

AN INMATE'S GUIDE TO THE UTAH BOARD OF PARDONS & PAROLE

PAROLE HEARING HANDBOOK 2025



INTRODUCTION

The purpose of this handbook is to help you and your family understand the parole process. It is not intended to provide legal advice.

This information is accurate as of March 2025. Future laws and policies may change this content.

The Utah Board of Pardons and Parole thanks all groups and individuals who helped make this handbook.

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PART 1

ABOUT THE BOARD

WHAT IS THE BOARD OF PARDONS & PAROLE?



The Utah Board of Pardons and Parole (Board) was created by the Utah Constitution. The Board makes decisions about parole, prison release, commutation, executive clemency, and pardons for all individuals in the custody of the Utah Department of Corrections.

There are five full-time Board members and up to five part-time (pro tempore) members. The Governor appoints them, and the Senate approves them for five-year terms.

The Board has hearing officers who conduct some hearings and make recommendations. Hearing officers DO NOT make any decisions.

The mission of the Board is to protect public safety through informed and just decisions that consider victim input, the accountability of those under its jurisdiction, risk reduction, and rehabilitation. These decisions must be aligned with federal and state constitutions and statutes and the Board's administrative rules.

(See Utah Constitution Article VII, §12; Utah Code Ann. §77-27-2; Utah Admin. Code R671)



WHAT IS THE BOARD'S ROLE WITH SENTENCING?

Utah uses indeterminate sentencing, which means judges give a range of time for incarceration instead of a fixed amount (e.g., "0 to 5 years" rather than "2.5 years"). After you arrive at prison, the Board uses a form called a matrix, provided by the Utah Sentencing Commission, to calculate your sentencing guideline.*

The guidelines determined by AP&P for the Court (before you are sentenced) are not used by the Board.

Keep in mind, guidelines are recommendations, not mandates. Statute requires incarceration for the maximum sentence unless the Board grants an earlier release. The Board can choose to release someone either before or after the guideline. The guideline is just a starting point. The Board also looks at other factors including, but not limited to:

- the harm done to the victim,
- your behavior in prison,
- progress in treatment or education,
- and your criminal history.

Because of this, **people convicted of similar crimes can get different decisions from the Board regarding release, parole, parole conditions, and how long they stay in prison.**

*For more information:

<https://justice.utah.gov/sentencing/sentencing-and-release-guidelines/>

See Utah Code §63M-7-404

THE BOARD HAS THE AUTHORITY TO:

- *Grant parole*
- *Determine or adjust restitution*, fines, or forfeitures*
- *Terminate sentences before expiration*
- *Issue arrest warrants for parole violations*
- *Determine consequences for parole violations*
- *Revoke parole*
- *Conduct evidentiary hearings*
- *Grant pardons (except in cases of treason or impeachment)*
- *In rare or special cases, reduce or commute sentences*



*The Board can only determine restitution to cases sentenced before July 1, 2021.



BOARD DECISIONS

The Board keeps a record of all public hearings and decisions for 30 years after a sentence is terminated. You can request a copy by submitting a written request. There may be a fee for this service.

In most cases, the Board's decisions are final and cannot be appealed or reviewed by a court. However, a court may review a decision if someone believes their due process rights were violated or that the Board misused its authority. In the Utah State Courts, this type of review is called a Petition for Extraordinary Relief, under Utah Rule of Civil Procedure 65B. Board decisions cannot be challenged through a regular appeal or a post-conviction action. The Board may reconsider its own decisions through Special Attention Reviews, Rescission Hearings, or Redeterminations.

See Utah Code §77-27-5; Utah Admin. Code R671-305

Structured Decision-Making Framework

The Board uses a structured decision-making framework (SDMF) to guide all release decisions. This system is evidence-based and considers different parts of your history and behavior, called "domains," that research shows impact successful reentry into the community. These domains are used to help guide decisions, not as a strict set of rules.

Risk-Related Domains (predict your likelihood of success on parole) such as:

- **Criminal and Parole History:** Looks at when your criminal behavior began, how often it happened, whether it became more serious, and any previous outcomes while on probation or parole.
- **Self-Control:** Examines your ability to behave responsibly and make positive choices.
- **Programming:** Considers whether you've participated in and completed required programs. Also considers your participation in other programming like education, skills, employment, peer engagement, etc.
- **Institutional/Community Behavior:** Reviews your behavior while incarcerated and under supervision in the community.
- **Offender Change:** Looks for signs that you've benefited from programs, improved your thinking and decision-making, and made lasting changes in your behavior.
- **Release Plan:** Assesses whether you have a clear, realistic plan for your release (*See page 14 for more on release plans*).
- **Case-Specific Factors:** Considers any unique details about your situation that don't fit into the other categories.

Policy-Related Domains (focus on public expectations) such as:

- **Victim Considerations:** Considers the harm caused to the victim, including physical or emotional injury, property damage, and how the crime affected their daily life.
- **Statutory Considerations:** Takes into account parole guidelines and laws that apply to your case.
- **Community Considerations:** Looks at community support or opposition to your parole and the impact your crime had on the community.

This system ensures that decisions are fair, transparent, and focused on public safety while also considering your progress and readiness for reentry.

Any document that the Board uses to make a decision will be shared with you in the blue disclosure packet (*see Disclosure Packet on page 13 for more information*).






THE BOARD & DEPARTMENT OF CORRECTIONS

The Board and the Utah Department of Corrections (UDC) work together, but they are separate agencies. The Board makes decisions, while UDC has physical custody of inmates.




UDC is in charge of housing assignments, providing treatment programs ordered by the Board (depending on available bed space and eligibility), and supervising you while on parole. UDC will decide if you qualify for treatment. Keep in mind, limited space in treatment programs can affect your parole date, as you may have to wait for a spot to open up.

See Utah Code §64-13

UDC CAN

-  Determine housing
-  Provide treatment
-  Determine if someone's behavior makes them eligible to participate in treatment
-  Provide supervision while on parole
-  Resolve conflicts between a parolee and parole officer

UDC CANNOT

-  *Make release decisions*
-  *Revoke parole*
-  *Determine parole conditions*

GETTING A PAROLE DATE

STEP 1: BOARD TAKES JURISDICTION

Once you are sentenced to prison, the Board takes responsibility for making release decisions and deciding when and how your prison sentence will end. In the first six months after your sentence, the Board will:

- Review the Judgment & Commitment (J&C) to confirm your sentence
- Calculate your sentence's expiration date, credit for time served, and sentencing guideline
- Review your Pre-Sentence Investigation (PSI) report (except for the matrix)
- Set a date for your Original Hearing (See page 20 for more information)

The Board does not complete this process for individuals with a life without parole or death sentence.

See Utah Code Ann. §77-27-5

HOW THE BOARD CALCULATES YOUR TIME



- **Expiration Date:** *This is the longest time you can serve in prison based on the judge's sentence.*
- **Sentencing Guideline:** *This is a recommendation, not a mandate, for how long you should serve, calculated using a form from the Utah Sentencing Commission. It's just a suggestion, and the Board can release you before or after this time.*
- **Credit for Time Served:** *The time you've already spent in custody for the crime that led to this sentence reduces your maximum prison time. However, time for new crimes committed in prison or time spent in a psychiatric facility before prison doesn't count toward this credit.*

STEP 2: SCHEDULING REVIEW

Within the first six months of going to prison, the Board will conduct a Scheduling Review* to set the date for your Original Hearing (OH). When deciding the date, the Board looks at factors like:

- Minimum sentence
- Sentencing guidelines
- Nature of the offense
- Victim impact (if applicable)
- Rehabilitation needs
- Reports and other relevant documents

You will receive the Scheduling Review, which includes the tentative month and year for your Original Hearing. The review may also include orders for assessments, treatment, or other programs, which will be added to your Case Action Plan (CAP) by UDC. The Board expects you to follow your CAP and avoid any discipline violations before your Original Hearing.

Once the Scheduling Review is complete, the Board will also send your guideline matrix and calculation of credit for time served.

**See page 27 for more information on Scheduling Reviews.*

See Utah Admin. Code §R671-201

STEP 3: PREPARE FOR YOUR ORIGINAL HEARING

FOLLOW THESE SAME STEPS FOR A REHEARING

You can find more details about Original Hearings on page 20 and Rehearings on page 21.

THINGS THE BOARD WILL CONSIDER



The Board looks at many factors when making its decision. *For more details on what is considered, see the Structured Decision-Making Framework (SDMF) on page 8.*

As your hearing approaches, you may want to share information about your case, your progress, and your plans. **You can submit information to the Board in writing at any time.** This can be from you, your friends, family, community members, or other incarcerated individuals. Any information sent will be reviewed by Board staff and added to your file and reviewed by the Board when making its decision. The information will also be shared with you in the blue packet (*see next section for more information*). **Please note that submitting information does not trigger an action.**

People submitting information can talk about your character, the changes they have seen in you, your release plan, and your support system on the outside. It can also be helpful to submit information documenting acceptance into a treatment program or a job you've been offered.

Submissions from people other than UDC and the incarcerated individual are limited to five (5) pages.

REVIEW BLUE PACKET/DISCLOSURE

At least three weeks before your Original Hearing, you'll receive a disclosure, often called a "blue" packet. This packet contains all the information the Board will use to make its decision about parole.*

Review the packet carefully to ensure the information is accurate. You can correct or discuss anything that is wrong or missing before or during the hearing. If information is received by the Board after you receive the Blue Packet, it will be sent to you as a "late disclosure."

*If sharing certain information could compromise the safety of the prison or the person providing the information, you will get a general description of the information, but not a copy of the document in the Board's file.

See Utah Admin. Code §R671-303

IMPORTANT:

Responding to Information Used by the Board

- Review all documents carefully.
- You can submit corrections, responses, or questions in writing before your hearing, or bring them up during the hearing.
- If you need to correct something, clearly explain the issue and include any proof to support your correction.

WRITE A RELEASE PLAN:



Getting and Returning Your Inmate Hearing Information Packet

- Your case manager will give you a packet 4-6 weeks before your Original Hearing.
- Complete the packet, including your release plans, and return it to your case manager at least 3 weeks before your hearing.
- Your case manager will return the completed packet to the Board.
- TIP: If you are required to complete community-based treatment (like Substance Abuse or Sex Offender treatment), it's a good idea (but not required) to include a letter of acceptance from the treatment provider in your packet.

What to Include in Your Release Plan:

A good release plan helps you return to the community and succeed on parole. The information in your release plan can have a big impact on your hearing and the Board's decision.

- Make sure everything you provide is accurate and detailed.
- Write clearly in pen.
- Use extra pages if you need more space.
- Don't write on the back of pages.

TIP: PLAN YOUR KEY POINTS



Before filling out the packet, draft your main points on a separate sheet of paper.

Include:

- Your past offense
- What you're doing now to improve
- Your future goals
- Support from positive family and friends
- Your actions since the offense
- Activities showing better choices
- How you've reduced risk factors (*see page 32*)
- How you've prepared for release
- How you'll keep addressing these risks after release
- You can also explain any factors that could reduce your risk (*see page 30*)

THE PACKET WILL ASK ABOUT:

- **Your history:**

- ◇ Your version of what led to your incarceration
- ◇ How your actions affected the victim
- ◇ Drug/alcohol use
- ◇ Why you engaged in criminal behavior
- ◇ Family
- ◇ Education
- ◇ Adverse Childhood Experiences
- ◇ Medical/mental health issues
- ◇ Gang membership
- ◇ Programing and treatment

- **Plans After Release:**

- ◇ **Housing** - Where will you live and why is it a supportive environment?
- ◇ **Employment** - Where will you work, and what will you do? Stable work helps reduce the risk of reoffending.
- ◇ **Treatment** - What's your treatment plan? Do you have strategies for staying stable? What's your back up plan?
- ◇ **Transportation** - How will you get to treatment, work, or appointments?
- ◇ **Support System** - What people or organizations will help and encourage you?
- ◇ **Parole Compliance** - How will you follow parole rules? What support do you need? How will you pay restitution? How will you follow no-contact orders?

For more details, see "More About Release Plans" on page 30.

STEP 4: ATTEND THE HEARING

What to Expect in the Hearing

- **Be Honest:** Answer all questions truthfully.
- **Highlight Positive Changes:** Share how you've worked to improve yourself while incarcerated.
- **Discuss Your Release Plans:** Explain your plans for reentry and how you'll follow parole conditions.
- **Ask for Clarification:** If you don't understand a question, don't hesitate to ask for it to be explained.
- **Address the Blue Packet:** If there's anything in the blue disclosure packet you want to clarify or correct, bring it up during the hearing—even if you've already written a letter about it.

Remember, your answers and what you share during the hearing will help the Board decide your case.

HEARINGS AT USCF & GUNNISON

Hearings at Utah State Correctional Facility (USCF) and Central Utah Correctional Facility (CUCF in Gunnison) are held in Board hearing rooms, either in person or by video conference (R671-301). See the image below for the room layout at both locations.

Hearings in cases where there is a loss of life are always held at USCF. If an individual is housed at another facility, UDC will arrange transport for the hearing.

For information about how friends and family can attend a hearing in person or online visit <https://bop.utah.gov> For in-person hearings, UDC staff may provide you the opportunity to talk with family or friends who attend the hearing.

Video Conference Hearings at County Jails

In county jails, video conference hearings are held in a private area, away from other inmates.

ATTORNEYS & HEARINGS

Attorneys can only speak at the following hearings:

- **Parole Violation Hearing:** *You can hire your own attorney or use one provided by the Board.*
- **Evidentiary Hearing:** *You can hire your own attorney or use one provided by the Board.*
- **Pardon Hearing**
- **Commutation Hearing**

Though not allowed to speak, attorneys can attend hearings as members of the public and submit written comment or argument to the Board.

VICTIMS ATTENDING A HEARING

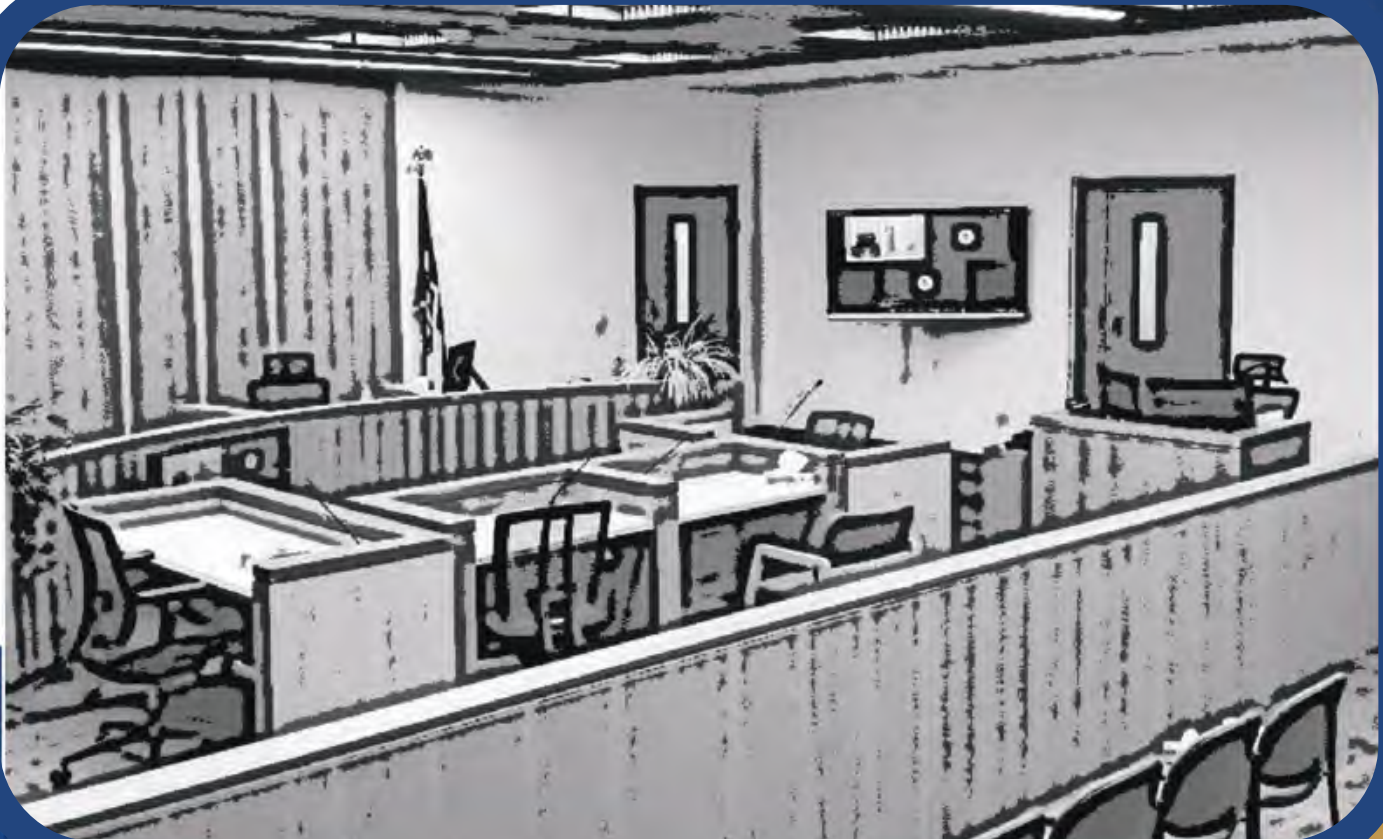
Victims and victim's families are notified about all hearings and can choose to attend either in-person or via video conference. They do not have to give testimony and can have someone else speak for them if they prefer.

In-person hearings: If a victim or victim's family wants you to leave the room while they share their testimony, they can ask for that. You will still be able to listen from a secure area outside the hearing room.

Video conference: During a video hearing, the victim or victim's family can ask to keep their camera off while they give their testimony. The hearing official will decide if this is allowed.

See Utah Code Ann. §77-27-9.5; Utah Admin. Code §R671-203-1

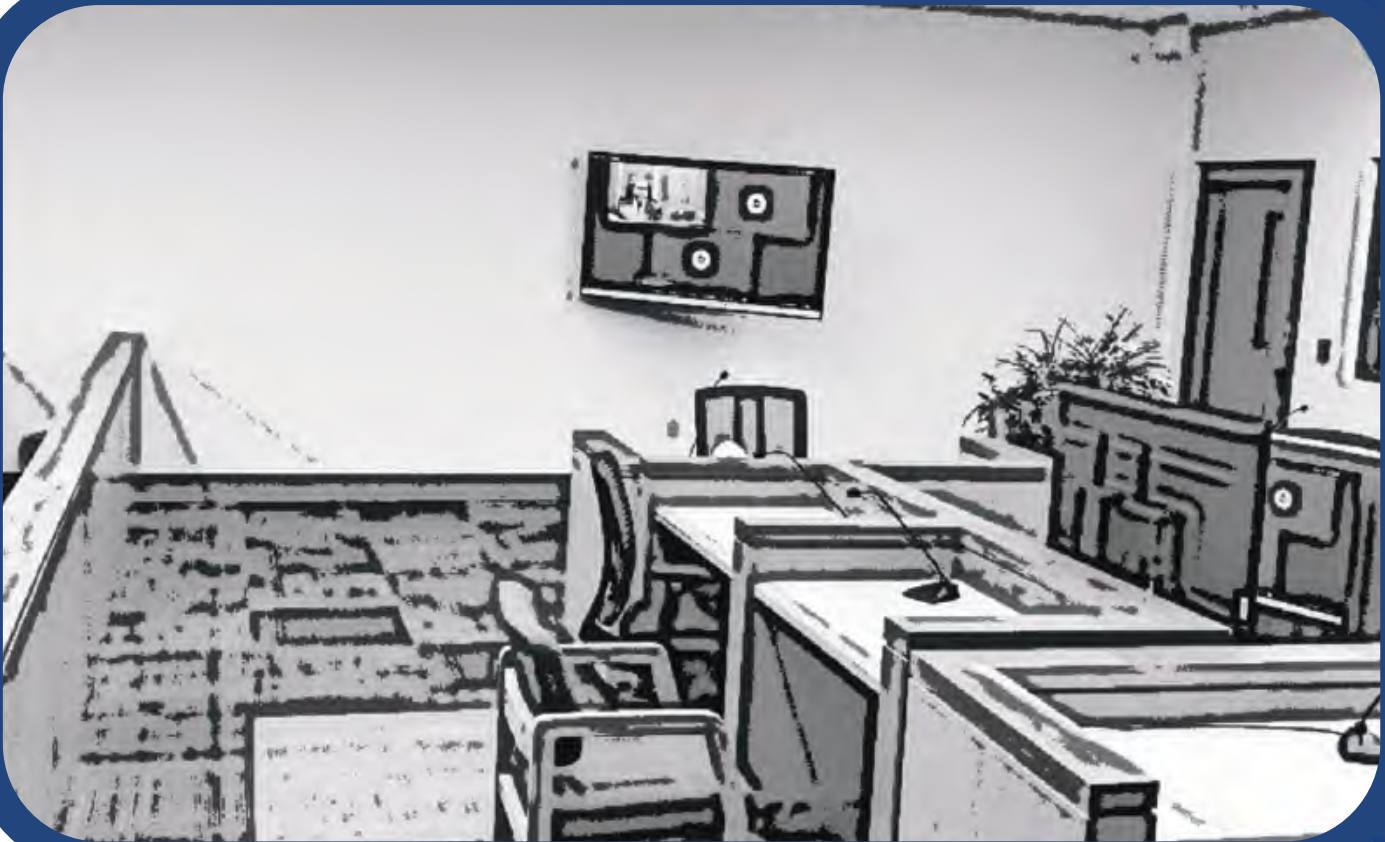
HEARING ROOM



STEP 5: WAIT FOR THE DECISION

The Board usually makes a decision four to six weeks after your hearing. You will receive a paper copy of the decision by mail. The decision is also posted online as soon as it's available. If you have loved ones in the community, they can check online for the decision, which is faster than waiting for the mailed copy.

HEARING ROOM



PART 4

GENERAL INFORMATION

ABOUT HEARINGS

- Unless your sentence doesn't allow for parole (e.g., life without parole), you have the right to a hearing with the Board sometime during your sentence.
- All Board hearings are "personal-appearance hearings," and you will be able to participate either in person or by video conference.
- During a hearing you can speak, share documents, ask questions, and answer questions.
- If you choose to waive your right to appear or refuse to attend, the Board may still hold the hearing and make a decision without you.
- If you are housed out of state and agree to it, your appearance can be done by video.

HEARINGS RELATED TO GETTING A PAROLE DATE

For more information and tips on preparing for Original Hearing, Rehearing, or Rescission Hearing see page 36.

ORIGINAL HEARING



The first time you appear before the Board is usually your Original Hearing.

About Original Hearings:

- This is a personal-appearance hearing where the Board reviews your record with you for the first time.
- You will have the opportunity to speak.
- Victims, victim families, or their representatives can also speak.
- You may have legal counsel with you, but they can't speak.
- People with information for the Board, like family, friends, potential employers, or treatment providers, can submit written comments.
- Any information sent to the Board will be added to your record and shared with you (disclosed) before the hearing.

See Utah Admin. Code §R671-201

REHEARING



A Rehearing could occur after an Original Hearing and is scheduled by the Board to review your progress.

A Rehearing may be held to:

- Review new information or an updated assessment.
- Get updates on your participation in specific programs.
- Evaluate your behavior in prison.
- Set a release date.

The Rehearing process is similar to the Original Hearing, with the same speaking and disclosure rules.

REMEMBER



- *No decisions are made on the day of your hearing. The Board will review the information and decide afterward.*
- *Having an Original Hearing or Rehearing does not guarantee a release date will be set.*

The hearing outcome could:

- *Set a future rehearing date without a parole date; this may include required programs or evaluations.*
- *Set a parole date and conditions; this may include completing certain programs or evaluations before release to supervision.*
- *Set a paper review if there are pending charges.*

RESCISSION HEARING



“Rescission” means to cancel, take away, or change

A Rescission Hearing is held to decide if the Board should take away or delay a previously set parole date due to new information that affects your release.

