

1 STATE OF OKLAHOMA

2 1st Session of the 54th Legislature (2013)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1722

6 By: Osborn

7 COMMITTEE SUBSTITUTE

8 An Act relating to prisons and reformatories;
9 amending 57 O.S. 2011, Sections 332.2, 332.7, 332.8,
10 332.18 and 354, which relate to the Pardon and Parole
11 Board and parole considerations; requiring submission
12 of application prior to considerations for reprieves,
13 commutations, pardons and acts of clemency;
14 establishing procedures and guidelines for
15 applications for commutation; establishing
16 requirements for recommendations; providing notice
17 requirements; authorizing commutation for certain
18 persons under certain circumstances; providing
19 procedures for pardon applications; providing
20 statutory reference for parole considerations;
21 establishing parole consideration criteria for
22 persons sentenced to consecutive sentences; directing
23 the Pardon and Parole Board to consider prior
24 criminal records; requiring postimprisonment
supervision for certain parolees; providing condition
when considering parole for certain persons; deleting
certain eligibility requirement; modifying certain
consideration requirement; modifying medical parole
consideration requirements; deleting construing
provision; repealing 57 O.S. 2011, Section 332.17,
which relates to parole considerations; and providing
an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. AMENDATORY 57 O.S. 2011, Section 332.2, is
2 amended to read as follows:

3 Section 332.2 A. The Pardon and Parole Board, which shall meet
4 only on the call of the Chairman, is authorized, if and when an
5 application made to the Governor for a reprieve, commutation,
6 parole, pardon, or other act of clemency is certified thereto by the
7 Governor, to examine into the merits of said application and make
8 recommendations to the Governor in relation thereto, said
9 recommendation being advisory to the Governor and not binding
10 thereon.

11 B. Any consideration for reprieve, commutation, pardon or any
12 other act of clemency shall be made only after application is made
13 to the Governor pursuant to the procedures set forth below. The
14 Governor shall immediately provide a copy of the application to the
15 district attorney and the victim or representative of the victim.

16 C. Upon receipt of an application for commutation, the Governor
17 may refer such application to the Pardon and Parole Board for
18 examination and recommendation as provided herein.

19 D. An application for commutation to the Governor must be
20 accompanied by the written recommendation of two of three trial
21 officials. Trial officials shall include:

22 1. The current elected judge of the court where the conviction
23 was had;
24

1 2. The current elected district attorney of the jurisdiction
2 where the conviction was had; or

3 3. The current elected sheriff of the county where the
4 conviction occurred or the chief of police in the jurisdiction where
5 the offense occurred.

6 A commutation may not be considered without favorable
7 recommendations from two of the three trial officials.

8 E. If the convicted person has the recommendation of two of the
9 three trial officials and no written communication is received from
10 the third trial official, the Governor or the Pardon and Parole
11 Board, if the Governor has referred the application to the Board for
12 review, shall give the remaining trial official at least ten (10)
13 days' notice that recommendations for commutation are being
14 considered.

15 F. In cases resolved prior to the tenure of the present
16 officeholders, the recommendation of persons holding such offices at
17 the time of conviction may be used to support the recommendation of
18 the present trial officials, if such recommendations are in
19 compliance with the requirements of subsection G of this section.

20 G. The recommendation for commutation of a sentence by a trial
21 official shall include the following:

22 1. A statement that the penalty now appears to be excessive;
23 2. A recommendation of a definite term now considered by the
24 official as just and proper; and

1 3. A statement of the reasons for the recommendation based upon
2 facts directly related to the case which were not available to the
3 court or jury at the time of the trial or there has been a statutory
4 change in penalty for the crime which makes the original penalty
5 appear excessive.

6 H. In the event the Governor has requested a review by the
7 Pardon and Parole Board, the Board shall schedule the application on
8 a commutation docket in compliance with the notice requirements set
9 forth herein. Where the Governor has not elected to seek a
10 recommendation from the Board, the Governor shall provide the victim
11 or representative of the victim at least twenty (20) days to offer
12 protests before favorable consideration of the application.

13 I. Applications for commutation shall be given impartial review
14 as required in Section 10 of Article VI of the Oklahoma
15 Constitution. Inmates who have been sentenced to death,
16 imprisonment for life without the possibility of parole, convicted
17 of an offense provided for in Section 13.1 of Title 21 of the
18 Oklahoma Statutes, or convicted of other crimes where the
19 Legislature has limited parole consideration are eligible for
20 commutation as provided herein, only if all three trial officials in
21 subsection D of this section have provided favorable written
22 recommendations.

