

Arizona provides compassionate release to eligible prisoners in “imminent danger of death” through the **Executive Clemency** process.¹ Prisoners may also request **Compassionate Leave/Furlough** to obtain 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 - To be eligible for Executive Clemency (i.e., a pardon or commutation of sentence) because of a medical condition, a prisoner must be in imminent danger of death.³ Somewhat confusingly, though, Arizona Law defines “imminent” using three different time frames:

- The Arizona Department of Corrections (Department) defines a prisoner in imminent danger of death as suffering from a medical condition that, in the physician’s professional opinion, “with a reasonable medical certainty” will result in the individual’s death within **three** months.⁴
- The Arizona Board of Executive Clemency (Clemency Board) states that a prisoner can apply for commutation of a sentence if his or her diagnosis shows that death is imminent and expected to occur within **four** months.⁵
- Arizona’s pardon application process also defines “imminent danger of death,” stating that the prisoner has been examined by a medical doctor who has diagnosed him or her as suffering from a medical condition that will, to a reasonable medical certainty, result in the prisoner’s death within **six** months.”⁶

Exclusions - The Clemency Board can waive the usual exceptions, based on the time served and time remaining to be served, if the prisoner is in imminent danger of death.⁷

II. APPLICATION/REFERRAL

To be considered for Executive Clemency Due to Imminent Danger of Death, a prisoner must apply for early release by filing either a Commutation of Sentence or Pardon application.⁸

- Although the Governor has exclusive authority to grant Executive Clemency, it may not be granted unless it has first been recommended by the Clemency Board.⁹ Any applications sent directly to the Governor are forwarded to the Clemency Board for processing.
- The applications are available on the Clemency Board’s website.¹⁰

III. DOCUMENTATION AND ASSESSMENT

Statutory Eligibility/Time Computation Unit - The Department's Time Computation Unit first determines if the prisoner meets the non-medical eligibility guidelines,¹¹ which, as referenced above, can be waived if a prisoner is in imminent danger of death.¹² The Unit then forwards the application to the Grievance/Appeal Coordinator for Health Services within one work day.¹³

Review and Documentation/Health Services - After ensuring that the appropriate application is complete, the Grievance/Appeal Coordinator for Health Services (Coordinator) asks the onsite medical provider to evaluate the prisoner, review the medical records, and write a medical summary that includes a diagnosis, treatment plan, current medical status, prognosis, and any supporting documentation.¹⁴ The Coordinator reviews the report and prepares a clinical summary that includes "the reasonable medical certainty that the inmate's medical condition will result in death" and an opinion on the prisoner's life expectancy.¹⁵ The application and clinical summary are forwarded to Health Services for final approval.¹⁶

Recommendation/ Health Services - Health Services approves or disapproves the prisoner's application and then sends it back to the Grievance/Appeal Coordinator.¹⁷ If approved, the Coordinator notifies the Board and forwards the signed clinical summary, application, and any other relevant documentation.¹⁸ If denied, the Health Services Coordinator notifies the Board and forwards the denial and relevant documentation to the assigned corrections officer, who advises the prisoner as to the decision.¹⁹

- There is no appeal process for prisoners who have been denied by Health Services.²⁰

Release Plan - Although not listed as a requirement in the Executive Clemency process, Department policy includes a detailed section on medical/mental health release planning that applies to *all* prisoners with medical needs who are anticipating release.²¹ The Department's Release Planners, and other designated health staff, work with the appropriate correctional officers and Community Corrections staff to find an appropriate placement²² and to assist the prisoner with health insurance, applying for federal benefits, and arranging necessary medical services upon release.²³

IV. DECISION-MAKING PROCESS

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

ARIZONA BOARD OF EXECUTIVE CLEMENCY

The Clemency Board is responsible for making recommendations to grant or deny requests for Executive Clemency.²⁵ The process varies somewhat, depending on when the prisoner committed the offense: For prisoners who committed felony offenses on or after Jan. 1, 1994, the Board must conduct a hearing.²⁶

