



THE UTAH BOARD OF PARDONS & PAROLE

BOARD DECISION PROCESS / JRI UPDATE

April 17, 2015

UTAH PROSECUTION COUNCIL
2015 SPRING CONFERENCE

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OVERVIEW AND REVIEW OF THE UTAH BOARD OF PARDONS & PAROLE

***** THE BASICS *****

BOARD JURISDICTION

- Board created by Utah Constitution.
- Board determines whether, and under what conditions, persons committed to prison may be released, supervised, or returned to custody.
- Independent state agency within the executive branch.
- Board action takes place upon the concurrence of a majority of board members.

SENTENCING IN UTAH

- Prison sentences in Utah are indeterminate, (imposed sentences are for a specified range of time, including a minimum and maximum time frame).
- Once a person is sentenced to prison, the Board has jurisdiction.
- Offenders must serve their entire sentence unless the Board grants release the prior to sentence expiration.

***** Selected Statutes *****

76-3-203. Indeterminate Term of Imprisonment.

A person who has been convicted of a felony may be sentenced to imprisonment for an indeterminate term as follows:

- (1) In the case of a felony of the first degree, unless the statute provides otherwise, for a term of not less than five years and which may be for life.
- (2) In the case of a felony of the second degree, unless the statute provides otherwise, for a term of not less than one year nor more than 15 years.
- (3) In the case of a felony of the third degree, unless the statute provides otherwise, for a term not to exceed five years.



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77-18-4. Sentence -- Term -- Construction.

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

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

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

76-3-208. Imprisonment -- Custodial authorities.

(1) . . . (b)(i) class A misdemeanor commitments shall be to the jail, or other facility designated by the town, city, or county where the defendant was convicted, unless the defendant is also serving a felony commitment at the Utah State Prison at the commencement of the class A misdemeanor conviction, in which case, the class A misdemeanor commitment shall be to the Utah State Prison for an indeterminate term not to exceed one year; and

(ii) the court may not order the imprisonment of a defendant to the Utah State Prison for a fixed term or other term that is inconsistent with this section and Section 77-18-4; and

(c) all other misdemeanor commitments shall be to the jail or other facility designated by the town, city or county where the defendant was convicted.

76-3-401. Concurrent or consecutive sentences -- Limitations -- Definition.

(6) (a) If a court imposes consecutive sentences, the aggregate maximum of all sentences imposed may not exceed 30 years imprisonment, except as provided under Subsection (6)(b).

(b) The limitation under Subsection (6)(a) does not apply if:

(i) an offense for which the defendant is sentenced authorizes the death penalty or a maximum sentence of life imprisonment; or

(ii) the defendant is convicted of an additional offense based on conduct which occurs after his initial sentence or sentences are imposed.



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(7) The limitation in Subsection (6)(a) applies if a defendant:

- (a) is sentenced at the same time for more than one offense;
- (b) is sentenced at different times for one or more offenses, all of which were committed prior to imposition of the defendant's initial sentence; or
- (c) has already been sentenced by a court of this state other than the present sentencing court or by a court of another state or federal jurisdiction, and the conduct giving rise to the present offense did not occur after his initial sentencing by any other court.

(8) When the limitation of Subsection (6)(a) applies, determining the effect of consecutive sentences and the manner in which they shall be served, the Board of Pardons and Parole shall treat the defendant as though he has been committed for a single term that consists of the aggregate of the validly imposed prison terms as follows:

- (a) if the aggregate maximum term exceeds the 30-year limitation, the maximum sentence is considered to be 30 years; and
- (b) when indeterminate sentences run consecutively, the minimum term, if any, constitutes the aggregate of the validly imposed minimum terms.

(9) When a sentence is imposed or sentences are imposed to run concurrently with the other or with a sentence presently being served, the term that provides the longer remaining imprisonment constitutes the time to be served.

* * *

ORIGINAL HEARINGS - Utah Admin Code R671-201

Within 6 months of prison commitment, BOPP must give offender notice of the month and year in which initial appearance (original hearing) will be held.

- **Homicide Sentences:** The Board will determine a month and year for the original hearing via administrative routing.
- **Offender Under Age 18:** The Board will determine a month and year for the original hearing via administrative routing

Offense Type / Severity	If Sentence Is:	Then OH Will Be Held After:
First Degree Felony	16 + Years to Life	15 Years of Prison
First Degree Felony	10-15 Yrs. To Life	7 Years of Prison
First Degree Felony	>10 Yrs. To Life	3 Years of Prison
Second Degree (Sex Offense)	Up to 15 Years	18 Months of Prison
Second Degree (All Others)	Up to 15 Years	6 Months of Prison
Third Degree (Sex Offense)	Up to 5 Years	12 Months of Prison
Third Degree (All Others)	Up to 5 Years	3 Months of Prison

Inmates who are sentenced to death or life without parole have no original hearing.



