STATE OF OKLAHOMA

1st Session of the 54th Legislature (2013)

HOUSE BILL 1722 By: Osborn

AS INTRODUCED

An Act relating to prisons and reformatories; amending 57 O.S. 2011, Sections 332.2, 332.7, 332.8, 332.18 and 354, which relate to the Pardon and Parole Board and parole considerations; providing application requirements for reprieves, commutations, pardons and acts of clemency; establishing procedures and guidelines for applications for commutation; establishing requirements for recommendations; providing notice requirements; authorizing commutation for certain persons under certain circumstances; providing procedures for pardon applications; establishing parole consideration criteria for persons sentenced to consecutive sentences; directing the Pardon and Parole Board to consider prior criminal records; requiring post-imprisonment supervision for certain parolees; prohibiting parole consideration of certain persons; deleting certain eligibility requirement; deleting obsolete statutory reference; 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:

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, is authorized, if and when an application made to the Governor for a reprieve, commutation, parole, pardon, or other act of clemency is certified thereto by the Governor, to examine into the merits of said application and make recommendations to the Governor in relation thereto, said recommendation being advisory to the Governor and not binding thereon.

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

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

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

a. the current elected judge of the court where the conviction was had,

b. the current elected district attorney of the jurisdiction where the conviction was had, or

c. the current elected sheriff of the county where the conviction occurred or the chief of police in the jurisdiction where the offense occurred.

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

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

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

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

a. a statement that the penalty now appears to be excessive,

b. a recommendation of a definite term now considered by the official as just and proper, and

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

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

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

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

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

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

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

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

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

~~E.~~ O. Any notice required to be provided to the victims or the ~~victim's~~ representatives of the victim shall be mailed by first-class mail to the last-known address of the victim or ~~victim's~~ representatives of the victim. It is the responsibility of the victims or ~~victim's~~ representatives of the victim to provide the Pardon and Parole Board a current mailing address. The ~~district attorney's~~ victim-witness coordinator of the district attorney shall assist the victims or ~~victim's~~ representatives of the victim with supplying their address to the ~~board~~ Board if they wish to be notified. Upon failure of the Pardon and Parole Board to notify a victim who has requested notification and has provided a current

mailing address, the final decision of the Board may be voidable, provided, the victim who failed to receive notification requests a reconsideration hearing within thirty (30) days of the ~~Board's~~ recommendation by the Board for parole. The Pardon and Parole Board may reconsider previous action and may rescind a recommendation if deemed appropriate as determined by the Board.

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

~~G.~~ Q. All meetings of the Pardon and Parole Board shall comply with Section 301 et seq. of Title 25 of the Oklahoma Statutes; provided that the ~~board~~ Board shall have the authority to limit the number of persons attending in support of, or in opposition to, any inmate being considered for parole and shall have the authority to exclude persons from attendance in accordance with prison security regulations and the capacity of the meeting room. Persons excluded from attending the meeting under this provision shall be informed of their right to be informed of the ~~board's~~ vote of the Board in accordance with Section 312 of Title 25 of the Oklahoma Statutes. Provided further, nothing in this section shall be construed to

prevent any member of the press or any public official from attending any meeting of the Pardon and Parole Board, except as provided by the Oklahoma Open Meeting Act~~, Section 301 et seq. of Title 25 of the Oklahoma Statutes~~.

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

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

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

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

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

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

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

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

C. The parole hearings conducted for persons pursuant to paragraph 3 of subsection A of this section or for any person who was convicted of a violent crime as set forth in Section 571 of this

title and who is eligible for parole consideration pursuant to either paragraph 1 of subsection A of this section or subsection B of this section shall be conducted in two stages, as follows:

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

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

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

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

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

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

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

G. The Pardon and Parole Board shall not recommend to the Governor any person who has been convicted of three or more felonies arising out of separate and distinct transactions, with three or more incarcerations for such felonies, unless such person shall have served the lesser of at least one-third (1/3) of the sentence imposed, or ten (10) years; provided that whenever the population of

the prison system exceeds ninety-five percent (95%) of the capacity as certified by the State Board of Corrections, the Pardon and Parole Board may, at its discretion, recommend to the Governor for parole any person who is incarcerated for a nonviolent offense not involving injury to a person and who is within six (6) months of his or her statutory parole eligibility date.

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

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

J. It shall be the duty of the Pardon and Parole Board to cause an examination to be made at the penal institution where the person is assigned, and to make inquiry into the conduct and the record of

the said person during his custody in the Department of Corrections, which shall be considered as a basis for consideration of said person for recommendation to the Governor for parole. However, the Pardon and Parole Board shall not be required to consider for parole any person who has completed the time period provided for in this subsection if the person has participated in a riot or in the taking of hostages, or has been placed on escape status, while in the custody of the Department of Corrections. The Pardon and Parole Board shall adopt policies and procedures governing parole consideration for such persons.

~~I.~~ K. Any person in the custody of the Department of Corrections who is convicted of an offense not designated as a violent offense by Section 571 of Title 57 of the Oklahoma Statutes and who is not a citizen of the United States and is or becomes subject of a final order of deportation issued by the United States Department of Justice shall be considered for parole to the custody of the United States Immigration and Naturalization Service for continuation of deportation proceedings at any time subsequent to reception and processing through the Department of Corrections. No person shall be considered under this section without the concurrence of at least three members of the Pardon and Parole Board. The vote on whether or not to consider such person for parole and the names of the concurring Board members shall be set

forth in the written minutes of the meeting of the Board at which the issue is considered.

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

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

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

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

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

Section 332.8 No recommendations to the Governor for parole shall be made nor any paroles granted by the Board in relation to any inmate in a penal institution in the State of Oklahoma unless

the Pardon and Parole Board considers the victim impact statements if presented to the jury, or the judge in the event a jury was waived, at the time of sentencing and, in every appropriate case, as a condition of parole, monetary restitution of economic loss as defined by Section 991f of Title 22 of the Oklahoma Statutes, incurred by a victim of the crime for which the inmate was imprisoned. In every case, the Pardon and Parole Board shall first consider the number of previous felony convictions and the type of criminal violations leading to any such felony convictions, then shall consider either suitable employment or a suitable residence, and finally shall mandate participation in education programs to achieve the proficiency level established in Section 510.7 of this title or, at the discretion of the Board require the attainment of a general education diploma, as a condition for release on parole. The Board shall consider the availability of programs and the waiting period for such programs in setting conditions of parole release. The Board may require any program to be completed after the inmate is released on parole as a condition of parole. A facsimile signature of the inmate on parole papers that is transmitted to the Board shall be an accepted means of acknowledgement of parole conditions. The probation and parole officer shall render ~~every~~ reasonable assistance to any person making application for parole, in helping to obtain suitable employment or enrollment in an education program or a suitable

residence. Any inmate who fails to satisfactorily attend and make satisfactory progress in the educational program in which the inmate has been required to participate as a condition of parole, may have his or her parole revoked. If an inmate's parole is revoked, such inmate shall be returned to confinement in the custody of the Department of Corrections.

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

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

B. When a request is made for a medical parole review of an inmate who is dying or is near death as certified by the medical director of the Department of Corrections or whose medical condition has rendered the inmate no longer a threat to public safety, the Executive Director shall place such inmate on the first available parole review docket for a compassionate parole consideration. Inmates who meet the criteria set out in this section are not

subject to the two-stage hearing process in subsection C of Section 332.7 of this title.

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

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

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

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

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

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

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