

Inmate Being Held After Sentence was Commuted

If a person's sentence was officially commuted by the executive authority (President for a federal sentence, or Governor for a state sentence), but the prison is continuing to hold them beyond the terms of that commutation, that can raise serious legal issues. The correct course of action depends on why they remain incarcerated.

Before filing anything, determine:

- * Was the commutation unconditional or conditional?
- * Did it reduce the sentence to "time served," or merely shorten the sentence?
- * Has the commutation order actually taken effect?
- * Is the prison claiming another legal basis for detention (another sentence, parole hold, detainer, pending charges, immigration hold, etc.)?

If there is no lawful basis to continue confinement after the commutation became effective, several remedies may be appropriate. You can do this yourself, as soon as possible.

We recommend the first step: Give notice to the prison Warden, Template 1: Demand For Immediate Release

If the Warden does not set his release:

We recommend using template 2, Notice of Wrongful Imprisonment, this is to be filed in the court where the original charges came. It is intended to document that officials were informed of the executive order yet continued the detention despite that knowledge, and demands the inmates release.

This should do it. But you never know in today's courts. Just do not give up.

This would be the next step:

File a petition for a writ of habeas corpus (stating Commutation Not Honored) is often the primary judicial mechanism to challenge unlawful continued detention. Each state has their own forms. The petition should include:

- * A copy of the commutation order.
- * A timeline showing the effective date.
- * The current sentence calculation.
- * An explanation of why no lawful basis remains for confinement.

* Copies of any administrative requests and responses.

Writs of habeas corpus can be found on your states form website. Our website has the index for state forms. Click the link of your state, and search for that form. Download it, fill it out and send it in.

The court can then determine whether the detention is lawful (which being commuted, it is not) and, if it is not, order appropriate relief.

These are the things that can be done. Make sure all forms are in the inmates name.

1. Obtain a certified copy of the Executive Clemency/Commutation Order.

2. Request an Immediate Sentence Computation from Prison Records. This shows they had them.

3. Inmate should have filed an Administrative Remedy/Grievance at the prison.

4. Send a Demand for Immediate Release to the Warden. (Template 1)

5. Notify the Department of Corrections Legal Division that the inmate has commutataion and is being unlawfully detained.

6. Notify the Governor's Clemency Office that inmate has not been released.

7. File the Petition for Writ of Habeas Corpus.

8. If necessary, file a civil rights action for unlawful detention.

These forms may be of help if there is no action on your filing. Ai can generate them for you.

* **Notice of Constitutional Violations**

* **Affidavit of Continued Wrongful Confinement**