

1 HB580
2 211785-1
3 By Representative England
4 RFD: Judiciary
5 First Read: 01-APR-21

SYNOPSIS: Under existing law, the Board of Pardons and Paroles is required to consider certain factors in determining whether to grant parole.

This bill would add the requirement that the board review cases of elderly prisoners under certain circumstances.

This bill would also make nonsubstantive, technical revisions to update the existing code language to current style.

A BILL
TO BE ENTITLED
AN ACT

Relating to parole; to amend Sections 15-22-26 and 15-22-28, as last amended by Act 2019-393, 2019 Regular Session, Code of Alabama 1975; to further provide for parole consideration; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 15-22-26 and 15-22-28, as last
2 amended by Act 2019-393, 2019 Regular Session, Code of Alabama
3 1975, are amended to read as follows:

4 "§15-22-26.

5 "(a) (1) Except as provided in Section 15-22-28, no
6 ~~No~~ prisoner ~~shall~~ may be released on parole ~~merely~~ as a reward
7 for good conduct or efficient performance of duties assigned
8 in prison, but only if the Board of Pardons and Paroles is of
9 the opinion that the prisoner meets criteria and guidelines
10 established by the board to determine a prisoner's fitness for
11 parole and to ensure public safety.

12 "(2) The guidelines shall ~~serve~~ do all of the
13 following:

14 "a. Serve as an aid in the parole process ~~and shall~~
15 ~~promote.~~

16 "b. Promote the use of prison space for the most
17 violent and greatest risk offenders, while recognizing that
18 the board's paramount duty is to protect public safety. ~~The~~
19 ~~guidelines shall be~~

20 "c. Be structured, and actuarially based, ~~reviewed~~
21 ~~every three years by the board, after a specified open comment~~
22 ~~period determined by the board, and posted on the website of~~
23 ~~the board and include, but not be limited to, .~~

24 "(3) The guidelines shall assess all of the
25 following:

1 "~~(1)~~ a. The prisoner's risk to reoffend, based upon
2 a validated risk and needs assessment, as defined in Section
3 12-25-32.

4 "~~(2)~~ b. Progress by the prisoner ~~and~~ in complying
5 with the Department of Corrections to plan for reentry.

6 "~~(3)~~ c. Input from the victim or victims, the family
7 of the victim or victims, prosecutors, and law enforcement
8 entities.

9 "~~(4)~~ d. Participation in risk-reduction programs
10 while incarcerated.

11 "~~(5)~~ e. Institutional behavior of the prisoner while
12 incarcerated.

13 "~~(6)~~ f. Severity of the underlying offense for which
14 the prisoner was sentenced to incarceration.

15 "(b) Except as provided in Section 15-22-37, if the
16 board grants a prisoner parole, the prisoner shall be released
17 from prison upon the terms and conditions set by the board,
18 and while released on parole, shall remain in the legal
19 custody of the warden of the prison from which he or she is
20 paroled until the expiration of the maximum term specified in
21 his or her sentence or until he or she is fully pardoned.

22 "(c) The board shall clearly articulate its reasons
23 for approval or denial of parole for each prisoner, based on
24 its established guidelines, and shall provide the reasons for
25 approval or denial to the prisoner, the victim, the Department
26 of Corrections, or any other interested party upon written
27 request submitted to the board. The use of established

1 guidelines for parole consideration shall not create a right
2 or expectation by a prisoner to parole release. Additionally,
3 the articulated reasons for denial of parole release shall not
4 create a right or expectation for parole release. The
5 guidelines shall serve as an aid in the parole ~~decisionmaking~~
6 decision-making process, and the decision concerning parole
7 release shall be at the complete discretion of the board.

8 "§15-22-28.

