

1 **BOARD OF PARDONS AND PAROLE**

2 **TECHNICAL AMENDMENTS**

3 2010 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Eric K. Hutchings**

6 **Senate Sponsor: Jon J. Greiner**

8 **LONG TITLE**

9 **General Description:**

10 This bill makes technical amendments to provisions concerning the Utah Board of
11 Pardons and Parole.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ allows the board to conduct hearings with inmate, offender, or witness appearance
15 and participation by videoconference or other electronic means;

16 ▶ allows the appointment of fewer than the maximum authorized pro tempore
17 members of the board;

18 ▶ allows the board to recommend applicants to the governor for pro tempore
19 appointment and Senate consent;

20 ▶ removes references to certified shorthand reporters, and allows the board to provide
21 electronic copies of hearing recordings; and

22 ▶ makes technical corrections.

23 **Monies Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**

28 AMENDS:

29 **77-27-1**, as last amended by Laws of Utah 1996, Chapter 100

- 30 77-27-2, as last amended by Laws of Utah 2002, Chapter 176
- 31 77-27-5, as last amended by Laws of Utah 2005, Chapter 96
- 32 77-27-8, as last amended by Laws of Utah 1994, Chapter 13
- 33 77-27-9, as last amended by Laws of Utah 2009, Chapter 337
- 34 77-27-11, as last amended by Laws of Utah 1997, Chapter 75

35 ENACTS:

36 77-27-1.5, Utah Code Annotated 1953



38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section 77-27-1 is amended to read:

40 **77-27-1. Definitions.**

41 As used in this chapter:

42 (1) "Appearance" means any opportunity to address the board, a board member, a
43 panel, or hearing officer, including an interview.

44 [~~(1)~~] (2) "Board" means the Board of Pardons and Parole.

45 [~~(2)~~] (3) "Commission" means the Commission on Criminal and Juvenile Justice.

46 [~~(3)~~] (4) "Commutation" is the change from a greater to a lesser punishment after
47 conviction.

48 [~~(4)~~] (5) "Department" means the Department of Corrections.

49 [~~(5)~~] (6) "Expiration" occurs when the maximum sentence has run.

50 [~~(6)~~] (7) "Family" means persons related to the victim as a spouse, child, sibling,
51 parent, or grandparent, or the victim's legal guardian.

52 (8) "Hearing" means an appearance before the board, a panel, a board member or
53 hearing examiner, at which an offender or inmate is afforded an opportunity to be present and
54 address the board, and encompasses the term "full hearing."

55 (9) "Location," in reference to a hearing, means the physical location at which the
56 board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless of
57 the location of any person participating by electronic means.

58 (10) "Open session" means any hearing before the board, a panel, a board member, or
59 a hearing examiner which is open to the public, regardless of the location of any person
60 participating by electronic means.

61 [~~(7)~~] (11) "Panel" means members of the board assigned by the chairperson to a
62 particular case.

63 [~~(8)~~] (12) "Pardon" is an act of grace by an appropriate authority exempting a person
64 from punishment for a crime.

65 [~~(9)~~] (13) "Parole" is a release from imprisonment on prescribed conditions which, if
66 satisfactorily performed by the parolee, enables the parolee to obtain a termination of his
67 sentence.

68 [~~(10)~~] (14) "Probation" is an act of grace by the court suspending the imposition or
69 execution of a convicted offender's sentence upon prescribed conditions.

70 [~~(11)~~] (15) "Reprieve or respite" is the temporary suspension of the execution of the
71 sentence.

72 [~~(12)~~] (16) "Termination" is the act of an appropriate authority discharging from
73 parole or concluding the sentence of imprisonment prior to the expiration of the sentence.

74 [~~(13)~~] (17) "Victim" means:

75 (a) a person against whom the defendant committed a felony or class A misdemeanor
76 offense, and regarding which offense a hearing is held under this chapter; or

77 (b) the victim's family, if the victim is deceased as a result of the offense for which a
78 hearing is held under this chapter.

