



Board of Pardons and Parole

Information Packet

Thank you for contacting the ACLU of Utah with your complaint about the Board of Pardons and Parole. We hope that this is helpful to you, it is intended as information only not legal advice. The ACLU of Utah cannot provide emergency assistance or legal consultation.

Utah Board of Pardons and Parole

Information for Inmates and their Families

The ACLU of Utah created this informational document to explain how the Utah Board of Pardons and Parole (BOP) functions, and the role the Board plays in determining how long each state inmate remains in state custody. This information is intended for inmates, their loved ones, and members of the general public.

Utah's indeterminate sentencing system affords the BOP with broad discretion to make determinations about an inmate's actual length of stay in the custody of the Utah Department of Corrections, as well as the conditions of release and parole. While the State does provide some sentencing guidelines (through the Utah Sentencing Commission), the BOP is allowed to make decisions outside those guidelines, at any time, on a case-by-case basis. This means that inmates who have similar court dispositions (were convicted of similar crimes, with similar sentencing guidelines) may receive very different decisions from the BOP regarding release, rehearings, parole requirements and overall length of stay.

The BOP is a state agency, independent of the Department of Corrections. There are five official board members, appointed by the Governor, who have ultimate authority over parole and pardon determinations. Additionally, the BOP employs ten hearing officers, who are not board members, but who conduct parole hearings on behalf of the board. Hearing officers do not have ultimate authority to make parole decisions. Rather, hearing officers submit their recommendations about release, rehearings and parole requirements to the official Board Members, who then make the final determination. Board decisions about parole require only a majority vote; once three of the five board members agree on a determination, the decision is approved. All BOP decisions are final and cannot be appealed.

The Utah Constitution Article VII (UCA), Section 12, creates the Board of Pardons and Parole ("BOP") and establishes the parameters of its responsibilities.¹ UCA 77-27 specifies the makeup of the board and its general operational and procedural guidelines.² With the approval of the Senate, the Governor of Utah appoints members to the BOP.³ The BOP is made up of five full-time members and five temporary members, each serving five-year terms. When a full-time member or a hearing officer is absent, a temporary member sits in for them. Each year, one full-time Board member and one temporary member are up for renewal or replacement.⁴

If an inmate wishes to be released prior to the end of their sentence they will need to go before the BOP. If an inmate does not want to go before the BOP they must serve the entire sentence.⁵

In Utah, if a criminal defendant is sentenced to an "indeterminate sentence"—for example, if they are sentenced to 0 to 5 years in the Utah State Prison—that inmate must serve the entire length of their indeterminate sentence unless the BOP releases them prior to the expiration of their sentence.⁶ In the case

of first degree felony, whether sentenced to 3 to life, 5 to life, 15 to life, or 25 to life, the entire length of such a sentence is natural life unless action is taken by the BOP to alter that sentence.

For non-homicide offenses, when will an inmate have his/her first hearing?

Each inmate who has a sentence that carries the possibility of parole has the right to an appearance before the BOP.⁷ The appearance may be in person, by videoconferencing or by other electronic means.⁸ The BOP determines when and under what conditions persons should be released. It may also pardon, terminate, or commute offender sentences. All decisions they make must be consistent with federal and state constitutions and Utah statutes.⁹

A state inmate that is housed under the jurisdiction of the Utah Department of Corrections has the right to be present at his or her parole hearing. During the hearing, an inmate may speak, present documents, ask questions, and answer questions. If an inmate waives his or her right to appear or refuses to attend the hearing, the BOP may proceed with the hearing and issue a decision without the inmate in attendance.¹⁰ If an inmate is housed out-of-state, and has consented, the inmate's electronic appearance by telephone is permissible.¹¹

The first appearance before the BOP is referred to as an "original hearing." Eligibility for that hearing is determined by the sentence given by the court.¹² The sentence is recorded in a document called the "judgment" or "judgment of conviction." It includes the specific crime of conviction and the sentence. Additionally, a summary is included if the sentence can be found on the docket.¹³ The inmate may only request that the original hearing date be changed if there are exceptional circumstances. The BOP will grant or deny such a request. An example of an exceptional circumstance would be when an inmate has other criminal charges in another case that are pending at the same time the hearing is scheduled.¹⁴ Within 6 months of being committed to prison the BOP must notify an inmate of the month and year of their "original hearing." However, in most cases it notifies the inmate about 4-6 weeks after their arrival at the prison.

