

ARIZONA BOARD OF EXECUTIVE CLEMENCY

BOARD POLICY #114

Policy Title: COMMUTATION OF SENTENCE	Effective Date: September 1, 2024	Policy #114
	Supersedes: May 07, 2018	

PURPOSE:

The purpose of this policy is to outline the general procedures and guidelines associated with the eligibility and processing of Commutation of Sentence applications and subsequent Board determinations. Throughout this process, the Board’s determination is final.

AUTHORITY:

- ARS §13-603(L)
- ARS §31-402
- ARS §31-411 (H) (I) (1)
- ARS §38-431.01
- ARS §31-403

PROCEDURE

114.1 Eligibility & Exceptions

- 1.1 Inmates who are statutorily eligible or an inmate who has served the required amount of minimum time may apply for commutation. Inmates who are eligible for parole with a date of offense on or after January 1, 1994 are not commutation eligible on the same case, count, or sentence unless otherwise permitted by statute.
- 1.2 For those inmates who committed their felony offense on or after January 01, 1994, the Board may recommend to the Governor for commutation of sentence after finding by clear and convincing evidence that the sentence imposed is clearly excessive given the nature of the offense and the record of the offender and that there is a substantial probability that when released the inmate will conform his/her conduct to the requirements of the law.
- 1.3 The Board will only consider those inmates who have served two (2) years of their sentence of imprisonment to the Arizona Department of Corrections Rehabilitation and Reentry (ADCRR) (including presentence incarceration if applicable) from their sentence begin date and are not within one (1) year of their mandatory release date

from the ADCRR.

- 1.3.1 A mandatory release does not include non-discretionary releases, i.e. Temporary Release, Transition Program Release and/or Parole Eligibility.
- 1.4 The Board will not consider those with a sentence of less than 3 years of imprisonment in ADCRR.
- 1.5 The Board will not consider future (consecutive) sentences to a term of incarceration for commutation except as follows.
 - 1.5.1 The Board may consider future sentences if the court makes findings pursuant to A.R.S. §13-603(L) that the total of the legally mandated sentence is clearly excessive and the Court's 603(L) order applies to each of the current and future consecutive sentences.
 - 1.5.2 The Board may also consider (future) consecutive sentences to a term of incarceration if the matter is under the same criminal case number and the total aggregate of the **future** consecutive sentences is fifty (50) or more years of incarceration (not including terms of probation) unless ineligible by statute. Consecutive life sentences will be treated as a total aggregate of fifty (50) years or more of incarceration unless ineligible by statute.
- 1.6 Inmates who have had a term of community supervision revoked previously by the Board pursuant to A.R.S. §31-402.5(B) are not eligible for commutation of that period of community supervision.
- 1.7 The exceptions to the Board time requirements are:
 - a. inmates seeking commutation under A.R.S. §13-603(L),
 - b. inmates seeking commutation under imminent danger of death, and
 - c. an inmate subject to a warrant of execution issued by the Arizona Supreme Court.

114.2 Application Process

- 2.1 Inmates must complete and sign the current commutation of sentence application form adopted by the Board at the time of application. Applications submitted using an outdated application form will be returned to the applicant. This application will be made available via:
 - a. the Board's website,
 - b. request by mail, and
 - c. ADCRR Correctional Staff.
- 2.2 Inmates shall transmit their completed application to the ADCRRR Time Computation Unit for review and certification. Only those applications first reviewed and certified by the ADCRR Time Computation Unit as statutorily eligible for commutation will be forwarded to the Board for review.
 - 2.2.1. Applications sent directly to the Board will be returned unprocessed.

- 2.2.2. Only applications found to be complete by the Executive Director, or designee, will be scheduled for a Phase I Commutation Hearing. Incomplete applications or ineligible inmate applications will be returned to the inmate. Incomplete applications will be returned with a notice explaining the application deficiencies.

