

Rule Book

Georgia

State Board of Pardons and Paroles

59556

...e Street, N.E.
...gia 30308
(404) 894-5360



1979

A Message to the Reader

This new Rule Book makes an organized presentation of policies, procedures, and Constitutional and statutory laws used by the State Board of Pardons and Paroles in its administration of executive clemency. It is intended to present clearly and simply the information which may be useful to inmates, court officials, parole and prison personnel, attorneys, and other interested persons. Significant additions since the last edition in 1975 are sections on The Role of a Parole Board (page 4), Parole Rating Guidelines (page 9), Pre-Parole Investigations (page 14), and Youthful Offender Conditional Release (page 27).

James F. Morris, Chairman
State Board of Pardons and Paroles

CONTENTS

FUNDAMENTALS	3
Paramount Duties of Board	3
The Role of a Parole Board	4
Rule-Making Authority	5
Tuesdays Reserved for Visitors	5
Representation by Attorneys	5
Records Kept of Board Contacts	6
Written Communication Preferred	6
Confidentiality of Records	6
Obtaining Confidential Information	6
Unclassified Information	6
Majority Vote Decides Clemency	7
Acceptance of Conditions in Writing	7
Withdrawal of Grant of Clemency	7
Probation Is Not Parole	7
Parole Board Does Not Run Prisons	7
Earned Time	8
ACQUISITIONS	
PAROLE	9
Parole Rating Guidelines	9
Parole Consideration	10
Parole Decision by Independent Judgment	10
Notification of Parole Decision	11
Work Release Referral	11
Consideration After Parole Denial	11
Consideration After Escape	11
Consideration After Parole Revocation	11
Time-Served Requirements for Parole	12
Consecutive and Concurrent Sentences	12
Persons Sentenced Under Youthful Offender Act	12
Exceptions to Time-Served Rules	12
Notification of Judge and District Attorney	13
Pre-Parole Investigations	14
Important Factors in Parole Decision	15
Statewide Inmate Interview Program	16
Visitors Welcome Every Tuesday	16
Recommendations for Parole	16
Recommendations Against Parole	16
Employment and Residence Plans	17
Out-of-State Parole	17
Detainer and Conditional Transfer	17
Waiver of Parole Consideration	18
Parole Supervision	18

Conditions of Parole	18
Arrest of Parolee	20
Preliminary Hearing for Alleged Violator	20
Final Hearing for Alleged Violator	20
Discharge from Parole	21
Early Discharge from Parole	21
Removal of Disabilities to Allow Military Enlistment	21
REPRIEVE	22
Reprieve for Compassionate Reasons	22
Reprieve for Medical Reasons	23
COMMUTATION	24
Commutation of Unjust Sentence	24
Commutation of Death Sentence	24
Commutation to Discharge Parolee	25
Commutation to Credit Reprieve Time	25
Commutation to Credit Jail Time	25
Commutation to Credit Hospital Time	25
REMISSION	26
Supervision After Remission	26
Violation and Hearings	26
YOUTHFUL OFFENDER CONDITIONAL RELEASE	27
Court Selects Youthful Offenders	27
Board Guidelines Determine Contracted Release Date	27
Poor Performance is Penalized	28
Parole Consideration	28
Release of Youthful Offender	28
Discharge from Youthful Offender Supervision	28
PARDON	29
Basis for Granting Pardon	29
REMOVAL OF DISABILITIES	30
Restoration of Civil and Political Rights	30
Automatic Rights Restoration	30
CONSTITUTIONAL PROVISIONS	31
STATUTORY PROVISIONS	34
PAROLE ELIGIBILITY SCHEDULE . Inside Back Cover	

Fundamentals

The State Board of Pardons and Paroles is composed of five members appointed by the Governor for seven-year terms subject to confirmation by the State Senate. Each year the Board elects one of its members to serve as chairman.

The Board was established in 1943 by an amendment to the Georgia Constitution and functions as part of the Executive Branch of State government. The Board is attached, for the purpose of receiving administrative support, to the Department of Offender Rehabilitation but performs its duties independently of that Department. Members of the Board serve ex-officio in an advisory capacity to the Board of Offender Rehabilitation.

Paramount Duties of Board

These are the paramount duties of the Board:

- To release under parole supervision or on other supervised release, in accordance with established eligibility rules, all inmates who the Board believes will remain at liberty without violating the law and whose release will be compatible with the welfare of society;
- To make every feasible effort to bring about the rehabilitation of those inmates released;
- To return promptly to custody releasees who are unable to adjust and who violate conditions of their releases;
- To protect society by not releasing inmates shown to be a menace to society, except when an inmate would be discharged soon without supervision at the end of his sentence and it is thought better to return him to society under strict supervision;

- To grant reprieves and pardons, commute penalties, remove disabilities imposed by law, and remit any part of a sentence for any offense against the State except in cases of treason or impeachment and except when the Governor refuses to suspend a sentence of death;
- To determine which persons may be granted clemency and to set the conditions for persons granted conditional clemency.

The Role of a Parole Board

Executive clemency has a long history in America. It is typically administered today by an independent parole board, which performs a function vital if criminal justice is to remain a flexible and continuing process throughout. The parole board's existence assures that the executive branch of government, in addition to the legislative and judicial, has a discretionary role in criminal justice.

The principle of separation of powers is upheld when the judiciary's regular involvement in a case ends at the time the offender is sentenced to prison. Then the parole board begins monitoring the inmate and drawing knowledge of the case from the court, police, prison, and society to form the basis of a just decision to grant or deny clemency.

Persons are sentenced to prison for four purposes: punishment, incapacitation, deterrence, and rehabilitation. A parole board studies the need for and accomplishment of each of these purposes in each case being considered. Justice demands that the handling of each case should be tailored to the crime and to the offender.

A parole board's view of a case necessarily differs from that of a local court or law enforcement agency; the board can compare the case with thousands of others statewide. The board's unique central position and authority allow it to reduce sentencing disparity. Excessive harshness is more readily reduced, but excessive leniency in the form of a too-light confinement sentence may be corrected partially by parole denial.

It would be difficult to over-estimate the importance of a parole board's investigative and decision-making authority being centralized. Any substitute prisoner-release mechanism triggered by numerous officials scattered in courthouses or prisons would be destined to be inequitable and probably not in the best interests of the citizens' safety or taxpayers' pocketbooks.

Parole supervision works. This is the message from the Uniform Parole Reports Program of the National Council on Crime and Delinquency. Parole revocation rates nationwide have consistently been well below the recidivism rates for persons discharged straight from prison. In Georgia the parolee success

rate regularly exceeds the national average.

Discretion in releasing inmates appears inevitable. The question is where discretion is best placed and how it is best applied. The answer is provided in an independent, informed, just, and careful parole board.

Rule-Making Authority

The Board may at any time adopt rules not inconsistent with the law.

The Board's rules are published by the Secretary of State in *Rules and Regulations of the State of Georgia*. This is in accordance with Section 77-525 of the Georgia Code Annotated, which reads in part as follows:

"All rules and regulations adopted pursuant to the provisions of this section shall be adopted, established, promulgated, amended, repealed, filed and published in accordance with the applicable provisions and procedures as set forth in the Georgia Administrative Procedure Act (Title 3A), and the courts shall take judicial notice of any such rules or regulations."

Tuesdays Reserved for Visitors

Anyone wishing to speak with a Board representative about a case may come to the Board's headquarters on any Tuesday which is not a State holiday between 8:15 a. m. and 4:15 p.m. No appointment is needed. The Board welcomes inmates' relatives, friends, and attorneys and others desiring to speak for or against clemency.

Representation by Attorneys

Representation by an attorney is not necessary for any type of clemency consideration. Consideration for parole is automatic, and application for other types of clemency is easy. Board procedures are not too formal or complex for the average person to understand. The decision whether to employ an attorney is a personal decision by the offender, ex-offender, or anyone acting in his behalf.

Only licensed attorneys who are active members, in good standing, of the State Bar of Georgia may appear before the Board *for a fee*. The Board may require an attorney representing a person before the Board to file a sworn statement as to whether he is receiving a fee.

A member of the Georgia General Assembly or other elected or appointed State official may not charge a fee for appearing before the Board regardless of whether he is an attorney.

Records Kept of Board Contacts

The Board maintains a written record of every person contacting a Board member on behalf of an inmate. This record includes the name and address of the contacting person and the reason for the contact.

Written Communication Preferred

The Board greatly prefers receiving written communication on a case rather than oral communication so that such communication may readily be made a permanent part of the case file.

Confidentiality of Records

All information, both oral and written, received by the Board in the performance of its duty and which is not public record elsewhere and was not obtained in a public Board hearing is classified as confidential State secret unless declassified by resolution of the Board. Confidential information includes investigative and supervisory reports and recommendations for and against clemency.

Obtaining Confidential Information

The Board will consider declassifying confidential information on rare occasions, such as when it is legitimately needed in a prosecution or legal defense. Requests for declassifying information must be submitted to the Board in writing specifying the information desired and the reason it is desired.

The Board will not consider disclosing that a clemency vote of any type was unanimous or split, how it was split numerically, or how any member voted except on request of the Governor or Attorney General. The Board may on its own motion disclose this information only by unanimous consent of all Board members.

The Board Chairman may disclose, at his discretion, sufficient information to correct or refute misleading or erroneous allegations and when it is deemed in the best interests of the public and the parole system.

Unclassified Information

The Board will disclose unclassified information when requested in writing with stated reasons or, at the Board's discretion, when requested in person or by telephone. The following case information is unclassified: offender's name, alias, serial number, sex, race, offense, court of conviction, sentence, date and computed starting date of sentence, scheduled discharge date, parole eligibility date, institution where offender is or was confined, dates of escape and recapture, detainers against offender,

whether case is under active consideration, grant of clemency, outstanding Board arrest warrant, transcript of hearing for alleged violator of clemency conditions, revocation or cancellation of conditional clemency, and all other records and documents which were public when received.

Also unclassified are the Board's reports required by law to be made to the Governor, General Assembly, and State Auditor.

Majority Vote Decides Clemency

A decision to grant any type of clemency is by majority vote.

Acceptance of Conditions in Writing

An inmate is informed of the conditions of his parole, re-prieve, or other conditional clemency and must accept all conditions by signing the clemency document before the clemency will become effective.

Withdrawal of Grant of Clemency

The Board reserves the right to withdraw the grant of any form of clemency prior to the effective date if, in its discretion, it believes withdrawal to be justified.

Probation Is Not Parole

Probation is not an act of the State Board of Pardons and Paroles. Probation is an act of a court. Probation is not parole. Parole may be granted by the Parole Board after a person has served part of his sentence in prison. Probation instead of imprisonment may be ordered by a court for all or part of a person's sentence.

Both a probationer and a parolee are under supervision and must obey certain conditions, which, if violated, may lead to revocation. The Parole Board may revoke parole. The sentencing court which ordered a person placed on probation is the only agency which may revoke that probation.

Questions about a person's probated sentence should be directed to the sentencing court.

Parole Board Does Not Run Prisons

The State Board of Pardons and Paroles has no responsibility to run the State prison system. Only the Department of Offender Rehabilitation administers the prisons, transfers an inmate from one prison to another, assigns an inmate to prison programs, makes an inmate a trusty, gives an inmate a furlough at special times like Thanksgiving and Christmas, computes time to be served, issues time sheets, provides medical care, grants visiting

and mail privileges, and takes prison disciplinary action, including suspension of earning Earned Time. The Parole Board is not responsible for any of those things. Questions about those things should be directed to the Department of Offender Rehabilitation, 800 Peachtree Street, N.E., Atlanta, Georgia 30308.

Earned Time

The State Board of Pardons and Paroles does not administer the system of crediting Earned Time to an inmate's sentence for good behavior or good performance in prison. Only the Department of Offender Rehabilitation may credit, suspend the earning of, and remove Earned Time in prison. This system permits service of a non-life prison sentence in one-half its stated length.

When a person is released on parole or other supervised release, his projected prison discharge date with credited Earned Time becomes his projected date for discharge from supervision.

Parole

Parole is the discretionary release of an offender from confinement, after he has served part of his sentence, under continuing State custody and supervision and under conditions which, if violated, permit his reimprisonment. In Georgia, State and county inmates may be granted parole only by the State Board of Pardons and Paroles.

Parole Rating Guidelines

In the latter half of 1979 the Parole Board plans to begin using parole rating guidelines to help render even more prompt, consistent, soundly based, and explainable parole decisions. The guidelines will incorporate the Board's philosophy that the more serious an inmate's offense, the longer he should be confined, and that the greater the probability he may violate parole, the less likely he will be paroled.

The guidelines will be structured around a list of offenses ranked by the five Members according to offense severity. A second list will contain the other significant factors, such as prior criminal record and drug-abuse history, which have been scientifically identified from Georgia parolee records. An inmate's parole risk level will be determined by adding variously weighted unfavorable criminal and social characteristics, which increase his chances of becoming a parole failure. A guidelines chart will guide the Board to determine how long an inmate with a certain crime-severity level, parole risk level, and court-imposed sentence length should serve in prison. Eventually, the plan is to tell the inmate early in his sentence exactly where he stands. (The guidelines will not be applied to inmates serving life sentences.)

When the guidelines are fully implemented, it is intended to have a felony inmate interviewed within weeks after he enters a State prison. Following that, the Board expects to complete its

investigations into his criminal and social history. Ultimately, it plans within nine months to tell him whether to expect parole; if affirmative, when he may expect it; and show him, using the guidelines chart, why. If an inmate is given a tentative parole release date, it will be stressed to him that the parole will be postponed or cancelled if his prison record is not satisfactory.

