

Senator Michael K. McKell proposes the following substitute bill:

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 and restricts eligibility for parole for certain offenders.

Highlighted Provisions:

This bill:

- ▶ defines "deliberative process" for the Board of Pardons and Parole;
- ▶ exempts the deliberative process of the Board of Pardons and Parole from Open and Public Meetings Act requirements;
- ▶ addresses records of the Board of Pardons and Parole that are exempt from disclosure and discovery provisions; and
- ▶ prevents an offender convicted of a homicide where the victim's remains have not been recovered from being paroled unless the offender has cooperated with efforts to locate the remains.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

This bill provides a coordination clause.



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **77-27-1**, as last amended by Laws of Utah 2015, Chapter 412

29 **77-27-5**, as last amended by Laws of Utah 2019, Chapter 148

30 **77-27-9**, as last amended by Laws of Utah 2019, Chapter 72

31 **Utah Code Sections Affected by Coordination Clause:**

32 **77-27-9**, as last amended by Laws of Utah 2019, Chapter 72

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

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

36 **77-27-1. Definitions.**

37 As used in this chapter:

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

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

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

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

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

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

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

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

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

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

- 57 (c) "Deliberative process" does not include:
- 58 (i) a hearing where the offender is present;
- 59 (ii) any factual record the board is considering, including records of the offender's
- 60 criminal convictions, records regarding the offender's current or previous incarceration and
- 61 supervision, and records regarding the offender's physical or mental health;
- 62 (iii) recommendations regarding the offender's incarceration or supervision from any
- 63 other individual, governmental entity, or agency;
- 64 (iv) testimony received by the board regarding the offender, whether written or verbal;
- 65 or
- 66 (v) the board's decision or rationale for the decision.

67 ~~[(7)]~~ (8) "Department" means the Department of Corrections.

68 ~~[(8)]~~ (9) "Expiration" occurs when the maximum sentence has run.

69 ~~[(9)]~~ (10) "Family" means persons related to the victim as a spouse, child, sibling,
70 parent, or grandparent, or the victim's legal guardian.

71 ~~[(10)]~~ (11) "Hearing" means an appearance before the board, a panel, a board member
72 or hearing examiner, at which an offender or inmate is afforded an opportunity to be present
73 and address the board, and encompasses the term "full hearing."

74 ~~[(11)]~~ (12) "Location," in reference to a hearing, means the physical location at which
75 the board, a panel, a board member, or a hearing examiner is conducting the hearing, regardless
76 of the location of any person participating by electronic means.

77 ~~[(12)]~~ (13) "Open session" means any hearing before the board, a panel, a board
78 member, or a hearing examiner which is open to the public, regardless of the location of any
79 person participating by electronic means.

80 ~~[(13)]~~ (14) "Panel" means members of the board assigned by the chairperson to a
81 particular case.

82 ~~[(14)]~~ (15) "Pardon" is an act of grace that forgives a criminal conviction and restores
83 the rights and privileges forfeited by or because of the criminal conviction. A pardon releases
84 an offender from the entire punishment prescribed for a criminal offense and from disabilities
85 that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a
86 consequence of conviction or punishment for a criminal offense.

87 ~~[(15)]~~ (16) "Parole" is a release from imprisonment on prescribed conditions which, if

88 satisfactorily performed by the parolee, enables the parolee to obtain a termination of his
89 sentence.

90 [~~(16)~~] (17) "Probation" is an act of grace by the court suspending the imposition or
91 execution of a convicted offender's sentence upon prescribed conditions.

92 [~~(17)~~] (18) "Reprieve or respite" is the temporary suspension of the execution of the
93 sentence.

94 [~~(18)~~] (19) "Termination" is the act of discharging from parole or concluding the
95 sentence of imprisonment prior to the expiration of the sentence.

96 [~~(19)~~] (20) "Victim" means:

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

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

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

102 **77-27-5. Board of Pardons and Parole authority.**

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

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

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

117 (d) No restitution may be ordered, no fine, forfeiture, or restitution remitted, no parole,
118 pardon, or commutation granted or sentence terminated, except after a full hearing before the

119 board or the board's appointed examiner in open session. Any action taken under this
120 subsection other than by a majority of the board shall be affirmed by a majority of the board.

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

122 (f) The board may determine restitution as provided in Section 77-27-6 and Subsection
123 77-38a-302(5)(d)(iii)(A).

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

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

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

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

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

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

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

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

145 (e) Nothing in this section prevents the obtaining or enforcement of a civil judgment,
146 including restitution as provided in Section 77-27-6.

