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PROFILES IN PAROLE RELEASE AND REVOCATION:

Examining the Legal Framework in the United States

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PROFILES IN PAROLE RELEASE AND REVOCATION:

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Utah

By

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1. Background; Sentencing System

a. Sentencing Framework

Utah has an indeterminate sentencing system in which the legislature specifies minimum and maximum ranges for each crime.² The Utah Board of Pardons was created in 1896, and was renamed the Utah Board of Pardons and Parole in 1993.³ Also in 1993, the Utah Sentencing Commission was established; it publishes annual sentencing guidelines that are intended to provide “predictability by communicating a standard in sentencing and releasing.”⁴

b. Does the State Have a Parole Board or other Releasing Authority?

Utah’s Constitution provides for a Board of Pardons and Parole.⁵

<http://bop.utah.gov/>

c. Which Agencies Are Responsible for the Supervision of Parole?

The Utah Department of Corrections’ Division of Adult Probation and Parole is responsible for supervision of parole.⁶

<http://corrections.utah.gov>

d. Which Agency Has Authority Over Parole Revocation?

The Board has statutory authority over parole revocation.⁷



2. Parole and Other Prison Release Decisions

a. Parole Release Eligibility Formulas; Degree of Indeterminacy in System

Felony sentences in Utah are indeterminate, but must remain within statutory boundaries given the degree of the crime and must have a minimum and maximum term.⁸ There are higher allowable maximums for certain specific crimes.⁹ Utah employs true mandatory minimum sentencing only in the context of life without parole or capital felony sentences; technically, all other prisoners are under Board jurisdiction and can be released at any time.¹⁰

Terms of incarceration for many felony sentences are set using the Utah sentencing guidelines matrix score, which takes into account the crime charged as well as a variety of aggravating and mitigating factors.¹¹ However, these guidelines are not legally binding.¹² In addition, before the sentencing hearing, “the judge often orders the Department of Corrections’ Division of Adult Probation and Parole to prepare a sentencing report,” which includes a sentencing recommendation.¹³

Felony crimes fall into four broad degrees:¹⁴

Degree	Possible Prison Term	Possible Fine
Capital	Life, LWOP, Death Penalty	N/A
First Degree	Five years to life in prison	Up to \$10,000
Second Degree	One to 15 years in prison	Up to \$10,000
Third Degree	Zero to five years in prison	Up to \$5,000

General rules of release eligibility. As the Board explains, “when a person is sent to prison in Utah, the offender must serve the entire sentence imposed, unless the Board acts to release the offender prior to the expiration of the sentence.”¹⁵ The Utah sentencing guidelines are also addressed to the Board of Pardons and Parole, and may help the Board to determine when during the course of the prison sentence release is appropriate.¹⁶

The date of a prisoner’s first hearing before the Board varies greatly depending on the class and nature of the crime committed.¹⁷ By regulation, hearing eligibility varies by type of offense:¹⁸

3rd-degree felony (non-sex offense): 3 months
 3rd-degree felony (sex offense): 12 months
 2nd-degree felony (non-sex offense): 6 months
 2nd-degree felony (sex offense): 18 months

1st-degree felony (less than 10-year minimum sentence):
 3 years
 1st-degree felony (10 to 15-year minimum sentence):
 7 years
 1st-degree felony (more than 15-year minimum sentence):
 15 years

Note that the Board may parole an offender before their minimum release date if they find “mitigating circumstances” that justify an early release.¹⁹

The court has discretion to sentence the defendant either concurrently or consecutively.²⁰ Inmates serving consecutive sentences in Utah are not subject to a simple adding up of the minimum terms for each sentence. By statute, the Board is required to aggregate concurrent sentences as though they were a single, continuous sentence. The minimum term is the aggregate of the validly imposed minimum terms, and the maximum is generally either 30 years, or the aggregate of the maximum terms. For concurrent (or mixed) sentences, the Board must calculate a guideline sentence for the most serious offense and then add 40% of the guideline sentence for each consecutive sentence imposed; or 10% for each concurrent sentence imposed.²¹ In two state Supreme Court cases, consecutive sentences were reversed as an abuse of discretion because they robbed the Board of Pardons and Paroles of the ability to assess defendants’ rehabilitative needs and to allow release.²² However, a more recent decision upheld a consecutive sentence which added a single year to a defendant’s minimum term in prison.²³

Violent offenders. Recidivist violent offenders may face classification as a “habitual violent offender” and face a sentencing enhancement based on this status. While these offenders are still parole release eligible, the Board must consider that a convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.²⁴

Sex offenders. As shown above, sex offenders may face a delay in the initial parole hearing due to the length of their minimum sentence. Some may also face classification as habitual violent offenders.

Life sentences. The Board cannot parole or pardon a person sentenced to death, but may commute the sentence to life without parole.²⁵ Those facing life without parole may become eligible for parole if “the Board finds by clear and convincing evidence that the person is permanently incapable of being a threat to the safety of society.”²⁶

Recurring eligibility after denial and exceptions. There is no routine right to a second (or subsequent) hearing. If parole is not granted at the initial hearing, the Board will

inform the offender of the next possible rehearing date, if there is one.²⁷ In most cases, if the Board denies release, it will schedule a future hearing date and detail what must be accomplished during the interim period.²⁸

The Board's website explains that "[w]hen a sentencing guideline date or total minimum sentences are far in the future at the time of the hearing, the Board will usually schedule a rehearing so that the Board may again interview the offender and review the case closer to a possible release date." It also adds that a hearing may be necessary where the Board makes release consideration contingent on completing treatment or programming.²⁹ However, the initial release hearing allows the Board to "schedule a parole date, schedule a release without parole (termination), schedule a rehearing at any point within an offender's sentence, or order an inmate to serve the full sentence before being released."³⁰

b. Good Time, Earned Time, and Other Discounts

Utah offenders do not earn good time towards any portion of their sentence.

c. Principles and Criteria for Parole Release Decisions

General statutory standard for release decisions. The Board has very broad discretion with regard to release decisions, and there are few statutory standards beyond parole eligibility requirements discussed above. Note that an offender who is not yet otherwise eligible for parole release may also be released if "mitigating circumstances" justify that action.³¹

Statutory factors board must consider. The Board must interview offenders to consider their fitness for release and must verify as far as possible information considered by other sources.³² There are many other additional (non-statutory) factors that the Board may consider in release, including the nature of the crime, the offender's criminal history, prison adjustment, treatment history, education, risk to the community, length of substance abuse versus rehabilitation, overall rehabilitative progress, degree of meaningful support system, and the nature and stability of release plans.³³ The Board may view these factors as aggravating or mitigating for the offender, but "no one factor is controlling" and the Board "does not simply compare or total these factors."³⁴

Special standard for violent offenders. Habitual violent offenders convicted of multiple violent or sex crimes are eligible for parole but their crimes are considered an "aggravating factor" in a determination of release.³⁵

d. Parole Release Guidelines

Parole release guidelines used for most offenders (other than sex offenders). The Utah Sentencing Commission develops non-binding sentencing and release guidelines that may be considered by the Board in parole release but do not have the force of law.³⁶ The Sentencing Commission encourages the Board to follow their guidelines and/or matrix scores "except where there are aggravating and mitigating factors."³⁷ In addition, the sentencing judge may mail a statement to the Board setting out "the term for which, in his opinion, the offender should be imprisoned," along with details of the circumstances of the case and information regarding the offender's character.³⁸

However, the Board may also depart from these guidelines and suggestions, and make individualized decisions in each case by considering "the nature and severity of the crime(s) committed, including the harm done to the victim and society, the continued risk posed by the inmate, and the inmate's behavior and programming efforts while incarcerated."³⁹

Parole release guidelines for sex offenders. The Guidelines contain specialized matrices for certain violent crimes and sex crimes; these often advise the Board to consider, for example, details of the crime and characteristics of the victim.⁴⁰

e. Risk and Needs Assessment Tools

Statutory mandate. The risk assessment tools used are not mandated by statute.

Transparency. The Utah Sentencing and Release Guidelines, which contain a risk assessment tool, are published each year.