Because no chart can encompass all possible circumstances surrounding a parole decision, sometimes there will be a case in which the Board, in rendering its decision, decides to depart from guidelines. In such case the openness will continue via the requirement that any deviation from the guidelines will be justified in a written statement of the Board's reasons.

The guidelines' most visible result will be to open to public scrutiny the parole decision process. When operational, the system should reveal and regulate the consistent exercise of discretion in paroling offenders and should provide for them an intelligently administered alternative to further incarceration.

Parole Consideration

An inmate serving a State felony or State misdemeanor sentence in the custody of the Department of Offender Rehabilitation is automatically considered for parole at the proper time. No application is necessary.

An inmate serving a county misdemeanor sentence is considered for parole at the proper time if he has requested consideration.

The Board will consider an inmate for parole regardless of appeals or other legal action by the inmate or his representative. If the offender, since receiving his current sentence, has not at any time entered custody of the Department of Offender Rehabilitation, he must request parole consideration.

A request for parole consideration may be in any written form and must contain name under which the inmate was convicted, place where serving, offense(s), date(s) and court(s) of conviction, and length(s) of sentence(s). The request should be submitted as early as possible to allow enough time for necessary investigations.

The Board may decide not to consider paroling an offender serving a Georgia sentence in custody at an out-of-State or Federal prison or at a mental hospital when favorable action of the Board would not result in the offender's release from confinement.

Parole Decision by Independent Judgement

When an inmate is considered for parole, the case file is given to one of the five Board members, who studies it, deliber-

ates alone, and renders his independent decision. Then a staff member transfers the file to a second Board member, who writes his decision. This process continues until three decisions favoring parole or three decisions against parole have been collected. Thus every parole decision is the decision of a majority of the Board.

Notification of Parole Decision

On the same day an inmate's parole certificate is issued, he is sent a letter informing him of his tentative release date, which is approximately fourteen days later. A decision to grant parole is always tentative and may be reconsidered and reversed for cause prior to the inmate's release.

An inmate denied parole is sent a letter informing him of the decision and giving reasons without disclosing confidential sources of information or possibly discouraging diagnostic opinions.

Work Release Referral

When an inmate is considered for parole, the Board may postpone a final parole decision until the inmate successfully completes at least four months on Work Release. An inmate thus selected for Work Release referral will be notified by letter, a copy of which will be sent to his warden. To the Work Release administrator in the Department of Offender Rehabilitation will go another copy, which will communicate the Board's request that the inmate be placed on Work Release.

Consideration After Parole Denial

An inmate not subject to parole rating guidelines who is denied parole is scheduled for his next parole consideration not more than three years later.

Consideration After Escape

An inmate who has escaped will not be considered for parole until his return to custody of Georgia prison authorities. If he was considered for parole before his escape, he will be scheduled for his next consideration one to three years after recapture.

Consideration After Parole Revocation

A person returned to prison after parole revocation or Youthful Offender Conditional Release revocation will be scheduled for parole consideration one to three years after revocation unless the Board directs otherwise in its order of revocation, votes to consider the case earlier, or unless a new sentence supersedes the revoked sentence for the purpose of computing parole eligibility.

Time-Served Requirements for Parole

Persons serving felony sentences or combination felony and misdemeanor sentences of less than twenty-one years become eligible for parole consideration after serving nine months or one-third of their sentences, whichever is greater.

Persons serving felony sentences or combination felony and misdemeanor sentences of twenty-one or more years, including a life sentence, become eligible for parole consideration after serving seven years.

Persons serving only misdemeanor sentences become eligible for parole consideration after serving six months or one-third of their sentences, whichever is greater.

To equate justice or in the best interests of society, the Board may make individual exceptions to the above time-served rules.

Overriding the above rules where applicable, the Georgia Constitution states that persons who are convicted of Armed Robbery (committed on or after January 1, 1977) cannot be paroled or pardoned before serving at least five years, and states that persons whose death sentences are commuted by the Board to life imprisonment (on or after January 1, 1977) cannot be paroled or pardoned before serving 25 years.

Consecutive and Concurrent Sentences

When two or more sentences are to be served consecutively, the correct parole eligibility date will be the eligibility date computed for a sentence equal to the total of the consecutive sentences.

When two or more sentences are to be served concurrently, a parole eligibility date will be computed for each concurrent sentence. The date which is furthest in the future will be the correct parole eligibility date. However, if any concurrent sentence is too short with all possible Earned Time for it to have a parole eligibility date, that particular sentence must be completed with all possible Earned Time before parole consideration may take place.

Persons Sentenced Under Youthful Offender Act

A person sentenced under the *Youthful Offender Act of 1972* will be considered for parole after serving one-third of his maximum sentence. Such an offender will be released earlier if he fulfills contracted release requirements set for his particular case. (See pages 27, 28.)

Exceptions to Time-Served Rules

An inmate or his representative may apply to the Board in any written form presenting substantial evidence as to why the inmate

should be considered for parole prior to his eligibility date. In determining whether to begin an investigation for a possible parole exception, the Board will consider the following:

- (1) A *substantial showing* that the sentence was excessively harsh and that a failure to grant an exception would be a miscarriage of justice.
- (2) A *substantial showing* of the necessity for early consideration to promote rehabilitation of the inmate. For example, such showing might include the inmate's proposed admission, within three months of the regular parole consideration date, into a college, university, technical school, or other educational facility which has accepted him for enrollment. Consideration will be given to the recommendation of the Department of Offender Rehabilitation, convincing evidence that the inmate can and will improve his situation through an early release and that he has already made substantial progress toward rehabilitation and will abide by the rules of a free society, and convincing evidence that continued incarceration of the inmate will serve no beneficial purpose.

The Board emphasizes that family circumstances, business affairs, hardship, sickness, need, and other reasons shared almost universally by inmates are not such evidence on which the Board will make an exception.

The Board considers a sentence imposed by a court to be fair, just, and correct unless there is a substantial showing to the contrary. Eligibility requirements must normally be adhered to so that inmates may receive equitable treatment. General statements from officials or private individuals regarding an application for an exception are helpful but alone are not sufficient for the Board to make an exception.

When an application for an exception presents substantial and convincing evidence, the Board initiates a thorough investigation and, based on evidence so gathered, decides whether to consider the case further.

When a case is considered for an exception, any codefendants are considered simultaneously provided the codefendants received sentences equal in length. This does not mean the same action will be taken.

Notification of Judge and District Attorney

When the Board considers paroling an inmate before he has served the time required for automatic initial consideration, the

Board is required by law to notify in writing, at least ten days before formal consideration, the sentencing judge and district attorney of the county where the inmate was sentenced to give them an opportunity to express their views.

When the Board has decided tentatively to grant parole to a felon with two or more felony convictions prior to the offense for which he is currently serving, the district attorney of the judicial circuit in which the inmate was convicted of his present offense will under Board policy be notified and given the opportunity to be heard by the Board.

Pre-Parole Investigations

Before the Board initially considers an inmate for parole, it conducts investigations, detailed reports of which become a part of the Board's case file, which is separate from files maintained by the Department of Offender Rehabilitation.

First, a parole officer studies arrest and court records and may talk with arresting officers, court officials, victims, and witnesses so he can write a *Legal Investigation* report on the details of the inmate's current offense and a summary of any prior offenses in the same county.

Next, a parole officer interviews the inmate and completes a *Personal History Statement* questionnaire. The inmate is asked, among other things, where he has resided, attended school, and worked; who his family members are and where they live; whom he has chosen as references; where he plans to live and work; and what his own account is of his crime.

Finally, a parole officer conducts a *Social Investigation*, which includes interviews with persons mentioned in the Personal History Statement as well as others. The written report presents a revealing picture of the inmate's life from birth to current imprisonment and may also indicate the degree of his truthfulness.

Before any inmate is paroled, the Board reviews a *Parole Review Summary* from the Department of Offender Rehabilitation. This discusses the inmate's behavior, attitude, physical status, mental and emotional condition, participation in activities, and performance in work and training.

The Board may, at its discretion, request detailed psychological and/or psychiatric opinions before considering a case.

Other documents in the case file usually include a Federal Bureau of Investigation record of arrests and convictions, Classification and Admission Summary (on the inmate's condition when he entered prison), Disciplinary Reports, all letters received, and summaries of information from headquarters visitors.

Important Factors in Parole Decision

Certain factors have been designated by the Board as especially important when a person is considered for parole. The Board will not parole an inmate if there is substantial reason to believe he will engage in further criminal conduct or will not conform to specified conditions of parole. In its thorough and impartial investigations the Board will take into account any or all of the following factors:

I. Prior History

- A. The inmate's employment history, education, and occupational skills and training (including military training).
- B. The inmate's past illegal use of controlled substances or past habitual and excessive use of alcohol.
- C. Any recommendations made by the sentencing court.
- D. The inmate's behavior and attitude during any previous experience of probation or parole, and the recency of such experience.
- E. Circumstances of the offense for which the inmate is serving a sentence.
- F. Any protests or recommendations filed with the Board regarding the inmate's suitability for parole.
- G. Any record which the inmate may have of past offenses.
- H. The inmate's reputation in the community.

II. Prison Record

- A. The inmate's ability and readiness to assume obligations and undertake responsibilities.
- B. The inmate's vocational, educational, and other training since incarceration.
- C. The inmate's conduct during his term of imprisonment.
- D. Any noticeable attitudinal change since the offense for which the inmate was incarcerated.
- E. The physical and emotional status of the inmate.
- F. The inmate's positive efforts on behalf of himself or on behalf of others.

III. Forward View

- A. The inmate's family status, including whether his relatives display an interest in him or whether he has other close and constructive associations in the community.
- B. The type of residence, neighborhood, or community in which the inmate plans to live.

- C. The adequacy of the inmate's plans or prospects upon release.
- D. The availability of community resources to assist the inmate.

Statewide Inmate Interview Program

Time does not permit Board members personally to interview every inmate being considered for parole. However, under a continuing Board program, inmates nearing their parole consideration date are automatically selected for interview by a Board member if they meet certain criteria, which are available in writing on request.

Visitors Welcome Every Tuesday

The Board believes that enough information for parole consideration is obtained through regular official investigations. Therefore, the Board neither asks nor expects anyone to come to its Atlanta headquarters in behalf of an inmate being considered for parole. Nevertheless, any person wishing to speak with a Board representative about a case is welcome to come to the Board's headquarters on any Tuesday which is not a State holiday between 8:15 a.m. and 4:15 p.m. No appointment is needed. Because the Board may begin reviewing a case before the scheduled consideration month, a person desiring to talk about an inmate's parole consideration should do so as early as possible.

Recommendations for Parole

Soliciting recommendations or signatures on petitions is not required for favorable parole consideration. The views of persons familiar with a case are obtained through regular official investigations and kept confidential. The Board discourages seeking recommendations from officers of a court because many court officials do not consider this a proper judicial function. However, the Board welcomes information from any source, public or private, which may shed additional light on a case and welcomes voluntary recommendations or information from court and other public officials, from the inmate's relatives, neighbors, and friends, and from all others.

Recommendations Against Parole

The Board welcomes receiving all available information on a case, both favorable and unfavorable, and keeps such information and its source strictly confidential. Recommendations against

granting parole should be made in writing over the signature of the writer or in person, and all reasons for opposing parole should be fully explained.

Employment and Residence Plans

It is necessary that an inmate have an acceptable employment offer or other definite means of support and an acceptable residence plan before his release on parole although not necessarily before the Board renders its decision. Special forms for offering employment and residence are available from the Board on request. The Board may, at its discretion, not require an employment plan for an aged or disabled inmate.

Out-of-State Parole

An inmate who wants to be paroled to another state should notify the Georgia State Board of Pardons and Paroles of his specific residence and employment plans, giving complete addresses. He may do this by informing the parole officer who interviews him for the Personal History Statement before his initial consideration or by writing directly to the Board.

A prospective parolee has legitimate reasons to request out-of-State parole if he has been a resident of the proposed receiving state, if his family lives there, and if suitable employment can be arranged before his release. The proposed receiving state will investigate the inmate's parole plans and will decide whether to accept him for supervision. The Georgia Board must also approve the inmate's parole plans, and only the Georgia Board may grant parole.

Detainer and Conditional Transfer

A detainer indicating that an inmate is wanted to face charges or serve a sentence may be filed with the Department of Offender Rehabilitation by authorities in Georgia, another state, the Federal system, or the military.

A detainer does not prevent an inmate from being considered at his normal parole consideration date. However, an inmate granted clemency would be conditionally transferred directly to the custody of the detaining authority. Only if the detaining authority released the person before the end of his Georgia sentence could his status, at the Board's discretion, actually become that of a parolee.

Because detainers against Georgia inmates are filed with the Department of Offender Rehabilitation, all inquiries about them should be directed to that Department or to the detaining authority.

Waiver of Parole Consideration

An inmate may waive parole consideration by notifying the Board in writing of this desire. The inmate may withdraw his waiver by notifying the Board in writing. A waiver may not be withdrawn before it has been in effect thirty days. An inmate thinking of temporarily waiving parole consideration should realize that a waiver halts or prevents pre-parole case investigations which may take three months to complete. Therefore, a parole-eligible inmate who withdraws his waiver must then wait several months before his case is ready for consideration.

Parole Supervision

When released from confinement on parole, a parolee must report to his assigned parole officer without delay. The parole officer has two major responsibilities. First, the officer is a counselor who may help the parolee with family, budget, and job-placement problems, etc., or may refer the parolee to an appropriate agency for help. Second, the officer is responsible for assuring that the parolee understands the conditions of his release and that the conditions are followed.