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***** Board Decision Process, Factors and Considerations *****

1. Initial determinations: The Board considers the offender's total (aggregate) sentence, credit for time served, sentence expiration dates, state law and sentencing guidelines when making a decision about an offender's sentences and possible release following an offender's first (original) hearing:

a. All sentences are combined to determine the aggregate (total) sentence.

*Example: If an offender is sentenced for separate crimes or cases to serve two second degree felonies **consecutively**, the total sentence would be 1 to 15 years + 1 to 15 years, equaling a minimum of two years and a maximum of 30 years.*

b. Credit for time served calculation.

The Board's staff will calculate credit for time served ("CTS") in custody prior to commitment for the current sentences. The Board uses the CTS to create a "start date" from which the sentence expiration and the minimum sentence will be measured. The start date is the date the offender arrives at the prison, moved back by each day of granted CTS.

Example: If an offender arrives at the prison to start serving a sentence on July 1st and has 90 days of credit for time served (CTS), the applicable "start date" for the sentence will be April 1st.

c. Sentence expiration date.

Using the total sentence and the sentence "start date", the Board calculates an offender's expiration date, which is the maximum length of all imposed prison sentences.

d. Maximum sentence must be served unless Board grants earlier release.

e. Sentencing Guidelines.

Board staff calculates the applicable sentence guideline.

f. Hearing disclosure:

At the time of an original hearing, each offender is provided with the Board's credit for time served calculations, guideline calculation, and individual and total sentence information.



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2. Board Decisions: Following a hearing, the Board may:

- a. Grant parole.**
- b. Grant termination of the sentence.**
- c. Schedule a Re-hearing,** which allows the Board to review the offender's sentence, case action plan progress, behavior inside the prison or jail, and risk to society or public safety.

If the Board decides that specific programming or treatment (such as sex offender treatment) must be completed before a release will be considered, the Board may schedule a rehearing to allow for treatment or programming completion prior to reviewing the case again.

- d. Deny release (expire sentence),** which allows the court's imposed sentence to be served in full.

3. Decision Factors and Considerations: When making a decision following a hearing, the Board's starting point is the court-ordered total minimum sentence. The Board then considers the sentencing guideline and all information which sets each case and offender apart from other offenders convicted of the same or similar crimes.

The Board also considers the following factors which are unique and specific for each offender:

- a.** the minimum, maximum, concurrent, and consecutive sentences imposed by the court;
- b.** the specific facts of the crime and criminal behavior;
- c.** comments, notes, or recommendations from the sentencing court;
- d.** the offender's risk to the victim or the general public, based on current and past behavior;
- e.** the type, effects, and extent of injuries to the victim;
- f.** whether the crimes and criminal conduct showed extreme cruelty or depravity;
- g.** whether the offender abused a position of trust or responsibility in connection to committing the crime;
- h.** whether the victim was a child or was otherwise particularly vulnerable;
- i.** offender risk assessments;
- j.** psychological, psychiatric, psycho-sexual, competency, or other mental health reports;
- k.** whether weapons were used in the offense;
- l.** the number of victims;



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- m.** whether the crimes were committed for personal gain, and the damages to the victims;
- n.** the reasons the offender committed the crime;
- o.** the offender's role in the crime (*was the offender the leader or organizer, or simply a follower or minimal actor*);
- p.** the offender's conduct after the offense (*did the offender lie, hide evidence, withhold information, or flee, or did the offender surrender and not commit any other crimes*);
- q.** whether the offender's criminal history is significantly more serious than included in the guideline calculation;
- r.** whether the offender has a history of similar offenses;
- s.** whether the offender's criminal conduct is increasing or decreasing in seriousness;
- t.** how the offender has performed under earlier probation or parole supervision;
- u.** the offender's behavior while incarcerated;
- v.** reports or recommendations from AP&P or the Department of Corrections, including reports concerning programming, education, treatment, work assignments, or disciplinary violations during the offender's incarceration;
- w.** victim impact statements, reports, letters, or testimony;
- x.** whether the offender has health, medical, or other needs or situations which mitigate in favor of release;
- y.** whether other states or agencies have placed detainers and whether an offender will serve additional prison sentences;
- z.** information regarding the offender submitted by the offender or on the offender's behalf by family, friends, treating professionals, employers, defense attorneys, or prosecutors;
- aa.** the offender's remorse and acceptance of responsibility for the criminal behavior;
- bb.** the offender's efforts to pay restitution;
- cc.** the offender's efforts at improvement, and good behavior after the crime and during incarceration;
- dd.** whether the offender successfully completed the case action plan or Board required programming/treatment while incarcerated;
- ee.** whether the offender requires additional treatment or programming to increase the likelihood of living a crime-free life and decrease the chance of returning to prison;
- ff.** the length of the offender's drug or alcohol use or abuse compared to the offender's efforts to overcome that use or abuse; and
- gg.** whether the offender has good, positive community support (family members, friends, etc.), a place to live, and possible employment.



