

PARDON BOARD APPLICATION

Enclosed is a Pardon Board application as requested.

Also enclosed is a copy of the Board's policies and procedures and instructions for filing an application for pardon. Please refer to these to insure that the application is completed and returned correctly. Applications will not be accepted which are not completed according to the instructions.

When the application and supportive material are returned, they will be considered in executive session by the Board at their next scheduled consideration meeting. You will be notified in writing as soon as possible following that meeting of the results. If the application is accepted and the case set for a hearing, the hearing will be held at the next scheduled quarterly hearings meeting of the Board and your appearance before the Board would be required at that time. **The Pardons Board process can take 12 months or more.**

PLEASE NOTE: 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. The Board of Pardons does not have authority to act in such cases where the offenses are against a city municipal ordinance code or the U.S. Government; reference State of Nebraska Constitution Article IV, Section 13 and Nebraska Statutes 83-170 and 83-1,126. Also, the Board can accept or deny an application or requested offense for any reason or no reason at all and currently the Board will not consider or hear any infraction convictions, any traffic violations, driving under the influence (DUI/DWI) or driving under suspension.

It is the usual practice in the granting of pardons to hear only those misdemeanor cases where three (3) years has elapsed and those felony cases where ten (10) years has elapsed upon completion of sentencing, including any probation, supervised release, or parole term, with no further law enforcement contacts or court convictions within the waiting period.

In the state of Nebraska there are no laws or statutes that allow a complete expungement of ones criminal history. Any law enforcement contact, arrests, and convictions will remain on ones history forever. However, you can file an application to the Nebraska Board of Pardons requesting a pardon be granted on your convictions. If a pardon is granted to you, it would be indicated on your history record. It is recommended that a copy of any pardon granted be presented to any prospective employers, schools, etc.

Please feel free to contact this office if you have any questions or refer to the Pardon Boards website: www.pardons.state.ne.us.

Sonya Fauver
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INSTRUCTIONS FOR FILING AN APPLICATION NEBRASKA PARDONS BOARD - FULL PARDONS

Applications are processed according to the date they are received in the Nebraska Board of Pardons Office. Applications will be scheduled on the next available open docket for considerations. Dockets can close at any time. There is no guarantee that any application received will be scheduled for the most current docket available. As numerous applications are received daily, any application received can be postponed and scheduled for a future consideration meeting. **The Pardons Board process can take 12 months or longer. Please follow instructions closely, applications that are not completed according to the instructions will be returned and cause further delays in setting the case on a docket.**

MATERIALS NEEDED FOR CONSIDERATION

1. Completed application including the signature of the applicant.

An application secured from the office of the Board, should be completed giving detailed information as to one's activities since release. If an applicant has had more than one felony or misdemeanor conviction in Nebraska the application should include information for each conviction for which you wish a pardon. A pardon from Nebraska would in no way pardon one from convictions in other states.

2. Several reference/character letters. **(Three or more)**

Several letters verifying the applicant's good character from citizens of the community where the applicant has resided must accompany the application.

3. A **receipt** from the Clerk of the County or District Court indicating that all fines, court costs and restitutions have been satisfied.

Court fines, costs and restitutions are expected to be satisfied. A current dated letter from the Clerk of the District or County Court of the sentencing county stating that all fines, costs, and restitutions have been satisfied, or a current dated receipt showing all fines, costs, and restitutions have been paid, **must be submitted with the application**.

4. Court documents for penalties other than incarceration in state correctional facilities.

In the event an applicant is requesting a pardon from a misdemeanor or felony conviction where the penalty imposed was anything other than incarceration in a **state correctional** facility, **court documents must accompany the application** indicating the offense, date of sentence, and penalty **(Sentencing Order, Probation Order, and Release from Probation Order)**. Records of term(s) of confinement in state correctional facilities are available to the Board through the Department of Correctional Services.

BOARD OF PARDONS
P.O. Box 94754
Lincoln, NE 68509-4754

APPLICATION FOR FULL PARDON

1. First Name: _____ Middle Name: _____ Last Name: _____

2. Any other names used: _____

3. Current address: _____

City: _____ State: _____ Zip Code: _____

4. Home phone number: _____ Work/Cell phone number: _____

Email Address: _____

5. Date of birth: _____ Place of birth: _____ Current Age: _____

6. Social Security Number: _____

7. Criminal History Record Information:

Sex: Male _____ Female _____ Race _____

Height _____ Weight _____ Eye Color _____ Hair Color _____

8. Have you ever applied for a pardon before? _____ If yes, when? _____

9. List crime(s) for which you are seeking a pardon:
 (If requesting pardons on more crimes, see last page of application for additional listings).