Main risk instrument. The Utah Department of Corrections employs the LS/RNR to evaluate both static and dynamic risk factors.⁴¹ According to MHS, the company that produces the LS/RNR, this risk assessment "captures General Risk/Need Factors including Criminal History, Education/Employment, Family/Marital, Leisure/ Recreation, Companions, Alcohol/Drug Problems, Procriminal Attitude/Orientation, and Antisocial Pattern. It also captures Specific Risk/Need Factors including Personal Problems with Criminogenic Potential and History of Perpetration, including sexual and non-sexual assault and other forms of violence and anti-social behavior."⁴²

In addition, the Department uses a “Supervision & Treatment Levels Framework” worksheet to identify both the needs of the offender (types and levels of intervention necessary to improve success), and the responsivity of the offender (barriers to appropriate intervention that must be considered).⁴³

Sex offenders. The Department of Corrections uses the Static-99, the Static-2002, and the STABLE-2007 as sex-offender specific risk tools. Each score, and a combined risk score, are reported to the Board.⁴⁴

f. Medical or Compassionate Release

The Board must consider compassionate release in several exceptional circumstances, including:

- Upon request of the Department of Corrections, if an offender’s public safety and recidivism risk is significantly reduced due to old age, medical infirmity, disease, disability, or mental health issues;
- Upon request of the Department, if an offender suffers from a serious and persistent medical condition that requires extensive medical attention, palliative care, or nursing home care; or
- Upon request of the Department or another interested party, if an offenders’ immediate family member dies within 120 days of a previously scheduled release.

Before granting this type of release, the Board must make an effort to contact victims who have requested notice of such hearings. However, the Board can make a decision to release with or without a hearing. Compassionate release may either be to supervised parole, or be based on a sentence termination.⁴⁵

g. Executive Clemency Power

The Board has the power to grant respite or reprieve, commute punishments, or pardon offenses. These actions are taken by a majority Board vote.⁴⁶

h. Emergency Release for Prison Crowding

When the Utah State Prison (the larger of two state prisons in Utah) reaches 96.5% of capacity, or “operational capacity,” the Executive Director of the Department of Corrections must notify the governor of Utah, the legislative leadership, and the Board of Pardons and Paroles that there is an overcrowding emergency. If, afterwards, the prison population rises to 98% of capacity, or “emergency release capacity,” for 45 days, the Board of Pardons and Paroles is granted special administrative rulemaking authority to remedy the problem.⁴⁷

3. Parole Release Hearing Process

a. Format of Release Hearings

Open hearings are held at correctional facilities throughout the state.⁴⁸ A single Board member or hearing officer is generally assigned to conduct the open hearing, and the official’s notes are then reviewed by Board members.⁴⁹ Most Board actions are taken by a majority vote of 3 out of 5 members.⁵⁰

Any full hearing must include an appearance before the Board, panel, a board member, or a hearing officer, at which the offender or inmate is afforded an opportunity to be present and address the Board.⁵¹ However, an interview is considered an appearance, and the appearance may be held by video or telephone conference.⁵² An appearance before the Board may be waived.⁵³

b. Information Before the Board: Factors the Board May Consider

The Board considers the offender’s file, which may include comments, notes, and recommendations of the sentencing court; psychological, psychiatric, psycho-sexual, competency, or other mental health reports; reports or recommendations from Adult Probation and Parole or the Department of Corrections, including reports concerning programming, education, treatment, work assignments, or disciplinary violations during incarceration; victim impact statements, reports, or letters; and information regarding the offender submitted by the offender or on the offender’s behalf from family, friends, treating professionals, employers, defense attorneys, or prosecutors.⁵⁴

Anyone is allowed to send the Board correspondence about an inmate, but it must be limited in length and will be disregarded if overly prejudicial.⁵⁵ The Board also “reserves the right to strike from the offender’s file, and to refuse to accept or consider any material or submissions which are irrelevant, defamatory, or which do not otherwise conform to this rule.” No testimony will be taken at a hearing other than from the offender and victims.⁵⁶ The Board has subpoena power, and can thus compel the attendance of witnesses and production of evidence.⁵⁷

c. Prisoners’ Procedural Rights

The inmate must be present to verify information and to determine fitness for release,⁵⁸ and has the right to “speak, present documents, ask, and answer questions.”⁵⁹ An inmate can waive or refuse a personal appearance at a hearing, but may still be required to submit to a “courtesy hearing held by the appropriate authority in which the offender is housed in lieu of an appearance.”⁶⁰

Offenders are entitled to an impartial hearing, and board members or hearing officers must recuse themselves in cases where impartiality might be reasonably questioned.⁶¹ No ex parte communications concerning “the substance of a pending or impending matter” may be made, and a staff member not directly involved in the case should handle communications from offenders, victims, family members or “any other person outside the staff of the Board.”⁶²

An inmate may be represented before the Board by a licensed attorney but is not guaranteed representation by counsel.⁶³ In addition, there is no provision to allow counsel to speak on behalf of an inmate, and legal counsel must submit a brief (which can be a maximum of 5 pages long) 7 days prior to a scheduled hearing.⁶⁴ One exception is for inmates who are deemed to be unable to represent themselves; they may be allowed representation, and the Board can appoint a representative, if necessary.⁶⁵

The inmate is given the date of the initial hearing (and subsequent hearings) in advance.⁶⁶ The Board is required to provide inmates with all information used to consider their release, and give the inmate an opportunity to respond.⁶⁷ Hearings can be continued to allow time to submit additional information or documentation, and offenders can submit new documentation up to 5 days after a hearing has taken place.⁶⁸

The Board will also “provide an offender with a copy of the records contained in the offender’s file at least 3 days prior to any personal appearance hearing in which a parole or release date may be fixed or extended by the board,” but that file may be redacted for safety reasons.⁶⁹ The Board receives a summary of the risk assessment from the Department of Corrections rather than the entire risk assessment. Inmates are provided with these summaries and any other documents received by the Board regarding the hearing.⁷⁰

d. Victim and Other Participants

The victim⁷¹ of a crime should be given notice of important criminal justice hearings,⁷² including parole hearings. Victims are also to be notified upon the release of an offender.⁷³ Utah’s VINE system is a free automated hotline that can provide victims who register with information on parole release 30 days before release, in addition to other updates on an inmate’s status.⁷⁴ The Board must make rules to ensure that victims have “an adequate opportunity” participate at the hearings.⁷⁵ Victims are able to attend and to “to present [their] views concerning the decisions to be made regarding the defendant” either orally or in writing.⁷⁶ Victims are also able to appoint someone else to make a statement on their behalf and remain present at

the hearing, or to be represented by a family member if they are dead or otherwise unable to attend.⁷⁷ Victims are also able to testify out of the presence of the inmate, but not as part of a separate hearing.⁷⁸ One exception to this is for a victim impact hearing which may be requested to take victim statements for future use in cases where the initial parole hearing is scheduled more than three years after the offender’s commitment to prison.⁷⁹ However, the victim may not attend a review or special attention hearing unless the defendant is present.⁸⁰

“Timely prior notice” of the time and location of the hearing must be given to the “county or district attorney’s office responsible for prosecution of the case, the sentencing court, [and] law enforcement officials responsible for the defendant’s arrest and conviction.”⁸¹

Board hearings are generally open to the public,⁸² and hearing schedules are available online.⁸³

e. Burden of Proof or Standards of Persuasion

There is no formal burden of proof in parole release decisions.

f. Possible Outcomes at Parole Release Hearing; Form of Decisions

Decisions must be reached (or ratified) by a majority vote of the Board.⁸⁴ The Board produces a public document that provides a brief rationale for the decision, which is also given or mailed to the inmate.⁸⁵ The Board’s decision is normally not reached at the hearing (because only a hearing officer or single member of the Board will be there), but is issued afterwards, usually within 2-4 weeks.⁸⁶

The initial hearing allows the Board to “schedule a parole date, schedule a release without parole (termination), schedule a rehearing at any point within an offender’s sentence, or order an inmate to serve the full sentence before being released.”⁸⁷

g. Administrative or Judicial Review of Parole Denial

A redetermination petition (which must originate with and be signed by the offender) can be filed “if the offender’s current release date is more than five years in the future or the decision was for expiration of a life sentence.”⁸⁸ The decisions made at these hearings are final and non-appealable by statute.⁸⁹

