

1 **HOUSE OF REPRESENTATIVES - FLOOR VERSION**

2 STATE OF OKLAHOMA

3 1st Session of the 54th Legislature (2013)

4 COMMITTEE SUBSTITUTE
5 FOR
6 HOUSE BILL NO. 1722

By: Osborn of the House

and

Johnson (Rob) of the Senate

8
9 COMMITTEE SUBSTITUTE

10 An Act relating to prisons and reformatories;
11 amending 57 O.S. 2011, Sections 332.2, 332.7, 332.8,
12 332.18 and 354, which relate to the Pardon and Parole
13 Board and parole considerations; requiring submission
14 of application prior to considerations for reprieves,
15 commutations, pardons and acts of clemency;
16 establishing procedures and guidelines for
17 applications for commutation; establishing
18 requirements for recommendations; providing notice
19 requirements; authorizing commutation for certain
20 persons under certain circumstances; providing
21 procedures for pardon applications; providing
22 statutory reference for parole considerations;
23 establishing parole consideration criteria for
24 persons sentenced to consecutive sentences; directing
 the Pardon and Parole Board to consider prior
 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.

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

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

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

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

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

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

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1 1. The current elected judge of the court where the conviction
2 was had;

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

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

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

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

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

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

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 1. A statement that the penalty now appears to be excessive;

2 2. A recommendation of a definite term now considered by the
3 official as just and proper; and

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

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

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

1 subsection D of this section have provided favorable written
2 recommendations.

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

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

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

1 ~~C.~~ M. The Pardon and Parole Board shall notify all victims or
2 ~~victim's~~ representatives of the victim in writing at least twenty
3 (20) days before an inmate is considered by the ~~board~~ Board provided
4 the ~~board~~ Board has received a request from the victim or ~~victim's~~
5 representatives of the victim for notice. The ~~board~~ Board shall
6 provide all victims or ~~victim's representative~~ representatives of
7 the victim with the date, time and place of the scheduled meeting
8 and rules for attendance and providing information or input to the
9 ~~board~~ Board regarding the inmate or the crime. If requested by the
10 victim or ~~victim's representative~~ representatives of the victim, the
11 ~~board~~ Board shall allow the victim or ~~victim's representative~~
12 representatives of the victim to testify at the parole hearing of
13 the inmate for at least five (5) minutes.

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

18 ~~E.~~ O. Any notice required to be provided to the victims or the
19 ~~victim's~~ representatives of the victim shall be mailed by first-
20 class mail to the last-known address of the victim or ~~victim's~~
21 representatives of the victim. It is the responsibility of the
22 victims or ~~victim's~~ representatives of the victim to provide the
23 Pardon and Parole Board a current mailing address. The ~~district~~

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1 ~~attorney's~~ victim-witness coordinator of the district attorney shall
2 assist the victims or ~~victim's~~ representatives of the victim with
3 supplying their address to the ~~board~~ Board if they wish to be
4 notified. Upon failure of the Pardon and Parole Board to notify a
5 victim who has requested notification and has provided a current
6 mailing address, the final decision of the Board may be voidable,
7 provided, the victim who failed to receive notification requests a
8 reconsideration hearing within thirty (30) days of the ~~Board's~~
9 recommendation by the Board for parole. The Pardon and Parole Board
10 may reconsider previous action and may rescind a recommendation if
11 deemed appropriate as determined by the Board.

12 ~~F. P.~~ P. For purposes of this section, "victim" shall mean all
13 persons who have suffered direct or threatened physical or emotional
14 harm, or financial loss as the result of the commission or attempted
15 commission of criminally injurious conduct, and "~~victim's~~
16 representatives of the victim" shall mean those persons who are
17 members of ~~a victim's~~ the immediate family of the victim, including
18 stepparents, stepbrothers, stepsisters, and stepchildren.