OFFENSE(S)	COUNTY WHERE COMMITTED	DATE OFFENSE COMMITTED	DATE ARRESTED	DATE SENTENCED	SENTENCE RECEIVED
a.					
b.					
c.					

On the above convictions that you are requesting a pardon, did you serve any State of Nebraska prison sentences? _____ If yes, what was your State Inmate Number? _____

21. Have you ever been convicted of a crime other than the above mentioned? Yes _____ No _____

If yes, give the full particulars: _____

22. Have you ever been addicted to the use of alcohol or controlled substances: Yes _____ No _____

If yes, please explain: _____

23. List your previous residences and state how long you resided there, your occupation at each and give two acquaintances:

Previous residence	Length of residence	Occupation	Acquaintances

24. Give **name, occupation and address of each** of the following:

- Spouse (or former spouse): _____
- Children (**please provide ages**): _____

- Father: _____
- Mother: _____
- Sisters: _____

- Brothers: _____

36. Give your reason for requesting a pardon
(May be attached on a separate sheet of paper - labeled question number 36.)

37. If your crime was a felony or a misdemeanor crime of domestic violence, Federal law prohibits you from carrying, transporting, possessing and/or receiving firearms.

Are you requesting authorization to possess a firearm? Yes _____ No _____

This application will become a matter of public record once it is received by the Board of Pardons.* Falsification of any portion of this application can be reason for denial.

Signature of applicant _____

Date of signature _____

Additional information on any questions may be continued on another blank sheet of paper attached and noted with the same question number.

PROCEDURE

When an application is filed, the Board makes a thorough investigation of the case, determines if the application should be accepted for hearing and if accepted, sets the case for a public hearing. The applicant will be notified of the results within a reasonable amount of time.

The Board holds public hearings quarterly, usually in March, June, September, and December of each year. Specific dates are determined following each meeting for the next quarterly meeting.

If a hearing is granted on an application for full pardon, the applicant is expected to be in attendance for the hearing. If an applicant wishes to request a hearing in absentia, this request should be made when the application is filed. Only in rare cases will a hearing be granted in absentia. These are public hearings; a notice appears in state and county newspapers, the press may be in attendance, and testimony is taken from anyone appearing in support or opposition to the application. A reasonable effort will be made to contact the victim of offenses defined as crimes against a person by the Board's Policy and Procedure Guidelines.

The Board may consult with the Board of Parole concerning any application.

TRAFFIC OFFENSES – DWI, DUI, DUS, AND OTHER TRAFFIC VIOLATIONS:

The Pardons Board takes Driving While Intoxicated, Driving Under The Influence, and Driving Under Suspension very seriously. The Board of Pardons has the authority to accept or deny an application for any reason or no reason at all. Currently the Board is not in the practice of pardoning DWI convictions, DUI convictions, DUS convictions, or any other traffic violation convictions, as these types of convictions can be enhanced and the Board does not want to exempt the conviction from ones criminal history record or excuse them from the crime.

IMPORTANT:

Please keep copies of pardon application, court documents, character reference letters, and any other materials submitted for your personal records.

Pardons Board Website: www.pardons.state.ne.us

THE EFFECT OF POST-SENTENCING ON CRIMINAL RECORDS

Certain court and administrative actions which follow sentencing in criminal cases are considered “dispositions” under the Nebraska Security, Privacy, and Dissemination of Criminal History Information Act and an entry showing the action is made in the appropriate criminal history information record. These actions include pardons, orders to set-aside the conviction, expungement orders, orders to seal records, parole violations, probation violations, etc.

