

HB0379S01 compared with HB0379

~~text~~ shows text that was in HB0379 but was deleted in HB0379S01.

inserted text shows text that was not in HB0379 but was inserted into HB0379S01.

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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 ~~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~~.~~

~~;~~ and

- ▶ prevents an offender convicted of a homicide where the victim's remains have not

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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:

~~{ None }~~ This bill provides a special effective date.

This bill provides a coordination clause.

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

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

Utah Code Sections Affected by Coordination Clause:

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

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

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

77-27-1. Definitions.

As used in this chapter:

- (1) "Appearance" means any opportunity to address the board, a board member, a panel, or hearing officer, including an interview.
- (2) "Board" means the Board of Pardons and Parole.
- (3) "Case action plan" means a document developed by the Department of Corrections that identifies the program priorities for the treatment of the offender, including the criminal risk factors as determined by a risk and needs assessment conducted by the department.
- (4) "Commission" means the Commission on Criminal and Juvenile Justice.
- (5) "Commutation" is the change from a greater to a lesser punishment after conviction.
- (6) "Criminal risk factors" means a person's characteristics and behaviors that:
 - (a) affect that person's risk of engaging in criminal behavior; and
 - (b) are diminished when addressed by effective treatment, supervision, and other

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support resources resulting in reduced risk of criminal behavior.

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

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

(c) "Deliberative process" does not include:

(i) a hearing where the offender is present;

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

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

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

or

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

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

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

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

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

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

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

~~(13)~~ (14) "Panel" means members of the board assigned by the chairperson to a

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particular case.

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

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

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

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

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

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

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

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

Section 2. 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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) the offense committed by the parolee; and

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

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

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

77-27-9. Parole proceedings.

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

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

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

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

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

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

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

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

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

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

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

(f) The restrictions imposed in Subsections (2)(d) and (e) apply to all cases that come before the Board of Pardons and Parole ~~for the board's members that pertain only to day-to-day management and operation of the board are not a meeting as defined in Section 52-4-103.~~ on or after April 27, 1992.

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

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

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

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

(3) The board may rescind:

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

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

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

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

(5) (a) The board may adopt rules consistent with law for [its] the board's government, meetings and hearings, the conduct of proceedings before [it] the board, the parole and pardon

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of offenders, the commutation and termination of sentences, and the general conditions under which parole may be granted and revoked.

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

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

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

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

Section 4. **Effective date.**

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

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

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