

NEVADA

Capital Clemency Information Memorandum

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Introduction

Clemency in capital cases serves as a “fail-safe” in our criminal justice system, by acting to prevent unjust executions and to ensure that there is meaningful due process and review at every stage of a capital case. Prior to the execution of a death-sentenced prisoner, a clemency petition asks a governor, board of pardons and paroles, or both, to review the case and grant either a *reprieve* (a delay of execution for a set or undetermined period of time); a *pardon* (effectively ‘undoing’ the initial conviction); or a *commutation* of sentence (for example, reducing a sentence of death to a sentence of life in prison). In the capital clemency context, death row petitioners typically seek either a *reprieve* or a *commutation*.

Because the clemency process almost always takes place outside the courtroom and years after a person was initially convicted and sentenced, a death row prisoner may seek executive commutation for a wide range of reasons that may not have been raised or adjudicated in earlier legal proceedings. In seeking clemency, therefore, a petitioner is not restricted by the same rules and requirements that govern an appeal in court. As a result, petitions for capital clemency allow for—and indeed, require—additional investigation into the prisoner’s case and a nuanced understanding of the state-specific issues that can be relevant to the decision maker(s).

While clemency has long been recognized as an essential component of our criminal justice system, access to clemency is not explicitly guaranteed by the federal Constitution or otherwise governed by traditional due process requirements. States, therefore, have wide latitude in defining the procedures that govern their capital clemency processes. As a result, these processes, the quality of capital clemency representation, and the receptivity of decision makers vary widely nationwide.

The following information was assembled to give stakeholders in the capital clemency process some of the information most relevant to understanding clemency in Nevada. Some of the information contained within this memorandum does not relate directly to Nevada’s capital clemency process, but nevertheless provides important context and background for thinking about clemency in the state. Given capital clemency’s unique nature as a virtually unrestricted appeal to an executive branch decision maker, it is vital that practitioners seeking clemency on behalf of a death row prisoner have a full understanding of the target state’s historical, political, and legal landscape—or, at the very least, consider those factors as they approach the clemency process.

While the information contained within this memorandum is **not intended to serve as the basis for a capital clemency petition or campaign and is not designed to encapsulate all the diverse issues to consider in capital clemency**, we hope that it will provide a valuable starting point for all stakeholders interested in this important issue.

State Capital Clemency Process

I. Basics of the State Capital Clemency Process

In many jurisdictions, the capital clemency process is opaque, with few national or state-specific resources available on the topic. As a result, extensive research has been conducted to prepare these memoranda—including lengthy interviews with local practitioners, calls to governors’ offices and parole boards, as well as online research—to help clarify the process for practitioners and others seeking information. Nevertheless, certain areas of practice, such as when to file a petition, and how a petition is likely to receive a response from the decision maker, are not governed by clearly established law or policy. As a result, any gaps noted within these documents reflect a lack of available information or clear answers. Additionally, it is important to remember that the capital clemency process often differs from non-capital clemency processes, and that much of the publicly available information regarding clemency pertains only to non-death-penalty cases.

a. The Power Defined

The Constitution of the State of Nevada grants the clemency power to the governor, justices of the state Supreme Court, and the Attorney General:

The governor, justices of the supreme court, and attorney general, or a major part of them, of whom the governor shall be one, may, upon such conditions and with such limitations and restrictions as they may think proper, remit fines and forfeitures, commute punishments . . . and grant pardons, after convictions, in all cases, except treason and impeachments, subject to such regulations as may be provided by law relative to the manner of applying for pardons.¹

Together, these individuals make up the State Board of Pardons Commissioners (“Board”).² In capital cases, the Board has the authority to stay the execution of a judgment of death³ and the ability to commute death sentences to a life sentence that does not allow parole, but may not commute to a sentence where parole is ever possible.⁴

b. The Decision Maker(s)

Statute mandates that members of the Board must meet at least semiannually.⁵ The governor is the Chair of the Board.⁶ Members are not required to have any specific training or qualifications to serve on the Board; however, the Secretary is selected on the basis of “training, experience, capacity, and interest in correctional services.”⁷ The Secretary establishes and posts procedures and criteria for the selection of applications.⁸

¹ Nev. Const. art. 5, § 14(1).

² Nev. Rev. Stat. § 213.010(1).

³ Nev. Rev. Stat. § 176.415(1).

⁴ Nev. Const. art. 5, § 14(2).

⁵ Nev. Rev. Stat. § 213.010(2).

⁶ Nev. Admin. Code § 213.030.

⁷ Nev. Rev. Stat. § 213.017(2).

⁸ Nev. Admin. Code § 213.055(1).

