

NOTICE OF 120-DAY (EMERGENCY) RULE

- The agency identified below in box 1 provides notice of a 120-day (emergency) rule pursuant to Utah Code Section 63G-3-304.
- Please address questions regarding information on this notice to the agency.

Rule Information

DAR file no: 40707 Date filed: 08/25/2016 03:04 PM
 State Admin Rule Filing Key: 157846
 Utah Admin. Code ref. (R no.): R671-201

Agency Information

1. Agency: Pardons (Board Of) - Administration
 Room no.: 300
 Building:
 Street address 1: 448 E 6400 S
 Street address 2:
 City, state, zip: SALT LAKE CITY UT 84107-8530
 Mailing address 1: 448 E 6400 S STE 300
 Mailing address 2:
 City, state, zip: SALT LAKE CITY UT 84107-8530

Contact person(s):

Name:	Phone:	Fax:	E-mail:	Remove:
Greg Johnson	801-261-6454	801-261-6481	gregjohnson@utah.gov	<input type="checkbox"/>

(Interested persons may inspect this filing at the above address or at DAR during business hours)

Rule Title

2. Title of rule or section (catchline):
 Original Hearing Schedule and Notice

Effective Date

3. Effective Date (mm/dd/yyyy): 08/25/2016

Rule Purpose

4. Purpose of the rule or reason for the change:
 The purpose of the rule change is to require the Board to set earlier original hearings for individuals who committed a homicide offense as a minor and individuals sentenced to three years to life.

Rule Summary

5. Summary of the rule or change:
 Original hearings for individuals who committed a homicide offense as a minor will be set at less than 15 years.
 Original hearings for individuals sentenced to three years to life will be scheduled after the service of twelve months as opposed to the previous requirement of three years.

6. Regular rulemaking procedures would:

- cause an imminent peril to the public health, safety, or welfare
- cause an imminent budget reduction because of budget restraints or federal requirements
- place the agency in violation of federal or state law

Case law requires a certain standard of review when an individual who is sentenced to life in prison for an offense that was committed when the individual was a minor. If the sentence is three years to life, the Board must conduct the original hearing before the minimum sentence which is less than three years.

Aggregate Cost Information

7. Aggregate anticipated cost or savings to:

A) State budget:

Affected: No Yes

Hearings are already required. The change only affects the timing of the hearing and does not create any revenue or increase costs for the agency.

B) Local government:

Affected: No Yes

Local government does not participate in parole hearings and is not impacted by the proposed change.

C) Small businesses:

Affected: No Yes

("small business" means a business employing fewer than 50 persons)

Small business does not participate in parole hearings and is not impacted by the proposed change.

D) Persons other than small businesses, businesses, or local government entities:

Affected: No Yes

("person" means any individual, partnership, corporation, association, governmental entity, or public or private organization of any character other than an agency)

The inmate benefits by having an earlier review of the inmates' parole status. Parole hearings are at no cost to the inmate. The proposed change does not create any cost to the inmate.

Compliance Cost Information

8. Compliance costs for affected persons:

Parole hearings are at no cost to the inmate. The proposed change does not create any cost to the inmate.

Department Head Comments

9. A) Comments by the department head on the fiscal impact the rule may have on businesses:

Businesses are not involved in parole hearings and will not be impacted. The change only moves up the date of the original hearing.

B) Name and title of department head commenting on the fiscal impacts:

Angela Micklos, Chair

Citation Information

10. This rule change is authorized or mandated by state law, and implements or interprets the following state and federal laws.

State code or constitution citations (required) (e.g., Section 63G-3-402; Subsection 63G-3-601(3); Article IV) :
 Art VII Sec 12, Section 77-27-5, Section 77-27-7, Section 77-27-9

Incorporated Materials

11. This rule adds, updates, or removes the following title of materials incorporated by reference (a copy of materials incorporated by reference must be submitted to DAR; if none, leave blank) :

<p style="text-align: center;">Official Title of Materials Incorporated (from title page) Publisher Date Issued (mm/dd/yyyy) Issue, or version (including partial dates) ISBN Number ISSN Number Cost of Incorporated Reference Adds, updates, removes-- SELECT ONE --</p>

Indexing Information

12. Indexing information - keywords (maximum of four, one term per field, in lower case, except for acronyms (e.g., "GRAMA") or proper nouns (e.g., "Medicaid")):
 parole, hearing, inmates

File Information

13. Attach an RTF document containing the text of this rule change (filename):
 There is a document associated with this rule filing.