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The Board may view each of these factors as aggravating (negative for the offender) or mitigating (positive for the offender) when evaluating an individual offender and comparing the totality of the offender's behavior and public safety risk with other offenders whose sentences are the same, but whose conduct, risks, and efforts at improvement may be very different. The Board also considers these factors so that an individual decision regarding each offender is specific to that offender. *(For instance, the guideline for a 2nd degree felony burglary following a home invasion could be the same as the guideline for a 2nd theft of a motor vehicle, and yet the crimes and the public safety impact are very different).*

Not all of these factors are present in every situation, and no one factor is controlling. The Board does not simply compare or total these factors. Each of these factors are considered and weighed as the Board and individual Board members determine whether, and when, to grant a release.

- 4. Board Decision and Rationale:** The Board provides the offender with an order which includes the Board's decision and may include notes to the offender or the Department of Corrections regarding future Board expectations regarding the offender or the possibility of Board review for case action plan completion.

When the Board enters an order after an original hearing, rehearing, parole violation hearing, parole violation evidentiary hearing or rescission hearing, the Board will also issue and provide the offender with a rationale sheet for the decision and order. The rationale sheet will show which aggravating and mitigating factors the Board found relevant to its decision.



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HB 348S01 Criminal Justice Programs & Amendments

Rep. Eric K. Hutchings / Sen. J. Stuart Adams
(CCJJ's Justice Reinvestment Initiative)

What It Does:

General Purpose: Amends Utah Code provisions regarding corrections, sentencing, probation and parole, controlled substance offenses, substance abuse and mental health treatment, vehicle offenses, and related provisions to modify penalties and sentencing guidelines, treatment programs for persons in the criminal justice system, and probation and parole compliance and violations to address recidivism.

Specific Provisions:

- reduces penalties for specified offenses involving controlled substances and provides that specified penalties be increased for subsequent convictions for the same offenses;
- makes significant changes to “drug zones” for controlled substance offense penalty enhancements. (See §58-37-8(4)(a) [lines 4746-4774]).
- overturns provisions of *State v. Hunt*, 906 P.2d 311 (Utah 1995) regarding second or subsequent conviction enhancement applicable to charges in same information. (See §58-37-8(6)(b) [lines 4807-4811]).
- reduces the penalties for motor vehicle, trailer and boating offenses;
- defines criminal risk factors and requires that these factors be considered in providing mental health and substance abuse treatment through governmental programs to individuals involved in the criminal justice system;
- requires the Division of Substance Abuse and Mental Health (DSAMH) to establish standards for mental health and substance abuse treatment, and for treatment providers, concerning individuals who are incarcerated or who are required by a court or the Board of Pardons and Parole (BOPP) to participate in treatment;
- requires that DSAMH, working with the courts and the Department of Corrections (DOC), establish performance



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- goals and outcome measurements for treatment programs, including recidivism;
- requires that DSAMH track the performance and outcome data and make this information available to the public;
 - requires that the collected data be submitted to CCJJ and that the commission compile the data and make it available to specified legislative interim committees;
 - requires DSAMH, in collaboration with CCJJ, to analyze specified programs and practices, and provide recommendations to the Legislature;
 - requires CCJJ to study and report on programs initiated by state and local agencies to address recidivism, including cost reductions and the costs and resources required to meet goals for providing treatment as an alternative to incarceration;
 - provides that CCJJ administer a performance incentive grant program that allocates funds to counties for programs and practices that reduce recidivism;
 - requires that the Sentencing Commission modify sentencing guidelines, criminal history scores, and guidelines for periods of incarceration to implement the recommendations of CCJJ regarding reducing recidivism;
 - requires that the Sentencing Commission establish graduated sanctions to provide prompt and effective responses to violations of probation or parole;
 - requires that the Sentencing Commission establish graduated incentives to provide prompt and effective responses to an offender's compliance and positive conduct;
 - requires that DOC implement the graduated sanctions and incentives established by the Sentencing Commission;
 - requires that DOC, in collaboration with CCJJ, DSAMH, and the Utah Association of Counties gather information related to treatment and program outcomes, including recidivism reduction and cost savings based on the reduction in the number of inmates, and provide the information to CCJJ;
 - provides payments to county jails for housing probation and parole violators as funding is available;