23 J. Upon receipt of an application for pardon, the Governor may
24 refer such application to the Pardon and Parole Board for review and

1 recommendation. In the event the Governor has requested the review
2 of the Pardon and Parole Board, the Board shall schedule the
3 application on a commutation docket in compliance with the notice
4 requirements set forth herein. Where the Governor has not elected
5 to seek a recommendation from the Board, the Governor shall provide
6 the district attorney and the victim or representative of the victim
7 at least twenty (20) days to offer protests before favorable
8 consideration of the application.

9 K. Paroles may be considered by the Board only as provided in
10 Sections 332.7 and 332.18 of this title.

11 L. The Pardon and Parole Board shall provide a copy of their
12 regular docket to each district attorney in this state at least
13 twenty (20) days before such docket is considered by the ~~board~~
14 Board, or in the case of a supplemental, addendum or special docket,
15 at least ten (10) days before such docket is considered by the ~~board~~
16 Board, and shall notify the district attorney of any recommendations
17 for commutations or paroles no later than twenty (20) days after the
18 docket is considered by the ~~board~~ Board.

19 ~~C.~~ M. The Pardon and Parole Board shall notify all victims or
20 ~~victim's~~ representatives of the victim in writing at least twenty
21 (20) days before an inmate is considered by the ~~board~~ Board provided
22 the ~~board~~ Board has received a request from the victim or ~~victim's~~
23 representatives of the victim for notice. The ~~board~~ Board shall
24 provide all victims or ~~victim's representative~~ representatives of

1 the victim with the date, time and place of the scheduled meeting
2 and rules for attendance and providing information or input to the
3 ~~board~~ Board regarding the inmate or the crime. If requested by the
4 victim or ~~victim's representative~~ representatives of the victim, the
5 ~~board~~ Board shall allow the victim or ~~victim's representative~~
6 representatives of the victim to testify at the parole hearing of
7 the inmate for at least five (5) minutes.

8 ~~D.~~ N. The Pardon and Parole Board shall notify all victims or
9 ~~victim's~~ representatives of the victim in writing of the ~~board's~~
10 decision of the Board no later than twenty (20) days after the
11 inmate is considered by the ~~board~~ Board.

12 ~~E.~~ O. Any notice required to be provided to the victims or the
13 ~~victim's~~ representatives of the victim shall be mailed by first-
14 class mail to the last-known address of the victim or ~~victim's~~
15 representatives of the victim. It is the responsibility of the
16 victims or ~~victim's~~ representatives of the victim to provide the
17 Pardon and Parole Board a current mailing address. The ~~district~~
18 ~~attorney's~~ victim-witness coordinator of the district attorney shall
19 assist the victims or ~~victim's~~ representatives of the victim with
20 supplying their address to the ~~board~~ Board if they wish to be
21 notified. Upon failure of the Pardon and Parole Board to notify a
22 victim who has requested notification and has provided a current
23 mailing address, the final decision of the Board may be voidable,
24 provided, the victim who failed to receive notification requests a

1 reconsideration hearing within thirty (30) days of the ~~Board's~~
2 recommendation by the Board for parole. The Pardon and Parole Board
3 may reconsider previous action and may rescind a recommendation if
4 deemed appropriate as determined by the Board.

5 ~~F.~~ P. For purposes of this section, "victim" shall mean all
6 persons who have suffered direct or threatened physical or emotional
7 harm, or financial loss as the result of the commission or attempted
8 commission of criminally injurious conduct, and "~~victim's~~
9 representatives of the victim" shall mean those persons who are
10 members of ~~a victim's~~ the immediate family of the victim, including
11 stepparents, stepbrothers, stepsisters, and stepchildren.

12 ~~G.~~ Q. All meetings of the Pardon and Parole Board shall comply
13 with Section 301 et seq. of Title 25 of the Oklahoma Statutes;
14 provided that the ~~board~~ Board shall have the authority to limit the
15 number of persons attending in support of, or in opposition to, any
16 inmate being considered for parole and shall have the authority to
17 exclude persons from attendance in accordance with prison security
18 regulations and the capacity of the meeting room. Persons excluded
19 from attending the meeting under this provision shall be informed of
20 their right to be informed of the ~~board's~~ vote of the Board in
21 accordance with Section 312 of Title 25 of the Oklahoma Statutes.
22 Provided further, nothing in this section shall be construed to
23 prevent any member of the press or any public official from
24 attending any meeting of the Pardon and Parole Board, except as

1 provided by the Oklahoma Open Meeting Act, ~~Section 301 et seq. of~~
2 ~~Title 25 of the Oklahoma Statutes.~~

3 H. R. All victim information maintained by the Department of
4 Corrections and the Pardon and Parole Board shall be confidential
5 and shall not be released.

