

**ARIZONA BOARD OF EXECUTIVE CLEMENCY
BOARD POLICY #114**

Policy Title: Commutation of Sentence	Draft Date: May 2014	Policy #114
	Effective Date: August 19, 2014	
	Revision: 07-30-14	Pages: 1-4

This policy (and/or procedures) therein does not create a contract for employment between any employee and the Board of Executive Clemency. Nothing in this policy changes the fact that all uncovered employees of the Board of Executive Clemency are at will employees and serve at the pleasure of the appointing authority.

Purpose:

The purpose of this policy is to outline the general procedures and guidelines associated with the processing of Commutation of Sentence applications and subsequent Board determinations.

Policy:

It is the policy of the Arizona Board of Executive Clemency, to conduct a hearing for all eligible inmates to determine whether to recommend to the Governor that a commutation of sentence be granted. If granted, the action changes the penalty imposed by a court on a convicted felon to one that is less severe, but does not restore the inmate's civil rights.

Authority:

ARS § 13-603(L)

ARS § 31-402

ARS § 31-411 (H)(I)(1)

ARS § 38-431.01

ARS § 31-403

Procedure:

- A. Individuals must complete and sign the application for commutation form adopted by the Board. This application will be made available on the Board's website and by mail if internet service is not accessible to a requestor.
- B. All applications for a Commutation of Sentence shall be transmitted to the Department of Corrections for review and certification by the originator. Only those applications certified by the AZDOC as statutorily eligible for commutation will be forwarded to the Board for review. Only applications found to be complete by the Chairman of the Board will be scheduled for a Commutation Hearing. Incomplete applications or applications not meeting the requirements of this policy will be returned to the petitioner.
- C. If an inmate's sentence does not require a minimum amount of time to be served before applying for commutation then 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 release eligibility date as determined by the Department of Corrections.

- D. The Board *may* consider cases where an inmate has served only (1) year of his or her sentence if the inmate's sentence is three (3) years or less and the inmate is not within six (6) months of their earliest release date.
- E. When an inmate is in imminent danger of death or the Board has received a Warrant of Execution issued by the Arizona Supreme Court, or in cases where the court has entered a special order pursuant to ARS § 13-603(L), the Board may waive the above eligibility criteria as listed in C & D, and schedule a Phase II hearing. In order for the Board to consider such application, however, the inmate must meet all other statutory and policy eligibility criteria.
1. An order of the court pursuant to ARS § 13-603(L) – i.e., the court at the time of sentencing finds that the legally mandated sentence is clearly excessive – allows the defendant, notwithstanding the minimum service requirements of subsection C or D of this policy, to petition the Board, within ninety days after commitment to the Department of Corrections, for commutation of that sentence, even if the sentence is a consecutive sentence that the defendant has not yet begun to serve (i.e., future consecutive sentence). If and after a 603L commutation request hearing is held and if the board determination is to not pass the commutation request to the Governor then no further commutation request will be considered by the Board for two years from the date of the most recent denial.
 2. If it has been determined by a licensed physician, from the Arizona Department of Corrections affiliated medical service provider that an inmate, upon examination, is suffering from a medical condition which, in the doctor's professional medical opinion will to a reasonable medical certainty result in the applicant's death within six (6) months then the inmate may apply for an Imminent Danger of Death commutation. A *written statement* to the Board by the attending physician stating this diagnosis is required and must be submitted with the commutation application. The physician certifying the condition of the inmate must be available to the board to provide testimony at the time of the commutation hearing. If the attending physician is not available a physician associated and familiar with the condition of the inmate may testify in place of the attending physician.
- F. When a commutation from imprisonment is to be considered, the board, on request and before holding a hearing on the commutation, shall notify the attorney general, the presiding judge of the superior court, the county attorney in the county in which the prisoner requesting commutation was sentenced and the victim of the offense for which the prisoner was incarcerated. The notice to the victim shall be mailed to the last known address. The notice shall state the name of the prisoner and shall set the month of the hearing. The notice shall inform the victim of the victim's right to be present and to submit a written report to the board expressing the victim's opinion concerning the release of the prisoner. No hearing concerning commutations shall be held until at least fifteen (15) days have 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 as evidence that

notification was sent. The provision of this subsection requiring notice to the government officials shall not apply when there is imminent danger of death certified commutation request or when the term of imprisonment is within two hundred ten (210) days of expiration.

Commutation Hearing Process

Except as provided in subsection E.1 thru E.2 of this policy, commutation hearings will be held in two phases:

1. On the date set by the Chairman for the Phase I hearing, the Board will review the application, inmate's files, letters and all relevant information. The Phase I hearing is an "in absentia hearing", however, family, friends, victims, other witnesses and legal counsel may submit written information concerning the matter or may provide oral testimony regarding the sentence received by the inmate at the time of sentencing. At the conclusion of the hearing the Board may take one of the following actions:
 - a) Find by a *majority vote* of the board members that there is no basis for further consideration on the application;
 - b) Find by a *majority vote* of the board that the inmate should pass to Phase II.
2. At the Phase II hearing, the Board will interview the inmate, review all relevant information provided including the comprehensive report prepared by Board staff and take testimony from family, friends, victims, other witnesses and/or legal counsel.
3. When the Board votes to recommend a Commutation of Sentence to the Governor, a letter of recommendation is prepared that includes the reasons for the affirmative vote. Letters of dissent may also be prepared and forwarded to the Governor by any Board member who voted contrary to the majority decision. A board member who votes in the majority will be selected by the Chairman to prepare the letter to the Governor.
4. Any recommendation for commutation that is passed *unanimously* by Board and that is not acted on by the governor within ninety days after its submission automatically becomes effective. 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.
5. 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.
6. Upon receipt of the determination of the Governor the inmate will be advised of the decision and the board's files updated.
7. If the Board decides not to recommend commutation to the Governor the inmate may reapply to the board for commutation consideration three years from the date of denial for a non-serious offense except in those cases where a five year set off is applied. (Offenses committed after January 1, 2006; A.R.S 31-403.E)

8. The board may waive the provisions of subsection 7 if any of the following applies:
 1. The person meets the conditions as outlined in Section E, subsections 1-2 of this policy.
 2. The person is the subject of a warrant of execution.
9. The Board's determination is final.

Implementation:

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