

1                                    **BOARD OF PARDONS AND PAROLE AMENDMENTS**  
2                                    2024 GENERAL SESSION  
3                                    STATE OF UTAH  
4                                    **Chief Sponsor: Stephanie Pitcher**  
5                                    House Sponsor: Andrew Stoddard

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6  
7 **LONG TITLE**

8 **General Description:**

9        This bill modifies provisions relating to the Board of Pardons and Parole.

10 **Highlighted Provisions:**

11        This bill:

- 12        ▶ clarifies provisions concerning sentencing, credit for time served, and competency
- 13        ▶ proceedings to reflect the existing jurisdiction of the Board of Pardons and Parole (board);
- 14        ▶ provides that the board may intervene in certain proceedings;
- 15        ▶ modifies provisions relating to offender eligibility for the earned time program;
- 16        ▶ modifies provisions relating to when the board may stay the determination of an
- 17        offender's hearing date for certain proceedings;
- 18        ▶ replaces the term "alienist" with "licensed mental health professional" for certain
- 19        examinations;
- 20        ▶ grants the board the ability to appoint counsel or a lay representative for an offender
- 21        under certain conditions; and
- 22        ▶ makes technical and conforming changes.

23 **Money Appropriated in this Bill:**

24        None

25 **Other Special Clauses:**

26        None

27 **Utah Code Sections Affected:**

AMENDS:

- 28        **76-3-201**, as last amended by Laws of Utah 2023, Chapters 184, 497
- 29        **77-15-3**, as last amended by Laws of Utah 2018, Chapter 147
- 30        **77-18-111**, as renumbered and amended by Laws of Utah 2021, Chapter 260

28 **77-27-5**, as last amended by Laws of Utah 2023, Chapters 151, 173  
 29 **77-27-5.4**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 4  
 30 **77-27-7**, as last amended by Laws of Utah 2022, Chapter 430

31 ENACTS:

32 **77-27-7.1**, Utah Code Annotated 1953

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

35 Section 1. Section **76-3-201** is amended to read:

36 **76-3-201 . Sentences or combination of sentences allowed -- Restitution and other**  
 37 **costs -- Civil penalties.**

38 (1) As used in this section:

39 (a) (i) "Convicted" means:

40 (A) having entered a plea of guilty, a plea of no contest, or a plea of guilty with a  
 41 mental condition; or

42 (B) having received a judgment of guilty or a judgment of guilty with a mental  
 43 condition.

44 (ii) "Convicted" does not include an adjudication of an offense under Section  
 45 80-6-701.

46 (b) "Restitution" means the same as that term is defined in Section 77-38b-102.

47 (2) Within the limits provided by this chapter, a court may sentence an individual convicted  
 48 of an offense to any one of the following sentences, or combination of the following  
 49 sentences:

50 (a) to pay a fine;

51 (b) to removal or disqualification from public or private office;

52 (c) except as otherwise provided by law, to probation in accordance with Section  
 53 77-18-105;

54 (d) in accordance with Subsection 77-18-111(4), to imprisonment;

55 (e) on or after April 27, 1992, to life in prison without parole; or

56 (f) to death.

57 (3) (a) This chapter does not deprive a court of authority conferred by law:

58 (i) to forfeit property;

59 (ii) to dissolve a corporation;

60 (iii) to suspend or cancel a license;

61 (iv) to permit removal of an individual from office;

- 62 (v) to cite for contempt; or  
63 (vi) to impose any other civil penalty.
- 64 (b) A court may include a civil penalty in a sentence.
- 65 (4) In addition to any other sentence that a sentencing court may impose, the court shall  
66 order an individual to:
- 67 (a) pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution  
68 Act;
- 69 (b) subject to Section 77-32b-104, pay the cost expended by an appropriate  
70 governmental entity under Section 77-30-24 for the extradition of the individual if  
71 the individual:
- 72 (i) was extradited to this state, under Title 77, Chapter 30, Extradition, to resolve  
73 pending criminal charges; and
- 74 (ii) is convicted of an offense in the county for which the individual is returned;
- 75 (c) subject to Subsection (5) and Subsections 77-32b-104(2), (3), and (4), pay the cost of  
76 medical care, treatment, hospitalization, and related transportation, as described in  
77 Section 17-50-319, that is provided by a county to the individual while the individual  
78 is in a county correctional facility before and after sentencing if:
- 79 (i) the individual is convicted of an offense that results in incarceration in the county  
80 correctional facility; and
- 81 (ii) (A) the individual is not a state prisoner housed in the county correctional  
82 facility through a contract with the Department of Corrections; or
- 83 (B) the reimbursement does not duplicate the reimbursement under Section  
84 64-13e-104 if the individual is a state probationary inmate or a state parole  
85 inmate; and
- 86 (d) pay any other cost that the court determines is appropriate under Section 77-32b-104.
- 87 (5) The cost of medical care under Subsection (4)(c) does not include expenses incurred by  
88 the county correctional facility in providing reasonable accommodation for an inmate  
89 qualifying as an individual with a disability as defined and covered by the Americans  
90 with Disabilities Act, 42 U.S.C. 12101 through 12213, including medical and mental  
91 health treatment for the inmate's disability.

