

July 2014

A Message from the Chairman/Executive Director:

The Board of Executive Clemency is pleased to offer in this report data and information which accurately depicts the work performed by the Board and its administrative personnel between July 1, 2013 and June 30, 2014. The report is largely self-explanatory and is provided to illustrate the Board's preparation, review and final determination on a myriad of diverse hearings scheduled or held during the last fiscal year.

The Board's staff continues to support, in highly professional manner, the Board's mission, goals, policies and statutory responsibilities. Though limited in numbers our administrative staff has maintained a high level of dedication and professionalism. Their efforts are noteworthy as staffing shortages and workplace adjustments were made throughout the year. But even with these difficulties administrative staff was able to meet the needs of the Board. I am pleased to report that our hearing docket is current, no hearing backlog is present, and this can be directly attributed to the work of the Board's administrative staff and the dedication of the Board itself.

The Board is proud of its traditional support of upholding a victim's participation rights during our hearing process. To enhance our notification and informational process to victims the Board has worked closely with the Arizona Department of Corrections to insure that all victims are properly notified of pending hearings. The Board has also applied for a grant which when approved will provide the Board with its own dedicated victim rights professional.

To enhance stakeholder and citizen participation in our hearing process the Board's calendar and posting sheets have been revised. These modifications were made to make both of these notices reader friendly while also increasing the information provided within the notices. These notices and much more information can be found on the Board's website (<https://boec.az.gov>).

To further enhance our outreach to the public the Board's website was recently reconfigured to supply a significant amount of new information. The new format and the information contained therein have been positively received by many of our stakeholders. The Board is committed to expanding our public outreach and will continually review the content of our website to insure its accuracy and to update its informational content.

The Board of Executive Clemency works diligently to be a model of fiscal responsibility. The Board has met and will continue to meet its responsibility to work within its fiscal guidelines. Our goal is to be model of efficiency while we continue to meet our statutory obligations and improve overall operations.

The Board continues to broaden our cooperation and excellent working relationship with other federal, state, county and local government entities. Such cooperation has been deemed vital to the continued revision and improvement of our services in the upcoming years.

I wish to express my thanks to the Governor, Legislature, and the numerous state agencies that have worked so closely with the Board this year and additionally to the citizens of Arizona for their continued support of our operations. Should you have any questions about the Board or its operations I encourage you to visit our website at [www.boec.az.gov](http://www.boec.az.gov) or call our office at (602) 542-5656.

Respectfully Submitted,

Brian L. Livingston

Chairman/Executive Director

## The Board's Mission

The mission of the Arizona Board of Executive Clemency is to ensure public safety by:

- considering and granting parole to inmates who are certified eligible by the Department of Corrections and who appear not to pose a threat to society, and
- recommending to the Governor only those executive clemency actions that are in the best interests of the citizens of Arizona.

## The Board's Purpose

The Board conducts monthly Parole hearings for inmates who were convicted of offenses committed on or before January 1, 1994. Hearings may also be held to consider Work Furlough; Home Arrest; Absolute Discharge from Imprisonment or from Parole Supervision; Parole Rescission; and Parole Revocation requests. The Board also conducts hearings for clemency actions that include Pardon, Commutation of Sentence, and Reprieve.

## History of the Board

Change and adaptation best characterize the Board's history. Arizona first afforded inmates the opportunity for parole in 1901, prior to becoming a state. The agency then known as the Board of Control functioned as the Territory's discretionary releasing mechanism and consisted of the Governor, Territorial Auditor, and one citizen appointed by the Governor.

The Board of Control retained its releasing authority until the first Arizona Criminal Code became effective in October 1913, when it was replaced by the Board of Pardons and Paroles. The three-person Board consisted of a Governor-appointed citizen chairperson, the Superintendent of Public Instruction and the Attorney General. Board composition remained unchanged for the next five decades.

In 1966, the Legislature expanded Board membership to five part-time members appointed by the Governor to five-year terms. Two years later, legislation replaced the five part-time members with three full-time members. The Governor appointed all members to three-year terms, subject to Senate confirmation.

In 1978, as part of the new Criminal Code, the Legislature expanded the Board to five full-time members serving five-year terms, with gubernatorial appointments remaining subject to Senate confirmation. In 1984, the Legislature further expanded the Board to seven full-time members.

The 1993 Legislative session included legislation that eliminated all Board releases for inmates whose offenses were committed after January 1, 1994, and changed the agency's name to the Board of Executive Clemency.

In 1997, the Board's membership was decreased from seven to five. That change became effective in January 1998.

In 2014, the Board membership varied from four to five full time members who perform their duties on a full time basis. Board members are appointed by the Governor to five-year terms.

*Arizona Revised Statutes § 31-401 and subsequent sections detail the Board's operating authority and duties.*

## Types of Board Hearings

**General Parole** (A.R.S. § 31-412[A]) A conditional release from incarceration that entitles the parolee to serve the remainder of the parolee's term outside of the confines of a penal institution, if the parolee satisfactorily complies with all of the terms and conditions provided in the parole order.