79 Section 2. Section **77-27-1.5** is enacted to read:

80 **77-27-1.5. Appearance by inmate, offender, or witness.**

81 (1) An appearance by an inmate, offender, or witness before the board, a panel, board
82 member, or hearing officer may be in person, through videoconferencing or other electronic
83 means. Any appearance by videoconference or other electronic means shall be recorded as
84 provided in Section 77-27-8.

85 (2) An inmate's or offender's electronic appearance by telephone is permissible with

86 the consent of the inmate or offender, when the inmate or offender is incarcerated in a facility
87 outside of this state.

88 Section 3. Section 77-27-2 is amended to read:

89 **77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.**

90 (1) There is created the Board of Pardons and Parole. The board shall consist of five
91 full-time members and not more than five pro tempore members to be appointed by the
92 governor with the consent of the Senate as provided in this section. The members of the board
93 shall be resident citizens of the state. The governor shall establish salaries for the members of
94 the board within the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer
95 Compensation.

96 (2) (a) (i) The full-time board members shall serve terms of five years. The terms of
97 the full-time members shall be staggered so one board member is appointed for a term of five
98 years on March 1 of each year.

99 (ii) The pro tempore members shall serve terms of five years[~~The five pro tempore~~
100 ~~members added by Subsection (1) shall be appointed to terms that both commence on May 1,~~
101 ~~1996, and respectively end on February 28, 1999, and February 29, 2000. These terms are~~
102 ~~reduced by two and one years respectively so that the appointment of one pro tempore member~~
103 ~~expires every year beginning in 1996. Terms previously set to expire will now expire the last~~
104 ~~day of February of their respective years], beginning on March 1 of the year of appointment,
105 with no more than one pro tempore member term beginning or expiring in the same calendar
106 year. If a pro tempore member vacancy occurs, the board may submit the names of not fewer
107 than three or more than five persons to the governor for appointment to fill the vacancy.~~

108 (b) All vacancies occurring on the board for any cause shall be filled by the governor
109 with the consent of the Senate pursuant to this section for the unexpired term of the vacating
110 member.

111 (c) The governor may at any time remove any member of the board for inefficiency,
112 neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.

113 (d) A member of the board may not hold any other office in the government of the

114 United States, this state or any other state, or of any county government or municipal
115 corporation within a state. A member may not engage in any occupation or business
116 inconsistent with ~~[his]~~ the member's duties.

117 (e) A majority of the board constitutes a quorum for the transaction of business,
118 including the holding of hearings at any time or any ~~[place]~~ location within or without the
119 state, or for the purpose of exercising any duty or authority of the board. Action taken by a
120 majority of the board regarding whether parole, pardon, commutation, termination of sentence,
121 or remission of fines or forfeitures may be granted or restitution ordered in individual cases is
122 deemed the action of the board. A majority vote of the five full-time members of the board is
123 required for adoption of rules or policies of general applicability as provided by statute.
124 However, a vacancy on the board does not impair the right of the remaining board members to
125 exercise any duty or authority of the board as long as a majority of the board remains.

126 (f) Any investigation, inquiry, or hearing that the board has authority to undertake or
127 hold may be conducted by any board member or an examiner appointed by the board. When
128 any of these actions are approved and confirmed by the board and filed in its office, they are
129 considered to be the action of the board and have the same effect as if originally made by the
130 board.

131 (g) When a full-time board member is absent or in other extraordinary circumstances
132 the chair may, as dictated by public interest and efficient administration of the board, assign a
133 pro tempore member to act in the place of a full-time member. Pro tempore members shall
134 receive a per diem rate of compensation as established by the Division of Finance and all
135 actual and necessary expenses incurred in attending to official business.

136 (h) The chair may request staff and administrative support as necessary from the
137 Department of Corrections.

138 (3) (a) Except as provided in Subsection (3)~~(c)~~(b), the Commission on Criminal and
139 Juvenile Justice shall:

140 (i) recommend five applicants to the governor for a full-time member appointment to
141 the Board of Pardons and Parole; and

142 (ii) consider applicants' knowledge of the criminal justice system, state and federal
143 criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.