92 Section 2. Section **77-15-3** is amended to read:

93 **77-15-3 . Petition for inquiry regarding defendant -- Filing -- Contents.**

- 94 (1) When a defendant charged with a public offense[~~or serving a sentence of imprisonment~~]  
95 is incompetent to proceed, an individual described in Subsection (2)(b) may file a

96 petition in the district court of the county where the charge is pending or where the  
97 defendant is confined.

98 (2) (a) (i) The petition shall contain a certificate that it is filed in good faith and on  
99 reasonable grounds to believe the defendant is incompetent to proceed.

100 (ii) [-]The petition shall contain a recital of the facts, observations, and conversations  
101 with the defendant that have formed the basis for the petition.

102 (iii) If filed by defense counsel, the petition may not disclose information in violation  
103 of the attorney-client privilege.

104 (b) The petition may be based upon knowledge or information and belief and may be  
105 filed by the defendant, any person acting on behalf of the defendant, the prosecuting  
106 attorney, or any person having custody or supervision over the defendant.

107 Section 3. Section **77-18-111** is amended to read:

108 **77-18-111 . Sentence -- Term -- Construction.**

109 (1) If an individual is convicted of a crime and the judgment provides for a commitment to  
110 the state prison, the court shall not fix a definite term of imprisonment unless otherwise  
111 provided by law.

112 (2) The sentence and judgment of imprisonment shall be for an indeterminate term of not  
113 less than the minimum and not to exceed the maximum term provided by law for the  
114 particular crime.

115 (3) Except as otherwise expressly provided by law, every sentence, regardless of the  
116 sentence's form or terms, which purports to be for a shorter or different period of time,  
117 shall be construed to be a sentence for the term between the minimum and maximum  
118 periods of time provided by law and shall continue until the maximum period has been  
119 reached unless sooner terminated or commuted by authority of the board.

120 (4) (a) A court may not order that a term of imprisonment commences before the day  
121 upon which the sentence of imprisonment is imposed, except to correct a sentence  
122 consistent with Rule 22(e) or 30(b) of the Utah Rules of Criminal Procedure.

123 (b) The board may grant an individual credit for time served or other credit against a  
124 sentence, including as provided in Subsection 76-3-208(1)(b) or Section 76-3-403 or  
125 77-27-5.4.

126 Section 4. Section **77-27-5** is amended to read:

127 **77-27-5 . Board of Pardons and Parole authority.**

128 (1) (a) Subject to this chapter and other laws of the state, and except for a conviction for  
129 treason or impeachment, the board shall determine by majority decision when and