**Parole to a Consecutive Sentence or Another Jurisdiction** (A.R.S. § 31-412.B) A mechanism to parole an inmate to a consecutive sentence to be served in an institution or parole to another jurisdiction.

**Early Parole** (A.R.S. § 41-1604.11[K]) A conditional release from incarceration before the inmate has reached his or her general parole eligibility date. This type of release consideration is used when there is a lack of bed space in the Department of Corrections' institutions. An inmate eligible for release under this statute may be considered for parole, home arrest or work furlough.

**Home Arrest** (A.R.S. § 41-1604.13) A program for inmates who are eligible to complete their prison sentence in the community. The Home Arrest program is a restrictive program that uses active electronic monitoring surveillance and the supervision of a Home Arrest officer. A person in the Home Arrest program is under inmate status and subject to all of the rules and regulations of the Department of Corrections. Except for authorized movements out of the residence, such as employment and mandated treatment programming, the inmate is confined to his residence.

**Work Furlough** (A.R.S. § 41-1604.11) A release from prison that allows the inmate to maintain gainful employment and pay restitution to the victim of the inmate's offense.

**Absolute Discharge** (A.R.S. §§ 31-411 and -414) The Board may discharge a person from imprisonment (-411) or parole supervision (-414) prior to the sentence expiration date or prior to the expiration of parole. Community Corrections (a division of the Department of Corrections) may recommend a parolee for an absolute discharge to the Board because of his/her exceptional performance while under parole supervision.

**Pardon** (A.R.S. §§ 31-441 through -446) An act of grace by the Governor that absolves the convicted felon of the legal consequences of his or her crime and conviction. Pursuant to A.R.S. § 31-402, the Governor cannot grant a pardon unless the Board has first recommended it.

**Reprieve** (A.R.S. §§ 31-443 through 31-446) A delay or temporary suspension of the carrying out of punishment. Pursuant to A.R.S. § 31-402, the Governor may grant a reprieve only upon recommendation of the Board.

**Commutation of Sentence** (A.R.S. §§ 13-603[L], 31-402, 31-403, 31-411[H], 31-411[I][1], and 38-431.01) A change or modification of a sentence imposed by the court. The Board assumes that sentences imposed by the court are fair and correct; however, either by Judicial request or by inmate application, the Board may find mitigating circumstances under which justice would be better served if a commutation were recommended to the Governor. Pursuant to A.R.S. § 31-402, the Governor may grant a commutation of sentence only upon recommendation of the Board.

**Rescission** Withdrawal of an action previously granted by the Board before the inmate actually enters the action status.

**Revocation** (A.R.S. §§ 31-415 through 31-417) Withdrawal of an action previously granted by the Board after the inmate has entered the action status.

**Modification** A hearing held to determine if conditions of release should be modified or changed. A modification hearing is usually held at the request of a Parole Officer.

### Current Board Members

Chairman/Executive Director – Brian L. Livingston  
Vice Chairman/Board Member – Ellen Kirschbaum  
Board Member – Laura Steele  
Board Member – C.T. Wright

### Board Member Terms

	<i>Appointed</i>	<i>Term Ends</i>
Brian L. Livingston	2012	2017
Ellen Kirschbaum	2009	2014
Laura Steele	2014	2019
Dr. C.T. Wright	2014	2019

### PAST MEMBERS WHO SERVED DURING THE PERIOD OF THIS REPORT

Jesse Hernandez      Term ended 2013  
Melvin Thomas      Term ended 2013  
John LaSota      Term ended 2014  
Donna Harris      Term ended 2014

### Structure

The Board is supported by seven full-time administrative staff members:

**Chairman/Executive Director.** In 2004, the Legislature combined the positions of Chairman and the Executive Director through 2007. In 2006, the combining of positions was extended through 2014.

**Administrative Service Officer II.** Under the direction of the Chairman/Executive Director, this officer is responsible for managing the Board’s business and human resource functions and serves as computer network administrator.

**Project Specialist II.** This staff member drafts policies and procedures, performs special projects as determined by the Chairman/Executive Director, maintains statistical information and acts as the Board’s legislative liaison.

**Administrative Support Staff.** The four Administrative Support Staff members monitor hearings; process packets for the Board’s use in making release decisions; provide statutorily mandated notifications to victims, officials and other concerned individuals and entities; manage and maintain individual files and the file room; and complete dispositions and proclamations for Board decisions.