If the inmate is committed for a non-homicide offense, the schedule for original hearings before the BOP is as follows:

- First-degree felony sentences greater than 15 to life: eligible for an original hearing after serving at least 15 years.
- First-degree felony sentences of 10 or 15 to life: eligible for an original hearing after serving at least 7 years.
- All other first-degree felony sentences of less than 10 to life: eligible for an original hearing after serving at least 3 years.
- Second-degree felony sexual offense: eligible for an original hearing after serving at least 12 months.
- All other second-degree felony sentences: eligible for an original hearing after serving at least 6 months.
- Third-degree felony sexual offense: eligible for an original hearing after serving at least 6 months.
- All other third degree felony and class A misdemeanor sentences: eligible for an original hearing after serving at least 3 months.¹⁵

For homicide offenses eligible for parole, when will an inmate have his/her first hearing?

Within six months of arrival at prison, the BOP will notify an inmate of the month and year of their original hearing.¹⁶ The date of the original hearing may occur at any time during the inmate's sentence, and the BOP determines the date on a case-by-case basis.¹⁷

For homicide offenses not eligible for parole, will an inmate have a hearing?

Homicide offense commitments not eligible for parole (including sentences of life without parole or death) are not scheduled for an original hearing.¹⁸

What factors do the BOP consider when making a decision?

When setting a sentence length, the BOP considers the nature of the offense, an inmate's prior criminal history, an inmate's progress in programs and treatment, results of any mental health or psychological evaluations, recommendations of the sentencing judge and prosecutor, and letters from the victim, family, and other interested parties.¹⁹

Can an attorney speak on behalf of an inmate during parole hearings?

Parole hearings are open to the public. An inmate's attorney is allowed to observe and witness the proceedings along with the public, but the attorney is not allowed to speak on behalf of the inmate. Only victims and the inmate can speak during parole hearings.²⁰

Attorneys are only allowed to speak at two specific types of hearings before the BOP. An attorney may speak on behalf of an inmate at a parole violation hearing where there are no new criminal convictions. In this instance, the alleged parole violator may hire a private attorney, or an attorney may be assigned at the State's expense.²¹ An attorney may also speak on behalf of an inmate at a pardon and commutation hearing. If an inmate wants an attorney at his or her pardon or commutation hearing, they must hire a private attorney – they are not allowed an attorney at the State's expense.²² In certain circumstances the BOP may determine that an inmate is not able to represent him or herself effectively. In those cases the BOP will appoint a representative, or other type of assistance the BOP determines necessary to conduct an orderly hearing.²³ As examples, a representative may be an interpreter, a DOC staff member assisting an inmate with a physical infirmity, or a representative from NAMI assisting an inmate who suffers from mental illness.²⁴

What happens at a parole hearing?

Hearings are held at the prison parole hearing room. The BOP member conducting the hearing sits in the front of the room facing the inmate and the public. The inmate sits closest to and facing the BOP member. The inmate sits with his or her back toward the public and is instructed to not ever face the public. Members of the public are seated at the back of the room. If the victim or the victim's family is present to give testimony, they have the option of speaking with the inmate present or to have the inmate escorted out of the hearing room prior to their testimony. At the end of the hearing, the victim and his or her family (if present) are escorted out of the room first. Only when they have left can the inmate turn and talk to family and friends. If the inmate is escorted from the room, the inmate will be able to hear the victim's complete testimony and respond to the testimony upon being returned to the room.

What other types of hearings are held before the BOP?