Questions are frequently asked about the effect of such orders on the criminal history record. Most often, individuals want to know if the action will cause the record to be removed from the files (expunged, erased, sealed, suppressed, etc.). The answer in all of these cases is NO – that the record remains in the file and the action is recorded (shown) as an additional disposition to the case. **There is no provision under Nebraska law for complete expungement or removal of criminal records except for very limited expungement procedure under §§ 29-3523 due to the error of a law enforcement agency.** The Attorney General has issued an opinion that court orders for removal of records are issued without proper authority and do not result in the removal of records. Since records are required to be complete, these actions are noted in the appropriate criminal history record. In the State of Nebraska, a criminal conviction cannot be “erased” or “expunged.” It can be “pardoned” or “set-aside,” but it **will not be removed from a criminal history record. Once there is a conviction on your record, it always will be on your record.**

PARDON:

A full pardon is an act of executive clemency or “formal forgiveness” / “act of grace” for a crime. It restores the offender to his or her civil rights and exempts the offender from further punishment or restriction by the state as a consequence of the crime. **It does not “erase guilt or result in the expungement of the conviction.**

A pardon nullifies the conviction and restores those civil rights which are lost by a felony conviction (the right to vote, serve as a juror, hold public office, etc.). **A pardon does not release an individual from paying the costs of their conviction nor does it restore the right to possess firearms under Nebraska state law and/or federal law unless it contains specific gun clause language.** A pardon is simply an additional disposition in the case and, as such, is noted in the record. The record is retained and is a public record open to inspection.

Moreover, the Governor, Attorney General, and Secretary of State are exclusively empowered by the state constitution to grant pardons, in their capacity as the Board of Pardons (§§ 83-1,126). Once pardoned an offender’s right to vote and hold office may be restored and possibly as well the right to possess a firearm (§§ 529-112 and §§ 583-1130). **Nowhere in the statutes does a pardon require expungement of the offender’s record.** In the State of Nebraska, a criminal conviction cannot be “erased” or “expunged.” It can be “pardoned,” but it **will not be removed from a criminal history record. Once there is a conviction on your record, it always will be on your record.**

When a pardon is issued by the Board of Pardons, it is merely relieving the offender of further punishment or restriction by the state as a consequence of the offender’s crime. The Pardons Board does not represent to any applicant that the issuance of a pardon carries any greater consequence than that. **If an applicant for a pardon asks whether or not the conviction should be revealed on a job application, etc., the appropriate advice would be that the conviction should be revealed because it has not been expunged. When the conviction is revealed by a successful pardon applicant, however, that fact that the granted pardon may also be noted.** Employers and others who obtain the criminal history record will see the original conviction as well as the granted pardon order. It is recommended that a copy of the pardon certificate be presented to prospective employers and attached to any employment application.

SET-ASIDE:

A person convicted of a crime would retain all his/her rights except those specifically revoked by statute or law (US Federal / States). Upon conviction of a felony, an individual loses the right to vote, to be a juror, to hold any office of honor, trust, or profit with the state, and the right to possess those weapons, etc. described in §§ 28-1206. These rights may only be restored through the granting of a pardon. The mere completion of the sentence does not restore any rights lost because of the conviction.

Nebraska §§29-2264 provides that a person who has successfully completed a sentence of probation and meets other requirements of the statute may petition the court for an order setting aside the conviction. If granted, this order nullifies (void/ invalidates / of no value or consequence/ break) the conviction and restores the civil rights which are lost by a felony conviction. The person may then legally indicate that they do not have a conviction for this offense when making employment or license applications. The criminal history record, however, remains in the file and is still usable against the individual should they be tried for or convicted of a subsequent criminal offense or to impeach them if they are a witness in a trial and for certain licensing procedures (teachers, foster care, etc.). Similarly, a set-aside does not restore the right to

possess firearms under federal law. The court's order showing a set-aside is simply entered in the record. Employers and others who obtain the criminal history record will see the original conviction as well as the set-aside order.

If a person's conviction is "set-aside" following completion of probation term pursuant to §§ 29-2264, is the effect equivalent to issuance of a pardon by the Nebraska Board of Pardons? The answer is NO.

State Statute §§ 29-2264 does not result in the granting of a pardon. Nor does it allow a court to grant a "partial pardon." The court is permitted to set-aside convictions, but certain civil disabilities are exempt from restoration.

An order setting aside a conviction may be introduced in later proceedings within the judicial branch of the government (court system) against a defendant. If a set-aside is granted by the court, the existence of the conviction may still be used to impeach the defendant as a witness. The conviction may still be used to determine sentence enhancement with regard to subsequent conviction and may be still used to determine whether the defendant is eligible to have a subsequent conviction set-aside. The conviction may also still be used to determine whether the defendant is eligible for a foster care license or teaching certificate, etc. **Thus §§ 29-2264 (set-aside) does not nullify (void/ invalidate / of no value or consequence/ break) all of the legal consequences of the crime committed as occurs when a pardon is granted.**

Since only the Board of Pardons may restore civil rights lost through a conviction, the "set-aside" of a conviction pursuant to Neb. Rev. Stat. §§ 29-2264 would not restore any civil rights lost through a conviction. (Attorney General Opinion # 96023). A felony conviction or a domestic assault conviction can only have civil rights restored by the Nebraska Board of Pardons.