State senator David Parks introduced Senate Joint Resolution 1 in February 2017, which proposed replacing the State Board of Pardons Commissioners with a Clemency Board.⁹ In its original form, the proposed legislation would have changed the composition of the Board to members appointed by the governor, supreme court chief justice, and attorney general and increased the frequency of Board meetings to at least four times per year.¹⁰ An amendment to the legislation in May 2017 eliminated the membership changes while retaining the provision increasing the frequency of Board meetings.¹¹ Because the proposed changes would alter the Nevada Constitution, they would need to be approved by the legislature in the current session and again in 2019 before going to voters in 2020.¹²

c. When to Bring a Petition

Applications for capital clemency are not considered by the Board until all available judicial appeals are exhausted.¹³ Clemency applications must be submitted to the Secretary at least 90 days before one of the semiannual meetings of the Board,¹⁴ which typically occur the second week of November and the second week of May.¹⁵

d. How to Bring a Petition

Applications for clemency are obtained from the Secretary of the Board or wardens of Department of Corrections' facilities,¹⁶ and must be mailed to the Secretary:¹⁷

Executive Secretary
Nevada Board of Pardons
1677 Old Hot Springs Road, Suite A
Carson City, NV 89706

All applications for a pardon or commutation must at least include: the court in which the judgment was rendered, the kind or character of punishment, the name of the person submitting the application, the grounds on which the application is based, and any other information deemed relevant by the Secretary.¹⁸ The lengthy criteria used for the selection of applications are posted on the Board's website,¹⁹ but the

⁹ Ben Botkin, *Pardons board change could reduce Nevada prison population*, Las Vegas Review-Journal, (Feb. 21, 2017), <https://www.reviewjournal.com/news/politics-and-government/nevada/pardons-board-change-could-reduce-nevada-prison-population/>.

¹⁰ *Id.*

¹¹ Ben Botkin, *Change in bill would now keep Nevada pardons board*, Las Vegas Review-Journal, (May 17, 2017), <https://www.reviewjournal.com/news/2017-legislature/change-in-bill-would-now-keep-nevada-pardons-board/>.

¹² Ben Botkin, *supra* note 9.

¹³ Nev. Admin. Code § 213.120(1).

¹⁴ Nev. Admin. Code § 213.040(2).

¹⁵ Nev. Admin. Code § 213.020(2).

¹⁶ Nev. Admin. Code § 213.040(1).

¹⁷ *State Clemency – Nevada*, Criminal Justice Policy Foundation, <http://www.cjpf.org/clemency-nv/> (last visited June 23, 2016).

¹⁸ Nev. Rev. Stat. § 213.020(1).

¹⁹ *Criteria for the Evaluation of Inmate Applications for Clemency*, State of Nevada Board of Pardons, <http://pardons.nv.gov/uploadedFiles/pardonsnvgov/content/About/CriteriaEvalInmateAppsForClemency.pdf> (last visited Jan. 3, 2017). These criteria are also discussed below, *infra* note 31 and accompanying text.

Nevada Administrative Code indicates that a member of the Board can select an application for consideration notwithstanding those criteria:

. . . a member of the Board *may select an application for clemency* for the consideration of the Board at a meeting *notwithstanding the procedures and criteria established by the Secretary* . . . any regulation of the Board or the recommendation or absence of a recommendation from the Director of the Department or the Chief Parole and Probation Officer. A member of the Board who wishes to select an application for the consideration of the Board must inform the Secretary of the selection not less than 50 days before the date of the meeting at which the Board will consider the application, unless the member demonstrates good cause for a shorter period of time.²⁰

The governor has the authority to remove an application from consideration after it is selected by the Board for review.²¹

e. Hearing Practice

According to the Criminal Justice Policy Foundation, approximately five percent of clemency petitions are forwarded by relevant staff members for consideration by the Board.²² The Secretary has final approval in placing an application on the agenda for a semiannual meeting,²³ but the applications selected for consideration “must be accompanied by a recommendation from the Director of the Department [of Corrections].”²⁴ Once placed on the agenda, the applicant receives a hearing before the Board,²⁵ and the victim’s relatives must be notified of the hearing.²⁶

While hearings before the Board are informal, and rules of evidence do not apply,²⁷ the Board can require that all testimony be given under oath, require the presence of the applicant, and accept any affidavits or depositions taken and certified by a district judge, county clerk, or notary public.²⁸

Meetings of the Board are public, can be viewed on live streaming video from the Supreme Court of Nevada, and transcripts can be purchased from the court reporter.²⁹ The Board also publishes the results of meetings, which include the decisions made by the Board in both prisoner and community cases.³⁰

f. Responding to a Petition

The Board considers a variety of factors to determine if clemency should be granted. Criteria published by the Board state that applications in capital cases where the offenses were committed between 1982 and

²⁰ Nev. Admin. Code § 213.055(2) (emphasis added).

²¹ Nev. Admin Code § 213.055(4).

²² *State Clemency – Nevada*, *supra* note 17.

²³ Nev. Admin. Code § 213.183(2).

²⁴ Nev. Admin. Code § 213.183(1).

²⁵ Nev. Admin. Code § 213.183(2).

²⁶ Nev. Admin. Code § 213.187. See also Nev. Rev. Stat. § 213.005.

²⁷ Nev. Admin. Code § 213.190.

²⁸ Nev. Admin. Code § 213.200.

²⁹ *Public Meeting Information*, Nevada Board of Pardons Commissioners, <http://pardons.nv.gov/Meetings/> (last visited June 21, 2016).