Reasons for a Rescission Hearing:

- Poor behavior in prison.
- New conviction or disciplinary violation reported to the Board.
- Lack of available beds in a halfway house/Community Correctional Center or treatment facility.
- Your proposed address is no longer suitable.

A Rescission Hearing is a personal-appearance hearing, with the same speaking and disclosure rules as an Original Hearing.

A Rescission Hearing result could be:

- No change to your release date.
- Delay of release date.
- Removal of your release date.

See Utah Admin. Code §R671-310

POSTPONING OR CONTINUING A HEARING

If more documents are submitted, the Board may delay or continue your hearing. If this happens:

- All additional documents must be submitted to the Board within 14 days.
- These documents will be shared with you 3 days before the hearing.
- If the Board receives documents less than 3 days before the hearing, they will be shown to you during the hearing, and you'll have time to review them. You can either proceed with the hearing or request more time to review the documents.
- In some cases, you can go forward with the hearing and then request 2–4 weeks to provide a response to the Board before they make a final decision.

See Utah Admin. Code §R671-204



HEARINGS RELATED TO PAROLE VIOLATIONS

Board Warrant

If someone is accused of violating their parole terms, Adult Probation and Parole (AP&P) can ask the Board to issue a warrant for their arrest and return to prison. This is called a "Board Warrant." If a Board Member reviewing the request finds there is enough evidence (probable cause) to support the alleged violation(s), they may issue the warrant. Sometimes a parole violation allegation results in new, pending criminal charges.

Once the individual is in custody, they have the right to a Parole Violation Hearing.

See Utah Admin. Code §R671-510 and §R671-512

Parole Violation Waiver

The Board screens all parole violations to see if the individual is eligible for a waiver. If the individual is eligible, a waiver will be sent to them. They should review it before deciding to sign it. Signing the waiver means admitting to the violation and skipping the wait for a Parole Violation Hearing.

If you choose not to sign the waiver, write "decline" on it and send it back. If you don't return it, the Board will wait up to 30 days from when it was sent to give you time to review and respond before moving forward.

See Utah Admin. Code §R671-514

Parole Violation Hearing

A Parole Violation Hearing is held when someone on parole is accused of breaking parole conditions.

- **If there are no new criminal charges** – The hearing usually takes place within 60 days of their return to prison.
- **If there are new criminal charges** – The hearing may be postponed until the new charges are resolved in court.

At the hearing, the individual can admit, plead no contest, or deny each alleged parole violation.

- **If they deny** one or more violations, an Evidentiary Hearing may be scheduled.
- **If they admit or plead no contest**, the hearing official may collect statements from both the parole agent and the individual.

The Board will provide an attorney for this process.

See Utah Admin. Code §R671-516

Evidentiary Hearing

An Evidentiary Hearing is scheduled when parole violations are denied, and AP&P does not dismiss the allegations.

- The individual can be represented by a Board-provided attorney or hire their own.
- They have the right to question witnesses and present evidence.

After the hearing, a summary goes to the Board for review and decision. Note that the Board only determines if it's "more likely than not" that parole terms were violated, based on a **preponderance of the evidence**. The Board does not decide on new criminal charges; that is the court's role.

See Utah Admin. Code §R671-517

OTHER TYPES OF BOARD HEARINGS



Pardon Hearing

A Pardon Hearing can be granted by the Board if an individual requests it at least five years past their termination. A pardon is considered “an act of grace” that forgives a criminal conviction and restores the rights and privileges lost due to the criminal conviction. The process to request a pardon is extensive; more information can be found at bop.utah.gov/pardons.

See Utah Admin. Code §R671-315

Commutation Hearing

A commutation reduces a sentence from a greater penalty to a lesser one. In rare and special cases, someone may ask the Board to commute their sentence. Under the Utah Constitution, the Board is the only authority that can reduce or commute a death sentence given by Utah State Courts.

See Utah Admin. Code §R671-312, 312a, 312b



TYPES OF REVIEWS

The Board conducts Reviews to consider new or updated information. They are different from hearings and do not involve in-person appearances.

Scheduling Reviews

See page 11 for information on Scheduling Reviews

Within the first six months of going to prison, the Board will conduct a Scheduling Review to determine the date of your Original Hearing. In setting that date, the Board considers your minimum sentence/sentencing guideline, sentencing reports, the nature of the offense, victim impact in applicable cases, rehabilitative needs, and other relevant documentation.

Administrative Review or Paper Review

These Reviews are considerations of new information in your file. The Board may be waiting for new charges to be filed, treatment to be completed, addresses to be approved, etc. To make sure this information is reviewed, the Board sets a review date.

Special Attention Review

Special Attention Reviews occur for many reasons, usually it is to consider some new information.

- The new information provided to the Board may be positive, negative, or informational. Examples might be a request for compassionate release, notification of completion of treatment, or notice of a disciplinary action.
- If someone is currently incarcerated, a Special Attention Review may be submitted by anyone but is most commonly submitted by a UDC caseworker, clinical staff, counsel, or the incarcerated individual themselves.
- For those on parole, a Special Attention Review may address parole condition violations and are submitted by AP&P.
- The Board may choose whether to hold a hearing on a Special Attention Request.

See Utah Admin. Code §R671-311

Redetermination Review

A Redetermination Review asks the Board to reconsider a past decision it made.

When Can You Request a Redetermination Review?

You can request a review if:

- Your sentence has the possibility of parole.
- Enough time has passed since the Board's last decision (see Time Requirements below).
- You don't have new criminal convictions.
- You don't have any pending disciplinary violations.

Time Requirements:

- **Board decided release, rehearing, or expiration of sentence (excludes expire life decisions):** You can request a review 5 years after the Board's decision for release, rehearing, or sentence expiration.
- **Board decided to expire a life sentence:** You can request a review 10 years after the Board decided your life sentence would expire.

- Homicide cases where Original Hearing is set more than 15 years after decision: If your Original Hearing was set more than 15 years after you arrived in prison, you can request a review 10 years after the last decision.

How to Submit a Request

- *Explain clearly why you believe the Board should reconsider its decision.*
- *Include a report with information about your case plan, treatment, disciplinary record, and risk assessment.*
- *Sign the request if you are submitting it yourself.*

What Happens Next?

If the Board finds a valid reason to grant a Redetermination Review they can make a decision with or without holding a hearing. The Board may ask the Department of Corrections for additional information about your request.

See Utah Administrative Rule 671-316

Termination Request Review

A Termination Request Review is made for someone who is currently on parole to be terminated from AP&P supervision and Board jurisdiction.

- The request must be processed through AP&P and include information on the parolee's performance while on supervision.
- Termination requests are reviews and do not include a formal hearing before the Board.

See Utah Admin. Code §R671-405

OTHER IMPORTANT INFORMATION

Things you can do before your hearing:

These actions will be included in your Institutional Progress Report (IPR) which is prepared by UDC and provides information about your progress:

- Avoid major disciplinary actions while in prison.
- Participate in pre-release programs or counseling.
- Work on your education (in person or on your tablet):
 - ◊ Enroll in GED classes.
 - ◊ Complete career readiness or vocational courses.
 - ◊ Finish rehabilitative, treatment, and cognitive behavior programs.
- Manage your behavior and provide proof of good conduct while incarcerated.

Other ways to prepare:

- Participate in a mental health evaluation, if needed.
- Gather letters and witnesses who can provide positive information on your behalf.
- Provide character references.
- Prepare a solid plan for employment, education, housing, and reentry if granted parole.
- Sign up for or address participation in substance abuse programs, if necessary.
- Work with your attorney to prepare for possible questions.
- Review your “blue packet” to fully understand your case, your potential parole, and how you plan to stay out of trouble after release.

More About Release Plans

The Board cares about your success in the community. Not having access to food, shelter, or other necessities can increase your risk of reoffending.

Consider the following when you write your release plan:

Housing:

- Describe where you will live.
- Explain how your living situation will help you follow the rules of parole.

Employment:

- Stable employment is a positive factor that helps lower the risk of reoffending.

Transportation

- Share how you plan to get to treatment, work, or appointments.

Treatment

- Talk about your mental health treatment plan, including strategies for stability and any medications you'll use to complete parole successfully.
- If you need to complete outpatient treatment (e.g., Substance Abuse or Sex Offender treatment):
 - ◇ Include details about who will provide the treatment.
 - ◇ Explain how you will pay for it.
- Also, have a backup plan in case your main treatment plan doesn't work. For example, if you can't start treatment for a few months, explain what you will do in the meantime.

Support System

- Talk about the people and organizations in your support network.
 - ◇ Who will help you stay out of trouble?
 - ◇ Who will assist you in adjusting back to the community?
 - ◇ Who will you turn to for help?

Housing & Parole

- You may receive a parole date before your residence is approved.
- You may be paroled to a Community Correctional Center (CCC) while you search for an approved residence.
- If your residence is not approved, the Board will be notified. This could result in a rescission of your parole (see page 22) while you continue to find an approved address.
- If you're having trouble finding housing, your case manager and UDC's reentry services will assist you.
- The Board does not parole individuals to homeless shelters.

Risk & Protective Factors

Risk and protective factors play a key role in your success after release.

Common Risk Factors

Risk factors increase the likelihood of committing a crime. They include:

- Antisocial behavior patterns
- Aggressive or harmful actions
- Criminal history
- Exploitive or manipulative behavior
- Thinking errors, impulsiveness, and poor self-control
- Disregard for others' feelings or needs
- Poor decision-making and problem-solving skills
- Inability to resolve conflicts without aggression or violence
- Beliefs and values supporting criminal activity
- Associating with people who encourage antisocial behavior
- Chaotic family relationships with no support for positive behavior
- Poor performance in work/school, leading to dissatisfaction and unmet needs
- Lack of pro-social leisure activities
- Drug or alcohol abuse

Common Protective Factors

- Improved self-control and decision-making skills
- Better problem-solving and conflict resolution skills
- Beliefs and values supporting prosocial behavior
- Positive friends and environment
- Stable, supportive family relationships
- Employment or support that meets personal and family needs
- Abstaining from drugs/alcohol and engaging in substance abuse treatment
- Relapse prevention, including external supports to avoid risky situations
- Healthy ways to spend time and positive socialization
- Access to mental and physical health care
- Programs/treatments tailored to individual learning, cultural, and personal needs
- Addressing trauma and adverse childhood experiences

Earned Time Credit

State statute has both mandatory and discretionary earned time credit (ETC). Programs that qualify and the process for receiving the credit can change. Refer to the most recent approved ETC document. Time cuts are only applied once you have a release date.

See Utah Code Ann. §77-27-5.4

Interstate Compacts For Parole

An Interstate Compact allows you to serve parole in another state. UDC, not the Board, handles these decisions. You must apply and pay the application fees, and the process can take several months. After you receive a release date, you can work with your case manager to start the paperwork.

See Utah Code Ann. §77-27-24

AGGRAVATING & MITIGATING CIRCUMSTANCES

Aggravating and mitigating circumstances are factors that influence the severity of a sentence and eligibility for parole.

Aggravating Circumstances

Aggravating circumstances related to the offense may include:

- Significant physical or psychological injury to the victim.
- Extreme cruelty or depravity involved in the offense.
- Involvement of two or more victims.
- Continuous criminal activity over a significant time period.
- Substantial monetary loss caused by the offense.

Additional aggravating factors considered by the Board may include:

- Repeat offenses indicating an inability to comply in less restrictive settings.
- Willful failure to attend or participate in educational, vocational, or treatment programs.
- Regular association with individuals engaged in criminal behavior.
- Continued aggressive or harmful behavior towards others.

Mitigating Circumstances

Mitigating circumstances may include:

- Voluntary participation in screening processes (e.g., LSI, TCUD, MHS) while in jail.
- Payment or good faith effort to repay restitution to the victim.
- Compliance with all pre-trial conditions.
- Engagement in community-based supervision or treatment services aligned with a risk assessment.
- A stable and supportive living environment that encourages positive behavior.
- Positive, supportive, pro-social relationships and community activities.
- Implementation of positive educational or employment plans.
- A crime-free record of over two years after completing previous probation, parole, or incarceration.



FREQUENTLY ASKED QUESTIONS

1. Why is the Board's guideline different from AP&P's?

The Sentencing Commission makes the Sentencing Guidelines. AP&P and the Board use these same guidelines, but the outcome might not be the same.

- AP&P figures out the guideline *before* the judge decides on the sentence. At this point, the judge hasn't said if the sentences will be consecutive (served one after the other) or concurrent (served at the same time). Also, AP&P's calculation might not include other cases that you still have open.
- The Board figures out the guideline *after* the judge has given the sentence -- and usually after any other open cases have been decided. The Board's guideline will show if your sentences are consecutive or concurrent, based on what the judge ordered. If you are found or plead guilty in other open cases, the Board will add all your sentences together into one guideline.

This is why the Board's guideline might be different from AP&P's guideline.

See page 10 for more information about how the Board calculates your time.

2. What if I am appealing my conviction?

You have the right to appeal your conviction or seek post-conviction relief. The Board must follow the current court sentence until the court issues a new order.

3. How can I best prepare for my hearing?

To prepare for your hearing follow Step 3 on page 12. Additionally, focus on actions that show you are committed to personal growth and positive change. Here are some key steps:

- **Maintain Good Behavior:** Avoid disciplinary actions and follow the rules in your facility. Consistently demonstrating respect for rules and authority shows you are ready for accountability.
- **Engage in Programming:** Actively participate in classes, therapy, or treatment programs, including those expected by the Board, those that qualify for time cuts, and optional programs. Successfully completing these programs demonstrates your dedication to addressing the issues that led to your incarceration and your commitment to personal growth and self-improvement.
- **Follow Your Case Action Plan:** Work on the goals outlined in your case action plan, such as education, employment training, or other recommended activities.
- **Show Respect and Responsibility:** Be respectful toward staff and peers. Take responsibility for your actions and show a willingness to learn and improve.
- **Develop a Support System:** Build relationships with family, friends, or mentors who can support your reintegration and be included in your release plan.

Consistently taking these steps demonstrates your commitment to change and helps the Board see your readiness to return to the community.

4. Is there a way to see the Board before my Original Hearing?

You can request a Redetermination Review following the rules outlined on page 28.

However, it's rare for the Board to release someone before their guideline date. Since most Original Hearings are already scheduled before the guideline, seeing the Board early is unlikely to result in an early release unless there are exceptional circumstances.

5. What is the difference between a hearing and a review?

A review allows the Board to consider new information without scheduling a hearing, which can make the decision process faster.

The Board may order a review instead of a hearing when they are waiting for specific documents or updates, such as a pending case or a requested assessment. Once the necessary information is received, the Board reviews it and makes a decision without holding a hearing.

For example:

- a. If the Board orders a psychological assessment after your Original Hearing, the Board may schedule a review to review the assessment instead of holding a rehearing to determine if parole will be granted.
- b. If you are back on a parole violation and, at your Parole Violation Hearing, AP&P informs the Board of new pending charges, the Board may order a review to consider those charges once they are filed.

6. How do I get a discretionary time cut?

Discretionary time cuts should be submitted as Special Attention Reviews (*see page 28*). These are most often submitted by the Department of Corrections. The Board will consider exemplary performance, completing programs beyond the two CAP priorities, or other positive accomplishments when considering a discretionary time cut.

When considering a discretionary time cut, the Board reviews several factors, including the nature of the offense, court-imposed sentence, behavior while incarcerated, completion of programming, and the release plan. While no specific program guarantees a time cut, completing programming is a positive factor the Board considers.

Time cuts are only applied once you have a release date.

7. Why was I denied parole even though I served my entire sentencing guideline?

Parole is not guaranteed. By law, incarceration is required for the full maximum sentence unless the Board decides to grant an earlier release. Sentencing guidelines are recommendations, not requirements, and the Board has the discretion to grant or deny parole regardless of the guideline.

The guideline is just a starting point. The Board also considers many factors, including:

- The harm caused to the victim
- Behavior while in prison
- Progress in treatment or education
- Criminal history

This means that even individuals convicted of similar crimes may receive different decisions about release, parole conditions, or length of stay.

For more information about the Board's role in sentencing see page 6.

8. If I abscond what impact will that have on my expiration date?

If you abscond while on parole, the time you are gone will be added to your expiration date. For example, if you are scheduled to expire on April 1, 2030 and you abscond for 30 days your new expiration will be May 1, 2030. This is called "tolling."

9. How long will I be back in prison on a parole violation and how do I get a waiver?

Length of stay on a parole violation:

The Utah Sentencing Guidelines include guidelines for supervision and parole violations.

- For the first three parole violations, the time back in prison is capped at 180 days unless the Board finds that an exception authorized by the Utah Sentencing Commission applies.
- The Board can choose to release you earlier than 180 days if they believe it's appropriate.
- For a fourth or later parole violation, the Board has full discretion to decide how long you'll stay in prison.

The Board cannot keep you in prison beyond your maximum sentence. The Board can extend your time past the cap if they find a reason, such as a risk to public safety. If a public safety exception is included in your decision, it means the Board found that one or more of the reasons listed below apply to you:

Public Safety Exception: "Your next hearing or release date is beyond the parole violation guideline because the Board finds a public safety exception. A public safety exception means the Board finds that your conduct has or may present a substantial threat to

public safety such as a dangerous weapon, fleeing, violent arrest behavior, new person crime allegations, or a high priority Community Correctional Center (CCC) walk away. A public safety exception may also be found when your conduct includes behavior that repeats the cycle that led to the past crimes, repeat driving under the influence (DUI) violations, absconding with a history of person crimes, mental health instability that negatively impacts a criminogenic risk factors, repeat domestic violence offenses, or serious financial crimes.”

Parole violation waiver:

Everyone returned to prison for a parole violation is screened to see if they qualify for a waiver. The decision to issue a waiver is based on the type of violations. If you meet the criteria for a waiver it will be sent to you. This process typically takes 60 days.

If you sign the waiver you are admitting to the allegations. The signed waiver will be returned to the Board and your case will be presented to the Board for a review and decision.

10. When will I get a decision from the Board?

Here’s an overview of how long it typically takes the Board to make decisions for different types of hearings and reviews:

HEARINGS

- **Original Hearing or Rehearing:** Usually 4–6 weeks, though some decisions may take longer.
- **Rescission Hearing:** Typically 1–4 weeks.
- **Postponed or Continued Hearings:** On average, it takes about 3 months to get rescheduled on the hearing calendar.
- **Board Warrant:** Usually issued within 24 hours of receiving the request.
- **Parole Violation Waiver:** If approved for a waiver, it will be sent to the individual 2–4 weeks after returning to prison; once signed and returned, a decision is typically made within 2–3 weeks.
- **Parole Violation Hearing:** Typically 2–4 weeks, though some decisions may take longer.
- **Evidentiary Hearing:** Usually 4–6 weeks, though some decisions may take longer.

REVIEWS



- **Scheduling Review:** Completed within 6 months of your arrival at prison.
- **Paper Review:** Timing varies depending on the reason it was ordered.
- **Special Attention Review:** The Board typically receives the request within 24 hours of submission, but the decision time depends on the case.
- **Redetermination Review:** Usually 4–6 weeks, though some decisions may take longer.
- **Termination Review:** Typically 1-2 weeks once all the information is submitted

These are general timeframes, and some decisions may take longer based on the complexity of the case or other factors.

RESTITUTION

The rules for restitution are different if you were sentenced before or after July 1, 2021.

For additional information, please refer to Utah Code §77-27-6.1

GLOSSARY

- **Adult Probation & Parole (AP&P)** - A state agency that supervises individuals on probation and parole in the community.
- **Aggregate** - A calculation of total prison sentences for multiple offenses under the Board's jurisdiction.
- **Aggravating Factors** - Circumstances that may contribute negatively to a release decision. (see Mitigating Factors)
- **Board Order** - An official decision made by the Board and posted on the Board's website.
- **Bureau of Criminal Identification (BCI)** - Agency responsible for entering, updating, and maintaining criminal history data for all arrests and the outcome of the arrests. Is also responsible for determining expungement eligibility.
- **Case Action Plan (CAP)** - A plan for individuals while incarcerated and on community-based supervision, based on various assessments, that outlines an individual's education, program, and treatment needs and to set goals to address areas of risk and need.
- **Civil Judgment** - An order by the Court or Board to require restitution be paid to a victim
- **Cognitive Behavioral Therapy (CBT)** - Behavioral treatment/therapy that focuses on identified criminal risk factors and thought processes as well as skill practice in order to reduce risk.
- **Community Correctional Center (CCC)** - Facilities operated by the Utah Department of Corrections designed to help individuals who may not have a place to go upon release from prison or who have been ordered to complete specific programs at the facility
- **Commission on Criminal and Juvenile Justice (CCJJ)** - The state government body established to develop criminal and juvenile justice policy in Utah.

- **Compassionate Release** - A Board order to release an individual from prison based on an exceptional circumstance, including:
 - ◇ 1) the death of an immediate family member that occurs within 120 days of the scheduled release,
 - ◇ 2) the incarcerated individual's need for extensive medical attention, nursing home care, or palliative care, or
 - ◇ 3) if the incarcerated individual's public safety and recidivism risk is significantly reduced due to the effects or symptoms of advanced age, medical infirmity, disease or disability (Utah Administration Rule R671-314).
- **Concurrent** - Two or more sentences that are served at the same time.
- **Consecutive** - Two or more sentences that are served one after the other.
- **Credit for Time Served (CTS)** - The amount of time served in custody prior to commitment to prison.
- **Central Utah Correctional Facility (CUCF)** - A Utah Department of Corrections prison located in Gunnison, Utah.
- **Commutation Hearing** - A hearing held to review a request to change or reduce the severity of a crime, to change or reduce an imposed sentence, or to change or reduce the type and level of offense.
- **Commitment** - A sentence imposed by the Court for a criminal conviction that results in a prison term and Board jurisdiction.
- **Contingencies** - A requirement set by the Board for an individual to complete prior to their release from imprisonment.
- **Earned Time Credit (mandatory and discretionary)** - A process by which an individual's release date may be adjusted up to 4 months earlier for completion of an approved program. Time cuts are only applied once you have a release date. *See page 33.*
- **Evidentiary Hearing** - When a parolee has entered a denial to a parole violation allegation and the Board wishes to consider the allegation, the Board shall hold a hearing. The Department of Corrections bears the burden of establishing a parole violation by a preponderance of the evidence.

- **Government Records Access and Management Act (GRAMA)** - Utah law that provides the public with the right to access certain records prepared, maintained or controlled by a government entity.
- **Guideline Date** - The date established as the presumptive time to be served for offenses for which an individual has been sentenced to prison. (*See Utah Sentencing Commission*)
- **Guilty but Mentally Ill (GMI)** - This is a special type of guilty plea that indicates that the individual was found guilty of the crime but was mentally ill at the time and may still be mentally ill. (*Utah Code § 76-2-3*)
- **Hearing Officer (HO)** - Board staff members who are assigned to conduct hearings and provide reports to the Board.
- **Judgment and Commitment (J&C)** - The document containing the official sentence imposed by the court.
- **Jurisdiction** - Cases over which the Board has authority.
- **Law Enforcement Bureau (LEB)** - A division of the Utah Department of Corrections responsible for conducting criminal/administrative investigations.
- **Level of Service** - Risk, Need, Responsivity (LS-RNR) - A risk assessment tool combined with a survey of needs used for development of a case action plan. (*See case action plan*).
- **Mental Health Support Services (MHSS)** - Utah Department of Corrections community based mental health support program.
- **Mitigating Factors** - Circumstances that may contribute positively to a release decision (*see Aggravating Factors*)
- **Moral Reconciliation Therapy (MRT)** - A type of behavioral therapy aimed at reducing risk of criminal recidivism.
- **No Contest** - A legal option in which a defendant neither admits nor denies a criminal charge, but accepts the punishment as if they were guilty.
- **Original Hearing (OH)** - A hearing before the Board to determine whether a release will be granted prior to the end of an individual's sentence.

