that postpones punishment. A reprieve does not affect the sentence but merely suspends its execution.

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

Reprieves are reserved for emergency situations. The Governor will consider each emergency case on its individual merits at the soonest practicable time.

As with other forms of executive clemency, the Governor may request a recommendation from the Parole Board on a request for a reprieve.

III. Considerations Relevant to Executive Clemency Decisions

The Governor's pardoning power should only be exercised when doing so is in the interests of justice and equity. In making this determination, the Governor employs a holistic review that gives due consideration to the nature of the underlying offense and the applicant's role in the underlying offense, the impact of the crime on any victim(s) and society as a whole, and any other factors weighing on the fundamental fairness of granting a pardon to the applicant.

The Governor will view favorably any civic contributions and educational accomplishments of applicants both prior to and after conviction. These include charitable and civic contributions, voluntary community service activities, military service, and

educational degrees or professional certificates earned by the applicant after conviction. To assist in the evaluation process, applicants should include any significant achievements and evidence of good citizenship.

The Governor will consider whether the applicant has been a law-abiding citizen and a productive member of society after their conviction. Due consideration will be given to consistent employment history and a lack of a criminal record after discharge, including municipal, state, and federal offenses. Applicants should submit evidence regarding their employment history and their criminal record as directed by the application form.

The Governor will weigh whether the applicant has demonstrated personal growth. Applicants should provide any information which they feel shows personal development and positive life changes since the commission of the offense. Any evidence that the applicant has accepted responsibility, demonstrated remorse, or atoned for their offense(s) should also be provided. An applicant's voluntary participation in substance abuse or other treatment programs and/or restorative justice initiatives will also be considered.

IV. Information About the Application Process

1. These Guidelines, the Instructions to Applicant and Application are available online at www.governor.state.nm.us.
2. There is no fee to apply for executive clemency.
3. Applicants should address their requests to the Governor and identify the type of executive clemency (i.e., pardon, commutation of sentence, conditional release) they are seeking.
4. The Governor may refer requests to the Parole Board for investigation and recommendation.¹²
5. The Parole Board will examine the request to determine whether it meets the criteria for consideration set forth in these guidelines. If it does not, the Parole Board will notify the applicant and the Governor and no further action will be taken. If it does, the Parole Board will call for a field investigation by the Corrections Department. The applicant shall comply with any request by the Parole Board for interviews or additional documentation. Parole Board recommendations are not binding on the governor and are used solely to assist the Governor in performing her non-delegable duties.
6. The Parole Board or the Governor may also request pertinent input from the sentencing judge and/or prosecuting attorney involved in the relevant conviction.

¹² See NMSA 1978, § 31-21-17 (1955).

7. After reviewing all the reports, other materials, and recommendations provided, the Governor will decide whether to grant executive clemency.
8. There is no specific length of time for processing requests for executive clemency. **It is not necessary for the applicant to contact the Governor's Office to check on the status of a request and applicants are discouraged from doing so.** The applicant will be promptly notified of any significant developments with the application. Applicants should notify the Governor's Office in writing upon a change of address.
9. When a pardon is granted, the New Mexico Department of Public Safety and the Federal Bureau of Investigation are notified so that records on the applicant may be updated. The pardon is filed with the Secretary of State and is a public record.
10. Letters of denial or ineligibility issued to the applicant by the Governor are also public records.
11. If an applicant applied for executive clemency under a prior administration and did not receive a response, the applicant must submit a new application and may re-apply at any time.
12. If an applicant was denied executive clemency by a prior administration, the applicant may apply for the same form of executive clemency two (2) years after the date of the previous application.
13. If an applicant was denied executive clemency by the current administration, the applicant may apply for the same form of executive clemency four (4) years from the date of the previous application.
14. The Governor has full discretion over applications for executive clemency and may review them at any time or not at all.
15. The Governor's decision is final and is not appealable.

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