9 "(a) ~~It shall be the duty of the Board of Pardons~~
10 ~~and Paroles, upon its own initiative, to make an investigation~~
11 ~~of any and~~ The Board of Pardons and Paroles shall investigate
12 all prisoners confined in the jails and prisons of the state,
13 through use of a validated risk and needs assessment as
14 defined in Section 12-25-32, ~~with a view of determining the~~
15 ~~feasibility of releasing the prisoners on parole and effecting~~
16 ~~their reclamation~~ to determine which prisoners may be released
17 on parole. Reinvestigations shall be made from time to time as
18 the board may determine or as requested by the Department of
19 Corrections ~~may request~~. ~~The investigations shall include such~~
20 ~~reports and other information as the board may require from~~
21 ~~the Department of Corrections or any of its officers, agents,~~
22 ~~or employees.~~

23 "(b) ~~It shall be the duty of the~~ The Department of
24 Corrections ~~to shall~~ cooperate with the ~~Board of Pardons and~~
25 ~~Paroles~~ board for the purpose of carrying out this article.

26 "(c) Temporary leave from prison, ~~including~~
27 ~~Christmas furloughs,~~ may only be granted ~~only~~ by the

1 Commissioner of the Department of Corrections to a prisoner
2 for good and sufficient reason and may be granted within ~~or~~
3 ~~without~~ the state, ~~provided, that Christmas furloughs shall~~
4 ~~not be granted to any prisoner convicted of drug peddling,~~
5 ~~child molesting or rape, or to any maximum security prisoner~~
6 ~~or outside the state.~~ A permanent, ~~7~~ written record of all
7 temporary leaves, ~~together with~~ including the reasons ~~therefor~~
8 leave was granted, shall be kept by the commissioner. He or
9 she shall furnish the Board of Pardons and Paroles with a
10 record of each leave granted and the reasons ~~therefor~~ leave
11 was granted, and the same shall be placed by the board in the
12 prisoner's file.

13 "(d) ~~No prisoner shall be released on parole except~~
14 ~~by a majority vote of the board.~~ The board shall may not
15 parole any prisoner for employment by any official of the
16 State of Alabama, nor shall any parolee be employed by an
17 official of the State of Alabama and be allowed to remain on
18 parole; provided, however, that this ~~provision shall~~
19 subsection does not apply ~~in the case of~~ to a parolee whose
20 employer, at the time of the parolee's original employment,
21 was not a state official.

22 "(e) The board shall set a prisoner's initial parole
23 consideration date according to the following schedules:

24 "(1) For prisoners receiving sentence deductions
25 pursuant to the Alabama Correctional Incentive Time Act,
26 Article 3 of Chapter 9 of Title 14, the following schedule
27 shall apply:

1 "a. For terms of five years or less, the prisoner
2 shall be scheduled for initial parole consideration on the
3 current docket.

4 "b. For terms over five years and up to 10 years,
5 the prisoner shall be scheduled for initial parole
6 consideration approximately 18 months prior to the minimum
7 release date.

8 "c. For terms of more than 10 years and up to 15
9 years, the prisoner shall be scheduled for initial parole
10 consideration approximately two years and six months prior to
11 the minimum release date.

12 "(2) For prisoners convicted on or after March 21,
13 2001, of one or more of the following Class A felonies, the
14 initial parole consideration date shall be set for a date once
15 a prisoner has completed 85 percent of his or her total
16 sentence or 15 years, whichever is less.

17 "a. Rape in the first degree.

18 "b. Kidnapping in the first degree.

19 "c. Murder.

20 "d. Attempted murder.

21 "e. Sodomy in the first degree.

22 "f. Sexual torture.

23 "g. Robbery in the first degree with serious
24 physical injury as defined in Section 13A-1-2.

25 "h. Burglary in the first degree with serious
26 physical injury as defined in Section 13A-1-2.

1 "i. Arson in the first degree with serious physical
2 injury as defined in Section 13A-1-2.

3 "(3) For all other prisoners, the initial parole
4 consideration date shall be set for a date following
5 completion of one-third of the prisoner's sentence or 10
6 years, whichever is less.

7 "(4) If the prisoner is serving consecutive
8 sentences, the initial parole consideration date may not be
9 set for a date before the prisoner has separately served the
10 time prescribed in this subsection for each consecutive
11 sentence imposed.