To the agency: Information requested on this form is required by Sections 63G-3-301, 304, and 402. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date and publication in the Utah State Bulletin.

Agency Authorization

Agency head or designee, and title: Angela Micklos
 Chair
 Date (mm/dd/yyyy): 08/25/2016

Control Panel

DAR Control Panel

Control Name	Currently	Change To
Lock Status	Default	Force On
Filing Status	BulletinPrep	BulletinPrep
Text Status	New	New
Form Status	New	New
Incorp Status	New	New

DAR Notes:
NO DAR NOTES

Additional Links for DAR
Effective Note:

Title Note:

Invalidated Reason:

R671. Pardons (Board of), Administration.

R671-201. Original Hearing Schedule and Notice.

R671-201-1. Schedule and Notice.

(1) (a) Within six months of an offender's commitment to prison the Board shall give notice of the month and year in which the inmate's original hearing will be conducted.

(b) A minimum of seven days prior notice should be given regarding the specific day and approximate time of such hearing.

(2) (a) Homicide offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of aggravated murder (if the sentence includes the possibility of parole), murder, felony murder, manslaughter, child abuse homicide, negligent homicide, automobile homicide, homicide by assault, any attempt, conspiracy or solicitation to commit any of these offenses, and any other offense, regardless of title, description or severity, when it is known at the time of sentencing that the offense conduct resulted in the death of any person.

(b) Sexual offense commitment, for purposes of this rule, means a prison commitment to serve a sentence for a conviction of any crime for which an offender is defined as a kidnap offender pursuant to Utah Code Ann. Subsection 77-41-102(9); or for which an offender is defined as a sex offender pursuant to Utah Code Ann. Subsection 77-41-102(16); or any attempt, conspiracy or solicitation to commit any of the offenses listed in those sections.

(3) (a) All homicide offense commitments eligible for parole shall be routed to the Board as soon as practicable for the determination of the month and year for an original hearing.

(b) The Board shall determine, by majority vote, the month and year of an original hearing for an offender serving a homicide offense commitment.

(c) In setting an original hearing for a homicide offense commitment, the Board shall only consider information available to the court or offender at the time of sentencing.

(d) Homicide offense commitments not eligible for parole, ~~(including sentences of life without parole or death), shall~~ may not be scheduled for original hearings.

(e) If the offender is less than 18 years of age at the time of the homicide offense and the offense is eligible for parole, the original hearing shall be scheduled no later than 15 years after the date of sentencing.

(4) If the offender is less than 18 years of age at the time of commitment and the offense is eligible for parole, the case shall be routed to the Board as soon as practicable for the determination, by majority vote, of the month and year for an original hearing.

(5) When an offender's prison commitment does not include a

homicide offense commitment, an offender is eligible to have an original hearing before the Board as follows:

(a) After the service of fifteen years for first degree felony commitments when the most severe sentence imposed and being served is a sentence greater than 15 years to life, excluding enhancements.

(b) After the service of seven years for first degree felony commitments when the most severe sentence imposed and being served is a sentence of 10 years to life, or 15 years to life, excluding enhancements.

(c) After the service of three years for all other first degree felony commitments.

(d) After the service of twelve months if the most serious offense of incarceration is: (i) a second degree felony sexual offense commitment; or (ii) a first degree felony which is three to life.

(e) After the service of six months for all other second degree felony commitments.

(f) After the service of six months if the most serious offense of incarceration is a third degree felony sexual offense commitment.

(g) After the service of three months for all other third degree felony and class A misdemeanor commitments.

(6) (a) An offender may request that their original appearance and hearing before the Board be scheduled other than as provided by this rule. An offender's request shall specify the extraordinary circumstances or reasons which give rise to the request. The Board may grant or deny the offender's request in its sole discretion.

(b) The Board may, in its discretion, depart from the schedule as provided by this rule if:

(i) an offender requests a continuance due to extraordinary circumstances;

(ii) an offender has unadjudicated criminal charges pending at the time a hearing would normally be scheduled;

(iii) a Class A misdemeanor commitment has expired prior to an original hearing; or

(iv) the Board determines that other unusual or extraordinary circumstances impact the setting of an original hearing.

KEY: parole, inmates, hearings

Date of Enactment or Last Substantive Amendment: October 15, 2015

Notice of Continuation: September 22, 2014

Authorizing, and Implemented or Interpreted Law: Art. VII Sec. 12; 77-27-5; 77-27-7; 77-27-9