114.3 Imminent Danger of Death

- 31 The Board may waive the eligibility criteria and schedule a Phase II hearing if the inmate has filed an imminent danger of death application and ADCRR has certified that the inmate meets the criteria for imminent danger of death commutation.
- 32 The inmate may only be considered for an imminent danger of death commutation if the independent medical specialist referred by ADCRR's contracted medical provider completes a written prognosis statement that there is reasonable medical certainty that the inmate's medical condition will result in death within four (4) months from the point of application.
 - 321 ADCRR's contracted medical provider's designated licensed physician shall also provide a statement concurring or non-concurring with the prognosis of the independent medical specialist that the inmate has less than four (4) months to live.
 - 322 The ADCRR Health Services Contract Monitoring Bureau will arrange, upon request, for ADCRR's contracted medical provider (or designee) to provide testimony at the time of the commutation hearing. The party assisting the inmate in the application shall make the request in writing to ADCRR's Health Services Contract Monitoring Bureau. A member of the Board of Executive Clemency staff and ADCRR's Health Services Contract Monitoring Bureau will coordinate the date and time of the hearing for the provider to testify.
 - 323 The Executive Director, or designee, will make every effort to accommodate priority scheduling for imminent danger of death commutation hearings.
 - 324 Inmates will be notified on the commutation of sentence application that their medical records may become public record and discussed in public forum during the commutation hearing. They shall acknowledge this notice by their signature on the application form.

114.4 Order of the Court A.R.S. §13-603(L)

- 4.1 An order of the court pursuant to A.R.S. §13-603(L) provides:
 - a. "If at the time of sentencing the court is of the opinion that a sentence that the law requires the court to impose is clearly excessive, the court may enter a special order allowing the person sentenced to petition the Board of Executive Clemency for a commutation of sentence within ninety days after the person is committed to the custody of the state department of corrections. If the court enters a special order regarding commutation, the court shall set forth in writing its specific reasons for concluding that the sentence is

clearly excessive. The court shall allow both the state and the victim to submit a written statement on the matter. The court's order, and reasons for its order, and the statements of the state and the victim shall be sent to the Board of Executive Clemency.”

- 4.2 When a 603(L) commutation request hearing is held and if the Board’s determination is not to recommend a commutation of sentence to the Governor then no further commutation of sentence application will be considered unless deemed eligible by ADCRR based on statutory authority and/or Board of Executive Clemency Policy and Procedure.
- 4.3 If a 603(L) commutation is not recommended by the Board, the inmate may reapply for commutation pursuant to the provisions of their sentence or a minimum of three years, whichever is later from the date of denial unless:
 - a. The three year waiting period is extended pursuant to A.R.S. §31-403(E) for inmate who committed serious offenses on or after January 01, 2006. Reapplication will be determined on statutory requirements and timeframes set by the Board.
- 4.4 A commutation hearing that is conducted pursuant A.R.S. §13-603(L) where commutation is **not** recommended by the Board, reapplication shall be made pursuant to A.R.S. §31-403, not A.R.S. §13-603(L), and the two Phase hearing process shall apply.
- 4.5 A commutation hearing that is conducted pursuant to A.R.S. §13-603(L) where commutation is recommended by the Board but denied by the Governor, reapplication shall be made pursuant to A.R.S. §31-403, not A.R.S. §13-603(L).
- 4.6 When a 603(L) commutation of sentence has been recommended to the Governor and denied, the applicant may reapply three years from the date of the 603(L) hearing, or in accordance with **A.R.S. §31-403**, whichever is later.
- 4.7 Pursuant to A.R.S. §31-403(D)(3), the Board may allow an inmate to reapply sooner **only** if a request is made at the time of the initial 603(L) hearing and the Board votes by majority decision to allow reapplication sooner than the standard timeframe.

114.5 Notification

- 5.1 When a commutation from imprisonment is to be considered, the Board, on request and before conducting a commutation hearing, the Board shall notify the attorney general, the Presiding Judge of the Superior Court the County Attorney in the county in which the inmate requesting commutation was convicted and sentenced and the ADCRR Victim Services Unit. Upon request for post-conviction notice, the victim of the offense for which the inmate has applied for commutation of sentence in shall also be notified.
- 5.2 The notice to the victim shall be mailed to the last known address no less than fifteen (15) calendar days prior to the hearing date. The notice shall inform the victim of the victim’s right to be present and/or to submit a written statement to the board.

- 5.3 A commutation hearing shall not be held until at least fifteen (15) calendar days have passed after the date of sending the hearing notice to the victim. The Board shall retain a copy of the notice to the victim.
- 5.4 The provision of this subsection requiring notice to the government officials shall not apply where there is an imminent danger of death certified commutation request or when the term of imprisonment is within two hundred ten (210) days of expiration.