At a standard rehearing (with a date set by the Board) offenders have the same rights as they do in the initial hearing.⁹⁰ In contrast, the Board can make a redetermination decision without a hearing.⁹¹

The special attention review and hearing process may be used to “adjust parole conditions, review Board decisions, and grant relief when exceptional circumstances exist, or upon board initiative action.”⁹² The Board must initiate this process on request of Board staff (to correct clerical or other errors), or on the receipt of a written request explaining exceptional circumstances for which modification is sought. If the Department of Corrections initiates this process, it must first review the request and make a recommendation.⁹³

The Board processes most special attention reviews administratively, utilizing written or electronic reports and without the appearance of the offender. The Board may also schedule a special attention hearing if it determines that a personal appearance will assist in making a decision regarding the request. However, “Special Attention requests that are considered to be repetitive, frivolous or lacking in substantial merit may be placed in the offender’s file without formal action or response.”⁹⁴

In general “decisions of the Board in cases involving paroles, pardons, commutations or terminations of sentence, restitution, or remission of fines or forfeitures are final and are not subject to judicial review.”⁹⁵ However, the state constitution may require judicial review based on allegations that the manner in which a parole hearing was conducted violated due process.⁹⁶

h. Rescission of Parole Release Dates

A prior decision may be reviewed and rescinded at any time before an offender’s release from custody.⁹⁷ This can occur based on receipt of new information from an outside party (such as the Department of Corrections), or on the Board’s own initiative. A hearing officer must conduct a hearing and make an interim decision to be reviewed by board members.

4. Supervision Practices

Parole supervision rate. On December 31, 2015, the parole supervision rate in Utah was 167 parolees per 100,000 adults. This was lower than the 50-state average of 304 parolees per 100,000 adults.⁹⁸

a. Purposes of Supervision

As noted in one Utah court decision, “the purpose of parole is to assist those who have broken the criminal law to make a controlled and supervised transition from prison life—with its intimate and constant association with a society of lawbreakers and a high degree of regimentation—to a complete reintegration into society without that kind of association and regimentation. To facilitate that transition, an inmate is permitted parole status subject to conditions designed to maximize the potential for a successful reintegration of the parolee by attempting to ward off some of the undesirable influences that may defeat the purpose of the parole system.”⁹⁹

b. Are All or Only Some Releasees Placed on Supervision?

All parolees are initially released under the supervision of the Department of Corrections.¹⁰⁰

c. Length of Supervision Term

Minimum supervision term. Parole automatically expires after three years, with some exceptions.¹⁰¹ Those convicted after 2008 of any crime listed as an “Offense Against the Person” “shall complete a term of parole that extends through the expiration of the person’s maximum sentence, unless parole supervision is terminated earlier by the Board of Pardons and Parole.”¹⁰² Conviction for second-degree forcible sexual abuse or sexual abuse of a child (or an inchoate crime based on these offenses) committed after July 2008 requires that the offender serve a ten year parole sentence.¹⁰³ Conviction for some violent and/or sex crimes committed after July 2008 may result in lifetime parole¹⁰⁴ which can be terminated early by the Board.¹⁰⁵ In terminating parole, the Board must consider the offense committed by the parolee, the statutory period of parole, and pertinent information within the parolee’s file.¹⁰⁶ Finally, individuals who have pled guilty and mentally ill must serve at least five years on parole, unless their sentence expires prior to the five years.¹⁰⁷

Early termination from parole. Early termination from parole is up to the discretion of the Board. However, for individuals convicted after 1997 it requires evidence that the parolee has completed high school classwork and obtained a diploma, a GED, or a vocational certificate or proof of a diagnosed learning disability or other justified cause.¹⁰⁸

Extension of supervision term. While most parolees are terminated successfully from parole at the three-year mark, violation of the terms of parole could trigger extension of the term of parole to a later date, up to the maximum sentence length.¹⁰⁹

Incentives; “goal parole.” By statute, the Department of Corrections has established a program that allows compliant parolees to earn credits that reduce their term of parole if their maximum parole term is three years. Parolees may earn reduction credits at a rate of up to 30 days per month. The Board must terminate parole when the period of parole supervision has been accrued by a combination of time served and credits earned.¹¹⁰

d. Conditions of Supervision

The Board has discretion to determine the conditions of parole.¹¹¹ There are 9 standard conditions of parole that are in use by the Board as of July, 2016. These include:¹¹²

1. COMPLIANCE: I will be honest with Adult Probation and Parole (AP&P) and the Board; and will comply with my Parole Agreement and my Case Action Plan.
2. REPORTING: I will report to AP&P on the day I am released from prison. While on parole, I will report as directed. I will not leave Utah, or any other state to which I am transferred, without prior written permission from my parole agent.
3. RESIDENCE: (A) I will establish a residence of record, and I will not change my residence without the prior approval of my parole agent. I will permit my parole agent to visit my residence or other place where I am present, and conduct searches and seizures according to state law.

(B) If I do not have a residence approved at the time of my parole, I agree to enter an AP&P community center until I have an approved residence.

4. ABSCONDING: I will not abscond or flee from parole.
5. CONDUCT: I will obey all federal, state and local laws and all court orders. I will not associate with any person who is involved in criminal activity.
6. CONTACT: I will not have contact with any victim of my offenses or any co-defendant, without the prior approval of my parole agent.
7. WEAPONS: I will not purchase, possess, own, use, or have under my control, any explosive, firearm, ammunition, or dangerous weapon, including archery equipment or crossbows.
8. RESTITUTION: I will pay all restitution obligations ordered by my sentencing court or by the Board.
9. SUBSTANCE TESTING: I will submit to testing of breath, body fluids, or hair as directed by AP&P if I have been ordered any substance abuse related special conditions.

The Board may add special conditions to the parole agreement that are designed to help hold an offender accountable or rehabilitate the offender.¹¹³ In addition, those on early intensive release may face additional parole requirements.¹¹⁴ Copies of the parole agreement are delivered to the parolee and to the Department of Corrections.¹¹⁵

Sex offenders. Sex offenders face three potential supervision programs based on their type of offense. For example, the “Sex Offender A” program is for those who had underage victims.¹¹⁶ It involves therapy, no contact with children without permission or entering places where children congregate, and no possession of items designed to entertain or lure children as well as registration as a sex offender.

Modification of conditions. Parole modifications require notice and a hearing in which the parolee makes a personal appearance, or waiver of a hearing by the parolee.¹¹⁷

Incentives; lighter conditions. Graduated incentives for good performance on parole may include approval to serve as a peer mentor, a reduction in community service, a reduction in drug or alcohol testing, a reduction or elimination of curfew, a certificate, public recognition, or similar rewards.¹¹⁸

e. Fees and Other Financial Sanctions

Parole supervision fees. There is a \$30 monthly supervision fee for parolees. Payment of fees may be suspended or waived by the Department of Corrections upon a showing by the offender that such imposition would create a substantial hardship or if the offender owes restitution to the victim. In determining whether the fee would constitute a substantial hardship, the department must consider the financial resources of the offender and the burden the fee would impose with regard to the offender's other obligations.¹¹⁹

Payments for drug and alcohol testing. No payment for drug or alcohol testing is mentioned in statutes or official materials.

Restitution. The Board can order payment of court-ordered restitution (or impose restitution independently) as a condition of parole. It can also schedule restitution payments or order compensatory or other service in lieu of, or in combination with, restitution. The Board may order restitution to recover costs incurred by the DOC, the state, or any other agency arising out of the defendant's needs or conduct.¹²⁰ Restitution may also be ordered as the result of a parole violation.¹²¹

Child support. Paying court-ordered child support was a standard condition of parole, but this is no longer the case.¹²²

Other financial obligations. There are no other financial obligations related to parole, absent the Board's stipulation that fees be treated as restitution (see above).