Hearing - Clemency hearings are open to the public and are generally informal.²⁷ The Clemency Board allows prisoners to be represented by counsel at the hearings.²⁸

- *Priority Scheduling* - The Clemency Board's Executive Director "will make every effort to accommodate priority scheduling" for hearing requests involving prisoners who are in imminent danger of death.²⁹
- *Notice* - The usual notice requirements do not apply for Executive Clemency cases before the Board involving prisoners who are in imminent danger of death.³⁰
- *Testimony* - The medical provider who prepared the clinical diagnosis must be available for testimony before the Clemency Board when the hearing is scheduled.³¹

The Clemency Board must forward recommendations for clemency/commutation based on imminent danger of death within seven (7) working days.³²

GOVERNOR

If a unanimous Clemency Board recommendation to grant clemency is not acted on by the Governor within 90 days after it is submitted, it automatically becomes effective.³³

V. POST-DECISION

Denials and Appeal Rights - A denial of a clemency/commutation request at any stage of the process cannot be appealed, and neither the Governor nor the Clemency Board is legally required to provide a reason for denial.³⁴

VI. REPORTING/STATISTICS

Although Arizona law does not require that clemency decisions be reported, the Clemency Board has published the following statistics:

- In Fiscal Year 2017, the Clemency Board held four hearings for prisoners who were in imminent danger of death and, of those, recommended three to the Governor.³⁵
- In Fiscal Year 2016, the Clemency Board held seven hearings for prisoners who were in imminent danger of death and, of those, recommended one to the Governor.³⁶

These numbers correspond with a March 2018 new report that Gov. Doug Ducey, who has been in office since January 2015, has granted five clemency/commutation requests, with four of those being for prisoners who were in imminent danger of death.³⁷ Prior to Gov. Ducey's term, it was said that a prisoner was more likely to be struck by lightning than to be granted clemency.³⁸

COMPASSIONATE LEAVE/FURLOUGH

Arizona law states that the Department of Corrections (Department) may authorize “compassionate leave” - a furlough, temporary removal, or temporary release of a prisoner from custody - for specified reasons, including so that he or she can receive medical treatment that is not available at the prison.³⁹

Note that the Department’s public information contradicts the statute. The relevant statutes say Compassionate Leave can be used for “medical treatment not available at the prison or institution.” However, the Department website says Compassionate Leave can only be authorized for a “verified terminal illness.”⁴⁰

There is only very limited information in the Department rules on the Compassionate Leave program in general and no specific details as it relates to eligibility for prisoners in need of medical care:⁴¹

- Prisoners are not eligible if they (1) are serving a sentence for a sex offense; (2) have a history of sex offense arrests or convictions; (3) are registered as a sex offender; or (4) a history of or current conviction for “dangerous crimes against children.”⁴²
- The Department may require the prisoner to reimburse the state for expenses incurred due to the temporary release.⁴³
- While the prisoner is on Compassionate Leave, Arizona law says that he or she is not on “inmate status.”⁴⁴ However, it also says that the prisoner is still under the jurisdiction of the Department “until the terms of community supervision are met.”⁴⁵

NOTES

¹ Az. Const. art. V, § V; Ariz. Rev. Stat. §§ 31-403 (D) and 31-443.

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

³ Ariz. Rev. Stat. § 31-403 (D); Arizona Department of Corrections, Department Order Manual (Manual), Department Order (Order) 1002 (Apr. 10, 2017), § 1.11.3, https://corrections.az.gov/sites/default/files/policies/1000/1002-effective_041017.pdf.

⁴ Manual, Order 1002-Definitions, 43.

⁵ Arizona Board of Executive Clemency, Board Policy #114 (June 1, 2017), § 114.3, https://boec.az.gov/sites/default/files/documents/files/114-Commutation%20of%20Sentence_0.pdf. See also Arizona Board of Executive Clemency, Frequently Asked Questions, <https://boec.az.gov/helpful-information/frequently-asked-questions>, and Arizona Board of Executive Clemency, Commutation of Sentence Application, 2, <https://boec.az.gov/sites/default/files/documents/files/Commutation%20Application%202017%20Rev%20May%202017.pdf>.

