

Arizona provides compassionate release to eligible incarcerated individuals in “imminent danger of death” through the **Executive Clemency** process.¹ Individuals may also request **Compassionate Leave** if they need specialized care for terminal illnesses or medical treatment not available in prison.²

EXECUTIVE CLEMENCY DUE TO IMMINENT DANGER OF DEATH

I. ELIGIBILITY

Medical Condition – An incarcerated individual with a terminal illness may be eligible for Executive Clemency – either a Commutation of Sentence under Imminent Danger of Death³ or a Pardon under Imminent Danger of Death⁴ – if expected to die “imminently.” Somewhat confusingly, though, Arizona Law defines “imminent” using three different time frames:

- The Arizona Department of Corrections, Rehabilitation, and Reentry (Department) says that an individual is in imminent danger of death if suffering from a medical condition that will, in a physician’s professional opinion “with a reasonable medical certainty,” result in death within **three months**.⁵
- The Arizona Board of Executive Clemency (Clemency Board) states that it will only consider an individual for a **Commutation** based on imminent danger of death if the prognosis indicates there is a reasonable medical certainty that the medical condition will result in death within **four months** of applying.⁶
- The Clemency Board’s *Pardon Application*, however, says that an individual will be considered in imminent danger of death if a physician has diagnosed a medical condition that will, to a reasonable medical certainty, result in death within **six months**.⁷

Exclusions –The Clemency Board can waive the usual exclusions, which are based on time served and time remaining to be served, if the individual applying for Executive Clemency is in imminent danger of death.⁸

II. APPLICATION/REFERRAL

To be considered for Executive Clemency Due to Imminent Danger of Death, an incarcerated individual must apply for early release by filing either a *Commutation of Sentence Application*⁹ or a *Pardon Application*, both available from the Clemency Board.¹⁰

- Although the Governor has exclusive authority to grant Executive Clemency, the Clemency Board must first make its recommendation.¹¹ Any applications sent directly to the Governor are forwarded to the Clemency Board for processing.¹²

III. DOCUMENTATION AND ASSESSMENT

Statutory Eligibility/Time Computation Unit – For all Executive Clemency requests, the Department’s Time Computation Unit first determines whether the incarcerated person meets the statutory eligibility requirements.¹³ The Department rules also state that the individual must have served two years from the “sentence begin date” and not be within one year of release, parole eligibility date, or earliest release date.¹⁴ However, the Board can waive those two requirements if an individual is in imminent danger of death.¹⁵ The Unit then forwards the application to the Medical Services Division Grievance Coordinator/Investigator (Coordinator) within one work day.¹⁶

Review – After ensuring that the application is complete, the Coordinator forwards the application to the Medical Services Division Medical Director (or the Medical Director’s designee).¹⁷ Within one work day from receipt, the Medical Director must review the application for medical eligibility and send it back to the Coordinator.¹⁸

- **Not Eligible** – If the Medical Director decides the incarcerated person is **not** medically eligible, the application is forwarded back to the Time Computation Unit and the Clemency Board within one day. The Unit forwards the “denied packet” to the assigned corrections officer who then gives the information to the individual.¹⁹
- **Eligible** – If the Medical Director decides the individual is medically eligible, the Coordinator must request a medical summary from the on-site medical provider within one work day.²⁰ The on-site provider must send the summary back to the Coordinator within one work day and must include the person’s diagnosis, treatment plan, current medical status, and prognosis.²¹

Discharge Plan – The Coordinator must work with the medical provider on a “detailed discharge plan” that includes residential housing plans, the names of those who are expected to live with and care for the individual, and any “continuity of care” planning.²²

IV. DECISION-MAKING PROCESS

Decision-Maker – As referenced above, the Governor has exclusive authority to grant Executive Clemency.²³ However, the Governor may not grant it unless the Arizona Board of Executive Clemency has first recommended it.²⁴ Thus, although the Governor is the ultimate decision-maker, the Board has a key role in the decision.

Hearing: Arizona Board of Executive Clemency – Clemency hearings are open to the public and are generally informal.²⁵ The Clemency Board allows incarcerated individuals to be represented by counsel at the hearings.²⁶

- **Priority Scheduling** – The Clemency Board policy states that the Board’s Executive Director must make every effort to accommodate “priority scheduling” for hearing Commutation requests involving individuals who are in imminent danger of death.²⁷ (Note, however, the Board’s guidelines do not reference a priority schedule for individuals in imminent danger of death who are seeking a Pardon.)²⁸
- **Notice** – The usual notice requirements do not apply for Executive Clemency cases before the Board that involve incarcerated individuals who are in imminent danger of death.²⁹
- **Testimony** – Upon request, the medical provider who prepared the clinical diagnosis will provide testimony before the Clemency Board.³⁰

