

**BOARD OF PARDONS AND PAROLE**

**TECHNICAL AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: Jon J. Greiner

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**LONG TITLE**

**Committee Note:**

The Judiciary, Law Enforcement, and Criminal Justice Interim Committee recommended this bill.

**General Description:**

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

**Highlighted Provisions:**

This bill:

- ▶ allows the board to conduct hearings with inmate, offender, or witness appearance and participation by videoconference or other electronic means;
- ▶ allows the appointment of fewer than the maximum authorized pro tempore members of the board;
- ▶ allows the board to recommend applicants to the governor for pro tempore appointment and Senate consent;
- ▶ removes references to certified shorthand reporters, and allows the board to provide electronic copies of hearing recordings; and
- ▶ makes technical corrections.

**Monies Appropriated in this Bill:**

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 77-27-1, as last amended by Laws of Utah 1996, Chapter 100

33 77-27-2, as last amended by Laws of Utah 2002, Chapter 176

34 77-27-5, as last amended by Laws of Utah 2005, Chapter 96

35 77-27-8, as last amended by Laws of Utah 1994, Chapter 13

36 77-27-9, as last amended by Laws of Utah 2009, Chapter 337

37 77-27-11, as last amended by Laws of Utah 1997, Chapter 75

38 ENACTS:

39 77-27-1.5, Utah Code Annotated 1953



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

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

43 **77-27-1. Definitions.**

44 As used in this chapter:

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

47 [~~1~~] (2) "Board" means the Board of Pardons and Parole.

48 [~~2~~] (3) "Commission" means the Commission on Criminal and Juvenile Justice.

49 [~~3~~] (4) "Commutation" is the change from a greater to a lesser punishment after  
50 conviction.

51 [~~4~~] (5) "Department" means the Department of Corrections.

52 [~~5~~] (6) "Expiration" occurs when the maximum sentence has run.

53 [~~6~~] (7) "Family" means persons related to the victim as a spouse, child, sibling,  
54 parent, or grandparent, or the victim's legal guardian.

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

58 (9) "Location," in reference to a hearing, means the physical location at which the

59 board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless of  
60 the location of any person participating by electronic means.

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

64 ~~[(7)]~~ (11) "Panel" means members of the board assigned by the chairperson to a  
65 particular case.

66 ~~[(8)]~~ (12) "Pardon" is an act of grace by an appropriate authority exempting a person  
67 from punishment for a crime.

68 ~~[(9)]~~ (13) "Parole" is a release from imprisonment on prescribed conditions which, if  
69 satisfactorily performed by the parolee, enables the parolee to obtain a termination of his  
70 sentence.

71 ~~[(10)]~~ (14) "Probation" is an act of grace by the court suspending the imposition or  
72 execution of a convicted offender's sentence upon prescribed conditions.

73 ~~[(11)]~~ (15) "Reprieve or respite" is the temporary suspension of the execution of the  
74 sentence.

75 ~~[(12)]~~ (16) "Termination" is the act of an appropriate authority discharging from parole  
76 or concluding the sentence of imprisonment prior to the expiration of the sentence.

77 ~~[(13)]~~ (17) "Victim" means:

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

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

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

83 **77-27-1.5. Appearance by inmate, offender, or witness.**

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

88 (2) An inmate's or offender's electronic appearance by telephone is permissible with the  
89 consent of the inmate or offender, when the inmate or offender is incarcerated in a facility

90 outside of this state.

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

92 **77-27-2. Board of Pardons and Parole -- Creation -- Compensation -- Functions.**

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

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

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

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

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

116 (d) A member of the board may not hold any other office in the government of the  
117 United States, this state or any other state, or of any county government or municipal  
118 corporation within a state. A member may not engage in any occupation or business  
119 inconsistent with ~~his~~ the member's duties.

120 (e) A majority of the board constitutes a quorum for the transaction of business,

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

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

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

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

141 (3) (a) Except as provided in Subsection (3)[~~(c)~~](b), the Commission on Criminal and  
142 Juvenile Justice shall:

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

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

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

149 (4) (a) The board shall appoint an individual to serve as its mental health adviser and  
150 may appoint other staff necessary to aid it in fulfilling its responsibilities under Title 77,  
151 Chapter 16a, Commitment and Treatment of Mentally Ill Persons. The adviser shall prepare

152 reports and recommendations to the board on all persons adjudicated as guilty and mentally ill,  
153 in accordance with Title 77, Chapter 16a.

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

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

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

162 (c) The mental health adviser shall:

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

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

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

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

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

172 and

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

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

175 **77-27-5. Board of Pardons and Parole authority.**

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

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

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

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

193 (e) The board may determine restitution as provided in Section 77-27-6 and Subsection  
194 77-38a-302(5)(d)(ii).

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

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

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

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

214 of the sentence until the case is reported to the Legislature at its next session. The Legislature  
215 shall then either pardon or commute the sentence, or direct its execution.

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

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

225 Section 5. Section ~~77-27-8~~ is amended to read:

226 **77-27-8. Record of hearing.**

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

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

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

243 Section 6. Section ~~77-27-9~~ is amended to read:

244 **77-27-9. Parole proceedings.**



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

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

253 (c) The board may not pardon or parole any offender or commute or terminate the  
254 sentence of any offender unless the board has granted a full hearing, in open session, after  
255 previous notice of the time and [~~place~~] location of the hearing, and recorded the proceedings  
256 and decisions of the board.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

307 **77-27-11. Revocation of parole.**

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

310 (2) (a) If a parolee is detained by the Department of Corrections or any law  
311 enforcement official for a suspected violation of parole, the Department of Corrections shall  
312 immediately report the alleged violation to the board, by means of an incident report, and make  
313 any recommendation regarding the incident.

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

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

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

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

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

327 (i) to be present;

328 (ii) to be heard;

329 (iii) to present witnesses and documentary evidence;

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

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

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

338 disposition.

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

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

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**Legislative Review Note**  
**as of 10-22-09 2:03 PM**

**Office of Legislative Research and General Counsel**