

2023 Regular Session

HOUSE BILL NO. 588

BY REPRESENTATIVE GAINES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PROCEDURE: Provides relative to convictions rendered by a verdict from a non-unanimous jury

1 AN ACT

2 To enact R.S. 15:574.2.2, relative to post-conviction relief; to provide relative to the grounds
3 for post-conviction relief for non-unanimous jury verdicts; to provide relative to time
4 limitations for post-conviction relief when a petitioner has a conviction rendered by
5 a non-unanimous jury; to authorize remedies for persons convicted by a verdict
6 rendered by a non-unanimous jury; to establish a review board for cases in which a
7 non-unanimous jury verdict was rendered; to provide for an effective date; and to
8 provide for related matters.

9 Be it enacted by the Legislature of Louisiana:

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

11 §574.2.2. Non-unanimous jury convictions; special committee

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

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

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

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

6 (2) In addition to the appointment of the special committee members, the
7 governor shall also appoint one alternate member from each of the categories
8 established by Paragraph (1) of this Subsection. This person shall be of the same
9 qualifications as the special committee members and shall serve only in an ad hoc
10 capacity should any committee member be unable to serve for any reason. The ad
11 hoc member shall be from the same category as the member who is unavailable to
12 serve.

13 (3) All five special committee members shall be present for any hearing on
14 or in consideration of an application for relief. However, only the retired appellate
15 court judges or supreme court justices shall serve as voting members of the special
16 committee. For all other administrative purposes, two of the three special committee
17 members shall constitute a quorum. The retired district attorney or assistant district
18 attorney and the retired public defender or assistant public defender shall provide
19 information and input regarding the facts and circumstances surrounding the
20 conviction based on the review of the file and records of the proceedings.

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

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

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

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

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

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

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

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

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

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

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

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

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

10 (b) The petitioner shall use the Uniform Application for Special
11 Consideration approved by the Supreme Court of Louisiana. The application shall
12 be signed by the petitioner.

13 (c) The petitioner has the right to legal representation and, if the petitioner
14 cannot afford legal representation, he may request for an appointment of counsel in
15 the Uniform Application for Special Consideration.

16 (d) After the application is received, the special committee shall request a
17 certified copy of the entirety of the record of the proceedings relative to the
18 petitioner's direct appeal of the conviction on which the petitioner's application is
19 based and petitioner's affidavit that the allegations contained in the application are
20 true and accurate to the best of petitioner's information and belief. If no direct
21 appeal has been taken, the application shall be accompanied by a certified copy of
22 the trial court record.

23 (e) Failure of the petitioner to provide supporting documentation with an
24 application shall not be grounds for denial of the petitioner's application. However,
25 if the petitioner submits an application without providing the required certified copy,
26 the petitioner shall include in his affidavit that the he requested a certified copy of
27 the entirety of the record of the proceedings relative to the petitioner's direct appeal,
28 or trial court record, of the conviction on which the petitioner's application is based
29 from the clerk of court from the parish of conviction. Thereafter, upon receipt of

1 such documentation from the clerk of court, the petitioner shall be allowed to
2 supplement his application prior to any hearing on the petitioner's application.

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

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

15 (2)(a) The petitioner shall have the burden of establishing by clear and
16 convincing evidence the non-unanimity of his conviction based exclusively upon the
17 existing certified copy of the entirety of the record submitted with the application.
18 If the petitioner is unable to establish that the verdict was non-unanimous, the special
19 committee shall summarily deny the petitioner's application at a hearing without any
20 further consideration, inquiry, or review for relief under this Section. If the
21 petitioner is able to establish that the verdict was non-unanimous, the special
22 committee shall then consider whether the non-unanimous verdict resulted in a
23 miscarriage of justice.

24 (b) In determining whether the non-unanimous jury verdict resulted in a
25 miscarriage of justice, evidence shall be limited to the certified copy of the entirety
26 of the record upon which the petitioner's application is based, any testimony of the
27 petitioner or victim, as provided by R.S. 46:1842, et seq., and any written statement
28 submitted by the district attorney of the judicial district where the conviction was

1 obtained. In its evaluation, the special committee may also consider any of the
2 following, illustrative, non-exhaustive, non-mandatory factors:

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

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

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

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

9 (v) The length of deliberations.

10 (vi) The nature of the offense.

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

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

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

19 (3)(a) The special committee may not grant or deny a remedy without a
20 hearing on the petitioner's application. The special committee shall schedule an
21 application for hearing at the soonest available committee meeting, but in no event
22 prior to the receipt of the certified copy of the petitioner's record of the proceedings
23 upon which the petitioner's application is based. In addition to notifying the
24 petitioner that the matter has been set for hearing, the special committee shall notify
25 the district attorney in the judicial district where the conviction occurred, and the
26 victim, or relative of a deceased victim, of the time and date of the hearing.

27 (b) Except as provided for in Subparagraph (c) of this Paragraph, two of the
28 three voting members of the special committee shall be required for both an

1 affirmative finding that the petitioner's conviction was the result of a non-unanimous
2 jury verdict and that the non-unanimous verdict resulted in a miscarriage of justice.

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

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

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

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

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

26 (5)(a) If an application is granted resulting in parole release, the term of
27 supervised release shall be the remaining term of the original sentence of conviction
28 or as commuted by the governor.

1 (b) If parole release is not granted, the special committee may recommend
2 any of the following alternative remedies:

3 (i) Reducing the original sentence of conviction.

4 (ii) Resentencing based upon the petitioner pleading to an offense which
5 would have resulted in a responsive verdict when the non-unanimous verdict
6 occurred.

7 (6) Upon the completion of a minimum of one-half of the term of parole
8 supervision or twenty-five years, whichever is less, the offender may subsequently
9 petition the committee on parole for consideration of early termination of parole
10 supervision, as provided by 15:574.7(E).

11 (7) All qualified victims, as provided by R.S. 46:1842 et seq., shall be
12 afforded opportunity and access to all victim services available through the
13 Department of Public Safety and Corrections Victim Services section throughout the
14 entirety of the process from initial application through the duration of any potential
15 release.

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

23 Section 3. This Act shall become effective upon signature by the governor or, if not
24 signed by the governor, upon expiration of the time for bills to become law without signature
25 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If
26 vetoed by the governor and subsequently approved by the legislature, this Act shall become
27 effective on the day following such approval.

28

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 588 Original

2023 Regular Session

Gaines

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 remedies 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.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Adds R.S. 15:574.2.2)