HB299

FTJGC5C-1

By Representative England

RFD: Judiciary

First Read: 06-Mar-24

SYNOPSIS:

Under existing law, the Board of Pardons and Paroles is required to consider parole release guidelines in determining whether to grant or deny parole.

This bill would require the Board of Pardons and Paroles to give weighted consideration to the health of an inmate in making its parole decision.

Under existing law, when a prisoner who has been convicted of a nonviolent offense with a sentence of 20 years or less is denied parole, the board shall reconsider releasing the prisoner on parole no more than two years after the parole release denial.

This bill would provide that when a prisoner who has served at least 10 years of his or her sentence and has reached the age of 60 is denied parole, the board shall reconsider releasing the prisoner on parole no more than two years after the denial of parole and shall provide the inmate with a detailed plan to improve the chances he or she will be granted parole at the next hearing.

This bill would provide that if the board fails to provide a detailed plan to the prisoner, he or she shall be provided a new parole hearing within 90 days of the denial.

This bill would provide appellate relief for a prisoner with a serious chronic health condition who was denied parole in certain circumstances.

Under existing law, inmates that meet certain criteria may be considered for medical parole.

This bill would require the board to hold a medical parole hearing within 30 days of an inmate becoming eligible for medical parole.

This bill would provide for appellate relief for an inmate who was denied medical parole.

This bill would authorize an inmate released on medical furlough to reside in any state.

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 pardons and paroles; to amend Section 15-22-26, Section 15-22-28, as last amended by Act 2023-367, 2023 Regular Session, and Sections 15-22-37 and 15-22-43, Code of Alabama 1975, to require the Board of Pardons and Paroles to give weighted consideration to an inmate's age when determining whether to grant parole, to require the board to hold a rehearing once parole is denied for certain inmates, to

provide for appellate relief for a prisoner with a serious chronic health condition who was denied parole in certain circumstances; to require the board to hold a medical parole hearing within a specified period of time of an inmate becoming eligible for medical parole; provide for appellate relief for an inmate who was denied medical parole; to amend Section 14-14-5, Code of Alabama 1975, to provide that an inmate released on medical furlough may reside in any state; and to make nonsubstantive, technical revisions to update the existing code language to current style.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 15-22-26, Section 15-22-28, as last amended by Act 2023-367, 2023 Regular Session, and Sections 15-22-37 and 15-22-43, Code of Alabama 1975, are amended to read as follows:

"§15-22-26

(a)(1) A ~~No~~ prisoner shall be released on parole ~~merely~~ as a reward for good conduct or efficient performance of duties assigned in prison~~, but only~~ if a majority of the Board of Pardons and Paroles ~~is~~ members are of the opinion that the prisoner meets criteria and guidelines established by the board to determine a prisoner's fitness for parole and to ensure public safety.

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

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

b. Promote the use of prison space for the most violent and greatest risk offenders, while recognizing that the

board's paramount duty is to protect public safety. ~~The guidelines shall be~~

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

(3) The guidelines shall consider all of the following:

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

~~(2)~~b. Progress by the prisoner and the Department of Corrections to plan for reentry.

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

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

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

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

(4) The board shall give weighted consideration to the health of the inmate when considering parole.

(b) Except as provided in Section 15-22-37, if the board grants a prisoner parole, the prisoner shall be released from prison upon the terms and conditions set by the board, and while released on parole, shall remain in the legal custody of the warden of the prison from which he or she is

paroled until the expiration of the maximum term specified in his or her sentence or until he or she is fully pardoned.

(c) The board shall clearly articulate its reasons for approval or denial of parole for each prisoner, based on its established guidelines, and shall provide the reasons for approval or denial to the prisoner, the victim, the Department of Corrections, or any other interested party upon written request submitted to the board. The use of established guidelines for parole consideration shall not create a right or expectation by a prisoner to parole release. Additionally, the articulated reasons for denial of parole release shall not create a right or expectation for parole release. The guidelines shall serve as an aid in the parole decisionmaking process, and the decision concerning parole release shall be at the complete discretion of the board."