Board Actions

Yearly Totals, Fiscal Year 2014

7-1-13 to 6-30-14

<b>COMMUTATION PHASE 1 HEARINGS SCHEDULED</b>	<b>305</b>
Hearings Conducted	305
<i>New Code (Truth-in-Sentencing-1994)</i>	305
Passed to Phase II	13
Not Passed to Phase II	279
Continued	10
Ineligible, Removed from Agenda	3

<b>COMMUTATION PHASE 2 HEARINGS SCHEDULED</b>	<b>55</b>
Hearings Conducted	55

**Type of Hearings:**

<i>New Code (Truth-in-Sentencing-1994)</i>	37
Recommended to Governor	19
Not Recommended to Governor	15
Continued	1
Ineligible, removed from agenda	2
<i>Old Code (Pre-Truth in Sentencing)</i>	1
Recommended to Governor	1
Not Recommended to Governor	0
<i>13-603 L (Special Order by the Court)</i>	10
Recommended to Governor	3
Not Recommended to Governor	6
Ineligible, Removed from Agenda	1
<i>Imminent Danger</i>	7
Recommended to Governor	3
Not Recommended to Governor	1
Continued	3

<b>PARDONS SCHEDULED</b>	<b>22</b>
Hearings Conducted	22
Recommended to Governor	5
Not Recommended to Governor	9
Continued	8

<b>ABSOLUTE DISCHARGES SCHEDULED</b>	<b>24</b>
Hearings Conducted	24
Granted	3
Denied	13
Continued	7
Ineligible	1

<b>MODIFICATIONS SCHEDULED</b>	<b>3</b>
Hearings Conducted	3
Granted	1
Denied	0
Continued	2

<b>REPRIEVES SCHEDULED</b>	<b>2</b>
Hearings Conducted	2
<i>Warrants of Execution Received</i>	3
Recommended to Governor	0
Not Recommended to Governor	2
Pending Scheduling	1

<b>PAROLE HEARINGS SCHEDULED</b>	<b>522</b>
Hearings Conducted	394

***Types of Hearings:***

<b>31-412A/411*</b>	<b>29</b>
Granted	2
Denied	13
Appeared & Waived	1
Continued	0
Refused to Appear	11
SED/Released/Ineligible/OTC/MLT	2

*\*Eligible for Parole/Absolute Discharge*

**31-412A/411/HA\*** ..... **343**

Granted .....	65
Denied.....	153
Appeared & Waived.....	13
Continued.....	25
Refused to Appear.....	59
SED/Released/Ineligible/OTC/MLT .....	28

*\*Eligible for Parole/Absolute Discharge/Home Arrest*

**31-412B(CS)/411\*** ..... **139**

Granted.....	24
Denied.....	45
Appeared & Waived .....	14
<a href="#">Continued</a> .....	8
Refused to Appear.....	45
SED/Released/Ineligible/OTC/MLT.....	3

*\*Eligible for Parole to a Consecutive term/Absolute Discharge*

**31-412B(DET)/411\*** ..... **10**

Granted .....	4
Denied.....	1
Appeared & Waived .....	2
Continued.....	0
Refused to Appear.....	1
SED/Released/Ineligible/OTC/MLT.....	2

*\*Eligible for Parole to a Detainer/Absolute Discharge*

**Work Furlough**..... **1**

Granted.....	0
Denied.....	0
Appeared & Waived.....	0
Continued .....	0
Refused to Appear.....	1
SED/Released/Ineligible/OTC/MLT .....	0

<b>PROBABLE CAUSE HEARINGS SCHEDULED</b> .....	<b>0</b>
Hearings Held.....	0
Requests Received*.....	503
Waived.....	0
Rescheduled .....	0
DOC SED.....	0

*\*PC hearing requests were held before the full Board at Phase I of the revocation hearing process*

<b>WARRANT REQUESTS RECEIVED</b> .....	<b>2,823</b>
Technical .....	2,823
SED/Released/OTC.....	(570)
<b>VIOLATORS SCHEDULED</b> .....	<b>2,253</b>
Hearings Conducted .....	2,253

**Types of Hearings:**

<i>CSR Revocation</i> .....	2,232
Revoked .....	1,964
Not in Violation .....	17
Revoked & Reinstated .....	195
Continued .....	56

<i>Parole Revocation</i> .....	18
Revoked .....	10
Not in Violation .....	0
Revoked & Reinstated .....	4
Continued .....	4

<i>HA Revocation</i> .....	3
Revoked .....	2
Not in Violation.....	0
Revoked & Reinstated.....	1
Hearings Continued.....	0

<b>MODE OF HEARINGS CONDUCTED</b> .....	<b>3,058</b>
Telephonic .....	838
Video .....	1,890
Personal.....	39
In Absentia .....	291

**PACKETS SENT TO GOVERNOR .....26**

Granted..... 5

Denied ..... 9

Grant by Governor's Default ..... 0

Pending Governor's Disposition..... 12

**POST CONVICTION NOTIFICATIONS RECEIVED ..... 1,241**

Victims..... 513

Officials..... 728

**TOTAL HEARINGS CONDUCTED .....3,058**

**TOTAL HEARINGS SCHEDULED ..... 3,186**

**TOTAL NUMBER OF CERTIFICATIONS and WARRANTS PROCESSED.....3756\***

*\*This total was compiled with newly developed tracking specific to warrants processed beginning January 1, 2014 through July 31, 2014. Paroles and Clemency Actions for the entire 2013/2014 FY: 522/Paroles; 411/Clemency Actions; 2823/warrants are included in this report.*

Arizona Board of Executive Clemency

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Provisions for Individuals with Disabilities

Individuals who have a disability and require reasonable accommodation in order to use this document are encouraged to contact the Board of Executive Clemency at 602-542-5656.