The Clemency Board must forward recommendations for Commutation based on imminent danger of death to the Governor within seven working days.³¹ Based on the available public information, there is no such expedited time frame for Pardon recommendations, and the Board has stated that seeking a Pardon is a “lengthy and time consuming process.”³²

Governor’s Decision – When a Clemency Board recommendation to grant a Commutation is unanimous, it automatically becomes effective if the Governor does not act upon it within 90 days.³³ There is no such requirement or designated time frame for Pardon recommendations, and the Governor can respond at any time.³⁴

V. POST-DECISION

Denials and Appeal Rights

- **Commutations** – An incarcerated individual cannot appeal the denial of a Commutation request at any stage of the process and neither the Governor nor the Clemency Board is legally required to provide a reason for denial.³⁵ After a denial, there are general time restrictions on when an individual may reapply for a Commutation;³⁶ however, those are waived if the reapplication is based on imminent danger of death due to a medical condition.³⁷
- **Pardons** – If the Board votes not to recommend a Pardon or if the Governor denies the application, the individual may apply again in three years from the date of the Board’s decision.³⁸

VI. REPORTING/STATISTICS

Arizona law does not require that the Governor or Clemency Board report its decisions. However, the Clemency Board responded to FAMM's request for information and provided the following information:

- In 2019, the Clemency Board received 12 requests for Executive Clemency Due to Imminent Danger of Death:³⁹
 - The Board recommended two individuals to the Governor for Executive Clemency, and he granted release for both. The Board recommended three additional individuals for Executive Clemency to the Governor, but they died before he took action.
 - The Board denied six individuals, and those applications did not move forward to the Governor.
 - The Board denied one individual because the Department had already granted him release under a different authority.
- In 2020, the Clemency Board received requests from nine individuals for Executive Clemency Due to Imminent Danger of Death. It recommended, and the Governor granted, release for all nine people.⁴⁰

COMPASSIONATE LEAVE

Arizona law states that the Department of Corrections, Rehabilitation, and Reentry (Department) may authorize Compassionate Leave, defined as a temporary removal or release for the purpose of furnishing medical treatment not available at the prison.⁴¹

- Note that the Department's public information says Compassionate Leave can only be authorized for a "verified terminal illness,"⁴² which contradicts the statute.
- The statute says that individuals released on Compassionate Leave are not on "inmate status."⁴³ However, it also says that they are still under the Department's jurisdiction "until the terms of community supervision are met."⁴⁴

There is no other publicly available information on eligibility criteria, the Department's decision-making process, or how many individuals the Department has granted Compassionate Leave due to a medical condition.

ARIZONA COMPASSIONATE RELEASE **PRIMARY LEGAL SOURCES**

EXECUTIVE CLEMENCY DUE TO IMMINENT DANGER OF DEATH

State Constitution

Arizona Constitution, Article V, § 5, available through the Arizona State Legislature, <https://www.azleg.gov/viewDocument/?docName=http://www.azleg.gov/const/5/5.htm>.

Statute

Arizona Revised Statutes, § 31-403 (D) (2020), available through the Arizona State Legislature, <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/31/00403.htm>.

Regulations

Arizona Administrative Code, Title 5, Chapter 4: Board of Executive Clemency (2008), available through the Arizona Secretary of State, https://apps.azsos.gov/public_services/Title_05/5-04.pdf.

Agency Policy/Publications

Arizona Board of Executive Clemency, Board Policy #109, Pardon Hearings (July 6, 2017), https://boec.az.gov/sites/default/files/documents/files/109-Pardon%20Hearings_0.pdf.

Arizona Board of Executive Clemency, Board Policy #114, Commutation of Sentence (May 7, 2018), <https://boec.az.gov/sites/default/files/documents/files/114-Commutation%20of%20Sentence%20Rev%2005-2018.pdf>.

Arizona Board of Executive Clemency, Frequently Asked Questions (2018), <https://boec.az.gov/helpful-information/frequently-asked-questions>.

Arizona Board of Executive Clemency, *Commutation of Sentence Application* (2019), <https://boec.az.gov/sites/default/files/documents/files/Commutation%20Application%202-28-19.pdf>.

Arizona Board of Executive Clemency, *Pardon Application* (2013), 1, https://boec.az.gov/sites/default/files/documents/files/Pardon%20Application_0.pdf.

Arizona Department of Corrections, Rehabilitation, and Reentry, Department Order Manual, Department Order 1002-Inmate Release Eligibility System (Nov. 30, 2020), § 1.11.3, https://corrections.az.gov/sites/default/files/policies/1000/1002_031021.pdf.

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ARIZONA COMPASSIONATE RELEASE **PRIMARY LEGAL SOURCES**

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COMPASSIONATE LEAVE

Statutes

Arizona Revised Statutes, § 31-233 (B) (2020), available through the Arizona State Legislature, <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/31/00233.htm>.