"§15-22-28

(a) ~~It shall be the duty of the Board of Pardons and Paroles, upon its own initiative, to make an investigation of any and~~ The Board of Pardons and Paroles shall investigate all prisoners confined in the jails and prisons of the state, through use of a validated risk and needs assessment, as defined in Section 12-25-32, ~~with a view of determining the feasibility of releasing the prisoners on parole and effecting their reclamation~~to determine which prisoners may be released on parole. Reinvestigations shall be ~~made from time to time~~ performed as determined by the board ~~may determine~~ or as requested by the Department of Corrections ~~may request. The investigations shall include such reports and other~~

~~information as the board may require from the Department of Corrections or any of its officers, agents, or employees~~.

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

(c) Temporary leave from prison~~, including Christmas furloughs,~~ may only be granted ~~only~~ by the Commissioner of the Department of Corrections to a prisoner for good and sufficient reason and may be granted within ~~or without~~ the state~~; provided, that Christmas furloughs shall~~ or outside the state. Furlough may not be granted to any prisoner convicted of ~~drug peddling, child molesting, or rape,~~ any Class A felony sex offense, as provided in Section 15-20A-5, or to any ~~maximum security~~ prisoner in close custody. A permanent~~,~~ written record of all temporary leaves, ~~together with~~ including the reasons ~~therefor~~leave was granted, shall be kept by the commissioner. He or she shall furnish the Board of Pardons and Paroles with a record of each leave granted and the reasons ~~therefor~~leave was granted, and the same shall be placed by the board in the prisoner's file.

(d) ~~No prisoner shall be released on parole except by a majority vote of the board.~~ The board shall not parole any prisoner for employment by any official of this state, nor shall any parolee be employed by an official of this state and be allowed to remain on parole~~; provided, however, that this provision shall~~. This subsection does not apply ~~in the case of~~ to a parolee whose employer, at the time of the parolee's original employment, was not a state official.

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

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

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

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

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

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

a. Rape in the first degree.

b. Kidnapping in the first degree.

c. Murder.

d. Attempted murder.

e. Sodomy in the first degree.

f. Sexual torture.

g. Robbery in the first degree with serious physical

injury as defined in Section 13A-1-2.

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

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

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

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

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

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

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

(2) Any decision by the board to invoke the procedures of this subsection shall be subject to legal review by the

deputy Attorney General or assistant Attorney General assigned to the board, prior to the issuance of a parole certificate and the prisoner's release. If it is determined that the grant of parole consideration failed to satisfy the requirements of this subsection or any rule adopted pursuant to this subsection, the decision shall be reversed and the prisoner shall be notified by the board.

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

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

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

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

d. A requirement that the prisoner have no violent disciplinaries during a prescribed period preceding the prisoner's current application for parole consideration.

e. A requirement that the prisoner have no disciplinaries of any kind within a prescribed period preceding the prisoner's current application for parole consideration.

f. A requirement that the prisoner's risk of re-offense is determined to be medium or low following the completion of a validated risk and needs assessment, as defined in Section 12-25-32, conducted by a trained probation and parole officer.

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

(g)(1) Notwithstanding any law to the contrary, any prisoner who is charged with a new federal, state, or local offense punishable by a term of imprisonment exceeding 12 months shall not be considered for parole until after the charge has been disposed, whether by trial or other means.

(2) A prisoner shall immediately be notified by the Department of Corrections of any new charges pursuant to subdivision (1).

(h)(1) If a prisoner convicted of a nonviolent offense, as defined in Section 12-25-32, with a sentence of 20 years or less is denied parole, the board shall reconsider releasing the prisoner on parole no more than two years after his or her parole release denial.

(2) Any prisoner denied parole who has served at least

10 years of his or her sentence, and has reached the age of 60, shall have a reconsideration parole hearing at least every two years following a denial. If the board denies parole, the board shall provide the prisoner with a detailed plan to improve the chances parole will be granted at the next hearing.

(3) If the board fails to provide the prisoner with a detailed plan as provided in subdivision (2), the board shall reconsider releasing the prisoner on parole within 90 days of the denial.

