

2023 Regular Session

HOUSE BILL NO. 588

BY REPRESENTATIVES GAINES AND MACK

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 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.

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, four of the five 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 parole 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 a uniform application for special consideration
11 developed and approved by the special committee. The application shall be signed
12 by the petitioner and accompanied by a certified copy of the entirety of the record
13 of the proceedings relative to the petitioner's direct appeal of the conviction on which
14 the petitioner's application is based and petitioner's affidavit that the allegations
15 contained in the application are true and accurate to the best of petitioner's
16 information and belief. If no direct appeal has been taken, the application shall be
17 accompanied by a certified copy of the trial court record.

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

27 (d) Any documents requested by a petitioner pursuant to Subparagraph (1)(e)
28 of this Subsection from the clerk of court of the parish of conviction shall be made
29 available by the clerk of court to the petitioner no later than ninety days after the

1 request is made. A petitioner requesting a certified copy of the record on direct
2 appeal or trial court record for purposes of submitting with an application for relief
3 pursuant to this Section shall be deemed indigent for purposes of the cost of
4 production of the requested record. If the requested documents are unavailable, the
5 clerk of court shall certify the reasons why the requested documents are unavailable
6 and shall provide the certification to the petitioner within ninety days of the request.

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

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

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

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

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

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

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

4 (v) The length of deliberations.

5 (vi) The nature of the offense.

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

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

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

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

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

26 (c) In all instances where the petitioner is serving a life sentence, an
27 affirmative vote of three of the three members of the special committee shall be
28 required for both an affirmative finding that the petitioner's conviction was the result

1 of a non-unanimous jury verdict and that the non-unanimous verdict resulted in a
2 miscarriage of justice.

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

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

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

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

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

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

28 (7) All qualified victims, as provided by R.S. 46:1842 et seq., shall be
29 afforded opportunity and access to all victim services available through the

1 Department of Public Safety and Corrections Victim Services section throughout the
2 entirety of the process from initial application through the duration of any potential
3 release.

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

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

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 Engrossed

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 Dept. of Public Safety and Corrections (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)

Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Judiciary to the original bill:

1. Change the quorum requirement from three out of five members to four out of five members.
2. Remove the requirement that a uniform application for special consideration be approved by the Supreme Court of La., and provide that the special committee develop and approve the uniform application.
3. Change the affirmative vote requirement for petitioners serving a life sentence from two out of three votes to three out of three votes.