⁶ Arizona Board of Executive Clemency, Pardon Application, 1, https://boec.az.gov/sites/default/files/documents/files/Pardon%20Application_0.pdf.

⁷ Ariz. Rev. Stat. §§ 31-403 (D) and 31-442; Manual, Order 1002, §§ 1.11.3.1.3 and 1.11.3.1.4.

⁸ Manual, Order 1001.01, § 1.12.

⁹ Ariz. Rev. Stat. Ann. § 31-402 (A).

¹⁰ See application forms at <https://boec.az.gov/helpful-information/forms>.

¹¹ Manual, Order 1002, § 1.11.3.1.1.

¹² Id. at §§ 1.11.3.1.3 and 1.11.3.1.4.

¹³ Manual, Order 1002, § 1.11.3.2.

¹⁴ Manual, Order 1002, §§ 1.11.3.2.1 and 1.11.3.2.2.

¹⁵ Manual, Order 1002 § 1.11.3.2.3.

¹⁶ Id. at § 1.11.3.2.4. The policy does not say who in Health Services is responsible for final approval.

¹⁷ Id. at § 1.11.3.3.

¹⁸ Id. at § 1.11.3.3.1.

¹⁹ Id. at § 1.11.3.3.3.

²⁰ Id. at § 1.11.3.4.

²¹ Manual, Order 1001, § 1.8 (2016), at 16, https://corrections.az.gov/sites/default/files/policies/1000/1001-effective_123016.pdf.

²² Id. at § 1.8.2.4.

²³ Id. at § 1.8.7.

²⁴ Ariz. Rev. Stat. Ann. § 31-402 (A).

²⁵ Ariz. Rev. Stat. § 31-402. See also Arizona Board of Executive Clemency, Board Policies #109 (pardons) and #114 (commutation of sentence).

²⁶ Id. at (C).

²⁷ Ariz. Admin. Code § R5-4-102.

²⁸ Id.

²⁹ Board Policy #114, § 114.3, Subsection 3.2.3

³⁰ Ariz. Rev. Stat. § 31-411 (I).

³¹ Manual, Order 1002, § 1.11.3.3.2; Board Policy #114, § 114.3, Subsection 3.2.

³² Board Policy #114, § 114.7, Subsection 7.3.

³³ Ariz. Rev. Stat. § 31-402 (D).

³⁴ Arizona Board of Executive Clemency, Frequently Asked Questions, *supra* note 5.

³⁵ Arizona Board of Executive Clemency, Annual Report: Fiscal Year 2017, at 18, <https://boec.az.gov/sites/default/files/documents/files/Annual%20Final%20Report.pdf>.

³⁶ Arizona Board of Executive Clemency, Annual Report: Fiscal Year 2016, at 23, <https://boec.az.gov/sites/default/files/documents/files/2016%20Annual%20Report.pdf>.

³⁷ Leingang, Rachel, “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/>.

³⁸ Id.

³⁹ Ariz. Rev. Stat. §§ 31-233 (B) and 41-1604.11 (B).

⁴⁰ See Ariz. Rev. Stat. §§ 31-233 (B) and 41-1604.11 (B); see also the Arizona Department of Corrections website at <https://corrections.az.gov/release-types#compassionate>.

⁴¹ See Ariz. Rev. Stat. §§ 31-233 (B) and 41-1604.11 (B); see also Manual, Order 1002.08, § 1.1 and the Arizona Department of Corrections website at <https://corrections.az.gov/release-types#compassionate>.

⁴² Manual, Order 1002, §§ 1.1.1.2 and 1.1.1.3.

⁴³ Ariz. Rev. Stat. §§ 31-233 (B) and 41-1604.11 (B).

⁴⁴ Ariz. Rev. Stat. § 31-233 (E).

⁴⁵ Id.

⁴⁶ Id. at (F).