6 SECTION 2. AMENDATORY 57 O.S. 2011, Section 332.7, is
7 amended to read as follows:

8 Section 332.7 A. For a crime committed prior to July 1, 1998,
9 any person in the custody of the Department of Corrections shall be
10 eligible for consideration for parole at the earliest of the
11 following dates:

12 1. Has completed serving one-third (1/3) of the sentence;

13 2. Has reached at least sixty (60) years of age and also has
14 served at least fifty percent (50%) of the time of imprisonment that
15 would have been imposed for that offense pursuant to the applicable
16 ~~Truth in Sentencing~~ matrix, provided in Sections 598 through 601,
17 Chapter 133, O.S.L. 1997; provided, however, no inmate serving a
18 sentence for crimes listed in Schedules A, S-1, S-2 or S-3 of
19 Section 6, Chapter 133, O.S.L. 1997, or serving a sentence of life
20 imprisonment without parole shall be eligible to be considered for
21 parole pursuant to this paragraph;

22 3. Has reached eighty-five percent (85%) of the midpoint of the
23 time of imprisonment that would have been imposed for an offense
24 that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of

1 Section 6, Chapter 133, O.S.L. 1997, pursuant to the applicable
2 matrix; provided, however, no inmate serving a sentence of life
3 imprisonment without parole shall be eligible to be considered for
4 parole pursuant to this paragraph; or

5 4. Has reached seventy-five percent (75%) of the midpoint of
6 the time of imprisonment that would have been imposed for an offense
7 that is listed in any other schedule, pursuant to the applicable
8 matrix; provided, however, no inmate serving a sentence of life
9 imprisonment without parole shall be eligible to be considered for
10 parole pursuant to this paragraph.

11 B. For a crime committed on or after July 1, 1998, any person
12 in the custody of the Department of Corrections shall be eligible
13 for consideration for parole who has completed serving one-third
14 (1/3) of the sentence; provided, however, no inmate serving a
15 sentence of life imprisonment without parole shall be eligible to be
16 considered for parole pursuant to this subsection.

17 C. The parole hearings conducted for persons pursuant to
18 paragraph 3 of subsection A of this section or for any person who
19 was convicted of a violent crime as set forth in Section 571 of this
20 title and who is eligible for parole consideration pursuant to
21 either paragraph 1 of subsection A of this section or subsection B
22 of this section shall be conducted in two stages, as follows:

23 1. At the initial hearing, the Pardon and Parole Board shall
24 review the completed report submitted by the staff of the Board and

1 shall conduct a vote regarding whether, based upon that report, the
2 Board decides to consider the person for parole at a subsequent
3 meeting of the Board; and

4 2. At the subsequent meeting, the Board shall hear from any
5 victim or ~~victim's representative~~ representatives of the victim that
6 ~~wants~~ want to contest the granting of parole to that person and
7 shall conduct a vote regarding whether parole should be recommended
8 for that person.

9 D. Any inmate who has parole consideration dates calculated
10 pursuant to subsection A, B or C of this section shall be considered
11 at the earliest such date. Except as otherwise directed by the
12 Pardon and Parole Board, any person who has been considered for
13 parole and was denied parole or who has waived consideration shall
14 not be reconsidered for parole:

15 1. Within three (3) years of the denial or waiver, if the
16 person was convicted of a violent crime, as set forth in Section 571
17 of this title, and was eligible for consideration pursuant to
18 paragraph 1 of subsection A of this section or subsection B of this
19 section, unless the person is within one (1) year of discharge; or

20 2. Until the person has served at least one-third (1/3) of the
21 sentence imposed, if the person was eligible for consideration
22 pursuant to paragraph 3 of subsection A of this section. Thereafter
23 the person shall not be considered more frequently than once every
24

1 three (3) years, unless the person is within one (1) year of
2 discharge.

