

## SB0063S02 compared with SB0063S01

~~text~~ shows text that was in SB0063S01 but was deleted in SB0063S02.

text shows text that was not in SB0063S01 but was inserted into SB0063S02.

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Senator Stephanie Pitcher proposes the following substitute bill:

### BOARD OF PARDONS AND PAROLE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephanie Pitcher**

House Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

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

##### Highlighted Provisions:

This bill:

- ▶ clarifies provisions concerning sentencing, credit for time served, and competency proceedings to reflect the existing jurisdiction of the Board of Pardons and Parole (board);
- ▶ provides that the board may intervene in certain proceedings;
- ▶ modifies provisions relating to offender eligibility for the earned time program;
- ▶ modifies provisions relating to when the board may stay the determination of an offender's hearing date for certain proceedings;
- ▶ replaces the term "alienist" with "licensed mental health professional" for certain

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examinations;

- ▶ grants the board the ability to appoint counsel or a lay representative for an offender under certain conditions; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**76-3-201**, as last amended by Laws of Utah 2023, Chapters 184, 497

**77-15-3**, as last amended by Laws of Utah 2018, Chapter 147

**77-18-111**, as renumbered and amended by Laws of Utah 2021, Chapter 260

**77-27-5**, as last amended by Laws of Utah 2023, Chapters 151, 173

**77-27-5.4**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 4

**77-27-7**, as last amended by Laws of Utah 2022, Chapter 430

ENACTS:

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

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

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

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

(1) As used in this section:

(a) (i) "Convicted" means:

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

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

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

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

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

- (a) to pay a fine;
- (b) to removal or disqualification from public or private office;
- (c) except as otherwise provided by law, to probation in accordance with Section

77-18-105;

- (d) in accordance with Subsection 77-18-111(4), to imprisonment;
- (e) on or after April 27, 1992, to life in prison without parole; or
- (f) to death.

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

- (i) to forfeit property;
- (ii) to dissolve a corporation;
- (iii) to suspend or cancel a license;
- (iv) to permit removal of an individual from office;
- (v) to cite for contempt; or
- (vi) to impose any other civil penalty.

(b) A court may include a civil penalty in a sentence.

(4) In addition to any other sentence that a sentencing court may impose, the court shall order an individual to:

(a) pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act;

(b) subject to Section 77-32b-104, pay the cost expended by an appropriate governmental entity under Section 77-30-24 for the extradition of the individual if the individual:

(i) was extradited to this state, under Title 77, Chapter 30, Extradition, to resolve pending criminal charges; and

(ii) is convicted of an offense in the county for which the individual is returned;

(c) subject to Subsection (5) and Subsections 77-32b-104(2), (3), and (4), pay the cost of medical care, treatment, hospitalization, and related transportation, as described in Section 17-50-319, that is provided by a county to the individual while the individual is in a county

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correctional facility before and after sentencing if:

(i) the individual is convicted of an offense that results in incarceration in the county correctional facility; and

(ii) (A) the individual is not a state prisoner housed in the county correctional facility through a contract with the Department of Corrections; or

(B) the reimbursement does not duplicate the reimbursement under Section 64-13e-104 if the individual is a state probationary inmate or a state parole inmate; and

(d) pay any other cost that the court determines is appropriate under Section 77-32b-104.

(5) The cost of medical care under Subsection (4)(c) does not include expenses incurred by the county correctional facility in providing reasonable accommodation for an inmate qualifying as an individual with a disability as defined and covered by the Americans with Disabilities Act, 42 U.S.C. 12101 through 12213, including medical and mental health treatment for the inmate's disability.

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

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

(1) When a defendant charged with a public offense [~~or serving a sentence of imprisonment~~] is incompetent to proceed, an individual described in Subsection (2)(b) may file a petition in the district court of the county where the charge is pending or where the defendant is confined.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) (a) Subject to this chapter and other laws of the state, and except for a conviction for treason or impeachment, the board shall determine by majority decision when and under what conditions an offender's conviction may be pardoned or commuted.

(b) The [~~Board of Pardons and Parole~~] board shall determine by majority decision when and under what conditions an offender committed to serve a sentence at a penal or correctional facility, which is under the jurisdiction of the department, may:

- (i) be released upon parole;
- (ii) have a fine or forfeiture remitted;
- (iii) have the offender's criminal accounts receivable remitted in accordance with Section 77-32b-105 or 77-32b-106;
- (iv) have the offender's payment schedule modified in accordance with Section 77-32b-103; or
- (v) have the offender's sentence terminated.

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(c) The board shall prioritize public safety when making a determination under Subsection (1)(a) or (1)(b).

(d) (i) The board may sit together or in panels to conduct hearings.

(ii) The chair shall appoint members to the panels in any combination and in accordance with rules made by the board in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act[, ~~by the board~~].

(iii) The chair may participate on any panel and when doing so is chair of the panel.

(iv) The chair of the board may designate the chair for any other panel.