Conditions of Parole

A person released on parole must agree to obey all conditions listed on the back of his parole certificate. Violation of any condition may result in arrest and parole revocation. The thirteen standard conditions of parole, which apply to *all* parolees, are as follows:

1. **FIRST REPORT:** Within 48 hours of my release I will report to my Parole Officer, either by personal visit or by telephone, and will deliver or mail to my Parole Officer the Notice of Arrival form.
2. **REGULAR REPORTS:** I will, between the first and fifth days of each month until my discharge from parole, make a full and truthful written report to my Parole Officer on the form provided for that purpose. I will report in person to my Parole Officer at the times and places I am instructed to report.
3. **RESIDENCE:** I will not change my residence without first getting permission from my Parole Officer. I will not abscond from parole supervision. I agree that my required residence is as follows:

4. EMPLOYMENT: I will work diligently at a lawful occupation and support my legal dependents, if any, to the best of my ability. I will not quit my job without first getting permission from my Parole Officer. I agree that my required employment is as follows:
5. LEAVING STATE: I will not leave my State of residence, even briefly, without first getting permission from my Parole Officer.
6. DANGEROUS DRUG AND ALCOHOL: I will not possess or use any dangerous drug or other substance controlled by law which is not prescribed for me by a physician. I will not use an alcoholic beverage to excess.
7. PERSON AND PLACE OF BAD REPUTATION: I will not knowingly associate with any former inmate of a penal institution, any person who has been convicted of a felony, or any person of bad reputation. I will not visit a place of bad reputation where disorderly conduct may occur or which is frequented by persons of ill repute.
8. WEAPON: I will not possess or have under my control any firearm or other deadly weapon.
9. MOTOR VEHICLE: I will not purchase or have interest in any type motor vehicle without first getting permission from my Parole Officer.
10. CURFEW: I will not be away from my residence of record between the hours of 12:00 midnight and 6:00 a.m. unless required to do so in connection with my employment.
11. LAW: I will not violate the law of any governmental unit.
12. QUESTIONS AND INSTRUCTIONS: I will promptly and truthfully answer all questions from the State Board of Pardons and Paroles and its authorized representatives and carry out all instructions from them.
13. IMMEDIATE NOTIFICATION: I will immediately notify my Parole Officer if I am arrested for any offense, including a traffic offense, or if there is any change in my residence or employment.

In addition, the Board may require special conditions appropriate to the individual case and designed to help the parolee succeed on parole.

Arrest of Parolee

When a parolee has reportedly violated a condition of his release, a Board warrant may be issued for his arrest. If the alleged violation is absconding from parole supervision or if the parolee is otherwise not available to the Board for a hearing, a temporary revocation order may be issued. This order suspends the running of the sentence from the date of the order.

Preliminary Hearing for Alleged Violator

A parolee charged with violating a parole condition will be afforded a preliminary hearing within a reasonable time at or near the site of the alleged violation before a Board hearing examiner not directly involved in the case. The purpose of this hearing is to determine whether there is probable cause to believe the parolee violated a parole condition and whether he should be held under arrest pending the Board's decision on revocation.

The parolee will be given sufficient notice of the preliminary hearing to prepare his case. At the preliminary hearing the parolee may be represented by an attorney. The parolee may present witnesses and documentary evidence in his own behalf and cross-examine witnesses unless the hearing examiner conducting the hearing determines that a witness's safety would be jeopardized by revealing his identity. The parolee will be invited to make statements and answer questions but will not be required to do so.

The hearing examiner who conducts the preliminary hearing may subpoena witnesses resident within the county of the alleged violation to appear at the hearing. He may also issue subpoenas for the production of documents or other written evidence at the hearing.

A preliminary hearing need not be held when the parolee has been convicted of a new felony or misdemeanor in a court of record, has absconded from supervision, has signed a waiver of preliminary hearing, has admitted the violation to his parole officer, or has not been arrested on a Board warrant prior to a final hearing.

Final Hearing for Alleged Violator

A parolee charged with violating a parole condition will be afforded a final hearing before the Board unless he has been convicted of a new felony or misdemeanor in a court of record or admits the violation and signs a waiver of final hearing, but in

either case the Board may decide to allow the parolee to continue on parole. The final hearing will be an informal, non-adversary proceeding, and the Board will consider all relevant evidence and information.

At the final hearing the parolee will have the same rights a parolee has at a preliminary hearing as specified above.

The Board may subpoena witnesses from throughout Georgia to appear at the final hearing and may issue subpoenas for the production of documents or other written evidence at the hearing.

After the final hearing the Board will decide by majority vote whether to continue or revoke parole.

Discharge from Parole

When a person is released on parole, his projected prison discharge date with credited Earned Time becomes his projected date for discharge from parole supervision.

Early Discharge from Parole

The Board will consider granting an early discharge from parole, upon petition from the parole officer, when the parolee has served four years on parole on a life sentence with a *satisfactory* adjustment in society or three years on parole on a life sentence with an *exemplary* adjustment in society; or when the parolee has served three years on parole on a lesser sentence with a *satisfactory* adjustment in society or two years on parole on a lesser sentence with an *exemplary* adjustment in society. The parolee who meets these requirements may apply to the Board through his parole officer for a Restoration of Civil and Political Rights with commutation. (See page 30.)

Removal of Disabilities to Allow Military Enlistment

A parolee, not an inmate, may apply to the Board in writing for removal of disabilities to allow his enlistment in the United States armed forces. If granted, such clemency may be suspension of parole supervision or early discharge from parole. A Board order removing disabilities will not become effective until the Board receives official notification of enlistment.

Reprieve

Reprieve is the temporary suspension of a prison sentence to release an offender under conditions which, if violated, permit his reimprisonment. A reprieve may be granted by the State Board of Pardons and Paroles to release an inmate for compassionate reasons, for medical reasons, or for other reasons defined by Board policy. Because a reprieve, unlike a parole, is a sentence suspension, a reprievee returned to prison as a reprieve violator receives no credit on his sentence for the time spent on reprieve.

Reprieve for Compassionate Reasons

A reprieve lasting a few hours or a few days may be granted to an inmate so that he may visit a critically ill member of his immediate family or attend the funeral of a member of his immediate family. A reprieve may also be granted when a natural disaster or other unusual occurrence threatens the welfare of the inmate, members of his family, or the public at large. A reprieve for compassionate reasons will be granted at the Board's discretion only when it has been determined that the reprieve is compatible with the best interests of society and the State. An inmate granted a reprieve of this type will have the reprieve period credited to his sentence if he does not violate a condition of the reprieve.

If there is not enough time to submit a request for a reprieve in writing, the Board will accept a request in person or by telephone. The request should include the name of the critically ill patient and his illness or the name of the deceased, telephone number of physician or funeral director who will confirm this information, relation of patient or deceased to inmate, hospital where patient is being treated or date, time, and location of funeral, a proposed residence during reprieve, and travel arrangements.

A prison warden, following certain standards set by the De-

partment of Offender Rehabilitation, may authorize an emergency special leave within Georgia when there is serious illness or death in an inmate's immediate family. Therefore, an inmate thinking of requesting a reprieve for compassionate reasons from the Board should first request, if policy permits, an emergency special leave from his warden.

Reprieve for Medical Reasons

A medical reprieve may be granted to an inmate when it is shown he is suffering from a definable illness for which necessary treatment is available only outside the State prison system. The written request for such a reprieve should be supported by a specific and detailed statement from a physician. An inmate thinking of requesting a medical reprieve from the Board should first determine through his warden whether a special leave may be authorized by the Department of Offender Rehabilitation.

Commutation

Commutation is the reduction of a sentence to one which is less severe.

Commutation of Unjust Sentence

The Board will consider commuting a sentence, other than a death sentence, only when it receives substantial written evidence that the sentence is either excessive, illegal, unconstitutional, or void; evidence that justice would be served by a commutation; and evidence that commutation would be in the best interests of society and the inmate. Application may be in any written form.

Without convincing evidence to the contrary, the Board presumes that a court sentence is fair and correct.

Commutation of Death Sentence

The Board will consider an application for commutation of a death sentence and will hold a hearing if feasible. When sufficient time for consideration does not remain, the Board will request the Governor to grant a stay of execution. If the Governor refuses the Board's request for a stay of execution, the Board is prohibited under the Georgia Constitution from granting clemency in the case.

Application for commutation of a death sentence may be in any written form and must contain grounds on which the request is based. A copy of the application normally will be furnished to the district attorney of the judicial circuit of conviction at least five days before the hearing. The Board requests that an application for commutation of a death sentence not be submitted until all legal remedies in State and Federal courts have been exhausted. If no application is submitted, the Board itself may initiate consideration of commutation.

In each case the Board conducts a thorough investigation. The Board studies the detailed circumstances of the offense,

the offender's background, the conduct of the trial, the appellate record, and extensive interviews with persons whose knowledge may shed additional light on the case. Substantial evidence of sufficiently mitigating facts is required to justify commutation.

The Board may commute a death sentence by majority vote.

The Georgia Constitution states that a person whose death sentence is commuted by the Board to life imprisonment (on or after January 1, 1977) cannot be pardoned or paroled before serving 25 years.

Commutation to Discharge Parolee

When a person receives early discharge from parole through a Restoration of Civil and Political Rights, this clemency includes a commutation of his sentence to present service. (See page 30.)

Commutation to Credit Reprieve Time

When an inmate receives a reprieve for compassionate reasons, a commutation will credit his sentence with the time spent on reprieve *if* he completes the reprieve period without violating reprieve conditions. (See pages 22, 23.)

Commutation to Credit Jail Time

An inmate sentenced before July 1, 1970, may request the Board to consider granting credit on his sentence for the time he spent in jail before sentencing. If this time is officially verified, it may be credited through commutation. Application may be in any written form.

All inmates sentenced on or after July 1, 1970, should have jail time credited to their sentences automatically by the Department of Offender Rehabilitation.

Commutation to Credit Hospital Time

An inmate sentenced before July 1, 1970, may request the Board to consider granting credit on his sentence for the time he spent in a facility for examination or treatment of a physical or mental disability before sentencing. This must have been an examination or treatment ordered by the court as a result of the offense for which the inmate later received his prison sentence. If this time is officially verified, it may be credited through commutation. Application may be in any written form.

All inmates sentenced on or after July 1, 1970, should have such examination and treatment time credited to their sentences automatically by the Department of Offender Rehabilitation.

Remission

Remission of a sentence is the lessening of the duration of confinement without reducing the length of sentence. The Board may remit all or part of a confinement sentence to probation.

Supervision After Remission

An offender whose confinement sentence is remitted to probation must report to a parole officer, who will explain the release conditions.

Violation and Hearings

An offender whose confinement sentence was remitted to probation by the Board and who is accused of violating a condition of release will be subject to the same arrest and hearing procedures and afforded the same rights applicable to an accused parole violator. (See page 20.)

Youthful Offender Conditional Release

Youthful Offender Conditional Release is the release of an offender from confinement who was sentenced under the *Youthful Offender Act of 1972* and who has fulfilled contracted release requirements. The Board releases him under continuing State custody and supervision and under conditions which, if violated, permit his reimprisonment.

Court Selects Youthful Offenders

A person age 17 to 25 who is convicted of a non-capital felony may be sentenced to prison under the *Youthful Offender Act of 1972*. The sentencing court alone decides who will be so sentenced. The selected offender receives an indeterminate sentence of zero to six years unless the statutory maximum for his offense is less than six years, in which case he receives a sentence of zero to whatever is the maximum, or unless a probated sentence (not First Offender Act) with less than six years remaining is revoked and the offender is committed to confinement under the Youthful Offender Act, in which case he receives a sentence of zero to whatever is the remaining time. As an inmate he enters the Youthful Offender Program administered by the Department of Offender Rehabilitation but with release and revocation authority vested in the State Board of Pardons and Paroles.

Board Guidelines Determine Contracted Release Date

The Department of Offender Rehabilitation negotiates a behavioral contract with a Youthful Offender for his release at a specified date provided he completes stated programs, accomplishes stated rehabilitative goals, and maintains satisfactory conduct. The contracted release date is selected by the Department guided by Board-established categories of confinement lengths, which take into account the inmate's offense, prior history, and

28 YOUTHFUL OFFENDER CONDITIONAL RELEASE

personal needs. To become effective, the contract must be endorsed by the inmate, the Department, and the Parole Board.

Poor Performance is Penalized

A Youthful Offender who fails to fulfill his contracted release requirements may have his release date postponed.

Gross misbehavior or willful lack of effort to fulfill release requirements may result in the inmate's removal from the Youthful Offender Program. Removal may be by the Department of Offender Rehabilitation acting alone or at the recommendation of the State Board of Pardons and Paroles.

Parole Consideration

An inmate sentenced as a Youthful Offender who has not been contractually released by the time he completes one-third of his maximum sentence is at that time considered for parole.

Release of Youthful Offender

A Youthful Offender who fulfills his contract is granted a Youthful Offender Conditional Release by the Board. The releasee is supervised by a parole officer and must obey the same standard conditions a parolee must obey (see page 18) as well as any special conditions appropriate to the case.

A releasee accused of violating a condition of his Youthful Offender Conditional Release will be subject to the same arrest and hearing procedures and afforded the same rights applicable to an accused parole violator. (See page 20.)

A releasee whose release is revoked may or may not be returned to the Youthful Offender Program. If he is, a new release contract will be negotiated. If he is not, he will be considered for parole within three years after revocation.

Discharge from Youthful Offender Supervision

When a person is released on Youthful Offender Conditional Release, his projected prison discharge date with credited Earned Time becomes his projected date for discharge from supervision. After being supervised for one year, the releasee *may* be recommended by his parole officer for early discharge.