- 130 under what conditions an offender's conviction may be pardoned or commuted.
- 131 (b) The [~~Board of Pardons and Parole~~] board shall determine by majority decision when  
132 and under what conditions an offender committed to serve a sentence at a penal or  
133 correctional facility, which is under the jurisdiction of the department, may:
- 134 (i) be released upon parole;
- 135 (ii) have a fine or forfeiture remitted;
- 136 (iii) have the offender's criminal accounts receivable remitted in accordance with  
137 Section 77-32b-105 or 77-32b-106;
- 138 (iv) have the offender's payment schedule modified in accordance with Section  
139 77-32b-103; or
- 140 (v) have the offender's sentence terminated.
- 141 (c) The board shall prioritize public safety when making a determination under  
142 Subsection (1)(a) or (1)(b).
- 143 (d) (i) The board may sit together or in panels to conduct hearings.
- 144 (ii) The chair shall appoint members to the panels in any combination and in  
145 accordance with rules made by the board in accordance with Title 63G, Chapter 3,  
146 Utah Administrative Rulemaking Act[, ~~by the board~~].
- 147 (iii) The chair may participate on any panel and when doing so is chair of the panel.
- 148 (iv) The chair of the board may designate the chair for any other panel.
- 149 (e) (i) Except after a hearing before the board, or the board's appointed examiner, in  
150 an open session, the board may not:
- 151 (A) remit a fine or forfeiture for an offender or the offender's criminal accounts  
152 receivable;
- 153 (B) release the offender on parole; or
- 154 (C) commute, pardon, or terminate an offender's sentence.
- 155 (ii) An action taken under this Subsection (1) other than by a majority of the board  
156 shall be affirmed by a majority of the board.
- 157 (f) A commutation or pardon may be granted only after a full hearing before the board.
- 158 (2) (a) In the case of [~~any hearings~~] a hearing, timely prior notice of the time and location  
159 of the hearing shall be given to the offender.
- 160 (b) The county or district attorney's office responsible for prosecution of the case, the  
161 sentencing court, and law enforcement officials responsible for the defendant's arrest  
162 and conviction shall be notified of any board hearings through the board's website.
- 163 (c) Whenever possible, the victim or the victim's representative, if designated, shall be

164 notified of original hearings and any hearing after that if notification is requested and  
165 current contact information has been provided to the board.

166 (d) (i) Notice to the victim or the victim's representative shall include information  
167 provided in Section 77-27-9.5, and any related rules made by the board under that  
168 section.

169 (ii) The information under Subsection (2)(d)(i) shall be provided in terms that are  
170 reasonable for the lay person to understand.

171 (3) (a) A decision by the board is final and not subject for judicial review if the decision  
172 is regarding:

173 (i) a pardon, parole, commutation, or termination of an offender's sentence;

174 (ii) the modification of an offender's payment schedule for restitution; or

175 (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.

176 (b) Deliberative processes are not public and the board is exempt from Title 52, Chapter  
177 4, Open and Public Meetings Act, when the board is engaged in the board's  
178 deliberative process.

179 (c) Pursuant to Subsection 63G-2-103(25)(b)(xi), records of the deliberative process are  
180 exempt from Title 63G, Chapter 2, Government Records Access and Management  
181 Act.

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

184 (e) Nothing in this section prevents the obtaining or enforcement of a civil judgment.

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

188 (b) Notwithstanding Subsection (4)(a), respites or reprieves may not extend beyond the  
189 next session of the ~~[Board of Pardons and Parole]~~ board.

190 (c) At the next session of the board, the board:

191 (i) shall continue or terminate the respite or reprieve; or

192 (ii) may commute the punishment or pardon the offense as provided.

193 (d) In the case of conviction for treason, the governor may suspend execution of the  
194 sentence until the case is reported to the Legislature at the Legislature's next session.

195 (e) The Legislature shall pardon or commute the sentence or direct the sentence's  
196 execution.

197 (5) (a) In determining when, where, and under what conditions an offender serving a

198 sentence may be paroled or pardoned, have a fine or forfeiture remitted, have the  
199 offender's criminal accounts receivable remitted, or have the offender's sentence  
200 commuted or terminated, the board shall:

- 201 (i) consider whether the offender has made restitution ordered by the court under  
202 Section 77-38b-205, or is prepared to pay restitution as a condition of any parole,  
203 pardon, remission of a criminal accounts receivable or a fine or forfeiture, or a  
204 commutation or termination of the offender's sentence;
- 205 (ii) except as provided in Subsection (5)(b), develop and use a list of criteria for  
206 making determinations under this Subsection (5);
- 207 (iii) consider information provided by the ~~[Department of Corrections]~~ department  
208 regarding an offender's individual case action plan; and
- 209 (iv) review an offender's status within 60 days after the day on which the board  
210 receives notice from the ~~[Department of Corrections]~~ department that the offender  
211 has completed all of the offender's case action plan components that relate to  
212 activities that can be accomplished while the offender is imprisoned.

213 (b) The board shall determine whether to remit an offender's criminal accounts  
214 receivable under this Subsection (5) in accordance with Section 77-32b-105 or  
215 77-32b-106.

