

**ARIZONA BOARD OF EXECUTIVE CLEMENCY  
POLICY #106**

<b>Policy Title:</b>  <b>TWO MEMBER BOARD PANEL</b>	<b>Effective Date: July 06, 2017</b>	<b>Policy #106</b>
	<b>Supersedes: January 28, 2015</b>	<b>Pages: 3</b>

**PURPOSE**

The purpose of this policy and procedure is to establish the criteria for the Chairman to authorize a two member quorum and set forth the determination of the vote for that hearing.

**AUTHORITY**

A.R.S. § 31-401  
A.R.S. § 41-1604  
A.R.S. § 31-412

**PROCEDURE**

**106.01 Reasons and Types of Hearings**

1.1 Two member Board panels shall be authorized to conduct the following hearings:

- a. Revocation;
- b. Rescission
- c. Work Furlough;
- d. Parole;
- e. Home Arrest;
- f. Modification
- g. Commutation, and
- h. Pardon.

**106.02 Two Member Panel Votes for a Parole, Home Arrest, Work Furlough, Modification or Pardon**

2.1 If the vote is unanimous then the action passes or fails.

2.2 If the vote is tied then the matter is taken under advisement by the chairman who will cast the deciding vote on whether action passes or fails.

2.3 If the vote is tied and the Chairman is part of the two member panel, then the action fails.

2.4 Excluding pardon hearings, for those inmates convicted of a serious offense and the vote is unanimous, the Chairman must concur with that vote before the action passes. If there is a tied vote, the action fails without going to the Chairman because the vote has to be unanimous.

2.5.1 If the Chairman is part of the two man panel, then the hearing cannot be held and must be continued.

### **106.03 Two Member Panel Votes for Revocation Hearing**

3.1 In a **Phase I** Revocation Hearing, if the vote is:

- a. unanimous, then action either passes or fails;
- b. tied, if the Chairman is not part of the two member panel, then the matter is taken under advisement by the Chairman who will cast the deciding vote; or
- c. tied, but if the Chairman is part of the two member panel then the action fails.

3.2 In a **Phase II** Revocation Hearing, if the vote is:

- a. unanimous then the action passes or fails;
- b. tied, and the Chairman is not a member of the panel, then the matter is taken under advisement; or
- c. tied and the chairman is a member of the panel, then the matter must be re-convened in order for additional Board member(s) to consider the action. The Board must make a decision regarding what action to take if they found that the inmate has violated his conditions of release.

### **106.4 Two Member Panel Votes for Commutation Hearing**

4.1 In a **Phase I** Commutation hearing, if the vote is:

- 4.1.1 an unanimous vote then the inmate is either scheduled for a Phase II hearing or his application is denied.
- 4.1.2 a tied vote then the matter taken under advisement by the Chairman who will cast the deciding vote on whether the inmate's application is scheduled for a Phase II hearing.
- 4.1.3 a tied and the Chairman is part of the two member panel, then the action fails and the inmate's application for commutation is denied.

4.2 In a **Phase II** Commutation hearing, if the vote is:

- 4.2.1 an unanimous vote then the action passes or fails

4.2.2 a tied vote then the matter is taken under advisement by Chairman who will cast the deciding vote on whether a recommendation is made to the governor.

4.2.3 tied and the Chairman is part of the two member panel then the action fails and the inmate's application for commutation is denied.

4.3 If the Board *denies commutation* and the inmate committed an offense designated by statute under A.R.S. 31-403, the Board may vote to lengthen the period of time the inmate must wait before re-applying for commutation. If the vote is

4.3.1 unanimous then the matter must be forwarded to the Chairman and the Chairman must concur with the vote.

4.3.2 tied (regardless of whether Chairman is part of the Board) statute requires unanimous vote, so the action fails because A.R.S. 31-403(C) requires an unanimous vote.

4.3.2.1 If the Chairman is one of the two members in the unanimous vote, then no action can be taken and the matter should be considered by the board at a meeting where at least three members are present.

#### **106.5 Matters Under Advisement by Chairman**

5.1. When a matter is taken under advisement by the Chairman, the Chairman will review all the related documentation and audio within 5 working days of the Chairman's return from absence.

5.1.1 Within 14 working days of the Chairman's return, the matter will be scheduled on the calendar noting it as a "Chairman's Vote and Determination" along with the type of hearing and inmate/offender's name.

5.1.2 The Chairman will cast their vote and announce the determination in the open meeting. Interested parties shall be notified.

#### **IMPLEMENTATION:**

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