(i)(1) A prisoner with a serious chronic health condition whose parole was denied shall have the right to seek judicial review of the denial as provided in this subsection. For the purposes of this section, a "serious chronic health condition" includes any non-terminal physical or medical condition rendering an individual permanently and irreversibly incapacitated as determined by reasonable medical judgment.

(2) Within 28 days of receiving from the board, in writing, the reason for the denial of parole, the prisoner, or an individual acting on the prisoner's behalf, may appeal the decision.

(3) The venue for an appeal shall be the circuit court of the county of conviction.

(4) The petition shall be heard by the circuit judge who presided over the trial or, if the judge is no longer serving, by any of the circuit judges in the circuit where the prisoner was convicted.

(5) Review by the court shall be de novo by the circuit

court without a jury.

(6) The decision by the circuit court may be appealed pursuant to the court of criminal appeals and is subject to the Rules of Appellate Procedure."

"§15-22-37

(a) The Board of Pardons and Paroles may adopt rules, not inconsistent with ~~the provisions of~~ this article, ~~touching upon~~ relating to all matters ~~dealt with~~ included in this article, including, among others, practice and procedure in matters pertaining to paroles, pardons, and remission of fines and forfeitures~~; provided, however, that no~~. No rule adopted by the board ~~shall have the effect of denying to~~ may deny any person whose application for parole or the revocation of whose parole is being considered by the board from having the benefit of counsel or witnesses upon the hearing.

(b) The Board of Pardons and Paroles shall adopt rules to do all of the following:

(1) Establish a program of limited supervision for qualifying parolees ~~who qualify~~ addressing eligibility using validated risk and needs assessments, as defined in Section 12-25-32, transfers among levels of supervision, to include guidelines for the transfer of lower-risk individuals to an administrative form of parole, and reporting requirements.

(2) Develop policies and procedures for screening, assessment, and referral for parolees to connect with recidivism reduction services including, but not limited to, cognitive behavioral intervention and substance abuse treatment.

(3) Establish a matrix of rewards for compliance and pro-social behaviors and swift, certain, and graduated sanctions to be imposed by the board, as provided under subsections (e) and (f) of Section 15-22-32, in response to corresponding violations of parole terms or conditions imposed.

(4) Establish clear guidelines and procedures that retain the board's discretion in individual parole release cases. ~~The guidelines shall provide that, if a prisoner convicted of a nonviolent offense, as defined in Section 12-25-32, with a sentence of 20 years or less is denied parole, the board shall reconsider releasing the prisoner on parole no more than two years after such parole release denial.~~ The guidelines shall ~~allow~~ use a current validated risk and needs assessment as defined in Section 12-25-32, past criminal history, program completion, institutional misconduct, and other individual characteristics related to the likelihood of offending in the future to be factored into the release decision while working to allocate prison space for the most violent and greatest risk prisoners.

(5) Ensure that the provisions of subsections (k) and (l) of Section 15-22-24 are implemented relating to the supervision and treatment of parolees.

(6) Establish criteria, guidelines, and procedures to discharge parolees from parole supervision requirements prior to the expiration of the full maximum term for which the parolee was sentenced, unless the parolee was convicted of a violent offense as defined in Section 12-25-32, which shall

include review of a parolee for discharge from parole supervision at least every two years if the parolee has satisfied all financial obligations owed to the court, including restitution, and has not had his or her supervision revoked.

(c) Notwithstanding any other provision of law to the contrary, subsections (a) through (c) of Section 41-22-5~~(a)-(c)~~, Section 41-22-5.1(b), Section 41-22-6, and subsections (a) through (e) and subsection (g) of Section 41-22-23~~(a)-(e), (g)~~ of the Alabama Administrative Procedure Act shall apply to the board's adoption, amendment, or repeal of rules, procedures, guidelines, or other policies, except rules, procedures, guidelines, or other policies concerning the supervision of parolees or probationers. The Alabama Administrative Procedure Act shall not otherwise apply to the board. The notice required by ~~subdivision (a)(1) of~~ Section 41-22-5(a)(1) shall be given, and notice shall be given to the Governor and Attorney General or their designees.