Incentives; reduction of economic sanctions. Potential rewards for good behavior may include fine reduction as well as cash vouchers or awards.¹²³

5. Parole Revocation

Parole revocation proceedings. In 2015, there were 228 parolees returned to incarceration through a new sentence and 1,159 parolees returned to incarceration through the revocation process.¹²⁴

Absconders. No public data exists on the rate at which parolees abscond in Utah.

a. Principles and Criteria of "When to Revoke"

Policy considerations. A performance audit of Utah's Adult Probation and Parole by the Office of the Legislative Auditor General in September 2013 identified many inconsistencies in supervision practices throughout the state. Primary among them was the varied number of violations that trigger a revocation in each AP&P region. The Utah Commission on Criminal and Juvenile Justice confirmed those findings in the Justice Reinvestment Report in November 2014, and additionally found regional variation in the types and numbers of violations leading to a revocation.¹²⁵

Beginning in October 2015, the Board was required by statute to refer to the Sentencing Guidelines when making a decision to re-incarcerate the parolee.¹²⁶ The law mandated that the Sentencing Commission establish graduated sanctions to respond to parole violations. The Board is now required to implement those sanctions, which are intended to address statewide disparity of responses to violations, to incorporate an evidence-based response to violations, to improve outcomes, and to address a recognized driver of the prison population.¹²⁷

Statutorily enumerated factors. Proof of violation of any condition of parole may trigger revocation.¹²⁸

b. Revocation Guidelines

The Sentencing Guidelines now require parole officers, their supervisors, and the Board to utilize graduated sanctions in response to parolee violations. The process for responding consists of several steps.

A *Decision Making Authority Matrix* is utilized to determine the appropriate entity to respond to an offender's actions given their risk level and the severity of the violation. This matrix suggests an intervention from either the Board, a parole officer, or a parole officer acting with the approval of their supervisor. The higher the level of risk or the severity of the violation, the more likely will be contact

with the Board. A referral to the Board may occur with or without a recommendation to incarcerate from the supervising agency.¹²⁹

The decision-making authority is encouraged to use a *Response Magnitude Form* to determine the proportionality or magnitude of the response. This form represents a decision tree that evaluates the violation, the offender risk level, the offender need level, and the violation's relationship to offender risk. Upon completion of this evaluation, the form indicates whether a higher, moderate, or lower sanction should be utilized.¹³⁰

Finally, the specific sanction to be imposed is determined using a separate form titled *Graduated Sanctions*. This form contains a list of sanctions that are categorized by their severity. The sanctions that are available range from a verbal warning to a 180-day term of incarceration based on the number and types of violations. The 180-day sanction, for example, only applies to a third or successive parole violation. More than three violations may also result in revocation up to the maximum term of the sentence. Exceptions to the graduated sanctions allow the Board to impose greater terms of incarceration, including execution of the sentence, in some circumstances.¹³¹

c. Risk and Needs Assessment Tools

Under the Guideline's *Supervision & Treatment Levels Framework*, offender risk and need is assessed to fix the parameters of supervision and treatment. However, the risk level is also used to determine sanctions for violations of parole. In general, a higher risk level indicates that more severe sanctions should be pursued.¹³²

The risk level is determined "based upon the results of a validated screening and assessment instrument." The Guidelines instructions indicate that the Level of Service/Risk, Need, Responsivity ("LS/RNR") is viewed as the appropriate instrument to inform most Department of Corrections' decision-making.¹³³ This tool is described in greater detail in § 2e of this report.

Sex offenders. As mentioned in §2e of this report, the Department of Corrections utilizes the Static-99, Static-2002, and STABLE-2007 for sex offenders and shares the results with the Board.

d. Preliminary and Final Revocation Procedures

Arrest or summons. The Department of Corrections may detain the parolee based on an alleged parole violation and either administer intermediate sanctions or request a warrant from the Parole Board. Law enforcement officers who discover alleged parole violations not amounting to a new criminal charge may detain offenders long enough to turn them over to AP&P. Any officer (law enforcement or AP&P agent) may arrest, detain and pursue any parole violation allegation which involves new criminal conduct.¹³⁴ As mentioned above, under the new Guidelines system parole officers are required to report certain types of violations to the Board (thus initiating the hearing process) rather than utilize intermediate sanctions.¹³⁵

Parole violation hearing. Once a warrant is issued, based upon probable cause, and the parolee is returned to prison, the parolee may be detained based upon the probable cause finding of the warrant until the initial parole violation hearing is held. Utah's Parole Board utilizes a combined hearing and disposition process. A hearing is held within 30 days of the parolee's return to prison, at which the parolee may admit or deny the allegations. If one or more allegations are admitted, the hearing officer, parolee, agent and the parolee's counsel will discuss possible outcomes, dispositions and sanctions to recommend to the Board. If a parolee denies a parole violation allegation and either AP&P or the hearing official believes there is insufficient evidence to justify an evidentiary hearing, that finding will be communicated to the Board. If the majority of the Board agrees, the allegation shall be dismissed.

At the time of arrest on a Board warrant, the parolee is provided with a waiver form which can be used to admit the parole violations and waive a hearing, thereby seeking an expedited resolution of the violation proceeding. Arrested parolees are also provided with a Probable Cause Challenge Form, which can be used by the parolee to challenge the information upon which the warrant was based. This probable cause challenge is directed to a member of the Board for expedited resolution, within 10 days of receipt. Following the parole violation hearing, if one or more allegations were admitted, the hearing officer will submit a summary of the hearing and a recommendation to the Board. Then, a majority of Board reaches a decision regarding the sanction to be imposed and conditions of release, if granted.¹³⁶

Evidentiary hearing. Should the parolee or counsel, or the hearing officer of AP&P, desire a hearing to resolve any denied allegations, an evidentiary hearing will be scheduled at the earliest convenience of the Board. Evidentiary hearings are typically presided over by one Board member. The state (AP&P) bears the burden of proof to a preponderance standard. Following the close of evidence, the presiding official will summarize the hearing, findings and conclusions for the other Board members, and the Board will reach a decision, by a majority, regarding the violation allegations, disposition, sanction and any release conditions to be imposed if another release is granted.¹³⁷

When the parolee commits a new crime, the process differs. The Board may take judicial notice of the new conviction and revoke parole without an evidentiary hearing. The Board may then schedule a hearing to determine parole violation sanctions, as well as address any new convictions and sentence under Board jurisdiction.¹³⁸

e. Offenders' Procedural Rights

Before an evidentiary hearing, the hearing official must inform a parolee of his right during the hearing to be present, be heard, present witnesses and evidence, to confront and cross-examine adverse witnesses (absent a showing of good cause for not allowing the confrontation), and to have representation by counsel in certain circumstances.¹³⁹ Parolees have a statutory right to be represented by counsel if they are mentally incompetent or are pleading not guilty to the alleged violation. Parolees are entitled to written notice of an alleged violation and a statement of evidence against them.¹⁴⁰ If a parolee denies the allegations of a violation and an evidentiary hearing is held, they have access to any evidence presented at the hearing.¹⁴¹

f. Victims and Other Participants

Victims may attend a parole revocation hearing regarding any offense that involved them and present their views, however, this rarely occurs.¹⁴² The county or district attorney's office responsible for prosecuting the case, the sentencing court, and the law enforcement officials responsible for the arrest and conviction of the defendant must be notified of a parole revocation hearing.¹⁴³ Board hearings are open to the public, unless the Board decides that a portion of the hearing should be confidential.¹⁴⁴

g. Burden of Proof or Standards of Persuasion

It is within discretion of Board of Pardons to weigh all evidence before it in deciding whether to revoke parole.¹⁴⁵ The Department of Corrections must establish a parole violation by a preponderance of the evidence.¹⁴⁶ No findings of guilt shall be based solely on hearsay evidence, unless it would otherwise be permitted by a court of law.¹⁴⁷ Final decisions are reached by majority vote of the members of the Board sitting.¹⁴⁸

h. Revocation and Other Sanctions

By statute, parolees found to have violated the conditions of parole may, at the discretion of the Board, be returned to parole, have restitution ordered, be re-imprisoned, or be subject to any other conditions the Board may impose within its discretion.¹⁴⁹ The Board's discretion is somewhat limited because it is mandated to follow, to some extent, the parole violation sentencing Guidelines. Yet, "any non-incarceration response is always available" to the Board.¹⁵⁰

If a violation has occurred that requires a form of confinement, there are several options:

- The Board or a parole supervisor can require a stay at a Community Correctional Center ("CCC") program. According to the DOC, at the CCC the parolee is "subject to tighter restrictions and intensive treatment programs aimed at addressing the underlying issues causing him to struggle." During time spent at the CCC, an offender can check out to attend school, look for/attend work, or see family; thus maintaining community ties.¹⁵¹
- The Board or a parole supervisor may impose a very short jail term, from 1 to 5 days in jail.
- Finally, the Board (and only the Board) may impose up to 180 days of incarceration.