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- requires that DOC develop case action plans for offenders, including a risk and needs assessment and treatment priorities;
- provides that DOC may impose a sanction of three to five days for violations of probation or parole as part of the program of graduated sanctions;
- requires that DOC evaluate and update inmates' case action plans, including treatment resources and supervision levels to address reentry of inmates into the community at the termination of incarceration;
- requires that DOC establish a program allowing offenders to earn credits of days for compliance with terms of probation or parole, which will reduce the time on probation or parole;
- requires that DOC report annually to CCJJ data collected regarding the earned credits program;
- requires DOC to establish standards, including best practices, for treatment programs provided in county jails;
- requires DOC to establish standards and a certification program for the public and private providers of the treatment programs;
- requires DOC to establish goals and outcome measurements regarding the treatment programs, collect related data, and analyze the data to determine effectiveness;
- requires that DOC collaborate with DSAMH to: track a group of program participants to determine net benefit from using treatment as an alternative to incarceration; and evaluate costs and resources needed to meet goals for using treatment as an alternative to incarceration;
- requires that DOC provide the data collected regarding the treatment programs to CCJJ for the commission's use in preparing its annual report;
- requires that DOC establish an audit for compliance with the treatment standards;
- provides that time served in confinement for a violation of probation is counted as time served toward any term of incarceration imposed for the violation of probation;
- requires that BOPP establish an earned time program that reduces the period of incarceration for offenders who



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successfully complete programs intended to reduce the risk of recidivism, collect data on the implementation of the program, and report the data to CCJJ;

- requires that if BOPP orders incarceration for a parole violation, it shall impose a period of incarceration that is consistent with the guidelines established by the Sentencing Commission;
- amends the offense of criminal trespass; and
- modifies a description regarding restricted persons and dangerous weapons as related to amendments made in this legislation regarding controlled substances.

Effects on BOPP Decisions:

1- Amended Sentencing Guidelines (Length of Stay)

- ❖ Criminal History axis – relevant to risk analysis
- ❖ Crime Category axis – aspirational, descriptive, or historical?

Statutory Provisions:

63M-7-404:

(2) (a) The commission shall modify the sentencing guidelines for adult offenders to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism.

(b) The modifications under Subsection (2)(a) shall be for the purposes of protecting the public and ensuring efficient use of state funds.

(3) (a) The commission shall modify the criminal history score in the sentencing guidelines for adult offenders to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism.

(b) The modifications to the criminal history score under Subsection (3)(a) shall include factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again.

{{Lines 5196 – 5206}}



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- 2- **Sanctions/Incentive Matrix**
(Sentencing Comm., Court, AP&P, and BOPP)
 - ❖ Probation, Parole supervision
 - ❖ Reward accomplishments
 - ❖ Sanction violations
 - ❖ Can include up to 3 days in jail at time
 - (No more than 5 days in jail in 30 day period)

- 3- **DOC Case Action Plans**
 - ❖ Risk and needs analysis
 - ❖ Treatment priorities
 - ❖ Updated regularly
 - ❖ Include supervision levels and re-entry planning

- 4- **DOC Supervision Performance Credits**
 - ❖ Offenders earn “credits” for compliance w/ supervision
 - ❖ Allows early termination of probation or parole (up to 1/2 of time off)
 - ❖ Doesn't apply to offenders on parole for Title 76, Chapter 5 “person” crimes.

Statutory Provisions:

64-13-21(7): (a) The department shall establish a program allowing an offender on probation under Section 77-18-1 or on parole under Subsection 76-3-202(1)(a) to earn credits for the offender's compliance with the terms of the offender's probation or parole, which shall be applied to reducing the period of probation or parole as provided in this Subsection (7).

(b) The program shall provide that an offender earns a reduction credit of 30 days from the offender's period of probation or parole for each month the offender completes without any violation of the terms of the offender's probation or parole agreement, including the case action plan.

(c) The department shall maintain a record of credits earned by an offender under this Subsection (7) and shall request from the court or the Board of Pardons and Parole the termination of probation or parole not fewer than 30 days prior to the termination date that reflects the credits earned under this Subsection (7).