Pardon

A pardon is a declaration of record by the Board that a person is relieved from the legal consequences of a particular conviction. It restores civil and political rights and removes all legal disabilities resulting from the conviction.

Basis for Granting Pardon

A pardon may be granted in two instances:

- (1) A pardon may be granted to a person who proves his innocence of the crime for which he was convicted under Georgia law. Newly available evidence proving the person's complete justification or non-guilt may be the basis for granting a pardon. Application may be submitted in any written form any time after conviction.
- (2) A pardon which does not imply innocence may be granted to an applicant convicted under Georgia law who has completed his full sentence obligation, including serving any probated sentence and paying any fine, and who has thereafter completed five years without any criminal involvement. The five-year waiting period after sentence completion may be waived if the waiting period is shown to be detrimental to the applicant's livelihood by delaying his qualifying for employment in his chosen profession. Application must be made by the ex-offender on a form available from the Board on request.

No pardon is automatic; the Board judges the merits of each individual case.

The Georgia Constitution states that persons who are convicted of Armed Robbery (committed on or after January 1, 1977) cannot be pardoned or paroled before serving at least five years, and states that persons whose death sentences are commuted by the Board to life imprisonment (on or after January 1, 1977) cannot be pardoned or paroled before serving 25 years.

Removal of Disabilities

Under the Georgia Constitution, a person convicted of a felony or any other "crime involving moral turpitude, punishable by the laws of this State with imprisonment in the penitentiary," loses his civil and political rights, including the right to vote, the right to hold public office, and the right to serve on a jury. Using an application form available on request, a person who was convicted under Georgia law may apply to the Board for a Restoration of Civil and Political Rights. If the person was convicted under another state's law or under Federal law but is residing in Georgia and wishes to exercise civil and political rights in this State, he also may apply.

Restoration of Civil and Political Rights

A Restoration of Civil and Political Rights carries no implication of innocence and may be granted only to a person who has completed his sentence or served four years on Georgia parole on a life sentence with a satisfactory adjustment in society (three years with exemplary adjustment) or served three years on Georgia parole on a lesser sentence with a satisfactory adjustment in society (two years with exemplary adjustment).

Automatic Rights Restoration

The Board automatically restores civil and political rights to a felony parolee or Youthful Offender Conditional Releasee upon discharge from supervision if he has no other sentence to serve or pending criminal charge against him.

Constitutional Provisions

The State Board of Pardons and Paroles was Constitutionally created in 1943 by an amendment to the Constitution of the State of Georgia of 1877. The amendment, which was ratified by the voters on August 3, 1943, gave the Board clemency powers and duties formerly held by the Governor. These provisions were later made a part of the Constitution of 1945 and subsequently a part of the Constitution of 1976.

The Constitutional provisions regarding the Board are as follows:

The matter set forth below is taken from Georgia Code Annotated and is here reproduced by permission of the copyright owner, The Harrison Company, Norcross, Georgia.

CHAPTER 2-20. STATE BOARD OF PARDONS AND PAROLES

2-2001 (Art. IV, Sec. II) Paragraph I. State Board of Pardons and Paroles

There shall be a State Board of Pardons and Paroles to be composed of not less than five or more than seven members, the number to be determined by the General Assembly. The successors to the present members and all members of the board who are subsequently appointed to fill vacancies occurring because of the expiration of terms of office shall be appointed for terms of seven years unless removed from office for cause, as hereinafter provided. In the event of a vacancy for any reason other than the expiration of term, such vacancy shall be filled in the manner hereinafter provided for the unexpired term. All appointments to the board shall be made by the Governor and shall be subject to the confirmation of the Senate. Any member of the board may be removed from office for cause by the unanimous action of the Governor, Lieutenant Governor and Attorney General or by judgment of the Senate in a trial of impeachment. The present members of the board shall serve out the terms to which they were appointed. The Governor shall not be a member of the State Board of Pardons and Paroles. The General Assembly shall fix the

compensation of the members of the board, but until changed by the General Assembly, the members shall continue to receive that compensation which the present members are receiving. The State Board of Pardons and Paroles shall have power to grant reprieves, pardons and paroles, to commute penalties, remove disabilities imposed by law, and may remit any part of a sentence for any offense against the State, after conviction except in cases of treason or impeachment, and except in cases in which the Governor refuses to suspend a sentence of death. When a sentence of death is commuted to life imprisonment, the board shall not have the authority to grant a pardon to the convicted person until such person has served at least 25 years in the penitentiary, and such person shall not become eligible for parole at any time prior to serving at least 25 years in the penitentiary. When a person is convicted of armed robbery, the board shall not have the authority to consider such person for pardon or parole until such person has served at least five years in the penitentiary. The board shall act on all applications within 90 days from the filing of same, and in all cases a majority shall decide the action of the board. If any member for any cause is unable to serve in any case involving capital punishment when the board shall consist of three members, the Governor shall act as the third member of said board and the action so taken in such instance shall be by unanimous vote. The State Board of Pardons and Paroles shall at each session of the General Assembly communicate to that body in full detail each case of pardon, parole, commutation, removal of the convict, the offense for which he was convicted, the sentence and its date, the date of the pardon, parole, commutation, removal of disabilities or remission of sentence and the reasons for granting the same, and the State Board of Pardons and Paroles may make rules and regulations as may be authorized by law.

Each year the board shall elect one of its members to serve as chairman of the board for the ensuing year. The General Assembly may enact laws in aid of, but not inconsistent with, this Paragraph.

Cross References

Legislation constituting the Board of Pardons and Paroles and defining its powers and duties, see Title 77, Penal Institutions, Chapter 77-5. Compensation and allowances of board, see §§ 89-724, 89-725.

Editorial Note

This section was a portion of Const. 1945, § 2-3011. The remainder of Const. 1945, § 2-3011, will be found in § 2-2802 of the 1976 Constitution. The following changes were made in this section of the 1976 Constitution.

"Three" was changed to "five" to reflect the current membership size of the Board as changed by the General Assembly in 1973.

Language was added to continue current members through their respective terms.

Language was changed to provide that all members of the Board are subject to the removal for cause provision. The 1972 Amendment to the 1945 Constitution covered only the additional members, if added by the General Assembly, the successors to the present members, and all members subsequently appointed to fill vacancies.

Surplus language was deleted from the sentence relative to the authority of the General Assembly to set the compensation of the members of the Board.

The sentence providing that the Governor shall serve as the third member of the Board under certain circumstances was deleted as meaningless, because the Board size has been increased from three to five members.

Acts 1976, p. 1865, proposed the above as a complete supersedeas of the former section. Ratified, Nov. 2, 1976. As to incorporation of this amendment to the 1945 Constitution into the 1976 Constitution, see § 2-7003.

ANNOTATIONS

Letter of resignation

Undated letter of resignation signed by new member of Pardon and Paroles Board at demand of Governor was in clear violation of this provision of Constitution. Instead of making full-term appointment of seven years, Governor, by virtue of purported letter of resignation, attempted to make appointment to continue only so long as he wished. 227/623 (182 S. E. 2d 450).

Limitation on authority

Ga. Laws 1976, p. 1865, which became effective on January 1, 1977, is limitation on authority of State Board of Pardons and Paroles to grant pardons or paroles to persons whose death penalties are commuted by Board of Pardons and Paroles after January 1, 1977, or persons who are convicted of armed robbery after January 1, 1977. Op. Atty. Gen. 77-17.

Statutory Provisions

The Georgia General Assembly at its regular session in 1943 enacted legislation, signed into law by the Governor on February 5, 1943, which provided for the establishment and operation of the State Board of Pardons and Paroles pending ratification later that year of the Constitutional Amendment creating the Board.

The statutory provisions regarding the Board as enacted in 1943 and as later amended are as follows:

The matter set forth below is taken from Georgia Code Annotated and is here reproduced by permission of the copyright owner, The Harrison Company, Norcross, Georgia.

CHAPTER 77-5. BOARD OF PARDONS AND PAROLES

Sec.	
77-501	State Board of Pardons and Paroles; creation, members, appointment
77-502	Same; term of office, vacancies
77-502.1	Members of State Board of Pardons and Paroles unable to serve; council; suspension of member; appointment of person to serve in place and instead of member
77-502.2	Same; reinstatement of member when incapacity overcome
77-502.3	Same; cases involving capital punishment
77-503	Same; salaries; traveling expenses
77-504	Same; chairman, secretary
77-505	Same; official seal
77-506	Same; quorum
77-507	Same; Attorney General as legal adviser
77-508	Same; office, supplies, equipment
77-509	Same; clerical and other help and assistants
77-510	Same; qualifications of members
77-511	Power of board to grant reprieves, pardons, and paroles. Duty to supervise parolees, aid parolees and probationers, and study cases of prisoners
77-511.1	Transfer of functions
77-512	Obtaining information respecting persons subject to relief by board; records
77-513	Vote required to extend clemency; written opinions
77-514	Prerequisites to probation, parole, and pardon
77-515	Terms and conditions of parole. Status of parolees. Peonage forbidden

- 77-516 Information to be used by board in considering cases. Disposition of prisoners pardoned or paroled
- 77-516.1 Procedure when board considers cases in which prisoner has failed to serve the time required by law for automatic initial consideration
- 77-517 Terms of parole; imposition, and penalty for violation
- 77-518 Arrest of parolee or conditional releasee violating terms of parole or release
- 77-518.1 Same; preliminary hearing
- 77-519 Final hearing; finding of board; conviction of crime
- 77-520 Time of discharge from parole. Granting privileges to, and pardoning, parolee
- 77-521 Duty of prison authorities to cooperate with board
- 77-522 Preservation of documents on which clemency based. Conditional pardons forbidden
- 77-523 Power of Governor to suspend sentences and to grant pardons and paroles
- 77-524 Effect of law on probation power of courts. Duty of board to cooperate with probation agencies
- 77-525 Power of board to adopt rules and regulations
- 77-526 Duty of board to make reports
- 77-527 Effect of law on other laws respecting parole and probation
- 77-528 Effect of pardon in relieving from disabilities
- 77-529 Effect of law on previously granted pardons, paroles, and probations
- 77-530 Liberal construction
- 77-531 Transfer of pardon and parole records to State Board of Pardons and Paroles
- 77-532 Effect of partial invalidity of law
- 77-533 Secrecy of information; public hearings
- 77-534 Legislative policy
- 77-535 Advisory staff abolished
- 77-536 Same; appointment; terms
- 77-537 Same; compensation
- 77-538 Same; duties; examination of applicants for parole; reports on examinations
- 77-539 Same; offenses constituting sex crimes; time of examination by advisory staff; unfavorable reports referred to district attorney; hearing; hospitalization
- 77-540 Same; cooperation with committee; records
- 77-541 Practice of law before State Board of Pardons and Paroles
- 77-542 Record to be kept of persons contacting members of State Board of Pardons and Paroles on behalf of prisoners
- 77-543 Removal for cause of members of State Board of Pardons and Paroles; definitions
- 77-544 Same; rules and regulations; promulgation
- 77-545 Same; rules and regulations; contents
- 77-546 Same; Administrative Procedure Act not applicable to removal committee.
- 77-547 Unlawful for members of General Assembly or other State elective or appointive official to accept compensation for appearing before State Board of Pardons and Paroles
- 77-548 Same; exceptions

Cross References

Reprieves, pardons and probation, see Chapter 27-27.

Editorial Note

This Chapter, as it originally appeared in the Code 1933, constituted the Prison Commission a board of pardons, with the duty of investigating applications for executive clemency and making recommendations to the Governor thereon, under rules prescribed in the Chapter. For the subsequent history of the Prison Commission and the later changes in the jurisdiction of the Prison Commission and its successors over clemency matters, see the Editorial Note to Chapter 77-3.

The Act of 1943, codified in this Chapter, creates the entirely new State Board of Pardons and Paroles, whose sole function is to deal with paroles, pardons and all matters relating to executive clemency. By amendment to Art. V. Sec. I, Par.

XII of the Constitution of 1877, which was made part of the Constitution of 1945 (see § 2-3011), the new board is made a constitutional body. The Constitution and the Act confer upon the board practically all the clemency powers formerly conferred upon the governor. See §§ 2-311, 77-511.

The Act of 1943 does not expressly repeal any prior law, but contains only the usual general provision repealing conflicting laws. Since, however, it sets up entirely new machinery for the exercise of clemency, creating a new board to deal with the subject-matter in a new way, it would seem to have the effect of repealing all prior laws relating to clemency. "While repeals by implication are not favored and the intention to repeal must be plain and unmistakable, yet a repeal by implication will result where a statute is manifestly intended to cover the subject-matter of a former statute and to act as a substitute for it, notwithstanding the express provisions of the acts are not repugnant." *Atlanta v. Goodman*, 183 Ga. 834 (129 S. E. 829) and cases cited.

It follows that both the provisions of Chapter 77-5 in the Code of 1933 and subsequent provisions supplementing or modifying such provisions are repealed by necessary implication. The subsequent provisions thought to be so repealed, and therefore omitted from this codification, will be found in Acts 1937-38, Extra. Sess., pp. 200, 276, and Acts 1941, p. 273.

77-501 State Board of Pardons and Paroles; creation, members, appointment

There shall be a State Board of Pardons and Paroles, which shall consist of five members appointed by the Governor, subject to confirmation of the Senate.

(Acts 1943, p. 185; 1973, pp. 157, 158.)

Cross References

Constitutional provision creating board as constitutional body, see Const. 1945, § 2-3011.