(e) (i) Except after a hearing before the board, or the board's appointed examiner, in an open session, the board may not:

(A) remit a fine or forfeiture for an offender or the offender's criminal accounts receivable;

(B) release the offender on parole; or

(C) commute, pardon, or terminate an offender's sentence.

(ii) An action taken under this Subsection (1) other than by a majority of the board shall be affirmed by a majority of the board.

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

(2) (a) In the case of [~~any hearings~~] a hearing, 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) (i) 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.

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

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

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- (i) a pardon, parole, commutation, or termination of an offender's sentence;
- (ii) the modification of an offender's payment schedule for restitution; or
- (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.

(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(25)(b)(xi), records of the deliberative process are exempt from Title 63G, Chapter 2, Government Records Access and Management Act.

(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.

(4) (a) 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.

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

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

- (i) shall continue or terminate the respite or reprieve; or
- (ii) may commute the punishment or pardon the offense as provided.

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

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

(5) (a) In determining when, where, and under what conditions an offender serving a sentence may be paroled or pardoned, have a fine or forfeiture remitted, have the offender's criminal accounts receivable remitted, or have the offender's sentence commuted or terminated, the board shall:

(i) consider whether the offender has made restitution ordered by the court under Section 77-38b-205, or is prepared to pay restitution as a condition of any parole, pardon, remission of a criminal accounts receivable or a fine or forfeiture, or a commutation or termination of the offender's sentence;

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(ii) except as provided in Subsection (5)(b), develop and use a list of criteria for making determinations under this Subsection (5);

(iii) consider information provided by the [~~Department of Corrections~~] department regarding an offender's individual case action plan; and

(iv) review an offender's status within 60 days after the day on which the board receives notice from the [~~Department of Corrections~~] department that the offender has completed all of the offender's case action plan components that relate to activities that can be accomplished while the offender is imprisoned.

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

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

(a) the offense committed by the parolee; and

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

(7) For an offender 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.

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

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

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

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

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

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

(1) The board shall establish an earned time program that reduces the period of incarceration for offenders who successfully complete specified programs, the purpose of which is to reduce the risk of recidivism.

(2) The earned time program shall:

(a) provide not less than four months of earned time credit each for the completion of



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up to two programs that:

(i) are approved by the board in collaboration with the [~~Department of Corrections~~] department; and

(ii) are recommended programs that are part of the offender's case action plan; and

(b) allow the board to grant in [~~its~~] the board's discretion earned time credit in addition to the earned time credit provided under Subsection (2)(a).

(3) The earned time program may not provide earned time credit for [~~offenders~~] an offender:

(a) whose previously ordered release date does not provide enough time, including time for transition services, for the [~~Board of Pardons and Parole~~] board to grant the earned time credit;

(b) who [~~have~~] has been sentenced by the court to a term of life without the possibility of parole;

(c) who [~~have~~] has been ordered by the [~~Board of Pardons and Parole~~] board to serve until the expiration of the offender's sentence, including a life sentence;

(d) who [~~do~~] does not have a current release date; [~~or~~]

(e) who [~~have~~] has not met a contingency requirement for release that has been ordered by the board[~~;~~]; or

(f) who has been given a termination date by the board.

(4) The board may order the forfeiture of earned time credits under this section if [~~it~~] the board determines a rescission hearing is necessary.

(5) The department shall notify the board not more than 30 days after an offender completes a program as defined in Subsection [~~77-27-5.4(2)(a)~~] (2)(a).

(6) The board shall collect data for the fiscal year regarding the operation of the earned time credit program, including:

(a) the number of offenders who have earned time credit under this section in the prior year;

(b) the amount of time credit earned in the prior year;

(c) the number of offenders who forfeited earned time credit; and

(d) additional related information as requested by the Commission on Criminal and Juvenile Justice.

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(7) The board shall collaborate with the [~~Department of Corrections~~] department in the establishment of the earned time credit program.

(8) To the extent possible, programming and hearings shall be provided early enough in an offender's incarceration to allow the offender to earn time credit.

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

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

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

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

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

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

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

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

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

(B) charged conduct that has not reached resolution.

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

~~(d) (i) If the board delays setting the hearing date as described in Subsection (1)(b), the board shall establish and use a process to monitor the progress of the pending criminal action~~

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by seeking or obtaining updates no less frequently than every six months.

(ii) The board shall establish the process described in Subsection (1)(d)(i) by creating rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

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

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

(c) (i) ~~[Any]~~ An offender outside of the state shall, if ordered by the board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction in which the offender is housed in lieu of an appearance before the board. The offender shall be promptly notified in writing of the board's decision.

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

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

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

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

(5) In ~~[any]~~ a case ~~[where]~~ in which an offender's mental competency is questioned by

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the board, the chair may appoint one or more [~~alienists~~] licensed mental health professionals to examine the offender and report in writing to the board, specifically addressing the issue of competency.

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

- (a) the hearing process;
- (b) [~~alienist examination~~] licensed mental health professional examinations; and
- (c) parolee petitions for termination of parole.

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

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

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

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

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

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

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

Section 8. **Effective date.**

This bill takes effect on May 1, 2024.