144 (b) The procedures and requirements of Subsection (3)(a) do not apply if the governor
145 appoints a sitting board member to a new term of office.

146 (4) (a) The board shall appoint an individual to serve as its mental health adviser and
147 may appoint other staff necessary to aid it in fulfilling its responsibilities under Title 77,
148 Chapter 16a, Commitment and Treatment of Mentally Ill Persons. The adviser shall prepare
149 reports and recommendations to the board on all persons adjudicated as guilty and mentally ill,
150 in accordance with Title 77, Chapter 16a.

151 (b) The mental health adviser shall possess the qualifications necessary to carry out the
152 duties imposed by the board and may not be employed by the Department of Corrections or
153 the Utah State Hospital.

154 (i) The Board of Pardons and Parole may review outside employment by the mental
155 health advisor.

156 (ii) The Board of Pardons and Parole shall develop rules governing employment with
157 entities other than the board by the mental health advisor for the purpose of prohibiting a
158 conflict of interest.

159 (c) The mental health adviser shall:

160 (i) act as liaison for the board with the Department of Human Services and local
161 mental health authorities;

162 (ii) educate the members of the board regarding the needs and special circumstances
163 of mentally ill persons in the criminal justice system;

164 (iii) in cooperation with the Department of Corrections, monitor the status of persons
165 in the prison who have been found guilty and mentally ill;

166 (iv) monitor the progress of other persons under the board's jurisdiction who are
167 mentally ill;

168 (v) conduct hearings as necessary in the preparation of reports and recommendations;
169 and

170 (vi) perform other duties as assigned by the board.

171 Section 4. Section **77-27-5** is amended to read:

172 **77-27-5. Board of Pardons and Parole authority.**

173 (1) (a) The Board of Pardons and Parole shall determine by majority decision when
174 and under what conditions, subject to this chapter and other laws of the state, persons
175 committed to serve sentences in class A misdemeanor cases at penal or correctional facilities
176 which are under the jurisdiction of the Department of Corrections, and all felony cases except
177 treason or impeachment or as otherwise limited by law, may be released upon parole,
178 pardoned, ordered to pay restitution, or have their fines, forfeitures, or restitution remitted, or
179 their sentences commuted or terminated.

180 (b) The board may sit together or in panels to conduct hearings. The chair shall
181 appoint members to the panels in any combination and in accordance with rules promulgated
182 by the board, except in hearings involving commutation and pardons. The chair may
183 participate on any panel and when doing so is chair of the panel. The chair of the board may
184 designate the chair for any other panel.

185 (c) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole,
186 pardon, or commutation granted or sentence terminated, except after a full hearing before the
187 board or the board's appointed examiner in open session. Any action taken under this
188 subsection other than by a majority of the board shall be affirmed by a majority of the board.

189 (d) A commutation or pardon may be granted only after a full hearing before the
190 board.

191 (e) The board may determine restitution as provided in Section 77-27-6 and
192 Subsection 77-38a-302(5)(d)(ii).

193 (2) (a) In the case of original parole grant hearings, rehearings, and parole revocation
194 hearings, timely prior notice of the time and ~~[place]~~ location of the hearing shall be given to
195 the defendant, the county or district attorney's office responsible for prosecution of the case,
196 the sentencing court, law enforcement officials responsible for the defendant's arrest and
197 conviction, and whenever possible, the victim or the victim's family.

198 (b) Notice to the victim, his representative, or his family shall include information
199 provided in Section 77-27-9.5, and any related rules made by the board under that section.
200 This information shall be provided in terms that are reasonable for the lay person to
201 understand.

202 (3) Decisions of the board in cases involving paroles, pardons, commutations or
203 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not
204 subject to judicial review. Nothing in this section prevents the obtaining or enforcement of a
205 civil judgment, including restitution as provided in Section 77-27-6.