Editorial Note

Acts 1973, pp. 157, 158, entirely superseded the former section, the effect being to increase the number of members from three to five in conformity with the 1972 amendment to Const. 1945, § 2-3011.

Annotations

Cited. 227/623 (182 S. E. 2d 450).

77-501.1 Same; size of board increased; terms of office; vacancies

The fourth and fifth members of the board, appointed pursuant to the provisions of this Amendment [§§ 77-501, 77-501.1], their successors, the successors to the present members and all members of the board who are subsequently appointed to fill vacancies shall serve on the board for a period of seven years or until they shall be removed from office for cause by the unanimous action of the Governor, Lieutenant Governor, and Attorney General or by the judgment of the Senate in a trial of impeachment. All appointments to the board shall be made by the Governor and shall be subject to the confirmation of the Senate. Appointments made at times when the Senate is not in session shall be effective ad interim. The fourth and fifth members shall be appointed within 30 days of the effective date of this law.

(Acts 1973, pp. 157, 158.)

77-502 Same; terms of office, vacancies

The first members shall be appointed for terms of three, five and seven years, respectively, to be designated by the Governor, and at the expiration of said terms their successors shall be appointed for terms of seven years. All of said terms shall date from January 1,

1943. Vacancies shall be filled by appointment by the Governor, subject to the confirmation of the Senate, for unexpired terms. Appointments made at times when the Senate is not in session shall be effective ad interim.

(Acts 1943, p. 185.)

Annotations

Cited. 227/623 (182 S. E. 250).

77-502.1 Members of State Board of Pardons and Parole unable to serve; council; suspension of member; appointment of person to serve in place and stead of member

Whenever the Governor from his own knowledge or upon receiving information, deemed by him to be reliable, that any member of the State Board of pardons and Paroles is by reason of illness or other providential cause unable to perform the duties of his office, he shall call a council to be composed of the president of the Medical Association of Georgia, the president of the State Bar of Georgia, and the Director of the Department of Public Health of the State of Georgia for the purpose of ascertaining whether or not any such member is in fact unable to perform the duties of his office.

In the event the president of the Georgia Medical Association is disqualified or unable for any cause to serve on said council he shall appoint some other member of the Georgia Medical Association, preferably an elected officer therein to serve in his place and stead, and he shall notify the Governor of his appointee.

In the event the president of the State Bar of Georgia is disqualified or unable for any cause to serve on said council he shall appoint some other member of the State Bar of Georgia, preferably an elected officer therein to serve in his place and stead, and he shall notify the Governor of his appointee.

In the event the Director of the Department of Public Health is disqualified or unable for any cause to serve on said council the Chairman of the State Board of Health, if he be a physician who is licensed under the Georgia Medical Practice Act (Chapter 84-9), shall serve in the place and stead of the director. In the event the Director of the Department of Public Health and the chairman of the State Board of Health are disqualified or unable for any cause to serve on said council, the Chairman of the State Board of Health shall designate a physician who is licensed under the Georgia Medical Practice Act (Chapter 84-9) and who is a member of the State Board of Health to serve in their place and stead, and he shall notify the Governor of his appointee.

The Governor shall inform the council of the information that has caused him to believe that any such member is unable to perform the duties of his office and if such council, or a majority thereof, after a full investigation and examination into the truth of such information, shall, in writing duly signed, find that such member is incapacitated to perform the duties of his office, the Governor shall execute an executive order relating such facts and such member shall thereupon be suspended from performing the duties of his office the Governor shall appoint a person to perform the duties of such member of the State Board of Pardons and Paroles during his incapacity.

The person appointed to perform the duties of any such member of the State Board of Pardons and Paroles shall give bond with good security as required of other members of the State Board of Pardons and Paroles, shall be given the same oath of office as other members of the State Board of Pardons and Paroles, and shall be issued a commission as a member of the State Board of Pardons and Paroles which shall be effective so long as such member performs the duties of a member of the State Board of Pardons and Paroles. Upon giving said bond as herein required, upon taking the oath as herein required, and upon being issued his commission as herein authorized, shall be authorized to do everything, perform every act and exercise every prerogative and discretion that any other member of the State Board of Pardons and Paroles might do, perform or exercise under existing law in the absence of his incapacity.

The person appointed to serve as a member of the State Board of Pardons and Paroles in the place and stead of an incapacitated member shall be subject to the confirmation of the Senate if the Senate is in session at the time of his appointment or convenes in session prior to the expiration of his appointment. Any such appointment made at times when the Senate is not in session shall be effective ad interim.

During the period of incapacity of any such member of the State Board of Pardons and Paroles, such member shall be entitled to receive the compensation and such other benefits as may be provided by law or otherwise for members of the State Board of Pardons and Paroles.

Notwithstanding any other law to the contrary, such appointee may be an elected official, appointed official, appointed official or an employee of the State of Georgia. The order appointing such person to serve in the place and stead of any such incapacitated member shall include the compensation, not to exceed the compensation received by other members of the State Board of Pardons and Paroles, to be received by such person.

No member of the commission designated in this section shall be civilly or criminally liable for his action and doings as a member of said commission and this provision may be pleaded as an absolute defense in any civil or criminal proceedings relative thereto.

(Acts 1970, pp. 729, 730.)

Cross References

Removal for cause of members of State Board of Pardons and Paroles, see §§ 77-543 through 77-546.

Editorial Note

For the effect of the Executive Reorganization Act of 1972 on the positions of Director of the Department of Public Health and Chairman of the State Board of Health, see §§ 40-35123.2, 99-3503 et seq.

77-502.2 Same; reinstatement of member when incapacity overcome

Whenever the Governor upon his own knowledge or upon receiving information, deemed by him to be reliable, that the member of the State Board of Pardons and Paroles who has been determined incapacitated to perform the duties of his office has overcome his incapacity, that said incapacity has been removed or

said incapacity has ceased, shall call the council that previously examined the member of the State Board of Pardons and Parole who was found to be incapacitated to perform the duties of his office or call a council comprised of the persons set forth in section 77-502.1, or whenever the council from their own knowledge or upon receiving information, deemed by them to be reliable, that the member of the State Board of Pardons and Paroles who has been determined incapacitated to perform the duties of his office has overcome his incapacity, that said incapacity has been removed or said incapacity has ceased, may call themselves into session for the purpose of ascertaining whether or not any such member of the State Board of Pardons and Paroles is in fact able to resume the performance of the duties of his office.

The Governor shall inform the council of the information that has caused him to believe that such person is able to resume the performance of the duties of his office and if such council, or a majority thereof, after full investigation and examination into the truth of such information or the information that has been given to the council, shall, in writing duly signed, find that the incapacity of such member has ceased and that such member is capable of assuming the performance of duties of his office, the Governor shall execute an executive order relating such facts and such member shall thereafter assume and perform the duties of his office and the term of the member of the State Board of Pardons and Paroles appointed to perform the duties of such member shall terminate.

(Acts 1970, pp. 729, 732.)

77-502.3 Same; cases involving capital punishment

In the event any member of the State Board of Pardons and Paroles is disqualified or unable to serve in any case involving capital punishment and the Governor is also disqualified or for any cause is unable to act as the third member of the State Board of Pardons and Paroles, the Governor or the person exercising the executive power shall, by executive order, appoint a person to serve in the place and stead of the Governor.

Notwithstanding any other law to the contrary, such appointee may be an elected official, appointed official or an employee of the State of Georgia. The order appointing such person to serve in the place and stead of any such member and the Governor shall include the compensation to be received by such person.

(Acts 1970, pp. 729, 733.)

Editorial Note

Although §§ 2-3011 and 77-501 have been amended to provide for a five-member Board of Pardons and Paroles, this section has not been amended to take into account the increased membership.

77-503 Same; salaries; traveling expenses

The members of the board shall devote their full time to the duties of their office. The salary and travel expense of the members of the board shall be \$5,000 per annum payable in equal monthly installments and each member shall, in addition to said salary and in lieu of any subsistence and necessary travel expense provided therein, receive the sum of \$300 per month, plus transportation

fare and per diem if travel is made by railroad or bus, or the regular mileage fee fixed by this Chapter where private car is used in the performance of official duties.

(Acts 1943, p. 185; 1947, pp. 673, 674; 1952, pp. 6, 7.)

Editorial Note

The first sentence of this section is from the Act of 1943, which created the board. That Act fixed the salary of each member at \$5,000 per annum and provided that "each member shall be allowed necessary expenses when traveling in the performance of the duties of the office." The Act of 1947 is a rewriting of the provisions respecting salary and expenses, and those provisions appear here as they were written in that Act.

The words, "this Chapter," near the end of the section, are substituted for the words "said Act," referring to the Act of 1943, which occur in the Act of 1947. Attention is called to this fact for the purpose of noting that "said Act" (of 1943)—and therefore "this Chapter"—contains no provision fixing any "regular mileage fee." Mileage for State officials is generally governed by § 40-2002.

The Act of 1952 changed the sum to be received per month, in addition to salary from \$150 to \$300.

Although this section was not specifically amended or repealed, Acts 1973, p. 701, codified as §§ 89-723 through 89-726, provided for salary increases for certain State officials including the members of the Board of Pardons and Paroles.

Annotations

Cited. 227/623 (182 S. E. 2d 450).

77-504 Same; chairman, secretary

The Governor shall biennially appoint one of the members of the board as chairman, who shall serve until his successor is appointed and qualified. As soon as practicable after their appointment, the members of the board shall meet and select from their number a secretary, who shall serve for a period of two years or until his successor is appointed and qualified. Neither the chairman nor the secretary shall draw any salary from the State in addition to that which he receives as a member of the board.

(Acts 1943, pp. 185, 186.)

77-505 Same; official seal

The board shall adopt an official seal of which the courts shall take judicial notice.

(Acts 1943, pp. 185, 186.)

77-506 Same; quorum

A majority of the board shall constitute a quorum for the transaction of all business except as hereinafter provided.

(Acts 1943, pp. 185, 186.)

77-507 Same; Attorney General as legal advisor

The Attorney General shall be the legal advisor of the board.

(Acts 1943, pp. 185, 186.)

77-508 Same; office, supplies, equipment

The board shall have office quarters in the State capitol, and supplies, stationery and equipment shall be provided for this board in the same manner as they are provided for other departments, boards, commissions, bureaus or offices of the State

(Acts 1943, pp. 185, 186.)

77-509 Same; clerical and other help and assistants

The board may appoint such clerical, stenographic, supervisory and expert assistants, and establish qualifications for employees as

they may deem necessary, and in its discretion may discharge such employees.

(Acts 1943, pp. 185, 186.)

77-510 Same; qualifications of members

No member of the board or no full-time employee thereof shall, during his service upon or under the board engage in any other business or profession or hold any other public office; nor shall he serve as a representative of any political party, or executive committee or other governing body thereof, or as an executive officer or employee of any political committee, organization or association, or be engaged on the behalf of any candidate for public office in the solicitation of votes, or otherwise become a candidate for public office without resigning from the board. No member of the present Prison and Parole Board shall be eligible to be appointed a member of said Board of Pardons and Paroles, or to any subordinate position under such board, until two years after the term of office of such member of the present Prison and Parole Board shall have expired.

(Acts 1943, pp. 185, 186.)

Editorial Note

The "present Prison and Parole Board" was the State Prison and Parole Commission. Former § 77-501 provided that "The Prison Commission is hereby constituted a board of pardons." For the history of the Prison Commission, see the Editorial Note beginning Chapter 77-3.

Annotations

Cited. 227/623 (182 S. E. 2d 450).

Business or profession

Petition here for commutation of sentence held not to show that there was any delay or prejudice to any right of petitioner by reason of fact that member of Board of Pardons and Paroles was engaged in business of banking and farming, and petition fails to show any cause for application of writ of injunction. 205/713 (2) (55 S. E. 2d 119).

Ineligibility

This section does not purport to deal with qualifications of a member of the board at time of his appointment; it relates solely to conduct of members after appointment. 205/713, 716 (55 S. E. 2d 119).

In absence of constitutional or statutory provisions as to eligibility and qualifications of members of State Board of Pardons and Paroles, one otherwise eligible is not rendered ineligible to such office, or disqualified from serving as member of such board, because at time of appointment and while serving on board he was engaged in farming, in business of banking, and was member of State Democratic Executive Committee. 206/149 (1) (56 S. E. 2d 285).

Where statute enumerates powers and duties of member of State Board of Pardons and Paroles, and provides that such member, while serving on such board, shall not do certain acts, and is silent as to what penalty shall be upon his doing acts prohibited, demurrer to information in nature of quo warranto, seeking to oust member on ground that he was ineligible and disqualified because he was engaged in the prohibited acts, should have been sustained. Id. 149 (2).

Mandamus will not lie to compel member of board to resign because he is engaged in business, is member of the Executive Committee of the State Democratic Party, and member of Governor's staff. 206/646 (58 S. E. 2d 423).

Public office

Public office, within meaning of this section, does not include membership in State Democratic Executive Committee; officer, member, or employee of a political committee is not a public officer. 205/713, 717 (55 S. E. 2d 119).