There are many situations that allow the Board to deviate from the Guidelines. Exceptions are made for Board-initiated decreases/increases in violation magnitude, new criminal convictions or criminal conduct, "substantial and immediate threat[s] to public safety which cannot be addressed through behavior modification sanctions," mentally ill defendants, and continuations of violation hearings as per Board regulations.¹⁵²

Less serious violations may be handled through administrative sanctions. Under the Guidelines, the Board is not consulted. These sanctions may include curfew, travel restrictions, community service, electronic monitoring, increased supervision, reporting, or testing. Sanctions for very minor violations may include receiving a verbal warning, writing a letter of apology, or developing a risk avoidance plan.

Any time a person spends in confinement awaiting a hearing before the Board constitutes service of the sentence.¹⁵³ However, while “all time served on parole, outside of confinement and without violation, constitutes service of the total sentence,” any time spent outside of confinement after a parole violation does not constitute service, unless the parolee is exonerated. Any period of absence or evasion of parole supervision also tolls the parole period.¹⁵⁴ This means that if a parolee is re-imprisoned, the total sentence to be served is calculated less any time spent on parole without a violation.

i. Issuing Parole Revocation Decisions

The parolee shall be promptly notified in writing of the Board’s findings and decision.¹⁵⁵

j. Administrative or Judicial Review of Parole Revocation

The Utah Supreme Court has held that review of parole decisions by the Utah Board of Pardons and Parole is appropriate insofar as due process pursuant to Utah Const. art. I, § 7 requires that the inmate know what information the Board will be considering at the hearing and that the inmate know soon enough in advance to have a reasonable opportunity to prepare responses and a rebuttal of inaccuracies.¹⁵⁶ The judicial review authorized by the Utah Constitution is limited to the process by which the Board undertakes its sentencing function. So long as the period of incarceration decided upon by the Board falls within an inmate’s applicable indeterminate range then that decision, absent unusual circumstances, cannot be considered arbitrary and capricious.¹⁵⁷

In some cases, a writ of habeas corpus may be used to challenge Board authority to revoke parole.¹⁵⁸ However, inmates may be granted extraordinary relief, but the scope of review is limited to situations where the Board has “exceeded its jurisdiction or failed to perform an act required by constitutional or statutory law.”¹⁵⁹ Again, this type of review is limited to questions about the terms and conditions of confinement or the authority to restrain liberty.

A special attention review hearing, conducted by the Board, may be scheduled if a parolee contests an alternative parole violation sanction.¹⁶⁰

k. Re-release Following Revocation

The Board has authority to imprison a parolee for a length of time as determined by the Board and the recommendations of the sentencing commission, not to exceed the maximum term.¹⁶¹ If the re-incarceration term is shorter than the maximum term, inmates may be re-paroled until the maximum term is reached, or have their sentence terminated short of expiration.

6. Parole Board; Institutional Attributes

a. Source of Authority and Jurisdiction

The Board is established and given prison release authority by Utah’s Constitution.¹⁶² The Board may determine, subject to state law, whether class A misdemeanants committed to Department of Corrections facilities and most felons “may be released upon parole, pardoned, ordered to pay restitution, or have their fines, forfeitures, or restitution remitted, or their sentences commuted or terminated.”¹⁶³

b. Location in Government

The Board is an independent agency within the executive branch.¹⁶⁴

c. Purpose (Vision/Principles/Rationale)

According to the Board, its vision is to “make the state of Utah a safer, better place to live for all its citizens.”¹⁶⁵ In a value statement, the Board states that it seeks “to provide optimum protection of the public and safeguard the rights, privileges, and interests of victims and offenders; to make consistent, rational, and careful decisions, without regard to race, color, religion, gender, political affiliation, or national origin, on the merits of each case, taking into account aggravating and mitigating circumstances; to provide service in the most cost effective, efficient manner; and to respond to all inquiries in a timely fashion and work with other agencies to find solutions to problems.”¹⁶⁶

Finally, “the mission of the Utah Board of Pardons and Parole is to render just decisions by balancing victim needs, offender accountability, and public safety with regard to the length of incarceration, parole supervision, termination of sentence, commutation of sentence, and pardons.”¹⁶⁷

d. Appointment and Qualifications of Board Members

All board members are appointed by the governor of Utah with the consent of the Senate.¹⁶⁸

Qualifications. All board members must be citizens of the state, cannot hold any other government office (at any level) or hold another position (including as a business owner) that would be “inconsistent with the member’s duties.”¹⁶⁹ Full-time Board members must be recommended to the governor by the Commission on Criminal and Juvenile Justice. This Commission considers each applicant’s knowledge of the criminal justice system, state and federal criminal law, judicial procedure, corrections policies and procedures, and behavioral sciences.¹⁷⁰

e. Tenure and Number of Board Members, Ease of Removal

There are five full-time members of the Board who serve staggered terms of five years (with one replaced each year).¹⁷¹ There may also be “not more than” five pro tempore members who are nominated to the governor by the Board and also serve for five years. One board member is appointed to be chair by the governor, but there are no special qualifications for that role.¹⁷² The chair may appoint a vice-chair from the other board members to stand in and perform duties if needed. The governor can remove a Board member at any time for “inefficiency, neglect of duty, malfeasance or malfeasance in office, or for cause upon a hearing.”¹⁷³

f. Training and Continuing Education

There is no statute or administrative rule requiring training or the continuing education of Board members.

g. Workload

As all decisions require a majority vote, including such matter as administrative reviews, special attention hearings, revocations, alternate sanctions for parole violations, and rescissions, the Board makes over 11,000 decisions each year. Each member reads, reviews and votes on approximately 70% to 80% of the total. Files are routed for decision to each of the Board members on a random basis. Once a board member casts a vote, the file routes to the other board members in a rotation which changes each month. As soon as three board members are in agreement, the routing ceases and the three-person vote becomes the Board’s decision. Some decisions are resolved as soon as 3 board members have voted, and some require a 4th or even a 5th vote to reach a majority. In cases where no majority has been reached after all five board members vote, the case goes to conference to be discussed by the full board until a majority decision is reached.¹⁷⁴

h. Reporting and Accountability of the Parole Board

A “scorecard” is used to report quarterly activities of the Board. It reports the number of hearings and revocation cases. It also grades the Board on timeliness of hearing results, parole revocation decisions, non-hearing cases, and hearings, response time for correspondence, and victim notification.¹⁷⁵ However, there is no Annual Report produced by the Board that details other key statistics such as the number of annual hearings or recidivism rates. One goal identified by the recent Justice Reinvestment Report is to require criminal justice decision makers to do increased data collection and reporting of key performance measures.¹⁷⁶

Public agencies are required by law to provide access to records that are defined as “public.”¹⁷⁷ A Government Records Access and Management Act (“GRAMA”) request form is available on the Board’s website.¹⁷⁸ However, records “that, if disclosed, would jeopardize the security or safety of a correctional facility, or records relating to incarceration, treatment, probation, or parole, that would interfere with the control and supervision of an offender’s incarceration, treatment, probation, or parole” are considered protected. In addition, the law protects records that “would reveal recommendations made to the Board of Pardons and Parole by an employee or contractor for the Department of Corrections, the Board of Pardons and Parole, or the Department of Human Services that are based on the employee’s or contractor’s supervision, diagnosis, or treatment of any person within the Board’s jurisdiction.”¹⁷⁹

