

1 31-403. Commutation; restrictions on consideration

2 A. A person who is otherwise eligible for commutation **OR IS SEEKING A**
3 **PARDON** and who is denied a commutation of sentence **OR PARDON**
4 recommendation shall not petition or be considered by the board for
5 commutation **OR PARDON** of that sentence for a period of five years following
6 the date of the board's denial of the commutation recommendation if the
7 offense for which the commutation recommendation was denied involved any of
8 the following:

- 9 1. Death in violation of section 13-1104 or 13-1105.
- 10 2. Serious physical injury if the person was sentenced pursuant to section 13-
11 704.
- 12 3. A dangerous crime against children as defined in section 13-705.
- 13 4. A felony offense in violation of title 13, chapter 14 or 35.1.

14 B. Notwithstanding subsection A, paragraph 2 of this section, if, in its sole
15 discretion, the board determines that the person committed an offense that
16 involved serious physical injury as defined in section 13-105 and that the
17 person was not sentenced pursuant to section 13-704, the board may order that
18 the person shall not petition or be considered by the board for commutation **OR**
19 **PARDON** of that sentence for a period of five years following the date of the
20 board's denial of the commutation recommendation.

21 C. Notwithstanding subsection A or B of this section, the board, at the time of
22 denial, may lengthen the five year period of time prescribed in subsection A or B
23 of this section to a period of up to ten years, except that if the offense for which
24 commutation **OR PARDON** was denied involved a violation of an offense listed in
25 subsection A, paragraph 1 of this section, the board may lengthen the period of
26 time to a period of time that is greater than ten years and that is specified by
27 the board by one of the following votes:

- 28 1. A majority affirmative vote if four or more members consider the action.
- 29 2. A unanimous affirmative vote if three members consider the action.
- 30 3. A unanimous affirmative vote if two members consider the action pursuant to
31 section 31-401, subsection I and the chairman concurs after reviewing the
32 information considered by the two members. If the chairman is one of the two
33 members constituting a two member quorum under section 31-401, subsection
34 I, and both the chairman and the other member vote to lengthen the five year
35 period to a period of time greater than ten years, no further action shall be
36 taken and the decision on whether to lengthen the five year period shall be
37 considered by the board at a meeting at which at least three members are
38 present and voting.

39 D. The board may waive the provisions of subsections A, B and C of this section
40 if any of the following applies:

- 41 1. The person is in imminent danger of death due to a medical condition, as
42 determined by the board.
- 43 2. The person is the subject of a warrant of execution.
- 44 3. The sentence for which commutation **OR PARDON** is sought is the subject of
45 a special order issued by the court pursuant to section 13-603, subsection L.

1 E. This section applies only to **COMMUTATION REQUESTS FOR** offenses that are
2 committed on or after January 1, 2006 **AND TO PARDON REQUESTS FOR**
3 **OFFENSES THAT ARE COMMITTED ON OR AFTER JANUARY 1, 2016.**

4 31-411. Parole or discharge; conditions of parole; release under supervision of
5 state department of corrections; notice of hearing; exceptions; drug testing
6 costs

7 A. Any prisoner who has been certified as eligible for parole or absolute
8 discharge from imprisonment pursuant to section 31-412, subsection B or
9 section 41-1604.09 shall be given an opportunity to apply for release on parole
10 or for an absolute discharge from imprisonment. **ANY PRISONER WHO HAS**
11 **BEEN CERTIFIED AS ELIGIBLE FOR PAROLE PURSUANT TO SECTION 31-412,**
12 **SUBSECTION C OR SECTION 41-1604.09.I.2. SHALL BE GIVEN AN**
13 **OPPORTUNITY TO APPLY FOR RELEASE ON PAROLE.** The board of executive
14 clemency shall not entertain any other form of application or petition for the
15 release on parole or absolute discharge from imprisonment of any prisoner.

16 B. A prisoner who is eligible for parole or absolute discharge from imprisonment
17 shall be given an opportunity to be heard either before a hearing officer
18 designated by the board or the board itself, at the discretion of the board.

19 C. If the hearing is heard by a hearing officer, the hearing officer shall make a
20 recommendation on application for parole or absolute discharge from
21 imprisonment to the board within thirty days after the hearing date. Within
22 thirty days after the date of the hearing officer's recommendations, the board
23 shall review these recommendations and either approve, with or without
24 conditions, or reject the prisoner's application for parole or absolute discharge
25 from imprisonment. A prisoner who is eligible for parole or absolute discharge
26 from imprisonment shall not be denied parole or absolute discharge from
27 imprisonment without an opportunity to be heard before the board unless
28 another form of release has been granted.

