

# VICTIMS' RIGHTS BRIEF

For Arizona's Justice System Administrators, Practitioners, and Advocates

Vol. VIII No. 1 January 2005

## Preparing Victims for the Parole and Clemency Process

As victim service practitioners, you may have experienced victims contacting you with terror in their voices, saying they just received a letter from the Arizona Board of Executive Clemency indicating that an inmate, who caused their victimization, will soon have a hearing to seek parole or clemency. The victim is confused and upset since the inmate was sentenced to ten years in the Arizona Department of Corrections, and less than half that time has passed.

In this month's *Brief*, we will highlight the Arizona Board of Executive Clemency and its function. This will provide a base knowledge of the parole and clemency process so you can in turn prepare the victim for the possibility of the inmate's original sentence being modified.

### Origins of the Board

The State of Arizona first afforded inmates the opportunity for parole in 1901. In 1913, the Legislature established the Board of Pardons and Paroles. In 1993, due to legislative changes, the Board's name changed from Board of Pardons and Paroles to the Board of Executive Clemency (BOEC).

In 1993, Truth-in-Sentencing laws established a new sentencing structure. The legislation eliminated the practice of Parole Board releases for inmates whose offense was committed after January 1, 1994. However, the Board was required to continue to conduct parole hearings for inmates who had committed offenses prior to January 1994.

Truth-in-Sentencing legislation applies to all felony offenses committed on or after January 1, 1994. Its purpose is to make the time actually served by the inmate closely match the sentence imposed by the court. The majority of all inmates serve approximately 85 percent of the sentence imposed to earliest release, unless they are serving a flat sentence (100 percent of sentence imposed). In addition, all inmates are released under Community Supervision for approximately 15 percent of the sentence imposed.

The mission of the Arizona Board of Executive Clemency is to ensure public safety by considering and granting parole to inmates certified as eligible by the Department of Corrections and who appear not to pose a threat to society, and by recommending to the Governor only those executive clemency actions which are in the best interest and safety of the citizens of Arizona.

### Parole vs. Clemency Hearings

After the Truth-in Sentencing laws passed, the general public found the change confusing. Deciphering the differences between parole and clemency can be difficult.

There are two main types of **Parole Hearings**, General Parole and Parole to a Consecutive Sentence or Another Jurisdiction.

*General Parole* is a conditional release from incarceration which entitles the parolee to serve the remainder of the parolee's term outside the confines of a penal institution if the parolee satisfactorily complies with all the terms and conditions of the release and supervision. The following are types of conditional releases on General Parole:

*Home Arrest* is a program for those inmates who are eligible to complete their prison sentence in the community. The Home Arrest program is a restrictive program using active electronic monitoring surveillance and the supervision of a Home Arrest officer. Except for authorized movements out of the residence, such as employment or mandated treatment programming, the inmate is confined to his residence.

*Work Furlough* is a release from prison, which allows the inmate to maintain gainful employment and pay restitution to the victim of the inmate's offense.

*Rescission* is a withdrawal of an action previously granted by the Board before the inmate actually enters the change in status. This is typically completed due to disciplinary problems with the inmate prior to the actual change in status.

*Absolute Discharge* is where the Board may discharge a person from imprisonment or parole supervision prior to the sentence expiration date or prior to the expiration of parole.

The second type of parole hearing is *Parole to a Consecutive Sentence or Another Jurisdiction*. It means to parole an inmate to a consecutive sentence to be served in an institution or to parole the inmate to another jurisdiction.

While Clemency is a completely different process from Parole, **Clemency Hearings** are held in the same manner. There are three separate avenues that can be taken when an inmate petitions for clemency. Each may be granted by the governor upon recommendation by the Board:

*Commutation of Sentence* is a change or modification of a sentence imposed by the court. This is the most requested action by inmates.

*Pardon* is an "act of grace", which absolves the convicted person of the legal consequences of the crime and conviction.

*Reprieve* is a delay or temporary suspension of carrying out punishment.