- 216 (6) In determining whether parole may be terminated, the board shall consider:  
217 (a) the offense committed by the parolee; and  
218 (b) the parole period under Section 76-3-202, and in accordance with Section 77-27-13.
- 219 (7) For an offender placed on parole after December 31, 2018, the board shall terminate  
220 parole in accordance with the supervision length guidelines established by the Utah  
221 Sentencing Commission under Section 63M-7-404, to the extent the guidelines are  
222 consistent with the requirements of the law.

223 (8) The board may intervene as a limited-purpose party in a judicial or administrative  
224 proceeding, including a criminal action, to seek:

225 (a) correction of an order that has or will impact the board's jurisdiction; or

226 (b) clarification regarding an order that may impact the board's jurisdiction.

227 (9) A motion to intervene brought under Subsection (8)(a) shall be raised within 60 days  
228 after the day on which a court enters the order that impacts the board's jurisdiction.

229 Section 5. Section **77-27-5.4** is amended to read:

230 **77-27-5.4 . Earned time program.**

231 (1) The board shall establish an earned time program that reduces the period of

- 232 incarceration for offenders who successfully complete specified programs, the purpose  
 233 of which is to reduce the risk of recidivism.
- 234 (2) The earned time program shall:
- 235 (a) provide not less than four months of earned time credit each for the completion of up  
 236 to two programs that:
- 237 (i) are approved by the board in collaboration with the ~~[Department of Corrections]~~  
 238 department; and
- 239 (ii) are recommended programs that are part of the offender's case action plan; and
- 240 (b) allow the board to grant in ~~[its]~~ the board's discretion earned time credit in addition to  
 241 the earned time credit provided under Subsection (2)(a).
- 242 (3) The earned time program may not provide earned time credit for ~~[offenders]~~ an offender:
- 243 (a) whose previously ordered release date does not provide enough time, including time  
 244 for transition services, for the ~~[Board of Pardons and Parole]~~ board to grant the earned  
 245 time credit;
- 246 (b) who ~~[have]~~ has been sentenced by the court to a term of life without the possibility of  
 247 parole;
- 248 (c) who ~~[have]~~ has been ordered by the ~~[Board of Pardons and Parole]~~ board to serve until  
 249 the expiration of the offender's sentence, including a life sentence;
- 250 (d) who ~~[do]~~ does not have a current release date; ~~[or]~~
- 251 (e) who ~~[have]~~ has not met a contingency requirement for release that has been ordered  
 252 by the board~~[-]~~ ; or
- 253 (f) who has been given a termination date by the board.
- 254 (4) The board may order the forfeiture of earned time credits under this section if ~~[it]~~ the  
 255 board determines a rescission hearing is necessary.
- 256 (5) The department shall notify the board not more than 30 days after an offender completes  
 257 a program as defined in Subsection ~~[77-27-5.4(2)(a)]~~ (2)(a).
- 258 (6) The board shall collect data for the fiscal year regarding the operation of the earned time  
 259 credit program, including:
- 260 (a) the number of offenders who have earned time credit under this section in the prior  
 261 year;
- 262 (b) the amount of time credit earned in the prior year;
- 263 (c) the number of offenders who forfeited earned time credit; and
- 264 (d) additional related information as requested by the Commission on Criminal and  
 265 Juvenile Justice.



- 266 (7) The board shall collaborate with the [~~Department of Corrections~~] department in the  
267 establishment of the earned time credit program.
- 268 (8) To the extent possible, programming and hearings shall be provided early enough in an  
269 offender's incarceration to allow the offender to earn time credit.

270 Section 6. Section ~~77-27-7~~ is amended to read:

271 **77-27-7 . Parole or hearing dates -- Interview -- Hearings -- Report of licensed**  
272 **mental health professional -- Mental competency -- Rulemaking authority.**

273 [~~(1) The Board of Pardons and Parole shall determine within six months after the date of~~  
274 ~~an offender's commitment to the custody of the Department of Corrections, for serving a~~  
275 ~~sentence upon conviction of a felony or class A misdemeanor offense, a date upon~~  
276 ~~which the offender shall be afforded a hearing to establish a date of release or a date for~~  
277 ~~a rehearing, and shall promptly notify the offender of the date.]~~

278 (1) (a) For an offender serving a sentence upon conviction of a felony or class A  
279 misdemeanor offense, the board shall:

280 (i) within six months after the day on which the offender is committed to the custody  
281 of the department, set a hearing date to establish the offender's release date or date  
282 for rehearing; and

283 (ii) promptly notify the offender of the date described in Subsection (1)(a)(i).