³⁰ See *id.*

1995 are not considered for commutations that allow parole until twenty years have passed, and for capital offenses committed after 1995, prisoners will not be considered for commutations that allow for parole at all.³¹ Other factors that apply to all prisoner applications include evidence of self-improvement, illness or disability, proportionality of sentence to sentence received by co-defendants, participation in the offense, and history of abuse at the hands of the victim.³²

When capital clemency applications are reviewed, the governor must be present, and a decision must be made by a majority of the Board.³³

If a majority votes in favor of clemency and the commutation of a death sentence, the Board must issue a written statement to the officer or authority charged with executing the punishment.³⁴ That notice must include the name of the applicant, the time and place of conviction, the kind of punishment substituted for the death penalty, and the place where the substituted punishment is to be served.³⁵

The Board receives approximately 1,000 commutation petitions each year, from both capital and non-capital cases.³⁶ Historically, the Board granted hearings for approximately 20 applicants, and granted commutations in about half of those hearings between 1990 and 2011.³⁷ Applicants are typically told of the Board's decision in approximately eight weeks, but the process can last up to six months.³⁸

II. State Political and Judicial Information

a. Current Clemency Decision Maker(s)

As stated above, the Nevada Board of Pardons Commissioners that is responsible for reviewing and deciding on clemency applications consists of the governor, justices of the Supreme Court of Nevada, and the state attorney general.³⁹

i. Governor Brian Sandoval

Governor Brian Sandoval was first elected in 2010, and reelected in 2014, as the governor of Nevada.⁴⁰ In 2005, before being elected governor, Sandoval was appointed to the United States District Court of Nevada by then-President George W. Bush, and was Nevada's first Hispanic federal judge.⁴¹ Prior to his appointment to the bench, Sandoval served three years as the Attorney General of Nevada, was chair of the Nevada Gaming Commission, and served in the state legislature.⁴² In 2016, it was reported that that

³¹ *Criteria for the Evaluation of Inmate Applications for Clemency*, *supra* note 19.

³² *Id.*

³³ Nev. Admin. Code § 213.120(2).

³⁴ Nev. Rev. Stat. § 213.080.

³⁵ *Id.*

³⁶ *Nevada*, Collateral Consequences Resource Center, <http://ccresourcecenter.org/state-restoration-profiles/nevada-restoration-of-rights-pardon-expungement-sealing/> (last visited June 17, 2016).

³⁷ *Id.*

³⁸ *State Clemency – Nevada*, *supra* note 17.

³⁹ Nev. Const. art. 5, § 14.

⁴⁰ *Governor Brian Sandoval*, Nevada.gov, <http://gov.nv.gov/About/Governor-Brian-Sandoval/> (last visited June 23, 2016).

⁴¹ *Governor Brian Sandoval*, National Governors Association, <http://www.nga.org/cms/home/governors/current-governors/col2-content/main-content-list/brian-sandoval.html> (last visited June 23, 2016).

⁴² *Id.*

President Barack Obama had considered him as a potential replacement for Antonin Scalia on the U.S. Supreme Court; however, Governor Sandoval removed himself from consideration.⁴³ Governor Sandoval was born in California, but moved to Reno, Nevada, where he graduated from high school.⁴⁴ He graduated from the University of Nevada with a Bachelor of Arts degree in 1986, and from The Ohio State University Moritz College of Law in 1989.⁴⁵

Governor Sandoval is considered a moderate Republican, having voted in favor of tax increases to improve state education and expressing support for immigration reform and renewable energy.⁴⁶ While nationwide polling indicates that he has been one of the most popular Republican governors,⁴⁷ Sandoval has also received criticism from more conservative members of the Republican Party for his moderate policies.⁴⁸ In particular, Sandoval has been criticized for his support of a major tax increase package in Nevada.⁴⁹

According to On the Issues, a non-partisan organization, Governor Sandoval generally supports the death penalty and stated during his 2010 gubernatorial campaign that he supports capital punishment for “those who commit the worst crimes.”⁵⁰ When he was attorney general, Sandoval’s office represented the state in at least 11 capital case direct appeals.⁵¹ In seven of those cases, the petitioner remains on Nevada’s death row.⁵²

Governor Sandoval voted against clemency in two publicized, non-capital cases, once as attorney general⁵³ and once as governor.⁵⁴ In both instances, he did not make any statements about his reasons for opposing clemency, nor has he made any official statements about clemency during his term as governor.

⁴³ Brent Kendall, *Nevada Governor Brian Sandoval Removes Himself From Supreme Court Consideration*, The Wall Street Journal, (Feb. 25, 2016), <http://www.wsj.com/articles/nevada-gov-brian-sandoval-removes-himself-from-supreme-court-consideration-1456427598>.

⁴⁴ *Brian Sandoval*, Ballotpedia, https://ballotpedia.org/Brian_Sandoval (last visited June 23, 2016).

⁴⁵ *Governor Brian Sandoval*, Nevada.gov, *supra* note 40.

⁴⁶ Ben Woffard, *Meet Brian Sandoval*, Politico, (Feb. 23, 2016), <http://www.politico.com/magazine/story/2016/02/nevada-primary-brian-sandoval-213668>.

⁴⁷ At the end of 2015, Sandoval had an approval rating of 66%, in a survey that measured approval rates of voters in all 50 states. See Reid Wilson, *How Do Voters Feel About Your Governor*, Morning Consult, (Nov. 20, 2015), <https://morningconsult.com/2015/11/20/how-do-voters-feel-about-your-governor/>.

⁴⁸ Ben Woffard, *supra* note 46.

⁴⁹ *Id.*

⁵⁰ *Brian Sandoval on Crime*, On the Issues, http://www.ontheissues.org/Governor/Brian_Sandoval_Crime.htm (last visited June 23, 2016).