77-511 Power of board to grant reprieves, pardons, and paroles. Duty to supervise parolees, aid parolees and probationers, and study cases of prisoners

The State Board of Pardons and Paroles shall have power to grant reprieves, pardons and paroles, to commute penalties, to remove disabilities imposed by law, and to remit any part of a sentence for offenses against the State, after conviction, except in cases of treason and impeachment, and except in cases in which the death sentence has been imposed and the Governor refuses to suspend the execution of such death sentence to enable the board to consider and pass upon the same. In all cases when the Governor has suspended the execution of a death sentence to enable the board to consider and pass on same it shall be mandatory that said board act within a period not exceeding 90 days from the date of the suspension order of the Governor. In all cases of clemency, pardons and paroles, a majority vote of the members is sufficient for approval except in cases involving capital punishment, and in such cases a unanimous vote of all members of the board is necessary: Provided, however, if any member for any cause is unable to serve in any case involving capital punishment the Governor shall act as the third member of said board and the action so taken in such instances shall be by unanimous vote. In the cases which the board has power to consider, such board shall be charged with the duty of determining what prisoners serving sentences imposed by a court of this State may be released on pardon or parole, and affixing the time and conditions thereof. The Board shall also be charged with the duty of supervising all persons placed on parole; of determining violations thereof and of taking action with reference thereto; of making such investigations as may be necessary and of aiding parolees or probationers in securing employment. It shall be the duty of the board personally to study the cases of those prisoners whom the board has power to consider, so as to determine their ultimate fitness for such relief as the board has power to grant: Provided, however, that the board by an affirmative vote of two of its members shall have the power to commute a sentence of death to one of life imprisonment.

(Acts 1943, pp. 185, 187; 1973, pp. 1294, 1295.)

Editorial Note

A constitutional amendment, adopted on the same day the Act of 1943 was enacted, and ratified on August 3, 1943, took the pardoning power from the Governor and conferred it on the Board of Pardons and Paroles. For this amendment, carried forward into the Constitution of 1945 as Art. V, Sec. I, Par. XI, see § 2-3011.

A resolution approved March 19, 1943 (Acts 1943, p. 1718), after reciting that the State Board of Pardons and Paroles had announced through its chairman a policy of refusing to consider applications for pardon or parole in all misdemeanor cases and that it was the intent of the General Assembly in creating the Board that it should consider such applications in all cases, resolved: "That the chairman and members of the State Board of Pardons and Paroles be, and they are hereby directed and instructed that it is the wish and intent of this General Assembly that all matters pertaining to pardons and paroles be considered by said board, including misdemeanor cases, as well as felony cases."

Acts 1972, pp. 1294, 1295, entirely superseded the former section. Although §§ 2-3011 and 77-501 have been amended to provide for a five-member Board of Pardons and Paroles, this section has not been amended to take into account the increased membership.

Annotations

Cited. 201/730, 733 (41 S. E. 2d 148).

Charge

Charge to jury in replying to inquiry whether or not a defendant serving specific number of years could be paroled before serving complete sentence, held to be without error. 88 App. 330, 331 (76 S. E. 2d 810).

77-511.1 Transfer of functions

The function and responsibility of supervising all persons placed on parole or other conditional release by the State Board of Pardons and Paroles is hereby transferred to the State Board of Pardons and Paroles. (Acts 1977, p. 1209, eff. July 1, 1977.)

Editorial Note

Section 3 of this Act, which enacted this section and amended §§ 40-35162.6 and 77-507a, provides as follows: "To effectuate the purposes of this Act, thirty supervisors and eight clerical personnel of the Department of Offender Rehabilitation shall be transferred to the State Board of Pardons and Paroles to provide for the initial and orderly transfer of powers and functions to the said Board. The per diem and expenses of said supervisors and the equipment and supplies of clerical personnel shall be determined by the Office of Planning and Budget."

77-512 Obtaining information respecting persons subject to relief by board; records

It shall be the duty of the board to obtain and place in its permanent records as complete information as may be practically available on every person who may become subject to any relief which may be within the power of the board to grant. Such information shall be obtained as soon as possible after imposition of the sentence and shall include:

- (a) A complete statement of the crime for which such person is sentenced, the circumstances of such crime and the nature of such person's sentence.
- (b) The court in which such person was sentenced.
- (c) The term of his sentence.
- (d) The name of the presiding judge, the prosecuting officers, the investigating officers and the attorney for the person convicted.
- (e) Copy of presentence investigation and any previous court record.
- (f) Fingerprint record.
- (g) A copy of all probation reports which may have been made.
- (h) Any social, physical, mental or criminal record of such person.

The board in its discretion may also obtain and place in its permanent records similar information on each person who may be placed on probation. The board shall immediately examine such records and any other records obtained and make such other investigation as they may deem necessary. It shall be the duty of the court and of all probation officers and other appropriate officers to furnish to the board, upon its request, such information as may be in their possession or under their control. The welfare boards of the State of Georgia and all other State, county and city agencies, sheriffs and their deputies and all peace officers shall cooperate with the board and shall aid and assist it in the performance of its duties. The board may make such rules as to the privacy or privilege of such information and its use by others than the board and its staff as may be deemed expedient in the performance of its duties.

(Acts 1943, pp. 185, 188.)

77-513 Vote required to extend clemency; written opinions

No person shall be granted clemency, pardon or parole or other relief from sentence except by majority vote of the board and in all cases involving capital punishment, a unanimous vote of all members is necessary provided three members of said board may commute a death sentence to life imprisonment, as provided in section 77-511. A grant of clemency, pardon or parole or other relief from sentence shall be rendered only by a written decision, which shall be signed by at least the number of board members required for the relief granted, and which shall become a part of the permanent record.

(Acts 1943, pp. 185, 189; 1975, p. 795.)

Editorial Note

Acts 1975, p. 795, rewrote the second sentence.

77-514 Prerequisites to probation, parole, and pardon

Good conduct and efficient performance of duties by a prisoner shall be considered by the board in his favor and shall merit consideration of an application for pardon or parole. No prisoner shall be released on probation or placed on parole until and unless the board shall find that there is reasonable probability that, if he is so released, he will live and conduct himself as a respectable and law-abiding person, and that his release will be compatible with his own welfare and the welfare of society. No person shall be released on pardon or placed on parole unless and until the board is satisfied that he will be suitably employed in self-sustaining employment, or that he will not become a public charge: Provided, however, the board may, in its discretion, and notwithstanding other provisions of this Chapter, grant pardon or parole to any aged or disabled persons.

(Acts 1943, pp. 185, 189; 1974, p. 474.)

Editorial Note

Acts 1974, p. 474, added the proviso relating to pardons and paroles for aged or disabled persons.

77-515 Terms and conditions of parole. Status of parolees. Peonage forbidden

Any person who may be paroled shall be released on such terms and conditions as the board shall prescribe. The board shall diligently see that no peonage is allowed in the guise of parole relationship or supervision. Such parolee shall remain in the legal custody of the board until the expiration of the maximum term specified in his sentence or until he is pardoned by the board. In the event a parolee violates the terms of his parole, he shall be subject to rearrest and/or extradition for placement in the actual custody of the board to be redelivered to any prison or public works camps of this State.

(Acts 1943, pp. 185, 190.)

Annotations**Time served**

Under Act of February 5, 1943, as amended (Chapter 77-5), creating State Board of Pardons and Paroles, parole can be revoked only by order of board. Thus, where prisoner, while serving his maximum sentence on parole, was arrested, tried, convicted, and sentenced of another crime and State Board did not, by order, revoke his parole, time he served in Federal prison for second offense will be counted on his maximum sentence for first offense. 219/59 (131 S. E. 2d 551).

77-516 Information to be used by board in considering cases. Disposition of prisoners pardoned or paroled

The board, in considering any case within its power, shall cause to be brought before it all pertinent information on such person. Included therein shall be a report of the superintendent, warden or jailer of the jail, prison or public works camp in which such person has been convicted, upon the conduct and record of such person while in such jail, prison or public works camp; the results of such physical and mental examinations as may have been made of such person; the extent to which such person appears to have responded to the efforts made to improve his social attitude; his industrial record while confined and the nature of his occupations while so confined, and a recommendation as to the kind of work he is best fitted to perform and at which he is most likely to succeed when and if he is released. The board may make such other investigation as it may deem necessary in order to be fully informed on such person. Before releasing any person on parole, the board may have such person appear before it and may personally examine him. Thereafter, upon consideration, the board shall make its findings and determine whether or not such person shall be treated a pardon, parole, or other relief within the power of such board; and the board shall determine the terms and conditions thereof. Notice of such determination shall be given to such person and to the prison official having him in custody. If such a person is granted a pardon or a parole, the prison official having such person in custody shall, upon notification thereof, inform him of the terms and conditions thereof and shall in strict accordance therewith release such person. If such person is indigent at the time he is released, which fact shall be determined in advance by the board, he shall be given his transportation by the nearest route to the destination noted in the pardon or parole. In addition thereto, he shall be furnished clothes, shoes, a hat, a suit of underclothing, not to exceed in value in the aggregate the sum of \$15, and \$5 in cash, the cost of which shall be paid by the State of Georgia as are other expenses of the board.

(Acts 1943, pp. 185, 190.)

Cross References

State Board of Corrections to furnish transportation, money and clothing to discharged inmates, see § 77-317. Duty of board to respect rules and regulations of State Board of Corrections relating to computations of time served by inmates, see § 77-320.

Editorial Note

The word "treated" in the fourth sentence from the end of this section no doubt should be "granted"; but "treated" is the word used in the enrolled Act.

ANNOTATIONS

Immunity

Members of Georgia Board of Pardons and Paroles are, while employed in processing of applications for parole, are performing quasi-judicial functions and are immune from suits for damages for such acts. There was no publication under § 105-701. 134 App. 680 (215 S. E. 2d 537).

Parole interview

Where plaintiff alleged that Board does grant interviews to some similarly-situated applicants for parole, but had arbitrarily refused him such interview, under rule that board could not personally interview all parole applicants, but inmates meeting certain criteria

were automatically selected for interview under rule promulgated by Board, it could not be said that there existed no set of facts which would entitle plaintiff to relief he demands. 531 F 2d 1247.

77-516.1 Procedure when board considers cases in which prisoner has failed to serve the time required by law for automatic initial consideration

Notwithstanding any other provisions of law to the contrary, if the board is to consider any case in which the prisoner has failed to serve the time required by law for automatic initial consideration, the board shall notify, in writing at least 10 days prior to consideration, the sentencing judge and district attorney of the county where such person was sentenced. Such sentencing judge or district attorney, or both, may appear at a hearing held by the board or make a written statement to the board expressing their views and making their recommendation as to whether such person should be paroled.

(Acts 1972, p. 410; 1975, pp. 793, 794.)

Editorial Note

Acts 1975, pp. 793, 794, entirely superseded the former section.

77-517 Terms of parole; imposition, and penalty for violation

The board, upon placing a person on a parole, shall specify in writing the terms and conditions thereof, a certified copy of which shall be given to the parolee. Thereafter, a copy shall be sent to the clerk of court in which such person was convicted. The board shall adopt general rules on the terms and conditions of parole and what shall constitute the violation thereof and make such special rules to govern particular cases. Such rules, both general and special, may include, among other things, a requirement that the parolee shall not leave the State of Georgia or any definite area in Georgia without the consent of the board; that he shall contribute to the support of his dependents to the best of his ability; that he shall make reparation or restitution for his crime; that he shall abandon evil associates and ways; that he shall carry out the instructions of his parole supervisor, and, in general, so comport himself as such supervisor shall determine. A violation of the terms of parole may render the parolee liable to arrest and a return to prison to serve out the term for which he was sentenced.

(Acts 1943, pp. 185, 191.)

Annotations

Revocation of parole

Prisoner who is paroled by Pardon and Parole Board remains in legal custody of Parole Board until expiration of maximum term specified in his sentence, and if he violates terms of his parole, board has authority to revoke his parole and return him to prison to serve remainder of his maximum sentence. 219/662 (1) (135 S. E. 2d 414).

Since appellant was found guilty of murder and was given life sentence, § 27-2709 would not apply. It appears that State Board of Pardons and Paroles would have exclusive jurisdiction as to further consideration of rescinding probation or conditional release. 122 App. 653, 654 (178 S. E. 2d 337).

Order of board states that defendant serve remainder of his sentence on probation, and it is appellee's argument that "due to the fact that the appellant is a probationer and not a parolee he is then subject to the supervision of the superior court where he was convicted or transferred," and that court therefore has authority to revoke probation. Distinction is not well drawn, since

under § 77-514 board does have authority to release prisoner on probation, he is then "conditional releasee" under terms of § 77-519 and is to be further dealt with by board as therein stated. Trial court erred in holding that it had jurisdiction of revocation of appellant's probation. Id. 654.

Restitution

Restitution ordered was payment of \$59.15 hospital bill for medical services. Testimony showed same was reasonable and proper, hence it could not be said that same was excessive in any amount. Restitution in form of damages to victim of assault or beating has been held to be reasonable condition of probation. 143 App. 725 (240 S. E. 2d 133).

77-518 Arrest of parolee or conditional releasee violating terms of parole or release

If any member of the board shall have reasonable ground to believe that any parolee or conditional releasee has lapsed into criminal ways, or has violated the terms and conditions of his parole or conditional release in a material respect, such member may issue a warrant for the arrest of such parolee or conditional releasee.

(a) Said warrant, if issued by a member or the board, shall be returned before the board and shall command that the alleged violator of parole or conditional release be brought before the board for a final hearing on revocation of parole or conditional release within a reasonable time after the preliminary hearing provided for in section 77-518.1.

(b) All officers authorized to serve criminal process, all peace officers of this State and all circuit probation and parole supervisors shall be authorized to execute the warrant.

(c) Any circuit probation and parole supervisor, when he has reasonable ground to believe that a parolee or conditional releasee has violated the terms or conditions of his parole or conditional release in a material respect, shall notify the board or some member thereof, and proceedings shall thereupon be had as provided herein.

(Acts 1943, pp. 185, 192; 1965, pp. 478, 479; 1970, pp. 187, 188; 1975, p. 786.)