- **Office of State Debt Collection (OSDC)** - A state agency that manages the collection and distribution of monies owed in a criminal case.
- **Pardons Hearing** - A hearing granted by the Board where a pardon (an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited because of the criminal conviction) is considered.
- **Parole** - State supervision for individuals who have been released to the community prior to the end of an individual's sentence.
- **Paper Review** - A review scheduled when the Board needs to gather additional information before making a decision.
- **Public Defender Fee (PDF)** - A fee imposed by the court associated with the services of a court appointed attorney.
- **Pre-Sentence Investigation/Pre-Sentence Report (PSI/PSR)** - A report prepared for the court or the Board that contains information about an individual convicted of a crime, the facts of the crime, and the impact to the victim.
- **Parole Revocation** - The process by which an individual may be returned to prison for violating the terms and conditions of their parole.
- **Parole Violation Hearing (PV)** - A hearing held after an individual is returned to prison to determine if they have violated the terms or conditions of their parole.
- **Parole Violation/Original Hearing (PV/OH)** - A hearing held to address parole violations along with new commitments which the Board has jurisdiction over. Guidelines will be based on the new offense not on the parole violation cap.
- **Parole Violator Program (PVP)** - A program designed to assist individuals who are in violation of their parole to return to compliance without returning to prison.
- **Preponderance of the Evidence** - Evidence that is enough to persuade you that the claim is more likely true than not true.
- **Recidivism** - When an individual involved in the criminal justice system reoffends. This can be defined in different ways depending on the context.

- **Redetermination Review** - A request submitted to the Board to reconsider a previous decision or request a review by the Board while incarcerated. (*Utah Administration Rule R671-316*)
- **Response Incentive Matrix (RIM)** - A tool used by the Board and AP&P to determine an appropriate response to positive or negative behavior while under supervision.
- **Residential Substance Use Treatment (RSUT)** - Institutional or community programming to address substance use.
- **Restitution** - Compensation the court or Board requires individuals to pay to victims of crime.
- **Rehearing (RH)** - A hearing held by the Board after a previous hearing.
- **Rehearing/Original Hearing (RH/OH)** - A hearing held to address any new case(s).
- **Rescission Hearing** - A hearing held after a release date has been taken away by the Board for violations of prison regulations, new criminal convictions, or other issues.
- **Rescission/Bed Space Hearing** - A hearing held after a release date has been taken away by the Board for lack of bed space at a community correctional center or an approved address.
- **Rescission/Original Hearing** - A hearing held after a release date has been taken away by the Board and now the individual has a new prison commitment.
- **Scheduling Review** - A review of the incarcerated individual's information used to determine when the original hearing will be tentatively set.
- **Sentence** - The sanction imposed by a court on a person who has been convicted of a crime.
- **Sentencing Guidelines** - An average recommended sentence length based on current convictions and criminal history created by the Utah Sentencing Commission.
- **Smart Scheduling** - The scheduling of original hearings by taking into account the individual's needs for treatment and their guideline date.

- **Special Attention** - Reviews or hearings to adjust parole conditions, review earlier Board decisions, and change earlier decisions when exceptional circumstances exist.
- **Sex Offender Registry (SOR)** - The agency responsible for maintaining and updating sex offender registration files operated by the Department of Public Safety.
- **Sex Offender Treatment Program (SOTP)** - Institutional or community programming to address sexual offending.
- **Substance Use Treatment (SUT)** - Institutional or community programming to address substance use.
- **Tentative Hearing Date** - The month and year a hearing date is estimated to be scheduled.
- **Termination of Sentence** - A date provided for the termination of incarceration or parole supervision by the Board.
- **Termination Request** - A report received from Adult Probation and Parole informing the Board that a termination date is approaching or that the individual has done well on parole and is being recommended to be terminated.
- **Utah Department of Corrections (UDC)** - State agency tasked with the responsibility of overseeing the individuals on probation, parole, or incarcerated in prison.
- **Utah Office for Victims of Crime (UOVC)** - Provides financial compensation for victims of crime.
- **Utah State Correctional Facility (USCF)** - A Utah Department of Corrections prison located in Salt Lake City, Utah.
- **Victim Notification**: A process in which crime victims are notified of scheduled Board hearings.

REFERENCES TO BOARD RULE

R671. Pardons (Board of), Administration.**R671-101. Rules.****R671-101-1. Rules.**

Board of Pardons rules shall be processed according to state rulemaking procedures. The Board shall determine if the rule is to be submitted through the regular rulemaking or emergency rulemaking procedure. Rules shall then be distributed as necessary.

Any error, defect, irregularity or variance in the application of these rules which does not affect the substantial rights of a party may be disregarded. Rules are to be interpreted with the interests of public safety in mind so long as the rights of a party are not substantially affected.

KEY: pardons, parole

Date of Last Change: August 24, 2021

Notice of Continuation: August 28, 2021

Authorizing, and Implemented or Interpreted Law: 77-27-9(5); 63G-3

R671. Pardons (Board of), Administration.**R671-102. Americans with Disabilities Act Complaint Procedures.****R671-102-1. Authority and Purpose.**

(1) This rule is made under authority of Utah Code Ann. Subsection 63G-3-201(3). The Board of Pardons and Parole (Board) adopts, defines, and publishes within this rule the grievance procedures for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

(2) The purpose of this rule is to implement the provisions of Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Board because of a disability.

R671-102-2. Definitions.

(1) "ADA Coordinator" means the Board's Administrative Coordinator, assigned by the Board's Chairperson to investigate and facilitate the prompt and equitable resolution of complaints filed by qualified persons with disabilities. The ADA Coordinator may also be a representative of the Department of Human Resource Management assigned to the Board.

(2) "Board" means the Board of Pardons and Parole created by Utah Const. Art. 7, Section 12(1), and Utah Code Ann. Section 77-27-2(1).

(3) "Chairperson" as provided in Utah Code Ann. Subsection 77-27-4(1), means the Board's Chairperson.

(4) "Designee" means an individual appointed by the Board's Chairperson, or the Board's Vice-Chairperson, to investigate allegations of ADA non-compliance in the event the ADA Coordinator is unable or unwilling to conduct an investigation for any reason, including a conflict of interest. A designee does not have to be an employee of the Board; however, the designee must have a working knowledge of the responsibilities and obligations required of employers and employees by the ADA.

(5) "Disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual; a record of such an impairment; or being regarded as having such an impairment.

(6) "Major life activities" include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, and working. A major life activity also includes the operation of major bodily function, such as functions of the immune system, normal cell growth, digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.

(7) "Qualified Individual" means an individual who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Board. A "qualified individual" is also one who, with or without reasonable accommodation, can perform the essential functions of the employment position that individual holds or desires.

(8) "Vice-Chairperson," as provided in Utah Code Ann. Subsection 77-27-4(2), means the Board's Vice-Chairperson.

R671-102-3. Filing of Complaints.

- (1) Any qualified individual may file a complaint alleging non-compliance with Title II of the Americans with Disabilities Act, as amended, or the federal regulations promulgated thereunder.
- (2) Qualified individuals shall file their complaints with the Board's ADA Coordinator, unless the complaint alleges that the ADA Coordinator was non-compliant, in which case qualified individuals shall file their complaints with the Board's designee.
- (3) Qualified individuals shall file their complaints within 90 days after the date of the alleged non-compliance to facilitate the prompt and effective consideration of pertinent facts and appropriate remedies; however, the Board's Chairperson has the discretion to direct that the grievance process be utilized to address legitimate complaints filed more than 90 days after alleged non-compliance.
- (4) Each complaint shall:
 - (a) include the complainant's name and address;
 - (b) include the nature and extent of the individual's disability;
 - (c) describe the Board's alleged discriminatory action in sufficient detail to inform the Board of the nature and date of the alleged violation;
 - (d) describe the action and accommodation desired; and
 - (e) be signed by the complainant or by his legal representative.
- (5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the person(s) allegedly aggrieved by the reported discrimination.
- (6) If the complaint is not in writing, the ADA Coordinator or designee shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.
- (7) By filing a complaint or a subsequent appeal, the complainant authorizes necessary parties to conduct a confidential review of all relevant information, including records classified as private or controlled under the Government Records Access and Management Act, Utah Code Ann. Subsection 63G-2-302(1)(b) and Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), (B), and (C) and 42 U.S.C. 2112(d)(3)(B) and (C), and relevant information otherwise protected by statute, rule, regulation, or other law.

R671-102-4. Investigation of Complaints.

- (1) The ADA Coordinator or designee shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsections R671-102-3(4) and (7) of this rule if it is not made available by the complainant.
- (2) The ADA Coordinator or designee may seek assistance from the Attorney General's staff, and the Board's human resource and budget staff in determining what action, if any, should be taken on the complaint. The ADA Coordinator or designee may also consult with the Vice-Chairperson in making a recommendation.
- (3) The ADA Coordinator or designee shall consult with representatives from other state agencies that may be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any recommendation that would:
 - (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;
 - (b) require facility modifications; or
 - (c) require reassignment to a different position.

R671-102-5. Recommendation and Decision.

- (1) Within 15 working days after receiving the complaint, the ADA Coordinator or designee shall recommend to the Board's Vice-Chairperson what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.
- (2) If the ADA Coordinator or designee is unable to make a recommendation within the 15 working day period, the complainant shall be notified in writing or in another accessible format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.
- (3) The Board's Vice-Chairperson may confer with the ADA Coordinator or designee and the complainant and may accept or modify the recommendation to resolve the complaint. The Board's Vice-Chairperson shall render a decision within 15 working days after the Board's Vice-Chairperson's receipt of the recommendation from the ADA Coordinator or designee. The Board's Vice-Chairperson shall take all reasonable steps to implement the decision. The Board's Vice-Chairperson's decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.

R671-102-6. Appeals.

- (1) The complainant may appeal the Board's Vice-Chairperson's decision to the Board's Chairperson within ten working days after the complainant's receipt of the Vice Chairperson's decision.
- (2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.
- (3) The Board's Chairperson may name a designee to assist on the appeal. The ADA coordinator or his designee may not also be the Board's Chairperson's designee for the appeal.
- (4) In the appeal, the complainant shall describe in sufficient detail why the decision does not effectively address the complainant's needs.
- (5) The Board's Chairperson or his designee shall review the ADA Coordinator's or his designee's recommendation, the Board's Vice-Chairperson's decision, and the points raised on appeal prior to reaching a decision. The Board's Chairperson may direct additional investigation as necessary. The Board's Chairperson shall consult with representatives from other state agencies that would be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General before making any decision that would:
 - (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item so that it would require a separate appropriation;
 - (b) require facility modifications; or
 - (c) require reassignment to a different position.
- (6) The Board's Chairperson shall issue a final decision within 15 working days after receiving the complainant's appeal. The decision shall be in writing, or in another accessible format suitable to the complainant, and shall be promptly delivered to the complainant.
- (7) If the Board's Chairperson is unable to reach a final decision within the 15 working day period, the complainant shall be notified in writing, or by another accessible format suitable to the complainant, why the final decision is being delayed and the additional time needed to reach a final decision.

R671-102-7. Record Classification.

- (1) Records created in administering this rule are classified as "protected" under Utah Code Ann. Subsections 63G-2-305(9), (22), (24), and (25).
- (2) After issuing a decision under Section R671-102-5, or a final decision upon appeal under Section R671-102-6, portions of the record pertaining to the complainant's medical condition shall be classified as "private" under Utah Code Ann. Subsection 63G-2-302(1)(b), or "controlled" under Utah Code Ann. Section 63G-2-304, consistent with 42 U.S.C. 12112(d)(4)(A), and (C) and 42 U.S.C. 12112(d)(3)(B) and (C), at the option of the ADA coordinator.
 - (a) The written decision of the Board's Vice-Chairperson or the Board's Chairperson shall be classified as "public," and all other records, except controlled records under Subsection R671-102-7(2), classified as "private."

R671-102-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under:

- (a) the state Anti-Discrimination Complaint Procedures, Utah Code Ann. Section 34A-5-107 and Utah Code Ann. Section 67-19-32;
- (b) the Federal ADA Complaint Procedures, 28 CFR 35.170 through 28 CFR 35.178; or
- (c) any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: disabilities

Date of Last Change: May 8, 2014

Notice of Continuation: September 17, 2024

Authorizing, and Implemented or Interpreted Law: 67-19-32; 63G-2

R671. Pardons (Board of), Administration.

R671-103. Attorneys.

R671-103-1. Attorneys.

- (1) Only persons licensed to practice law in the Utah may appear and represent an inmate, offender, or petitioner before the Board, except as otherwise provided in statute.
- (2) A person may not act as an attorney or represent any inmate, offender, or petitioner before the Board if:
 - (a) the person has been prohibited from doing so by Board order entered pursuant to the Board's inherent powers or this rule; or
 - (b) the person is disbarred or suspended from the practice of law in Utah or any other jurisdiction.
- (3) An attorney may not represent anyone in connection with a matter in which the attorney participated personally and substantially as a judge or other adjudicative officer or law clerk to such a person, or as an arbitrator, mediator or other third party neutral unless all parties to the matter give informed consent.
- (4) An attorney who has formally served as a public officer or employee of the government shall not otherwise represent a client in connection with a matter in which the attorney participated personally and substantially as a public officer or employee, unless the appropriate government agency gives its informed consent, confirmed in writing, to the representation.

R671-103-2. Prohibiting Attorney Appearance and Representation.

- (1) The Board may prohibit any attorney from representing any offender before the Board if the Board determines that the attorney:
 - (a) has violated any federal, state or local law or ordinance;
 - (b) is disbarred or suspended in Utah or any other jurisdiction;
 - (c) is not currently authorized to practice law;
 - (d) has violated any rule or regulation of the Department of Corrections regarding facility integrity or security;
 - (e) has violated any of the Rules of Professional Responsibility as promulgated by the Utah Supreme Court;
 - (f) has violated any of the Board's Administrative Rules; or
 - (g) has previously caused disruption to Board functions.

KEY: parole, inmates, attorneys

Date of Last Change: October 10, 2024

Notice of Continuation: August 2, 2024

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 78A-9-103

R671. Pardons (Board of), Administration.

R671-104. Language Access.

R671-104-1. Language Access.

- (1) The Board shall provide interpreters at Board hearings for non-English speaking or limited English proficiency offenders or victims.
- (2) The Department of Corrections shall indicate the need for an interpreter on the offender's profile in the computer system.
- (3) A non-English speaking or limited English proficiency offender or victim may request an interpreter for a hearing.
 - (a) Requests should be made at least 30 days before the hearing.
 - (b) Offender requests should be submitted with the hearing information form.
- (4) A hearing official may request an interpreter and continue the hearing if the hearing official has reservations about the offender's ability to communicate in English.
- (5) A hearing shall be continued if an interpreter is necessary, but not available.
- (6) If an offender has concerns about the effectiveness or conduct of the interpreter, the offender may appeal in writing to the Board within 10 days of the Board's decision.
- (7) Individuals providing interpretation services for Board hearings shall:
 - (a) be certified or approved as an interpreter in the subject language by the Utah State Courts, Federal Courts or equivalent certification;
 - (b) be in good standing with the training and ethical standards of the certifying body;
 - (c) render a complete and accurate interpretation or sight translation, without altering, omitting, or adding anything to

- (d) be impartial and unbiased and refrain from conduct that may give an appearance of bias;
- (e) disclose any real or perceived conflict of interest;
- (f) protect the confidentiality of all privileged and other confidential information;
- (g) abstain from giving legal advice or personal opinions to individuals for whom they are interpreting;
- (h) report to the hearing official any difficulties with translation, or any reservations about being able to provide effective interpretation; and
- (i) comply with all security requirements of the Department of Corrections.

KEY: interpreters, languages, parole

Date of Last Change: October 10, 2024

Notice of Continuation: September 8, 2020

Authorizing, and Implemented or Interpreted Law: 77-27-7

R671. Pardons (Board of), Administration.

R671-201. Original Hearing Schedule and Notice.

R671-201-1. Schedule and Notice.

(1)(a) The Board shall conduct a scheduling review to determine the month and year of an offender's original hearing, and provide timely notice to the offender, within six months of the offender's commitment to prison, and provide notice in accordance with Utah Administrative Rule R671-203 Victim Input and Notification.

(b)(i) No original hearing may be scheduled for any offender whose prison commitment includes a sentence of death.

(ii) No original hearing will be scheduled for any offender whose sentence includes a commitment of life without the possibility of parole. The Board will not consider parole for any offender whose prison commitment includes a sentence of life without parole, unless the requirements of Subsection 77-27-9(7) are met.

(iii) Every other offender will be scheduled for an original hearing as described in this rule.

(2) For purposes of this rule, "scheduling review" means the process by which the Board schedules the month and year for an offender's original hearing.

(3) The date of the original hearing may be adjusted if:

(a) an offender requests a delay or continuance;

(b) an offender has unadjudicated criminal charges pending at the time a hearing would normally be held;

(c) a Class A misdemeanor commitment has expired before an original hearing; or

(d) the Board determines that other unusual or extraordinary circumstances impact the scheduling of an original hearing; or

(e) calendar constraints exist.

(4)(a) When scheduling an original hearing by scheduling review, the Board may consider the following, guideline date, pre-sentence report (including victim impact statements), nature of the offense, rehabilitative needs, and any relevant documentation provided.

(b) If the Board obtains and considers additional information which was not available to the offender before or at the time of sentencing, the additional information shall be provided to the offender. The offender may provide a response to any of the disclosed materials before or at the original hearing.

(5) When scheduling an original hearing by scheduling review, if the offender was less than 18 years of age at the time of the commitment offense, the original hearing shall be scheduled:

(a) no later than 6 months before the individual's 25th birthday, so long as the individual is in secure care, in the provisional custody of the Division of Juvenile Justice and Youth Services, at the time of the hearing.

(b) no later than 10 years after the individual's transfer to the custody of the Utah Department of Corrections if the individual is transferred to the custody of the department before their 25th birthday, so long as the total amount of time after the date of sentencing does not exceed 15 years.

(6) When the Board sets an original hearing in Subsection (5), the Board shall make a referral to the victim advocate at the Department of Health and Human Services to provide support and assistance should the victims of record choose to participate in any Board hearings to which they are entitled to participate.

(7) An offender may request in writing that their original appearance and hearing before the Board be continued. The request shall specify the reasons supporting the request. The Board may grant or deny the offender's request in its sole discretion.

KEY: parole, inmates, hearings

Date of Last Change: August 14, 2024

Notice of Continuation: September 17, 2024

Authorizing, and Implemented or Interpreted Law: Art. VII Sec. 12; 77-27-5; 77-27-7; 77-27-9

R671. Pardons (Board of), Administration.

R671-202. Notification of Hearings.

R671-202-1. Notification.

- (1)(a) An offender shall be notified of the date, time, place, and type or purpose of a personal appearance hearing at least seven calendar days in advance of the hearing, except in extraordinary circumstances.
- (b) In extraordinary circumstances, the hearing may be conducted without the seven day notification.
- (c) An offender may waive this notice requirement.
- (2) Public notice of Board hearings shall be posted one week in advance on the Board's website (www.bop.utah.gov).

KEY: parole, inmates

Date of Last Change: August 24, 2021

Notice of Continuation: August 28, 2021

Authorizing, and Implemented or Interpreted Law: 63G-3-201(2); 77-27-9(5); 77-27-7(6)

R671. Pardons (Board of), Administration.

R671-203. Victim Input and Notification.

R671-203-1. General Provisions.

- (1) "Victim" means:
 - (a) A natural person against whom a charged crime or conduct is alleged to have been perpetrated or attempted by an offender personally or as a party to the offense or conduct, for which a conviction was entered and for which the Board has jurisdiction;
 - (b) A natural person originally named as an alleged victim in an allegation of criminal conduct who is not a victim of the offense of Board jurisdiction to which the defendant entered a negotiated plea of guilty or no contest; or
 - (c) A victim representative as provided in Subsection R671-203-1(2).
 - (d) Pursuant to Subsection 77-38-2(9), for purposes of the right to be present, "victim of crime" does not mean any person who is in custody as a pretrial detainee, as a prisoner following conviction for an offense, or as a juvenile who has committed an act that would be an offense if committed by an adult, or who is in custody for mental or psychological treatment. The Board may consider written submissions from any of the foregoing individuals.
- (2) "Victim representative" means: a person designated by a victim or by this rule to represent a victim during Board processes, hearings, or communications.
- (3) Pursuant to Subsection 77-27-13(2), the Department of Corrections (Department) shall provide the Board with any available information in its records or possession concerning the impact a crime may have had upon the victim or victim's family.
- (4)(a) Pursuant to Subsection 77-27-13(5)(a), within 30 days from the date of sentencing the prosecutor of the case responsible for an offender's arrest, conviction, and sentence, shall forward to the Board any victim impact statement in its possession that refers to any physical, mental, or economic loss suffered by the victim or victim's family.
- (b) Upon request of the Board pursuant to Subsection 77-27-13(4), any other law enforcement official responsible for an offender's arrest, prosecution, conviction, sentence, supervision or incarceration, shall forward to the Board any victim impact statement in its possession that refers to any victim contact information or any physical, mental, or economic loss suffered by the victim or victim's family.
- (5) No victim or victim representative appearing at a hearing may be photographed without the approval of the victim, victim representative, and the presiding hearing official.
- (6)(a) Victims are encouraged to:
 - (i) visit the Board's website, bop.utah.gov, as soon as possible to obtain information about Board procedures; and
 - (ii) provide information to the Board for future notifications.
- (b) The Board shall maintain information in written form and on its website, bop.utah.gov, for victims about Board procedures, victim notification, attending hearings, submitting victim impact information, and testifying at hearings.
- (7) Victims are encouraged to utilize the Board's website, bop.utah.gov, to learn of decisions and hearing outcomes. Victims may also contact the Board, after any parole hearing, for information concerning the outcome of that hearing. Victims may also contact the Department for information regarding offender releases.
- (8) Persons attending hearings must comply with the security and clearance regulations of the facility where the hearing is held. These regulations may include picture identification, appropriate dress, and no contraband. Persons who want to attend a hearing should contact the Department directly or on their website, corrections.utah.gov, for the latest information regarding security and visiting information.

R671-203-2. Victim Representative.

- (1) If a victim does not wish to give testimony or cannot do so, a victim representative may be designated to speak on the victim's behalf.
 - (a) If a victim is over the age of 18 at the time of a hearing and desires to designate a victim representative, the victim may make that designation on the record at a hearing, or in a notarized statement filed with the Board before or at a hearing.
 - (b) If a victim is under the age of 18 at the time of a hearing, a victim's parent, guardian, or custodian may represent the victim during Board processes, hearings, and communications.
 - (c) If a victim is deceased, a family member, or the victim's personal representative as appointed by a court, may be designated as the victim's representative.
- (2) A victim representative must act according to the instructions, and in the best interests, of the victim.
- (3) Notwithstanding this rule, or any designation, an offender, offender's co-defendant, or offender's attorney may not act as a victim representative in matters before the Board in which the offender was convicted of causing any injury or damage to the victim.
- (4) Once a victim representative is identified for a victim under the age of 18, the Board will notify the victim representative unless the victim indicates otherwise.

R671-203-3. Notification.

