

1 **SENATE FLOOR VERSION**

2 March 26, 2013

3 ENGROSSED HOUSE
4 BILL NO. 1722

By: Osborn, Biggs and Hoskin of
the House

5 and

6 Johnson (Rob) and Ivester
7 of the Senate

8
9 An Act relating to prisons and reformatories;
10 amending 57 O.S. 2011, Sections 332.2, 332.7, 332.8,
11 332.18 and 354, which relate to the Pardon and Parole
12 Board and parole considerations; requiring submission
13 of commutation applications to the Pardon and Parole
14 Board; establishing procedures and guidelines for
15 applications and recommendations for commutation;
16 providing notice requirements; requiring impartial
17 reviews of commutation applications; requiring
18 submission of pardon applications to the Pardon and
19 Parole Board; providing procedures for pardon
20 applications; directing the Pardon and Parole Board
21 to provide certain information to the Legislature;
22 requiring publication of information on certain
23 website; establishing parole consideration criteria
24 for 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
5 meet 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 commutation shall be made only after
13 application is made to the Pardon and Parole Board pursuant to the
14 procedures set forth in this section. The Pardon and Parole Board
15 shall provide a copy of the application to the district attorney,
16 the victim or representative of the victim and the Office of the
17 Attorney General within ten (10) business days of receipt of such
18 application.

19 C. An application for commutation must be sent to the trial
20 officials, who shall have twenty (20) business days to provide a
21 written recommendation or protest prior to consideration of the
22 application. Trial officials shall include:

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

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

3 3. The chief or head administrative officer of the arresting
4 law enforcement agency.

5 D. In cases resolved prior to the tenure of the present
6 officeholders, the recommendation or protest of persons holding such
7 offices at the time of conviction may also be considered by the
8 Board.

9 E. The recommendation for commutation of a sentence by a trial
10 official may include the following:

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

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

14 3. A statement of the reasons for the recommendation based upon
15 facts directly related to the case which were not available to the
16 court or jury at the time of the trial or based upon there having
17 been a statutory change in penalty for the crime which makes the
18 original penalty appear excessive.

19 F. The Pardon and Parole Board shall schedule the application
20 on a commutation docket in compliance with the notice requirements
21 set forth herein. The Board shall provide the victim or
22 representative of the victim at least twenty (20) days to offer
23 recommendations or protests before consideration of the application.

24

1 G. Applications for commutation shall be given impartial review
2 as required in Section 10 of Article VI of the Oklahoma
3 Constitution.

4 H. Any consideration for pardon shall be made only after
5 application is made to the Pardon and Parole Board. Upon receipt of
6 an application for pardon, the Board shall provide a copy of the
7 application to the district attorney, the victim or representative
8 of the victim and the Office of the Attorney General within twenty
9 (20) business days of receipt of such application. The district
10 attorney and the victim or representative of the victim shall have
11 twenty (20) business days to provide written recommendation or
12 protest prior to the consideration of the application. The Board
13 shall schedule the application on a pardon docket in compliance with
14 the notice requirements set forth herein.

15 I. In accordance with Section 10 of Article VI of the Oklahoma
16 Constitution, the Board shall communicate to the Legislature, at
17 each regular session, by providing a summary of the activities of
18 the Board. This summary shall include, but not be limited to, the
19 following Board activity:

20 1. The approval or recommendation rates of the Board for both
21 violent and nonviolent offenses;

22 2. The parole approval rates for each individual Board member
23 for both violent and nonviolent offenses; and

1 3. The percentage of public comments to and personal
2 appearances before the Board including victim protests and personal
3 appearances, district attorney protests and personal appearances,
4 and delegate recommendations and personal appearances on behalf of
5 the offender.

6 This summary shall be made available to the public through
7 publication on the website of the Pardon and Parole Board.