Editorial Note

Acts 1975, p. 786, entirely superseded the former section.

77-518.1 Same; preliminary hearing

Whenever a parolee or conditional releasee is arrested on a warrant issued by a member of the board for an alleged violation of parole or conditional release, an informal preliminary hearing in the nature of a court of inquiry shall be held at or near the place of the alleged violation.

(a) This proceeding shall commence within a reasonable time after the arrest of the parolee or conditional releasee. Its purpose shall be to determine whether there is probable cause or reasonable grounds to believe that the arrested parolee or conditional releasee has committed acts which would constitute a violation of parole or conditional release.

(b) The preliminary hearing shall be conducted by a hearing officer designated by the State Board of Pardons and Paroles who shall be some officer who is not directly involved in the case. It shall be the duty of the officer conducting the hearing to make a summary or digest, which may be in the form of a tape recording, of what transpires at the hearing in terms of the testimony and other evidence given in support of or against revocation. In addition, the officer shall state reasons for his decision that probable cause for revocation does or does not exist and shall indicate the evidence relied upon.

(c) It shall be the responsibility of the officer selected to conduct the

preliminary hearing to provide the alleged violator with written notice of the time and place of the proceeding, its purpose, and the violations which have been alleged. This notice shall allow a reasonable time for the alleged violator to prepare his case.

(d) The officer selected to conduct the preliminary hearing shall have the power to issue subpoenas to compel the attendance of witnesses resident within the county of the alleged violation, after notice of 24 hours. Such subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party may apply to the superior court of the county where the hearing provided for by this section is held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. The manner of service of subpoenas and costs of securing the attendance of witnesses, including fees and mileage, shall be determined, computed, and assessed in the same manner as prescribed by law for cases in the superior court.

(e) The officer selected to conduct the preliminary hearing shall also have power to issue subpoenas for production of documents or other written evidence at the hearing provided for by this section; but upon written request made promptly and before the hearing the officer may quash or modify the subpoena if it is unreasonable or oppressive, or condition denial of the request upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the documents or other written evidence. Enforcement of such subpoenas may be sought in the same manner as provided above for subpoenas to compel attendance of witnesses.

(f) At the hearing the alleged violator may appear and speak in his own behalf, may present witnesses to testify in his behalf, and may bring letters, documents, or any other relevant information to the hearing officer. He shall also have the right to cross-examine those who have given adverse information at the preliminary hearing relating to the alleged violation: Provided, that the hearing officer may refuse to allow such questioning if he determines that the informant would be subjected to risk of harm if his identity were disclosed.

(g) Should the hearing officer determine that probable cause for revocation exists, he shall then determine whether the alleged violator should be incarcerated pending his final revocation hearing, or whether he should be set free on his personal recognizance pending that hearing. If an alleged violator who is set free on his personal recognizance subsequently fails to appear at his final hearing, the board may summarily revoke his parole or conditional release.

(h) The decision of the hearing officer as to probable cause for revocation shall not be binding on the board, but may be either ratified or overruled by majority vote of the board. In the event that the board overrules a determination of the hearing officer that probable cause did not exist, the board shall then determine whether the alleged violator should be incarcerated pending his final hearing, or whether he should be set free on his personal recognizance pending that hearing. If an alleged violator who is set free on personal recognizance subsequently fails to appear at his final hearing, the board may summarily revoke his parole or conditional release. Where a hearing officer has determined, after finding probable cause, that the alleged violator should be set free on his personal recognizance, the board may overrule that decision and order the alleged violator to be incarcerated pending his final hearing.

(Acts 1975, pp. 786, 787.)

ANNOTATIONS

Constitutional rights

U. S. Supreme Court's directives are met and probationer's constitutional rights are fully protected through single dispositional hearing where: (1) petition is filed by probation supervisor in court where original probation sentence has been entered; (2) such petition recites in details of original trial including nature of offense, defendant's plea, court's sentence and date thereof, and copy of terms and conditions of probation sentence; (3) specificity as to alleged violations of probation conditions; (4) prayer for citation, petition for revocation, and petition for rule to show cause; (5) consideration of petition by trial judge and his entry of order requiring service of copy of petition and show cause ruling for specified date, time, and place in open court; (6) service of petition and court order; (7) full-fledged hearing in accordance with § 27-2713; and (8) judicial determination in writing by court stating particulars in which terms of probation had been violated and recital as to specific term that remains to be served. 137 App. 673 (2014) S. E. 2d 873.

77-519 Final hearing; finding of board; conviction of crime

(a) A parolee who has allegedly violated the terms of his parole or conditional release shall have a right to a final hearing before the board, to be held within a reasonable time after the occurrence of one of the following events:

- (1) after an arrest warrant has been issued by a member of the board and probable cause for revocation has been found by the preliminary hearing officer; or
- (2) after a majority of the board overrules a determination by the preliminary hearing officer that such probable cause does not exist; or
- (3) after the board or two of its members is informed of an alleged violation and decides to consider the matter of revocation without issuing a warrant for the alleged violator's arrest.

(b) The purpose of such hearing shall be to determine whether the alleged violator has in fact committed any acts which would constitute a violation of the terms and conditions of his parole or conditional release and whether those acts are of such a nature as to warrant revocation of parole or conditional release: Provided, however, when a parolee or conditional releasee has been convicted of any crime, whether a felony or a misdemeanor, or has entered a plea of guilty or nolo contendere thereto, in a court of record, his parole or conditional release may be revoked without a hearing before the State Board of Pardons and Paroles: Provided, further, that whenever it shall appear to the State Board of Pardons and Paroles that a parolee or conditional releasee either has absconded or has been convicted of another crime in a Federal court or in a court of record of another State, the State Board of Pardons and Paroles may issue an order of temporary revocation of parole or conditional release, together with its warrant for said violator, which shall suspend the running of the parolee's or conditional releasee's time from the date of the temporary revocation of parole or conditional release to the date of the determination by the board as to whether such temporary revocation shall be made permanent. If the board determines that there has been no violation of the conditions of such parole or conditional release then such parolee or such releasee shall be reinstated upon his original parole or conditional release without any loss of time and the order of temporary revocation of parole or conditional release and the warrant shall be withdrawn.

(1) In all cases in which there is a hearing before the board the alleged violator shall be given written notice of the time and place of the hearing and of the claimed violations of parole or conditional release. In addition this notice shall advise him of the following rights:

(A) his right to disclosure of evidence introduced against him: Provided, however, this right shall not be construed to require the board to disclose to

an alleged violator confidential information contained in its files which has no direct bearing on the matter of parole revocation;

(B) his opportunity to be heard in person and to present witnesses and documentary evidence;

(C) his right to confront and cross-examine adverse witnesses, unless a majority of the board determines that disclosure of a particular informant's identity would cause that informant or a member of his family to suffer a risk of harm; and

(D) his right to subpoena witnesses and documents through the board as provided herein.

Such notice shall be served by delivering it to the alleged violator in person, by delivering it to a person 18 years or older at his last known place of residence, or by depositing it in the mail properly addressed to his last known place of residence.

(2) The board shall have the power to issue subpoenas to compel the attendance of witnesses at the hearing provided for by this section. Such subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party may apply to the superior court of the county where the hearing provided for by this section is held for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. The manner of service of subpoenas and costs of securing the attendance of witnesses, including fees and mileage, shall be determined, computed, and assessed in the same manner as prescribed by law for cases in the superior court.

(3) The board shall also have power to issue subpoenas for production of documents or other written evidence at the hearing provided for by this section, but upon written request made promptly and before the hearing may quash or modify the subpoena if it is unreasonable or oppressive, or condition denial of the request upon the advancement by the person in whose behalf the subpoena is issued of the reasonable cost of producing the documents or other written evidence. Enforcement of such subpoenas may be sought in the same manner as provided above for subpoenas to compel attendance of witnesses.

(4) Within a reasonable time after the hearing provided for by this section, the board shall enter an order rescinding parole or conditional release and returning the parolee or conditional releasee to serve the sentence theretofore imposed upon him, with benefit of computing the time so served on parole or conditional release as a part of his sentence, or reinstating such parole or conditional release, or shall enter such other order as it may deem proper. The board shall issue a written statement which shall indicate its reasons for revoking or not reinstating parole or conditional release or for taking such other action as it deems appropriate and shall also indicate the evidence relied upon in determining the facts which form the basis for these reasons. The parolee or conditional releasee who is the subject of the board's decision shall be furnished with a copy of this written statement.

(Acts 1943, pp. 185, 192; 1955, pp. 351, 352; 1964, pp. 497, 498; 1965, pp. 478, 480; 1975, pp. 786, 789.)

Editorial Note

Acts 1975, pp. 786, 789, entirely superseded the former section.

ANNOTATIONS

Revocation hearing

Trial court was authorized to find that defendant had in fact had revocation hearing before State Board of Pardons and Paroles and that determination was made by Board that he had violated terms of his parole. 235/834 (221 S. E. 2d 594).

Traffic offenses

Remand of appellant to custody held error since conviction of traffic offenses under jurisdiction of Traffic Violations Bureau Act, does not authorize parole revocation without a hearing as provided by statute. 232/89, 91 1205 S. E. 2d 274).

Waiver

Habeas corpus court was authorized to find that inasmuch as defendant was represented by counsel and chose to enter his plea without notice or conference with counsel, who was prepared to represent him on trial of trespass charge, he knowingly and voluntarily waived right to counsel on guilty plea hearing. 235/834 (221 S. E. 2d 594).

Time served

Under Act of February 5, 1943, as amended (Chapter 77-5), creating State Board of Pardons and Paroles, parole can be revoked only by order of board. Thus, where prisoner, while serving his maximum sentence on parole, was arrested, tried, convicted, and sentenced of another crime and State Board did not, by order, revoke his parole, time he served in Federal prison for second offense will be counted on his maximum sentence for first offense. 219/59 (131 S. E. 2d 551).

Prisoner serving sentence in sister State not entitled to removal of Georgia detainer because sentence has expired, for violation of parole tolls running of sentence. 464 F. 2d 551.

77-520 Time of discharge from parole. Granting privileges to, and pardoning, parolee

No person who has been placed on parole shall be discharged therefrom by the board prior to the expiration of the term for which he was sentenced, or until he shall have been duly pardoned or otherwise released as hereinafter provided or as provided by law. The board may adopt rules and regulations, policies and procedures for the granting of statutory good time and extra good time to persons while serving sentences on parole to the same extent and in the same amount as if such person were serving the sentence in custody. The board shall also be authorized to withhold or to revoke in whole or in part any such statutory and extra good time allowances. The board may relieve a person on parole from making further reports and may permit such person to leave the State or county if satisfied that this is for the parolee's best interest and for the best interest of society. When a parolee has, in the opinion of the board, so conducted himself as to deserve a pardon or a commutation of sentence or the remission in whole or in part of any fine, forfeiture or penalty, the board may grant such relief in cases within its power.

(Acts 1943, pp. 185, 193; 1965, pp. 478, 481.)

Editorial Note

Acts 1965, p. 478, entirely superseded the former section.

77-521 Duty of prison authorities to cooperate with board

The superintendent, warden or jailer of any jail or prison or public works camp in which persons convicted of a crime may be confined and all officers or employees thereof shall at all times cooperate with the board and upon its request shall furnish it with such information as they may have respecting any person inquired about as will enable the board properly to perform its duties. Such official shall at all reasonable times, when the public safety permits, give the members of the board, its authorized agents and employees, access to all prisoners in their charge.

(Acts 1943, pp. 185, 193.)

77-522 Preservation of documents on which clemency based. Conditional pardons forbidden

The board shall preserve on file all documents on which it has acted in the granting of clemency, reprieve, pardon or parole. Following the effective date of this Chapter no conditional pardon shall be issued.

(Acts 1943, pp. 185, 193.)

Cross References

Keeping of prison records, see § 77-320.

77-523 Power of Governor to suspend sentences and to grant pardons and paroles

Following the effective date of this Chapter the Governor of Georgia shall have the power and authority to suspend the execution of sentences of death or sentences in cases of treason. The Governor shall have no authority or power whatever over the granting of pardons or paroles.

(Acts 1943, pp. 185, 193.)

Editorial Note

This Chapter became effective on February 5, 1943 (Section 31 to the Act). On the same day an amendment to the Constitution was adopted which wrote into the Constitution the provisions of this section. This amendment was ratified on August 3, 1943. It has been carried forward into the Constitution of 1945. For the constitutional provision, see § 2-3011; see also the Editorial Note preceding § 77-501. Section 32 of the Act of 1943 (Acts 1943, pp. 185, 195) provided that, pending the ratification of the amendment, the granting of reprieves and pardons by the State Board of Pardons and Paroles should be subject to approval by the Governor.

77-524 Effect of law on probation power of courts. Duty of board to cooperate with probation agencies

Nothing contained herein shall be construed as repealing any power given to any court of this State to place offenders on probation or supervise the same nor of any probation agency set up and now existing in any county of the State in conjunction with such courts: Provided, however, the State Board of Pardons and Paroles shall be authorized to cooperate with any such existing agencies, except it shall not assume or pay any financial obligations thereof; and the board shall be authorized to cooperate with the courts for probation of offenders in those counties in which there is no existing probation agency, when such court so requests.

(Acts 1943, pp. 185, 194.)

Cross References

Probation by courts, see Chapter 27-27.