(d) The Director of Pardons and Paroles shall post on the board's website the guidelines provided under subdivision (b)(4) and the board's existing rules, procedures, guidelines, or other policies concerning the grant or denial of pardons, the grant or denial of paroles, the restoration of political and civil rights, the remission of fines and forfeitures, and the revocation of parole."

"§15-22-43

(a)(1) The Board of Pardons and Paroles shall establish a special medical parole docket and adopt the rules for

implementation pursuant to Section 15-22-24(e). For each person considered for medical parole, the board shall determine whether the person is a geriatric inmate, permanently incapacitated inmate, or terminally ill inmate for purposes of placing the person on a special medical parole docket to be considered for parole by the board. An open public hearing shall be held, pursuant to Section 15-22-23, to consider the medical parole of the inmate. Notices of the hearing shall be sent pursuant to Sections 15-22-23 and 15-22-36. The notice shall clearly state the inmate is being considered for a medical parole.

(2) The Department of Corrections shall immediately provide, upon request from the board, a list of geriatric, permanently incapacitated, and terminally ill inmates who are otherwise eligible for parole, subject to the limitations provided under Section 15-22-28(e). By January 1 of each calendar year, the Department of Corrections shall additionally identify all inmates who have spent more than 30 or more days in an infirmary in the prior calendar year or received costly and frequent medical treatment outside a Department of Corrections facility in the previous 12 months, as well as all inmates suffering from a life-threatening illness and whose death is imminent within 12 months, who are otherwise parole eligible, subject to the limitations provided under Section 15-22-28(e), and shall immediately provide this information to the board to determine if identified inmates may be considered for a medical parole.

(3) Upon a determination that the inmate is eligible

for a medical parole, the board shall place the inmate on the next available special medical parole docket pursuant to rules adopted by the board for the board to consider the individual for medical parole.

(4) The board shall hold a medical parole hearing within 30 days of an inmate being placed on the list of geriatric, permanently incapacitated, or terminally ill inmates.

(b) Medical parole consideration shall be in addition to any other release for which an inmate may be eligible.

(c) In considering an inmate for medical parole, the board may request that additional medical evidence be produced, or that additional medical examinations be conducted by the Department of Corrections.

(d) In determining factors for a medical parole, the board shall take into consideration all of the following:

(1) Risk for violence.

(2) Criminal history.

(3) Institutional behavior.

(4) Age of the inmate, currently and at the time of the offense.

(5) Severity of the illness, disease, or infirmities and whether the same existed at the time of the offense.

(6) All available medical and mental health records.

(7) Reentry plans, which include alternatives to caring for terminally ill or permanently incapacitated inmates in traditional prison settings.

(e) This article shall not apply to inmates ~~convicted~~

serving a life without parole sentence for a conviction of capital murder or to inmates convicted of a Class A felony sex offense, as provided in Section 15-20A-5.

(f) Unless provided otherwise in this article, any medical parole under this article shall comply with Article 2, Chapter 22, Title 15.

(g)(1) An inmate whose medical parole was denied shall have the right to seek judicial review of the denial as provided in this subsection.

(2) Within 28 days of receiving from the board, in writing, the reason for the denial of parole, the inmate, or an individual acting on the inmate's behalf, may appeal the decision.

(3) The venue for an appeal shall be the circuit court of the county of conviction.

(4) The petition shall be heard by the circuit judge who presided over the trial or, if the judge is no longer serving, by any of the circuit judges in the circuit where the inmate was convicted.

(5) Review by the court shall be de novo by the circuit court without a jury.

(6) The decision by the circuit court may be appealed pursuant to the court of criminal appeals and is subject to the Rules of Appellate Procedure.

~~(g)~~(h) The board shall report annually to the Joint Legislative Interim Prison Committee, House Judiciary Sentencing Commission Subcommittee, the Joint Prison Oversight Committee, and the Alabama Sentencing Commission on the number

of medical paroles granted, the nature of the illnesses, diseases, and conditions of those paroled, the number of inmates granted and denied medical parole, and the number of cases granted medical parole, but that could not be released. The crimes for which the inmates have been convicted shall also be provided in the annual report. The report shall be made in a manner that does not disclose any individual identifying information for any particular inmate and shall be compliant in all respects with the Health Insurance Portability and Accountability Act.