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

16 ~~C.~~ K. The Pardon and Parole Board shall notify all victims or
17 ~~victim's~~ representatives of the victim in writing at least twenty
18 (20) days before an inmate is considered by the ~~board~~ Board provided
19 the ~~board~~ Board has received a request from the victim or ~~victim's~~
20 representatives of the victim for notice. The ~~board~~ Board shall
21 provide all victims or ~~victim's representative~~ representatives of
22 the victim with the date, time and place of the scheduled meeting
23 and rules for attendance and providing information or input to the
24 ~~board~~ Board regarding the inmate or the crime. If requested by the

1 victim or ~~victim's representative~~ representatives of the victim, the
2 ~~board~~ Board shall allow the victim or ~~victim's representative~~
3 representatives of the victim to testify at the parole hearing of
4 the inmate for at least five (5) minutes.

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

9 ~~E.~~ M. Any notice required to be provided to the victims or the
10 ~~victim's~~ representatives of the victim shall be mailed by first-
11 class mail to the last-known address of the victim or ~~victim's~~
12 representatives of the victim. It is the responsibility of the
13 victims or ~~victim's~~ representatives of the victim to provide the
14 Pardon and Parole Board a current mailing address. The ~~district~~
15 ~~attorney's~~ victim-witness coordinator of the district attorney shall
16 assist the victims or ~~victim's~~ representatives of the victim with
17 supplying their address to the ~~board~~ Board if they wish to be
18 notified. Upon failure of the Pardon and Parole Board to notify a
19 victim who has requested notification and has provided a current
20 mailing address, the final decision of the Board may be voidable,
21 provided, the victim who failed to receive notification requests a
22 reconsideration hearing within thirty (30) days of the ~~Board's~~
23 recommendation by the Board for parole. The Pardon and Parole Board
24

1 may reconsider previous action and may rescind a recommendation if
2 deemed appropriate as determined by the Board.

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

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

1 ~~H.~~ P. All victim information maintained by the Department of
2 Corrections and the Pardon and Parole Board shall be confidential
3 and shall not be released.

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

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

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

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

20 3. Has reached eighty-five percent (85%) of the midpoint of the
21 time of imprisonment that would have been imposed for an offense
22 that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of
23 Section 6, Chapter 133, O.S.L. 1997, pursuant to the applicable
24 matrix; provided, however, no inmate serving a sentence of life

1 imprisonment without parole shall be eligible to be considered for
2 parole pursuant to this paragraph; or

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

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

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

21 1. At the initial hearing, the Pardon and Parole Board shall
22 review the completed report submitted by the staff of the Board and
23 shall conduct a vote regarding whether, based upon that report, the
24

1 Board decides to consider the person for parole at a subsequent
2 meeting of the Board; and

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

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

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

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

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

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

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

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

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

16 J. It shall be the duty of the Pardon and Parole Board to cause
17 an examination to be made at the penal institution where the person
18 is assigned, and to make inquiry into the conduct and the record of
19 the said person during his custody in the Department of Corrections,
20 which shall be considered as a basis for consideration of said
21 person for recommendation to the Governor for parole. However, the
22 Pardon and Parole Board shall not be required to consider for parole
23 any person who has completed the time period provided for in this
24 subsection if the person has participated in a riot or in the taking

1 of hostages, or has been placed on escape status, while in the
2 custody of the Department of Corrections. The Pardon and Parole
3 Board shall adopt policies and procedures governing parole
4 consideration for such persons.

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

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

1 parole consideration date consistent with the provisions of this
2 section and criteria established by the Pardon and Parole Board.

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

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

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

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

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

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

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

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

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

21 C. No person shall be eligible for consideration for medical
22 parole without the concurrence of at least three members of the
23 Pardon and Parole Board. The vote on whether or not to consider
24 such person for parole and the names of the concurring Board members

1 shall be set forth in the written minutes of the meeting of the
2 Board at which the issue is considered.

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

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

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

17 SECTION 6. REPEALER 57 O.S. 2011, Section 332.17, is
18 hereby repealed.

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

20 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
21 March 26, 2013 - DO PASS
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