147 (4) This chapter may not be construed as a denial of or limitation of the governor's
148 power to grant respite or reprieves in all cases of convictions for offenses against the state,
149 except treason or conviction on impeachment. However, respites or reprieves may not extend

150 beyond the next session of the Board of Pardons and Parole and the board, at that session, shall
151 continue or terminate the respite or reprieve, or it may commute the punishment, or pardon the
152 offense as provided. In the case of conviction for treason, the governor may suspend execution
153 of the sentence until the case is reported to the Legislature at its next session. The Legislature
154 shall then either pardon or commute the sentence, or direct its execution.

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

158 (a) consider whether the offender has made or is prepared to make restitution as
159 ascertained in accordance with the standards and procedures of Section 77-38a-302, as a
160 condition of any parole, pardon, remission of fines or forfeitures, or commutation or
161 termination of sentence; and

162 (b) develop and use a list of criteria for making determinations under this Subsection
163 (5).

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

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

166 (b) the parole period as provided in Section 76-3-202, and in accordance with Section
167 77-27-13.

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

172 Section 3. Section 77-27-9 is amended to read:

173 **77-27-9. Parole proceedings.**

174 (1) (a) The Board of Pardons and Parole may parole any offender or terminate the
175 sentence of any offender committed to a penal or correctional facility under the jurisdiction of
176 the Department of Corrections except as provided in Subsection (2).

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

181 (c) The board may not parole any offender or terminate the sentence of any offender
182 unless the board has granted a full hearing, in open session, after previous notice of the time
183 and location of the hearing, and recorded the proceedings and decisions of the board.

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

188 (2) (a) An individual sentenced to prison prior to April 29, 1996, for a first degree
189 felony involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a
190 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of
191 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section
192 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4);
193 aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in
194 Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole
195 until the offender has fully completed serving the minimum mandatory sentence imposed by
196 the court. This Subsection (2)(a) supersedes any other provision of law.

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

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

203 (ii) the victim of the offense was under 18 years [~~of age~~] old at the time the offense was
204 committed.

205 (c) For a crime committed on or after April 29, 1996, but before January 1, 2019, the
206 board may parole any offender under Subsections (2)(b)(i) and (ii) for lifetime parole as
207 provided in this section.

208 (d) The board may not pardon or parole any offender or commute or terminate the
209 sentence of any offender who is sentenced to life in prison without parole except as provided in
210 Subsection (7).

211 (e) On or after April 27, 1992, the board may commute a sentence of death only to a

212 sentence of life in prison without parole.

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

215 (g) The board may not parole any offender convicted of a homicide unless:

216 (i) the remains of the victim have been recovered; or

217 (ii) the offender can demonstrate by a preponderance of the evidence that the offender
218 has cooperated in good faith in efforts to locate the remains.

219 (h) Subsection (2)(g) applies to any offender convicted of a homicide after February
220 25, 2021, or any offender who was incarcerated in a correctional facility on or after February
221 25, 2021, for a homicide offense.

222 (3) The board may rescind:

223 (a) an inmate's prison release date prior to the inmate being released from custody; or

224 (b) an offender's termination date from parole prior to the offender being terminated
225 from parole.

226 (4) (a) The board may issue subpoenas to compel the attendance of witnesses and the
227 production of evidence, to administer oaths, and to take testimony for the purpose of any
228 investigation by the board or any of [~~its~~] the board's members or by a designated hearing
229 examiner in the performance of [~~its~~] the board's duties.

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

232 (5) (a) The board may adopt rules consistent with law for [~~its~~] the board's government,
233 meetings and hearings, the conduct of proceedings before [~~it~~] the board, the parole and pardon
234 of offenders, the commutation and termination of sentences, and the general conditions under
235 which parole may be granted and revoked.

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

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

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

242 (7) The board may parole a person sentenced to life in prison without parole if the

243 board finds by clear and convincing evidence that the person is permanently incapable of being
244 a threat to the safety of society.

245 Section 4. **Effective date.**

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

250 Section 5. **Coordinating H.B. 379 with S.B. 124 -- Superseding technical and**
251 **substantive amendments.**

252 If this H.B. 379 and S.B. 124, Parole Amendments, both pass and become law, the
253 Legislature intends that the amendments to Section [77-27-9](#) in this bill supersede the
254 amendments to Section [77-27-9](#) in S.B. 124 when the Office of Legislative Research and
255 General Counsel prepares the Utah Code database for publication.