Rehearing

At an inmate's original hearing, the BOP may choose to give the inmate a rehearing instead of scheduling a parole date. A rehearing is conducted in the same manner as an original hearing and the inmate's progress will be reassessed.²⁵

Rescission

At any time during an inmate's sentence, the BOP can rescind any prior decision they have made.²⁶ An outside party may request a rescission hearing. The requesting party must provide information to the BOP establishing the basis for the request. The BOP may also review or rescind a prior decision on its own initiative.²⁷ For example, an inmate may have a rescission hearing because they violated prison regulations or because they have a new criminal conviction. At a rescission hearing, the BOP may decide to postpone a previously set release or rehearing date.²⁸

Redetermination

If the BOP has given an inmate a parole date far into the future, the redetermination hearing is a way the inmate can get their case re-evaluated before that time. Inmates with a less-than-a-natural-life sentence may apply for a redetermination hearing at five-year intervals from their last personal appearance. Inmates who have been sentenced to natural life are eligible to apply for a redetermination hearing every ten years from their last personal appearance.²⁹ The BOP may consider a request if 1) the time requirements have been met, 2) if there have been no new criminal convictions, or major disciplinary violations, or 3) significant and material change in circumstances have occurred that the BOP has not yet considered. The BOP can make a decision about the request with or without a hearing. If the BOP denies the redetermination request, it must provide a brief statement giving the reason why it was denied.³⁰

Special Attention Hearings/Review

The BOP uses special attention hearings or reviews to 1) adjust parole conditions, 2) review prior decisions the BOP made, or 3) modify prior decisions when special circumstances exist. These reviews are initiated by a written request with an explanation of the special circumstances. The request can come from the inmate, the inmate's family and friends, members of the community, the inmates caseworker, or the inmate's parole agent. Special circumstances are varied but include: changes in restitution obligations, changes in credit for time served, changes in applicable sentencing guidelines, exceptional performance or progress while incarcerated, new family support systems that may impact parole decisions, and other new and significant information not previously considered by the BOP.³¹ If the BOP decides to review the inmate's situation, it can either hold a personal appearance hearing or conduct an administrative review of the file.³² These are commonly called a "paper review."³³

Can an inmate or a member of the general public get a record of a hearing?

Yes. By law the BOP creates a record of all public hearings and dispositions and keeps them for five years. The records may be purchased by providing the BOP office with a written request.³⁴ If an inmate proves they are unable to purchase the record, the State will give the record to the inmate free of charge.³⁵

What are the guidelines for submitting information to the BOP?

The BOP may postpone a hearing to allow additional documents to be submitted. If the BOP agrees to a *continuation hearing*, or a postponement of the hearing, all additional documents need to be in the BOP's office within 14 days following the hearing where the continuation or postponement was granted. Each separate document is limited to five pages in length. If a continuation hearing is granted, and new, relevant documents are submitted to the BOP, the BOP must provide the inmate with copies of those documents three days prior to the personal appearance. If documents are provided to the BOP after the 14 days but before the hearing, those documents will be shown to the inmate at the hearing. If new documents are presented to the inmate at the hearing, the inmate will be given time to review them. At that point, the inmate can request that more time be given to them, or the inmate can tell the BOP the hearing can proceed as scheduled.³⁶

What is an order?

When the BOP makes a decision and puts it in writing it is called an Order. The written rationale, or reasoning, for the decision must accompany all Orders. Orders are public documents, and a copy of the Order will be given to the inmate.³⁷

How is the Guideline/Matrix Score Used?

The matrix score is an informal way for the BOP to determine an inmate's length of stay. Matrix guidelines are not law. They are non-binding recommendations developed by the Utah Sentencing Commission. (<http://www.sentencing.utah.gov/> - then click on the box "2015 Sentencing Guideline") Inmates can use the matrix score to estimate about how long they may be incarcerated, but it is not an actual sentence. For the BOP, the matrix score is used along with other factors to guide its determinations and decisions. Along with an inmate's guideline/matrix score, the BOP will look at the offender's criminal record, the offender's supervision history, the nature and severity of the offense, and other facts. Even with all of these factors, the BOP has wide discretion in making determinations. There is no legal obligation or requirement that the BOP to follow the matrix.³⁸

Can the Board's decision be challenged in the Courts?