Arizona Revised Statutes, § 41-1604.11 (B) (2020), available through the Arizona State Legislature, <https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/41/01604-11.htm>.

NOTES

* *Id.* means see prior note.

¹ Ariz. Rev. Stat. § 31-403 (D).

² Ariz. Rev. Stat. §§ 31-233 (B) and 41-1604.11 (B).

³ Ariz. Rev. Stat. § 31-403 (D); Arizona Department of Corrections, Rehabilitation, and Reentry, Department Order Manual, Department Order (DOC Order) 1002, § 1.11.3.

⁴ DOC Order 1002, § 1.12.2.

⁵ *Id.*, Glossary of Terms.

⁶ Arizona Board of Executive Clemency (Clemency Board), Board Policy #114, § 114.3.2. See also Clemency Board, *Commutation of Sentence Application*, 2.

⁷ Clemency Board, *Pardon Application* (2013), 1.

⁸ Ariz. Rev. Stat. §§ 31-403 (D) and 31-442; DOC Order 1002, §§ 1.11.3.1.3, 1.11.3.1.4, and 1.12.

⁹ Clemency Board, *Commutation of Sentence Application*.

¹⁰ Clemency Board, *Pardon Application*.

¹¹ Ariz. Rev. Stat. Ann. §§ 31-402 (A) and (C).

¹² *Id.* at (B).

¹³ DOC Order 1002, § 1.11.3.1.1.

¹⁴ Id. at §§ 1.11.3.1.3 and 1.11.3.1.4.

¹⁵ Id.

¹⁶ Id. at § 1.11.3.2.

¹⁷ Id. at 1.11.3.2.1.

¹⁸ Id. at 1.11.3.2.2.

¹⁹ Id. at 1.11.3.3.

²⁰ Id. at 1.11.3.4.1.

²¹ Id.

²² Id. at 1.11.3.4.2.

²³ Ariz. Const. art. V, § 5; Ariz. Rev. Stat. § 31-443.

²⁴ Ariz. Rev. Stat. §§ 31-402 (A) and (C). See also Clemency Board, Board Policy #109, Pardon Hearings, and Board Policy #114, Commutation of Sentence.

²⁵ Ariz. Admin. Code § R5-4-102.

²⁶ Id.

²⁷ Board Policy #114, § 114.3, Subsection 3.2.3.

²⁸ Board Policy #109, § 109.01, Subsection 1.2 (1).

²⁹ Ariz. Rev. Stat. § 31-411 (I), referencing § 31-411 (H); Board Policy # 109.01, Subsection 1.2.1.

³⁰ Board Policy #114, § 114.3, Subsection 3.2.2.

³¹ Id. at § 114.7, Subsection 7.3. See also Clemency Board, Frequently Asked Questions.

³² Clemency Board, Frequently Asked Questions.

³³ Ariz. Rev. Stat. § 31-402 (D).

³⁴ Clemency Board, Frequently Asked Questions.

³⁵ Id.

³⁶ Ariz. Rev. Stat. §§ 31-403 (A) through (C); Board Policy #114, § 114.7, Subsection 7.7.1.

³⁷ Ariz. Rev. Stat. § 31-403 (D); Board Policy #114, § 114.7, Subsection 7.7.2.

³⁸ Clemency Board, Frequently Asked Questions.

³⁹ Emails from Kathryn Ptak, Arizona Board of Executive Clemency, responding to FARM's Public Records Request, to FARM (April 1, April 5, and May 6, 2021) (on file with FARM, Office of the General Counsel).

⁴⁰ Id. See also Elizabeth Whitman, "After Long Wait, Ducey Commutes Sentences for Three Terminally Ill Arizona Inmates," *Phoenix New Times*, April 7, 2020, <https://www.phoenixnewtimes.com/news/coronavirus-arizona-prisons-inmates-ducey-commutes-terminally-ill-11464084>. Prior to 2019, it was reported that an incarcerated person in Arizona was more likely to be struck by lightning than to be granted Clemency. See Rachel Leingang, "Ducey Record on Pardons, Commutations Not Forgiving," *Arizona Capitol Times*, March 9, 2018, <https://azcapitoltimes.com/news/2018/03/09/arizona-doug-ducey-pardons-commutations-not-forgiving/>.

⁴¹ Ariz. Rev. Stat. §§ 31-233 (B) and 41-1604.11 (B).

⁴² See the Arizona Department of Corrections, Rehabilitation, and Reentry "Release Types" webpage at <https://corrections.az.gov/release-types#compassionate>.

⁴³ Ariz. Rev. Stat. § 31-233 (E).

⁴⁴ Id.