

Criteria for the Evaluation of Inmate Applications for Clemency October 2008 Meeting

The following criteria have been established to assist in the evaluation of inmate applications for clemency. Each case will be evaluated against these basic criteria. Those cases which show the most merit will be further evaluated based on all the factors associated with their case including criminal history prior to the current offense, as well as institutional conduct.

The following criteria are based on the philosophy that the Pardons Board is the “court of last resort” and the inmate is seeking relief once all appeals have been exhausted, and/or other extraordinary circumstances exist.

Nothing gives a person the right to be considered for clemency, and it is not intended that these criteria create an expectation for any consideration.

Qualifying Criteria:

In order to be considered, an inmate should demonstrate at least one of the following:

- 1) The applicant has within his or her capacity, made exceptional strides in self-development and self-improvement. The inmate has made responsible use of available rehabilitative programs to address treatment needs;
- 2) The applicant is suffering from a critical illness or has a severe and chronic disability, which would be mitigated by release from prison;
- 3) The applicant's further incarceration would constitute gross unfairness because of basic inequities involved, including:
 - The severity of the sentence received in relation to the sentences received by co-defendants or in relation to other offenders serving sentences for crimes with similar characteristics;
 - The extent of the applicant’s participation in the offense;
 - A history of abuse suffered by the applicant at the hands of the victim that significantly contributed to or brought about the offense.

Disqualifying Institutional Conduct:

- 1) Having been housed in disciplinary segregation for any period of time within the past 36 months.
- 2) Any guilty finding of a major disciplinary infraction within the past 24 months or a pending major disciplinary.
- 3) Three or more minor/general disciplinary infractions within the past 18 months.

Disqualifying Parole Status:

- 1) Inmates who are eligible for release on parole to the community within 12 months from the

October 2008 Pardons Board meeting date.

- 2) Inmates who are serving a period of parole revocation or a single sentence imposed while on parole.
- 3) Inmates who have been denied release on parole to the community on the current sentence.

Pending Criminal Charges, Investigations or Appeals:

- 1) All judicial remedies must be exhausted prior to being eligible for clemency review.
- 2) Inmates with unresolved criminal charges will not be considered.
- 3) Cases that are under appeal in Nevada or Federal Court will not be considered.
- 4) Inmates who are currently under investigation by the NDOC Inspector General or Attorney General's office will not be considered.

Time and Sentence Disqualifications:

- 1) An inmate with a sentence that is projected to discharge to the community within 12 months following the October 2008 Pardons Board meeting date will not be considered.
- 2) Inmates who have served a prior prison sentence for a felony conviction and whose current maximum sentence or combined consecutive maximum sentences are 20 years or less will not be considered.
- 3) Inmates recently committed to NDOC (less than 36 months time served) will not be considered.
- 4) Applications from inmates sentenced to death or life without the possibility of parole for an offense committed between November 2, 1982 and July 1, 1995 will not be considered for a commutation of sentence that allows parole eligibility until 20 calendar years have passed.
- 5) Applications from inmates sentenced to death or life without the possibility of parole for an offense committed after July 1, 1995 will not be considered for a commutation of sentence that allows for parole.

Exceptions:

Extraordinary circumstances or case factors may exist that mitigate disqualifying criteria. Circumstances may include an act of heroism or a catastrophic event. Mitigating case factors may include the age of the offender at the time the offense was committed in conjunction with little or no prior criminal history.

In order to consider applicants who claim exemptions because of extraordinary circumstances, the applicant must clearly demonstrate why such consideration should be given. Since most inmate families endure hardships while a person is incarcerated, family hardship is not considered an extraordinary circumstance.

Other consideration:

Each application will be considered on its own merit. Inmates meeting the minimum criteria will be subject to further review and may be disqualified for one or more of the following reasons:

- 1) The nature and severity of the crime or factors involved.
- 2) Prior criminal history.
- 3) Overall institutional adjustment.
- 4) Institutional evaluations indicate the inmate is a moderate or high risk to re-offend (psychological reports, sexual psych panel reports and/or parole risk assessments).

Evaluation of certain cases meeting the minimum criteria:

The following is provided to assist in evaluating applications on inmates who are serving sentences for Murder or sexual offenses. Cases which have more mitigating case factors will be given more weight toward consideration than those with aggravating influences. **The mitigating factors listed in this document are not intended to lessen or diminish the gravity of the offense.**

Murder convictions:

Aggravating influences include:

- A substantial degree of premeditation to commit the murder.
- Any evidence of torture or sexual connotations.
- The method in which the person was murdered required concentrated effort (ie, strangulation, stabbing or beating to death as opposed to a single gunshot).
- Mutilation of the victim's body.
- Luring the victim or murder by execution.
- Hiding the body.
- Child or disabled victim.
- Prior history of violence or institutional violence.

Mitigating influences include:

- Having been a co-offender during the murder and not having been the person who actually inflicted the wound(s).
- The murder occurred incidentally during the commission of another crime with little or no premeditation to kill.
- The murder occurred while the offender was in a heightened emotional state, or was influenced by abuse inflicted by the victim.
- The offender was a minor (under the age of 18) when the murder was committed.

Sex offenses:

Aggravating influences:

- The offender has prior arrests or convictions for sex related offenses.
- The victim was tied up or forcibly taken to another location.
- The victim was a child, elderly, or physically or mentally disabled.
- There were multiple victims.
- The duration of the offense lasted more than three hours or was repeated multiple times.
- The offense was planned or premeditated.
- The use of weapons or objects.
- The offender forcibly assaulted the victim, or threatened the use of force to coerce compliance.

Mitigating influences:

- The offense occurred with an adult victim, was situational, not premeditated and occurred only one time and the offender has no prior instances of sexual deviance or violence.
- The activity appeared to be consensual in nature and the offender has no prior arrests or convictions that are sexual or violent in nature (ie, lewdness with a minor and the minor is sexually active and the offender is not significantly older than the victim or the offender operates in a diminished capacity).

Additional Information on Inmates Serving Sentences of Life Without the Possibility of Parole:

NRS 213.1099 limits the Parole Board's authority when considering whether to release an inmate whose sentence has been commuted by the Pardons Board. The following information will be taken into consideration when cases involving sentences of death or life without the possibility of parole are evaluated.

NRS 213.1099 (4):

4. Except as otherwise provided in NRS 213.1215, the (*Parole*) Board may not release on parole a prisoner whose sentence to death or to life without possibility of parole has been commuted to a lesser penalty unless it finds that the prisoner has served at least 20 consecutive years in the state prison, is not under an order to be detained to answer for a crime or violation of parole or probation in another jurisdiction, and that he does not have a history of:

- (a) Recent misconduct in the institution, and that he has been recommended for parole by the Director of the Department of Corrections;
- (b) Repetitive criminal conduct;
- (c) Criminal conduct related to the use of alcohol or drugs;
- (d) Repetitive sexual deviance, violence or aggression; or
- (e) Failure in parole, probation, work release or similar programs.