Generally, BOP decisions are final, non-appealable, and not subject to judicial review.³⁹ Inmates may appeal BOP decisions 1) if they believe their due process rights were violated, or 2) through following Habeas Corpus post-conviction procedures.

Due Process:

An inmate will be notified of the purpose, date, time and place of a personal appearance hearing at least seven calendar days in advance of the hearing, except in extraordinary circumstances.⁴⁰ Case law requires the BOP to provide an inmate with copies of all documents it will be reviewing approximately 7-10 days before the hearing.⁴¹ The only reason the BOP will not provide an inmate with documents it is reviewing is if the BOP needs to protect an individual's safety by keeping those documents confidential. If the BOP feels it is unsafe to provide the documents directly to the inmate, it will provide a summary of the documents. If the BOP does not follow this process (either by not giving the inmate sufficient notice or withholding documents for reasons other than safety and confidentiality) the inmate may have the right to appeal on due process grounds. The inmate should review the documents carefully and submit any responses, corrections or questions to the hearing officer conducting the parole hearing.⁴²

Habeas Corpus

A writ of *habeas corpus* is a judicial mandate to a prison official ordering that an inmate be brought to the court so it can determine whether or not that person is imprisoned lawfully and whether or not he or she should be released from custody.⁴³

Habeas corpus law is complex and different courts follow different rules. It is up to each inmate to know the rules in his or her district. Generally, there are three rules to consider: (1) the inmate must file the petition within one year of the end of your direct appeal, (2) for state prisoners, present any and all claims you bring in a federal court to the state court first, and (3) know that it is almost impossible to file more than one *habeas* petition.⁴⁴

How Can I Get Additional Information?

Below is the web link to the Table of Contents for the Utah Administrative Code for the Board of Pardons and Parole. You can use the Table of Contents to get much more specific information:

<http://www.rules.utah.gov/publicat/code/r671/r671.htm>

¹State of Utah. (n.d.). *UT Constitution Article VII Section 12*. Retrieved 1 13, 2016, from Appointments
http://le.utah.gov/xcode/Articlevii/Article_vii,_Section_12.html

²State of Utah. (n.d.). *Statutory Authority*. Retrieved 1 13, 2016, from Agency: Board of Pardons and Parole:http://le.utah.gov/interim/2013/lfa/cobi2013/agcy_411.htm

³State of Utah. (n.d.). *UT Constitution Article VII Section 12*. Retrieved 1 13, 2016, from Appointments:
http://le.utah.gov/xcode/Articlevii/Article_vii,_Section_12.html

⁴State of Utah. (2015). *Board of Pardons and Parole -- Creation -- Compensation -- Functions*. Retrieved 1 25, 2016, from Utah Code, Utah Code of Criminal Procedure, Pardons and Parole:

http://le.utah.gov/xcode/Title77/Chapter27/77-27-S2.html?v=C77-27-S2_1800010118000101

⁵State of Utah. (2016). *Board of Pardons and Parole*. Retrieved August 23, 2016 from: <http://bop.utah.gov/index.php/hearings-top-public-menu/decision-factors>

⁶State of Utah. (2015). *Board of Pardons and Parole*. Retrieved 1 25, 2016, from Sentencing in Utah: <http://bop.utah.gov/>

⁷State of Utah. (2015). *Board of Pardons and Parole*. Retrieved December 02, 2015, from Original Hearing:
<http://bop.utah.gov/index.php/hearings-top-public-menu/types>

⁸State of Utah. (2010). *Appearance by inmate, offender, or witness*. Retrieved 1 14, 2016, from Utah Code of Criminal Procedure: http://le.utah.gov/xcode/Title77/Chapter27/77-27-S1.5.html?v=C77-27-S1.5_1800010118000101

⁹State of Utah. (2015). *Board of Pardons and Parole*. Retrieved December 09, 2015, from The Board of Pardons and Parole:
<http://bop.utah.gov/index.php/home-top-public-menu/how-the-board-works - introduction>

¹⁰State of Utah. (2015). *R671-301-1 (A). Personal Appearance*. Retrieved 1 13, 2016, from Board of Pardons and Parole:
<http://www.rules.utah.gov/publicat/code/r671/r671-301.htm>