- (1) Notice of an offender's original parole hearing shall be provided to a victim at least seven days in advance of the hearing, or as soon as practicable, at the victim's most recent address of record as provided to the Board. The notice shall include:
 - (a) the date, time, and location of the hearing;
 - (b) the type of hearing, and the cases or offenses involved;
 - (c) a list of or reference to the statutes and rules applicable to a victim's participation in the hearing;
 - (d) the contact information of the Board employee who may be contacted for further explanation of procedures regarding victim participation in the hearing;
 - (e) specific information about how the victim may obtain the results of the hearing; and
 - (f) notification that the victim must maintain their current contact information with the Board to receive future notifications of hearings affecting a specific offender's incarceration or parole.
- (2) If a victim is deceased, or the Board is otherwise unable to contact the victim, the Board shall make reasonable efforts to identify the victim's immediate family and notify them of the hearing.
- (3)(a) Following notice of the original hearing, a victim may elect to receive notice of any future hearing.
- (b) To receive notice of future hearings, a victim shall notify the Board of the desire to receive future notices, and shall thereafter maintain current contact information with the Board.
- (4) If a victim elects to receive future notices, the notice shall be sent to the victim's most recent contact information as provided to the Board.

R671-203-4. Right to Attend and Testify.

- (1) "Hearing" as discussed in Subsection 77-38-2(5)(g) means an open public hearing, as defined by Section R671-302-1, at which the offender is present and which concerns whether to grant parole or other form of discretionary release from imprisonment.
- (2) A victim may attend any hearing regarding the offender.
- (3) A victim may testify during any hearing regarding the offender.
- (4) A victim may request a re-scheduling or continuance of the hearing if travel or other significant conflict prohibits their attendance at the hearing.
- (5) The foregoing rights to attend and to testify are subject to compliance with facility regulations and hearing decorum standards.

R671-203-5. Victim Statements and Testimony.

- (1) A victim or victim representative, may testify regarding the impact of the offense upon the victim and the victim's views concerning the decisions to be made regarding the offender.
- (2) The testimony may be presented as a written statement, which may also be read aloud, if the presenter desires; or as oral testimony.
- (3) Oral testimony at hearings may be limited to accommodate the hearing calendar.
- (4) If a deceased victim's representative decides to orally testify, testimony may be limited to two representatives.
- (5) In exceptional or extraordinary circumstances a victim or victim representative may request that additional oral testimony be permitted.

(6)(a) A victim may present oral testimony during the hearing outside the presence of the offender as provided by Subsection 77-27-9.5(7). However, the offender shall be permitted to hear the victim's testimony and respond during the hearing.

(b) If a victim presents testimony during a victim impact hearing held separately from an original hearing or rehearing without the offender present, an audio recording of the victim's testimony shall be made available to the offender.

(7) Victims who desire to testify at hearings shall notify the Board as far in advance of the hearing as possible so that appropriate arrangements can be made and adequate time allocated. Victims shall inform the Board of their intent to testify before each hearing.

(8) Victims or representatives are encouraged to bring a written copy of their testimony to the hearing or send a copy to the Victim Coordinator for the Board's records.

(9) Other than protected identifying information, including address, email, and phone numbers, information submitted to the Board by the victim or victim's representative shall be disclosed to the offender pursuant to legal requirements.

R671-203-6. Victim Impact Hearings.

(1) If an offender's original parole hearing is scheduled more than three years from the offender's commitment to prison, the victim or victim representative may request that the Board conduct a Victim Impact hearing to:

- (a) keep victim impact testimony for future use and reference by the Board; or
- (b) to ensure the victim has the opportunity to participate in the original hearing.

(2) The Board may also conduct a Victim Impact hearing if a hearing, as defined by Subsection 77-38-2(5)(g) and Section R671-203-4, is to be held outside the state because the offender is housed in another state.

(3)(a) A Victim Impact hearing is not a substitute for an original hearing.

(b) A Victim Impact hearing held pursuant to Subsection R671-203-6(1) will not result in a review, re-scheduling, or re-determination of a previously determined original hearing date.

(4) A victim or victim's representative who requests, and for whom a Victim Impact hearing is conducted, retains the rights given pursuant to constitutional provision, statute, or Board rule, including: the right to notice of the original hearing and any future hearings, the right to attend any hearing for the offender, and the right to testify and make future statements to the Board at any hearing for the offender.

(5) In scheduling and conducting a Victim Impact hearing:

(a) Notice shall comply with Section R671-203-3.

(b) Victim and victim representative appearances and statements shall comply with Section R671-203-4.

(c) A Victim Impact hearing shall be conducted in accordance with other hearing procedures and practices except the offender's testimony shall be limited to responding to the victim's testimony.

(6) The Victim Impact hearing shall be recorded, pursuant to the Rule R671-304.

KEY: victims of crimes

Date of Last Change: June 9, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: Art. I, Sec. 28; 77-27-9.5; 77-37-3; 77-37-4; 77-38-1 et seq.; 63G-3-201(3); 77-27-1 et seq.; 77-27-9(4)

R671. Pardons (Board of), Administration.

R671-204. Hearing Continuances.

R671-204-1. Permissible Hearing Continuances.

Board hearings may be continued:

(1) to inquire into, investigate, assess, or respond to any issue associated with a:

(a) possible lack of competency of the offender, pursuant to Utah Code Ann. Sections 77-15-2, 77-15-3 or Utah Admin. Rule R671-206; or

(b) mentally ill offender whose mental health has deteriorated to a point where the offender has been transferred to the state hospital, or whose mental illness renders the offender unable to attend, understand, or appropriately participate in a hearing, pursuant to Utah Code Ann. Sections 62A-15-605, 62A-15-605.5, 77-16a-204, Utah R. Admin. P. R207-1, R207-2 or R671-207;

(2) when the offender is not available for the hearing due to medical or mental health reasons;

(3) to allow an offender who has been determined by the Board to be unable to effectively represent themselves to obtain assistance at the hearing, pursuant to Utah R. Admin. P. R671-308;

(4) to allow for the personal appearance of the offender if the offender is unable to appear at the hearing as scheduled;

(5) upon the request of a victim of record who desires to participate in the hearing, pursuant to Utah R. Admin. P. R671-203, but who cannot reasonably attend the hearing as scheduled;

- (6) to await the adjudication or resolution of new or additional criminal charges;
- (7) to conduct a parole violation evidentiary hearing, pursuant to Utah R. Admin. P. R671-517;
- (8) at the motion or request of the offender or an attorney representing the offender, with a written waiver and stipulation for the continuance, and a minimum notice to the Board of 3 business days;
- (9) when the Board determines that new, additional, critical, or material information necessary for a full, fair, accurate, and complete hearing has not been received and will not be received by the scheduled hearing; or
- (10) when the Board finds that a continuance is in the interest of justice, procedural economy, or is necessary because of transportation, technical, security, or other issues beyond the control of the Board.

R671-204-2. Limitations.

- (1) Staff may not reschedule or continue original hearings, rescission hearings, or rehearings beyond 90 days unless a majority of the Board concurs with the continuance.
- (2) No hearing may be continued beyond an offender's sentence expiration date.

KEY: continuances, hearings, parole

Date of Enactment or Last Substantive Amendment: October 31, 2016

Notice of Continuation: September 8, 2020

Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 63G-3-201(3); 77-27-5; 77-27-7; 77-27-9

R671. Pardons (Board of), Administration.

R671-205. Credit for Time Served.

R671-205-1. Definitions.

- (1) "Custody" for purposes of this rule, means that a person is held in jail or prison, and includes a person who is:
 - (a) in the custody of a peace officer pursuant to a lawful arrest;
 - (b) a minor confined in a facility operated by the Division of Juvenile Justice Services, following conviction as an adult in district court, when the district court obtained jurisdiction over the minor pursuant to Section 78A-6-450, 78A-6-451, or 80-6-501 et. Seq.; or
 - (c) committed to the Department of Corrections, but who is housed at the Utah State Hospital or other medical facility.
- (2)(a) "Sentence" for purposes of this rule, means a judgment, sentence, or commitment issued by a district court pursuant to Subsection 77-18-105(2) for a criminal conviction and over which the Board has prison release jurisdiction.
- (b) When a person is sentenced to prison after being convicted of multiple counts in the same criminal case, or after being convicted in multiple cases, credit for time served will be calculated separately for each sentence.

R671-205-2. Credit for Time Served.

- (1) Credit for time served is applied to reducing the statutory expiration date of a sentence and shall be granted by the Board against an offender's prison sentence for time an offender served in custody if, before being sentenced to prison, the offender was held in custody in connection with the specific sentence:
 - (a) while awaiting trial, conviction, or imposition of the sentence, including any time spent in confinement, detention, or hospitalization in the custody of the Department of Human Services or the Utah State Hospital awaiting competency evaluation or restoration;
 - (b) while on probation or parole and awaiting a hearing or decision regarding the probation or parole violation allegations;
 - (c) as a condition of probation following the imposition of a suspended prison sentence, if the offender is later committed to prison on or after October 1, 2015;
 - (d) as a sanction for a violation of probation, following the revocation and re-start or re-imposition of probation, if the offender is later committed to prison on or after October 1, 2015;
 - (e) as a response to a violation of probation, pursuant to the Response and Incentive Matrix, if the offender is later committed to prison on or after October 1, 2015;
 - (f) that is reversed, vacated, or otherwise set aside, if a subsequent prison sentence is imposed for the same criminal conduct;
 - (g) at the Utah State Hospital following a "guilty and mentally ill" conviction; or
 - (h) outside the state based solely on a Utah warrant issued in connection with the sentence under Board jurisdiction.
- (2) The Board may, in its discretion, grant credit for time served in other, extraordinary circumstances.

R671-205-3. Exclusions.

Credit for time served may not be granted for any period of custody served:

- (1) for an arrest, pre-trial detention, probation, commitment, case, conviction, or sentence over which the Board has no jurisdiction;
- (2) at the Utah State Hospital or comparable non-prison, psychiatric facility while an offender, before commitment to prison is under a civil commitment order or other similar order to remain in the facility;
- (3) in a medical or other treatment facility while under court supervision;
- (4) under home-confinement, house arrest, in a community correctional center, or in any other treatment facility while under court supervision; or
- (5) for an arrest, pre-trial detention, probation, commitment, or sentence while under the jurisdiction of the federal government.

R671-205-4. Concurrent and Consecutive Sentencing.

- (1) If an offender is committed to prison for more than one sentence, credit for time served shall be calculated for each sentence separately.
- (2) If an offender is committed to prison to serve consecutive sentences, only the credit for time served attributable to the consecutive sentence shall be granted against that sentence, and the consecutive sentence shall begin only following the expiration of any prior sentences.
- (3) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed concurrently, credit for time served shall begin on the date the subsequent prison sentence is imposed.
- (4) If an offender is serving one or more prison sentences, and a subsequent prison sentence is imposed consecutively, credit for time served may not be granted toward the consecutive sentence, and the consecutive sentence shall begin only following the expiration of any prior sentences.

R671-205-5. Verification of Time Served Required.

- (1) The Board shall only grant credit for time served if the time in custody is documented in official records of the court or facility of custody.
- (2) If an offender desires credit in addition to that granted by the Board, the offender bears the burden to petition for, and provide copies of records supporting, the additional credit.

KEY: credit for time served, prison release, parole

Date of Last Change: June 9, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: Art. VII Sec. 12; 77-18-105; 77-27-5; 77-27-7; 77-27-9

R671. Pardons (Board of), Administration.**R671-206. Competency of Offenders.****R671-206-1. Incompetence for Board Proceedings Defined.**

For purposes of the proceedings of the Board of Pardons and Parole (Board), an offender is incompetent to proceed if the offender is suffering from a mental disorder or intellectual disability resulting in either:

- (1) an inability to have a rational and factual understanding of a pending Board hearing; or
- (2) an inability to consult with counsel and participate in a hearing with a reasonable degree of rational understanding.

R671-206-2. Stay to Determine Offender Competence.

- (1) If a Board member or hearing official, Department of Corrections (Department) agent or employee, counsel for the State, or counsel for an offender has reason to believe that an offender may be incompetent as defined herein or as defined in UCA 77-15-2, all proceedings shall be stayed pending a decision by the Board regarding the offender's competence.
- (2) A stay of proceedings under this rule does not toll any time served nor does it affect an offender's sentence expiration date.

R671-206-3. Proceedings When Competence Is Questioned.

If there is reason to believe that an offender is or may be incompetent, the Board may:

- (1) request a mental health evaluation from the Department or a private mental health expert to assist in determining whether the offender is competent or is likely to become competent while housed in the custody of the Department;
- (2) appoint one or more contract psychologists to examine the offender and report in writing to the Board, specifically addressing the issue of competency, as defined herein and in UCA Subsection 77-27-7(5); or
- (3) request that the Board's counsel from the Attorney General's office file a petition on behalf of the Board with the district court for a competency hearing pursuant to UCA Section 77-15-3.

R671-206-4. Determination of Competence.

If the Board or the district court, pursuant to UCA Section 77-15-3, determines the offender is competent, the Board shall proceed with scheduled hearings or other actions.

KEY: criminal competency

Date of Last Change: January 8, 2018

Notice of Continuation: October 3, 2022

Authorizing, and Implemented or Interpreted Law: 77-15-2; 77-15-3; 77-15-5; 77-27-2; 77-27-7

R671. Pardons (Board of), Administration.

R671-207. Custody Transfer for Mentally Ill Offenders and Mentally Decompensating Offenders.

R671-207-1. Definitions.

For purposes of this rule the following definitions apply:

- (1) "Mentally decompensating offender" means an individual who is in the custody of the Department of Corrections (Department), who has not been adjudicated as a mentally ill offender by a court, but whose mental health has decompensated to the point that admission to the State Hospital is necessary to ensure adequate mental health treatment.
- (2) "Mentally ill offender" means an individual who has been adjudicated guilty with a mental illness, including an individual who has an intellectual disability, pursuant to Section 77-16a-202.
- (3) "State Hospital" means the Utah State Hospital or other facilities designated by the Utah State Hospital where offenders may be housed for mental health treatment.
- (4) "Correctional facility" means any of the Utah prison facilities operated by the Department or any portion of a county jail contracted with the Department to house offenders.
- (5) "Health and Human Services" means the Utah Department of Health and Human Services.

R671-207-2. Transferring a Mentally Ill Offender from the State Hospital to a Correctional Facility.

- (1) If Health and Human Services and the Department agree that a correctional facility can provide a mentally ill offender with adequate mental health treatment, that mentally ill offender shall be transferred from the State Hospital to a correctional facility in accordance with Subsections 77-16a-204(1) through (3).
- (2) If Health and Human Services and the Department do not agree on the transfer of a mentally ill offender from the State Hospital to a correctional facility, Health and Human Services shall notify the Board, in writing, of the dispute. Both the Department and Health and Human Services shall provide written reports and recommendations to the Board before an administrative hearing. The Board shall conduct an administrative hearing and may take testimony at that hearing. The Board shall issue its decision within 30 days of the administrative hearing.
- (3) The Department shall notify the Board when a mentally ill offender is transferred from the State Hospital to a correctional facility.
- (4) The Board shall schedule any necessary hearing upon the mentally ill offender's transfer to a correctional facility.
- (5) The Department shall receive any mentally ill offender when the Board orders the transfer.

R671-207-3. Retransferring a Mentally Ill Offender from a Correctional Facility to the State Hospital and Stay of Board Hearings.

(1) When a mentally ill offender, who has previously been transferred from State Hospital to a correctional facility, and who the Department has accepted, is later evaluated and it is determined that the mentally ill offender's mental condition has decompensated or that the mentally ill offender has become mentally unstable, that mentally ill offender may be retransferred back to the State Hospital if the Department and Health and Human Services agree to the retransfer.

(2) The Board shall stay any hearing for the mentally ill offender until the mentally ill offender is transferred back to a correctional facility, except for hearings regarding transfer back of the mentally ill offender to a correctional facility.

(3) If Health and Human Services and the Department do not agree to the retransfer of a mentally ill offender from a correctional facility to the State Hospital, the Board shall determine whether the mentally ill offender will be retransferred back to the State Hospital.

(4) The Department shall notify the Board, in writing, that the Department and Health and Human Services do not agree on a mentally ill offender's retransfer to the State Hospital. The Board shall conduct an administrative hearing on the matter. Both the Department and Health and Human Services shall provide written reports and recommendations to the Board before the administrative hearing. The Board may take testimony at the hearing. In making its decision, the Board shall consider the factors in Subsection 62A-15-605.5(2). The Board shall issue its decision within 30 days of the administrative hearing.

(5) Health and Human Services shall receive any mentally ill offender in the Department's custody when the Board orders the transfer.

(6) A mentally ill offender who has been retransferred to the State Hospital pursuant to this rule may be transferred back to a correctional facility in accordance with the Board's administrative rules and Section 77-16a-204.

R671-207-4. Transfer of a Mentally Decompensating Offender from a Correctional Facility to the State Hospital and Stay of Hearings.

(1) If the Department determines that a mentally decompensating offender in its custody needs to be transferred to the State Hospital to ensure adequate mental health treatment, the Department may request Health and Human Services transfer that mentally decompensating offender to the State Hospital.

(2) If Health and Human Services and the Department do not agree to transfer a mentally decompensating offender to the State Hospital, the Board shall determine whether the mentally decompensating offender will be transferred to the State Hospital.

(3) Health and Human Services shall notify the Board, in writing, of the dispute.

(4) The Board shall hold an administrative hearing on the matter. Before the hearing, the Department and Health and Human Services shall provide any reports and recommendations to the Board. In making its decision, the Board shall consider the factors in Subsection 62A-15-605.5(2). The Board shall issue its decision within 30 days of the administrative hearing.

(5) Health and Human Services shall receive any mentally decompensating offender in the Department's custody when the Board orders the transfer.

(6) The Department shall notify the Board when a mentally decompensating offender is transferred from a correctional facility to the State Hospital.

(7) The Board shall stay any hearings while a mentally decompensating offender is in the State Hospital, except for hearings regarding retransfer of a mentally decompensating offender to a correctional facility.

R671-207-5. Retransfer of a Mentally Decompensating Offender from the State Hospital to a Correctional Facility.

(1) Mentally decompensating offenders who have previously been transferred to the State Hospital shall be retransferred back to a correctional facility through agreement between the Department and Health and Human Services.

(2) If the Department and Health and Human Services cannot agree on a retransfer, the Board shall determine if the mentally decompensating offender will be retransferred back to a correctional facility.

(3) Health and Human Services shall notify the Board, in writing, of the dispute.

(4) The Board shall hold an administrative hearing on the matter. Before the hearing, the Department and Health and Human Services shall provide any reports and recommendations to the Board. In making this decision, the Board shall consider the factors in Subsection 62A-15-605.5(4). The Board shall issue its decision within 30 days of the administrative hearing.

(5) The Department shall notify the Board when a mentally decompensating offender is transferred back to a correctional facility.

(6) The Board shall schedule any necessary hearing for the mentally decompensating offender upon return to a correctional facility.

(7) The Department shall receive any previously transferred mentally decompensating offender when the Board orders the retransfer.

KEY: criminal competency, mentally ill offender, mentally decompensating offender

Date of Last Change: June 9, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: 62A-15-605.5; 62A-15-610; 77-16a-202; 77-16a-203; 77-16a-204

R671. Pardons (Board of), Administration.

R671-301. Personal Appearance.

R671-301-1. Personal Appearance.

(1) By statute, the Board or its designee is required to convene at least one public hearing for each offender except those serving life without parole or a death sentence. In rehearings, the offender is afforded rights and considerations afforded in the initial hearing except as provided by other Board rules because the setting of a parole date is still at issue.

(2) An offender has the right to be present if the offender is housed in the state (Section 77-27-7). The offender may speak, present documents, ask questions of the hearing official, and answer questions. In the event an offender waives this right to appear, or refuses to personally attend the hearing, the Board may proceed with the hearing and issue a decision.

(3) If an offender is housed out of state:

(a) The offender may waive the right to be present, and the Board may then conduct the hearing in absentia.

(b) The Board may request the Department of Corrections to return the offender to the state for the hearing.

(c) The Board may request that a courtesy hearing be conducted by the appropriate paroling authority of the custodial jurisdiction. A request along with a complete copy of Utah's record shall be forwarded for the hearing. Reports, a record of the hearing, and a recommendation shall be returned to the Utah Board for final action.

(d) An individual Board member or designee may travel to the custodial facility and conduct the hearing, record the proceeding, and make a recommendation for the Board's final decision.

(e) A hearing may be conducted by videoconference or conference telephone call.

KEY: inmates, parole

Date of Last Change: February 16, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: 63G-3-201(2) and (3); 77-27-7(2); 77-27-9(5)

R671. Pardons (Board of), Administration.

R671-302. Public Access to Hearings.

R671-302-1. Open Hearings.

(a) According to state law, and subject to fairness, health, and security requirements, Board hearings are open public hearings.

(b) Public access to Board hearings is primarily available through live internet streaming of hearing.

(c) When health, safety, and security procedures and protocols of the Board and the Utah Department of Corrections (UDC) allow, victims and members of the public, including media representatives, may attend Board hearings in person.

(d) The Board shall only accept testimony or comments from the offender and specific individuals as provided in Rules R671-203 and R671-308.

(e) The Board may suspend in-person access to hearings in cases of national, state, county, or municipal declared emergency; natural catastrophe; or other unforeseen and extraordinary circumstances.

R671-302-2. Limited Seating.

When conditions allow in-person attendance at hearings pursuant to Section R671-302-1, if the number of individuals wishing to attend a hearing exceeds the seating capacity of the room in which the hearing will be conducted, priority for admission and seating shall be given to:

1. an individual involved in the hearing;

2. a victim or victim representative of record;

3. up to three victim advocates or other individuals designated by a victim or victim representative of record;

4. up to five individuals selected by the offender;

5. any officials designated or approved by the Board; and

6. a member of the public on a first come basis.

R671-302-3. Security and Conduct.

(a) An individual may attend a Board hearing in-person pursuant to Section R671-302-1.

(b) Each individual in attendance at a Board hearing is subject to hearing facility security requirements and must conduct themselves in a manner that does not interfere with the orderly conduct of the hearing.

(c) Any individual in attendance at a Board hearing that causes a disturbance or engages in behavior deemed by the hearing official to be disruptive of the proceeding may be ordered to leave and security personnel may be requested to escort the individual from the premises.

R671-302-4. Executive Session.

Board executive sessions are closed sessions with no access. No filming, recording or transmitting of executive session portions of any hearing will be allowed.

R671-302-5. Media Procedures.

(a) In addition to the requirements of Section R671-303-3, a media representative may attend a Board hearing in-person pursuant to Section R671-302-1.

(b) A media representative may be permitted to operate photographic, recording or other equipment during the public portion of any hearing, subject to prior approval by the Board or its designee and the safety or security requirements of the Department of Corrections (UDC) and the hearing facility.

(c) If the Board receives requests for more than one media representative to operate photographic, recording or other equipment during a hearing, the Board shall require a media pooling arrangement.

(d) If a hearing official determines that media equipment or operators are causing a disturbance, are interfering with, or have the potential to cause a disturbance or interfere with an orderly, fair and impartial hearing, restrictions may be imposed to eliminate those problems.

(e) Instant broadcast or transmitting of video, audio, or images by media or any individual during a hearing is prohibited.

(f) Photographing, recording, transmitting, or broadcasting the image of any victim attending a Board hearing is prohibited unless approved by the victim and the hearing official prior to the hearing.

R671-302-6. Media Equipment Approval.

(a) A media request to use photographic, recording or other equipment must be made in writing to the Board director or designee at least three business days prior to a hearing.

(b) Equipment will not be approved if the equipment is likely to disturb or interfere with the hearing.

(c) If equipment is approved for use at a hearing, its location and mode of operation shall be approved in advance by the Board's designee. Any approved equipment will remain in a stationary position during the entire hearing and will be operated as unobtrusively as possible.

(d) No artificial lighting may be used during a hearing, or in the hearing room. The hearing official or other Board representative may direct the placement of equipment and seating to ensure the hearing is conducted in an orderly and safe manner.

R671-302-7. Violations.

