

BOARD OF PARDONS AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill addresses proceedings and records of the Board of Pardons and Parole.

Highlighted Provisions:

This bill:

- ▶ defines "deliberative process" for the Board of Pardons and Parole;
- ▶ exempts the deliberative process and day-to-day operations of the Board of Pardons and Parole from Open and Public Meetings Act requirements; and
- ▶ addresses records of the Board of Pardons and Parole that are exempt from disclosure and discovery provisions.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-27-1, as last amended by Laws of Utah 2015, Chapter 412

77-27-5, as last amended by Laws of Utah 2019, Chapter 148

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

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



28 **77-27-1. Definitions.**

29 As used in this chapter:

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

32 (2) "Board" means the Board of Pardons and Parole.

33 (3) "Case action plan" means a document developed by the Department of Corrections
34 that identifies the program priorities for the treatment of the offender, including the criminal
35 risk factors as determined by a risk and needs assessment conducted by the department.

36 (4) "Commission" means the Commission on Criminal and Juvenile Justice.

37 (5) "Commutation" is the change from a greater to a lesser punishment after
38 conviction.

39 (6) "Criminal risk factors" means a person's characteristics and behaviors that:

40 (a) affect that person's risk of engaging in criminal behavior; and

41 (b) are diminished when addressed by effective treatment, supervision, and other
42 support resources resulting in reduced risk of criminal behavior.

43 (7) (a) "Deliberative process" means the board or any number of the board's individual
44 members together engaging in discussions, whether written or verbal, regarding a parole, a
45 pardon, a commutation, termination of sentence, or remission of fines, fees, or restitution in an
46 individual case.

47 (b) "Deliberative process" includes the votes, mental processes, written notes, and
48 recommendations of individual board members and staff.

49 (c) "Deliberative process" does not include:

50 (i) a hearing where the offender is present;

51 (ii) any factual record the board is considering, including records of the offender's
52 criminal convictions, records regarding the offender's current or previous incarceration and
53 supervision, and records regarding the offender's physical or mental health;

54 (iii) recommendations regarding the offender's incarceration or supervision from any
55 other individual, governmental entity, or agency;

56 (iv) testimony received by the board regarding the offender, whether written or verbal;

57 or

58 (v) the board's decision or rationale for the decision.

59 ~~[(7)]~~ (8) "Department" means the Department of Corrections.

60 ~~[(8)]~~ (9) "Expiration" occurs when the maximum sentence has run.

61 ~~[(9)]~~ (10) "Family" means persons related to the victim as a spouse, child, sibling,
62 parent, or grandparent, or the victim's legal guardian.

63 ~~[(10)]~~ (11) "Hearing" means an appearance before the board, a panel, a board member
64 or hearing examiner, at which an offender or inmate is afforded an opportunity to be present
65 and address the board, and encompasses the term "full hearing."

66 ~~[(11)]~~ (12) "Location," in reference to a hearing, means the physical location at which
67 the board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless
68 of the location of any person participating by electronic means.

69 ~~[(12)]~~ (13) "Open session" means any hearing before the board, a panel, a board
70 member, or a hearing examiner which is open to the public, regardless of the location of any
71 person participating by electronic means.

72 ~~[(13)]~~ (14) "Panel" means members of the board assigned by the chairperson to a
73 particular case.

74 ~~[(14)]~~ (15) "Pardon" is an act of grace that forgives a criminal conviction and restores
75 the rights and privileges forfeited by or because of the criminal conviction. A pardon releases
76 an offender from the entire punishment prescribed for a criminal offense and from disabilities
77 that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a
78 consequence of conviction or punishment for a criminal offense.

79 ~~[(15)]~~ (16) "Parole" is a release from imprisonment on prescribed conditions which, if
80 satisfactorily performed by the parolee, enables the parolee to obtain a termination of his
81 sentence.

82 ~~[(16)]~~ (17) "Probation" is an act of grace by the court suspending the imposition or
83 execution of a convicted offender's sentence upon prescribed conditions.

84 ~~[(17)]~~ (18) "Reprieve or respite" is the temporary suspension of the execution of the
85 sentence.

