

BOARD OF PARDONS AND PAROLE REVISIONS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ken Ivory

Senate Sponsor: _____

LONG TITLE

General Description:

This bill allows the tolling of an offender's sentence if the Board of Pardons orders mental health treatment and the offender refuses to participate.

Highlighted Provisions:

This bill:

- ▶ allows the Board of Pardons to require an offender to participate in mental health treatment; and
- ▶ allows an offender's sentence to be tolled during the time in which the offender refuses to participate in treatment.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-16a-202, as last amended by Laws of Utah 2011, Chapter 366

77-27-7, as last amended by Laws of Utah 2018, Chapter 334

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

Section 1. Section **77-16a-202** is amended to read:



28 **77-16a-202. Person found guilty with a mental illness -- Commitment to**
29 **department -- Admission to Utah State Hospital.**

30 (1) In sentencing and committing an offender with a mental illness to the department
31 under Subsection [77-16a-104\(3\)\(a\)](#), the court shall:

32 (a) sentence the offender to a term of imprisonment and order that he be committed to
33 the department and admitted to the Utah State Hospital for care and treatment until transferred
34 to UDC in accordance with Sections [77-16a-203](#) and [77-16a-204](#), making provision for
35 readmission to the Utah State Hospital whenever the requirements and conditions of Section
36 [77-16a-204](#) are met; or

37 (b) sentence the offender to a term of imprisonment and order that the offender be
38 committed to the department for care and treatment for no more than 18 months, or until the
39 offender's condition has been stabilized to the point that commitment to the department and
40 admission to the Utah State Hospital is no longer necessary to ensure adequate mental health
41 treatment, whichever occurs first. At the expiration of that time, the court may recall the
42 sentence and commitment, and resentence the offender. A commitment and retention of
43 jurisdiction under this Subsection (1)(b) shall be specified in the sentencing order. If that
44 specification is not included in the sentencing order, the offender shall be committed in
45 accordance with Subsection (1)(a).

46 (2) The court may not retain jurisdiction, under Subsection (1)(b), over the sentence of
47 an offender with a mental illness who has been convicted of a capital felony. In capital cases,
48 the court shall make the findings required by this section after the capital sentencing
49 proceeding mandated by Section [76-3-207](#).

50 (3) When an offender is committed to the department and admitted to the Utah State
51 Hospital under Subsection (1)(b), the department shall provide the court with reports of the
52 offender's mental health status every six months. Those reports shall be prepared in accordance
53 with the requirements of Section [77-16a-203](#). Additionally, the court may appoint an
54 independent examiner to assess the mental health status of the offender.

55 (4) The period of commitment to the department and admission to the Utah State
56 Hospital, and any subsequent retransfers to the Utah State Hospital made pursuant to Section
57 [77-16a-204](#) may not exceed the maximum sentence imposed by the court. Upon expiration of
58 that sentence, the administrator of the facility where the offender is located may initiate civil

59 proceedings for involuntary commitment in accordance with Title 62A, Chapter 5, Services for
60 People with Disabilities, or Title 62A, Chapter 15, Substance Abuse and Mental Health Act.

61 (5) Notwithstanding Subsection (4), a person committed to the department and
62 admitted to the Utah State Hospital under the provisions of Subsection 77-16a-104(3) may not
63 be credited for time served during any period of time during which the person refuses
64 treatment.

65 Section 2. Section 77-27-7 is amended to read:

66 **77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists --**
67 **Mental competency.**

68 (1) The Board of Pardons and Parole shall determine within six months after the date
69 of an offender's commitment to the custody of the Department of Corrections, for serving a
70 sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the
71 offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and
72 shall promptly notify the offender of the date.

73 (2) Before reaching a final decision to release any offender under this chapter, the chair
74 shall cause the offender to appear before the board, its panel, or any appointed hearing officer,
75 who shall personally interview the offender to consider the offender's fitness for release and
76 verify as far as possible information furnished from other sources. Any offender may waive a
77 personal appearance before the board. Any offender outside of the state shall, if ordered by the
78 board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in
79 which the offender is housed in lieu of an appearance before the board. The offender shall be
80 promptly notified in writing of the board's decision.

81 (3) (a) In the case of an offender convicted of violating or attempting to violate any of
82 the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402,
83 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405,
84 the chair may appoint one or more alienists who shall examine the offender within six months
85 prior to a hearing at which an original parole date is granted on any offense listed in this
86 Subsection (3).

87 (b) The alienists shall report in writing the results of the examination to the board prior
88 to the hearing. The report of the appointed alienists shall specifically address the question of
89 the offender's current mental condition and attitudes as they relate to any danger the offender

90 may pose to children or others if the offender is released on parole.

91 (4) A parolee may petition the board for termination of lifetime parole as provided in
92 Section 76-3-202 in the case of a parolee convicted of a first degree felony violation, or
93 convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section
94 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or 76-5-405,
95 and released on parole before January 1, 2019.

96 (5) (a) In any case where an offender's mental competency is questioned by the board,
97 the chair may appoint one or more alienists to examine the offender and report in writing to the
98 board, specifically addressing the issue of competency.

99 (b) If the report indicates the offender would benefit from mental health counseling or
100 treatment, the board may require the offender to participate in mental health counseling or
101 treatment as a condition of release. An offender may not be credited for time served during any
102 period of time during which the offender refuses to participate in mental health counseling or
103 treatment required by the board.

104 (6) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
105 board shall make rules governing:

- 106 (a) the hearing process;
- 107 (b) alienist examination; and
- 108 (c) parolee petitions for termination of parole.