

**ARIZONA BOARD OF EXECUTIVE CLEMENCY**

**BOARD POLICY #114**

<b>Policy Title:</b>  <b>COMMUTATION OF SENTENCE</b>	<b>Effective Date: May 07, 2018</b>	<b>Policy #114</b>
	<b>Supersedes: June 01, 2017</b>	

**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 §13-603L  
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 whose sentence does not require a minimum amount of time to be served may apply for commutation.
- 1.2 For those inmates convicted of their 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 from their sentence begin date and are not within one (1) year of their eligible or mandatory release date for sentences more than 3 years.
- 1.4 The Board will not consider future (consecutive) sentences for commutation except as follows.

- 1.4.1 The Board may consider future sentences if the court makes findings pursuant to A.R.S. 13-603(L) that the legally mandated sentence is clearly excessive and the Court's 603L order applies to the total of all current and future consecutive. If the initial application is not recommended or is denied by the Governor, after the waiting period and there is no law to the contrary, the Board may again consider an application for commutation of any or all the current sentences or future consecutive sentences for which there is an A.R.S. 13-603(L) order.
- 1.4.2 The Board may also consider (future) consecutive sentences if the matter is under the same criminal case number and the total aggregate of the consecutive sentences is fifty (50) or more years.
- 1.4.3 The Board will not consider inmates with less than three years sentence.
- 1.4.4 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. Warrant of Execution received from the Arizona Supreme Court.

## **114.2 Application Process**

- 2.1 Inmates must complete and sign the Commutation of Sentence application form adopted by the Board at the time of application. This application will be made available via:
  - a. the Board's website,
  - b. request by mail, and
  - c. inmate's Correctional Officer III.
- 2.2 Inmates shall transmit their completed application to the Department of Corrections for review and certification. Only those applications certified by the AZDOC as statutorily eligible for commutation will be forwarded to the Board for review.
  - 2.2.1. Only applications found to be complete by the Executive Director 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**

- 3.1 The Board may waive the eligibility criteria and schedule a Phase II hearing if the inmate has been certified by the Arizona Department of Corrections and has filed an imminent danger of death application.
- 3.2 The inmate may only be considered for an imminent danger of death commutation if the independent medical specialist referred by ADC'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 ADC'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 ADC Health Services Contract Monitoring Bureau will arrange, upon request, for ADC'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 ADC's Health Services Contract Monitoring Bureau. A member of the Board of Executive Clemency staff and ADC's Health Services Contract Monitoring Bureau will coordinate the date and time of the hearing for the provider to testify.
- 323 The Executive Director 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 ARS § 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 603L 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 the Department of Corrections based on statutory and/or Board of Executive Policy and Procedure.
- 4.3 When a 603L commutation of sentence has been referred to the Governor and denied, the applicant may reapply from the date of the Governor's decision in three years or it may be based in accordance with **A.R.S.31-403**.

## 114.5 Notification

- 5.1 When a commutation from imprisonment is to be considered, the Board, before holding a commutation hearing, 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 sentenced. The victim of the offense for which the inmate was incarcerated shall also be notified.
- 5.2 The notice to the victim shall be mailed to the last known address no less than 15 days prior to the hearing date. The notice shall state the name of the inmate and shall set the month of the hearing. The notice shall inform the victim of the victim's right to be present and/or to submit a written report to the board expressing the victim's opinion concerning the commutation of sentence.
- 5.3 A commutation hearing shall not be held until at least fifteen (15) CALENDAR days passed after the date of sending the hearing notice to the victim. On mailing the notice, the Board shall file a hard copy of the notice in the Board's inmate file as evidence that notification was sent.
- 5.4 The provision of this subsection requiring notice to the government officials shall not apply where there is 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 and/or legal counsel should submit written information concerning the matter 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 will be made. All materials provided to the Board shall be considered in the review. The Board shall determine by vote whether to pass 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.
- 6.4 At the conclusion of a commutation hearing, the Board may take one of the following actions:
  - a. After 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.

- b. After 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.

## **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 someone who voted in the majority to prepare 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 forwarded to the Governor by any board member who voted contrary to the majority decision.

7.2 A letter of recommendation and if applicable, a dissent letter/s, 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 accompanied materials to the Governor within seven (7) working days.

7.4 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 time limit for the approval or rejection of such a recommendation.

7.6 The Board shall advise the inmate of the Governor's decision. The Executive Director shall ensure the Board's records/files are updated.

7.7 If commutation is not granted, the inmate may reapply for commutation three years from the date of denial 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 The Board may waive these provisions if any of the following applies:

- a. The person meets the conditions as outlined for imminent danger of death or 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.