



Susana Martinez  
Governor

## State of New Mexico

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# PARDON GUIDELINES

## I. PARDONING AUTHORITY:

- a. The pardoning authority in this State is vested exclusively in the Chief Executive, as stated in Article V, Section 6 of the New Mexico State Constitution:

*“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.”*

- b. The power to pardon listed in Article V, Section 6 is an absolute power at the sole discretion of the Governor.<sup>1</sup>
- c. The pardoning power extends to all offenses committed under state law, with the constitutional exceptions of impeachments and treason.
- d. The Governor’s pardoning power does not include expunging arrest or conviction records<sup>2</sup>.
- e. The pardoning power does not include convictions for violations of municipal ordinances or from another jurisdiction, such as, another state or a federal proceeding.<sup>3</sup> Federal pardon information may be obtained from the Pardon Attorney, U.S. Department of Justice, 500 First Street Northwest, Washington, D.C. 20530.

## II. PARDON’S GENERALLY:

Restoration of Civil Rights following completion of sentence and discharge from supervision:

- a. A pardon restores **all or some** of the rights of citizenship a convicted felon enjoyed prior to conviction.

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<sup>1</sup> See also *Lopez v. Kase*, 126 N.M. 733 (1999).

<sup>2</sup> Department of Public Safety has authority to expunge certain petty misdemeanor and misdemeanor ARREST records. Arrest records are those that did not result in a conviction. See NMSA 1978, § 29-3-8.1.

<sup>3</sup> See *Clovis v. Hamilton*, 41 N.M. 4 (1936) and 1970 Op. Atty Gen. N.M. 145.

- b. A pardon only removes disabilities imposed by the State of New Mexico, such as, the right to vote and hold public office.<sup>4</sup>
- c. A pardon does not prevent the pardoned offense from being considered as a prior conviction pursuant to the New Mexico Habitual Offender Act if the person is later convicted of a new offense.<sup>5</sup>
- d. A pardon does not remove any disabilities imposed by federal law.
- e. A pardon does not allow for the police, prosecutors, or court records to be expunged and the pardon itself is a public record.
- f. Misdemeanor convictions for Battery or Assault Against a Household Member do qualify for a restoration of the right to bear arms and those requesting the restoration of this right should apply through the standard application procedures.

### III. GENERAL CONSIDERATIONS:

- a. **Sexual offenders, habitual offenders (including multiple convictions for Driving Under the Influence of Intoxicating Liquors and/or Drugs, Assault or Battery Against a Household Member), multi-felony offenders, or offenders convicted of a crime of violence against a child are not eligible for a pardon.**
- b. The Governor may request a recommendation from the Parole Board, the attorney general, or corrections secretary.
- c. Application for a pardon to restore civil rights shall include proof of the applicant's *exemplary* behavior, distinct achievement, ability to act as a responsible and contributing member of society, and proof of a productive law-abiding life, such as:
  - i. The applicant shall include any significant achievements, such as, employment and educational accomplishments, and provide evidence of good citizenship and details about charitable and civic activities or other contributions made to the community.
  - ii. Due consideration will be given to consistent employment history, lack of criminal record since discharge (including municipal, state and federal offenses).
- d. Misdemeanor or Petty Misdemeanor convictions, except on application for the restoration of the right bear arms are not eligible for a pardon.
- e. All victims of crimes enumerated under the Victim's of Crime Act, <sup>6</sup> regardless of whether the crime was committed prior to the statute's enactment WILL BE notified and her/his opinion will weigh heavily on the Governor's decision.
- f. Applicants must possess a high school diploma or GED to be considered for a pardon.

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<sup>4</sup> NMSA 1978, § 31-13-1.

<sup>5</sup> See *Shankle v. Woodruff*, 64 N.M. 88 (1958).

<sup>6</sup> Victims of Crime Act (31-26-1 to 31-26-13, NMSA 1978)

#### IV. TIME REQUIREMENTS:

In order to apply for the restoration of civil rights, applicants must remain free of arrest for the following periods of time (there are no exceptions to the time requirements):

- a. Misdemeanor for Assault or Battery Against a Household member<sup>7</sup>: Applicant is eligible five (5) years after a discharge from supervision.
- b. Fourth degree felony: Applicant is eligible ten (10) years after a discharge from supervision.
- c. Third degree felony: Applicant is eligible fifteen (15) years after a discharge from supervision.
- d. Second degree felony: Applicant is eligible twenty (20) years after a discharge from supervision.
- e. First degree felony: Governor Martinez will not accept pardon applications for first degree felony convictions.

#### V. APPLICATION PROCEDURES:

- a. These Guidelines, the Notice to Applicant and Application are available online at [www.governor.state.nm.us](http://www.governor.state.nm.us).
- b. There is no fee for applying for a pardon.
- c. The Applicant shall complete the Application, comply with the instructions, and timely submit all supporting documentation; otherwise, the Application will not be considered.
- d. The Governor may refer pardon requests to the Parole Board for investigation and recommendation. If the Governor determines that the Parole Board's involvement is necessary, the 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 they are used solely to assist the Governor in performing her non-delegable duties.
- e. The Governor may request the sentencing judge and/or prosecuting attorney and/or law enforcement officers to provide pertinent input, including a recommendation for or against a pardon.
- f. After reviewing all the reports, other material and recommendations provided, the Governor will decide whether to grant the pardon or not.
- g. There is no requirement that the Governor take any action on an application for a pardon.
- h. The length of time needed to complete the pardon process cannot be predicted. **Once a completed application has been received by the Governor's Office, it is not necessary to contact the Governor's Office to check on the status of an application.** If the Governor

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<sup>7</sup> Assault or Battery Against a Household Member are the ONLY misdemeanor convictions that are eligible for clemency.

takes action on an application, the applicant will be notified. Applicants should notify the Governor's Office in writing if their address changes.

- i. When a pardon is granted, the New Mexico Department of Public Safety and the Federal Bureau of Investigation are notified so that they may update their records on the applicant. **The pardon is filed with the Secretary of State and is a public record.**
- j. If applicant was denied a pardon by a prior administration, he/she may apply two (2) years after the date of the original application.
- k. If applicant is denied a pardon by the current administration, he/she must wait four (4) years from the date of the application before applying again.
- l. **Letters of denial or ineligibility issued to the Applicant by the Governor are public records.**
- m. The Governor has full discretion over the pardon applications and may review them earlier or later than these guidelines permit.
- n. The decision of the Governor is final.