Any individual or organization that violates this rule may be removed from a hearing and may be prohibited from attending future Board hearings.

KEY: public hearings, media, equipment

Date of Last Change: August 24, 2021

Notice of Continuation: August 28, 2021

Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-9(5); 77-27-5(1)

R671. Pardons (Board of), Administration.**R671-303. Information Received, Maintained or Used by the Board.****R671-303-1. Information Received, Maintained or Used by the Board.**

(1) Offender access to information

(a) Absent a security or safety concern, as determined by the Board, the Board will provide the offender access to the information the Board will consider and given an opportunity to respond to such information, whenever the Board sets or extends the offender's parole or release date. The Board will provide the offender a written summary of information being considered if access to information presents a security or safety concern.

(b) The Board, upon request or upon its own motion, may:

(i) continue a hearing; or

(ii) allow the offender to submit additional documentation or information for consideration pursuant to the Board's order.

(c) The Board shall:

(i) provide an offender with a copy of the records not provided for previous hearings and contained in the offender's record at least three days prior to any personal appearance hearing in which a parole or release date may be fixed or extended by the Board;

(ii) at the beginning of the hearing, provide any additional information not provided under Subsection (1)(c)(i) obtained by the Board after this initial disclosure;

(iii) allow the offender an opportunity to review the supplemental information before the hearing proceeds in circumstances described under Subsection (1)(c)(ii); and

(iv) proceed with the hearing as scheduled if the offender requests no additional time for review as described under Subsection (1)(c)(iii).

(2) Submission of information

(a) Other than statements by the offender or information the Department of Corrections (Department) submits, other materials, briefs or written memoranda or argument submitted by or on behalf of any person, in preparation for a hearing, excluding commutation hearings governed by Rule R671-312, shall be limited to no more than five pages in length.

(b) In extraordinary circumstances, photographs or electronic images may be submitted and must be relevant to the offense. The Department limits the number of photographs or electronic images that an inmate may possess and photographs or electronic images of victims are contraband. The Board will disclose accepted photographs or electronic images at the beginning of a hearing. The offender may view the photographs or electronic images but not retain them. Pursuant to Subsection R671-303-1(1)(b), the offender may request additional time to respond or submit supplemental information.

(c) Submissions by legal counsel for or on behalf of an offender must be received by the Board no later than seven days prior to any scheduled hearing.

(d) The Board reserves the right to strike from the offender's record, and to refuse to accept or consider any material or submissions that are irrelevant, defamatory, inflammatory, or that do not otherwise conform to this rule.

KEY: inmates' rights, inmates, parole, records

Date of Last Change: February 16, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: 77-27-7(6)

R671. Pardons (Board of), Administration.

R671-304. Hearing Record.

R671-304-1. Hearing Record.

(1) An electronic audio record shall be made of each in-person, video, or telephonic hearings held by the Board of Pardons and Parole (Board).

(2) Pursuant to Section 77-27-8, a certified shorthand reporter shall record and transcribe the proceedings of any death penalty commutation hearing held by the Board.

(3) The electronic record made pursuant to this rule shall be maintained by the Board for seven years.

(4) Any magnetic, analog, or other non-digital hearing record made prior to January 1, 2009 shall be maintained for ten years from the date of the hearing.

(5) An offender or any member of the public may request a copy of the recording in writing.

(a) If the request for the recording requires that the record be copied to an electronic or digital medium, the Board may charge a fee, approved by the Legislature, for the copy.

(b) When requestors affirm by affidavit that they are unable to pay for a copy of the recording, the Board may furnish a copy of the record, at no fee, to the requestor.

KEY: government hearings

Date of Last Change: February 16, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-8; 77-27-9(5)

R671. Pardons (Board of), Administration.

R671-305. Board Decisions and Orders.

R671-305-1. Board Decisions and Orders.

The Board will reduce decisions to a written order. Orders entered following original hearings, re-hearings, special attention hearings, parole violation hearings, evidentiary hearings, rescission hearings, redetermination decisions, and compassionate release decisions will contain a brief rationale for the order. The Board's written orders and rationale statements are public documents. The Board shall provide or mail a copy of the order, and rationale statement if entered, to the person who is the subject of the order. The Board shall maintain a copy of orders entered in each case. The Board may publish its orders on its website at its discretion and convenience.

KEY: government hearings

Date of Last Change: February 16, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: Art VII, Sec 12; 63G-3-201; 77-27-9(5)

R671. Pardons (Board of), Administration.

R671-308. Offender Hearing Assistance.

R671-308-1. Offender Hearing Assistance.

Offenders who are deemed by the Board or a hearing official to be unable to effectively represent themselves at a hearing may be allowed to have any assistance the Board determines is necessary to conduct an orderly hearing. This may include a Board-appointed representative.

R671-308-2. Offender Legal Counsel – Parole Revocation Hearings.

(1) The Board may appoint or assign an attorney to represent offenders at parole violation hearings, including evidentiary hearings, at State expense, unless the offender is the subject of a new criminal conviction for which an initial or original hearing is scheduled.

(2) An offender may choose instead to be represented by their own attorney during parole revocation hearings at the offender's own expense.

(3) Any attorney appearing or representing an offender in parole revocation hearings shall be admitted and licensed to practice law within Utah. Any attorney representing an offender in a parole revocation hearing shall give notice of their representation to the Board before the hearing.

R671-308-3. Offender Legal Counsel – Other Hearings.

(1) Except in parole revocation proceedings as set forth in this rule, an offender or petitioner has no right, requirement, or entitlement to legal representation or appointed counsel before the Board or during or in connection with any Board hearing, review, or decision.

(2) No attorney or other person appointed or employed by an offender to assist in any matter or hearing before the Board may testify, speak, or otherwise address the Board during a hearing except as provided in this rule. Only the offender, a person appointed by the Board to assist an offender pursuant to this rule, or a victim as provided for by Utah law may present testimony or comment during a hearing.

(3) If a pardon or commutation petitioner appoints or employs an attorney at their own expense, to appear or represent the petitioner before the Board, the Board may allow the attorney to participate at the pardon or commutation hearing.

KEY: parole, inmates

Date of Last Change: June 9, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11; 77-27-29

R671. Pardons (Board of), Administration.

R671-309. Impartial Hearings.

R671-309-1. Ex Parte Communications.

(1) Offenders are entitled to an impartial hearing before the Board. The Board therefore discourages any ex parte contact with individual Board members or hearing officers at any time.

(2) All contacts by offenders, attorneys, victims of crime, their family members or any other person outside the staff of the Board regarding a specific case shall be referred, whenever possible, to a staff member who is not currently directly involved in hearing the case.

(a) If information provided by any person outside of a hearing is relevant to the offender's case, it shall be placed in the offender's file and disclosed to the offender.

(b) If the contact is by a victim wishing to make a statement for the Board's consideration, Rule R671-203 on Victim Input and Notification shall apply.

(c) Any inquiries or input from attorneys, public officials, or members of the public, regarding case facts or substantive matters, shall be submitted in writing.

(3)(a) A Board member or hearing officer assigned to a case may not initiate, permit, or consider ex parte communications concerning the substance of a pending matter.

(b) A Board member may not permit, consider, or be a party to any ex parte communication regarding a specific offender under Board jurisdiction if the object, intent, or substance of the communication is, or reasonably could be perceived to be, an attempt to impart information or opinion not contained in the offender's file, or to otherwise influence, change, or modify a Board decision or a Board member's deliberations, decision, or vote.

- (c) In situations where such ex parte communication does occur, the Board member or hearing officer shall immediately take steps to terminate the communication, and shall thereafter reduce the substance of the communication to a written memorandum to be maintained separately from the offender's file, including copies of any writings that formed any part of the ex parte communication.
- (d) Board staff will document the ex parte event and individuals involved in the ex parte communications and place the documentation in the file. This documentation shall be disclosed to the offender.
- (4) This rule may not preclude contact regarding procedural matters so long as such contact is not for the purpose of influencing the decision of the Board or any Board member on any particular case or hearing.
- (5) Attorneys may submit information for the Board to consider.
- (6) Violations of this rule may subject violators to sanctions pursuant to Section R671-103-2 and may result in a referral to the Office of Professional Conduct.

R671-309-2. Recusal.

- (1) A "hearing official" is a Board member, a Board member pro tempore, or a hearing officer.
- (2) A hearing official may be recused in any proceeding in which the hearing official's impartiality might reasonably be questioned, including but not limited to, the following circumstances:
 - (a) has a personal bias or prejudice concerning a party or a party's lawyer;
 - (b) is or could have been a witness or victim in any matter relating to the offender;
 - (c) has a familial, financial, or other relationship with anyone involved in the case that might reasonably be seen as a bias.
 - (d) where the hearing official has information about the case that does not appear in the file; and
 - (e) served as a lawyer, judge, agent, or caseworker in any previous matter with the offender.
- (3) In cases where a clear basis for recusal exists the hearing official will document the recusal in the file and reassign the case before the hearing is conducted.
- (4) If the conflict is not recognized before the hearing or the basis for recusal is minimal, the hearing official shall disclose the basis of the potential recusal to the offender. If the offender waives the recusal and agrees that the hearing official need not be disqualified, the hearing official may conduct the proceeding. The offender's waiver shall be entered on the record and memorialized in the case file.
- (5) If the offender believes the hearing official or any Board member should be recused, the offender shall raise the issue any time before or during the hearing.
 - (a) The offender may waive the recusal and continue with the hearing as prescribed in Subsection (2).
 - (b) If the offender requests the recusal of the hearing official or Board member who is conducting the hearing, the hearing official or Board member will rule on the issue. If the hearing official or Board member denies the recusal and proceeds with the hearing, the offender may appeal to the Board Chair or designee. The offender must clearly describe, in writing, the basis for recusing the hearing official and the requested remedy. If the offender does not appeal the issue within ten calendar days after the hearing official denies the recusal, the appeal is waived.
- (6) The offender may request the recusal of a Board member from the voting process based on any factors in Subsection (1).
 - (a) If the offender requests the recusal of a Board member who is not conducting the hearing, the hearing official will document the request. The Board will make a decision about the recusal before considering the case.
 - (b) If the offender does not raise the issue of recusal within ten calendar days after the Board renders a decision the claim is waived.
- (7) If a staff member of the Board meets the requirements of Subsection (2), that staff member shall declare the conflict, and the staff member's supervisor shall reassign the task to another staff member.

KEY: parole, inmates

Date of Last Change: October 10, 2024

Notice of Continuation: August 7, 2024

Authorizing, and Implemented or Interpreted Law: 63G-3-201(3); 77-27-1 et seq.; 77-27-5; 77-27-7; 77-27-9(4)(a)

R671. Pardons (Board of), Administration.

R671-310. Rescission Hearings.

R671-310-1. Rescission Hearings.

- (1) Any Board decision may be reviewed and rescinded by the Board at any time prior to an offender's actual release from custody.
- (2) If the rescission of a release or rehearing date is being requested by an outside party:
 - (a) information shall be provided to the Board establishing the basis for the request; and
 - (b) upon receipt of such information, the Board may schedule the offender for a rescission hearing.
- (3) The Board may review and rescind an offender's release or rehearing date on its own initiative.
 - (a) Except under extraordinary circumstances, the offender should be notified of the basis for consideration of rescission and the date of the scheduled hearing at least seven calendar days in advance of the hearing.
 - (b) The offender may waive this period.
- (4) In the event of an escape, the Board will rescind the inmate's date upon notification of escape from custody and continue the hearing until the inmate is available for appearance. The hearing may be continued pending criminal or administrative proceedings being resolved or until the Board receives appropriate information regarding the escape.
- (5) The Board may make an interim rescission decision upon receipt of a rescission request and prior to a rescission hearing.

KEY: parole, inmate

Date of Last Change: February 16, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-6; 77-27-11

R671. Pardons (Board of), Administration.

R671-311. Special Attention Reviews, Hearings, and Decisions.

R671-311-1. Special Attention Reviews and Decisions.

- (1) The Board may use special attention reviews or hearings to adjust parole conditions, review earlier Board decisions, and change earlier decisions when exceptional circumstances exist.
- (2) Special attention reviews shall be initiated by Board staff when necessary to correct clerical or other errors in Board orders, or upon the receipt of a written request explaining the exceptional circumstances for which modification is sought.
- (3) Exceptional circumstances which may result in a special attention review and decision may include:
 - (a) clerical errors in an earlier order;
 - (b) changes to the conditions of parole requested by the Department of Corrections (Department);
 - (c) determination of restitution obligations;
 - (d) payment of restitution obligations before release;
 - (e) reinstatement of a rescinded release before a rescission hearing;
 - (f) modification of an earlier decision due to changes in credit for time served as calculated by the Board;
 - (g) modification of an earlier decision due to changes in applicable guidelines as calculated by the Board;
 - (h) considering continuation of parole that may include modification or addition of new conditions of parole in lieu of revocation for parole violations;
 - (i) imposing parole violation sanctions pursuant to a request from the Department and a waiver from the offender;
 - (j) granting incentives and parole condition changes pursuant to a request from the Department;
 - (k) exceptional performance or progress in a correctional facility;
 - (l) Case Action Plan (CAP) completion or compliance over a significant period;
 - (m) earned time adjustments made pursuant to Section R671-311-3;
 - (n) exceptional circumstances not previously considered by the Board; or
 - (o) review of new and significant information not previously considered by the Board.
- (4) Unless the request for a special attention review is made by the Department or Board staff, the Board may request that the Department review the request and make a recommendation.
- (5) Special attention requests that are repetitive, frivolous, or lacking in substantial merit shall be summarily denied and placed in the offender's file without formal action or response.
- (6) Unless otherwise ordered by the Board, special attention reviews shall be processed administratively based on written or electronic reports supplied to the Board without the personal appearance of the offender.

R671-311-2. Special Attention Hearing.

(1) The Board may schedule a special attention hearing if it determines that a personal appearance hearing will assist in making a decision regarding a special attention request.

(2) A special attention hearing shall be scheduled if an alternative parole violation sanction is to be imposed and the offender requests a hearing.

R671-311-3. Earned Time Adjustments.

(1) As required in Section 77-27-5.4, earned time adjustments shall reduce the current period of incarceration for offenders who have been granted a release from prison and who successfully complete CAP priorities identified during the current period of incarceration. Earned time adjustment:

(a) means a reduction of an offender's current period of incarceration when a release date has been ordered by the Board; and

(b) has the same meaning as "credit" as used in Section 77-27-5.4.

(2) Earned time adjustments.

(a) an offender shall earn an adjustment of four months for the successful completion of a program identified by the Department as pertaining to, satisfying, or applying within an offender's CAP.

(b) an offender shall earn an adjustment of four months for successful completion of one additional program as identified by the Department in the offender's CAP.

(c) the earned time adjustment shall change the previously ordered release date, resulting in a reduction in the length of incarceration.

(d) the Board, in its discretion, may grant additional time adjustments for offenders who have already earned mandatory time adjustments based on other programming performance or achievement.

(e) the Board, in its discretion, may grant a time adjustment for an offender who has not completed CAP priority programming, when the Board determines there is good cause to do so.

(3) The Board may order the forfeiture of earned time credits under Section R671-311-3 if it determines that a rescission hearing is necessary due to a major disciplinary violation, new criminal conviction, new criminal activity, or other similar action committed by the offender.

(4) Exclusions:

(a) offenders whose previously ordered release date does not provide enough time, including time for transition services, for the adjustment may not be granted a full earned time adjustment, but may receive a partial adjustment if the previously ordered release date allows for the same.

(b) earned time adjustments may not be used to change an offender's original hearing as scheduled by the Board.

(c) offenders who have been sentenced to life without parole are ineligible for earned time adjustments.

(d) offenders who have been ordered by the Board to serve a life sentence to expiration are ineligible for earned time adjustments.

(e) earned time adjustments may not be granted for a second or subsequent completion of the same classes, programs, or CAP priorities during the same term of incarceration without an intervening release.

(f) offenders who do not have a current release date are not eligible for the earned time adjustment according to Subsection 77-27-5.4(3)(d); however, the Board shall consider the program completion when making subsequent release decisions.

(g) offenders who have not met a contingency requirement for release ordered by the Board are ineligible for an earned time adjustment.

(5) The Department shall notify the Board within 30 days of an offender's successful completion of a CAP program that is eligible for an earned time adjustment.

KEY: parole, inmates, sentences, earned time, earned time adjustment

Date of Last Change: June 9, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 63G-3-201(3); 64-13-1; 64-13-7.5; 64-13-25; 77-27-1 et seq.; 77-27-5.4; 77-27-7; 77-27-5; 77-27-6; 77-27-9(4)(a); 77-27-10(2)(b); 77-27-11

R671. Pardons (Board of), Administration.

R671-312. Commutation Hearings for Death Penalty Cases.

R671-312-1. General Applicability.

The provisions and procedures set forth below are of general applicability to all petitions filed with the Utah Board of Pardons and Parole (Board) seeking the commutation of a death sentence.

(1) Any person, individually or through counsel, who has been sentenced to death by a court in this state may petition the Board for commutation of the death sentence.

(2) No person has a right, privilege, or entitlement to commutation or clemency; nor to the scheduling of a commutation hearing. Nothing in this rule may be interpreted to convey any right or expectation of commutation, clemency, or to a commutation hearing. The decision to schedule a commutation hearing is within the exclusive power and authority of the Board.

(3) Petitions for commutation of a death sentence shall be governed by applicable state constitutional provisions, statutes, this rule, and other Board administrative rules as applicable.

(4) Any document, pleading, notice, attachment or other item submitted as part of the commutation petition, response, or subsequent pleadings shall be delivered to and filed with the Board's Administrative Coordinator at the Board's offices.

(5) Upon the filing of a commutation petition, and throughout the duration of all commutation proceedings, any communication to the Board by any party or party's counsel should be directed to the Board's Administrative Coordinator. Any communication from the Board to any party or counsel will be directed through the Board's Administrative Coordinator. This section does not apply to Board communications with its own legal counsel as assigned by the Attorney General.

(6) A commutation petition, any response thereto, and any subsequent pleading, or document submitted to the Board for consideration in relation to a commutation petition is considered a public document, unless the document is determined by the Board to be controlled, protected, or private, pursuant to any other statute, law, rule, or prior case law.

(7) Any order issued by the Board relating to a commutation petition is a public document.

(8) If the petitioner's execution is stayed by any court, after a commutation petition has been filed with the Board, but prior to commencement of any commutation hearing, all commutation proceedings before the Board shall cease.

(9) If the petitioner's execution is stayed by any court after a commutation hearing has commenced, the hearing may continue, and the Board may render its decision.

(10) As used in this rule, "day" means a regular calendar day, including weekends and holidays.

(11) As used in this rule, "Petitioner" means the person whose death sentence is sought to be commuted by the filing of a commutation petition with the Board.

(12) The Board may summarily deny, with or without a response or objection from the State, any commutation petition without a hearing.

(13) Procedures applicable to commutation petitions for any person sentenced to death by a court in this state prior to April 26, 1992, are governed by Rule R671-312A. Procedures applicable to commutation petitions for any person sentenced to death by a court in this state after April 26, 1992, are governed by Rule R671-312B.

(14) If the Board deems necessary and appropriate, the Board may temporarily stay an execution to fully hear a petition for commutation.

KEY: capital punishment

Date of Last Change: May 22, 2013

Notice of Continuation: October 3, 2022

Authorizing, and Implemented or Interpreted Law: Art VII, Sec 12; 77-19-8; 77-27-2; 77-27-4; 77-27-5; 77-27-5.5; 77-27-8; 77-27-9; 77-27-9.5.

R671. Pardons (Board of), Administration.

R671-312A. Commutation Procedures Applicable to Persons Sentenced to Death On or Before April 26, 1992.

R671-312A-1. Scope of Rule.

Rule R671-312 governs petitions and proceedings when a petition for commutation of a death sentence is filed by or on behalf of a person sentenced to death for a capital felony in this state. In addition to the rules of general applicability set forth in Rule R671-312, this Rule R671-312A governs commutation petitions and proceedings when a death sentence commutation petition concerns a person who was sentenced to death on or before April 26, 1992.

R671-312A-2. Eligibility.

- (1) A person sentenced to death, or that person's counsel, may file a petition for commutation of a death sentence no later than seven days after the sentencing court has issued a judgment of death and a warrant of execution.
- (2) If any appeal of the petitioner's conviction or sentence is filed or litigated on behalf of the petitioner, including any collateral challenges or lawsuits, the commutation petition shall be filed within seven days after completion of any such appeals of the conviction or sentence and collateral challenges or lawsuits, including any proceedings seeking post-conviction relief, habeas corpus relief, or other proceedings for extraordinary relief.
- (3) Failure of any petitioner or counsel to comply with this rule, other Board rules, or any Board directive or order may result in the summary denial of the petition and cancellation of any scheduled hearing.
- (4) Any act, omission, pleading, or other filing by a petitioner or counsel that the Board determines is meant to delay, hinder, or disrupt the Board's commutation process or proceedings may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-312A-3. Petition Requirements.

- (1)(a) The commutation petition shall be signed by the petitioner, under oath, and filed with the Board at the Board's office no later than seven days after the sentencing court signs a warrant setting an execution date.
- (b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.
- (c) If the petitioner is represented by counsel, counsel shall comply with Rule R671-103, Attorneys.
- (d) The petitioner or counsel shall properly serve a copy of the petition to the Utah Attorney General or designee in accordance with Utah Rule of Civil Procedure 4.
- (2) The commutation petition shall include:
 - (a) the petitioner's name, date of birth, and Department of Corrections' offender number;
 - (b) the name, address, telephone number, and email address of any counsel representing the petitioner in the commutation proceeding;
 - (c) a certified copy of the Judgment, Commitment, and Sentence for which commutation is petitioned;
 - (d) a certified copy of the warrant setting the execution date applicable to the petitioner and for which commutation is petitioned;
 - (e) a statement specifying whether or not the conviction or sentence for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;
 - (f) a statement specifying whether or not the conviction or sentence for which commutation is petitioned was the subject of any complaint, petition, or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeas corpus, or any other extraordinary relief; and if so, a copy of any applicable final orders, rulings, determinations, and appellate decisions regarding such litigation;
 - (g) a statement of the reasons or grounds which the petitioner believes support the commutation of the death sentence;
 - (h) copies of any written evidence upon which the petitioner intends to rely at the hearing; and
 - (i) the names of any witnesses the petitioner intends to call and a summary of their anticipated testimony.
- (3) If the petitioner previously requested commutation, the petition shall include a statement reciting what, if any, new, significant, and previously unavailable information exists which supports commutation and the reasons the petitioner believes this information supports reconsideration.
- (4) Within seven days of receiving the petition, the state, by and through the Attorney General or designee, shall file a response to the petition. The state shall file its response to the commutation petition with the Board and hand-deliver a copy of the response to the petitioner or counsel, if represented.
 - (a) The state's response shall include copies of any written evidence, the names of any witnesses, and a summary of the anticipated testimony upon which the state intends to rely to rebut the petitioner's claim that the sentence of death should be commuted.
 - (b) The Board may request either the petitioner or the state to provide additional information.

R671-312A-4. Preliminary Determinations and Procedures.

- (1) The Board, after considering the commutation petition and the state's response, may grant a commutation hearing or may deny the petition without further pleadings, response, hearing, or submissions.
- (2) The Board shall issue an order either granting or denying a commutation hearing. The Board's order shall be delivered to the petitioner, counsel, and the state's counsel, either by mail or electronic mail.
- (3) If the Board grants a commutation hearing, the Board Chair or another Board Member designated by the Chair, will:

- (a) schedule and hold a pre-hearing conference with the petitioner's counsel and the state's counsel to schedule the commutation hearing;
- (b) identify the witnesses to be called;
- (c) clarify the issues to be addressed; and
- (d) take any other action deemed necessary and appropriate to conduct the commutation hearing and proceedings.

