

1 **SENATE FLOOR VERSION**

2 February 19, 2013

3 SENATE BILL NO. 1039

By: Sykes of the Senate

4 and

5 Osborn of the House

6
7
8 An Act relating to pardon and parole procedures;
9 amending 57 O.S. 2011, Sections 332.2, 332.7, 332.8,
10 332.18 and 354, which relate to pardon and parole
11 dockets and recommendations, considerations and
12 conditions of parole; modifying procedures for
13 consideration of certain applications; prohibiting
14 parole consideration for certain inmates; requiring
15 consideration of certain prior records; requiring
16 post-imprisonment supervision of certain offenders;
17 prohibiting consideration of certain persons under
18 specified circumstances; requiring record of certain
19 vote; requiring consideration of certain statements;
20 deleting construing provision; making language
21 gender-neutral; repealing 57 O.S. 2011, Section
22 332.17, which relates to persons appearing out of
23 normal processing procedure; and providing an
24 effective date.

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

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

Section 332.2. A. The Pardon and Parole Board, which shall
meet only on the call of the ~~Chairman~~ Chair, is authorized, if and
when an application made to the Governor for a reprieve,

1 commutation, parole, pardon, or other act of clemency is certified
2 thereto by the Governor, to examine into the merits of said
3 application and make recommendations to the Governor in relation
4 thereto, said recommendation being advisory to the Governor and not
5 binding thereon.

6 B. Any consideration for reprieve, commutation, pardon or any
7 other act of clemency shall be made only after application is made
8 to the Governor pursuant to the procedures set forth in this
9 section. The Governor shall immediately provide a copy of the
10 application to the district attorney and the victim or victim's
11 representative.

12 C. Upon receipt of an application for commutation, the Governor
13 may refer such application to the Pardon and Parole Board for
14 examination and recommendation as provided in this section.

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

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

20 2. The current elected district attorney of the jurisdiction
21 where the conviction was had; and

22 3. Either the current elected sheriff of the county where the
23 conviction occurred, or the chief of police in the jurisdiction
24 where the offense occurred.

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

3 E. If the convicted person has the recommendation of two of the
4 three trial officials and no written communication is received from
5 the third local official, the Governor, or the Pardon and Parole
6 Board if the Governor has referred the application to the Board for
7 review, shall give the remaining trial official at least ten (10)
8 days' notice that such a clemency recommendation will be considered
9 prior to any such consideration.

10 F. In cases resolved prior to the tenure of the present office-
11 holders, the recommendation of persons holding such offices at the
12 time of conviction may be used to support the recommendation of the
13 present trial officials, if in compliance with the requirement of
14 subsection G of this section.

15 G. The requirements of the recommendation of trial officials
16 for commutation of sentence must include the following:

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

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

20 3. A statement of the reasons for the recommendation based upon
21 facts directly related to the facts of the cases and in existence,
22 but not available to, the court or jury at the time of the trial, or
23 a statutory change in penalty for the crime which would appear to
24 make the original penalty excessive.

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

8 I. Applications for commutation shall be given impartial review
9 as required in Section 10 of Article VI of the Oklahoma
10 Constitution. Inmates sentenced to death, life without parole, an
11 offense where the offender is required to serve eighty-five percent
12 (85%) of his or her sentence as set out in Section 13.1 of Title 21
13 of the Oklahoma Statutes, or other crimes where the Legislature has
14 limited parole consideration are eligible for commutation, only if
15 all three trial officials in subsection D of this section have
16 provided favorable written recommendations.

17 J. Upon receipt of an application for pardon, the Governor may
18 refer such application to the Pardon and Parole Board for review and
19 recommendation. In the event the Governor has requested the review
20 of the Pardon and Parole Board, the Board shall schedule the
21 application on a commutation docket in compliance with the notice
22 requirements set forth in this section. Where the Governor has not
23 elected to seek a recommendation from the Board, the Governor shall
24 provide the district attorney and the victim or victim's

1 representative at least twenty (20) days to offer protests before
2 favorable consideration to the application.

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

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

13 ~~C.~~ M. The Pardon and Parole Board shall notify all victims or
14 victim's representatives in writing at least twenty (20) days before
15 an inmate is considered by the board provided the board has received
16 a request from the victim or victim's representatives for notice.
17 The board shall provide all victims or victim's representative with
18 the date, time and place of the scheduled meeting and rules for
19 attendance and providing information or input to the board regarding
20 the inmate or the crime. If requested by the victim or victim's
21 representative, the board shall allow the victim or victim's
22 representative to testify at the parole hearing of the inmate for at
23 least five (5) minutes.

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

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

20 ~~F.~~ P. For purposes of this section, "victim" shall mean all
21 persons who have suffered direct or threatened physical or emotional
22 harm, or financial loss as the result of the commission or attempted
23 commission of criminally injurious conduct, and "victim's
24 representatives" shall mean those persons who are members of a

1 victim's immediate family, including stepparents, stepbrothers,
2 stepsisters, and stepchildren.

