

1 **SENTENCING GUIDELINES AMENDMENTS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ken Ivory**

5 Senate Sponsor: Daniel Hemmert

7 **LONG TITLE**

8 **General Description:**

9 This bill requires the Board of Pardons and Parole to develop a list of criteria as
10 rationale for its decisions regarding a person's sentence.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ requires the Board of Pardons and Parole to develop and use a list of criteria in any
14 decision it makes regarding whether:

- 15 • an offender's sentence may be paroled or pardoned;
- 16 • restitution should be ordered;
- 17 • fines or forfeitures should be remitted; or
- 18 • the sentence should be commuted or terminated; and

19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **77-27-5**, as last amended by Laws of Utah 2016, Chapter 223

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

29 Section 1. Section **77-27-5** is amended to read:

30 **77-27-5. Board of Pardons and Parole authority.**

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

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

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

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

48 (e) The board may determine restitution as provided in Section 77-27-6 and Subsection
49 77-38a-302(5)(d)(iii)(A).

50 (2) (a) In the case of original parole grant hearings, rehearings, and parole revocation
51 hearings, timely prior notice of the time and location of the hearing shall be given to the
52 defendant, the county or district attorney's office responsible for prosecution of the case, the
53 sentencing court, law enforcement officials responsible for the defendant's arrest and
54 conviction, and whenever possible, the victim or the victim's family.

55 (b) Notice to the victim, ~~[his]~~ the victim's representative, or ~~[his]~~ the victim's family
56 shall include information provided in Section 77-27-9.5, and any related rules made by the
57 board under that section. This information shall be provided in terms that are reasonable for

58 the lay person to understand.

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

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

71 (5) In determining when, where, and under what conditions offenders serving sentences
72 may be paroled, pardoned, have restitution ordered, or have their fines or forfeitures remitted,
73 or their sentences commuted or terminated, the board shall:

74 (a) consider whether the persons have made or are prepared to make restitution as
75 ascertained in accordance with the standards and procedures of Section 77-38a-302, as a
76 condition of any parole, pardon, remission of fines or forfeitures, or commutation or
77 termination of sentence[-]; and

78 (b) develop and use a list of criteria for making determinations under this Subsection
79 (5).

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