

Emergency Petition for Commutation of Sentence or Executive Clemency

The Governor's executive clemency authority derives from Section 14 of Article V of the Michigan Constitution of 1963, which states that the Governor shall have the power to grant reprieves, commutations, and pardons. Under this section of Michigan's constitution, the Governor can grant a Petition for Commutation of Sentence. A commutation is the reduction of an individual's sentence. The Michigan Parole Board has the authority to determine an individual's parole eligibility immediately instead of waiting until they've served their minimum sentence. A commutation does not nullify the underlying convictions.

Commutation is Not the Same as a Pardon

A pardon erases a conviction from an individual's record. A pardon by the Governor terminates the punishment and blots out of existence the guilt. The offender is as innocent as if they had never committed the offense. Pardons are extraordinary and extremely rare.

Process to Request Petition for Commutation of Sentence

An Application for Pardon or a Petition for Commutation of Sentence may initiate a clemency review if submitted by a prisoner, someone on their behalf, or their criminal defense attorney. All applications for pardons and commutations must be filed with the Michigan Parole Board and include the information, records, and documents required by the Michigan Department of Corrections. Section 44 of the Corrections Code describes the Parole Board's detailed process for considering commutations applications. Ordinarily, the Parole Board must conduct an initial application review within 60 days.

Request for Emergency Petition for Commutation of Sentence

It is possible to request emergency consideration from the Governor's office if a prisoner is medically frail. At the Governor's request, the parole board will move quickly to review a reprieve, commutation, or pardon based partly on a prisoner's medical condition. Like a Petition for Commutation of Sentence or a Petition for Clemency, there is no room for error in a request for emergency consideration. There are no second chances. Because a prisoner only gets one shot at this extraordinary relief, working with a qualified, experienced attorney is best.

When is a Prisoner Considered Medically Frail?

"Medically frail" describes an individual who is a minimal threat to society as a result of their medical condition, who has received a risk score of low on a validated risk assessment, and

whose recent conduct in prison indicates they are unlikely to engage in assaultive behavior, and who has one or both of the following:

- A permanent or terminal physical disability or serious and complex medical condition resulting in the inability to do one or more of the following without personal assistance: walk, stand, or sit.

OR

- A permanent or terminal disabling mental disorder, including dementia, Alzheimer's, or a similar degenerative brain disorder resulting in the need for a nursing home level of care and a significantly impaired ability to perform two or more daily living activities.

The Parole Board has the sole statutory duty to transmit its formal recommendation to the Governor regarding the application's merit. A Petition for Commutation of Sentence based on a medical emergency can be an inmate's only way to be home with family or get adequate medical treatment.

What happens if the Governor denies a Petition for Executive Clemency?

Have you heard the expression, "there are no second bites at the apple?" If the Governor denies a Petition for Executive Clemency, the prisoner cannot file a new petition for two years. Because of the emergency nature of the executive clemency process, the Petition must be correct, follow the required procedures, and be exceptionally persuasive. In most cases, it takes a skilled, experienced criminal defense lawyer to give prisoners their best hope of achieving emergency release from prison. The only exception to the two-year waiting requirement is a substantial change in circumstances, such as the prisoner's accelerating deterioration or the progression of a terminal medical condition from which they are not likely to recover.

Parole Board Process

The Governor's office forwards all clemency applications to the Parole Board for review. The Parole Board will conduct an initial assessment to determine if a public hearing should occur. If the Parole Board finds that the Petition is without merit, the application is immediately forwarded to the Governor with the Board's recommendation to deny the application. Suppose the majority of the Parole Board believes there is merit to the Petition for Executive Clemency. In that case, they schedule the matter for a public hearing, and the process for consideration commences. The parole board can question the prisoner or petitioner on all relevant issues at the public hearing. Members of the public and any victim or victim's representative may testify in support of or opposition to the applicant's clemency. After the hearing, the case is referred back to the Board for a final vote on the Governor's recommendation. After a majority vote, the Parole

Board's recommendation and all relevant materials, including the public hearing transcript and other pertinent documents, are sent to the Governor's office.

Final Disposition Process

The Governor and their legal staff will review the application and the recommendation of the Parole Board. If the Governor grants the Petition for Commutation, thus reducing the prisoner's sentence to time served, the Board will vote on parole. If the majority of the 10-member Parole Board favors parole, the board initiates a 28-day notice to the sentencing or successor sentencing judge, prosecutor, and any registered victim. However, in the case of a terminally ill or medically frail prisoner, the Parole Board may seek the prosecutor, judge, and victim's consent, to waive the 28-day notice and grant immediate parole release.