

<b>State of Utah</b> <b>Board of Pardons and Parole</b>  <b>Internal Operating</b> <b>Policies and Procedures</b>	Reference: 2.05	Page: 1 of 8
	Effective Date: October 25, 2004	Revision Date: July 30, 2013
<b>Subject: Delegation of Authority to Board Staff/Hearing Officers</b>		
<b>Authorized by:</b>		
Clark A. Harms, Chairman, Board of Pardons and Parole		

**Purpose:** To delegate the Board’s authority to conduct hearings and perform other ministerial functions to the Administrative Coordinator, Senior Hearing Officers, and Hearing Officers.

**Authority:** UCA 77-27-5; 77-27-7; 77-27-9; 77-27-11; UAC R671 et. seq.

**Policy:** It is the policy of the Board to delegate authority to the Administrative Coordinator, Senior Hearing Officers, and Hearing Officers (referred to in the statutes as “appointed examiner” and “designated hearing examiner” or “hearing officer”) to preside at hearings and to perform other duties as assigned.

All preliminary recommendations, interim decisions or orders made by the Administrative Coordinator, Senior Hearing Officers or Hearing Officers, pursuant to this policy, shall be ratified by a majority vote of the Board, and once ratified, are the decision and order of the Board.

All preliminary recommendations, interim decisions or orders made by the Administrative Coordinator, Senior Hearing Officers or Hearing Officers, pursuant to this policy, shall have the force and effect of a Board decision and order until they are amended, modified, ratified or rescinded by a majority vote of the Board.

## **Procedure:**

### **I- Delegation of Board Authority Regarding Hearings:**

- A. Board hearings are held in order to collect information, hear from victims, provide a fair and impartial opportunity for offenders to be heard and to fully inform the Board regarding a case or matter prior to Board action.
  
- B. In order to promote the expeditious and efficient fulfillment of the Board's constitutional and statutory duties, the Board delegates its authority to conduct parole, parole revocation, restitution, rescission and all other Board hearings (except commutation and pardon hearings) to the Board's Administrative Coordinator, Senior Hearing Officers and Hearing Officers ("hearing officials").
  
- C. When conducting Board hearings, the hearing official, acting under the Board's direction and this delegation of authority, is empowered to:
  - 1. Swear participants, maintain order, ensure the development of a clear and complete record, and receive relevant evidence and testimony in order to make a recommendation to the Board thereon.
  
  - 2. Set reasonable limits on repetitive and cumulative testimony and exclude any witness whose later testimony might be colored by the testimony of another witness, or any person whose presence might have a chilling effect on testifying witnesses.
  
  - 3. Rule on motions, exhibit lists, and suggested findings.
  
  - 4. Require the filing of memoranda of law and the presentation or oral argument with respect to any question of law.

5. Compel testimony and order production of evidence and the appearance of witnesses.
  6. Admit evidence that has reasonable and probative value.
  7. Limit evidentiary hearings to the sole purpose of receiving evidence which either refutes or substantiates specific claims or charges, and not to permit the hearing to go to unrelated matters.
  8. Note for the record any objection made as to the admissibility of evidence, and make a ruling thereon or take it under advisement to be ruled on later.
  9. Exercise discretion in the exclusion of inadmissible evidence or order parties to discontinue presenting cumulative evidence, and afford parties objecting to a ruling to state their precise grounds for the objection at the time such evidence is offered.
  10. Continue a hearing in the event a requested witness fails to appear, or for other good cause; and,
  11. Close proceedings as set forth in Utah Open and Public Meetings Act.
- C. After all testimony, documentary evidence, and arguments have been presented, the hearing official shall close the record and terminate the proceedings unless the parties to the hearing ask to submit a post-hearing brief or memorandum of law within a specified time. Upon receipt of post-hearing documents or upon expiration of the time to receive such documents, the record of the proceeding is closed.
- D. In all cases where a hearing official has conducted a hearing, a written recommendation to the Board along with the documents directly related to the hearing and the full case file will be presented to the Board for review and final decision.

- E. Board decisions shall be based upon the record established. No additional or new evidence is permitted unless compelled by the Board, in which case a rehearing or other means to disclose information to the inmate shall be ordered.

## **II. DELEGATION OF BOARD AUTHORITY TO SENIOR HEARING OFFICERS**

- A. In order to promote the expeditious and efficient fulfillment of the Board's constitutional and statutory duties, the Board delegates its authority in the following particulars to the Board's Administrative Coordinator and Senior Hearing Officers, who may, as assigned, by special attention review, (subject to ratification by the Board):
  1. Order an offender's placement in a Residential Treatment Program, Community Corrections Center, Parole Violator Center, Halfway Back Program, or Transitional Services, with a waiver signed by the offender.
  2. Impose up to 120 days confinement as a sanction in lieu of a warrant and return to prison for a parole violation (including jail, CCC placement, Parole Violator placement, confinement in the custody of DOC or pursuant to a contract with DOC, or home confinement).
  3. Rescind a parole date, and schedule a rescission hearing after 14 days, when a parole date is rescinded due to lack of bed space at a community corrections center when:
    - a. an offender's parole conditions mandate CCC placement; or
    - b. when an offender has no approved residence, is in need of transitional services at the time of proposed release, and no space at a CCC is available for transitional services placement.
  4. Grant or reinstate a parole date when space becomes available at a community corrections center after parole has been rescinded due to lack of bed space at a community corrections center (whether or not a rescission hearing has been held).
  5. Approve or deny requests to restart parole within a year of parole commencement. All such requests must be accompanied by a waiver from the offender agreeing to the parole re-start. Any restart request made by AP&P after more than one year of parole must be routed to the Board.
  6. If the Board orders a future incarceration reduction ("time cut") based on an offender's completion of a program, meeting specified conditions or other contingencies, and the program is later completed, or the condition or contingency is satisfied, a Senior Hearing Officer or the Administrative Coordinator, may order up to the maximum time cut approved by the Board, or as much of such time as remains.