3 E. Any person in the custody of the Department of Corrections
4 for a crime committed prior to July 1, 1998, who has been considered
5 for parole on a docket created for a type of parole consideration
6 that has been abolished by the Legislature shall not be considered
7 for parole except in accordance with this section.

8 F. The Pardon and Parole Board shall promulgate rules for the
9 implementation of subsections A, B and C of this section. The rules
10 shall include, but not be limited to, procedures for reconsideration
11 of persons denied parole under this section and procedure for
12 determining what sentence a person eligible for parole consideration
13 pursuant to subsection A of this section would have received under
14 the applicable matrix.

15 G. The Pardon and Parole Board shall not recommend to the
16 Governor any person who has been convicted of three or more felonies
17 arising out of separate and distinct transactions, with three or
18 more incarcerations for such felonies, unless such person shall have
19 served the lesser of at least one-third (1/3) of the sentence
20 imposed, or ten (10) years; provided that whenever the population of
21 the prison system exceeds ninety-five percent (95%) of the capacity
22 as certified by the State Board of Corrections, the Pardon and
23 Parole Board may, at its discretion, recommend to the Governor for
24 parole any person who is incarcerated for a nonviolent offense not

1 involving injury to a person and who is within six (6) months of his
2 or her statutory parole eligibility date.

3 H. Inmates sentenced to consecutive sentences shall not be
4 eligible for parole consideration on any such consecutive sentence
5 until one-third (1/3) of the consecutive sentence has been served or
6 where parole has been otherwise limited by law, until the minimum
7 term of incarceration has been served as required by law. Unless
8 otherwise ordered by the sentencing court, any credit for jail time
9 served shall be credited to only one offense.

10 I. The Pardon and Parole Board shall consider the prior
11 criminal record of inmates under consideration for parole
12 recommendation or granting of parole. In the event the Board grants
13 parole for a nonviolent offender who has previously been convicted
14 of an offense enumerated in Section 13.1 of Title 21 of the Oklahoma
15 Statutes or Section 571 of this title, such offender shall be
16 subject to nine (9) months postimprisonment supervision upon
17 release.

18 J. It shall be the duty of the Pardon and Parole Board to cause
19 an examination to be made at the penal institution where the person
20 is assigned, and to make inquiry into the conduct and the record of
21 the said person during his custody in the Department of Corrections,
22 which shall be considered as a basis for consideration of said
23 person for recommendation to the Governor for parole. However, the
24 Pardon and Parole Board shall not be required to consider for parole

1 any person who has completed the time period provided for in this
2 subsection if the person has participated in a riot or in the taking
3 of hostages, or has been placed on escape status, while in the
4 custody of the Department of Corrections. The Pardon and Parole
5 Board shall adopt policies and procedures governing parole
6 consideration for such persons.

7 ~~I.~~ K. Any person in the custody of the Department of
8 Corrections who is convicted of an offense not designated as a
9 violent offense by Section 571 of Title 57 of the Oklahoma Statutes
10 ~~and who,~~ is not a citizen of the United States and is subject to or
11 becomes subject ~~of~~ to a final order of deportation issued by the
12 United States Department of Justice shall be considered for parole
13 to the custody of the United States Immigration and Naturalization
14 Service for continuation of deportation proceedings at any time
15 subsequent to reception and processing through the Department of
16 Corrections. No person shall be considered for parole under this
17 subsection without the concurrence of at least three members of the
18 Pardon and Parole Board. The vote on whether or not to consider
19 such person for parole and the names of the concurring Board members
20 shall be set forth in the written minutes of the meeting of the
21 Board at which the issue is considered.

22 ~~J.~~ L. Upon application of any person convicted and sentenced by
23 a court of this state and relinquished to the custody of another
24 state or federal authorities pursuant to Section 61.2 of Title 21 of

1 the Oklahoma Statutes, the Pardon and Parole Board may determine a
2 parole consideration date consistent with the provisions of this
3 section and criteria established by the Pardon and Parole Board.

4 ~~K. No person who is appearing out of the normal processing
5 procedure shall be eligible for consideration for parole without the
6 concurrence of at least three (3) members of the Pardon and Parole
7 Board.~~

8 ~~L.~~ M. All references in this section to matrices or schedules
9 shall be construed with reference to the provisions of Sections 6,
10 598, 599, 600 and 601, Chapter 133, O.S.L. 1997.

11 ~~M.~~ N. Any person in the custody of the Department of
12 Corrections who is convicted of a felony sex offense pursuant to
13 Section 582 of ~~Title 57 of the Oklahoma Statutes~~ this title who is
14 paroled shall immediately be placed on intensive supervision.

