
HOUSE COMMITTEE AMENDMENTS

2022 Regular Session

Substitute for Original House Bill No. 744 by Representative Gaines as proposed by the House Committee on Judiciary

This document reflects the content of a substitute bill but is not in a bill form; page numbers in this document DO NOT correspond to page numbers in the substitute bill itself.

To enact R.S. 15:574.2.2, relative to post conviction relief; to provide relative to the grounds for post conviction relief for non-unanimous jury verdicts; to provide relative to time limitations for post conviction relief when a petitioner has a conviction rendered by a non-unanimous jury; to allow for parole eligibility for persons convicted by a verdict rendered by a non-unanimous jury; to establish a review board for cases in which a non-unanimous jury verdict was rendered; and to provide for related matters

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 15:574.2.2 is hereby enacted to read as follows:

§574.2.2 Non-unanimous jury convictions; special committee on parole

A.(1) The Special Committee on Parole for Non-unanimous Jury Convictions, hereinafter referred to as the "Special Committee," is hereby created in the Department of Public Safety and Corrections, which shall be authorized to enforce the provisions of this Section. The Special Committee shall consist of the following members:

(a) Three retired appellate court judges or supreme court justices appointed by the governor.

(b) One retired district attorney or assistant district attorney appointed by the governor from a list of three nominations by the Louisiana District Attorneys Association.

(c) One retired public defender or assistant public defender appointed by the governor from a list of three nominations by the Louisiana Public Defender.

(2) In addition to the appointment of the special committee members, the governor shall also appoint one alternate member from each of the categories established by Subparagraphs (1)(a), (b), and (c) of this Subsection. This person shall

be of the same qualifications as the special committee members and shall only serve in an ad hoc capacity should any committee member be unable to serve for any reason. The ad hoc member shall be from the same category as the member who is unavailable to serve.

(3) All five special committee members shall be present for any hearing on or in consideration of an application for relief. For all other administrative purposes, four of the five special committee members shall constitute a quorum.

B.(1) The chairman of the special committee shall be appointed by the governor. Additional officers may be elected by majority vote of the membership of the committee. The salary of the special committee members shall be the same as the salaries of the members of the Board of Pardons and shall be established in the same manner.

(2) Ad hoc special committee members shall be paid a per diem at a rate set by the special committee for services rendered due to the recusal or absence of any committee member from any participation in any petitioner's application or consideration.

C. All members appointed to the special committee shall be prohibited from representing any petitioner or victim either directly or indirectly. Any member of the special committee who has an existing or who has had any previous personal, professional, or financial transactions involving or relating to the petitioner or victim shall be recused from any participation in consideration of that petitioner's application.

D. The special committee shall meet not less than once per month per calendar year to consider applications filed by petitioners. Such dates shall be determined by the chairman. Notwithstanding any law to the contrary, persons providing testimony may appear before the committee by means of teleconference or telephone communication.

E. In accordance with the provisions of this Section, the special committee shall have the following powers and duties:

(1) To determine whether the petitioner was convicted of an offense by a non-unanimous jury, and, if so, then whether that conviction resulted in a miscarriage of justice.

(2) To determine the specific conditions of release from custody of any petitioner to whom parole was granted pursuant to this Section.

(3) To keep a record of its actions and notify each correctional facility of the special committee's final determination relating to petitioner's application.

(4) To take testimony under oath at a hearing or by deposition. Under no circumstance shall the victim or the victim's family be compelled to testify at any hearing set or otherwise convened by the special committee or under the provisions of this Section.

(5) To notify the district attorney of the judicial district, or prosecuting authority in the parish, where the conviction occurred of the petitioner's application to the special committee.

(6) To notify the district attorney of the judicial district, or prosecuting authority in the parish, where the conviction occurred of the special committee's final determination relating to petitioner's application.

(7) To perform any additional duties necessary to enforce the provisions of this Section.

F.(1)(a) Notwithstanding any provision of law to the contrary, any person currently incarcerated who alleges a conviction for an offense rendered by a non-unanimous jury shall be entitled to file an application with the special committee under the provisions of this Section, regardless of the term of imprisonment imposed.

(b) The petitioner shall use the Uniform Application for Special Parole Consideration approved by the Supreme Court of Louisiana. The application shall be signed by the petitioner and be accompanied by a certified copy of the entirety of the record of the proceedings relative to the petitioner's direct appeal of the conviction on which the petitioner's application is based and petitioner's affidavit that the allegations contained in the application are true and accurate to the best of

petitioner's information and belief. If no direct appeal has been taken, the application shall be accompanied by a certified copy of the trial court record.

(c) Failure of the petitioner to provide supporting documentation with an application shall not be grounds for denial of the petitioner's application. However, if the petitioner submits an application without providing the required certified copy, the petitioner shall include in his affidavit that the he requested a certified copy of the entirety of the record of the proceedings relative to the petitioner's direct appeal, or trial court record, of the conviction on which the petitioner's application is based from the clerk of court from the parish of conviction. Thereafter, upon receipt of such documentation from the clerk of court, the petitioner shall be allowed to supplement his application prior to any hearing on the petitioner's application.

(d) Any documents requested by a petitioner pursuant to Subparagraph (1)(c) of this Subsection from the clerk of court of the parish of conviction shall be made available by the clerk of court to the petitioner no later than ninety days after the request is made. A petitioner requesting a certified copy of the record on direct appeal or trial court record for purposes of submitting with an application for relief pursuant to this Section shall be deemed indigent for purposes of the cost of production of the requested record. If the requested documents are unavailable, the clerk of court shall certify the reasons why the requested documents are unavailable and shall provide the certification to the petitioner within ninety days of the request.

