

2022 Regular Session

HOUSE BILL NO. 1077 (Substitute for House Bill No. 744 by Representative Gaines)

BY REPRESENTATIVES GAINES, EDMONSTON, LANDRY, MACK, AND CHARLES OWEN

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 allow for parole eligibility for persons convicted by a  
6 verdict rendered by a non-unanimous jury; to establish a review board for cases in  
7 which a non-unanimous jury verdict was rendered; to provide for an effective date;  
8 and to 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 on parole

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

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 Subparagraphs (1)(a), (b), and (c) of this Subsection. This member  
9           shall be of the same qualifications as the special committee members and shall only  
10          serve in an ad hoc capacity should any committee member be unable to serve for any  
11          reason. The ad hoc member shall be from the same category as the member who is  
12          unavailable to serve.

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

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

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

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

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

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

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

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

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

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

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

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

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

27           F.(1)(a) Notwithstanding any provision of law to the contrary, any person  
28           currently incarcerated who alleges a conviction for an offense rendered by a

1 non-unanimous jury shall be entitled to file an application with the special committee  
2 under the provisions of this Section, regardless of the term of imprisonment imposed.

3 (b) The petitioner shall use the Uniform Application for Special Parole  
4 Consideration approved by the Supreme Court of Louisiana. The application shall  
5 be signed by the petitioner and be accompanied by a certified copy of the entirety of  
6 the record of the proceedings relative to the petitioner's direct appeal of the  
7 conviction on which the petitioner's application is based and the petitioner's affidavit  
8 that the allegations contained in the application are true and accurate to the best of  
9 petitioner's information and belief. If no direct appeal has been taken, the application  
10 shall be accompanied by a certified copy of the trial court record.

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

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

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

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

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

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

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

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

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

26                (v) The length of deliberations.

27                (vi) The nature of the offense.

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

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

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

7           (3)(a) The special committee may not grant or deny parole without a hearing  
8           on the petitioner's application. The special committee shall schedule an application  
9           for hearing at the soonest available committee meeting, but in no event prior to the  
10          receipt of the certified copy of the petitioner's record of the proceedings upon which  
11          the petitioner's application is based. In addition to notifying the petitioner that the  
12          matter has been set for hearing, the special committee shall notify the district  
13          attorney in the judicial district where the conviction occurred, and the victim, or a  
14          relative of a deceased victim, of the time and date of the hearing.

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

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

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

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

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

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

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

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

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

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

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

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#### 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)]

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HB 1077 Engrossed

2022 Regular Session

Gaines

**Abstract:** Provides relative to conviction in 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 DPS&C to create and establish the Special Committee on Parole for Non-unanimous Jury Convictions (special committee) 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 the special committee shall consist of three retired appellate court judges or supreme court justices appointed by the governor, one retired district attorney or assistant district attorney appointed by the governor from a list of three nominations by the La. District Attorneys Assoc., one retired public defender or assistant public defender appointed by the governor from a list of three nominations by the La. Public Defender Board, and one ad hoc member from each of the categories established by proposed law.

Proposed law requires petitioner to submit a 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. Further provides permissive factors that the special committee may consider in determining whether the non-unanimous verdict resulted in a miscarriage of justice.

Proposed law requires a favorable vote of three of the five members of the special committee for an affirmative finding that the petitioner's conviction was both the result of a non-unanimous jury verdict and the non-unanimous verdict resulted in a miscarriage of justice.

Proposed law requires a unanimous vote of the special committee for an affirmative finding that the petitioner's conviction was both the result of a non-unanimous jury verdict and the non-unanimous verdict resulted in a miscarriage of justice for petitioners serving a life sentence.



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 provides that if an application is granted resulting in parole release, the petitioner's term of supervised release shall be the remaining term of the original sentence of conviction or as commuted by the governor. Further provides that upon completion of a minimum of one-half of the term of parole supervision or 25 years, whichever is less, the offender may subsequently petition the committee on parole for consideration of early termination of parole supervision, as provided by proposed law (R.S. 15:574.7(E)).

Proposed law provides for a termination date three years after the effective date of proposed law or upon a ruling that Ramos v. Louisiana is retroactive, which is earlier.

Proposed law provides for retroactive application.

Proposed law provides that a petitioner that avails himself of the provisions of this Act shall not be prohibited from obtaining additional relief.

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

(Adds R.S. 15:574.2.2)