

Representative Judy Weeks Rohner proposes the following substitute bill:

BOARD OF PARDONS AND PAROLE AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Judy Weeks Rohner

Senate Sponsor: Jacob L. Anderegg

LONG TITLE

General Description:

This bill modifies the responsibilities of the Board of Pardons and Parole.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ requires the Board of Pardons and Parole to prioritize public safety when making a decision about an offender;
- ▶ enacts reporting requirements; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

77-27-5, as last amended by Laws of Utah 2021, Chapters 21, 246 and 260 and last amended by Coordination Clause, Laws of Utah 2021, Chapter 260

ENACTS:



26 77-27-32, Utah Code Annotated 1953



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

29 Section 1. Section 77-27-5 is amended to read:

30 **77-27-5. Board of Pardons and Parole authority.**

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

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

- 37 (i) be released upon parole;
- 38 (ii) have a fine or forfeiture remitted;
- 39 (iii) have the offender's criminal accounts receivable remitted in accordance with

40 Section 77-32b-105 or 77-32b-106;

- 41 (iv) have the offender's payment schedule modified in accordance with Section
- 42 77-32b-103; or

- 43 (v) have the offender's sentence terminated.

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

46 [~~(c)~~] (d) (i) The board may sit together or in panels to conduct hearings.

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

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

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

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

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

- 56 (B) release the offender on parole; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

87 (4) (a) This chapter may not be construed as a denial of or limitation of the governor's

88 power to grant respite or reprieves in all cases of convictions for offenses against the state,
89 except treason or conviction on impeachment.

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

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

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

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

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

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

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

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

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

109 (iii) consider information provided by the Department of Corrections regarding an
110 offender's individual case action plan; and

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

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

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

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

119 (b) the parole period under Section 76-3-202, and in accordance with Section
120 77-27-13.

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

125 Section 2. Section 77-27-32 is enacted to read:

126 **77-27-32. Reporting requirements.**

127 (1) The board shall publicly display metrics on the board's website, including:

128 (a) a measure of recidivism;

129 (b) a measure of time under board jurisdiction;

130 (c) a measure of prison releases by category;

131 (d) a measure of parole revocations;

132 (e) a measure of alignment of board decisions with the guidelines established by the

133 Sentencing Commission under Section 63M-7-404; and

134 (f) a measure of the aggregate reasons for departing from the guidelines described in

135 Subsection (1)(e).

136 (2) On or before September 30 of each year, the board shall submit to the commission

137 and the Law Enforcement and Criminal Justice Interim Committee a report for the previous

138 fiscal year that summarizes the metrics in Subsection (1).