

TITLE 5. CORRECTIONS

CHAPTER 4. BOARD OF EXECUTIVE CLEMENCY

(Authority: A.R.S. § 31-401 et seq.)

Article 1 through Article 7 consisting of Sections R5-4-101 through R5-4-705 adopted effective June 26, 1980.

Former Article 1 consisting of Sections R5-4-01, R5-4-03 through R5-4-09 repealed effective June 26, 1980.

ARTICLE 1. GENERAL PROVISIONS

Section	
R5-4-101.	Definitions
R5-4-102.	Board Hearings
R5-4-103.	Repealed
R5-4-104.	Repealed
R5-4-105.	Repealed
R5-4-106.	Repealed
R5-4-107.	Repealed
R5-4-108.	Repealed
R5-4-109.	Repealed

ARTICLE 2. PARDON

Article 2, consisting of Section R5-4-201, adopted effective September 22, 1997 (Supp. 97-3).

Article 2, consisting of Sections R5-4-201 and R5-4-202, repealed effective May 31, 1991 (Supp. 91-2).

Section	
R5-4-201.	Pardon

ARTICLE 3. RECISSION OR REVOCATION

Article 3, consisting of Sections R5-4-301 and R5-4-302, adopted effective September 22, 1997 (Supp. 97-3).

Article 3, consisting of Sections R5-4-301 thru R5-4-306, repealed effective May 31, 1991 (Supp. 91-2).

Section	
R5-4-301.	Rescission Hearings
R5-4-302.	Revocation Hearings

ARTICLE 4. REPEALED

Article 4, consisting of Sections R5-4-401 thru R5-4-404, repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 5. REPEALED

Article 5, Section R5-4-501 repealed effective May 31, 1991 (Supp. 91-2); Sections R5-4-502 and R5-4-503 repealed effective September 22, 1997 (Supp. 97-3).

R5-4-501.	Repealed
R5-4-502.	Repealed
R5-4-503.	Repealed

ARTICLE 6. REPEALED

Article 6, consisting of Sections R5-4-601 thru R5-4-603, repealed effective September 22, 1997 (Supp. 97-3).

R5-4-601.	Repealed
R5-4-602.	Repealed
R5-4-603.	Repealed

ARTICLE 7. REPEALED

Article 7, Sections R5-4-701 thru R5-4-704 repealed effective May 31, 1991 (Supp. 91-2); Section R5-4-705 repealed effective September 22, 1997 (Supp. 97-3).

R5-4-701.	Repealed
R5-4-702.	Repealed

R5-4-703.	Repealed
R5-4-704.	Repealed
R5-4-705.	Repealed

ARTICLE 8. REPEALED

Article 8, Sections R5-4-801 thru R5-4-806 repealed effective May 31, 1991 (Supp. 91-2); Section R5-4-807 repealed effective September 22, 1997 (Supp. 97-3).

Article 8 consisting of Sections R5-4-801 through R5-4-807 adopted effective October 17, 1984.

Former Article 8 consisting of Sections R5-4-801 through R5-4-808 adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5).

R5-4-801.	Repealed
R5-4-802.	Repealed
R5-4-803.	Repealed
R5-4-804.	Repealed
R5-4-805.	Repealed
R5-4-806.	Repealed
R5-4-807.	Repealed

ARTICLE 1. GENERAL PROVISIONS**R5-4-101. Definitions**

In this Chapter, unless otherwise specified:

1. "Applicant" means an individual who asks the governor to grant a pardon.
2. "Board" means the Arizona Board of Executive Clemency, as established by A.R.S. § 31-401(A).
3. "Department" means the Arizona Department of Corrections.
4. "Good cause" means a reason that the Board determines is substantial enough to afford a legal excuse.
5. "Inmate" means an individual who is under the jurisdiction of the Department, including an individual in custody or on parole, home arrest, work furlough, or community supervision.
6. "Pardon" means an action by the governor that absolves an individual of the legal consequences of a crime for which the individual was convicted.
7. "Presiding Officer" means either the Chairperson of the Board or the Chairperson of a Board panel assigned to conduct a hearing.
8. "Release" means parole, home arrest, work furlough, or community supervision.
9. "Rescission" means an act of the Board that voids a previously made release decision before the inmate is released.
10. "Request to rescind" means a document asking the Board for a rescission.
11. "Revocation" means an act by the Board that terminates an inmate's release because of a violation of a release condition.
12. "Street time" means the interval between when an inmate is released on parole and the parole is revoked or completed.
13. "Warrant" means a document that specifies an alleged violation of a condition of a release.
14. "Work day" means every day except Saturdays, Sundays, and state holidays listed at A.R.S. § 1-301.

Historical Note

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2). New Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

R5-4-102. Board Hearings

- A. The Board shall ensure that all hearings are open to the public as required by A.R.S. § 38-431 et seq.
- B. Unless otherwise provided by law, the Board shall conduct a hearing in an informal manner without adherence to the rules of evidence required in a judicial proceeding.
- C. The Board shall allow an inmate to be represented by counsel at a hearing.

Historical Note

Adopted effective June 26, 1980 (Supp. 80-3). Section repealed, new Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

R5-4-103. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-104. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-105. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-106. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-107. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-108. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-109. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 2. PARDON**R5-4-201. Pardon**

- A. Unless prohibited by law, an individual who was convicted of an Arizona felony offense may apply for a pardon.
- B. To apply for a pardon, an eligible individual shall submit to the Board a completed application form obtained from the Board.
- C. In addition to the application form required under subsection (B), an applicant shall submit other information and documents that the Board requests to assist it in deciding whether to recommend a pardon.

- D. If an inmate applies for a pardon, the Board shall request that the Department review the application and verify whether the inmate is eligible to apply for the pardon.
- E. After receiving a complete application from an eligible applicant, the Board shall schedule a hearing and provide advance written notice to the applicant of the date and location of the hearing.
- F. At the hearing, the Board shall take one of the following actions:
 1. Vote to deny recommending that the governor grant a pardon and notify the applicant in writing of the Board's decision within 10 work days.
 2. Vote to recommend that the governor grant a pardon and notify the applicant in writing of the Board's decision within 10 work days.
- G. If the Board votes to recommend a pardon, the Presiding Officer shall designate a Board member to prepare and send to the governor a letter of recommendation. The letter of recommendation may include a statement of individual Board members' reasons for voting to recommend a pardon. Board members who voted not to recommend a pardon may prepare and send letters of dissent to the governor.
- H. If the governor denies a pardon, the Board shall notify the applicant in writing of the governor's decision within 10 work days after receiving notice of the governor's decision.
- I. If the Board votes not to recommend a pardon for an applicant or if the governor denies a pardon, the applicant shall not apply again for a pardon for three years from the date of the Board's decision.

Historical Note

Former Section R5-4-201 repealed effective May 31, 1991 (Supp. 91-2). New Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

ARTICLE 3. RECISSION OR REVOCATION**R5-4-301. Rescission Hearings**

- A. An officer of the Department or a member of the Board may initiate the rescission process by submitting to the Board a request to rescind a previously made release decision that:
 1. Alleges:
 - a. The inmate to be released has violated the law,
 - b. The inmate to be released has violated a disciplinary rule of the Department,
 - c. The inmate to be released is not able to meet a condition of release, or
 - d. The Board lacked accurate or complete information when the Board made the release decision, and
 2. Includes a list of documents and items to be offered as evidence and witnesses who will be called to testify.
- B. After the Board receives a completed request to rescind, the Board shall schedule a rescission hearing unless a hearing officer designated by the Board to conduct a probable cause hearing determines there is no probable cause for the requested rescission, in which case, the request to rescind is deemed denied. The Board shall provide advance notice of the date and location of the rescission hearing to the inmate and the Department.
- C. The Board shall conduct the rescission hearing. The inmate may request that the hearing be continued for good cause. The Board may continue the hearing for good cause at any time.
- D. At the close of the rescission hearing, the Board shall take one of the following actions:

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1. Find that the allegation in the request to rescind is not true, deny the request to rescind, and allow to stand the Board's previous decision to grant release to the inmate.
2. Find that one or more of the allegations in the request to rescind are true and void the Board's previous decision to grant release to the inmate. The Department shall continue to hold the inmate in secure custody as provided by law.
3. Find that one or more of the allegations in the request to rescind are true but allow to stand the Board's previous decision to grant release to the inmate with or without additional conditions.