END NOTES

- ¹ The authors thank Clark A. Harms, Utah Board of Pardons and Parole, and his colleagues for comments on an earlier draft of this report.
- ² Utah Bd. Pardons & Parole, *Sentencing in Utah*, <http://bop.utah.gov> (last visited Jun. 28, 2016) [Hereinafter *Sentencing in Utah*].
- ³ Utah Bd. Pardons & Parole, *History of the Utah Board of Pardons and Parole*, <http://bop.utah.gov/index.php/home-top-public-menu/history-top-public-menu> (last visited Jun. 28, 2016).
- ⁴ Utah Sentencing Comm'n, 2015 Adult Sentencing and Release Guidelines at 13, available at: <http://www.sentencing.utah.gov/Guidelines/Adult/2015%20Adult%20Sentencing%20and%20Release%20Guidelines.pdf> [Hereinafter *2015 Guidelines*].
- ⁵ Utah Const. Art. VII §12.
- ⁶ Utah Code Ann. § 64-13-21 (West).
- ⁷ Utah Code Ann. § 77-27-11 (West).
- ⁸ Utah Code Ann. §§ 76-3-203, 76-3-204 (West). For example, for first-degree felonies, the judge is required to impose a minimum prison term of at least five years and a maximum term of up to life imprisonment. The sentencing judge has discretion to set a longer minimum term than required by the statute so that, for example, a prison term of 20 years to life is an available sentencing option. The judge may also select a maximum term shorter than the ceiling of life imprisonment so that, for example, a prison term of 5-10 years is permitted by statute. See, e.g., Utah Code Ann. §§ 77-18-4(2) – (3), 76-3-203(1) (West).
- ⁹ See, e.g., Utah Code Ann. § 76-5-403.1(2) (West) (establishing minimum mandatory sentence of 25 years for offense of sodomy on a child); Utah Code Ann. § 76-3-203.8(2) (West) (increasing both required minimum and allowable maximum terms “[i]f the trier of fact finds beyond a reasonable doubt that a dangerous weapon was used in the commission or furtherance of a felony”).
- ¹⁰ See Utah Code Ann. § 77-27-9(1)(b) (West); Utah Code Ann. § 76-3-206. While there is a constitutional barrier to making any crime punishable by a mandatory death sentence, capital felonies must be punished by either death, a life sentence with a minimum of at least 25 years, or life without parole. Correspondence with Clark A. Harms et al., Utah Bd. Pardons & Parole (July 26, 2016) [hereinafter *Correspondence with Board*].
- ¹¹ 2015 Guidelines, *supra* note 4.
- ¹² *Id.* at 1. (“It is important to note that these are guidelines only. They are intended to inform the sentencing authority, but do not dictate their decision. ... The calculated matrix recommendation on the Forms creates a starting point and reflects a recommendation for a typical case.”); *Labrum v. Utah State Bd. Of Pardons*, 870 P.2d 902, 908 (Utah 1993) (stating that “[a]lthough the Guidelines have no force of law, they have become, through policy and practice, the device for measuring ‘normal’ terms of incarceration in our indeterminate sentencing scheme.”).
- ¹³ Utah Courts, *The Sentencing Process*, <https://www.utcourts.gov/howto/criminallaw/penalties.asp#Process> (last visited Jun. 28, 2016). The sentencing report includes the police report, the defendant’s prior record, the defendant’s statement, drug and alcohol history, family history, probation history, the impact of the crime on the victim, and a sentencing recommendation for the judge’s consideration.
- ¹⁴ *Id.* citing Utah Code Ann. §§ 76-3-203, 76-3-301 (West).
- ¹⁵ Sentencing in Utah, *supra* note 2; See also Utah Code Ann. § 77-18-4(3) (West).
- ¹⁶ 2015 Guidelines, *supra* note 4.
- ¹⁷ Utah Admin. Code R671-201-1 (This regulation specifies initial hearing dates for various sentences. For example, for those serving sentences of greater than 15 years to life (first degree felonies), the initial hearing date is at 15 years).
- ¹⁸ *Id.*
- ¹⁹ Utah Code Ann. § 77-27-9 (West). There is also an intensive release program that still exists by statute but was discontinued and defunded based on prison returns after release. Utah Code Ann. § 77-27-10(3) (West); Correspondence with Board, *supra* note 10.
- ²⁰ Utah Code Ann. § 76-3-401(1) (West). Note that in general, the aggregate maximum sentence cannot exceed 30 years.
- ²¹ Utah Code Ann. § 76-3-401(8) (West); 2015 Guidelines, *supra* note 4 at 17.
- ²² See *State v. Galli*, 967 P.2d 930 at 938 (Utah 1998) (“The imposition of concurrent rather than consecutive sentences better serves Galli’s rehabilitative needs by allowing the Board of Pardons and Parole to release him from prison after five years if he has shown genuine progress toward rehabilitation. If he does not show such progress, then the Board will be able to keep him incarcerated for a long time, including life.”) and *State v. Strunk*, 846 P.2d 1297 at 1301-1302 (Utah 1993) (In this case, the trial court imposed three consecutive sentences (including a life sentence for murder) on a 16-year-old defendant who committed a violent sex crime involving a young child. The court wrote: “the diagnostic report was not optimistic as to Strunk’s prospect for long-term rehabilitation, but only time will tell what progress this youth can make toward overcoming his serious problems. Therefore, if on remand the trial court again imposes the longest minimum mandatory terms for these two offenses, all three terms should be ordered to run concurrently to afford the Board of Pardons the flexibility to adjust Strunk’s prison stay to match his progress in rehabilitation and preparation to return to society”).
- ²³ *State v. Spencer*, 258 P.3d 659, 661 (Utah Ct. App. 2011).
- ²⁴ Utah Code Ann. § 76-3-203.5 (West).
- ²⁵ Utah Code Ann. § 77-27-9 (2)(e) (West).
- ²⁶ Utah Code Ann. § 77-27-9 (6) (West) (This particular section was enacted on April 29, 1996 and does not apply to people convicted earlier than that date).
- ²⁷ Utah Code Ann. § 77-27-7 (West).
- ²⁸ Correspondence with Board, *supra* note 10.
- ²⁹ Utah Bd. Pardons & Parole, *Decision Factors*, <http://bop.utah.gov/index.php/hearings-top-public-menu/decision-factors> (last visited Jun. 28, 2016).
- ³⁰ Utah Bd. Pardons & Parole, FAQ: *Hearing Types: Original Hearing*, <http://bop.utah.gov/index.php/faq-top-public-menu> (last visited Jun. 28, 2016) (click “FAQ,” “Hearing Types”).
- ³¹ Utah Code Ann. § 77-27-9(1)(b) (West).
- ³² Utah Code Ann. § 77-27-7 (West).
- ³³ Clark A. Harms, Utah Bd. of Pardons & Parole, *Board Decision Process/JRI Update at 6-7* (Apr. 2015), <http://upc.utah.gov/materials/2015spring/boardPardonsHandout.pdf> (listing over 30 factors that the Board may consider as appropriate in a given case).
- ³⁴ *Id.* at 8.
- ³⁵ Utah Code Ann. § 76-3-203.5 (West).
- ³⁶ Utah Bd. Pardons & Parole, FAQ: *Hearings: What is the Guideline/Matrix Score*, <http://bop.utah.gov/index.php/faq-top-public-menu> (last visited Jun. 28, 2016) (click “FAQ,” “Hearings”).
- ³⁷ 2015 Guidelines, *supra* note 4.
- ³⁸ Utah Code Ann. § 77-27-13 (West).
- ³⁹ Utah Bd. Pardons & Parole, FAQ: *Hearings: How does the Board Decide who gets out of Prison*, <http://bop.utah.gov/index.php/faq-top-public-menu> (last visited Jun. 28, 2016) (click “FAQ,” “Hearings”).
- ⁴⁰ *Id.*
- ⁴¹ 2015 Guidelines, *supra* note 4 at 9.
- ⁴² MHS, *Levels of Service/Risk, Need, Responsivity*, <http://mhs.com/product.aspx?gr=saf&prod=lsirr&id=overview#scales> (last visited Jun. 28, 2016).
- ⁴³ 2015 Guidelines, *supra* note 4 at 9.

