

BOARD OF PARDONS AUTHORITY

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Daniel W. Thatcher

House Sponsor: Craig Hall

LONG TITLE

General Description:

This bill provides that the Board of Pardons and Parole has the authority to pardon all convictions except those for treason or impeachment.

Highlighted Provisions:

This bill:

- clarifies that the Board of Pardons and Parole has the authority to pardon any conviction except for treason or impeachment.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

77-27-5, as last amended by Laws of Utah 2017, Chapter 475

77-27-9, as last amended by Laws of Utah 2010, Chapter 110

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

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

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

(1) (a) The Board of Pardons and Parole shall determine by majority decision when and under what conditions any convictions, except for treason or impeachment, may be pardoned or commuted, subject to this chapter and other laws of the state.

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

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

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

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

48 ~~[(e)]~~ (f) The board may determine restitution as provided in Section 77-27-6 and
49 Subsection 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, the victim's representative, or the victim's family shall include
56 information provided in Section 77-27-9.5, and any related rules made by the board under that
57 section. This information shall be provided in terms that are reasonable for the lay person to

58 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.

83 Section 2. Section 77-27-9 is amended to read:

84 **77-27-9. Parole proceedings.**

85 (1) (a) The Board of Pardons and Parole may [~~pardon or~~] parole any offender or

86 [~~commute or~~] terminate the sentence of any offender committed to a penal or correctional
87 facility under the jurisdiction of the Department of Corrections [~~for a felony or class A~~
88 ~~misdemeanor~~] except as provided in Subsection (2).

89 (b) The board may not release any offender before the minimum term has been served
90 unless the board finds mitigating circumstances which justify the release and unless the board
91 has granted a full hearing, in open session, after previous notice of the time and location of the
92 hearing, and recorded the proceedings and decisions of the board.

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

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

101 (2) (a) A person sentenced to prison prior to April 29, 1996, for a first degree felony
102 involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a
103 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of
104 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section
105 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4);
106 aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in
107 Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole
108 until the offender has fully completed serving the minimum mandatory sentence imposed by
109 the court. This Subsection (2)(a) supersedes any other provision of law.

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

113 (i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape,

114 aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined
115 in Title 76, Chapter 5, Offenses Against the Person; and

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

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

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

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

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

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

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

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

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

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

141 (5) The board does not provide counseling or therapy for victims as a part of their

142 participation in any hearing under this chapter.

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

146 Section 3. **Effective date.**

147 If approved by two-thirds of all the members elected to each house, this bill takes effect
148 upon approval by the governor, or the day following the constitutional time limit of Utah
149 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
150 the date of veto override.