R671-312A-5. Commutation Hearing Procedures.

(1) Pursuant to Utah Constitution Article VII, Section 12, and Section 77-27-5 (1992), a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to:

- (a) the victim's representatives;
- (b) the police agency which investigated the offenses for which commutation has been petitioned;
- (c) the office or agency responsible for the prosecution of the offenses for which commutation has been petitioned; and
- (d) the court which originally imposed the sentence for the offenses for which commutation has been petitioned.

(3) Public notice of the commutation hearing will also be made via the Board's website, and the State of Utah Public Meeting and Notice website.

(4) If not otherwise called as a witness, a victim representative, as defined by Section R671-203-1, shall be given the opportunity to attend the commutation hearing and to present testimony regarding the commutation petition, in accordance with, and subject to Subsections R671-203-4(1) through R671-203-4(3), and Subsection R671-203-4(5).

(5) A commutation hearing is not adversarial and neither party is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, or the state's counsel.

(6) The Utah Rules of Evidence do not apply to a commutation hearing. However, any evidence and testimony sought to be introduced by the parties must be relevant to the issues to be decided by the Board. The Board, through the Board Chair, will make final determinations regarding evidence or testimony admissibility, relevance, or exclusion.

(7) In conducting the commutation hearing:

(a) The Board Chair or designee will place any witnesses under oath and may impose a time limit on each party for presenting its case.

(b) The Board will record the commutation hearing in accordance with Subsection 77-27-8(2).

(c) Rule R671-302, Public Access to Hearings, will govern media and public access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

(e) During the commutation hearing, no person, including either party, the petitioner, any witness, either party's counsel, or any other person associated with or employed by a party or counsel, may approach any member of the Board without leave from the Chair.

R671-312A-6. Commutation Decision.

(1) The Board shall determine by majority decision whether to grant or deny the commutation petition.

(2) The decision of the Board granting or denying commutation following a hearing shall be delivered by mail or electronic mail to the parties and then published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be provided to the court that entered the sentence or conviction that is the subject of the commutation petition.

KEY: capital punishment, death sentence, commutation

Date of Last Change: August 14, 2024

Notice of Continuation: October 3, 2022

Authorizing, and Implemented or Interpreted Law: Art VII, Sec 12; 77-19-8; 77-27-2; 77-27-4; 77-27-5; 77-27-5.5; 77-27-8; 77-27-9; 77-27-9.5.

R671. Pardons (Board of), Administration.

R671-312B. Commutation Procedures Applicable to Persons Sentenced to Death After April 26, 1992.

R671-312B-1. Scope of Rule.

Rule R671-312 governs all petitions and proceedings when a petition for commutation of a death sentence is filed by or on behalf of a person sentenced to death for a capital felony in this state. In addition to the rules of general applicability set forth in Rule R671-312, this Rule, R671-312B, governs commutation petitions and proceedings when a death sentence commutation petition concerns a person who was sentenced to death after April 26, 1992.

R671-312B-2. Eligibility.

(1) A person sentenced to death, or that person's counsel, may file a petition for commutation of a death sentence no later than seven days after the sentencing court has issued a judgment of death and a warrant of execution.

(2) If any appeal of the petitioner's conviction or sentence is filed or litigated on behalf of the petitioner, including any collateral challenges or lawsuits, the commutation petition shall be filed within seven days after completion of all such appeals of the conviction or sentence and collateral challenges or lawsuits, including all proceedings seeking post-conviction relief, habeas corpus relief, or other proceedings for extraordinary relief.

(3) Failure of any petitioner or counsel to comply with this rule, all other Board rules, or any Board directive or order may result in the summary denial of the petition and cancellation of any scheduled hearing.

(4) Any act, omission, pleading, or other filing by a petitioner or counsel that the Board determines is meant to delay, hinder, or disrupt the Board's commutation process or proceedings may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-312B-3. Petition Requirements.

(1)(a) The commutation petition shall be signed by the petitioner, under oath, and filed with the Board at the Board's office no later than seven days after the sentencing court signs a warrant setting an execution date.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Rule R671-103, Attorneys.

(d) The petitioner or counsel shall properly serve a copy of the petition to the Utah Attorney General or designee in accordance with Utah Rule of Civil Procedure 4.

(2) The commutation petition shall include:

(a) the petitioner's name, date of birth, and Department of Corrections offender number;

(b) the name, address, telephone number, and email address of any counsel representing the petitioner in the commutation proceeding;

(c) a certified copy of the Judgment, Commitment, and Sentence for which commutation is petitioned;

(d) a certified copy of the warrant setting the execution date applicable to the petitioner and for which commutation is petitioned;

(e) a statement specifying whether or not the conviction or sentence for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction or sentence for which commutation is petitioned was the subject of any complaint, petition, or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeas corpus, or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations, and appellate decisions regarding such litigation;

(g) a statement of the reasons or grounds which the petitioner believes support the commutation of the death sentence;

(h) copies of all written evidence upon which the petitioner intends to rely at the hearing;

(i) the names of all witnesses the petitioner intends to call and a summary of their anticipated testimony; and

(j) a statement certifying whether the issue or issues:

(i) have been reviewed previously by the courts;

(ii) should have been raised during the judicial process; or

(iii) if based on new information, are still subject to judicial review.

(3) If the petitioner previously requested commutation, the petition shall include a statement reciting what, if any, new, significant, and previously unavailable information exists which supports commutation and the reasons the petitioner believes this information supports reconsideration.

(4) Within seven days of receiving the petition, the state, by and through the Attorney General or designee, shall file a response to the petition. The state shall file its response to the commutation petition with the Board and hand-deliver a copy of the response to the petitioner or counsel, if represented.

(a) The state's response shall include copies of all written evidence, the names of any witnesses, and a summary of the anticipated testimony upon which the state intends to rely to rebut the petitioner's claim that the sentence of death should be commuted.

(b) The Board may request either the petitioner or the state to provide additional information.

R671-312B-4. Preliminary Determinations and Procedures.

(1) If the Board determines that it cannot consider the claims pursuant to Section 77-27-5.5, it shall deny the petition.

(2) If the Board determines the petition does not present a substantial issue for commutation, it shall deny the petition.

(3) If the Board determines the petition presents a substantial issue for commutation, which has not, or could not have been reviewed by the judicial process, the Board may grant a commutation hearing or deny the petition without further pleadings, response, hearing, or submissions.

(4) The Board shall issue an order either granting or denying a commutation hearing. The Board's order shall be delivered to the petitioner, counsel, and the state's counsel, either by mail or electronic mail.

(5) If the Board grants a commutation hearing, the Board Chair or another Board Member designated by the Chair, shall:

(a) schedule and hold a pre-hearing conference with the petitioner's counsel and the state's counsel schedule the commutation hearing;

(b) identify the witnesses to be called;

(c) clarify the issues to be addressed; and

(d) take any other action deemed necessary and appropriate to conduct the commutation hearing and proceedings.

R671-312B-5. Commutation Hearing Procedures.

(1) Pursuant to Utah Constitution Article VII, Section 12, and Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to:

(a) the victim's representatives;

(b) the police agency which investigated the offenses for which commutation has been petitioned;

(c) the office or agency responsible for the prosecution of the offenses for which commutation has been petitioned; and

(d) the court which originally imposed the sentence for the offenses for which commutation has been petitioned.

(3) Notice of the commutation hearing will be provided to the public via the Board's website, and the State of Utah Public Meeting and Notice website.

(4) If not otherwise called as a witness, a victim representative, as defined by Section R671-203-1, shall be given the opportunity to attend the commutation hearing, and to present testimony regarding the commutation of the death sentence, in accordance with, and subject to Subsections R671-203-4(1) through R671-203-4(3), and Subsection R671-203-4(5).

(5) A commutation hearing is not adversarial and neither party is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, or the State's counsel.

(6) The Utah Rules of Evidence do not apply to a commutation hearing. However, any evidence and testimony sought to be introduced by the parties must be relevant to the issues to be decided by the Board. The Board, through the Board Chair, will make final determinations regarding evidence or testimony admissibility, relevance, or exclusion.

(7) In conducting the commutation hearing:

(a) The Board Chair or designee will place any witnesses under oath and may impose a time limit on each side for presenting its case.

(b) The Board will record the commutation hearing in accordance with Subsection 77-27-8(2).

(c) Rule R671-302, Public Access to Hearings, will govern media and public access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

(e) During the commutation hearing, no person, including either party, the petitioner, any witness, either party's counsel, or any other person associated with or employed by a party or counsel, may approach any member of the Board without leave from the Chair.

R671-312B-6. Commutation Decision.

(1) The Board shall determine by majority decision whether to grant or deny the commutation petition.

(2) The decision of the Board granting or denying commutation following a hearing shall be delivered by mail or electronic mail to the parties and then published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be provided to the court that entered the sentence or conviction that is the subject of the commutation petition.

KEY: capital punishment, death sentence, commutation

Date of Last Change: August 14, 2024

Notice of Continuation: October 3, 2022

Authorizing, and Implemented or Interpreted Law: Art VII, Sec 12; 77-19-8; 77-27-2; 77-27-4; 77-27-5; 77-27-5.5; 77-27-8; 77-27-9; 77-27-9.5.

R671. Pardons (Board of), Administration.

R671-313. Commutation Hearings (Non-Death Penalty Cases).

R671-313-1. Applicability.

(1) For purposes of this rule and the decisions, determinations and orders of the Utah Board of Pardons and Parole Board, acting under its powers as authorized by the Utah Constitution, commutation may mean the change or reduction of the severity of a crime; the change or reduction of an imposed sentence; or the change or reduction of the type or level of offense. Commutation is an act of clemency. Commutation is not a conditional or unconditional pardon.

(2) No person has a right, privilege, or entitlement to commutation or clemency.

(3) Petitions for commutation of a death sentence shall be governed by applicable state constitutional provisions, statutes, and Rule R671-312.

(4) Any other petitions seeking commutation of a Utah conviction or sentence shall be governed by applicable state constitutional provisions and statutes, and by this administrative rule.

(5) As used in this rule, "subject" means the person whose convictions or sentences are sought to be commuted by the filing of a commutation petition with the Board.

(6) Any person, individually or through counsel, who has been convicted of any felony, Class A misdemeanor or Class B misdemeanor offense in this state, may petition the Board for commutation of such convictions or sentences entered or imposed in this state, except for cases of treason or impeachment.

(7) The Utah Attorney General; assistant attorneys general, as authorized by the attorney general; any county attorney or district attorney; or any deputy county or deputy district attorney as authorized by their elected county or district attorney; may petition the Board, on behalf of any convicted person, for commutation of any such conviction or sentence entered or imposed in this state, except for cases of treason or impeachment.

(8) Any document, pleading, notice, attachment, or other item which is submitted as part of the commutation petition, response, or subsequent pleadings shall be delivered to and filed with the Board.

(9) A commutation petition, any response thereto, and any subsequent pleading, submission, or document submitted to the Board for consideration in relation to a commutation petition are considered public documents, unless the document is determined by the Board to be controlled, protected, or private, pursuant to any other statute, law, rule, or prior case law.

(10) Any order issued by the Board relating to a commutation petition is a public document.

R671-313-2. Eligibility.

(1) No commutation petition regarding a traffic citation, an infraction, or a Class C misdemeanor will be considered by the Board.

(2) No petition seeking a posthumous commutation of any offense will be considered by the Board.

(3) A petition for commutation may be filed with the Board any time after the sentencing court has entered a conviction and a sentence. The Board may delay its consideration of any petition where there is or remains pending any appeal or post-conviction litigation regarding the convictions or sentences which are the subject of the commutation petition.

(4) Failure of any petitioner or counsel to comply with this rule, any other Board rule, or any Board directive or order, may result in the summary denial of the petition and cancellation of any scheduled hearing.

R671-313-3. Petition Requirements.

(1)(a) The commutation petition shall be signed under oath. If the petitioner is not the subject of the petition, the subject of the petition shall also sign the petition.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Rule R671-103 - Attorneys.

(2) The commutation petition shall include:

(a) the petitioner's name, address, telephone number, and email address;

(b) the subject's name, address, telephone number, and email address;

(c) the name, address, telephone number, and email address of any counsel representing the petitioner in the commutation proceeding;

(d) a certified copy of the judgment for which commutation is petitioned;

(e) a statement specifying whether or not the conviction or sentence for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction or sentence for which commutation is petitioned was the subject of any complaint, petition or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeas corpus or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations, and appellate decisions regarding such litigation;

(g) a copy of all police reports, pre-sentence reports, post-sentence reports and court dockets for the conviction or sentence for which commutation is petitioned;

(h) a certified copy of the subject's Utah and NCIC criminal history reports;

(i) a statement wherein the subject and petitioner certify that no criminal cases or charges are pending against the subject in any court. If the subject has any pending criminal cases or charges, the statement shall identify and explain all criminal cases or charges pending in any state, federal, or local court and the nature of the cases pending. If such proceedings are pending,

the statement must identify the court in which such cases are pending; explain the nature of the proceedings and charges; and note the status of the proceedings;

(j) a statement of the reasons and grounds which petitioner believes specifically support commutation;

(k) copies of all written evidence upon which petitioner intends to rely at the hearing, along with the names of all witnesses whom petitioner intends to call and a summary of their anticipated testimony;

(l) a statement specifying whether any of the stated reasons or grounds for commutation have been reviewed by the courts; and shall include copy of any court decision entered or made by such a reviewing court; and

(m) if the grounds for commutation are based upon post-conviction, newly discovered evidence, the petition shall include a statement explaining why such evidence is considered new, why the purportedly new evidence was not or could not have been reviewed during the judicial, appellate, or post-conviction process, and why the purportedly new evidence is not currently subject to judicial review.

(3) If the subject is currently on probation or parole, the petition shall include a report from Adult Probation and Parole which summarizes and explains the subject's progress while under supervision. This report shall include information regarding the subject's progress toward completing all supervision requirements, treatment requirements, violations and accomplishments, supervision history, and fulfillment of financial obligations while under supervision.

(4) If the subject is currently incarcerated, the petition shall include a current Institutional Progress Report from the Department of Corrections. This report shall include the subject's disciplinary history, program completion, employment history, and any other information about institutional conduct.

(5) If the subject has ever applied for and been denied commutation, the petition shall set forth what, if any, new, significant, and previously unavailable information exists which supports commutation and the reasons this information was not previously submitted to the Board, and why this information supports commutation.

(6) At any time following submission of a commutation petition, the Board may seek additional information from the petitioner, the subject, or counsel.

R671-313-4. Petition Procedures.

(1) Within six months, or as soon as practicable, after receipt of the petition, the Board may:

(a) deny the commutation petition without a hearing;

(b) request a response from the original prosecuting agency, Attorney General's Office, the subject of the petition, or their counsel; or

(c) grant a commutation hearing further consider the petition.

(2) If the Board denies a commutation petition without a hearing, it shall notify the petitioner and counsel, if represented, and the original prosecuting agency. The notification shall include a brief rationale for the Board's decision.

(3) The Board may request a response to the petition from the attorney general, district attorney, county attorney or city attorney whose office or agency originally prosecuted the counts, charges, or case resulting in the conviction and sentence for which commutation is sought; and from any attorney general, district attorney, county attorney or city attorney whose office represented the prosecuting agency or office in relation to any appeal or post-conviction litigation regarding any conviction or sentence which is the subject of the commutation petition, hereinafter referred to as the "state's response." The Board may also request a response from the subject of the petition or their counsel.

(4) If the Board requests a response at any time, the state's response shall be filed with the Board within 60 days of the Board's request, and shall clearly specify whether the responding agency or individual opposes or supports the commutation. The response shall also include all statements and arguments which form the basis of any opposition to the petition. This shall include all written evidence, the names of all witnesses, and a summary of the anticipated testimony upon which the responding agency or individual intends to rely.

(5) The Board, after considering the original commutation petition, and any requested response, may grant a commutation hearing, or may deny the petition. If the Board denies a commutation petition without a hearing, it shall notify the petitioner and counsel, if represented, and the original prosecuting agency. The notification shall include a brief rationale for the Board's decision.

(6) If the Board grants a commutation hearing:

(a) Within ten calendar days of receiving the Board's order granting a commutation hearing, the petitioner shall serve a copy of the commutation petition and all attachments upon any entity identified as "the state" in Subsection R671-313-4(3).

(b) The petitioner shall also serve the subject of the petition or their counsel if the subject has not already been served.

(c) Proof and verification of service of pleadings as required in this rule shall be filed with the Board within seven calendar days of accomplishing such service.

(7)(a) Any responding agency or individual must file their response within 60 days of receiving a copy of the petition.

(b) Responses shall be served on the petitioner. Proof and verification of service of pleadings as required in this rule shall be filed with the Board within seven calendar days of accomplishing such service.

(c) The response to the petition shall clearly specify whether the responding agency or individual opposes or supports the commutation. The response shall also include all statements and arguments which form the basis of any opposition to the petition. This shall include all written evidence, the names of all witnesses, and a summary of the anticipated testimony upon which the responding agency or individual intends to rely.

(8) If the Board grants a commutation hearing, the Board Chair or designee will schedule and hold a pre-hearing conference. At that conference the Board Chair or designee will schedule the commutation hearing, identify and set the

witnesses to be called, clarify the issues to be addressed, and take any other action deemed necessary and appropriate to conduct the commutation proceedings.

(9) There is no right to a commutation hearing, and the Board retains complete and absolute discretion to determine whether to grant a hearing on the commutation petition.

R671-313-5. Commutation Hearing.

(1) Pursuant to Utah Constitution, Article VII, Section 12, and Section 77-27-5, a commutation may only be granted after a full hearing before the Board.

(2) If a commutation hearing is granted;

(a) notice of hearing shall be published on:

(i) the Board's website; and

(ii) The Utah Public Notice website; and

(b) for each conviction which is the subject of the commutation hearing, notice of the hearing shall be mailed or otherwise sent to:

(i) any victim of record, if the victim can be located;

(ii) the arresting or investigating agency;

(iii) the sentencing court; and

(iv) the state.

(3) If not otherwise called as a witness, a victim as defined in Section R671-203-1, shall be given the opportunity to attend the commutation hearing, and to present testimony regarding the commutation petition, in accordance with, and subject to Section R671-203-4.

(4) The commutation hearing is not adversarial and neither side is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, the subject of the petition, and the subject's counsel. The Utah Rules of Evidence do not apply to a commutation hearing.

(5) In conducting the commutation hearing:

(a) The Board will place all witnesses under oath and may impose a time limit on each party for presenting its case.

(b) The Board will record the commutation hearing in accordance with Subsection 77-27-8(2).

(c) Rule R671-302 "Public Access to Hearings" will govern access to the hearing.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

R671-313-6. Commutation Decision.

(1) The Board shall determine by majority decision whether to grant the petition in whole or in part. The Board may, by majority decision, impose conditions for the commutation.

(2) The Board shall notify the petitioner and counsel, if represented, and the original prosecuting agency of the Board's decision. The notification shall include a brief rationale for the decision.

(3) The decision of the Board will also be filed with the court which entered the sentence or conviction which are the basis of the commutation petition and published on the Board's website.

(4) If a sentence or conviction is commuted, the Board will send a copy of the commutation order to the Utah Department of Public Safety, Bureau of Criminal Identification and the Federal Bureau of Investigation.

KEY: commutation, pardons, punishment

Date of Last Change: April 1, 2024

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Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 63G-3-201(3); 77-27-1 et seq.; 77-27-5; 77-27-9

R671. Pardons (Board of), Administration.

R671-314. Compassionate Release.

R671-314-1. Rule.

(1) For this rule, the "Department" means the Department of Corrections, the Department of Health and Human Services Clinical Health Services Division, or other designee of the Department of Corrections.

(2) The Board shall consider a compassionate release when specified exceptional circumstances exist.

(3) A compassionate release request submitted on behalf of an offender does not limit or preclude other requests for special attention or redetermination consideration.

(4) Compassionate release consideration shall be initiated upon the receipt of a written request, as specified in this rule, explaining the circumstances supporting the release.

(5) The Board shall consider a compassionate release in the following exceptional circumstances:

(a) Upon the request of the Department, the offender, an attorney representing the offender, or a member of the offender's immediate family, if an offender's public safety and recidivism risk is significantly reduced due to the effects or symptoms of advancing age, medical infirmity, disease, or disability, or mental health disease or disability, and the offender can be appropriately managed in the community;

(b) Upon the request of the Department, the offender, an attorney representing the offender, or a member of the offender's immediate family, if an offender suffers from a serious and persistent medical condition which requires extensive medical attention, nursing home care, or palliative care, or which cannot be adequately treated by the Department, and the offender can be appropriately managed in the community; or

(c) Upon the request of the Department, offender, or other interested person, if an offender's immediate family member dies within 120 days of a previously scheduled release.

(d) Requests made pursuant to Subsections (5)(a) and (b) of this rule will not be considered without corroborating documentation that is certified by a licensed medical professional.

(6) Unless the request for consideration of compassionate release is made by Board staff or the Department, the Board may request that the Department review the request, provide information as outlined in Subsection (9) of this rule, and make a recommendation.

(7) Requests for consideration of compassionate release that are repetitive, frivolous, or lacking in substantial merit shall be summarily denied and placed in the offender's file without a formal action or response.

(8) Unless otherwise ordered by the Board, requests for consideration of compassionate release shall be processed administratively based on written or electronic reports supplied to the Board without the personal appearance of the offender.

(9) If the compassionate release request is submitted pursuant to Subsections (5)(a) or (b) of this rule;

(a) the request shall include a report from the Department detailing;

(i) the specific effects, conditions, or symptoms to be considered;

(ii) the treatments available;

(iii) when possible, the prognosis of such effects, conditions, or symptoms;

(iv) if and how the offender's physical or mental capacity has been significantly reduced by a chronic or permanent condition; and;

(v) if community-based care will be required, a recommendation for the transition time necessary to complete arrangements for a care center, nursing home, or home care placement.

(b) The Board may order a compassionate release contingent upon completing arrangements for community-based care.

(10) For compassionate release requests submitted pursuant to this rule:

(a) Immediate family member is defined as a parent, stepparent, spouse, child, sibling, grandparent, or grandchild;

(b) If submitted pursuant to Subsection (5)(c) of this rule, the request shall be accompanied by a death certificate or other verification acceptable to the Board; and

(c) The Board may request that the Department review the request, provide any institutional or other reports requested by the Board, and make a recommendation regarding the request.

(11) Except as provided in Subsection (11)(a) of this rule, the Board may make a decision regarding a compassionate release with or without a hearing.

(a) Before granting a compassionate release pursuant to this rule, the Board shall hold a hearing if the compassionate release would occur before an offender's original hearing.

(i) 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.

(ii) The Board shall determine the scope of the representation described in Subsection (11)(a)(i) based on a review of the totality of the circumstances.

(b) Before granting a compassionate release without a hearing pursuant to this rule, the Board shall make a reasonable effort to contact, inform, and consider the input of any victim of record in the case for which the offender is incarcerated, if the victim of record has previously requested notice of hearings pursuant to Subsection 77-38-3(8).

KEY: parole, inmates

Date of Last Change: April 1, 2024

Notice of Continuation: September 8, 2020

Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 63G-3-201(3); 77-27-5; 77-27-7; 77-27-9

R671. Pardons (Board of), Administration.

R671-315. Pardons.

R671-315-1. Pardons.

(1) A pardon is an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction. A pardon releases an applicant from the punishment prescribed for a criminal offense and from disabilities, to the extent allowable by law, that are a result of the criminal conviction. A pardon reinstates any civil rights lost as a result of conviction or punishment for a criminal offense, to the extent allowable by law.

(2)(a) The Board may consider an application for a pardon from any individual who has been convicted of an offense in Utah, after the applicant has exhausted judicial remedies, including expungement, in an effort to ameliorate the effects of the conviction.