⁵¹ See *Bennett v. Eighth Judicial Dist. Court ex rel. Cty. of Clark*, 121 P.3d 605 (Nev. 2005); *Blake v. State*, 121 P.3d 567 (Nev. 2005); *Weber v. State*, 119 P.3d 107 (Nev. 2005); *McConnell v. State*, 107 P.3d 1287 (Nev. 2005); *Butler v. State*, 102 P.3d 71 (Nev. 2004); *Nika v. State*, 97 P.3d 1140 (Nev. 2004); *Browning v. State*, 91 P.3d 39 (Nev. 2004); *Kaczmarek v. State*, 91 P.3d 16 (Nev. 2004); *Thomas v. State*, 83 P.3d 818 (2004); *Mack v. State*, 75 P.3d 803 (Nev. 2003); *State v. Haberstroh*, 69 P.3d 676 (Nev. 2003).

⁵² See Deborah Fins, *Death Row U.S.A. Winter 2016*, NAACP Legal Defense and Educational Fund, Inc., http://www.naacpldf.org/files/publications/DRUSA_Winter_2016.pdf.

⁵³ Cy Ryan, *Clemency granted ‘show and tell’ killer*, Las Vegas Sun, (Nov. 16, 2004), <http://lasvegassun.com/news/2004/nov/16/clemency-granted-show-and-tell-killer/>.

⁵⁴ Sean Whaley, *Inmate hospitalization rise costing Nevada millions of dollars more*, Las Vegas Review-Journal, (Apr. 4, 2014), <http://www.reviewjournal.com/news/inmate-hospitalization-rise-costing-nevada-millions-dollars-more>.

ii. Attorney General Adam Paul Laxalt

Adam Paul Laxalt was elected attorney general in 2014 by a narrow margin,⁵⁵ as the youngest attorney general in the country.⁵⁶ Republican Laxalt defeated Democrat Ross Miller by less than one percent of the vote.⁵⁷ Key issues during the election included campaign finance, prosecutorial experience, and same-sex marriage.⁵⁸ After graduating from law school, Laxalt was a Judge Advocate General in the U.S. Navy from 2005 to 2010,⁵⁹ and from 2011 and 2012 served as a Special Assistant U.S. Attorney.⁶⁰ He then practiced business law in Las Vegas for three years before his election as Attorney General.⁶¹

While Laxalt has not made any public statements about clemency or the pardons process, it is notable that he voted against pardons in two newsworthy non-capital cases: one in which a pardon was ultimately granted, and one where it was denied.⁶²

iii. Justices of the Supreme Court of Nevada

Justices of the Supreme Court of Nevada are elected in nonpartisan elections and serve for six year terms.⁶³ Vacancies are filled through appointments by the governor.⁶⁴

Chief Justice Michael A. Cherry was elected to the Supreme Court of Nevada in 2006, after many years in private practice.⁶⁵ Cherry graduated from Washington University School of Law in 1969.⁶⁶ Before private practice, Cherry worked as a Deputy Clark County Public Defender.⁶⁷ He also served as a municipal judge for several years before heading the Clark County Special Public Defender's Office, where he led a team of attorneys that handled homicide and conflict cases from the public defender's office.⁶⁸ He was then elected to the Eighth Judicial District Court in 1998.⁶⁹

⁵⁵ *Silver State 2014 Election Night Results*, Nevada Secretary of State, (Dec. 15, 2014), <http://www.nvsos.gov/silverstate2014gen/NVOther>.

⁵⁶ *Nevada Attorney General Adam Paul Laxalt*, Nevada.gov, http://ag.nv.gov/About/About_Adam (last visited March 27, 2017).

⁵⁷ *Silver State 2014 Election Night Results*, *supra* note 55.

⁵⁸ Ken Ritter, *Nevada AG candidates trade charges during debate*, Las Vegas Sun, (Oct. 10, 2014), <http://lasvegassun.com/news/2014/oct/10/nevada-ag-candidates-trade-charges-during-debate>.

⁵⁹ *Adam Paul Laxalt*, The American Spectator, <http://spectator.org/bio/adam-paul-laxalt/> (last visited Mar. 24, 2017).

⁶⁰ See *Adam Paul Laxalt*, Nat'l Ass'n of Attorneys General, <http://www.naag.org/naag/attorneys-general/whos-my-ag/nevada/adam-paul-laxalt.php> (last visited May 17, 2017).

⁶¹ *Id.*; *General Adam Paul Laxalt Sworn in as Nevada's 33rd Attorney General*, The Office of Nevada Attorney General, (Jan. 5, 2015), http://ag.nv.gov/News/PR/2015/General_Adam_Paul_Laxalt_Sworn_in_as_Nevada%E2%80%99s_33rd_Attorney_General/.

⁶² See Geoff Dornan, *Carson City man imprisoned for 1998 murder to be released*, Nevada Appeal, (Nov. 17, 2015), <http://www.nevadaappeal.com/news/local/carson-city-man-imprisoned-for-1998-murder-to-be-released/>; Cy Ryan, *Pardons denied to three Las Vegas killers*, Las Vegas Sun, (Nov. 17, 2015), <http://lasvegassun.com/news/2015/nov/17/pardons-denied-to-three-las-vegas-killers/>.

⁶³ *Nevada Supreme Court*, Ballotpedia, https://ballotpedia.org/Nevada_Supreme_Court (last visited Mar. 24, 2017).

⁶⁴ *Id.*

⁶⁵ *Justice Michael A. Cherry*, Supreme Court of Nevada, http://nvcourts.gov/Supreme/Court_Information/Justices/Justice_Michael_A_Cherry/ (last visited Mar. 24, 2017).

