



***AN OVERVIEW OF
THE UTAH BOARD OF PARDONS & PAROLE***

2014 UPAA Conference

June 19, 2014



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- The Board of Pardons and Parole is created by state constitution and was originally comprised of the Governor, the Attorney General, and members of the Utah Supreme Court. (*Art. VII, Sec. 12*)
- Board authority also flows from statutes enacted by the Utah Legislature. (*UCA Title 77, Chapter 27*)
- The Board is an independent executive branch agency. The Board Chair is the agency director, and is a member of the Governor's cabinet.
- The Board is not a part of the Department of Corrections or the Department of Public Safety.
- The Board consists of five full time members, with up to five pro tempore members available to fill in for the full time members.
- Board Members are appointed by the Governor and confirmed by the Senate, and serve staggered five year terms.
- Most Board action takes place upon the concurrence of at least three members of the Board.

CURRENT BOARD MEMBERSHIP

FULL-TIME MEMBERS

Clark A. Harms (Chairman)	Appointed 2006
Angela F. Micklos (Vice-Chair)	Appointed 2009
Jesse Gallegos	Appointed 2003
Robert S. Yeates	Appointed 2009
Chyleen A. Arbon	Appointed 2012

PRO TEMPORE MEMBERS

Earl G. Xaiz S. Camille Anthony Jennifer K. Bartell Bradley P. Rich

BOARD JURISDICTION

- The Board has prison release and incarceration jurisdiction over offenders committed to the custody of the Utah Department of Corrections. (Felonies and Class A misdemeanors).
- The Board has parole jurisdiction over any inmate paroled from prison by Board order for the duration of their indeterminate sentence (Title 76, Chapter 5 crimes); or for a minimum of 5 years (GAMI pleas); or for 3 years.
- The Board has commutation and pardon jurisdiction over any Utah conviction, whether or not the offender was ever sentenced to prison.
- The Board has restitution imposition jurisdiction over any offender who is sent to prison.
- The Board has fine, fee, restitution or other financial obligation jurisdiction, for purposes of remission, over any Utah conviction.

BOARD AUTHORITY

- Grant parole from prison prior to expiration of court imposed sentence.
- Determine conditions of parole.
- Amend conditions of parole.
- Commute or reduce sentences (including death sentences).
- Determine and impose restitution as a condition of release.
- Impose or convert unpaid restitution, fines and fees.
- Remit any restitution, fine, fee or forfeiture imposed for a Utah conviction.
- Terminate the sentence of an inmate or parolee, short of sentence expiration.
- Issue warrants of arrest for parole violations.
- Impose sanctions for parole violations.
- Revoke parole and return parolee to prison.
- Conduct evidentiary hearings.
- Pardon any Utah conviction, except cases of treason or impeachment.

ORIGINAL HEARINGS

Utah Admin Code R671-201

- Within six months of commitment to prison the Board must give notice of the month and year of an inmate's original appearance before the Board.
- No release decision can be made without a hearing or appearance.

Original Appearance Schedule

- Any Homicide or Attempted Homicide: Original hearing set by Administrative Review (all 5 Board Members) [w/in 6 months of commitment].
- 1st Degree Felonies: 16 to Life (or higher) OH at 15 years
 10 or 15 to Life OH at 7 years
 3, 5, 6 or 7 to Life OH at 3 years
- 2nd Degree Felonies: (Sex Offense) OH at 18 months
 (All Other Offenses) OH at 6 months
- 3rd Degree Felonies: (Sex Offenses) OH at 12 months
 (All Other Offenses) OH at 3 months
- Inmates who are sentenced to death or life without parole are not granted an original hearing.
- **Scheduling** based on most severe sentence only, without regard to consecutive, aggregate or additional sentences or enhancements.

Decisions Following Hearings:

- 1) Grant Parole, set parole date, set parole conditions.
- 2) Grant Termination, set release date, set restitution.
- 3) Deny Parole or Release – Set for Re-Hearing.
- 4) Deny parole or Release – Order Expiration of sentence.

OTHER HEARINGS

Re-Hearings:	To review treatment or institutional behavior or accomplishments prior to ordering release.
Parole Violation:	Following warrant, arrest and prison return. Determine violation, revocation and sanction.
Rescission:	Determine rescission or loss of release, and determine applicable sanctions or additional conditions.
PV/Original:	Combines a parole violation hearing with original hearing for new offenses committed while on parole.
Rescission/Original:	Consider new prison commitments received after a release decision has been made.
Special Attention:	Consider new information, prison or AP&P issues, change, delete or amend conditions of release; institutional or parole behavior; set or amend restitution determinations; etc.
Commutation:	Held to consider petitions to commute death sentences, or change or commute any other conviction. <i>Full Board Hearing required.</i>
Pardon:	Held to consider an application for pardon. <i>Full Board Hearing required.</i>
Notes:	<ol style="list-style-type: none">1) Victims get notice and opportunity to be heard.2) Board can consider any information.3) Non-adversarial. Usually no attorneys.4) At OH, RH, PV/OH, RESC.; and RESC./OH – only inmates and victims can speak to the Board.5) Anyone can write to the Board or provide information.6) Rules of Evidence do not apply.7) Board is the final authority for commutation of death penalty.

ADMINISTRATIVE REVIEWS

At any time during an offender's incarceration or parole, the Board may review his/her case. This review may be the result of recommendations from prison caseworkers, parole agents, a request from the offender, or occasionally from an outside source. In any case, new information must be presented which has not been considered at the last review of the Board. This type of review can be either an administrative review of the file or a personal appearance hearing.