Historical Note

Former Section R5-4-301 repealed effective May 31, 1991 (Supp. 91-2). New Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

R5-4-302. Revocation Hearings

- A. An officer of the Department or a member of the Board may initiate the revocation process by requesting that the Department issue to the Board a warrant that:
 1. Alleges an inmate violated a condition of the inmate's release; and
 2. Lists documents and items to be offered as evidence and witnesses who will be called to testify.
- B. After the Department executes the warrant and it is determined there is probable cause to believe the inmate violated a condition of the inmate's release or the inmate waives a probable cause hearing, the Board shall schedule a revocation hearing. The Board shall provide advance notice of the date and location of the revocation hearing to the inmate and the Department.
- C. The Board shall conduct the revocation hearing. The inmate may request that the hearing be continued for good cause. The Board may continue the hearing for good cause at any time.
- D. At the close of the revocation hearing, the Board shall take one of the following actions:
 1. Find that each allegation in the warrant is not true and direct, in writing, that the Department release the inmate from secure custody to parole, home arrest, work furlough, or community supervision status.
 2. Find that one or more of the allegations in the warrant are true and revoke the inmate's release. The Department shall immediately place the inmate in secure custody and hold the inmate as provided by law.
 3. In the case of an inmate on parole, find that one or more of the allegations in the warrant are true and revoke the inmate's parole but place the inmate on home arrest. The Department shall hold the inmate in secure custody pending the inmate's release on home arrest.
 4. In the case of an inmate on parole, work furlough, home arrest, or community supervision, find that one or more of the allegations in the warrant are true but reinstate the inmate's release with or without additional conditions.
- E. If the Board revokes an inmate's parole status under subsection (D)(2) or (D)(3), the Board may determine whether the circumstances merit forfeiture of some or all street-time credits earned by the inmate while on parole.

Historical Note

Former Section R5-4-302 repealed effective May 31, 1991 (Supp. 91-2). New Section adopted effective September 22, 1997 (Supp. 97-3). Amended by final

rulemaking at 14 A.A.R. 529, effective April 5, 2008 (Supp. 08-1).

R5-4-303. Repealed**Historical Note**

Former Section R5-4-303 repealed effective May 31, 1991 (Supp. 91-2).

R5-4-304. Repealed**Historical Note**

Former Section R5-4-304 repealed effective May 31, 1991 (Supp. 91-2).

R5-4-305. Repealed**Historical Note**

Former Section R5-4-305 repealed effective May 31, 1991 (Supp. 91-2).

R5-4-306. Repealed**Historical Note**

Former Section R5-4-306 repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 4. REPEALED

Article 4, consisting of Sections R5-4-401 thru R5-4-404, repealed effective May 31, 1991 (Supp. 91-2).

ARTICLE 5. REPEALED**R5-4-501. Repealed****Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-502. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

R5-4-503. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 6. REPEALED**R5-4-601. Repealed****Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

R5-4-602. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

R5-4-603. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 7. REPEALED**R5-4-701. Repealed****Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-702. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-703. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-704. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-705. Repealed**Historical Note**

Adopted effective June 26, 1980 (Supp. 80-3). Repealed effective September 22, 1997 (Supp. 97-3).

ARTICLE 8. REPEALED**R5-4-801. Repealed****Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-802. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-803. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-804. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-805. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-806. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective May 31, 1991 (Supp. 91-2).

R5-4-807. Repealed**Historical Note**

Adopted as an emergency effective June 29, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-3). Emergency expired. Permanent rule adopted effective October 17, 1984 (Supp. 84-5). Repealed effective September 22, 1997 (Supp. 97-3).