- a. If the Senior Hearing Officer or Administrative Coordinator opposes or recommends against such an incarceration reduction, the file and reduction consideration shall be routed to the Board for determination.
7. Adjust a release date to coincide with the Tuesday release date prior to the expiration of sentence, when expiration of sentence has been previously ordered by the Board.
8. Order toll time:
  - a. When a parolee absconds parole;
  - b. When a parolee is incarcerated by any other jurisdiction while on parole.
  - c. When a parolee is absent from the State of Utah without permission of either APP or the Board.

If, however, possible toll time results from incarceration in other states or federal custody, and the offenses did not occur while on parole, such toll time requests should be routed to the Board.
9. Impose, as a condition of parole, any restitution amount(s) with interest, previously imposed by a sentencing Court, or previously imposed and ordered by the Board.
10. Exercise all authority and shall take any ministerial action which is delegated to the Hearing Officers.

### **III. DELEGATION OF BOARD AUTHORITY TO HEARING OFFICERS**

- A. In order to promote the expeditious and efficient fulfillment of the Board's constitutional and statutory duties, the Board delegates its authority in the following particulars to all Board Hearing Officers, who may, as assigned, by special attention review, (subject to ratification by the Board):
  1. Approve APP recommendations as to minor parole infractions not considered of sufficient magnitude to require a parole violation warrant, parole violation revocation or hearing, or other Board action.
  2. Initiate routings and/or support staff assistance.

3. Respond to inquiries from interested parties as to the disposition of cases, and exercise judgment as to what information may be released that has not been previously classified as sensitive or confidential.
4. Remove or modify as a special condition of parole:
  - a. Outpatient Substance Abuse Therapy with a signed waiver.
  - b. Outpatient Sex Offender Therapy with a signed waiver.
  - c. "No contact" conditions, if agreed upon by the victim, Adult Probation and Parole, and the therapist.
5. Continue offenders on parole who commit minor traffic violations occurring under chapter 6, article 3 and 6 through 18 of the Motor Vehicle Code, UCA, section 41-6-20 through 41-6-28 and 41-6-46 through 41-6-191. These provisions cover all moving violations except DUI's, reckless driving offenses, evading, fleeing an officer, failure to stop at an officer's command, and any serious moving violation.
6. Add or modify special parole conditions pursuant to a signed waiver (including restitution amounts, fines, fees, supervision fees, DOC CCC fees and non-custodial alternative event sanctions).
7. Process and enter restitution, fine, fee or interest clarifications, and any other clerical corrections, including corrections of Board records and decisions.
8. Adjust parole conditions based upon DOC reports on completion of special parole conditions or other routine matters.
9. Remove electronic monitoring as a special condition of parole as recommended by the Department of Corrections. Adding electronic monitoring may only be ordered with prior approval from the Board.
10. Deny duplicative special attention requests previously received and processed by the Board if no new material facts, circumstances or issues are presented.
11. Deny any special attention request seeking action for matters previously addressed and acted upon by the Board, i.e. second or subsequent special attention time cut request for program completion, when the same program completion has been previously addressed by the Board during the same continuous period of incarceration.

#### **IV. EXERCISE OF DELEGATED AUTHORITY – PROCEDURE**

- A. All special attention or administrative reviews will be screened by a hearing officer.
- 1.** If the requested or appropriate action is within the authority delegated herein to hearing officers, the hearing officer shall summarize the requested action or information, and make and enter the hearing officer's decision on the summary in a form approved by the Board. The hearing officer's decision shall be entered by staff as the preliminary order of the Board.
  2. If the requested or appropriate action is not within the authority delegated herein to hearing officers, but is within the authority delegated to the senior hearing officers, the hearing officer shall summarize the requested action or information, and forward the special attention request to a senior hearing officer, who shall then make and enter the senior hearing officer's decision on the summary in a form approved by the Board. The senior hearing officer's decision shall be entered by staff as the preliminary order of the Board.
  3. All other special attention requests, not within the delegated authority of the senior hearing officers or hearing officers shall be routed to the Board for decision. The hearing officer will include the appropriate routing cover sheet and should add any comments or recommendations. The initials of the originating hearing officer will always be affixed. (Examples of special attention requests that should be routinely routed to the Board include cases where new convictions have occurred, serious violations, unusual or unique incidents that do not occur with frequency, incidents involving violence, and matters that in the judgment and discretion of the hearing officer should be called to the attention of the Board).
  4. All special attention review summaries will include the following information:
    - a. Offender Name and DOC offender number.

- b. Date of routing or processing.
- c. A summary of the requested action and the facts and circumstances in support thereof.
- d. Any interim decision made.
- e. The number of previous alternative events.

5. All special attention reviews and decisions made thereon by senior hearing officers, hearing officers or the administrative coordinator will be submitted to the Board for review and approval or modification.

6. Board staff will print copies of Board dispositions which have been acted on pursuant to this policy. A cover sheet showing the Board's review, approval, and/or modification of these results is to be attached to the orders for Board review. Copies will be maintained.