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

Justice Ron D. Parraguirre graduated from the University of San Diego School of Law in 1985 and soon thereafter moved to Washington, D.C. to work for Senator Paul Laxalt, grandfather of Nevada Attorney General Adam Paul Laxalt, and then as counsel to the U.S. Senate Judiciary Committee's subcommittee on criminal law.⁷⁰ He then returned to Nevada to join his father's private practice.⁷¹ In 1991, he was elected to the Las Vegas Municipal Court, and he was later appointed to the Eighth Judicial District Court, where he served until he was first elected to the Nevada Supreme Court in 2004.⁷²

Justice James W. Hardesty was elected to the Supreme Court of Nevada in 2004.⁷³ After graduating from the University of Pacific, McGeorge School of Law in 1975, Hardesty worked in private practice for 23 years before being elected District Court Judge for the Second Judicial District of Washoe County, where he was eventually elected Chief Justice.⁷⁴

Justice Kristina Pickering worked in private practice until she was elected to the Supreme Court of Nevada in 2008.⁷⁵ She graduated from the University of California, Davis, King Hall School of Law in 1977 and then served as a law clerk for a U.S. District Court judge and spent several years in private practice before her election to the Court. She recently voted against a pardon in a well-publicized, non-capital case, joining Attorney General Laxalt as the only two members of the Board to vote against the pardon.⁷⁶

Justice Mark Gibbons graduated from Loyola University School of Law in Los Angeles in 1975 and worked in private practice before serving on the Clark County District Court, where he was elected Chief Judge in 2001.⁷⁷ He was elected to the Supreme Court of Nevada in 2002 and served as Chief Justice in 2008 and 2014.⁷⁸

Justice Michael Douglas, the first African American justice to serve on the Nevada Supreme Court, was first appointed to the Supreme Court of Nevada in 2004 by Governor Kenny Guinn and has since been reelected three times.⁷⁹ He graduated from the University of California, Hastings College of Law in 1974, and worked at both Nevada Legal Services and the Clark County District Attorney's Office until he was appointed to the Eighth Judicial District Court in 1995, where he served until he was appointed to the Supreme Court of Nevada.⁸⁰

⁷⁰ *Chief Justice Ron D. Parraguirre*, Supreme Court of Nevada, http://nvcourts.gov/Supreme/Court_Information/Justices/Justice_Ron_D_Parraguirre/ (last visited Mar. 24, 2017). The title of this page incorrectly names Justice Parraguirre as the Chief Justice of the Nevada Supreme Court.

Justice Cherry assumed that role on January 4, 2017.

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Justice James W. Hardesty*, Supreme Court of Nevada, http://nvcourts.gov/Supreme/Court_Information/Justices/Justice_James_W_Hardesty/ (last visited Mar. 24, 2017).

⁷⁴ *Id.*

⁷⁵ *Justice Kristina Pickering*, Supreme Court of Nevada, http://nvcourts.gov/Supreme/Court_Information/Justices/Justice_Kristina_Pickering/ (last visited Mar. 24, 2017).

⁷⁶ Geoff Dornan, *supra* note 62.

⁷⁷ *Justice Mark Gibbons*, Supreme Court of Nevada, http://nvcourts.gov/Supreme/Court_Information/Justices/Justice_Mark_Gibbons/ (last visited Mar. 24, 2017).

⁷⁸ *Id.*

⁷⁹ *Justice Michael Douglas*, Supreme Court of Nevada, http://nvcourts.gov/Supreme/Court_Information/Justices/Justice_Michael_Douglas/ (last visited Mar. 24, 2017).

⁸⁰ *Id.*

Justice Lidia S. Stiglich was appointed by Governor Sandoval to the Supreme Court of Nevada in 2016.⁸¹ She graduated from the University of California, Hastings College of Law, founded and managed the law firm of Stiglich & Hinckley LLP, and served as special counsel to Lieutenant Governor Brian K. Krolicki, before she was appointed district court judge of the Second Judicial Circuit in 2012.⁸²

b. Legislative Structure and Political Make-Up

The Nevada Legislature is made up of 63 members, with 42 members in the Assembly and 21 in the Senate.⁸³ Members of the Assembly are elected for two-year terms, and members of the Senate are elected for four-year terms, with approximately half up for reelection during each general election.⁸⁴

The Senate currently has a Democratic majority, with eleven Democratic Senators and ten Republican Senators.⁸⁵ The Assembly also has a Democratic majority, with twenty-seven Democratic Members and fifteen Republican Members.⁸⁶

Nevada state legislators are paid only for the first 60 days of a regular session, and for 20 days of a special session.⁸⁷ Regular sessions are held only in odd-numbered years, and special sessions can be called by the governor or by a vote of two-thirds of the members of each house.⁸⁸

c. Judicial Review of State Clemency

There has not been judicial review of capital clemency in Nevada. However, in 1991, the Supreme Court of Nevada held in *Kelch v. Director, Nevada Department of Prisons* that a commutation creates a protected liberty interest, but can be revoked if due process is provided during the revocation decision.⁸⁹ The court found that because Kelch's protected liberty interest in his commutation was in jeopardy of being deprived, the Board was required to provide due process. However, the court also found that the Board's revocation procedures—which included notice; a hearing; representation by counsel; the ability to introduce evidence, present witnesses, and confront and cross-examine witnesses; and stated reasons for the ultimate revocation decision by members of the Board—provided sufficient due process.⁹⁰

III. Supplemental State Information

In thinking about clemency, it is vital to remember that this stage of the death penalty process takes place outside of a courtroom, and is typically directed at a non-legal (or at the very least, non-judicial) audience. Depending on where the petitioner has been convicted and sentenced, a clemency petition will be

⁸¹ Justice Lidia S. Stiglich, Supreme Court of Nevada, http://nvcourts.gov/Supreme/Court_Information/Justices/Justice_Lidia_S_Stiglich/ (last visited May 17, 2017).