206 (4) This chapter may not be construed as a denial of or limitation of the governor's
207 power to grant respite or reprieves in all cases of convictions for offenses against the state,
208 except treason or conviction on impeachment. However, respites or reprieves may not extend
209 beyond the next session of the Board of Pardons and Parole and the board, at that session,
210 shall continue or terminate the respite or reprieve, or it may commute the punishment, or
211 pardon the offense as provided. In the case of conviction for treason, the governor may
212 suspend execution of the sentence until the case is reported to the Legislature at its next
213 session. The Legislature shall then either pardon or commute the sentence, or direct its
214 execution.

215 (5) In determining when, where, and under what conditions offenders serving
216 sentences may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures
217 remitted, or their sentences commuted or terminated, the board shall consider whether the
218 persons have made or are prepared to make restitution as ascertained in accordance with the
219 standards and procedures of Section 77-38a-302, as a condition of any parole, pardon,
220 remission of fines or forfeitures, or commutation or termination of sentence.

221 (6) In determining whether parole may be terminated, the board shall consider the
222 offense committed by the parolee, the parole period as provided in Section 76-3-202, and in
223 accordance with Section 77-27-13.

224 Section 5. Section **77-27-8** is amended to read:

225 **77-27-8. Record of hearing.**

226 (1) A verbatim record of proceedings before the Board of Pardons and Parole shall be
227 maintained by a [~~certified shorthand reporter or~~] suitable electronic recording device, except
228 when the board dispenses with a record in a particular hearing or a portion of the proceedings.

229 (2) When the hearing involves the commutation of a death sentence, a certified
230 shorthand reporter, in addition to [~~mechanical~~] electronic means, shall record all proceedings
231 except when the board dispenses with a record for the purpose of deliberations in executive
232 session. The compensation of the reporter shall be determined by the board. The reporter
233 shall immediately file with the board the original record and when requested shall with
234 reasonable diligence furnish a transcription or copy of the record upon payment of reasonable
235 fees as determined by the board.

236 (3) When [~~the party in interest~~] an inmate or offender affirms by affidavit that he is
237 unable to pay for a [~~transcript or~~] copy of the record [~~which is necessary for further~~
238 ~~proceedings available to him, and that affidavit is not refuted~~], the board may [~~order the~~
239 ~~reporter to~~] furnish [~~to the party in interest a transcript, or~~] a copy of the record[, ~~or so much of~~
240 ~~it as is reasonably applicable to any further proceedings, or a copy of the recording~~], at the
241 expense of the state, to the [~~party in interest~~] inmate or offender.

242 Section 6. Section **77-27-9** is amended to read:

243 **77-27-9. Parole proceedings.**

244 (1) (a) The Board of Pardons and Parole may pardon or parole any offender or
245 commute or terminate the sentence of any offender committed to a penal or correctional
246 facility under the jurisdiction of the Department of Corrections for a felony or class A
247 misdemeanor except as provided in Subsection (2).

248 (b) The board may not release any offender before the minimum term has been served
249 unless the board finds mitigating circumstances which justify the release and unless the board
250 has granted a full hearing, in open session, after previous notice of the time and [~~place~~]
251 location of the hearing, and recorded the proceedings and decisions of the board.

252 (c) The board may not pardon or parole any offender or commute or terminate the
253 sentence of any offender unless the board has granted a full hearing, in open session, after

254 previous notice of the time and [~~place~~] location of the hearing, and recorded the proceedings
255 and decisions of the board.

256 (d) The release of an offender shall be at the initiative of the board, which shall
257 consider each case as the offender becomes eligible. However, a prisoner may submit the
258 prisoner's own application, subject to the rules of the board promulgated in accordance with
259 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

260 (2) (a) A person sentenced to prison prior to April 29, 1996, for a first degree felony
261 involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a
262 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of
263 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section
264 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4);
265 aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in
266 Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole
267 until the offender has fully completed serving the minimum mandatory sentence imposed by
268 the court. This Subsection (2)(a) supersedes any other provision of law.

269 (b) The board may not parole any offender or commute or terminate the sentence of
270 any offender before the offender has served the minimum term for the offense, if the offender
271 was sentenced prior to April 29, 1996, and if:

272 (i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape,
273 aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as
274 defined in Title 76, Chapter 5, Offenses Against the Person; and

275 (ii) the victim of the offense was under 18 years of age at the time the offense was
276 committed.