115.6 Commutation Hearing Process

- 6.1 Except as provided in exemptions of this policy, commutation hearings will be held in two phases.
 - 6.1.1 At least one week prior to a commutation hearing, the Board members will be provided the application, inmate's files, letters and all relevant information for review. Family, friends, victims, witnesses, legal counsel, and/or members of the public should submit written information concerning the matter at least one week prior to the hearing.
- 6.2 A Phase I Hearing shall be a review of the application packet and conducted in quorum by Board members. The applicant is not present and no call to the public, including victims, will be made. All materials provided to the Board shall be considered in the review, including any written statements submitted by the victim.
 - 6.2.1 At the conclusion of a Phase I hearing, the Board by a *majority vote* may vote to pass the application to a Phase II hearing or vote to deny the commutation application and not pass the application to Phase II.
- 6.3 A Phase II Hearing shall include the participation of the applicant, victims and any members of the public wishing to address the Board.
 - 6.3.1 At the conclusion of a Phase II hearing, the Board by a *majority vote* of the Board may vote to recommend a commutation to the Governor or vote not to recommend a commutation to the Governor.
- 6.4 If commutation is not recommended by the Board, the inmate may reapply for commutation in three years from the date of denial unless:
 - 6.4.1 The three year waiting period is extended pursuant to A.R.S. §31-403(E) for inmate who committed serious offenses on or after January 01, 2006. Reapplication will be determined on statutory requirements and timeframes set by the Board.
 - 6.4.2 The Board may waive these provisions **only** if one the following applies:
 - a. The person meets the conditions as outlined for imminent danger of death, or
 - b. the person is the subject of a warrant of execution.

114.7 Recommendation

- 7.1 When the Board votes to recommend a commutation of sentence to the Governor, a letter of recommendation will be prepared by a Board member. The Board Chairman or, if not present, the Panel Chairman will assign to a Board member who voted in the majority the preparation of the recommendation letter to the Governor.
 - 7.1.1 The letter shall include the details of the offense and the sentence that is being commuted, the inmate's past criminal history, reason for the inmate seeking commutation and the board member's discussion and conclusion or the recommendation.
 - 7.1.2 Once the letter has been finalized, the Board's Executive Director shall ensure that all the necessary documents and proper formatting of the Governor's packet is accurate and complete.
 - 7.1.3 Letters of dissent may also be prepared and shall be forwarded to the Governor by any board member who voted contrary to the majority decision.
- 7.2 A letter of recommendation and if applicable, any letter(s) of dissent , along with the related case materials considered by the Board at the Phase I and II Hearings, shall be included in the packet of information sent to the Governor within 30 calendar days from the date that hearing was conducted.
- 7.3 Recommendation based on imminent danger of death shall be forwarded with accompanying materials to the Governor within seven (7) working days.
- 7.4 Pursuant to A.R.S. §31-402(D), any recommendation for commutation that is passed *unanimously* by the Board which is not acted on by the Governor within ninety days after receipt, will automatically become effective.
- 7.5 Any recommendation for commutation that is made by a *majority* of the board members present shall be sent to the Governor for consideration. There is no deadline for the approval or rejection of such a recommendation by the Governor.
- 7.6 The Board shall advise the inmate of the Governor's decision via written communication. The Executive Director shall ensure the Board's records/files are updated.
- 7.7 If commutation is not granted by the Governor, the inmate may reapply for commutation three years from the date of the Phase II hearing unless:
 - 7.7.1 The three year waiting period is extended pursuant to A.R.S. §31-403(E) for inmate who committed serious offenses on or after January 01, 2006. Reapplication will be determined on statutory requirements and timeframes set by the Board.
 - 7.7.2 See section 114.4.1 for information on reapplication if the commutation hearing

was conducted pursuant to A.R.S. §13-603(L).

7.7.3 The Board may waive these provisions **only** if one of the following applies:

- a. The person meets the conditions as outlined for imminent danger of death, or
- b. the person is the subject of a warrant of execution.

Implementation:

This policy was adopted by the Arizona Board of Executive Clemency in accordance with the law.