⁸² *Id.*

⁸³ *Facts About the Nevada Legislature*, Nevada Legislature, (Mar. 13, 2017), https://www.leg.state.nv.us/General/AboutLeg/General_Short.html.

⁸⁴ *Id.*

⁸⁵ *Nevada state senate elections, 2016*, Ballotpedia, https://ballotpedia.org/Nevada_State_Senate_elections,_2016 (last visited Nov. 11, 2016).

⁸⁶ *Nevada State Assembly elections, 2016*, Ballotpedia, https://ballotpedia.org/Nevada_State_Assembly_elections,_2016 (last visited Mar. 24, 2017).

⁸⁷ *Facts About the Nevada Legislature*, *supra* note 83.

⁸⁸ *Id.*

⁸⁹ *Kelch v. Dir., Nev. Dep't of Prisons*, 822 P.2d 1094 (Nev. 1991).

⁹⁰ *Id.* at 1097.

considered either by the governor, a board of pardons and paroles, or both. Regardless of the individual or entity responsible for the ultimate clemency decision, **politics and public opinion will almost always come into play as this critical decision is made.** For governors, clemency decisions are often perceived (rightly or wrongly) as political ‘hot potatoes’ that can be used against them if the public is not supportive. Even in states where clemency authority rests solely with a board, members are almost always appointed by the governor, and, therefore, also frequently feel constrained by the inherently political nature of their roles. As such, it is crucial to remember that local politics, history, demographics, culture, and ethos are always at play when a plea for clemency is being considered. In recognition of the fact that a truly compelling clemency petition cannot be brought without first considering how the issues raised will play out in that particular jurisdiction, the remainder of this memorandum is dedicated to providing some generalized information to better understand the culture and politics in the state where clemency is being sought.

a. State-wide Demographics

i. General Population

In 2016, the population of Nevada was estimated to be 2,940,058.⁹¹ This included approximately 50.7% Caucasian, 28.1% Hispanic or Latino, 9.3% African American, and 8.5% Asian residents.⁹²

ii. Political Breakdown

As of May 2016, 39.99% of registered voters in Nevada were Democrat, 34.89% were Republican, 19.09% were Nonpartisan, 4.41% were Independent American, and 0.78% were Libertarian. The remaining 0.83% of voter registrations were classified as Other.⁹³

One U.S. Senator from Nevada, Dean Heller, is a Republican, and the other, Catherine Cortez Masto, is a Democrat.⁹⁴ However, three of the four U.S. Representatives, Ruben Kihuen, Jacky Rosen, and Dina Titus, are Democrats, while only Mark Amodei is a Republican.⁹⁵

iii. Religious Make-Up

In a 2014 Pew study, 66% of adults in Nevada reported their religion as Christian, 5% as one of several non-Christian faiths, and 28% reported that they were unaffiliated.⁹⁶ The most prevalent Christian faiths were Catholic (25%) and Evangelical Protestant (20%).⁹⁷ The most prevalent non-Christian faith was

⁹¹ QuickFacts – Nevada, United States Census Bureau, <http://www.census.gov/quickfacts/table/PST045215/32> (last visited Mar. 24, 2017).

⁹² *Id.*

⁹³ May 2016 Voter Registration Statistics, Nevada Secretary of State, <http://www.nvsos.gov/sos/home/showdocument?id=4299> (last visited Mar. 24, 2017).

⁹⁴ Nevada elections, 2016, Ballotpedia, https://ballotpedia.org/Nevada_elections,_2016 (last visited Mar. 24, 2017).

⁹⁵ *Id.*

⁹⁶ Religious Landscape Study – Adults in Nevada, Pew Research Center, <http://www.pewforum.org/religious-landscape-study/state/nevada/> (last visited Mar. 24, 2017).

⁹⁷ *Id.*

Jewish (2%), and the most prevalent identification in the “unaffiliated” category was “nothing in particular” (18%).⁹⁸

iv. Income/Socioeconomic Breakdown

The median household income in Nevada between 2011 and 2015 was \$51,847, with a per capita income of \$26,541.⁹⁹ 14.7% of individuals in Nevada lived in poverty during that time.¹⁰⁰ Both the median and per capita incomes are below the national averages of \$53,889 and \$28,930 respectively, and the Nevada’s poverty rate is slightly higher than the national average of 13.5%.¹⁰¹

b. Criminal Justice

i. Overall Prison Population

According to data from 2015, Nevada’s overall crime rate was 22% lower than the national average, but its violent crime rate was 37% higher than the national average. In 2013, Nevada had 2,428.9 crimes per 100,000 people (compared to 3,098.6 crimes per 100,000 people nationally).¹⁰² The violent crime rate was 591.2 crimes per 100,000 people (compared to 367.9 crimes per 100,000 people nationally).¹⁰³