- ❖ Set OH – Homicide Cases
- ❖ Early Releases – Behavior
- ❖ Early Releases – Medical or Compassionate
- ❖ Change Conditions of Release
- ❖ Change Parole to Termination
- ❖ Determine Restitution
- ❖ Change Conditions of Parole
- ❖ Parole Violation – Alternative Events
- ❖ Parole Termination

WARRANTS

- Probable cause to believe that a parole violation has occurred.
- Submitted by parole agent.
 - Must include specific allegations and facts of parole violations.
- Warrants can be issued by any Board member, acting alone.

PARDONS & EXPUNGEMENTS

[1896]

The Board of Pardons and Parole, by majority vote and upon other conditions as provided by statute, may grant parole, remit fines, forfeitures, and restitution orders, commute punishments, and **grant pardons after convictions, in all cases** except treason and impeachments, subject to regulations as provided by statute. ~ *UTAH CONST. Art. VII, Sec. 12(2)(a)*

[1953]

The Board of Pardons and Parole shall determine by majority decision when and under what conditions, subject to this chapter and other laws of the state, persons committed to serve sentences in class A misdemeanor cases at penal or correctional facilities which are under the jurisdiction of the Department of Corrections, and all felony cases except treason or impeachment or as otherwise limited by law, may be released upon parole, **pardoned**, ordered to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated. ~ *Utah Code Ann. §77-27-5(1)(a)*

A commutation or pardon may be granted only after a full hearing before the board.

~ *Utah Code Ann. §77-27-5(1)(d)*

"Pardon" is an act of grace by an appropriate authority exempting a person from punishment for a crime.

~ *Utah Code Ann. §77-27-1(12).*

When total clemency is granted, the person to whom clemency was granted is as innocent as if he had never committed the offense.

~ *Ex Parte Garland, 71 U.S. 333, 393 (1866).*

A pardon is an act of grace by which an offender is released from the consequences of his offense, so far as such release is practicable and within control of the pardoning power, or of officers under its direction. It releases the offender from all disabilities imposed by the offense, and restores to him all of his civil rights. In contemplation of law, it so far blots out the offense, that afterwards it cannot be imputed to him to prevent assertion of his legal rights. It gives him new credit and capacity, and rehabilitates him to that extent in his former position.

~ *Knote v. United States, 95 U.S. 149, 153 (1877).*

[2013] {HB 33}

"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 offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a consequence of conviction or punishment for a criminal offense.

~ Utah Code Ann. §77-27-1(12)

[2013-14] {HB 33 (2013) / HB 366 (2014)}

- (1) 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.
- (2) 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.

~ Utah Code Ann. §77-27-5.1

The Board may consider an application for a pardon from any individual who has been convicted of an offense in the state of Utah, after the applicant has exhausted all judicial remedies, including expungement, in an effort to ameliorate the effects of the conviction. The Board generally will accept and consider a pardon application only after at least five years has passed since the sentence for the conviction has been terminated or expired.

~ Utah R. Admin. P. R671-315-1(A)

In addition to the completed application, Board staff shall obtain and provide relevant information that shall include but not be limited to:

- (a) all police reports concerning the conviction for which the applicant is seeking a pardon;
- (b) all 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 BCI report, NCIC report, and III report concerning the applicant;
- (f) the applicant's employment history;
- (g) verification that all imposed restitution, fines, fees, or surcharges have been paid in full; and
- (h) verification that the applicant completed therapy programs ordered by any court or by the Board.

~ Utah R. Admin. P. R671-315-1(A)(2)

DISCLOSURE

Absent legitimate security or safety concerns, offenders are provided copies of the information considered by the Board and are given an opportunity to respond whenever the Board fixes or extends the offender's parole or release date. In *rare* cases, when a security or safety concern arises, the offender is provided a written summary of the material information being considered.

The Board provides offenders with copies of the records contained in the offender's file at least three days prior to any personal appearance hearing in which parole or an early-release date may be fixed or extended by the Board. Any additional information obtained by the Board after this initial disclosure will be provided to the offender at the beginning of the hearing.

For administrative routings to set an original hearing date, the Board only considers information available to the court at the time of sentencing. This information will not be disclosed to the offender until the time of his/her original hearing, as it has already been disclosed in court.

PREPARING FOR A HEARING / THE BOARD'S FILE

- Judgment and commitment orders and other court communications.
- Pre and post-sentence investigations.
- Prosecuting and Defense Attorney communications to the Board.
- Department of Corrections reports.
- Victim communications.
- All correspondence, both positive and negative
- Inmate Board reports generated by prison.

HOW YOU CAN HELP?

- **INFORMATION, INFORMATION, INFORMATION!**
- **Victim Contact Information!!**
- **Changes, corrections, updates to PSR information.**
- **Restitution (amounts, hearings, stipulations, etc.)**
- **Prosecutor Recommendations.**
- **Plea agreement considerations, reasons, etc., especially plea agreements which seem out of the ordinary or particularly beneficial or detrimental to the defendant.**

CONTACT THE UTAH BOARD OF PARDONS AND PAROLE

Address: 448 East Winchester Street
Suite 300
Murray, Utah 84107

Telephone: (801) 261-6464

FAX: (801) 261-6481

E-Mail: bopinfo@utah.gov

Web: www.bop.utah.gov

Chairman:	Clark A. Harms
Vice-Chairman:	Angela F. Micklos
Administrative Coordinator:	Greg Johnson (801-261-6454)
Chief Hearing Officer:	Jan Nicol
Administrative Secretary:	Julie K. Brown