



# State of Utah - BOARD OF PARDONS AND PAROLE

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

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

- a. The Board combines all sentences together to determine a "total" sentence.**

The Board combines all of the current sentences imposed by the courts. The Board then determines an offender's aggregate (total) sentence, which combines all concurrent (running at the same time) and consecutive (running one after an other) sentences into a total sentence. This defines the total minimum sentence and maximum sentence.

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

- b. The Board calculates credit for time served in custody prior to prison commitment.**

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

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

- c. The Board calculates the offender's sentence expiration date.**

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

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

Utah law requires that persons committed to prison must serve the entire sentence imposed by the courts, unless the Board grants an earlier release.

**e. Sentencing Guidelines.**

The Board's staff calculates a guideline using the sentencing guidelines and instructions created by the Utah Sentencing Commission. All sentences imposed and being served at the same time are included in this calculation. *(The guidelines do not create an expectation of or right to release. However, the guidelines are helpful to the Board in analyzing a particular offender's sentences in relation to other offenders who have similar convictions, sentences and criminal histories.)*

**f. Hearing disclosure:**

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

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

- a. Grant parole**, which is supervised release from prison prior to expiration. On parole, the offender will be supervised by Adult Probation & Parole, and must obey standard parole conditions and special parole conditions set by the Board.
- b. Grant termination of the sentence**, which is a discharge of the sentence prior to expiration.
- c. Schedule a rehearing**, which allows the Board to review the offender's sentence, case action plan progress, behavior inside the prison or jail, and risk to society or public safety.

When a sentencing guideline date or total minimum sentences are far in the future at the time of a 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.

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

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

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

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

- a. the minimum, maximum, concurrent, and consecutive sentences imposed by the court;
- b. the specific facts of the crime and criminal behavior;
- c. comments, notes, or recommendations from the sentencing court;
- d. the offender's risk to the victim or the general public, based on current and past behavior;
- e. the type, effects, and extent of injuries to the victim;
- f. whether the crimes and criminal conduct showed cruelty or depravity;
- g. whether the offender abused a position of trust or responsibility in connection to committing the crime;
- h. whether the victim was a child or was otherwise particularly vulnerable;
- i. offender risk assessments;
- j. psychological, psychiatric, psycho-sexual, competency, or other mental health reports;
- k. whether weapons were used in the offense;
- l. the number of victims;
- m. whether the crimes were committed for personal gain, and the damages to the victims;
- n. the reasons the offender committed the crime;
- o. the offender's role in the crime (*was the offender the leader or organizer, or simply a follower or minimal actor*);
- p. the offender's conduct after the offense (*did the offender lie, hide evidence, withhold information, or flee, or did the offender surrender and not commit any other crimes*);
- q. whether the offender's criminal history is significantly more serious than included in the guideline calculation;
- r. whether the offender has a history of similar offenses;
- s. whether the offender's criminal conduct is increasing or decreasing in seriousness;
- t. how the offender has performed under earlier probation or parole supervision;
- u. the offender's behavior while incarcerated;
- v. reports or recommendations from AP&P or the Department of Corrections, including reports concerning programming, education, treatment, work assignments, or disciplinary violations during the offender's incarceration;
- w. victim impact statements, reports, letters, or testimony;
- x. whether the offender has health, medical, or other needs or situations which mitigate in favor of release;
- y. whether other states or agencies have placed detainers and whether an offender will serve additional prison sentences;
- z. information regarding the offender submitted by the offender or on the offender's behalf by family, friends, treating professionals, employers, defense attorneys, or prosecutors;
- a. the offender's remorse and acceptance of responsibility for the criminal behavior;
- b. the offender's efforts to pay restitution;
- c. the offender's efforts at improvement, and good behavior after the crime and during incarceration;
- d. whether the offender successfully completed the case action plan or Board required programming/treatment while incarcerated;
- e. whether the offender requires additional treatment or programming to increase the likelihood of living a crime-free life and decrease the chance of returning to prison;

- f. the length of the offender's drug or alcohol use or abuse compared to the offender's efforts to overcome that use or abuse; and
- g. whether the offender has good, positive community support (family members, friends, etc.), a place to live, and possible employment.

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

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

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

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