As of June 13, 2016, the Nevada Department of Corrections housed 13,652 prisoners. 90.98% of prisoners are male, 9.02% are female; 44.21% are Caucasian, 29.36% are African American, 21.25% are Hispanic, 2.76% are Asian, and 1.94% are American Indian.¹⁰⁴ The majority of prisoners are serving sentences between 2 and 15 years and are housed in medium security prisons.¹⁰⁵

i. Death Row Population and Demographics

Total Number of Prisoners on Death Row: 80¹⁰⁶

- Number of Women on Death Row: 0
- Number of Black Prisoners on Death Row: 30
- Number of White Prisoners on Death Row: 39
- Number of Hispanic Prisoners on Death Row: 9
- Number of Asian Prisoners on Death Row: 2

⁹⁸ *Id.*

⁹⁹ *QuickFacts – Nevada*, *supra* note 91.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Diane C. Thorton, *Fact Sheet – Nevada Crime and Corrections*, Nevada Legislative Counsel Bureau, (Dec. 2015), available at <https://www.leg.state.nv.us/Division/Research/Publications/Factsheets/CrimeRankings.pdf>.

¹⁰³ *Id.*

¹⁰⁴ *Stat Facts*, Nevada Department of Corrections, (June 13, 2016), available at <http://doc.nv.gov/uploadedFiles/docnvgov/content/About/Statistics/WFS/Facts%20Sheet%20Weekly%2020160613.pdf>.

¹⁰⁵ *Id.*

¹⁰⁶ *Death Row U.S.A. (Fall 2016)*, NAACP Legal Defense and Educational Fund, available at <http://www.naacpldf.org/files/about-us/DRUSAFall2016.pdf>.

	Caucasian (% of total)	Hispanic (% of total)	African American (% of total)	Asian (% of total)
Nevada Population ¹⁰⁷	50.7%	28.1%	9.3%	8.5%
Nevada Prison Population ¹⁰⁸	44.21%	21.25%	29.36%	2.76%
Nevada Death Row ¹⁰⁹	48.75%	11.25%	37.5%	2.5%
Nevada Executions (since 1979) ¹¹⁰	75%	8.3%	8.3%	8.3%

The 80 prisoners on death row in Nevada account for approximately 0.59% of Nevada’s total prison population.¹¹¹ The population of death row is 100% indigent.¹¹² The percentage of prisoners on death row who are African American is higher than Nevada’s general prison population, as well as four times the percentage of African Americans in the general population of Nevada.¹¹³

ii. Executions (Past and Pending)

Total Number of Executions since 1976: 12

- o Most Recent Execution: April 26, 2006
- o Number of Executions in 2016: 0
- o Stays Issued in 2016: 0
- o Scheduled Executions in 2017: 0

Nevada has executed 12 prisoners since 1979, following the reinstatement of the death penalty, and 73 individuals in total.¹¹⁴ Eleven of the twelve prisoners executed since 1979 voluntarily waived at least some of their remaining appeals.¹¹⁵

¹⁰⁷ *QuickFacts – Nevada*, *supra* note 91.

¹⁰⁸ *Stat Facts*, *supra* note 104.

¹⁰⁹ *See Death Row U.S.A. (Fall 2016)*, *supra* note 106.

¹¹⁰ *Searchable Execution Database*, Death Penalty Information Center, http://www.deathpenaltyinfo.org/views-executions?exec_name_1=&sex=All&state%5B%5D=Nv&sex_1=All&federal=All&foreigner=All&juvenile=All&volunteer=All (last visited Mar. 27, 2017).

¹¹¹ *See Death Row U.S.A. (Fall 2016)*, *supra* note 106; *Stat Facts*, *supra* note 104.

¹¹² *Nevada’s Death Penalty*, Nevada Coalition Against the Death Penalty, <http://nvcadp.org/the-death-penalty-in-nevada/> (last visited Mar. 24, 2017).

¹¹³ *QuickFacts – Nevada*, *supra* note 91; *Stat Facts*, *supra* note 104.

¹¹⁴ *Department Organization*, Nevada Department of Corrections, http://doc.nv.gov/About/Human_Resources/HR_Organization/ (last visited Mar. 24, 2017).

¹¹⁵ David Ferrara, *Nevada death row inmate making every effort to expedite execution*, Las Vegas Review-Journal (Jan. 29, 2017), <https://www.reviewjournal.com/crime/courts/nevada-death-row-inmate-making-every-effort-to-expedite-execution/>.

iii. Exonerations/Innocence¹¹⁶

Roberto Miranda was exonerated in 1996, after serving 14 years on Nevada's death row.¹¹⁷ Miranda was convicted after he was represented by an attorney with little experience, and whose lack of preparation in Miranda's case ultimately led a Clark County District Court judge to order a new trial.¹¹⁸ Miranda's new attorney investigated witnesses who were not called in the original trial because of his ineffective trial attorney and found new evidence that Miranda had been falsely accused by the prosecution's star witness.¹¹⁹ The prosecution decided not to retry him, and he was released.¹²⁰

c. Public Opinion Polling

A poll of Nevada voters conducted in January 2017 for the Nevada Independent found that respondents strongly supported keeping the death penalty, with 66% in favor of the death penalty and 27% opposed.¹²¹ Seven percent of respondents were unsure. This trend crossed party lines, with majorities of self-identified Republicans, Democrats, and Independents all favoring retaining the death penalty, although the gap between those favoring and those opposed was widest among Republicans, with 79% in favor and 15% opposed.¹²² Self-identified Democrats favored the death penalty by 55% to 38%, and Independents favored the death penalty by 63% to 27%.¹²³