ORDER TO EXPUNGE RECORDS OR SEAL RECORDS:

There is no general expungement law (expunged, erased, sealed, suppressed, etc.) in the State of Nebraska and the Attorney General's opinion is that there is no inherent authority in the courts to order expungement or sealing of records, the records remain in the files and are publicly accessible. The order of expungement is simply noted in the record. Juvenile records can be ordered sealed pursuant to a specific statute.

In the State of Nebraska, a criminal conviction cannot be "erased" or "expunged." It can be "pardoned" or "set-aside," but **it will not be removed from a criminal history record.** Once there is a conviction on your record, it always will be on your record. A "pardon" or "Set-Aside" does not erase a criminal record. The order pardoning or setting aside a conviction is **added to the criminal history record.** Any potential employer or other parties doing a criminal history background check will see the conviction and the addition of the pardon or set-aside order of referenced conviction.

PARDONING POWER VS COURT SET-ASIDE:

According to the Nebraska Attorney General's opinion, Number 96023, March 18, 1996, the pardoning power is vested in the Board of Pardons by the Nebraska State Constitution. The restoration of civil rights is embraced within a pardon and the restoration of civil rights is part of the pardoning power which is fixed in the Board of Pardons.

The Nebraska Constitution provides for separation of powers and prohibits one branch of government from exercising the powers of another branch. The powers of the State of Nebraska are divided into three separate departments, the Legislative, Executive, and Judicial. No other individual or group being of one of these departments will exercise any power rightly belonging to the other departments. The clemency power is granted to the three-member Board of Pardons, the Governor, Secretary of State, and Attorney General by the Nebraska Constitution.

Since the Nebraska Board of Pardons may only restore civil rights lost through a felony conviction, a "set aside" of a conviction would not restore any civil rights lost. (I.e. Restoration of gun rights / Serve in US military, etc.). A "set aside" is not equivalent to a pardon and a mere completion of a sentence does not restore any rights lost because of the conviction.

WHAT DOES A PARDON DO?

Civil rights are based on the principle of respect for the individual. The fundamental assumption is that each person is a moral and rational being who deserves to be treated with dignity. They mean choice and opportunity. These include the right to run for and hold public office, to serve on a jury and to serve as a Notary Public, the freedom to obtain a job, adopt a career, select a partner of one's choice and raise children. They include the right to travel widely and the right to work gainfully without harassment, abuse and threat of arbitrary dismissal. They even embrace the right to leisure, etc.

A pardon is an order granted to those individuals who have maintained a good reputation in their community, following the completion of their sentence(s) for a criminal offense. A pardon nullifies the conviction and restores those civil rights which are lost by a felony or a misdemeanor assault conviction (Federal Gun Control Act: 18 U.S.C. § 922 (g)).

A pardon is an act of executive clemency: “formal forgiveness” / “act of grace” for a crime. The pardon is a free gift from a supreme authority. **It restores the offender to his or her civil rights** and exempts the offender from further punishment or restriction by the state as a consequence of the crime. **It does not “erase guilt or result in the expungement of the conviction.”**

A pardon is simply an additional disposition in the case and, as such, is noted in the record. The record is retained and is a public record open to inspection. **A pardon does not release an individual from paying the costs of their conviction. A pardon does not automatically restore Restoration of Gun Rights.** Gun Rights must specifically be restored and **contain specific gun clause language.** The right to vote is automatically restored two (2) years upon completion of your felony sentence(s); therefore you need not submit an application in order to restore your right to vote.

A pardon is an official statement attached to the criminal record that states that the State of Nebraska has pardoned the crime. **A pardon Does Not expunge, remove, erase, seal or suppress the record of the crime from your criminal history record.**

When a pardon is issued by the Board of Pardons, it is merely relieving the offender of further punishment or restriction by the state as a consequence of the offender’s crime. The Pardons Board does not represent to any applicant that the issuance of a pardon carries any greater consequence than that. A pardon may serve as a means for a petitioner to advance in employment or education, etc.