29 D. If parole is granted, the prisoner shall remain on parole unless the board
30 revokes the parole or grants an absolute discharge from parole or until the
31 prisoner reaches the individual earned release credit date pursuant to section
32 41-1604.10. If the prisoner violates a condition of parole but has not committed
33 an additional offense, the board may place the prisoner on electronic monitoring
34 and order the defendant to participate in a community accountability pilot
35 program pursuant to section 41-1609.05. If the prisoner is still on parole on
36 reaching the individual earned release credit date pursuant to section 41-
37 1604.10, the prisoner shall be terminated from parole but shall be subject to
38 revocation under section 41-1604.10. When the prisoner reaches the individual
39 earned release credit date the prisoner's parole shall be terminated and the
40 prisoner shall no longer be under the authority of the board.

41 E. During the period of time that the prisoner remains on supervised parole
42 under subsection D of this section, the board shall require as a condition of
43 parole that the prisoner pay a monthly supervision fee of not less than sixty-five
44 dollars unless, after determining the inability of the prisoner to pay the fee, the
45 board requires payment of a lesser amount. The supervising parole officer shall
46 monitor the collection of the fee. The board may also impose any conditions of

1 parole it deems appropriate in order to ensure that the best interests of the
2 prisoner and the citizens of this state are served. These conditions may include:
3 1. Participation in a rehabilitation program or counseling.
4 2. Performance of community restitution work.

5 F. Seventy per cent of the monies collected pursuant to subsection E of this
6 section shall be deposited, pursuant to sections 35-146 and 35-147, in the
7 victim compensation and assistance fund established by section 41-2407 and
8 thirty per cent shall be deposited in the community corrections enhancement
9 fund established by section 31-418.

10 G. When parole or absolute discharge from imprisonment is denied, the board,
11 within ten days, shall prepare and deliver to the director of the state
12 department of corrections a written statement specifying the individualized
13 reasons for the denial of parole or absolute discharge from imprisonment unless
14 another form of release has been granted. The prisoner may view the written
15 statement prepared by the board. Every prisoner, having served not less than
16 one year, may be temporarily released according to the rules of the department
17 one hundred eighty days before the expiration of the sentence or the earned
18 release credit date, whichever first occurs, if the director finds that the release
19 is in the best interest of the state. The releasee shall remain under the control
20 of the state department of corrections until expiration of the term specified in
21 the sentence. If the releasee violates any condition of release, the releasee may
22 be returned to custody without further process.

23 H. When a commutation, absolute discharge from imprisonment or parole is to
24 be considered, the board, on request and before holding a hearing on the
25 commutation, absolute discharge from imprisonment or parole, shall notify the
26 attorney general, the presiding judge of the superior court, the county attorney
27 in the county in which the prisoner requesting a commutation, absolute
28 discharge from imprisonment or parole was sentenced, and the victim of the
29 offense for which the prisoner is incarcerated. The notice to the victim shall be
30 mailed to the last known address. The notice shall state the name of the
31 prisoner requesting the commutation, absolute discharge from imprisonment or
32 parole and shall set the month of hearing on the application. The notice to the
33 victim shall also inform the victim of the victim's right to be present and to
34 submit a written report to the board expressing the victim's opinion concerning
35 the release of the prisoner. No hearing concerning commutations, absolute
36 discharge from imprisonment or parole shall be held until fifteen days after the
37 date of giving the notice. On mailing the notice, the board shall file a hard copy
38 of the notice as evidence that notification was sent.

39 I. The provisions of this section requiring notice to the officials named in
40 subsection H of this section shall not apply:

41 1. When there is imminent danger of the death of the person convicted or
42 imprisoned.
43 2. When the term of imprisonment of the applicant is within two hundred ten
44 days of expiration.

45 J. In addition to any other fees, the board may require as a condition of parole
46 that the prisoner pay the reasonable costs associated with the prisoner's

1 participation in a drug testing program. The prisoner's costs shall not exceed
2 the department's cost for the program. The monies collected pursuant to this
3 subsection by the department may only be used to offset the costs of the drug
4 testing program.

5 31-412. Criteria for release on parole; release; custody of parolee; definition

6 A. If a prisoner is certified as eligible for parole pursuant to section 41-1604.09
7 the board of executive clemency shall authorize the release of the applicant on
8 parole if the applicant has reached the applicant's earliest parole eligibility date
9 pursuant to section 41-1604.09, subsection D and it appears to the board, in its
10 sole discretion, that there is a substantial probability that the applicant will
11 remain at liberty without violating the law and that the release is in the best
12 interests of the state. The applicant shall thereupon be allowed to go on parole
13 in the legal custody and under the control of the state department of
14 corrections, until the board revokes the parole or grants an absolute discharge
15 from parole or until the prisoner reaches the prisoner's individual earned release
16 credit date pursuant to section 41-1604.10. When the prisoner reaches the
17 prisoner's individual earned release credit date the prisoner's parole shall be
18 terminated and the prisoner shall no longer be under the authority of the board
19 but shall be subject to revocation under section 41-1604.10.