284 (b) (i) The board may delay setting the hearing date described in Subsection (1)(a)(i)  
285 if the offender has an additional pending criminal case at the time of the offender's  
286 commitment to the custody of the department.

287 (ii) For purposes of Subsection (1)(b)(i), a pending criminal case includes:

288 (A) uncharged conduct that is being screened for prosecution, unless one year has  
289 passed since the day on which the board was notified of the screening and no  
290 charge has been filed within that time period; and

291 (B) charged conduct that has not reached resolution.

292 (c) If the board delays setting the hearing date as described in Subsection (1)(b), the  
293 board shall set a hearing date no later than six months after the day on which the final  
294 criminal case described in Subsection (1)(b) has been resolved.

295 (d) (i) If the board delays setting the hearing date as described in Subsection (1)(b),  
296 the board shall establish and use a process to monitor the progress of the pending  
297 criminal action by seeking or obtaining updates no less frequently than every six  
298 months.

299 (ii) The board shall establish the process described in Subsection (1)(d)(i) by creating

300 rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking  
301 Act.

302 (2) (a) Before reaching a final decision to release [any] an offender under this chapter,  
303 the chair shall cause the offender to appear before the board, [its] the board's panel, or [  
304 any] an appointed hearing officer, who shall personally interview the offender to  
305 consider the offender's fitness for release and verify as far as possible information  
306 furnished from other sources.

307 (b) [~~Any~~] An offender may waive a personal appearance before the board.

308 (c) (i) [~~Any~~] An offender outside of the state shall, if ordered by the board, submit to  
309 a courtesy hearing to be held by the appropriate authority in the jurisdiction in  
310 which the offender is housed in lieu of an appearance before the board.

311 (ii) [~~]~~The offender shall be promptly notified in writing of the board's decision.

312 (3) (a) In the case of an offender convicted of violating or attempting to violate any of  
313 the provisions of Section 76-5-301.1, Subsection 76-5-302(2)(b)(vi), Section  
314 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,  
315 76-5-404.1, 76-5-404.3, or 76-5-405, the chair may appoint one or more [~~alienists~~]  
316 licensed mental health professionals who shall examine the offender within six  
317 months prior to a hearing at which an original parole date is granted on any offense  
318 listed in this Subsection (3).

319 (b) (i) The [~~alienists~~] licensed mental health professional shall report in writing the  
320 results of the examination to the board prior to the hearing.

321 (ii) The report of the appointed [~~alienists~~] licensed mental health professional shall  
322 specifically address the question of the offender's current mental condition and  
323 attitudes as they relate to any danger the offender may pose to children or others if  
324 the offender is released on parole.

325 (4) A parolee may petition the board for termination of lifetime parole as provided in  
326 Section 76-3-202 in the case of a parolee convicted of a first degree felony violation, or  
327 convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(2)(b)(vi),  
328 Section 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,  
329 76-5-404.3, or 76-5-405, and released on parole before January 1, 2019.

330 (5) In [any] a case [~~where~~] in which an offender's mental competency is questioned by the  
331 board, the chair may appoint one or more [~~alienists~~] licensed mental health professionals  
332 to examine the offender and report in writing to the board, specifically addressing the  
333 issue of competency.

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

336 (a) the hearing process;

337 (b) ~~[alienist examination]~~ licensed mental health professional examinations; and

338 (c) parolee petitions for termination of parole.

339 Section 7. Section **77-27-7.1** is enacted to read:

340 **77-27-7.1 . Appointment of counsel or lay representative -- Procedures.**

341 (1) If the board in the board's discretion determines that an offender within the board's  
342 jurisdiction is unable, due to physical, mental, or other circumstances, to meaningfully  
343 participate in a board hearing or other board proceeding, the board may appoint, at the  
344 board's own expense, legal counsel or a lay representative to assist the offender.

345 (2) The board shall determine the scope of the representation described in Subsection (1)  
346 based on a review of the totality of the circumstances.

347 (3) This section does not prevent the board from:

348 (a) appointing a licensed mental health professional in accordance with Section 77-27-7;

349 or

350 (b) otherwise seeking information concerning the offender from the department or  
351 another entity.

352 Section 8. **Effective date.**

353 This bill takes effect on May 1, 2024.