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

18 ~~H. R.~~ R. All victim information maintained by the Department of
19 Corrections and the Pardon and Parole Board shall be confidential
20 and shall not be released.

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

23 Section 332.7. A. For a crime committed prior to July 1, 1998,
24 any person in the custody of the Department of Corrections shall be

1 eligible for consideration for parole at the earliest of the
2 following dates:

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

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

13 3. Has reached eighty-five percent (85%) of the midpoint of the
14 time of imprisonment that would have been imposed for an offense
15 that is listed in Schedule A, B, C, D, D-1, S-1, S-2 or S-3 of
16 Section 6, Chapter 133, O.S.L. 1997, 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; or

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

3 B. For a crime committed on or after July 1, 1998, any person
4 in the custody of the Department of Corrections shall be eligible
5 for consideration for parole who has completed serving one-third
6 (1/3) of the sentence; provided, however, no inmate serving a
7 sentence of life imprisonment without parole shall be eligible to be
8 considered for parole pursuant to this subsection.

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

15 1. At the initial hearing, the Pardon and Parole Board shall
16 review the completed report submitted by the staff of the Board and
17 shall conduct a vote regarding whether, based upon that report, the
18 Board decides to consider the person for parole at a subsequent
19 meeting of the Board; and

20 2. At the subsequent meeting, the Board shall hear from any
21 victim or victim's representative that wants to contest the granting
22 of parole to that person and shall conduct a vote regarding whether
23 parole should be recommended for that person.

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

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

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

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

23 F. The Pardon and Parole Board shall promulgate rules for the
24 implementation of subsections A, B and C of this section. The rules

1 shall include, but not be limited to, procedures for reconsideration
2 of persons denied parole under this section and procedure for
3 determining what sentence a person eligible for parole consideration
4 pursuant to subsection A of this section would have received under
5 the applicable matrix.

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

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

1 I. The Pardon and Parole Board shall consider the prior
2 criminal record of inmates under consideration for parole
3 recommendation or granting of parole. In the event the Board grants
4 parole for a nonviolent offender who has previously been convicted
5 of an offense enumerated in Section 13.1 of Title 21 of the Oklahoma
6 Statutes or Section 571 of this title, such offender shall be
7 subject to nine (9) months post-imprisonment supervision upon
8 release.

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

22 ~~I.~~ K. Any person in the custody of the Department of
23 Corrections who is convicted of an offense not designated as a
24 violent offense by Section 571 of ~~Title 57 of the Oklahoma Statutes~~

1 this title and who is not a citizen of the United States and is or
2 becomes subject of a final order of deportation issued by the United
3 States Department of Justice shall be considered for parole to the
4 custody of the United States Immigration and Naturalization Service
5 for continuation of deportation proceedings at any time subsequent
6 to reception and processing through the Department of Corrections.
7 No person shall be considered under this section without the
8 concurrence of at least three (3) members of the Pardon and Parole
9 Board. The vote on whether to consider such person for parole and
10 the names of the concurring Board members shall be set forth in the
11 written minutes of the Board meeting at which the issue is
12 considered.

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

19 ~~K. No person who is appearing out of the normal processing~~
20 ~~procedure shall be eligible for consideration for parole without the~~
21 ~~concurrence of at least three (3) members of the Pardon and Parole~~
22 ~~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 Pardon and Parole Board
12 in relation to any inmate in a penal institution in the State of
13 Oklahoma unless the ~~Pardon and Parole~~ Board considers the victim
14 impact statements if presented to the jury, or the judge in the
15 event a jury was waived, at the time of sentencing and, in every
16 appropriate case, as a condition of parole, monetary restitution of
17 economic loss as defined by Section 991f of Title 22 of the Oklahoma
18 Statutes, 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
24 achieve the proficiency level established in Section 510.7 of this

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

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

21 Section 332.18. A. The Director of the Department of
22 Corrections shall have the authority to request the Executive
23 Director of the Pardon and Parole Board to place an inmate on the
24 Pardon and Parole Board docket for a medical reason, out of the

1 normal processing procedures. Documentation of the medical
2 condition of such inmate shall be certified by the medical director
3 of the Department of Corrections. The Pardon and Parole Board shall
4 have the authority to bring any such inmate before the Board at any
5 time, except as otherwise provided in subsection B of this section.

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

15 C. No person shall be eligible for consideration for medical
16 parole without the concurrence of at least three (3) members of the
17 Pardon and Parole Board. The vote on whether or not to consider
18 such person for parole and the names of the concurring Board members
19 shall be set forth in the written minutes of the Board meeting at
20 which the issue is considered.

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

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

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

11 SECTION 6. REPEALER 57 O.S. 2011, Section 332.17, is
12 hereby repealed.

13 SECTION 7. This act shall become effective November 1, 2013.
14 COMMITTEE REPORT BY: COMMITTEE ON JUDICIARY
15 February 19, 2013 - DO PASS
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