(b) Absent extraordinary circumstances, the Board will accept and consider a pardon application only after at least five years have passed since the sentence for the conviction and any enhancement period has terminated or expired.

(c) The Board will not consider pardons for infractions.

(3)(a) A person seeking a pardon from the Board must complete and submit, to the Board's satisfaction, an application in a form approved by the Board. Every requirement of this rule is subject to reasonable accommodations when requested by the applicant.

(b) No pardon application will be accepted unless it has been signed by the person whose convictions are sought to be pardoned.

(c) Posthumous pardon applications will not be accepted or considered.

(d) A pardon application will not be considered unless the applicant is willing to personally attend the pardon hearing.

(4) In addition to the completed application, the applicant shall provide to Board staff, where possible, other relevant information including:

(a) any police reports concerning the conviction for which the applicant is seeking a pardon;

(b) any pre- or post- sentence reports prepared in connection with any sentence served in jail or prison, and for any conviction for which the applicant is seeking a pardon;

(c) the applicant's inmate files;

(d) a recent Bureau of Criminal Identification (BCI) report, National Crime Information Center (NCIC) report, and Interstate Identification Index (III) report concerning the applicant;

(e) verification from the applicant or a third party, including the Office of State Debt Collection, that imposed restitution, fines, fees, or surcharges have been satisfied; and

(f) verification from the applicant that the applicant completed therapy programs ordered by any court or by the Board.

(5)(a) Board staff shall summarize information collected or submitted regarding the application and provide the application and additional information to the Board.

(b) As allowable by law, Board staff shall disclose to the applicant, before the hearing, any information obtained or received by the Board regarding the pardon application which is not from the applicant.

(c) The Board may request additional information from staff or from the applicant.

(6) Once complete, and if otherwise compliant with Board rules, the pardon application and any available relevant information will be considered by the Board, which shall vote to grant or deny a pardon hearing.

(7) If a pardon hearing is granted:

(a) notice of the hearing shall be published on:

(i) the Board's website; and

(ii) the Utah Public Notice website; and

(b) for each conviction which is the subject of the pardon hearing, notice of the hearing shall be mailed or otherwise sent to:

(i) any victim of record, if the victim can be located;

(ii) the arresting or investigating agency;

(iii) the sentencing court; and

(iv) the respective prosecuting agency.

(8) In furtherance of the Board's obligation to conduct a full and fair hearing, the following pardon hearing procedures apply:

(a) The pardon applicant shall personally appear and shall be required to testify. The applicant may designate a few family members or other supporters to offer testimony at the hearing, if time allows.

(b) Any victim of a conviction for which a hearing has been scheduled may offer testimony, or may submit written material concerning the pardon request. Any victim may designate a representative to testify on the victim's behalf at a pardon hearing.

(c) An authorized representative of the arresting or investigating agency, sentencing court or prosecuting agency for each conviction which is the subject of the hearing may offer testimony or may submit written material concerning the pardon request.

(d) The Board may subpoena any person to attend and testify at a pardon hearing if it determines that such testimony will aid the Board in making a decision regarding the pardon request.

(e) Any person not otherwise specified in this rule may submit letters in support of or in opposition to a pardon request.

(f) Any testimony or written material regarding a pardon request must be relevant, and must comply with other Board administrative rules.

(g) Statements or other material submitted regarding a pardon application or hearing may not be submitted anonymously.

(h) The Board may refuse to accept, remove from an applicant's file or pardon application, or refuse to consider any statement or material submitted which is irrelevant, inflammatory, defamatory, hearsay, or which does not otherwise conform to Board rules.

(i) The Board may manage the hearing as appropriate to promote efficiency.

(9) A pardon hearing may be conducted by the full Board, or by a panel or a single Board Member assigned by the Board Chair. If conducted by a panel of the Board, the Board Chair may appoint members to the panels in any combination.

(10) The Board may deny a pardon, grant a conditional pardon, or grant an unconditional pardon. The applicant will be notified in writing of the results as soon as practicable.

(11) Pardon decisions must be made by a majority vote. Pardon decisions are final and are not subject to judicial review.

(12) Upon granting a pardon, the Board shall issue an expungement order, directing any criminal justice agency to remove the recipient's identifying information relating to the expunged convictions from its records.

(a) An expungement order, issued by the Board, has the same legal effect and authority as an order of expungement issued by a court, pursuant to Title 77, Chapter 40, Utah Expungement Act.

(b) The Board shall provide clear written directions to the pardon recipient along with a list of agencies known to be affected by the expungement order.

(c) If the offense that was pardoned subjected the applicant to a registration requirement pursuant to Title 77, Chapter 41, Sex and Kidnap Offender Registry, the Board shall issue notification to the Department of Corrections of the pardon and direct that the applicant be removed from the registry.

(13) The Board may dispense with any requirement created by this rule for good cause.

KEY: pardons

Date of Last Change: June 9, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: Art. VII Sec. 12; 77-27-1(16); 77-27-5; 77-27-5.1; 77-27-9; 77-41-113

R671. Pardons (Board of), Administration.

R671-316. Redetermination.

R671-316-1. Redetermination Review.

(1) Redetermination is a process whereby the Department of Corrections (Department), a legal representative of the offender, or the offender may request that the Board review new, material, and significant information, or reconsider a prior decision.

(2) Redetermination of a previous decision may be considered if:

(a) the time requirements of this rule are met;

(b) the offender has no new criminal convictions since the entry of the decision for which redetermination is sought;

(c) the offender has no pending major disciplinary violations; and

(d) the Board finds cause to review the previous decision.

(3) The Department, a legal representative of the offender, or the offender may submit a redetermination request, asking the Board to reconsider a prior decision, if:

(a) the decision ordered the expiration of a life sentence, and at least ten years have passed since the Board's decision or any subsequent redetermination decision;

(b) the decision ordered a release, rehearing, or expiration of any sentence not involving the expiration of a life sentence, and at least five years have passed since the Board's decision or any subsequent redetermination decision; or

(c)(i) the decision set an original hearing for a homicide offense, pursuant to Subsection R671-201-1(3)(a);

(ii) the original hearing was set more than 15 years following the offender's arrival at the prison; and

(iii) at least ten years have passed since the administrative review decision or any subsequent redetermination decision.

(4) A redetermination request shall:

(a) clearly and specifically state the reasons supporting the redetermination request;

(b) include a current report detailing the offender's case action plan compliance, treatment participation and history, disciplinary history, and current risk assessment; and

(c) be signed by the offender if not submitted by the Department.

(5) If the request for redetermination is not submitted by the Department, the Board may request that the Department review the request, provide any updated institutional, medical, or other report requested by the Board, and make a recommendation regarding the request.

- (6) The Board may make a decision regarding a redetermination request with or without a hearing.
- (7) When the Board reaches a redetermination decision, that decision shall be accompanied by a brief statement or rationale for that decision.

KEY: parole, inmates

Date of Last Change: February 16, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 63G-3-201(2) and (3); 77-27-5; 77-27-9

R671. Pardons (Board of), Administration.

R671-402. Special Conditions of Parole.

R671-402-1. General.

(1) The Board may add special conditions to a standard parole agreement. Special conditions are generally intended to help hold an offender accountable or to help meet an offender's rehabilitative needs.

(2) At any time during an offender's incarceration or parole, the Board may amend the parole agreement on its own initiative, at the request of the Department of Corrections, or at the request of other interested parties. The offender shall be afforded a personal appearance hearing to discuss any proposed changes, unless the offender waives the right to the hearing.

KEY: parole

Date of Last Change: September 9, 2021

Notice of Continuation: September 10, 2021

Authorizing, and Implemented or Interpreted Law: 63G-3-201(2) and (3); 77-27-5; 77-27-6.1; 77-27-9; 77-27-10; 77-27-11

R671. Pardons (Board of), Administration.

R671-403. Restitution.

R671-403-1. General Provisions.

(1) This rule applies to offenders sentenced before July 1, 2021, only. For offenders sentenced on or after July 1, 2021, the Board will follow the procedures of Rule R671-404.

(2) If the Board determines that a court has previously ordered or determined restitution applicable to any conviction, or that restitution is owed to any victim as a result of the conduct for which an offender was convicted, or any related conduct as authorized by state law to be considered, the Board may order restitution:

(a) as a condition of parole;

(b) as a contingency to be satisfied before release from prison incarceration earlier than sentence expiration; or

(c) to be converted to a civil judgment, pursuant to applicable state law.

(3) The Board may, pursuant to state law, determine and order an offender to pay restitution at any time while the offender is under the Board's jurisdiction, when:

(a) restitution has been ordered by the sentencing court;

(b) pecuniary damages to a victim occurred as a result of the offender's criminal conduct but were not determined or ordered by the sentencing court;

(c) requested by the Department of Corrections (Department) or other criminal justice agency;

(d) pecuniary damages to any person or entity are caused by an offender's disciplinary violation, conduct, or behavior arising during incarceration;

(e) new information regarding restitution is submitted to the Board which was not available or considered at the time of sentencing or an earlier restitution determination; or

(f) the Board determines a restitution order is otherwise appropriate.

(4) Restitution determinations shall be:

(a) based upon a preponderance of the evidence; and

(b) made by a majority vote of the Board.

(5) When determining restitution, Subsection 77-38a-302(1)(2020) and Subsections 77-38a-302(5)(a) through (b)(2020) shall apply.

- (6) The Board may determine and order restitution based upon:
 - (a) earlier orders made by a sentencing court;
 - (b) earlier orders involving the same crimes, events, or incidents made by a court in the case of a co-defendant;
 - (c) amounts and determinations included in presentence reports; or
 - (d) information received regarding restitution claimed or owed that the Board determines is relevant and reliable.

R671-403-2. Restitution Ordered by the Court.

- (1) The Board shall affirm restitution ordered by a court in accordance with Section 77-38a-302(2020).
- (2) An offender shall resolve objections regarding restitution entered by a court with the applicable court.
- (3) The Board is not an appellate authority or forum in which to litigate restitution amounts previously ordered by a court.
- (4) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.
- (5) The offender bears the burden to prove the validity and amounts of any payments, credits, or offsets submitted for consideration.
- (6) If restitution was not determined or ordered by the sentencing court, the Board may, within one year of the imposition of sentence, refer the case back to the court for determination of restitution.

R671-403-3. Restitution Included in Presentence Report.

- (1) If any party fails to challenge the accuracy of the restitution determinations, amounts, or information contained in a presentence report at the time of sentencing, that matter shall be considered waived, pursuant to Subsection 77-38a-203(2)(d)(2020), and the Board may order restitution based upon the information in the presentence investigation report.
- (2) An offender may submit evidence of payments, credits, or offsets for consideration by the Board when determining restitution.
- (3) The offender bears the burden to prove the validity and amounts of any payments, credits, or offsets submitted for consideration.

R671-403-4. Initial Restitution Determination.

- (1) If restitution is not determined and ordered by the Board pursuant to Section R671-403-2 or Section R671-403-3, the Board may make an initial determination of restitution based upon the offender's convictions and the totality of the information available, including:
 - (a) restitution determinations made by a court applicable to a co-defendant for the same criminal conduct or the same victim;
 - (b) statements made by a victim, offender, or co-defendant relating to restitution, including statements made as part of a presentence report investigation;
 - (c) reports or calculations provided by the Department indicating the amount which should be ordered as restitution;
 - (d) statements made in any civil or criminal proceeding;
 - (e) statements made in documents provided to the Board; or
 - (f) statements made during Board hearings.
- (2) When the Board determines an initial restitution amount, the Board or the Department shall:
 - (a) inform the offender of the initial restitution determination; and
 - (b) inform the offender that any objection to the initial restitution determination must be filed with the Board in accordance with this rule.
- (3) If the offender agrees with, or does not object to, the initial restitution determination, that restitution amount shall be ordered by the Board.
- (4) If the offender objects to the initial restitution determination, the offender shall inform the Board of the objection and request a restitution hearing.
- (5) The offender's objection and request for a hearing:
 - (a) shall be submitted to the Board in writing within 30 days of the initial restitution determination;
 - (b) may be accompanied by a clear, brief statement explaining the offender's objections; and
 - (c) may refer to or be accompanied by an explanation of any evidence, documents, or the names and addresses of witnesses upon which the offender will rely to support the objection.
- (6) Following receipt of an offender's objection which complies with Section R671-403-4, the Board may change the initial restitution amount based upon the materials submitted by the offender, or may schedule a restitution hearing.
- (7) Failure of an offender to file a timely objection shall waive and forfeit an offender's ability to contest a restitution order by the Board based upon the initial restitution determination.

R671-403-5. Restitution Hearings - Informal Resolution of Objection.

- (1) Following the receipt of a timely objection to an initial restitution determination, the Board may designate a hearing officer or other Board employee to informally, and without hearing, try to resolve the offender's concerns or objections.
- (2) This informal resolution may involve correspondence or an interview or other meeting with the offender.
- (3) If an offender's objections to an initial restitution determination are not resolved, the Board shall schedule a restitution hearing.

R671-403-6. Restitution Hearings - Procedure.

- (1) Restitution hearings may be conducted by a Board member, hearing officer, or other designee of the Board Chair.
- (2) Board staff, the Department, the original prosecuting agency, the offender, and any victim may participate in the restitution hearing, as necessary.
- (3) The Board may issue subpoenas to procure the attendance of necessary witnesses.
- (4) The rules of evidence do not apply at restitution hearings.
- (5) Any payments, credits, or offsets, toward a restitution order may be proven by a preponderance of the evidence.
- (6) If any amount of restitution is claimed by, or on behalf of, any victim, in addition to any amount previously determined by a court or by the Board, including the initial restitution determination, the proponent of such additional restitution carries the burden of proving such additional restitution by a preponderance of the evidence. The request for restitution can be made by the victim or victim representative by submitting a written request to the Board.
- (7) Any party may submit documentation, records, or other written evidence for the Board to consider regarding the issue of restitution. The burden of proof is on the party requesting restitution to show by a preponderance of the evidence that the losses suffered were proximately caused by the offender's convicted conduct or that the offender agreed to pay.
- (8) The Board shall enter an order determining the amount of restitution owed by the offender, or continue the matter for additional information, further hearing or further consideration as needed.

R671-403-7. Modifications to Restitution Orders.

Modifications to restitution orders may occur:

- (1) Upon a waiver and stipulation of the offender;
- (2) Upon receipt of new or subsequent court orders;
- (3) When restitution claims, damages, or costs continue to accrue after sentencing;
- (4) Upon consideration of offender restitution payments, credits for payments made by others on the offender's behalf, offsets due to insurance or other third-party payments, or modifications based upon property being returned to a victim after the conclusion of court proceedings;
- (5) When an open or ongoing claim exists with the Utah Office for Victims of Crime;
- (6) Following an informal resolution regarding new restitution claims or offsets; or
- (7) Following subsequent restitution hearings.

R671-403-8. Compliance With Restitution Orders.

- (1) While the offender is under Department or Board jurisdiction, the Department shall enforce the Board's restitution orders and parole conditions.
- (2) As part of parole, the Board expects that parolees will make regular monthly payments based on the offender's ability to pay and in amounts sufficient to satisfy the restitution obligation during the parole period.
- (3) The Board and the Department have jurisdiction over, and may continue to enforce restitution orders, in cases which may have terminated on or after July 1, 2005, if the Board has had continuing jurisdiction over the offender in any other case.
- (4) The Department shall track cases for restitution payment and notify the Board in a timely manner of any action needed regarding restitution orders.
- (5) If any restitution ordered by the Board or by a court has not been paid in full before a parole termination request, the Department shall inform the Board, as part of the termination request:
 - (a) how much of the offender's restitution obligation has been paid;
 - (b) how much of the restitution obligation, including post-judgment interest, remains unpaid; and
 - (c) why the restitution obligation was not paid in full during the term of parole.
- (6) If any restitution ordered by the Board or by a court has not been paid in full before a parole termination request, the Board may deny the parole termination request.

R671-403-9. Unpaid Restitution - Civil Judgments.

(1) Upon termination or expiration of the sentence of an offender under the Board's jurisdiction, if an offender owes outstanding restitution, or if the Board makes an order of restitution within 60 days following the termination or expiration of the defendant's parole or sentence, the unpaid restitution shall be referred by the Board to the district court for the entry of a civil judgment and for civil collection remedies.

(2) The Board shall forward a restitution order to the sentencing court to be entered on the judgment docket.

(3) If the Board has continuing jurisdiction over the offender for a separate criminal offense, the Board may defer seeking a civil judgment for restitution until termination or expiration of any of the offender's sentences. The restitution obligation for the terminating or expiring case may be made a condition of parole for any separate or subsequent offense under continuing jurisdiction.

(4) The Board may order conversion of restitution to a civil judgment at any time, provided that the restitution amount was determined and ordered by:

(a) a Court;

(b) the Board during its jurisdiction over the offender; or

(c) the Board within 60 days following parole termination, sentence termination, sentence expiration, or other termination of Board jurisdiction.

R671-403-10. Restitution Allocations.

When the Board orders two or more offenders under its jurisdiction to pay restitution for the same event or conduct, the Board may apportion restitution among the offenders or may hold them jointly and severally liable.

KEY: restitution, hearings, parole

Date of Last Change: October 10, 2024

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 64-13-30; 64-13-33; 77-18-1(6)(b); 77-22-5; 77-27-6; 77-27-9(4)(a); 77-27-10; 77-30-24; 77-38a-203(2)(d); 77-38a-302

R671. Pardons (Board of), Administration.**R671-404. Restitution and Other Costs Applicable to Persons Sentenced on or After July 1, 2021.****R671-404-1. General Provisions.**

(1) This rule shall apply to offenders sentenced on or after July 1, 2021. For offenders sentenced before July 1, 2021, the procedures of Rule R671-403 shall apply.

(2) When the Board conducts its administrative review of an offender's record for purposes of setting an original hearing, it will determine if an order of restitution has been entered by the sentencing court.

(3) If no restitution order has been entered by the sentencing court when there is a conviction, the Board will refer the issue of restitution back to the sentencing court.

(a) Except in unusual circumstances, the Board will refer the issue of restitution back to the sentencing court before conducting the offender's original hearing.

(b) If an offender receives a new conviction and sentence after the original hearing, the Board will refer the issue of restitution in the new case back to the sentencing court as soon as practicable.

(c) In no event shall the Board refer a restitution issue back to the sentencing court beyond the time limits established in Section 77-18-118.

(4) When there is a conviction, if the sentencing court enters a restitution order, the Board will take no further action.

R671-404-2. Costs.

(1) The Board may, pursuant to state law, determine and order an offender to pay costs while the offender is under the Board's jurisdiction or within 90 days of the termination or expiration of the offender's sentence, when:

(a) the offender's parole violations cause pecuniary damages to a victim;

(b) the Department of Corrections (Department) or other criminal justice agency requests costs caused by the offender's needs or conduct;

(c) the offender's disciplinary violation, conduct, or behavior while incarcerated causes pecuniary damages to any person or entity; or

(d) there are any other incarceration- or supervision-related costs.

(2) If costs are requested by the Department or other criminal justice agency, that agency shall include information regarding whether the agency has already ordered the offender to pay costs to the agency or to a third party as a result of the offender's needs or conduct.

(3) Any costs ordered by the Board shall be forwarded to the sentencing court after entry to be entered on the docket as part of the offender's civil accounts receivable in accordance with Section R671-404-6.

R671-404-3. Payment Schedules.

(1) The Board will not establish a payment schedule for an offender to make payments on a criminal accounts receivable. The Board may, however, pursuant to state law, change the payment schedule of any offender under its jurisdiction.

(2) A petition for modification may be filed by any of the following:

- (a) an offender or the offender's counsel;
- (b) a victim or victim representative;
- (c) the Department or other law enforcement agency; or
- (d) the Board.

(3) The Board may hold a hearing on a petition for modification, or it may consider only written submissions.

(4) When a petition for modification is being considered, the offender and victim or victim representative shall receive notice and be permitted to provide comment and information.

(5) When considering a petition for modification, the Board shall consider the factors in Subsection 77-32b-103(3)(b).

(6) The Board will only change the payment schedule in accordance with Subsection 77-32b-105(2)(b).

(7) Incarceration of the offender alone is not a basis to change a payment schedule.

(8) Unless the Board expressly orders otherwise, an offender's payment schedule is stayed during any period the offender is incarcerated or otherwise subject to involuntary commitment and for 60 days after the offender releases from the incarceration or involuntary commitment.

R671-404-4. Payment of Restitution and Costs.

(1) As part of parole, the Board expects that parolees will make regular payments in accordance with the established payment schedule.

(2)(a) the Utah Office of State Debt Collection (OSDC) shall track and collect payments on the criminal accounts receivable.

(b) OSDC shall notify the Department in a timely manner of any nonpayment on the payment schedule.

(3) If any amount remains unpaid on the criminal accounts receivable before a parole termination request, the Department shall inform the Board, as part of the termination request:

- (a) how much of the offender's criminal accounts receivable has been paid;
- (b) how much of the criminal accounts receivable, including post-judgment interest, remains unpaid; and
- (c) why the criminal accounts receivable was not paid in full during the term of parole.

(4) If any portion of the criminal accounts receivable has not been paid in full before a parole termination request, the Board may:

- (a) deny the parole termination request; or
- (b) revoke parole if the Board finds that the failure to pay was willful.

(5) If the Board has ordered the offender to pay any costs in addition those that are part of the criminal accounts receivable, the Board may require payment of those costs during any period while the offender is on parole.

R671-404-5. Remitting Criminal Accounts Receivables.

(1) Any offender under the Board's jurisdiction or the offender's legal counsel may petition the Board to remit all or part of the offender's criminal accounts receivable.

(2) "Remit" means to forgive or eliminate.

(3)(a) Petitions for remittance must be filed with the Board no later than 90 days after termination of the offender's sentence.

(b) if a timely petition for remittance is filed, the Board retains jurisdiction over the offender past the expiration of the offender's sentence to resolve the petition only.

(4) A petition for remittance shall contain information regarding:

(a) an accounting of the amount still owing on the criminal accounts receivable for each criminal case where an account exists;

(b) the petitioner's specific request for remittance;

(c) whether the defendant has made substantial and good faith efforts to make payments on the criminal accounts receivable;

- (d) the needs of victims, if known to the offender;
 - (e) the offender's rehabilitative needs; and
 - (f) the other monetary obligations of the offender and the offender's ability to continue to make payments on a civil accounts receivable.
- (5)(a) When a petition for remittance is filed, the offender shall serve notice of the petition on the prosecuting entity.
- (b) the prosecuting entity is responsible to provide notice of the petition to the victims or victim representatives.
- (6) The Board shall hold a hearing on timely-filed petitions for remittance unless the petition is frivolous on its face or it is uncontested after notice has been given to the prosecuting entity and victims or victim representatives.
- (7) The Board may seek input from the Department or OSDC on the petition for remittance.
- (8)(a) At a hearing held on the petition for remittance, the offender, the victims or victim representatives, and a representative of the prosecuting entity shall be given an opportunity to speak to the Board.
- (b) where appropriate, other individuals, including a representative of the Department or OSDC, may also be permitted to speak.
- (9) The Board will consider the factors in Subsection 77-32b-106(3) in determining whether to remit any portion of the criminal accounts receivable.
- (10) The Board may remit an offender's criminal accounts receivable in whole or in part, but the Board may not remit any portion of the criminal accounts receivable that is the principle of restitution without the express consent of the victim who is owed that restitution.

R671-404-6. Termination of Sentence.

- (1) Subject to Subsection R671-404-6(2), no later than 90 days after the termination of an offender's sentence, the Board shall provide an accounting of the remaining balance on the criminal accounts receivable to the sentencing court to be entered as a civil judgment of restitution and a civil accounts receivable. The accounting shall identify:
- (a) each victim who is still owed restitution;
 - (b) the amount still owed to each victim;
 - (c) any other amounts still owed on the criminal accounts receivable; and
 - (d) any other amounts ordered by the Board to be included in the civil accounts receivable.
- (2) If the offender files a timely petition for remittance, the Board shall not send the accounting to the sentencing court until the petition is resolved.