15 SECTION 3. AMENDATORY 57 O.S. 2011, Section 332.8, is
16 amended to read as follows:

17 Section 332.8 No recommendations to the Governor for parole
18 shall be made nor any paroles granted by the Board in relation to
19 any inmate in a penal institution in the State of Oklahoma unless
20 the Pardon and Parole Board considers the victim impact statements
21 if presented to the jury, or the judge in the event a jury was
22 waived, at the time of sentencing and, in every appropriate case, as
23 a condition of parole, monetary restitution of economic loss as
24 defined by Section 991f of Title 22 of the Oklahoma Statutes,

1 incurred by a victim of the crime for which the inmate was
2 imprisoned. In every case, the Pardon and Parole Board shall first
3 consider the number of previous felony convictions and the type of
4 criminal violations leading to any such felony convictions, then
5 shall consider either suitable employment or a suitable residence,
6 and finally shall mandate participation in education programs to
7 achieve the proficiency level established in Section 510.7 of this
8 title or, at the discretion of the Board require the attainment of a
9 general education diploma, as a condition for release on parole.
10 The Board shall consider the availability of programs and the
11 waiting period for such programs in setting conditions of parole
12 release. The Board may require any program to be completed after
13 the inmate is released on parole as a condition of parole. A
14 facsimile signature of the inmate on parole papers that is
15 transmitted to the Board shall be an accepted means of
16 acknowledgement of parole conditions. The probation and parole
17 officer shall render ~~every~~ reasonable assistance to any person
18 making application for parole, in helping to obtain suitable
19 employment or enrollment in an education program or a suitable
20 residence. Any inmate who fails to satisfactorily attend and make
21 satisfactory progress in the educational program in which the inmate
22 has been required to participate as a condition of parole, may have
23 his or her parole revoked. If an inmate's parole is revoked, such
24

1 inmate shall be returned to confinement in the custody of the
2 Department of Corrections.

3 SECTION 4. AMENDATORY 57 O.S. 2011, Section 332.18, is
4 amended to read as follows:

5 Section 332.18 A. The Director of the Department of
6 Corrections shall have the authority to request the Executive
7 Director of the Pardon and Parole Board to place an inmate on the
8 Pardon and Parole Board docket for a medical reason, out of the
9 normal processing procedures. Documentation of the medical
10 condition of such inmate shall be certified by the medical director
11 of the Department of Corrections. The Pardon and Parole Board shall
12 have the authority to bring any such inmate before the Board at any
13 time, except as otherwise provided in subsection B of this section.

14 B. When a request is made for a medical parole review of an
15 inmate who is dying or is near death as certified by the medical
16 director of the Department of Corrections or whose medical condition
17 has rendered the inmate no longer a threat to public safety, the
18 Executive Director shall place such inmate on the first available
19 parole review docket for a compassionate parole consideration.
20 Inmates who meet the criteria set out in this section are not
21 subject to the two-stage hearing process in subsection C of Section
22 332.7 of this title.

23 C. No person shall be eligible for consideration for medical
24 parole without the concurrence of at least three members of the

1 Pardon and Parole Board. The vote on whether or not to consider
2 such person for parole and the names of the concurring Board members
3 shall be set forth in the written minutes of the meeting of the
4 Board at which the issue is considered.

5 D. The provisions of this section shall not apply to inmates
6 serving a sentence of life without possibility of parole.

7 SECTION 5. AMENDATORY 57 O.S. 2011, Section 354, is
8 amended to read as follows:

9 Section 354. Upon the commitment to imprisonment of any
10 prisoner ~~under the provisions of Section 1 hereof,~~ the Pardon and
11 Parole Board shall cause a continuing study to be made of the
12 prisoner. When the prisoner has served the minimum sentence
13 imposed, or as soon thereafter as he or she can be heard, the Pardon
14 and Parole Board shall hear the ~~prisoner's~~ prisoner application of the
15 prisoner for parole, and shall make such recommendation to the
16 Governor as, in its discretion, the public interest requires.
17 ~~Nothing herein contained shall be construed to prevent a hearing by~~
18 ~~the Pardon and Parole Board before the minimum term has been served.~~

19 SECTION 6. REPEALER 57 O.S. 2011, Section 332.17, is
20 hereby repealed.

21 SECTION 7. This act shall become effective November 1, 2013.

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