277 (c) For a crime committed on or after April 29, 1996, the board may parole any
278 offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in this section.

279 (d) The board may not pardon or parole any offender or commute or terminate the
280 sentence of any offender who is sentenced to life in prison without parole except as provided
281 in Subsection (6).

282 (e) On or after April 27, 1992, the board may commute a sentence of death only to a
283 sentence of life in prison without parole.

284 (f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come
285 before the Board of Pardons and Parole on or after April 27, 1992.

286 (3) (a) The board may issue subpoenas to compel the attendance of witnesses and the
287 production of evidence, to administer oaths, and to take testimony for the purpose of any
288 investigation by the board or any of its members or by a designated hearing examiner in the
289 performance of its duties.

290 (b) A person who willfully disobeys a properly served subpoena issued by the board is
291 guilty of a class B misdemeanor.

292 (4) (a) The board may adopt rules consistent with law for its government, meetings
293 and hearings, the conduct of proceedings before it, the parole and pardon of offenders, the
294 commutation and termination of sentences, and the general conditions under which parole may
295 be granted and revoked.

296 (b) The rules shall ensure an adequate opportunity for victims to participate at
297 hearings held under this chapter, as provided in Section 77-27-9.5.

298 (c) The rules may allow the board to establish reasonable and equitable time limits on
299 the presentations by all participants in hearings held under this chapter.

300 (5) The board does not provide counseling or therapy for victims as a part of their
301 participation in any hearing under this chapter.

302 (6) The board may parole a person sentenced to life in prison without parole if the
303 board finds by clear and convincing evidence that the person is permanently incapable of
304 being a threat to the safety of society.

305 Section 7. Section **77-27-11** is amended to read:

306 **77-27-11. Revocation of parole.**

307 (1) The board may revoke the parole of any person who is found to have violated any
308 condition of his parole.

309 (2) (a) If a parolee is detained by the Department of Corrections or any law

310 enforcement official for a suspected violation of parole, the Department of Corrections shall
311 immediately report the alleged violation to the board, by means of an incident report, and
312 make any recommendation regarding the incident.

313 (b) No parolee may be held for a period longer than 72 hours, excluding weekends and
314 holidays, without first obtaining a warrant.

315 (3) Any member of the board may issue a warrant based upon a certified warrant
316 request to a peace officer or other persons authorized to arrest, detain, and return to actual
317 custody a parolee, and may upon arrest or otherwise direct the Department of Corrections to
318 determine if there is probable cause to believe that the parolee has violated the conditions of
319 his parole.

320 (4) Upon a finding of probable cause, a parolee may be further detained or imprisoned
321 again pending a hearing by the board or its appointed examiner.

322 (5) (a) The board or its appointed examiner shall conduct a hearing on the alleged
323 violation, and the parolee shall have written notice of the time and [~~place~~] location of the
324 hearing, the alleged violation of parole, and a statement of the evidence against him.

325 (b) The board or its appointed examiner shall provide the parolee the opportunity:

326 (i) to be present;

327 (ii) to be heard;

328 (iii) to present witnesses and documentary evidence;

329 (iv) to confront and cross-examine adverse witnesses, absent a showing of good cause
330 for not allowing the confrontation; and

331 (v) to be represented by counsel when the parolee is mentally incompetent or pleading
332 not guilty.

333 (c) If heard by an appointed examiner, the examiner shall make a written decision
334 which shall include a statement of the facts relied upon by the examiner in determining the
335 guilt or innocence of the parolee on the alleged violation and a conclusion as to whether the
336 alleged violation occurred. The appointed examiner shall then refer the case to the board for
337 disposition.

338 (d) Final decisions shall be reached by majority vote of the members of the board
339 sitting and the parolee shall be promptly notified in writing of the board's findings and
340 decision.

341 (6) Parolees found to have violated the conditions of parole may, at the discretion of
342 the board, be returned to parole, have restitution ordered, or be imprisoned again as
343 determined by the board, not to exceed the maximum term, or be subject to any other
344 conditions the board may impose within its discretion.