

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: _____

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 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



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **76-3-201**, as last amended by Laws of Utah 2023, Chapters 184, 497

31 **77-15-3**, as last amended by Laws of Utah 2018, Chapter 147

32 **77-18-111**, as renumbered and amended by Laws of Utah 2021, Chapter 260

33 **77-27-5**, as last amended by Laws of Utah 2023, Chapters 151, 173

34 **77-27-5.4**, as last amended by Laws of Utah 2016, Third Special Session, Chapter 4

35 **77-27-7**, as last amended by Laws of Utah 2022, Chapter 430

36 ENACTS:

37 **77-27-7.1**, Utah Code Annotated 1953



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

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

41 **76-3-201. Sentences or combination of sentences allowed -- Restitution and other**
42 **costs -- Civil penalties.**

43 (1) As used in this section:

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

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

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

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

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

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

54 (a) to pay a fine;

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

56 (c) except as otherwise provided by law, to probation in accordance with Section

57 77-18-105;

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

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

60 (f) to death.

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

62 (i) to forfeit property;

63 (ii) to dissolve a corporation;

64 (iii) to suspend or cancel a license;

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

66 (v) to cite for contempt; or

67 (vi) to impose any other civil penalty.

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

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

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

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

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

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

79 (c) subject to Subsection (5) and Subsections 77-32b-104(2), (3), and (4), pay the cost
80 of medical care, treatment, hospitalization, and related transportation, as described in Section
81 17-50-319, that is provided by a county to the individual while the individual is in a county
82 correctional facility before and after sentencing if:

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

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

87 (B) the reimbursement does not duplicate the reimbursement under Section 64-13e-104

88 if the individual is a state probationary inmate or a state parole inmate; and

89 (d) pay any other cost that the court determines is appropriate under Section
90 77-32b-104.

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

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

97 **77-15-3. Petition for inquiry regarding defendant -- Filing -- Contents.**

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

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

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

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

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

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

112 **77-18-111. Sentence -- Term -- Construction.**

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

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

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

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

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

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

130 **77-27-5. Board of Pardons and Parole authority.**

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

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

137 (i) be released upon parole;

138 (ii) have a fine or forfeiture remitted;

139 (iii) have the offender's criminal accounts receivable remitted in accordance with
140 Section 77-32b-105 or 77-32b-106;

141 (iv) have the offender's payment schedule modified in accordance with Section
142 77-32b-103; or

143 (v) have the offender's sentence terminated.

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

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

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

- 150 (iii) The chair may participate on any panel and when doing so is chair of the panel.
- 151 (iv) The chair of the board may designate the chair for any other panel.
- 152 (e) (i) Except after a hearing before the board, or the board's appointed examiner, in an
153 open session, the board may not:
- 154 (A) remit a fine or forfeiture for an offender or the offender's criminal accounts
155 receivable;
- 156 (B) release the offender on parole; or
- 157 (C) commute, pardon, or terminate an offender's sentence.
- 158 (ii) An action taken under this Subsection (1) other than by a majority of the board
159 shall be affirmed by a majority of the board.
- 160 (f) A commutation or pardon may be granted only after a full hearing before the board.
- 161 (2) (a) In the case of [~~any hearings~~] a hearing, timely prior notice of the time and
162 location of the hearing shall be given to the offender.
- 163 (b) The county or district attorney's office responsible for prosecution of the case, the
164 sentencing court, and law enforcement officials responsible for the defendant's arrest and
165 conviction shall be notified of any board hearings through the board's website.
- 166 (c) Whenever possible, the victim or the victim's representative, if designated, shall be
167 notified of original hearings and any hearing after that if notification is requested and current
168 contact information has been provided to the board.
- 169 (d) (i) Notice to the victim or the victim's representative shall include information
170 provided in Section [77-27-9.5](#), and any related rules made by the board under that section.
- 171 (ii) The information under Subsection (2)(d)(i) shall be provided in terms that are
172 reasonable for the lay person to understand.
- 173 (3) (a) A decision by the board is final and not subject for judicial review if the
174 decision is regarding:
- 175 (i) a pardon, parole, commutation, or termination of an offender's sentence;
- 176 (ii) the modification of an offender's payment schedule for restitution; or
- 177 (iii) the remission of an offender's criminal accounts receivable or a fine or forfeiture.
- 178 (b) Deliberative processes are not public and the board is exempt from Title 52,
179 Chapter 4, Open and Public Meetings Act, when the board is engaged in the board's
180 deliberative process.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

210 (iv) review an offender's status within 60 days after the day on which the board
211 receives notice from the [~~Department of Corrections~~] department that the offender has

212 completed all of the offender's case action plan components that relate to activities that can be
 213 accomplished while the offender is imprisoned.

214 (b) The board shall determine whether to remit an offender's criminal accounts
 215 receivable under this Subsection (5) in accordance with Section 77-32b-105 or 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
 219 77-27-13.

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

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

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

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

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

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

229 **77-27-5.4. Earned time program.**

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

233 (2) The earned time program shall:

234 (a) provide not less than four months of earned time credit each for the completion of
 235 up to two programs that:

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

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

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

241 (3) The earned time program may not provide earned time credit for [~~offenders~~] an
 242 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 time
245 credit;

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

248 (c) who [~~have~~] has been ordered by the [~~Board of Pardons and Parole~~] board to serve
249 until 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~~]
255 the board determines a rescission hearing is necessary.

256 (5) The department shall notify the board not more than 30 days after an offender
257 completes 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
259 time 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
269 in an 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~~]

274 ~~of 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 which the~~
276 ~~offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and~~
277 ~~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 of
281 the department, set a hearing date to establish the offender's release date or date for rehearing;
282 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) if
285 the offender has an additional pending criminal case at the time of the offender's commitment
286 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; and

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

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

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

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

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

303 (3) (a) In the case of an offender convicted of violating or attempting to violate any of
304 the provisions of Section 76-5-301.1, Subsection 76-5-302(2)(b)(vi), Section 76-5-402,

305 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,
306 or 76-5-405, the chair may appoint one or more [~~alienists~~] licensed mental health professionals
307 who shall examine the offender within six months prior to a hearing at which an original parole
308 date is granted on any offense listed in this Subsection (3).

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

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

315 (4) A parolee may petition the board for termination of lifetime parole as provided in
316 Section 76-3-202 in the case of a parolee convicted of a first degree felony violation, or
317 convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(2)(b)(vi), Section
318 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,
319 or 76-5-405, and released on parole before January 1, 2019.

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

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

326 (a) the hearing process;

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

328 (c) parolee petitions for termination of parole.

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

330 **77-27-7.1. Appointment of counsel or lay representative -- Procedures.**

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

335 (2) The board shall determine the scope of the representation described in Subsection

336 (1) based on a review of the totality of the circumstances.

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

338 (a) appointing a licensed mental health professional in accordance with Section

339 [77-27-7](#); or

340 (b) otherwise seeking information concerning the offender from the department or

341 another entity.

342 Section 8. **Effective date.**

343 This bill takes effect on May 1, 2024.