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- ⁴⁴ Correspondence with Board, *supra* note 10. On rare occasions, the Board uses contract providers (instead of the Department) to conduct psychosexual evaluations, but the tools used are still the same.
- ⁴⁵ *Id.*; Utah Admin. Code R. 671-314. Note that almost all compassionate releases are to supervised paroles which allow the Board to monitor the offender in the community.
- ⁴⁶ Utah Code Ann. § 77-27-5 (West). Under art. 7, § 12 of the Utah Constitution, the governor may grant a temporary respite or reprieve until the Board can next meet. However, this provision has fallen into disuse due to advances in communication technology. Correspondence with Board, *supra* note 10.
- ⁴⁷ Utah Code Ann. § 64-13-38 (West). The term "Utah State Prison" in this section refers to the state's total prison population including all sites. As of July 2016, there were 3,158 inmates at the Draper facility; 1,589 state inmates housed in county jails on contract with the counties throughout the state; and 1,515 inmates at the Gunnison facility. Correspondence with Board, *supra* note 10.
- ⁴⁸ Utah Admin. Code R. 671-202.
- ⁴⁹ Utah Code Ann. § 77-27-5 (West). Although the statute allows the Board to conduct hearings en banc, in panels, individually or by individual hearing officers, the practice since 1992 has been that pardon and commutation hearings are with the full Board, and all other hearings are conducted by a single hearing official – board member or hearing officer.
- ⁵⁰ Keith N. Hamilton (Former Chair, Utah Bd. Pardons & Parole), *Sentence TBD: A Practical Primer on Utah's Indeterminate Sentencing Structure and the Board of Pardons and Paroles* (2014), http://www.acluutah.org/about-us/item/download/39_efd463d723f717dcd0455e2c6b62e55e. Note that the only decisions made by a single board member are issuing warrants, and ministerial actions such as continuing hearings. Correspondence with Board, *supra* note 10.
- ⁵¹ Utah Code Ann. § 77-27-1(8) (West).
- ⁵² Utah Code Ann. § 77-27-1(1) (West); Utah Admin. Code R. 671-301-1.
- ⁵³ Utah Code Ann. § 77-27-7 (West).
- ⁵⁴ Clark A. Harms, Utah Bd. of Pardons & Parole, *Board Decision Process/JRI Update* at 6-7 (Apr. 2015), <http://upc.utah.gov/materials/2015spring/boardPardonsHandout.pdf>.
- ⁵⁵ Utah Admin. Code R. 671-303-1. See also Utah Bd. Pardons & Parole, *Decision Factors Used by the Board*, <http://www.le.utah.gov/interim/2014/pdf/00003812.pdf>.
- ⁵⁶ Utah Bd. Pardons & Parole, *FAQ: Hearings: Who can speak at a hearing?* <http://bop.utah.gov/index.php/faq-top-public-menu> (last visited Jun. 28, 2016) (click "FAQ," "Hearings").
- ⁵⁷ Utah Code Ann. § 77-27-9 (West).
- ⁵⁸ Utah Code Ann. § 77-27-7(2) (West).
- ⁵⁹ Utah Admin. Code R. 671-301-1.
- ⁶⁰ Utah Code Ann. § 77-27-7(2) (West). Courtesy hearings are those conducted by out of state officials on behalf of BOP when the offender is housed in a facility outside of the state of Utah. Correspondence with Board, *supra* note 10.
- ⁶¹ Utah Admin. Code R. 671-309-2.
- ⁶² Utah Admin. Code R. 671-309-1.
- ⁶³ Utah Admin. Code R. 671-103.
- ⁶⁴ Utah Admin. Code R. 671-303-1(2).
- ⁶⁵ Utah Admin. Code R. 671-308-1.
- ⁶⁶ Utah Code Ann. §§ 77-27-7(1), 77-27-5(2)(a) (West).
- ⁶⁷ Utah Admin. Code R. 671-303-1.
- ⁶⁸ *Id.*
- ⁶⁹ *Id.* In a 1993 Utah Supreme Court case, an inmate successfully petitioned for the disclosure of his full file and, for due process reasons, the procedure was changed prospectively to allow inmates greater access to the records under consideration. See *Labrum v. Utah State Bd. of Pardons*, 870 P.2d 902 (Utah 1993).
- ⁷⁰ Correspondence with Board, *supra* note 10.
- ⁷¹ Utah Code Ann. §§ 77-27-9.5, 77-27-1(17) (West) (stating that "victim" can extend to the legal guardian of a victim, or a representative of the victim's family if the victim is deceased).
- ⁷² Utah Code Ann. § 77-38-3(7), (8) (West).
- ⁷³ Utah Code Ann. § 77-27-9.7 (West).
- ⁷⁴ Utah Dep't of Corrections, *Notification Services*, http://corrections.utah.gov/index.php?option=com_content&view=article&id=808&Itemid=116 (last visited Jun. 28, 2016).
- ⁷⁵ Utah Code Ann. § 77-27-9(4)(b) (West).
- ⁷⁶ Utah Code Ann. § 77-27-9.5(2a), (5) (West).
- ⁷⁷ Utah Code Ann. § 77-27-9.5(4)(b)-(c) (West).
- ⁷⁸ Utah Code Ann. § 77-27-9.5(7) (West).
- ⁷⁹ Utah Admin. Code R. 671-203-5.
- ⁸⁰ Utah Code Ann. § 77-27-9.5(2)(b)(i) (West).
- ⁸¹ Utah Code Ann. § 77-27-5(2)(a) (West).
- ⁸² Utah Admin. Code R. 671-302.
- ⁸³ Utah Bd. Pardons & Parole, *Hearing Schedules*, available at: <http://bop.utah.gov/index.php/hearings-top-public-menu> (last visited Aug. 11, 2016).
- ⁸⁴ Utah Admin. Code R. 671-305.
- ⁸⁵ Utah Code Ann. § 77-27-7 (West), Utah Admin. Code R. 671-305-1.
- ⁸⁶ Utah Bd. Pardons & Parole, *FAQ: Hearings: How Long Does It Take for the Board to Make a Decision After a Hearing*, <http://bop.utah.gov/index.php/faq-top-public-menu> (last visited Jun. 28, 2016) (click "FAQ," "Hearings").
- ⁸⁷ Utah Board of Pardons and Parole, *FAQ: Hearings: Original Hearing*, <http://bop.utah.gov/board-top-public-menu/organization/86-bop-faq-category.html> (last visited Jun. 28, 2016) (click "FAQ," "Hearing").
- ⁸⁸ Utah Admin. Code R. 671-316-1.
- ⁸⁹ Utah Code Ann. § 77-27-5 (West).
- ⁹⁰ Utah Admin. Code R. 671-301.
- ⁹¹ Utah Admin. Code R. 671-316(2)(C).
- ⁹² Utah Admin. Code R. 671-311. Exceptional circumstances may include "exceptional performance or progress in the institution," family events, work opportunities, or new information that was previously unavailable about the offender or the case.
- ⁹³ *Id.*
- ⁹⁴ *Id.*
- ⁹⁵ Utah Code Ann. § 77-27-5 (West); See also *Preece v. House*, 886 P. 2d 508 (Utah 1994) (holding that appeal is unavailable even where the Board errs in calculating sentence length).
- ⁹⁶ *Foot v. Utah Board of Pardons*, 808 P.2d 734 (Utah 1991).
- ⁹⁷ Utah Admin. Code R. 671-310.
- ⁹⁸ Danielle Kaeble & Thomas P. Bonczar, Bureau of Justice Statistics, Probation and Parole in the United States, 2015 at 22 (Appendix Table 4) (Dec. 2016), <https://www.bjs.gov/content/pub/pdf/ppus15.pdf>.
- ⁹⁹ *State v. Velasquez*, 672 P.2d 1254, 1258-59 (Utah 1983).
- ¹⁰⁰ Utah Bd. Pardons & Parole, *Parole, Special Conditions, and Victim Protection*, <http://bop.utah.gov/faq-top-public-menu> (last visited Aug. 11, 2016).
- ¹⁰¹ Utah Code Ann. § 76-3-202 (1)(a) (West).
- ¹⁰² Utah Code Ann. § 76-3-202 (1)(b) (West) (this includes many crimes, including many forms of assault and abuse, homicide, kidnapping, and sexual offenses).
- ¹⁰³ Utah Code Ann. § 76-3-202 (2) (West).
- ¹⁰⁴ Utah Code Ann. § 76-3-202 (3) (West). The maximum sentence for all first-degree felonies is now life in prison, so the maximum parole for these offenses is also life. Correspondence with Board, *supra* note 10.
- ¹⁰⁵ Utah Code Ann. § 76-3-202 (11) (West) (these crimes include child kidnapping, rape, sodomy, and sexual abuse).
- ¹⁰⁶ Utah Code Ann. § 77-27-5 (6) (West).
- ¹⁰⁷ Utah Code Ann. § 77-16a-205 (West).
- ¹⁰⁸ Utah Code Ann. § 76-3-202 (West).
- ¹⁰⁹ *Id.*