86 ~~[(18)]~~ (19) "Termination" is the act of discharging from parole or concluding the
87 sentence of imprisonment prior to the expiration of the sentence.

88 ~~[(19)]~~ (20) "Victim" means:

89 (a) a person against whom the defendant committed a felony or class A misdemeanor

90 offense, and regarding which offense a hearing is held under this chapter; or

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

93 Section 2. Section **77-27-5** is amended to read:

94 **77-27-5. Board of Pardons and Parole authority.**

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

98 (b) The Board of Pardons and Parole shall determine by majority decision when and
99 under what conditions, subject to this chapter and other laws of the state, individuals
100 committed to serve sentences at penal or correctional facilities that are under the jurisdiction of
101 the Department of Corrections, except treason or impeachment convictions or as otherwise
102 limited by law, may be released upon parole, ordered to pay restitution, or have their fines,
103 forfeitures, or restitution remitted, or their sentences terminated.

104 (c) The board may sit together or in panels to conduct hearings. The chair shall appoint
105 members to the panels in any combination and in accordance with rules made in accordance
106 with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, by the board. The chair may
107 participate on any panel and when doing so is chair of the panel. The chair of the board may
108 designate the chair for any other panel.

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

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

114 (f) The board may determine restitution as provided in Section [77-27-6](#) and Subsection
115 [77-38a-302\(5\)\(d\)\(iii\)\(A\)](#).

116 (2) (a) In the case of any hearings, timely prior notice of the time and location of the
117 hearing shall be given to the offender.

118 (b) The county or district attorney's office responsible for prosecution of the case, the
119 sentencing court, and law enforcement officials responsible for the defendant's arrest and
120 conviction shall be notified of any board hearings through the board's website.

121 (c) Whenever possible, the victim or the victim's representative, if designated, shall be
122 notified of original hearings and any hearing after that if notification is requested and current
123 contact information has been provided to the board.

124 (d) Notice to the victim or the victim's representative shall include information
125 provided in Section [77-27-9.5](#), and any related rules made by the board under that section. This
126 information shall be provided in terms that are reasonable for the lay person to understand.

127 (3) (a) Decisions of the board in cases involving paroles, pardons, commutations or
128 terminations of sentence, restitution, or remission of fines or forfeitures are final and are not
129 subject to judicial review.

130 (b) Deliberative processes are not public and the board is exempt from Title 52,
131 Chapter 4, Open and Public Meetings Act, when the board is engaged in the board's
132 deliberative process.

133 (c) Pursuant to Subsection [63G-2-103\(22\)\(b\)\(xi\)](#), records of the deliberative process
134 are exempt from Title 63G, Chapter 2, Government Records Access and Management Act.

135 (d) Unless it will interfere with a constitutional right, deliberative processes are not
136 subject to disclosure, including discovery.

137 (e) Nothing in this section prevents the obtaining or enforcement of a civil judgment,
138 including restitution as provided in Section [77-27-6](#).

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

147 (5) In determining when, where, and under what conditions an offender serving a
148 sentence may be paroled, pardoned, have restitution ordered, or have the offender's fines or
149 forfeitures remitted, or the offender's sentence commuted or terminated, the board shall:

150 (a) consider whether the offender has made or is prepared to make restitution as
151 ascertained in accordance with the standards and procedures of Section [77-38a-302](#), as a

152 condition of any parole, pardon, remission of fines or forfeitures, or commutation or
153 termination of sentence; and

154 (b) develop and use a list of criteria for making determinations under this Subsection
155 (5).

156 (6) In determining whether parole may be terminated, the board shall consider:

157 (a) the offense committed by the parolee; and

158 (b) the parole period as provided in Section 76-3-202, and in accordance with Section
159 77-27-13.

160 (7) For offenders placed on parole after December 31, 2018, the board shall terminate
161 parole in accordance with the supervision length guidelines established by the Utah Sentencing
162 Commission under Section 63M-7-404, to the extent the guidelines are consistent with the
163 requirements of the law.

164 (8) Discussions of the Board of Pardons and Parole or the board's members that pertain
165 only to day-to-day management and operation of the board are not a meeting as defined in
166 Section 52-4-103.