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(d) This Subsection (7) does not prohibit the department from requesting a termination date earlier than the termination date established by earned credits under Subsection (7)(c).

(e) The court or the Board of Pardons and Parole shall terminate an offender's probation or parole upon completion of the period of probation or parole accrued by time served and credits earned under this Subsection (7) unless the court or the Board of Pardons and Parole finds that termination would interrupt the completion of a necessary treatment program, in which case the termination of probation or parole shall occur when the treatment program is completed. *Lines 5457 - 5476*

5- **Time Served for Probation Violation Counts Against Sentence.**

Statutory Provisions:

77-18-1(11)(a) (iii) Any time served in confinement awaiting a hearing or decision concerning revocation of probation constitutes service of time toward a term of incarceration imposed as a result of the revocation of probation. *Lines 6831-6833*

6- **Time Served as a Condition of Probation Counts Against Sentence.**

Statutory Provisions:

77-18-1(12)(e) (iv) If the defendant had, prior to the imposition of a term of incarceration or the execution of the previously imposed sentence under this Subsection (12), served time in jail as a condition of probation or due to a violation of probation under Subsection 77-18-1(12)(e)(iii), the time the probationer served in jail constitutes service of time toward the sentence previously imposed. *Lines 6876-6880*



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7- “Earned Time Cuts”

- ❖ Reduce period of incarceration for inmates who successfully complete programs intended to reduce risk of recidivism.
- ❖ Minimum of 4 month cut for 1st CAP priority
- ❖ Additional 4 month cut for additional CAP programming
- ❖ Doesn't apply to LWOP or Natural Life sentences
- ❖ Doesn't affect compassionate release (family death), compassionate release (inmate health), restitution payment, other special attention early releases into this program

Statutory Provisions:

77-27-5.4. Earned time program.

- (1) The board shall establish an earned time program that reduces the period of incarceration for offenders who successfully complete specified programs, the purpose of which is to reduce the risk of recidivism.
- (2) The earned time program shall: (a) provide not less than four months of earned time credit for the completion of the highest ranked priority in the offender's case action plan; (b) provide not less than four months of earned time credit for completion of one of the recommended programs in the offender's case action plan; or (c) allow the board to grant in its discretion earned time credit in addition to the earned time credit provided under Subsections (2)(a) and (b).
- (3) The program may not provide earned time credit for offenders: (a) whose previously ordered release date does not provide enough time for the Board of Pardons and Parole to grant the earned time credit; (b) who have been sentenced by the court to a term of life without the possibility of parole; or (c) who have been ordered by the Board of Pardons and Parole to serve a life sentence.
- (4) The board may order the forfeiture of earned time credits under this section if the offender commits a major disciplinary infraction.
- (5) The department shall notify the board not more than 30 days after an offender completes a priority in the case action plan.
- (6) The board shall collect data for the fiscal year regarding the operation of the earned time credit program, including: (a) the number of offenders who have earned time credit under this section in the prior year; (b) the amount of time credit earned in the prior year; (c) the number of offenders who forfeited earned time credit; and (d) additional related information as requested by the Commission on Criminal and Juvenile Justice.



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

(8) To the extent possible, programming and hearings shall be provided early enough in an offender's incarceration to allow the offender to earn time credit. *{{Lines 6982-7014}}*

8- Parole Violation Guidelines

- ❖ Parole revocation incarceration sanctions
- ❖ Will these G/L's be for all violations, violations not including required programming completion, violations involving new criminal conduct?
- ❖ New crimes/convictions/commitments will have new sentencing G/L's, instead of these revocation G/L's

Statutory Provisions:

63M-7-404(5): (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on parole and: (i) who have violated a condition of parole; and (ii) whose parole has been revoked by the Board of Pardons and Parole.

(b) The guidelines shall consider the seriousness of the violation of the conditions of parole, the individual's conduct while on parole, and the individual's criminal history. *{{Lines 5213-5218}}*

77-27-11(6): (b) If the board revokes parole for a violation and orders incarceration, the board shall impose a period of incarceration consistent with the guidelines under Subsection 63M-7-404(5).

(c) The following periods of time constitute service of time toward the period of incarceration imposed under Subsection (6)(b): (i) time served in jail by a parolee awaiting a hearing or decision concerning revocation of parole; and (ii) time served in jail by a parolee due to a violation of parole under Subsection 64-13-6(2). *{{Lines 7107 - 7115}}*



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