20 B. Notwithstanding subsection A of this section, the director of the state
21 department of corrections may certify as eligible for parole any prisoner,
22 regardless of the classification of the prisoner, who has reached the prisoner's
23 parole eligibility date pursuant to section 41-1604.09, subsection D, unless an
24 increased term has been imposed pursuant to section 41-1604.09, subsection F,
25 for the sole purpose of parole to the custody of any other jurisdiction to serve a
26 term of imprisonment imposed by the other jurisdiction or to stand trial on
27 criminal charges in the other jurisdiction or for the sole purpose of parole to the
28 custody of the state department of corrections to serve any consecutive term
29 imposed on the prisoner. On review of an application for parole pursuant to this
30 subsection the board may authorize parole if, in its discretion, parole appears to
31 be in the best interests of the state.

32 **C. NOTWITHSTANDING SUBSECTIONS A AND B, A PRISONER WHO IS
33 CERTIFIED ELIGIBLE FOR PAROLE BY THE DIRECTOR OF THE STATE
34 DEPARTMENT OF CORRECTIONS UNDER SECTION 41-1604.09.I.2. MAY APPLY
35 FOR PAROLE PURSUANT TO SECTION 31-411. THE BOARD OF EXECUTIVE
36 CLMENCY MAY, IN ITS SOLE DISCRETION, AUTHORIZE RELEASE ON PAROLE IF
37 PAROLE APPEARS TO BE IN THE BEST INTERESTS OF THE STATE, SOCIETY
38 WILL BE ADEQUATELY PROTECTED AND THE PRISONER, IN ALL LIKELIHOOD,
39 WILL REMAIN AT LIBERTY WITHOUT COMMITTING ANY FURTHER VIOLATION
40 OF THE LAW. THE BOARD MAY REQUIRE HOME ARREST AND/OR ELECTRONIC
41 MONITORING DURING ANY PERIOD OF THE RELEASE.**

42 **€D.** A prisoner who is otherwise eligible for parole, who is not on home arrest or
43 work furlough and who is currently serving a sentence for a conviction of a
44 serious offense or conspiracy to commit or attempt to commit a serious offense
45 shall not be granted parole or absolute discharge from imprisonment except by
46 one of the following votes:

1 1. A majority affirmative vote if four or more members consider the action.
2 2. A unanimous affirmative vote if three members consider the action.
3 3. A unanimous affirmative vote if two members consider the action pursuant to
4 section 31-401, subsection I and the chairman concurs after reviewing the
5 information considered by the two members.
6 ~~D~~E. The board, as a condition of parole, shall order a prisoner to make any
7 court-ordered restitution.
8 ~~E~~F. Payment of restitution by the prisoner in accordance with subsection D of
9 this section shall be made through the clerk of the superior court in the county
10 in which the prisoner was sentenced for the offense for which the prisoner has
11 been imprisoned in the same manner as restitution is paid as a condition of
12 probation. The clerk of the superior court shall report to the board monthly
13 whether or not restitution has been paid for that month by the prisoner.
14 ~~F~~G. The board shall not disclose the address of the victim or the victim's
15 immediate family to any party without the written consent of the victim or the
16 victim's family.
17 ~~G~~H. For the purposes of this section, "serious offense" includes any of the
18 following:
19 1. A serious offense as defined in section 13-706, subsection F, paragraph 1,
20 subdivision (a), (b), (c), (d), (e), (g), (h), (i), (j) or (k).
21 2. A dangerous crime against children as defined in section 13-705. The citation
22 of section 13-705 is not a necessary element for a serious offense designation.
23 3. A conviction under a prior criminal code for any offense that possesses
24 reasonably equivalent offense elements as the offense elements that are listed
25 under section 13-705, subsection P, paragraph 1 or section 13-706, subsection
26 F, paragraph 1.
27 [41-1604.09. Parole eligibility certification; classifications; appeal;](#)
28 [recertification; applicability; definition](#)
29 A. The director shall develop and maintain a parole eligibility classification
30 system. Within the system, the director shall establish two classes of parole
31 eligibility, class one and class two, to be given effect as provided for in this
32 section, one class of parole noneligibility for dangerous psychiatric offenders
33 and as many other classes of noneligibility as he deems necessary or desirable.
34 Each person committed to the state department of corrections shall be classified
35 pursuant to the parole eligibility system established by the director.
36 B. The director shall establish rules pursuant to chapter 6 of this title for the
37 classification and certification of prisoners for purposes of parole.
38 Reclassification and certification shall be based on factors related to a prisoner's
39 record while in the custody of the department, including work performance,
40 compliance with all rules of the department, progress in any appropriate
41 training or treatment programs and the performance of any assignments of
42 confidence or trust. The director shall also establish rules governing the
43 procedures and performance standards by which prisoners, reclassified to
44 noneligibility classifications, may earn eligibility classification. Prisoners may be
45 reclassified only pursuant to the rules of the department. The director shall
46 distribute a copy of all the rules to each person committed to the department.