~~(h)~~ (i) This article shall not be deemed to grant any entitlement or right to release."

Section 2. Section 14-14-5, Code of Alabama 1975, is amended to read as follows:

"§14-14-5

(a) An inmate, or any concerned person, including, but not limited to, the inmate's attorney, family, physician, or an employee or official of the department may ~~initiate consideration~~ apply for medical furlough by submitting to the department ~~an initial~~ a medical ~~release~~ furlough application form along with supporting documentation as required by the department. The department shall provide an inmate with a copy of all supporting documentation upon the inmate's request. Supporting documentation shall include all of the following:

(1) Information concerning the inmate's medical history, prognosis, and age.

(2) Medical authorization form.

(3) ~~(b) (1) The initial application form shall include~~

~~the~~ A report of a physician ~~or physicians~~ employed by the department or its health care provider ~~and a~~ stating that the physician is of the opinion that the inmate is either terminally ill, permanently incapacitated, or that the inmate suffers from a chronic infirmity, illness, or disease related to aging.

(4) A notarized report of at least one other duly licensed physician who is board certified in the field of medicine for which the inmate is seeking a medical furlough, ~~and~~ who is not an employee of the department~~. These reports shall each be~~, stating that the physician is of the opinion that the inmate is either terminally ill, permanently incapacitated, or that the inmate suffers from a chronic infirmity, illness, or disease related to aging.

~~(2)~~(b) The commissioner shall provide the ~~initial~~ medical furlough application form and medical authorization forms to all department medical care providers~~, and~~. Additionally, the forms shall be available at every correctional facility for distribution to inmates.

(c) Consideration for medical furlough shall be initiated by the submission of ~~an~~ a medical furlough application form, along with supporting documentation, to the commissioner from the department, the inmate, or the inmate's representative~~, along with the department's supporting documentation to the commissioner~~.

(d) If the appropriate medical documentation pursuant to subsection ~~(b)~~(a) has indicated that the inmate is a geriatric inmate, permanently incapacitated, or terminally

ill, the commissioner, within 60 days of receipt of ~~an initial~~ a medical furlough application form, shall make a decision regarding the release of the inmate on medical furlough pursuant to ~~the provisions of~~ this chapter. ~~The initial application form and supporting document of inmates, who have been diagnosed by a physician as suffering from a chronic illness or disease related to aging, shall be submitted to the commissioner within 60 days of receipt of the application by the department. Supporting documentation shall include information concerning the inmate's medical history and prognosis, age, and institutional behavior. At the inmate's request, the department shall also provide a copy of all supporting documentation to the inmate.~~

(e) In determining eligibility factors for a medical furlough, the commissioner shall take into consideration all of the following factors:

(1) Risk for violence.

(2) Criminal history.

(3) Institutional behavior.

(4) Age of the inmate, currently and at the time of the offense.

(5) Severity of the illness, disease, or infirmities.

(6) All available medical and mental health records.

(7) Release plans, which include alternatives to caring for terminally ill or permanently incapacitated inmates in traditional prison settings.

(f)(1) If the commissioner determines that a geriatric inmate, permanently incapacitated inmate, or terminally ill

inmate meets the requirements for release to medical furlough pursuant to this chapter, the commissioner shall release the inmate on medical furlough pursuant to ~~the provisions of~~ this chapter within 90 days of receipt by the commissioner of the ~~initial~~ medical furlough application form and supporting documentation.

(2) An inmate released on medical furlough may reside in this state or another state.

(g) The commissioner ~~shall have the authority to~~ may revoke the inmate's furlough pursuant to ~~subsection (h) of~~ Section 14-14-4(h).

~~(g)~~(h) At least 30 days prior to release of a geriatric inmate, permanently incapacitated inmate, or terminally ill inmate under subsection (f), the commissioner shall provide notification of the medical furlough release to the district attorney of the jurisdiction where the inmate was last sentenced and shall also provide notification of the medical furlough release to the victim, victim's representative, and other interested individual via certified mail, return receipt requested, or by using the automated victim notification system as provided in Section 15-22-36 and Section 15-22-36.2."

Section 3. This act shall become effective on October 1, 2024.