12 "(f) (1) The board may deviate from the initial
13 parole consideration date established in subsection (e) or any
14 reconsideration date prescribed by the board's rules only in
15 either of the following circumstances:

16 "a. To comply with the policy and procedural
17 guidelines in effect on or before January 1, 2019, issued by
18 the board under Section 15-22-24~~(e)~~.

19 "b. If the prisoner ~~shows~~, by clear and convincing
20 evidence, shows that he or she is more likely than not to be
21 granted parole and that he or she would have been considered
22 for parole on an earlier date under generally applicable rules
23 or policies previously in effect.

24 "(2) Any decision by the board to invoke the
25 procedures of this subsection shall be subject to legal review
26 by the deputy Attorney General or assistant Attorney General
27 assigned to the board, prior to the issuance of a parole

1 certificate and the prisoner's release. If it is determined
2 that the grant of parole consideration failed to satisfy the
3 requirements of this subsection or any rule adopted pursuant
4 to this subsection, the decision shall be reversed and the
5 prisoner shall be notified by the board.

6 "(3) For purposes of paragraph (f) (1)b., the board
7 shall adopt rules to determine whether a prisoner is more
8 likely than not to be granted parole. These rules shall be
9 designed to minimize the risk a prisoner will be prejudiced by
10 any statutory or administrative changes in parole standards or
11 procedures that have occurred since the date of the prisoner's
12 conviction and shall include, but are not limited to, all of
13 the following:

14 "a. A requirement that the prisoner has completed a
15 minimum total period of incarceration.

16 "b. A requirement that the prisoner complete certain
17 programs while in custody of the Department of Corrections.

18 "c. A requirement that the prisoner provide a
19 statement of support from a Department of Corrections staff
20 member.

21 "d. A requirement that the prisoner have no violent
22 disciplinarys during a prescribed period preceding the
23 prisoner's current application for parole consideration.

24 "e. A requirement that the prisoner have no
25 disciplinarys of any kind within a prescribed period
26 preceding the prisoner's current application for parole
27 consideration.

1 "f. A requirement that the prisoner's risk of
2 re-offense is determined to be medium or low following the
3 completion of a validated risk and needs assessment, as
4 defined in Section 15-25-32, conducted by a trained probation
5 and parole officer.

6 "(4) A 30 days' written notice shall be provided to
7 the Governor and Attorney General for any parole consideration
8 date set by the board under subdivision (f) (1). The Governor
9 and Attorney General shall have 14 days from the time notice
10 is received to object to the grant of parole. If the board
11 grants parole consideration under subdivision (f) (1) and did
12 not give adequate notice to the Governor or Attorney General
13 or granted parole consideration despite an objection from the
14 Governor or Attorney General, the decision shall be reversed
15 and the prisoner shall be notified by the board.

16 (g) (1) Notwithstanding subsection (e) and Section
17 15-22-26, if a prisoner has served at least 15 years of his or
18 her sentence and has reached the age of 55, the board shall
19 conduct a parole hearing pursuant to this subsection to
20 determine whether the prisoner should be released on parole.

21 "(2) If the board determines there is a reasonable
22 probability that a released prisoner will live and remain at
23 liberty without violating the law and that his or her release
24 is not incompatible with the welfare of society, then the
25 board shall release the prisoner. The board shall release the
26 prisoner, pursuant to this subdivision, even if the prisoner

1 has not reached his or her initial parole consideration date
2 as provided in subsection (e).

3 "(3) If the board denies parole, the board shall
4 provide the prisoner with the factors and reasons for the
5 denial of parole, in writing, within two weeks of the decision
6 and shall set a date, not more than 24 months from the denial
7 of parole, for reconsideration.

8 "(4) If parole is granted, the board shall set
9 conditions of release pursuant to Section 15-22-29 and
10 notification shall be provided as required in Section
11 15-22-26."

12 Section 2. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.