19 ~~G. Q.~~ Q. All meetings of the Pardon and Parole Board shall comply
20 with Section 301 et seq. of Title 25 of the Oklahoma Statutes;
21 provided that the ~~board~~ Board shall have the authority to limit the
22 number of persons attending in support of, or in opposition to, any
23 inmate being considered for parole and shall have the authority to

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1 exclude persons from attendance in accordance with prison security
2 regulations and the capacity of the meeting room. Persons excluded
3 from attending the meeting under this provision shall be informed of
4 their right to be informed of the ~~board's~~ vote of the Board in
5 accordance with Section 312 of Title 25 of the Oklahoma Statutes.
6 Provided further, nothing in this section shall be construed to
7 prevent any member of the press or any public official from
8 attending any meeting of the Pardon and Parole Board, except as
9 provided by the Oklahoma Open Meeting Act, ~~Section 301 et seq. of~~
10 ~~Title 25 of the Oklahoma Statutes.~~

11 H. R. All victim information maintained by the Department of
12 Corrections and the Pardon and Parole Board shall be confidential
13 and shall not be released.

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

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

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

7 3. Has reached eighty-five percent (85%) of the midpoint of the
8 time of imprisonment that would have been imposed for an offense
9 that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of
10 Section 6, Chapter 133, O.S.L. 1997, pursuant to the applicable
11 matrix; provided, however, no inmate serving a sentence of life
12 imprisonment without parole shall be eligible to be considered for
13 parole pursuant to this paragraph; or

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

20 B. For a crime committed on or after July 1, 1998, any person
21 in the custody of the Department of Corrections shall be eligible
22 for consideration for parole who has completed serving one-third
23 (1/3) of the sentence; provided, however, no inmate serving a
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1 sentence of life imprisonment without parole shall be eligible to be
2 considered for parole pursuant to this subsection.

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

9 1. At the initial hearing, the Pardon and Parole Board shall
10 review the completed report submitted by the staff of the Board and
11 shall conduct a vote regarding whether, based upon that report, the
12 Board decides to consider the person for parole at a subsequent
13 meeting of the Board; and

14 2. At the subsequent meeting, the Board shall hear from any
15 victim or ~~victim's representative~~ representatives of the victim that
16 ~~wants~~ want to contest the granting of parole to that person and
17 shall conduct a vote regarding whether parole should be recommended
18 for that person.

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

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

8 2. Until the person has served at least one-third (1/3) of the
9 sentence imposed, if the person was eligible for consideration
10 pursuant to paragraph 3 of subsection A of this section. Thereafter
11 the person shall not be considered more frequently than once every
12 three (3) years, unless the person is within one (1) year of
13 discharge.

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

19 F. The Pardon and Parole Board shall promulgate rules for the
20 implementation of subsections A, B and C of this section. The rules
21 shall include, but not be limited to, procedures for reconsideration
22 of persons denied parole under this section and procedure for
23 determining what sentence a person eligible for parole consideration

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1 pursuant to subsection A of this section would have received under
2 the applicable matrix.

3 G. The Pardon and Parole Board shall not recommend to the
4 Governor any person who has been convicted of three or more felonies
5 arising out of separate and distinct transactions, with three or
6 more incarcerations for such felonies, unless such person shall have
7 served the lesser of at least one-third (1/3) of the sentence
8 imposed, or ten (10) years; provided that whenever the population of
9 the prison system exceeds ninety-five percent (95%) of the capacity
10 as certified by the State Board of Corrections, the Pardon and
11 Parole Board may, at its discretion, recommend to the Governor for
12 parole any person who is incarcerated for a nonviolent offense not
13 involving injury to a person and who is within six (6) months of his
14 or her statutory parole eligibility date.

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

22 I. The Pardon and Parole Board shall consider the prior
23 criminal record of inmates under consideration for parole

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1 recommendation or granting of parole. In the event the Board grants
2 parole for a nonviolent offender who has previously been convicted
3 of an offense enumerated in Section 13.1 of Title 21 of the Oklahoma
4 Statutes or Section 571 of this title, such offender shall be
5 subject to nine (9) months postimprisonment supervision upon
6 release.