1 C. The director shall maintain two classes for parole eligibility, class one and
2 class two. Inclusion of an inmate in class one shall be determined by adherence
3 to the rules of the department and continual willingness to volunteer for or
4 successful participation in a work, educational, treatment or training program
5 established by the department, except that a person sentenced pursuant to a
6 statute which requires that a person serve a mandatory minimum term shall not
7 be placed in class one until one-quarter of the mandatory minimum portion of
8 the term is served and shall not be released until the mandatory minimum
9 portion of the term is served. Inclusion of an inmate in class two shall be
10 determined by adherence to the rules of the department.

11 D. The director shall certify as eligible for parole any prisoner classified within
12 an eligible classification five months immediately prior to the prisoner's earliest
13 parole eligibility. The inmate shall be required to remain in a parole eligible
14 classification from the date of certification until the date of release on parole. If
15 the inmate does not remain in a parole eligible classification until the date of
16 release on parole, the entire parole process shall be rescinded. For the purposes
17 of this subsection, the prisoner's earliest parole eligibility occurs when the
18 prisoner has served one-half of his sentence unless the prisoner is sentenced
19 according to any provisions of law which prohibit the release on any basis until
20 serving not less than two-thirds of the sentence imposed by the court, the
21 sentence imposed by the court or any other mandatory minimum term, in which
22 case the prisoner must have served the sentence required by law.

23 E. Every prisoner shall be entitled to a hearing prior to reclassification of the
24 prisoner to a lower class. The hearing shall be before a person or persons
25 designated by the director to hold the hearings. Reasonable notice and a written
26 statement of the alleged violation of the rules shall be distributed to the
27 prisoner at least five days prior to the hearing. A prisoner may request a review
28 of a decision to reclassify the prisoner by delivering a written request to the
29 director.

30 F. Notwithstanding subsection D, placement of a prisoner in a noneligible parole
31 class except placement in the noneligible parole class for dangerous psychiatric
32 offenders shall result in an increase in the period of time the prisoner must
33 serve before reaching his earliest parole eligibility date. The increase shall equal
34 the number of days occurring after placement in a noneligible parole class and
35 before the prisoner is reclassified to a parole eligible class.

36 G. The classification of each prisoner shall be reviewed by the director not less
37 than once every six months. Any prisoner who was certified as eligible for
38 parole and denied parole and remains eligible for parole pursuant to subsection
39 D shall be recertified by the director not less than one nor more than four
40 months after the hearing at which the prisoner was denied parole, except that
41 the board of executive clemency in denying parole may prescribe that the
42 prisoner shall not be recertified for a period of up to one year after the hearing.

43 H. Immediately after the adoption of the rules required pursuant to this section,
44 the director shall forward a certified copy of the rules to the legislature. The
45 legislature may review and, by concurrent resolution, approve, disapprove or
46 modify the rules, except that they shall be given full force and effect pending

1 legislative review. If no concurrent resolution is passed by the legislature with
2 respect to the rules within one year following receipt of a certified copy of the
3 rules, they shall be deemed to have been approved by the legislature. If the
4 legislature disapproves the rules or a section of them, the director shall
5 immediately discontinue the use of any procedure, action or proceeding
6 authorized or required by the rules or section of the rules.

7 I. This section applies to either of the following:

8 1. A person who commits a felony offense before January 1, 1994.
9 2. A person who is sentenced to life imprisonment and who is eligible for parole
10 pursuant to section 13-716- **AND WHO HAS SERVED 25 YEARS. IF PAROLE IS**
11 **DENIED SUCH PERSON MAY NOT BE CERTIFIED AS ELIGIBLE FOR PAROLE**
12 **THEREAFTER SOONER THAN 60 MONTHS FOLLOWING A DENIAL .**

13 J. Pursuant to rules adopted by the director, on commitment to the department,
14 each prisoner shall be placed in parole class one beginning on the prisoner's
15 sentence begin date.

16 K. For the purposes of this section, "dangerous psychiatric offender" means an
17 inmate who has been placed in a psychiatric unit for psychiatric evaluation and
18 treatment and who has been determined to present a high risk of potential
19 violence.
20