¹¹State of Utah. (2010). *Appearance by inmate, offender, or witness*. Retrieved 1 14, 2016, from Utah Code of Criminal Procedure: [http://le.utah.gov/xcode/Title77/77-27-S1.5.html?v=C77-27-S1.5_1800010118000101](http://le.utah.gov/xcode/Title77/Chapter27/77-27-S1.5.html?v=C77-27-S1.5_1800010118000101)

¹²State of Utah. (n.d.). *Board Of Pardons and Parole*. Retrieved from How Dates Are Set:
http://bop.utah.gov/index.php/home-top-public-menu/how-the-board-works - how_original_dates_are_set

13 K. Hart and L. Sleight (personal communications 04/14/16).

¹⁴State of Utah. (2015, October). *UTAH ADMINISTRATIVE CODE*. Retrieved December 2015, from Rule 671-201(6). Original Parole Grant Hearing Schedule and Notice: <http://www.rules.utah.gov/publicat/code/r671/r671-201.htm>

¹⁵State of Utah. (2015, October). *UTAH ADMINISTRATIVE CODE*. Retrieved December 2015, from Rule R671-201. Original Parole Grant Hearing Schedule and Notice: <http://www.rules.utah.gov/publicat/code/r671/r671-201.htm>

¹⁶State of Utah. (2015, October). *UTAH ADMINISTRATIVE CODE*. Retrieved December 2015, from Rule R671-201(3)(a). Original Parole Grant Hearing Schedule and Notice: <http://www.rules.utah.gov/publicat/code/r671/r671-201.htm>

¹⁷ State of Utah. (2015). *Board of Pardons and Parole*. Retrieved December 02, 2015, from Original Hearing:
<http://bop.utah.gov/index.php/hearings-top-public-menu/types>

¹⁸State of Utah. (2015, October). *UTAH ADMINISTRATIVE CODE*. Retrieved December 2015, from Rule R671-201 (3)(d).

Original Parole Grant Hearing Schedule and Notice: <http://www.rules.utah.gov/publicat/code/r671/r671-201.htm>

¹⁹Utah Department of Corrections. (2015). *Family & Friends*. Retrieved 1 13, 2016, from Utah Board of Pardons and Parole: http://corrections.utah.gov/index.php?option=com_content&view=article&id=1049&Itemid=169

²⁰State of Utah. (2015). *Open Hearings*. Retrieved 1 13, 2016, from Board of Pardons and Parole: http://bop.utah.gov/index.php/home-top-public-menu/how-the-board-works - open_hearings

²¹State of Utah. (2015). *R671-308-2. Offender Legal Counsel Hearings*. Retrieved 1 28, 2016, from Utah Department of Administrative Services - Division of Administrative Rules: <http://www.rules.utah.gov/publicat/code/r671/r671-308.htm - E3>

²²State of Utah. (2015). *R671-308-3. Offender Legal Counsel - Pardon and Commutation Hearings*. Retrieved 1 14, 2016, from Utah Department of Administrative Services - Division of Administrative Rules:

<http://www.rules.utah.gov/publicat/code/r671/r671-308.htm - E3>

²³State of Utah. (2015). *R671-308-1. Offender Hearing Assistance*. Retrieved 1 13, 2016, from Utah Department of Administrative Services - Division of Administrative Rules: <http://www.rules.utah.gov/publicat/code/r671/r671-308.htm - E1>

²⁴G. Johnson (personal communication, June 01, 2016).

²⁵State of Utah. (2015). *Board of Pardons and Parole*. Retrieved December 02, 2015, from Original Hearing: <http://bop.utah.gov/index.php/hearings-top-public-menu/types>

²⁶Rescind means to take back or to say something is no longer valid; to cancel.