7 J. It shall be the duty of the Pardon and Parole Board to cause
8 an examination to be made at the penal institution where the person
9 is assigned, and to make inquiry into the conduct and the record of
10 the said person during his custody in the Department of Corrections,
11 which shall be considered as a basis for consideration of said
12 person for recommendation to the Governor for parole. However, the
13 Pardon and Parole Board shall not be required to consider for parole
14 any person who has completed the time period provided for in this
15 subsection if the person has participated in a riot or in the taking
16 of hostages, or has been placed on escape status, while in the
17 custody of the Department of Corrections. The Pardon and Parole
18 Board shall adopt policies and procedures governing parole
19 consideration for such persons.

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

12 ~~J.~~ L. Upon application of any person convicted and sentenced by
13 a court of this state and relinquished to the custody of another
14 state or federal authorities pursuant to Section 61.2 of Title 21 of
15 the Oklahoma Statutes, the Pardon and Parole Board may determine a
16 parole consideration date consistent with the provisions of this
17 section and criteria established by the Pardon and Parole Board.

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

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1 ~~L.~~ M. All references in this section to matrices or schedules
2 shall be construed with reference to the provisions of Sections 6,
3 598, 599, 600 and 601, Chapter 133, O.S.L. 1997.

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

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

10 Section 332.8 No recommendations to the Governor for parole
11 shall be made nor any paroles granted by the Board in relation to
12 any inmate in a penal institution in the State of Oklahoma unless
13 the Pardon and Parole Board considers the victim impact statements
14 if presented to the jury, or the judge in the event a jury was
15 waived, at the time of sentencing and, in every appropriate case, as
16 a condition of parole, monetary restitution of economic loss as
17 defined by Section 991f of Title 22 of the Oklahoma Statutes,
18 incurred by a victim of the crime for which the inmate was
19 imprisoned. In every case, the Pardon and Parole Board shall first
20 consider the number of previous felony convictions and the type of
21 criminal violations leading to any such felony convictions, then
22 shall consider either suitable employment or a suitable residence,
23 and finally shall mandate participation in education programs to

UNDERLINED language denotes Amendments to present Statutes.
BOLD FACE CAPITALIZED language denotes Committee Amendments.
~~Strike thru~~ language denotes deletion from present Statutes.

1 achieve the proficiency level established in Section 510.7 of this
2 title or, at the discretion of the Board require the attainment of a
3 general education diploma, as a condition for release on parole.
4 The Board shall consider the availability of programs and the
5 waiting period for such programs in setting conditions of parole
6 release. The Board may require any program to be completed after
7 the inmate is released on parole as a condition of parole. A
8 facsimile signature of the inmate on parole papers that is
9 transmitted to the Board shall be an accepted means of
10 acknowledgement of parole conditions. The probation and parole
11 officer shall render ~~every~~ reasonable assistance to any person
12 making application for parole, in helping to obtain suitable
13 employment or enrollment in an education program or a suitable
14 residence. Any inmate who fails to satisfactorily attend and make
15 satisfactory progress in the educational program in which the inmate
16 has been required to participate as a condition of parole, may have
17 his or her parole revoked. If an inmate's parole is revoked, such
18 inmate shall be returned to confinement in the custody of the
19 Department of Corrections.

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

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

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

17 C. No person shall be eligible for consideration for medical
18 parole without the concurrence of at least three members of the
19 Pardon and Parole Board. The vote on whether or not to consider
20 such person for parole and the names of the concurring Board members
21 shall be set forth in the written minutes of the meeting of the
22 Board at which the issue is considered.

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

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

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

15 SECTION 6. REPEALER 57 O.S. 2011, Section 332.17, is
16 hereby repealed.

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

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19 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY, dated 02/21/2013 - DO
20 PASS, As Amended and Coauthored.