A pardon restores civil rights lost due to a felony conviction. These rights include, but are not limited to:

- The right to vote
- The right to be a juror
- The right to hold public office
- The right to bear arms
- The right of admission to professional schools
- The right to take Civil Service Examination
- The right to serve in the military
- The right to be issued a passport
- The right to hold certain licenses (Liquor, Public Health, and Welfare Licenses)
 - i.e. teacher, attorney, doctor/nurse, beautician/barber, private investigator, law enforcement, etc.
- The right to government grants, loans, contracts, public housing, and educational funding

JOB APPLICATIONS:

If an applicant for a pardon asks whether or not the conviction should be revealed on a job application, etc., the appropriate advice would be that the conviction should be revealed because it has not been expunged. When the conviction is revealed by a successful pardon applicant, however, that fact that the granted pardon may also be noted. Employers and others who obtain the criminal history record will see the original conviction as well as the granted pardon order. It is recommended that a copy of the pardon certificate be presented to prospective employers and attached to any employment application.

FIREARM (GUN) RIGHTS:

FEDERAL GUN CONTROL ACT - 18 U.S.C. § 922

- Limitations come in two structures: State and Federal.
- It may be unlawful to possess firearms depending on whether the conviction (crime) is a felony or a misdemeanor. Generally it is permissible to possess weapons following a misdemeanor conviction except during the term of the sentence when firearm prohibitions are universally in effect as a condition of probation. Another exception is where the misdemeanor conviction is for domestic assault; federal law imposes a permanent ban on firearms - 18 U.S.C. Federal Prohibitor 922(g)(9), "who has been convicted in any court of a misdemeanor crime of domestic violence."
- Felony conviction, the rules are simple. Federal law prohibits firearm possession following ANY state or federal felony conviction. 18 U.S.C. Federal Prohibitor 922(g)(1), "it is unlawful for any person who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year...to possess...any firearm or ammunition."
- A list of federal indicators assists in establishing if a person is in violation of the federal statute prohibiting convicted felons from possessing firearms.

Federal law generally makes it a felony for a person to be in possession of a firearm if the person has any prior felony convictions.

Federal law contains an explicit statutory exception which provides that the federal criminal offense of firearms possession is inapplicable to person who have had their civil rights restored.

For federal law to recognize the state restoration of rights, the state restoration must include the right to vote, the right to seek and hold public office, and the right to serve on a jury.

If the state restoration of rights includes the three aforementioned rights, the federal law contains an additional federal "unless" clause which looks to state law to see if the state imposes any restriction on the right of the convicted felon to possess a weapon.

If there is some added firearms restriction under state law then the federal "unless" clause is triggered to make the possession of any firearms unlawful under federal law notwithstanding the state's restoration of civil rights. Example: if the state says a restored prohibited person may possess a shotgun but not a pistol, the state has allowed the person to possess the shotgun under state law BUT, because the state law has created some firearm restriction, this means that the federal prohibitor applies with full force notwithstanding a state restoration of rights. Thus the shotgun-pistol example, that person could be convicted under federal law for possession of the shotgun even though it would be lawful under state law.

Please consult with your local police department, county sheriff's department, Nebraska State Patrol, Nebraska Game and Parks Commission – Law Enforcement office, or private legal counsel (Lawyer) for questions on your personal situation and convictions regarding possession of firearms or other lethal weapons.

Reference:

Constitution of the United States

Nebraska State Constitution

Attorney General Opinions: 92030, 96023, 87088, 01011, 05004, 95001, I 11010

Nebraska State Patrol Legal Counsel Office – Subsequent Dispositions Document

State Statutes: Pardons Board; 29-2264; 29-3523; 28-1206; 29-112

Supreme Court of Nebraska: State v. Spady; No. S-01-970; June 14, 2002

Supreme Court of Nebraska: March 22, 1991 / State v. Illig, 237 Neb.598, 467 N.W.2d 375 (1991)

Nebraska State Patrol website: Carry Concealed Weapons permit

Legal Aid of Nebraska website

Nebraska Supreme Court website

Federal Bureau of Alcohol, Tobacco, and Firearms Rules and Regulations

Brady Handgun Violence Prevention Act of 1993 / Federal Gun Control Act: 18 U.S.C. § 922 (g)

NCIS: National Instant Criminal Background Check System

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

Revised July 1, 1994