IV. Additional Information for Consideration in Clemency

a. Significant Past Capital Clemency Decisions

i. Grants

The Board has granted capital clemency only once to **Thomas Nevius**, commuting his death sentence to life in prison without the possibility of parole in 2002.¹²⁴ Nevius was intellectually disabled, but evidence of

¹¹⁶ For inclusion in this section, an individual must have been convicted, sentenced to death, and subsequently either been acquitted of all charges related to the crime that placed them on death row, had all charges related to the crime that placed them on death row dismissed by the prosecution, or been granted a complete pardon based on evidence of innocence. This characterization mirrors the language used by national entities tracking death row exonerations, such as the National Registry of Exoneration and the Death Penalty Information Center. See *Glossary*, The National Registry of Exonerations, <http://www.law.umich.edu/special/exoneration/Pages/glossary.aspx> (last visited Mar. 24, 2017); *Innocence: List of those freed from death row*, Death Penalty Information Center, <http://deathpenaltyinfo.org/innocence-list-those-freed-death-row> (last visited Mar. 24, 2017).

¹¹⁷ *Innocence Database*, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/innocence> (last visited Mar. 24, 2017).

¹¹⁸ *Id.*

¹¹⁹ *Roberto Miranda*, The National Registry of Exonerations, (June 2012), <https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3477>.

¹²⁰ *Id.*

¹²¹ Riley Snyder, *The Independent Poll: Nevada voters overwhelmingly support death penalty*, The Nevada Independent, (Jan. 20, 2017), <https://thenevadaindependent.com/article/independent-poll-nevada-voters-overwhelmingly-support-death-penalty>.

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Clemency*, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/clemency> (last visited Mar. 24, 2017).

his disability was not presented to the jury because of incompetent trial counsel.¹²⁵ Six of the jurors in the case later said they would not have voted for execution if they had known of Nevius's intellectual disability.¹²⁶ Further, the prosecutor in the case used peremptory challenges to remove all African Americans from the jury panel.¹²⁷

ii. Denials (where newsworthy or controversial)

There have not been any particularly newsworthy denials of capital clemency in Nevada.

b. Relevant State Death Penalty (Non-Clemency) Opinions

There have not been any successful or significant state or federal decisions addressing legal challenges to Nevada's death penalty. However, a defendant whose capital trial was set to begin in 2016 plans to challenge the constitutionality of Nevada's death penalty.¹²⁸

c. Divisive/Important Political Issues in the State

In 2015, the state legislature approved spending over \$800,000 to build a new execution chamber at the Ely State Prison Facility, where death row prisoners are currently held, and the construction was finished in 2016.¹²⁹ The old execution chamber was no longer able to be used because it was not compliant with the Americans with Disabilities Act.¹³⁰

d. Other Relevant Legal, Historical, or Social Issues

Costs of the Death Penalty

The 2013 Nevada legislature commissioned a study of the cost of death penalty cases, and an audit released in 2014 found that each case in which the death penalty is sought cost the state approximately \$500,000 more than a case in which the death penalty is not pursued.¹³¹

¹²⁵ *Thomas Nevius Clemency Letter*, American Civil Liberties Union, <https://www.aclu.org/legal-document/thomas-nevius-clemency-letter-stay-granted-april-2001> (last visited June 20, 2016).

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Ex-felon to challenge legality of Nevada state death penalty*, KTNV Action News, (Mar. 15, 2016),

http://www.ktnv.com/news/exfelon-to-challenge-legality-of-nevada-state-death-penalty_39654864.

¹²⁹ Sean Whaley, *Nevada's new \$860,000 execution chamber is finished but gathering dust*, Las Vegas Review-Journal, (Nov. 27, 2016), <https://www.reviewjournal.com/crime/nevadas-new-860000-execution-chamber-is-finished-but-gathering-dust>.

¹³⁰ Geoff Dornan, *Ely execution chamber clears way for museum at Nevada State Prison*, Nevada Appeal, (June 20, 2015), <http://www.nevadaappeal.com/news/16886023-113/new-executive-chamber-clears-way-for-nsp-museum#>.

¹³¹ *Costs: Capital Cases in Nevada Much More Expensive Than Non-Death Penalty*, Death Penalty Information Center, <http://www.deathpenaltyinfo.org/node/5961> (last visited Mar. 24, 2017).

The 2016 Election

Notably, Nevada elected the first Latina to the U.S. Senate in the 2016 election, Senator Catherine Cortez Masto.¹³² Voters in Nevada also approved the legalization of the recreational use of marijuana.¹³³ Before the election, only four states and the District of Columbia allowed the recreational use of marijuana; however, Nevada, California, and Massachusetts voted for legalization in the 2016 election cycle.¹³⁴

¹³² Brian Latimer, *Nevada: Catherine Cortez Masto is First Latina Elected to U.S. Senate*, NBC News, (Nov. 9, 2016), <http://www.nbcnews.com/news/latino/nevada-catherine-cortez-masto-first-latina-elected-u-s-senate-n681021>.

¹³³ Jen Christensen and Meera Senthilingam, *Maine recount concludes yes to recreational marijuana, totaling 4 states that OK it*, CNN, (Nov. 9, 2016), <http://www.cnn.com/2016/11/09/health/marijuana-legalization-election-results/index.html>.

¹³⁴ *Id.*