(e) The district attorney of the judicial district or prosecuting authority in the parish where the conviction was obtained shall, in all instances, be permitted to file with the special committee a written response to the petitioner's application.

(2)(a) The petitioner shall have the burden of establishing by clear and convincing evidence the non-unanimity of his conviction based exclusively upon the existing certified copy of the entirety of the record submitted with the application. If the petitioner is unable to establish that the verdict was non-unanimous, the Special Committee shall summarily deny the petitioner's Application at a hearing without any further consideration, inquiry, or review for relief under this Section. If the petitioner is able to establish that the verdict was non-unanimous, the Special

Committee shall then consider whether the non-unanimous verdict resulted in a miscarriage of justice.

(b) In determining whether the non-unanimous jury verdict resulted in a miscarriage of justice, evidence shall be limited to the certified copy of the entirety of the record upon which the petitioner's application is based, any testimony of the petitioner or victim, as provided by R.S 46:1842, et seq., and any written statement submitted by the district attorney of the judicial district where the conviction was obtained. In its evaluation, the special committee may also consider any of the following, illustrative, non-exhaustive, non-mandatory factors:

(i) Whether the non-unanimity was the result of juror votes to acquit.

(ii) Whether a juror voted to convict for a responsive verdict when the petitioner was convicted of the offense charged.

(iii) Whether a juror voted to convict for the offense charged when the petitioner was convicted of a responsive verdict.

(iv) The overall strength of the state's case.

(v) The length of deliberations.

(vi) The nature of the offense.

(vii) The assistance of counsel for the applicant at trial and on appeal.

(viii) Any indicia of racial animus in the prosecution of the petitioner's case.

(c) If the petitioner is serving sentences for multiple convictions, the petitioner shall only be eligible to make a single application to the special committee pursuant to this Section for the conviction relative to the offense for which he is serving the longest sentence. If the petitioner is serving a sentence for multiple convictions under a single bill of information or indictment, the special committee shall consider the issue of non-unanimity for all counts.

(3)(a) The special committee may not grant or deny parole without a hearing on the petitioner's application. The special committee shall schedule an application for hearing at the soonest available committee meeting, but in no event prior to the receipt of the certified copy of the petitioner's record of the proceedings upon which the petitioner's application is based. In addition to notifying the petitioner that the

matter has been set for hearing, the special committee shall notify the district attorney in the judicial district where the conviction occurred, and the victim, or relative of a deceased victim, of the time and date of the hearing.

(b) Except as provided for in Subparagraph (c) of this Paragraph, three of the five special committee members shall be required for both an affirmative finding that the petitioner's conviction was the result of a non-unanimous jury verdict and that the non-unanimous verdict resulted in a miscarriage of justice.

(c) In all instances where the petitioner is serving a life sentence, an affirmative vote of four of the five members of the special committee shall be required for both an affirmative finding that the petitioner's conviction was the result of a non-unanimous jury verdict and that the non-unanimous verdict resulted in a miscarriage of justice.

G.(1) The provisions of this Section shall be the exclusive and sole remedy for any petitioner applying for relief on the basis of being convicted by a non-unanimous verdict. However, a claim for relief pursuant to this Section shall not preclude a petitioner from petitioning for relief under any other provision allowed by law not related to the non-unanimous verdict issue. Evidence of the non-unanimous verdict may be used at any other proceedings not under the provisions of this Section subject to the limitations in the Code of Evidence.

(2) Any grant or denial of parole by the special committee shall be deemed as a final determination of the petitioner's application for special parole consideration based on a non-unanimous jury verdict resulting in a miscarriage of justice. A denial of the petitioner's application shall not be subject to appeal or collateral attack nor shall the application be eligible for any reconsideration or rehearing.

(3) All applications pursuant to this Section shall be filed within one year of the effective date of this statute. The special committee shall not consider any petitioner's application for parole filed thereafter pursuant to this Section.

(4) A grant or denial of parole pursuant to this Section may be a consideration in any application made for a pardon by the petitioner when eligible.

Section 2. This Act shall become effective upon signature by the governor or, if not signed by the governor, upon expiration of the time for bills to become law without signature by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If vetoed by the governor and subsequently approved by the legislature, this Act shall become effective on the day following such approval.

Section 3. The provisions of Section 1 of this Act shall terminate either three years after the effective date of this Act or upon a ruling by the Louisiana Supreme Court that the holding in *Ramos v. Louisiana*, 140 S. Ct. 1390, 206 L.Ed.2d 583 (2020), is retroactive as a matter of Louisiana law, whichever occurs first. Any petitioner who has made application for or has availed himself of the relief provided by Section 1 of this Act shall not be prohibited from obtaining any additional relief afforded him resulting from such a ruling by the Louisiana Supreme Court.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB Draft

2022 Regular Session

Abstract: Provides relative to relief for cases in which a non-unanimous jury verdict was rendered.

Present law provides for the grounds of post conviction relief.

Present law provides relative to parole eligibility for certain offenders.

Proposed law adds an additional ground for convictions rendered by a verdict from a non-unanimous jury.

Proposed law authorizes the DPS&C to create and establish a board for the purpose of reviewing all cases in which a non-unanimous jury verdict was rendered prior to 2018. Provides for the composition and duties of the board. Further authorizes the DPS&C to adopt rules and regulations necessary to carry out proposed law.

Proposed law provides that no application for post conviction relief shall be considered if it is filed more than one year after the effective date of this statute.

Proposed law adds an exception for convictions rendered by a verdict from a non-unanimous jury verdict.

(Adds R.S. 15:574.2.2)