## **Hearing Process**

The process of Parole is driven by statute. Once Parole becomes available to the inmate according to statute, the hearing process begins. However, Clemency differs in that the process can be initiated by the inmate, an inmate's legal representative or in a death penalty sentence, the BOEC will automatically direct the inmate to the clemency process. Inmates and inmates' representatives must submit an application with the BOEC once they are eligible for clemency. According to the BOEC guidelines, inmates can apply for commutation of their sentence after serving two years of their sentence but not within one year of their scheduled release. Therefore, although statute indicates that they must serve 85 percent of their sentence, an inmate can seek commutation after just two years. There are two phases of this process.

The *Phase I* hearing is an in-absentia hearing at the Board office. The Board will vote to either deny further action or pass the application to a Phase II hearing.

A *Phase II* hearing is a personal hearing conducted at a state institution with the inmate in attendance. The Board will vote to either deny further action or recommend a reduction to the Governor. If the Board does recommend a reduction in sentence, the Governor will make the final decision.

## **Victims' Rights associated with the BOEC**

The prosecutor's office that handled the criminal case is responsible for educating victims on post-conviction rights and providing them with a post-conviction notification request (PCNR) form. It is the victim's responsibility to submit all copies of the PCNR form to the appropriate criminal justice agency to ensure notification of all post-conviction matters. If victims fail to receive the PCNR form from the prosecutor, they should contact the county prosecutor's office in which the crime occurred and request a PCNR form. However, any victim may request post-conviction notification directly from the BOEC by contacting them at (602)542-5656.

Once the BOEC receives a copy of the PCNR form or is directly contacted by a victim seeking notification, they will follow through with notification according to statute:

### 13-4414 Notice of post-conviction release; right to be heard; hearing; final decision

- A. The victim has the right to be present and be heard at any proceeding in which post-conviction release from confinement is being considered pursuant to section 31-233, section 31-326 or section 31-411.
- B. If the victim has made a request for post-conviction notice, the board of pardons and paroles shall, at least fifteen days before the hearing, give to the victim written notice of the hearing and of the victim's right to be present and be heard at the hearing.
- C. If the victim has made a request for post-conviction notice, the board of pardons and paroles shall give to the victim notice of the decision reached by the board. The notice shall be mailed within fifteen days after the board reaches its decision.

### 13-4436 Effect of failure to comply

- A. The failure to use reasonable efforts to perform a duty or provide a right is not cause to seek to set aside a conviction or sentence.
- B. Unless the prisoner is discharged from his sentence, the failure to use reasonable efforts to provide notice and a right to be present or be heard pursuant to this chapter at a proceeding that involves a post-conviction release is a ground for the victim to seek to set aside the post-conviction release until the victim is afforded the opportunity to be present or be heard.
- C. If the victim seeks to have a post-conviction release set aside pursuant to subsection B, the court, board of executive clemency or state department of corrections shall afford the victim a reexamination proceeding after the parties are given notice.
- D. A reexamination proceeding conducted pursuant to this section or any other proceeding that is based on the failure to perform a duty or provide a right shall commence not more than thirty days after the appropriate parties have been given notice that the victim is exercising his right to a reexamination proceeding pursuant to this section or to another proceeding based on the failure to perform a duty or provide a right.

Recognition must be given to Mr. Duane Belcher, Chairman of the Arizona Board of Executive Clemency and his staff for contributing to the development of this brief. Should you have any additional questions or concerns regarding the BOEC, please contact Chairman Belcher at (602)542-5656.

The Victims' Rights Brief is published every other month by the Arizona Attorney General's Office of Victim Services who remains wholly responsible for its content. The goal in generating the Brief is to promote justice and healing for crime victims by sharing information and fostering sensitivity within the justice system. Questions regarding content can be directed to Sarah Lynne Vasquez at (602) 542-4911. To learn more about victims' rights via the internet, visit us at [www.agaz](http://www.agaz).