KEY: restitution, government hearings, parole

Date of Last Change: June 9, 2022

Authorizing, and Implemented or Interpreted Law: 77-18-102, 77-18-114, 77-27-2, 77-27-5, 77-27-6.1, 77-27-11, 77-32b-102, 77-32b-103, 77-32b-104, 77-32b-105, 77-32b-106, 77-38b-102, 77-38b-302

R671. Pardons (Board of), Administration.

R671-405. Parole Termination.

R671-405-1. General Provisions.

- (1) When an offender is granted parole, the offender shall remain on parole until:
- (a) the offender's maximum parole term has been served;
 - (b) the Board grants a parole termination and discharge of the offender's sentence, pursuant to Subsection 64-13-21(7) and Section 76-3-202;
 - (c) the Board revokes the offender's parole; or
 - (d) the offender is confined during the parole period.
- (2) "Maximum Parole Term" for purposes of this rule is the expiration date of an offender's combined sentences, or the last day of the offender's legislative parole term, as set forth in Section 76-3-202, whichever occurs first.

R671-405-2. Termination Request Reports.

Parole termination requests or notices submitted by the Department of Corrections (Department) shall include or be accompanied by a report which includes:

- (1) The offender's identification information, supervising agent information, and agent contact information;
- (2) Any incentives granted to, or sanctions imposed on the offender by the Department during the term of parole supervision;

- (3) The number of total months on parole during which the offender was compliant with conditions of parole and the offender's case action plan;
- (4) A current risk assessment, score, and risk reduction information;
- (5) The results of a current sex offender treatment exit polygraph, if the offender is on parole for a sex offense or if requested by the Board;
- (6) An update on the offender's case action plan progress, compliance, and completion and a recommendation from the Department whether parole should be extended to allow successful completion of any necessary treatment program identified in the case action plan which has not yet been completed;
- (7) An update regarding the offender's compliance with or completion of any special conditions of parole; and
- (8) A summary which details the offender's payment of restitution obligations or orders, and if restitution has not been paid in full, an explanation of the non-payment, and the efforts the Department has made to collect restitution.

R671-405-3. Discretionary Termination of Parole.

- (1) The Department may request that the Board terminate any offender's parole at any time before the final day of the offender's maximum parole term.
- (2) The Department shall submit, with the request for early termination of parole, a termination report which contains the information set forth in Section R671-405-2.
- (3) Written notification of the Board's decision regarding the request for parole termination shall be provided to the offender through the Department.
- (4) In extraordinary circumstances, the Board may consider a termination request from an offender or offender's counsel. The Board may seek a recommendation from the Department on any parole termination request not submitted by the Department.

R671-405-4. Termination of Parole Pursuant to Earned Compliance Credit.

- (1) This section is only applicable to individuals placed on parole on or after October 1, 2015, but before January 1, 2019.
- (2) When the Department determines that an offender has met the requirements for an early termination of parole, pursuant to Subsection 64-13-21(7), it shall notify the Board within 30 days and request that the Board terminate the parole of the offender.
- (3) The Department shall submit, with the request for early termination of parole, a termination report which contains the information set forth in Section R671-405-2.
- (4) Upon receipt and verification of the Department's early termination request, the Board shall terminate the offender's parole, unless the Board determines that:
 - (a) the offender is currently in violation of parole;
 - (b) the offender violated the terms and conditions of parole at any point during parole, and the violation was not reported to the Board;
 - (c) the Board determines that the offender was awarded credit toward the early termination for a month in which the offender violated the terms and conditions of parole; or
 - (d) the Board determines that early parole termination would interrupt the completion of a necessary treatment program, identified in the offender's case action plan.
- (5) Written notification of the Board's decision regarding the request for early parole termination shall be provided to the offender through the Department.

KEY: sentencing, parole

Date of Last Change: June 9, 2022

Notice of Continuation: November 10, 2021

Authorizing, and Implemented or Interpreted Law: Art. VII, Sec. 12; 64-13-21(7); 76-3-202; 77-27-1(24); 77-27-5; 77-27-7(4); 77-27-9; 77-27-11; 77-27-12

R671. Pardons (Board of), Administration.

R671-509. Parole Progress / Violation Reports.

R671-509-1. Progress / Violation Reports.

(1) In accordance with sentencing and supervision length guidelines, a parole agent or other representative of the Department of Corrections shall submit a parole progress / violation report to the Board when an incident occurs that may constitute cause to modify the conditions of or revoke parole, including:

- (a) an arrest or conviction of any misdemeanor or felony;
- (b) violations of the general or special conditions of parole; and
- (c) an incident which results in the parole agent placing the parolee in jail, under arrest, in detainment, or other conditions or incidents which result in the parolee being denied liberty.

(2) These reported parole violations shall be investigated and all incident reports along with a recommended course of action shall be submitted to the Board within 72 hours of confinement or, if the parolee is not confined, detained, or arrested, within seven days from the discovery of the violation.

(3) The report shall advise the Board of a parolee's adjustment to parole and provide reasons for modification of the parole agreement conditions. Waivers of personal appearance from parolees shall be attached when applicable.

KEY: parole, incidents, progress, violations

Date of Last Change: April 1, 2024

Notice of Continuation: October 3, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-11

R671. Pardons (Board of), Administration.

R671-510. Evidence for Issuance of Warrants.

R671-510-1. Evidence for Issuance of Warrants.

(1) Board Warrants shall be issued only upon a showing that there is probable cause to believe that a parole violation has occurred.

(2) A Warrant Request shall be submitted by the parole agent setting forth facts that establish probable cause to believe that the parolee committed specific parole violations. Each allegation shall have a probable cause statement sufficient to support the issuance of an arrest warrant. Supplementary reports or information that are attached or appended to the warrant request may not be considered in establishing probable cause.

(3) Upon approval of the request by the Board, a Warrant of Arrest shall be issued to arrest, detain, and return the parolee to custody.

(4) In response to a warrant request, the Board may issue the warrant, deny the warrant, deny the warrant and order a different sanction, or return the warrant.

(5) If the Board returns a warrant request, the parole agent may resubmit the warrant request with additional information.

(6) If the Board has a previously issued a warrant, the parole agent may amend the warrant to add allegations or other information.

R671-510-2. Warrant Request.

(1) Warrant requests shall include:

- (a) the name of the parolee, offender number, and date of birth;
- (b) the allegations that a parole violation has occurred that justify possible revocation of parole;
- (c) the elements establishing probable cause for each allegation;
- (d) the condition of the parole agreement that the parolee is alleged to have violated, along with the date and location where the violation occurred; and
- (e) the name and signature of the parole agent or the reporting agent and supervisor.

R671-510-3. Parole Information.

- (1) The parole agent shall, on a form approved by the Board, provide the Board with the following information:
- (a) the parolee's risk and need assessment level at the time of the current violation and a summary of the areas of concern;
 - (b) the number of prior paroles;
 - (c) the parolee's parole violation history;
 - (d) the parolee's custody status;
 - (e) financial obligation details regarding the parolee;
 - (f) the parolee's address or living arrangements;
 - (g) the parolee's treatment summary;
 - (h) the results of any drug or alcohol tests;
 - (i) any new referred offenses or new criminal charges;
 - (j) any aggravating factors concerning the parolee;
 - (k) any mitigating factors concerning the parolee; and
 - (l) a summary of the parolee's current parole performance.

R671-510-4. Update Information.

- (1) Once the parolee is detained on a Board warrant, the parole agent shall track the case and keep the Board informed of any changes in status or circumstance of the allegations or parolee.
- (2)(a) Within two weeks of a parolee's arrest, the parole agent shall submit information about the circumstances of the arrest and amend the warrant request, including adding allegations, as appropriate.
- (b) If there are any additional updates or allegations, the amended warrant request shall be provided no less than two weeks before the hearing.
- (c) The parole agent shall provide the offender or the offender's counsel with a copy of the updated information no less than two weeks before the hearing.
- (3) At its discretion, the Board may dismiss the allegations if the updated information is not received in a timely manner, allow a continuance of the hearing, or take other appropriate action.

KEY: warrants, parole, probable cause

Date of Last Change: April 1, 2024

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-11

R671. Pardons (Board of), Administration.

R671-512. Execution of the Warrant.

R671-512-1. Execution of the Warrant.

- (1) When an agent executes a Board warrant, the agent shall provide the parolee with copies of the warrant, the warrant request/parole violation report, and a form with which the parolee may challenge the evidence or allegations which were used to show probable cause for the warrant.
- (2) If applicable, the agent shall provide an affidavit of waiver and pleas of guilt, along with a time waiver.
- (3) If the parolee refuses to accept any of the aforementioned documents, the agent shall document the refusal of service on the Acknowledgement of Receipt form.

KEY: parole, warrants

Date of Last Change: May 22, 2013

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-11; 77-27-27; 77-27-28; 77-27-29; 77-27-30

R671. Pardons (Board of), Administration.

R671-513. Expedited Determination of Parolee Challenge to Probable Cause.

R671-513-1. Expedited Determination of Parolee Challenge to Probable Cause.

1. If a parolee who is returned to custody for a parole violation wishes to challenge the probable cause statements or evidence upon which the warrant request was based, the parolee shall submit the challenge in writing, accompanied by a summary of the evidence supporting the challenge, within seven days of service of the arrest warrant on the parolee.

2. At least one member of the Board shall review all the evidence in support of the parole violation allegations, as well as the challenge and evidence submitted in support of the challenge, and decide whether probable cause for the violation allegations continues to exist.

3. The parolee also shall inform the Board and the parole agent in writing if any evidence relating to possible defenses to the alleged parole violation exists and must be preserved. The request to preserve evidence shall be in writing and sufficiently detailed so that the parole agent can easily identify and locate the evidence to be preserved.

R671-513-2. Review of Evidence.

Review of the parolee's evidence shall occur no later than five days after the parolee has submitted a challenge to probable cause. If the reviewing Board member decides that the challenge to probable cause is not sufficient, the Board member shall deny the parolee's challenge, and parole violation proceedings will continue in accordance with applicable rules. If the reviewing Board member decides that the challenge to probable cause is sufficient to warrant further review, the case shall be routed to the Board for deliberation. The Board may make a decision on the written submissions or take further action to resolve the probable cause challenge. If a majority of the Board believes the parolee's challenge negates the finding of probable cause, the warrant shall be withdrawn and the parolee reinstated on parole. Time spent incarcerated pursuant to a warrant which is withdrawn constitutes service of the parolee's sentence and parole term.

KEY: parole, warrant, hearing

Date of Last Change: October 10, 2024

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-9(4); 77-27-11; 77-27-27; 77-27-28; 77-27-29; 77-27-30

R671. Pardons (Board of), Administration.

R671-514. Waiver and Pleas.

R671-514-1. Waiver and Pleas.

After the execution of a Board warrant, the offender shall be informed of the opportunity to admit, deny, or plead no contest to any or all the alleged parole violations. An admission or plea of no contest to any allegation waives the right to a further hearing on that allegation. The offender shall be informed that an admission or plea of no contest is voluntary and there is no requirement to waive the offender's right to a parole violation hearing. If the offender declines to admit or plead no contest to an allegation, the Board will treat that as a denial of the allegation.

R671-514-2. Admissions or Pleas of No Contest Before Hearing.

(1) If an offender decides to admit or plead no contest to any alleged parole violation before a parole violation hearing, the offender shall be provided a parole violation hearing waiver form.

(2) If the Board concludes the offender is unable to knowingly and voluntarily execute the waiver, the Board:

- (a) may not execute the waiver; and may
- (b) assign counsel to represent the offender; or
- (c) take other appropriate action to assist the offender.

R671-514-3. Multiple Pleas Before Hearing.

An offender may admit or plead no contest to some of the allegations and deny others. The Board may decide to dismiss the allegations the offender denied and enter a disposition based solely on the admissions or pleas of no contest. If the Board chooses to make a disposition based solely on the admissions or pleas of no contest, it will not hold an evidentiary or parole revocation hearing. The Board may schedule a hearing to receive testimony if the Board determines that doing so would assist in its decision.

R671-514-4. Acceptance of Pleas.

- (1) An offender may enter an admission or plea of no contest using the parole violation hearing waiver form.
- (2) The parole violation hearing waiver form shall explain that an admission or no contest plea will result in a revocation of parole. The waiver shall also explain, if parole is revoked, the offender may be ordered to serve their full sentences to expiration.
- (3) The waiver shall also include a statement that the offender is waiving the rights to:
 - (a) a hearing at which the Department of Corrections would be required to prove parole violation allegations by a preponderance of the evidence;
 - (b) the appointment of an attorney to assist the offender at an evidentiary hearing;
 - (c) be present at the hearing where the evidence and testimony supporting the allegations are presented;
 - (d) confront and cross-examine any witnesses who testify regarding the violation allegations, absent a showing of good cause for not allowing the confrontation;
 - (e) call witnesses and testify themselves regarding the violation allegations.

R671-514-5. Withdrawal of Admissions.

- (1) An admission or plea of no contest may only be withdrawn by an offender;
 - (a) before the entry of the Board's revocation order and disposition based upon the plea; and
 - (b) upon leave of the Board after a showing by the offender that the plea was not knowingly and voluntarily entered.
- (2) A request to withdraw an admission or plea of no contest shall:
 - (a) be made in writing;
 - (b) clearly state that it is a motion or request to withdraw a parole revocation plea;
 - (c) be addressed to the Board Chair;
 - (d) clearly state the reasons supporting the withdrawal; and
 - (e) be received by the Board before entry of the disposition.
- (4) The Board need not hold a hearing before ruling on the request to withdraw a plea.
- (5) The Board may rule on a motion or a request to withdraw an admission or plea of no contest within 30 days of receipt and shall promptly notify the offender of its decision.

KEY: parole, allegations, pleas

Date of Last Change: May 3, 2024

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-9(4); 77-27-11; 77-13-6

R671. Pardons (Board of), Administration.

R671-515. Timeliness of Parole Revocation Hearings.

R671-515-1. Timeliness of Parole Revocation Hearings.

A Parole Revocation Hearing shall be conducted within 30 days after detention in a state prison, unless the parolee expressly waives the hearing in writing, or unless the Board finds good cause to continue the hearing.

R671-515-2. Detained in Another State.

If a parolee is detained in another state on a Utah Board warrant or on a new criminal offense, a parole revocation hearing should be conducted within 30 days after the parolee's return to the State of Utah.

R671-515-3. Exceed Time Period for Good Cause.

The Board may for good cause upon a motion by the parolee, the Department of Corrections, or upon its own motion, exceed the time period established by this rule. The time periods established by this rule are discretionary, not mandatory. A motion to dismiss a warrant or revocation proceeding based on failure to meet time limits will be granted only if the failure has substantially prejudiced the parolee's defense.

KEY: parole, timeliness, good cause

Date of Last Change: May 22, 2013

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-9(4); 77-27-11

R671. Pardons (Board of), Administration.

R671-516. Parole Revocation Hearings.

R671-516-1. Allegations.

At the hearing, the hearing official shall: (a) inform the parolee of the parole violation allegations; (b) review the parolee's rights as to any guilty or no-contest pleas that may be entered; and (c) take the parolee's pleas on the record.

R671-516-2. Proceedings Upon Plea of Guilt or No-Contest.

If the parolee pleads guilty or no-contest to any of the allegations, the hearing official may conduct further inquiry or proceedings in order to reach a disposition and recommendation regarding the parole violation. The parolee may present any reasons for mitigation. If present, the parole agent or representative of the Department of Corrections may discuss reasons for aggravation or mitigation and recommend a disposition. If not present, the parole agent or representative of the Department of Corrections may make such submissions and recommendations in writing.

R671-516-3. Not Guilty Pleas.

If the parolee pleads not guilty to any allegation, the Board shall either schedule an evidentiary hearing on the allegation or dismiss it as soon as practical. See also Utah Admin. Code R671-514, Waiver and Pleas of Guilt.

R671-516-4. Insufficient Evidence.

If, upon receiving a plea of not guilty to a parole violation allegation, the hearing official believes there is insufficient evidence to justify an evidentiary hearing, the matter shall be promptly routed to the Board. If a majority of the Board agrees, the allegation shall be dismissed. If all allegations are dismissed, the Board's warrant shall be vacated and the parolee released from custody and reinstated on parole.

KEY: parole, revocation, hearings

Date of Last Change: May 22, 2013

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11

R671. Pardons (Board of), Administration.

R671-517. Evidentiary Hearings and Proceedings.

R671-517-1. Evidentiary Hearings and Proceedings.

When a parolee has entered a not guilty plea to a parole violation allegation and the Board wishes to consider the allegation, the Board shall hold an evidentiary hearing unless the parolee has been convicted of a criminal charge and revocation is ordered pursuant to Utah R. Admin. P. R671-518.

R671-517-2. Confidentiality.

All hearings are open to the public, unless the Board decides that confidential information must be discussed. Only those portions of the hearing during which confidential information is discussed may be closed. See Utah R. Admin. R. R671-520.

R671-517-3. Notification.

The Board shall notify all parties of the time, date, and place of the hearing and of the disputed allegations. The parolee shall be notified of the right to be represented by an attorney of choice at the parolee's own expense, or such counsel as may be provided by the Board. The parolee shall also be informed of the right to confront and cross examine witnesses, absent a showing of good cause for not allowing the confrontation, and the right to present rebuttal evidence.

R671-517-4. Anticipated Witnesses, Documents and Other Evidence.

At least ten days prior to the hearing, unless otherwise directed by the Board, each party shall provide to the opposing party and to the Board a list of anticipated witnesses, documents, and other evidence to be submitted at the hearing, together with a summary of the relevance of each anticipated piece of evidence. Failure to comply with this rule may result in sanctions including, but not limited to, exclusion of the non-disclosed witnesses and evidence.

R671-517-5. Single Hearing Official.

An evidentiary hearing may be presided over by a single Board member or hearing officer as the Board Chair designates. The hearing official may, sua sponte, or upon motion of either party, exclude evidence that is irrelevant, unduly repetitious, or privileged. The hearing official may take judicial notice of undisputed facts and may rule on motions made prior to or during the hearing.

R671-517-6. Department of Corrections Bears Burden of Proof.

The Department of Corrections bears the burden of establishing a parole violation by a preponderance of the evidence. All testimony shall be given under oath. The Utah Rules of Evidence do not apply. Hearsay evidence is admissible and shall be given such weight as the hearing official considers appropriate; however, no finding of guilt shall be based solely on hearsay evidence, except where such evidence would be otherwise permitted in a court of law. Exclusionary rules and case law do not apply to parole revocation hearings.

R671-517-7. Opening Statements.

At the hearing, each party may make a brief opening statement, beginning with the State. After opening statements, the State has the burden of presenting evidence of parole violation. Upon conclusion of the State's case, the parolee may present evidence in response. If the parolee, as a defense, raises issues not adequately addressed by the State's case in chief, the hearing official may allow the State to present rebuttal evidence in response. Upon conclusion of all evidence, the hearing official may allow each party to make a brief closing argument.

R671-517-8. Written Submissions.

Any brief or legal memorandum submitted to the Board as part of an evidentiary hearing shall be filed at least ten calendar days prior to the hearing, and shall include proof of service on the opposing party. The opposing party shall file any written response no later than three calendar days prior to the hearing. Written submissions shall be no longer than ten double-spaced, typed pages, excluding exhibits. Either party may petition the hearing official for permission to exceed these length requirements or shorten these time requirements, and the decision whether to allow this shall rest in the sole discretion of the hearing official.

R671-517-9. Continuances.

1. All requests to continue a scheduled evidentiary hearing shall: (a) be submitted to the board in writing, at least seven calendar days prior to the scheduled hearing; and (b) contain either a stipulation of the parties, or a statement of why there is an extraordinary need for continuance and why such a continuance will not prejudice the interests of the other party.
2. The decision to grant or deny a continuance rests in the sole discretion of the hearing official.
3. In the event a continuance is granted, each party shall be responsible for notifying its own witnesses.

KEY: parole, evidentiary, hearings

Date of Last Change: May 22, 2013

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11

R671. Pardons (Board of), Administration.**R671-518. Conduct of Proceedings When a Criminal Charge Results in Conviction.****R671-518-1. Conduct of Proceedings When a Criminal Charge Results in Conviction.**

If a parolee has been convicted of a new crime, the Board may revoke parole upon receipt of verification of conviction. The Board need not hold an evidentiary hearing even if the parolee continues to deny guilt. It is sufficient that a trial court has adjudicated guilt.

KEY: parole, conviction, criminal charges

Date of Enactment or Last Substantive Amendment: November 19, 2003

Notice of Continuation: January 11, 2021

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11

R671. Pardons (Board of), Administration.

R671-519. Proceedings When Criminal Charges Result in Acquittal.

R671-519-1. Proceedings When Criminal Charges Result in Acquittal.

1. If the basis for a parole revocation proceeding is a criminal charge of which the parolee is later acquitted, the parole agent or representative of the State may submit as its sole evidence the transcript from the criminal trial, which shall be disclosed to the parolee.

2. The parolee may submit a response to the trial transcript submission or otherwise submit any information to supplement the record.

R671-519-2. Evidence Explanation.

Any party may file memoranda explaining whether the evidence provided at the trial was sufficient, under a preponderance standard, for finding a parole violation. Such memoranda shall not exceed ten, double-spaced, typed pages in length (excluding exhibits), except in cases where the Board has granted leave to exceed this limit.

R671-519-3. Personal Appearance.

A personal appearance hearing is not required for purposes of arguing the evidence. However, if, after reviewing the transcripts and memoranda, the hearing official concludes that parole has been violated, a personal appearance hearing may be held for purposes of determining disposition and hearing victim testimony.

KEY: parole, acquit, hearings

Date of Last Change: May 22, 2013

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11

R671. Pardons (Board of), Administration.

R671-520. Treatment of Confidential Testimony.

R671-520-1. Treatment of Confidential Testimony.

1. Confidential testimony shall be admitted at an evidentiary hearing on an alleged parole violation.

2. The State shall make a specific, written preliminary showing of good cause for the testimony to be received in camera.

3. Upon a finding of good cause for confidentiality, the Board shall conduct an in-camera inspection of the witness, the proffered testimony, and any supporting testimony to determine:

a. the credibility and veracity of the witness;

b. the overall reliability of the testimony itself; and

c. whether keeping the information confidential will substantially impair the parolee's due process rights to notice of the evidence or to confront and cross-examine adverse witnesses.

4. If the Board is satisfied with the three aspects in Subsection (3), it shall receive the testimony and give it whatever weight it considers appropriate. An electronic record shall be made of this in-camera proceeding.

5. A summary of the testimony taken in-camera shall be prepared for disclosure to the parolee, informing the parolee of the general nature of the testimony received in-camera but without defeating the good cause found by the Board for treating the information confidentially. This summary shall be presented on the record at the public evidentiary hearing and the parolee shall be given an opportunity to respond.

KEY: parole, confidential testimony, hearings

Date of Last Change: May 22, 2013

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11

R671. Pardons (Board of), Administration.

R671-522. Continuances Due to Pending Criminal Charges.

R671-522-1. Continuances Due to Pending Criminal Charges.

The board may, in it's discretion, continue hearings to allow for adjudication of new criminal charges.

R671-522-2. Notification and Verification.

If the Board determines that pending charges warrant a continuance of a hearing, the Board will notify the offender in writing and the reasons for doing so. When the Board receives verification that the criminal charges have been resolved, the hearing will be rescheduled as soon as practical.

KEY: parole, continuing, hearings

Date of Last Change: October 10, 2007

Notice of Continuation: October 4, 2022

Authorizing, and Implemented or Interpreted Law: 77-27-5; 77-27-9; 77-27-11