END NOTES

- ¹¹⁰ Utah Code Ann. § 64-13-21(7) (West). This provision does not apply to those convicted of person crimes or those who have pled guilty and mentally ill which has a separate statute requiring 5 years unless the applicable sentence expires prior to this period of time.
- ¹¹¹ Utah Code Ann. § 77-27-5 (1)(a) (West).
- ¹¹² Correspondence with Board, *supra* note 10.
- ¹¹³ Utah Admin. Code R. 671-402.
- ¹¹⁴ Utah Code Ann. § 77-27-10 (West).
- ¹¹⁵ *Id.*
- ¹¹⁶ Utah Dep't of Corrections, *Sex Offender A Program*, <http://corrections.utah.gov/images/Brooke/SEXOFFENDERAPROGRAM2015.pdf> (last visited Jun. 28, 2016).
- ¹¹⁷ Utah Admin. Code R. 671-402.
- ¹¹⁸ 2015 Guidelines, *supra* note 4.
- ¹¹⁹ Utah Code Ann. § 64-13-21(6) (West).
- ¹²⁰ Utah Code Ann. § 77-27-6 (West). In ordering restitution, a court (or the Board) must consider the financial resources of a defendant, the burden that restitution would impose with regard to other obligations, the ability of a defendant to pay on an installment basis, the rehabilitative effect of payment, and other circumstances that may make restitution inappropriate. Utah Code Ann. § 77-38a-302(5)(c) (West). *See also Monson v. Carver*, 928 P.2d 1017 (Utah 1996) (upholding a Board decision to independently impose restitution as part of a sentence).
- ¹²¹ Utah Code Ann. § 77-27-11(6) (West).
- ¹²² However, note that parole does require obedience to all court orders and state law. Correspondence with Board, *supra* note 10.
- ¹²³ 2015 Guidelines, *supra* note 4.
- ¹²⁴ Kaeble & Bonzcar, *supra* note 98 at 24 (Appendix Table 6).
- ¹²⁵ Justice Reinvestment Report Summary (2014), <http://corrections.utah.gov/images/Brooke/Summary%20of%20CCJJ%20report.pdf>.
- ¹²⁶ 2015 Utah Laws Ch. 412 (H.B. 348); *See also* Utah Code Ann § 77-27-11 (6)(b) (West).
- ¹²⁷ 2015 Guidelines, *supra* note 4 at 6.
- ¹²⁸ Utah Code Ann § 77-27-11(1) (West).
- ¹²⁹ 2015 Guidelines, *supra* note 4 at 32-33.
- ¹³⁰ 2015 Guidelines, *supra* note 4 at 33.
- ¹³¹ 2015 Guidelines, *supra* note 4 at 34.
- ¹³² 2015 Guidelines, *supra* note 4 at 32.
- ¹³³ *Id.*
- ¹³⁴ Utah Code Ann § 77-27-11(2) – (5) (West).
- ¹³⁵ 2015 Guidelines, *supra* note 4 at 32-33.
- ¹³⁶ Utah Admin. Code R. 671-513, 671-516; Correspondence with Board, *supra* note 10.
- ¹³⁷ Utah Admin. Code R. 671-517; Correspondence with Board, *supra* note 10.
- ¹³⁸ Utah Admin. Code R. 671-518.
- ¹³⁹ Utah Code Ann § 77-27-11(2) – (5) (West).
- ¹⁴⁰ Utah Code Ann § 77-27-11 (5)(a), (b) (West).
- ¹⁴¹ Correspondence with Board, *supra* note 10.
- ¹⁴² Utah Code Ann § 77-27-9.5 (West); Correspondence with Board, *supra* note 10. *See also* Utah Admin. Code R. 671-203(1) – (5).
- ¹⁴³ Utah Code Ann § 77-27-5(2)(a) (West).
- ¹⁴⁴ Utah Admin. Code R. 671-517.
- ¹⁴⁵ Utah Code Ann. § 77-27-5(3) (West); *Walker v. State Dept. of Corrections*, 902 P.2d 148 (Utah Ct. App 1995).
- ¹⁴⁶ Utah Admin. Code R. 671-517-6.
- ¹⁴⁷ *Id.*
- ¹⁴⁸ Utah Code Ann. § 77-27-11 (West).
- ¹⁴⁹ Utah Code Ann. § 77-27-11 (6) (West).
- ¹⁵⁰ 2015 Guidelines, *supra* note 4.
- ¹⁵¹ Utah Dep't of Corrections, *About Community Correctional Centers*, http://corrections.utah.gov/index.php?option=com_content&view=category&id=25&Itemid=189 (last visited Jun. 28, 2016).

- ¹⁵² *Id.*
- ¹⁵³ Utah Code Ann. § 77-3-202 (West).
- ¹⁵⁴ *Id.*
- ¹⁵⁵ Utah Code Ann. § 77-27-11 (West).
- ¹⁵⁶ *See, e.g., Linden v. Dep't of Corr.*, 81 P.3d 802 (Utah Ct. App. 2003).
- ¹⁵⁷ *Id.*
- ¹⁵⁸ *See, e.g., Peterson v. Utah Bd. of Pardons*, 907 P. 2d 1148 (Utah 1995).
- ¹⁵⁹ Utah R. Civ. Proc. 65B(d)(2)(D).
- ¹⁶⁰ Utah Admin. Code R. 671-311.
- ¹⁶¹ Utah Code Ann. § 77-27-11 (West).
- ¹⁶² Utah Const. art. VII § 12. The Board's decision-making by "majority vote" is also part of Utah's constitution.
- ¹⁶³ Utah Code Ann. § 77-27-5 (West); Bd. Pardons & Paroles, *Board Jurisdiction*, <http://bop.utah.gov> (last visited Jun. 28, 2016).
- ¹⁶⁴ Utah Const. art. VII § 12.
- ¹⁶⁵ Utah Bd. Pardons & Parole, FAQ: *Board Information: Mission, Vision, and Values*, <http://bop.utah.gov/index.php/faq-top-public-menu> (last visited Jun. 28, 2016) (click "FAQ", "Board Information").
- ¹⁶⁶ *Id.*
- ¹⁶⁷ *Id.*
- ¹⁶⁸ Utah Const. art. VII § 12.
- ¹⁶⁹ *Id.*
- ¹⁷⁰ Utah Code Ann. § 77-27-2 (West).
- ¹⁷¹ *Id.*
- ¹⁷² Utah Code Ann. § 77-27-4 (West).
- ¹⁷³ Utah Code Ann. § 77-27-2(2)(c) (West).
- ¹⁷⁴ Correspondence with Board, *supra* note 10.
- ¹⁷⁵ *See* Utah Bd. Pardons & Parole, *Performance Metrics*, <http://bop.utah.gov/index.php/home-top-public-menu/performance-metrics> (last visited Jun. 28, 2016).
- ¹⁷⁶ Utah Commission on Criminal and Juvenile Justice, *Justice Reinvestment Report Summary (2014)*, <http://corrections.utah.gov/images/Brooke/Summary%20of%20CCJJ%20report.pdf>.
- ¹⁷⁷ Utah Code Ann. § 63g-2-201 (West).
- ¹⁷⁸ Utah Bd. of Pardons & Parole, *GRAMA Records Request Form*, <http://www.bop.utah.gov/images/pdf/GRAMA.pdf> (last visited Jun. 28, 2016).
- ¹⁷⁹ Utah Code Ann. §§ 63g-2-305(13), (14) (West). A protected record may be disclosed to the person who submitted the record, has power of attorney from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification; or submits a notarized release from all persons, governmental entities, or political subdivisions whose interests were sought to be protected by the protected classification or from their legal representatives dated no more than 90 days prior to the date the request is made. Utah Code Ann. § 63-G-2-202(4) (West).