

**ARIZONA BOARD OF EXECUTIVE CLEMENCY  
BOARD POLICY**

<b>Policy Title</b> Commutation of Sentence	<b>Effective Date</b> 10/19/2011	<b>Policy No</b> 400.13.G
	<b>Supersedes</b> 400.13.F 08/10/2009	<b>Page(s)</b> 1 of 3

**Authority**

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

**Policy**

It is the policy of the Arizona Board of Executive Clemency, to conduct a hearing for all eligible applicants 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.

**Procedures**

- A. Individuals must complete and sign the application for commutation form adopted by the Board.
- B. All applications made to the Governor for a commutation of sentence are transmitted to the Chairperson of the Board of Executive Clemency for review. Only those applicants deemed eligible after review by the Department of Corrections, will be scheduled for a hearing.
- C. Only those applicants 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 will be considered. However, in cases where an applicant has served only one (1) year of his or her sentence, but is not in imminent danger of death or in a persistent vegetative state, the Board may consider and act on an application for commutation of sentence if all of the following apply:

- i. the applicant's sentence is three (3) years or less;
  - ii. the applicant is not within six (6) months of their earliest eligibility release date
- D. An order of the court pursuant to ARS § 13-603 (L) – i.e., that 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. 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., a future consecutive sentence). If on the initial petition commutation is not recommended or is denied by the Governor, after the two-year waiting period imposed in subsection I. and so long as there is no law to the contrary, the Board may again consider an application for commutation of any or all current sentences or future consecutive sentences for which there is a ARS § 13-603 (L) order, even though the defendant has not yet begun to serve the sentence(s).
- E. When the applicant is in imminent danger of death or in a persistent vegetative state, and the medical status has been verified by the Department of Corrections, 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), or the applicant has been recommended to the Governor for a commutation previously for the same sentence, the Board may waive the above eligibility criteria and schedule a Phase II hearing. In order for the Board to consider the application, however, the applicant must meet the statutory eligibility criteria.
- F. Except as provided in subsection E. and in subsection F.3 of this policy, commutation hearings will be held in two phases:
  - i. On the date set by the Chairperson for the Phase I hearing, the Board will review the application, applicant'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. 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 members that sufficient reasons exist to warrant further

investigation, and pass the matter to a Phase II hearing.

- ii. At the Phase II hearing, the Board will interview the applicant, review all relevant information and take testimony from family, friends, victims, other witnesses and/or legal counsel. At the conclusion of the hearing, a final decision is made to either recommend this action to the Governor or not to recommend this action to the Governor.
- iii. If an inmate is the subject of a warrant of execution issued by the Arizona Supreme Court the requirement for a Phase I hearing does not apply.

G. When a majority of 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.

H. Letters of recommendation and if applicable, dissent letters, along with the case materials considered by the Board at the Phase II hearing, are transmitted to the Governor by the Chairman.

I. Subsequent applications for commutation of sentence for an offense committed before January 1, 2006, are not considered until a period of two (2) years has elapsed from the final action taken by the Board on the matter.

J. Subsequent applications for commutation of sentence for an offense committed on or after January 1, 2006, that are not governed by ARS § 31-403, are not considered until a period of two (2) years has elapsed from the final action taken by the Board on the matter.

### **Implementation**

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

10/19/2011

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Duane Belcher, Sr.

Chairman

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Date