²⁷State of Utah. (2015). *R671-310-1. Rescission Hearings*. Retrieved 1 14, 2016, from Utah Department of Administrative Services - Division of Administrative Rules: <http://www.rules.utah.gov/publicat/code/r671/r671-310.htm - E1>

²⁸State of Utah. (2015). *Board of Pardons and Parole*. Retrieved December 02, 2015, from Original Hearing: <http://bop.utah.gov/index.php/hearings-top-public-menu/types>

²⁹State of Utah. (2015). *Board of Pardons and Parole*. Retrieved December 02, 2015, from Original Hearing <http://bop.utah.gov/index.php/hearings-top-public-menu/types>

³⁰State of Utah. (2015). *R671-316-1. Redetermination Review*. Retrieved 1 14, 2016, from Utah Department of Administrative Services - Division of Administrative Rules: <http://www.rules.utah.gov/publicat/code/r671/r671-316.htm - E1>

³¹State of Utah. (2015). *Rule R671-311. Special Attention Reviews, Hearings and Decisions*. Retrieved 1 14, 2016, from Utah Department of Administrative Services - Division of Administrative Rules: <http://www.rules.utah.gov/publicat/code/r671/r671-311.htm>

³²State of Utah. (2015). *Board of Pardons and Parole*. Retrieved December 02, 2015, from Original Hearing <http://bop.utah.gov/index.php/hearings-top-public-menu/types>

³³M. McAinsh (personal correspondence, July 22, 2016).

³⁴State of Utah. (2015). *Rule R671-304. Hearing Record*. Retrieved 1 14, 2016, from Utah Department of Administrative Services - Division of Administrative Rules: <http://www.rules.utah.gov/publicat/code/r671/r671-304.htm>

³⁵State of Utah. (2010). *Utah Code*. Retrieved 1 14, 2016, from 77-27-8 Record of hearing:

http://le.utah.gov/xcode/Title77/Chapter27/C77-27-S8_1800010118000101.pdf

³⁶State of Utah. (2015). *R671-303-1. Information Received, Maintained or Used by the Board*. Retrieved 1 14, 2016, from Utah Department of Administrative Services - Division of Administrative Rules: <http://www.rules.utah.gov/publicat/code/r671-303.htm>

³⁷State of Utah. (2015). *Board Decisions and Orders - Rule R671-305*. Retrieved 1 25, 2016, from Utah Department of Administrative Services - Division of Administrative Rules: <http://www.rules.utah.gov/publicat/code/r671/r671-305.htm>

³⁸Board of Pardons and Parole. (2015). *What is the guideline/matrix score?* Retrieved 1 25, 2016, from Board of Pardons and Parole: <http://bop.utah.gov/index.php/component/fsf/?view=faq&catid=1&faqid=10>

³⁹State of Utah. (2010). *Utah Code, Pardons and Parole (3)*. Retrieved January 13, 2016, from Utah Board of Pardons and Parole Authority: http://le.utah.gov/xcode/Title77/Chapter27/77-27-S5.html?v=C77-27-S5_1800010118000101

⁴⁰State of Utah. (n.d.). *UAC* . Retrieved 1 13, 2016, from R671-202 Notification of Hearings:

<http://www.rules.utah.gov/publicat/code/r671/r671-202.htm>

⁴¹[*Labrum v. Utah State Bd. of Pardons*, 870 P.2d 902, 909 \(Utah 1993\).](#)

⁴²State of Utah. (2015). *Disclosure of Information to the Offender*. Retrieved 1 13, 2016, from Board of Pardons and Parole: http://bop.utah.gov/index.php/home-top-public-menu/how-the-board-works - open_hearings

⁴³Find Law. (2015). *Criminal Law Criminal Procedure*. Retrieved 1 13, 2016, from The Appeal, Writ and Habeas Corpus Petition Process: <http://criminal.findlaw.com/criminal-procedure/the-appeal-writ-and-habeas-corpus-petition-process.html>

⁴⁴Columbia Human Rights Law Review. (2009). *A Jailhouse Lawyer's Manual - Chapter 13: Federal Habeas Corpus*. (B. Kennedy, Ed.) Retrieved 1 13, 2016, from <http://blogs2.law.columbia.edu/jlm/> and http://www.oklahomacriminallaw.com/Jail_House_Habeas_Manuel.pdf