77-525 Power of board to adopt rules and regulations

The board may adopt and promulgate rules and regulations, not inconsistent with the provisions of this Chapter, touching all matters herein dealt with, including, among others, the practice and procedure in matters pertaining to paroles, pardons, probations and remission of fines and forfeitures. Such rules and regulations shall contain an eligibility requirement for parole which shall set forth the time when the automatic initial consideration of inmates under the jurisdiction of the Department of Corrections for parole shall take place and also the times at

which periodic reconsideration thereafter shall take place, which consideration shall be automatic and no written or formal application shall be required; Provided, however, that such an inmate serving a misdemeanor sentence or misdemeanor sentences shall only be eligible for consideration for parole after the expiration of six months of his sentence or sentences, or one-third of the time of his sentence or sentences, whichever greater: and Provided, further, that such an inmate serving a felony sentence or felony sentences shall only be eligible for consideration for parole after the expiration of nine months of his sentence, or one-third of the time of such sentences, whichever is greater: and Provided, further, that inmates serving sentences aggregating 21 years or more shall become eligible for consideration for parole upon completion of the service of seven years. The board shall adopt rules and regulations governing the granting of other forms of clemency which shall include pardons, reprieves, commutation of penalties, removal of disabilities imposed by law, and the remission of any part of a sentence, and shall prescribe the procedure to be followed in applying for them. Applications for granting of such other forms of clemency and for exceptions to parole eligibility rules established by statute or promulgated by the board shall be made in such manner as the board shall direct by rules and regulations.

All rules and regulations adopted pursuant to the provisions of this section shall be adopted, established, promulgated, amended, repealed, filed and published in accordance with the applicable provisions and procedures as set forth in the Georgia Administrative Procedure Act [Title 3A], and the courts shall take judicial notice of any such rules or regulations.

For the purposes of this section, the words "rules and regulations" shall have the same meaning as the word "rule" as said word is defined in subsection (f) of section 3A-102, except the words "rules and regulations" shall not be construed to include the terms and conditions prescribed by the State Board of Pardons and Paroles to which a person paroled by the board may be subjected.

(Acts 1943, pp. 185, 194; 1964, pp. 487, 488; 1969, p. 948.)

Editorial Note

Acts 1964, p. 487, added all matter in the first paragraph beginning with the second sentence.

Acts 1969, p. 948, added the second and third paragraphs of this section.

Annotations

Cited. 201/730, 734 (41 S. E. 2d 148).

Authority of board

Under this Chapter, the State Board of Pardons and Paroles has full authority to grant pardons, conditional pardons, paroles, probations, remission of fines, forfeitures, etc., under any rules or regulations they may set up. 74 App. 48, 49 (2-b) (39 S. E. 2d 75).

Construction

This section, construed in connection with § 27-2502 (Acts 1919, p. 387), makes it obligatory that a convict serve his minimum sentence before he can be paroled. 74 App. 48, 49 (2-c) (39 S. E. 2d 75); overruled, 201/730 (41 S. E. 2d 148).

Parole interview

Where plaintiff alleged that Board does grant interviews to some similarly-situated applicants for parole, but had arbitrarily refused him such interview, under rule that board

could not personally interview all parole applicants, but inmates meeting certain criteria were automatically selected for interview under rule promulgated by Board, it could not be said that there existed no set of facts which would entitle plaintiff to relief he demands. 531 F.2d 1247.

77-526 Duty of board to make reports

On or before the first day of January each year the board shall make a written report of its activities, copies of which shall be sent to the Governor and to the Attorney General and to such other officers and persons as the board may deem advisable. One copy of said report shall become a part of the records of the board. Biennially the board shall make a full and complete report to the General Assembly of Georgia.

(Acts 1943, pp. 185, 194.)

77-527 Effect of law on other laws respecting parole and probation

Nothing in this Chapter shall be construed to change or modify the laws respecting parole and probation as administered by the juvenile court of this State or the Training School for Boys or the Training School for Girls or the courts where persons have been placed on probation in cases involving bastardy or abandonment of minor children.

(Acts 1943, pp. 185, 194.)

Cross References

Juvenile courts, see Title 24A.

Editorial Note

While this section was not formally amended, training schools for boys and girls were eliminated by Acts 1963, p. 81 et seq., which set up a new system of child welfare. See Chapter 99-2.

77-528 Effect of pardon in relieving from disabilities

Following the effective date of this Chapter, all pardons shall relieve from civil and political disabilities.

(Acts 1943, pp. 185, 195.)

Cross References

Constitutional provisions respecting effect of pardon in relieving disabilities, see Const. 1945, § 2-801. Eligibility to hold office as affected by pardon, see § 89-101 (3).

Editorial Note

The Chapter became effective on February 5, 1943.

ANNOTATIONS

Civil rights

Convicted felon who has had his civil rights restored is eligible to vote and hold public office. Op. Atty. Gen. U77-43.

77-529 Effect of law on previously granted pardons, paroles, and probations

Provisions of this Chapter shall not affect pardons, paroles or probations acted upon previous to the effective date of the law.

(Acts 1943, pp. 185, 195.)

Editorial Note

The Chapter became effective on February 5, 1943.

77-530 Liberal construction

This Chapter shall be liberally construed so that its purpose may be achieved.

(Acts 1943, pp. 185, 195.)

77-531 Transfer of pardon and parole records to State Board of Pardons and Paroles

All records and documents of the Prison and Parole Commission or any other agency of the State which relate solely to pardons or paroles shall be turned over to the State Board of Pardons and Paroles.

(Acts 1943, pp. 185, 195.)

Cross References

Keeping of other prison records by Director of Corrections, see § 77-320.

77-532 Effect of partial invalidity of law

If any clause, sentence, paragraph, section or part of this Chapter shall have any reason to be adjudged by any court of competent jurisdiction to be unconstitutional, invalid or void, such judgment shall not affect, impair or invalidate the remainder of the law, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which such judgment shall have been rendered.

(Acts 1943, pp. 185, 195.)

77-533 Secrecy of information; public hearings

(a) All information both oral and written received by the State Board of Pardons and Paroles in the performance of their duties under this Chapter and all records, papers and documents coming into their possession by reason of the performance of their duties under this Chapter shall be classified as confidential State secrets until declassified by a resolution of the board passed at a duly constituted session of the board: Provided, however, that the State Board of Pardons and Paroles shall be authorized to disclose to an alleged violator of parole or conditional release the evidence introduced against him at a final hearing on the matter of revocation of parole or conditional release.

(b) All hearings required by this Chapter to be held shall be public, and the transcript thereof exempt from subsection (a) above. All records and documents which were public records at the time they were received by the State Board of Pardons and Paroles are exempt from subsection (a) above. All information, reports, and documents heretofore required by law to be made available to the General Assembly, the Governor, or the State Auditor, are exempt from subsection (a) above.

(Acts 1953, Nov. Sess., pp. 210, 211; 1975, pp. 786, 792.)

Editorial Note

Acts 1975, pp. 786, 792, added the proviso to subsection (a).

ANNOTATIONS

Evidence

Trial judge erred in failing to grant defendant's motion for judgment n. o. v. because there was no evidence that actions of chairman of Board of Pardons and Paroles amounted to wrongfulness such as to be sufficient to lift shield that protects public officers acting colore officii. 131 App. 778 (206 S. E. 2d 618).

Cross References

Penalty for violation, see § 77-99011.

77-534 Legislative policy

In recognition of the doctrine contained in the Constitution of this State requiring the three branches of government to be separate, it is hereby declared the policy of the General Assembly that the duties and powers and functions of the State Board of Pardons and Paroles are executive in character and in the performance of their duties under this Chapter, no other body is authorized to usurp or substitute their function for the functions herein imposed upon the State Board of Pardons and Paroles.

(Acts 1953, Nov. Sess., pp. 210, 212.)

77-535 Advisory staff abolished

The advisory staff created by section 11-A [of Acts 1956, pp. 580, 581] is hereby abolished.

(Acts 1956, pp. 580, 581; 1959, p. 24; 1972, p. 1011.)

Editorial Note

This section was originally Section 11-A of Acts 1956, pp. 580, 581, and provided for the appointment of an advisor staff. Acts 1959, p. 24, did not specifically repeal Section 11-A of the Act, but added a new Section 11-G, which, since it abolished the staff, has been here codified in place of the original section. Note that while the staff has been abolished certain of its functions are still required to be performed according to the following sections. The original section 77-535 provided as follows:

"77-535 Advisory staff created.—There is hereby created within the State Board of Pardons and Paroles as a division thereof, an advisory staff to consist of professional members as follows: two medical experts qualified to practice medicine in this State, each of whom shall be licensed to practice medicine in Georgia and in addition shall have completed sufficient post graduate work in mental diseases and disorders to be eligible for certification by the American Board of Psychiatry and Neurology, and one legal expert who is a member of the Attorney General's office and who shall have had not fewer than seven years of active trial practice as an attorney at the bar of this State. (Acts 1956, pp. 580, 581.)"

Acts 1972, p. 1011, repealed that portion of this section dealing with the employment of expert assistance.

77-536 Same; appointment; terms

The professional member of said advisory staff shall be appointed by the Governor. The terms of office of members initially appointed shall commence on the date of the appointment and shall end with that of the incumbent chairman of the State Board of Pardons and Paroles. Terms of office of subsequent appointees shall begin and end with that of the chairman of the State Board of Pardons and Paroles.

(Acts 1956, pp. 580, 581.)

Editorial Note

This section was apparently repealed by implication by Acts 1959, p. 24. See Editorial Note following § 77-535.

77-537 Same; compensation

The members of said staff shall be compensated from appropriations made for the maintenance of the State Board of Pardons and Paroles, as follows: the professional medical members not more than \$50 per diem for each day of service required of them by the State Board of Pardons and Paroles, together with such allowances for travel appropriate to the proper execution of their duties as required by law: Provided, however, that any compensation or salary scale must be approved by the Budget

Commission. The member from the Attorney General's office shall receive no additional compensation for service on said board other than travel allowance.

(Acts 1956, pp. 580, 581.)

Editorial Note

This section was apparently repealed by implication by Acts 1959, p. 24. See Editorial Note following § 77-535.

77-538 Same; duties; examination of applicants for parole; reports on examinations

It shall be the duty of the professional staff, when called upon by the State Board of Pardons and Paroles, to examine carefully persons incarcerated in any penal institution of this State whose application for parole is before the board and advise with respect to whether the subject be mentally and morally capable of maintaining himself, or herself, outside a penal institution; whether there be any latent or unconscious mental or moral impairment reasonably calculated to render the subject a dubious parole risk; whether such subject would likely respond to psychiatric treatment. Said staff shall, after full examination, file with the chairman of the State Board of Pardons and Paroles its findings and observations, wherein shall be contained any observations or findings not mentioned herein which might have bearing on the subject's entitlement to parole. Methods of examination of parolees shall conform to diagnostic procedures usually employed in medical practice by specialists in mental and nervous diseases and disorders.

(Acts 1956, pp. 580, 582.)

Editorial Note

See § 77-535 and the Editorial Note thereunder.

77-539 Same; offenses constituting sex crimes; time of examination by advisory staff; unfavorable examination reports referred to district attorney; hearing; hospitalization

For the purposes contemplated herein, sex crimes are (1) rape; (2) assault with the intent to rape; (3) sodomy; (4) kidnapping a female by a male; (5) incest; (6) molesting children to gratify sex urge. Persons convicted of a sex crime shall be examined, not more than 60 days prior to become eligible for parole, by the advisory staff when requested to do so by the State Board of Pardons and Paroles. Said staff may, after careful examination and diagnosis, make known to the State Board of Pardons and Paroles whether the subject so examined has any mental, moral or physical impairment which would render release inadvisable. Not less than 90 days prior to the expiration date of the penal sentence of any such offender, that is to say, any person convicted of a sex crime, the Chairman of the State Board of Pardons and Paroles, when he considers it necessary, may direct the advisory staff to complete the same character of examination and report on each of such persons as is required in connection with an application for parole. Those reports of examination as would fail to support an application for parole shall be furnished to the district attorney of the judicial circuit wherein lies the county of residence of the offender, or in the event such person is a nonresident of this State, then to the

district attorney of the judicial circuit wherein lies the county in which the indictment, trial and conviction occurred. It shall thereupon be and become the duty of the district attorney to cause a hearing to be held in the offender's county of residence, or county of conviction if applicable, as provided for in section 88-507.3. Should the hearing result in a finding that the offender is mentally ill within the purview of section 88-507.1, the district attorney shall, notwithstanding any other provision of law, cause the offender to be hospitalized in a state psychiatric hospital selected by the Department of Public Health for a period not to exceed one year. Should continued hospitalization be necessary following the initial period of one year, the superintendent of the hospital shall apply for an order of continued hospitalization under the provisions of section 88-506.6. Upon completion of hospitalization, the offender shall be returned to the custody of the sheriff of the county in which the hearing was held.

(Acts 1956, pp. 580, 582; 1972, p. 1158.)

Cross References

Definition of rape, see § 26-2001. Indecent molestation of children, see § 26-2019. Assault with intent to rape, see § 26-1302. Kidnapping, see § 26-1311. Incest, see § 26-2006. Sodomy, see § 26-2002.

Editorial Note

See § 77-535 and Editorial Note thereunder
Acts 1972, p. 1158, changed the words "solicitor general" to "district attorney" and changed his duties with reference to sex crime offenders.

77-540 Same; cooperation with committee; records

In the accomplishment of the aforementioned duties, officers, agents and employees of this State, and of each subdivision thereof, having the custody of prisoners, shall be required to lend full cooperation to said advisory staff in the accomplishment of their duties under sections 77-535 through 77-540. Records shall be filed with the State Board of Pardons and Paroles and kept in the individual case folder of the persons concerned and made available to the State Board of Pardons and Paroles and to members of the advisory staff: Provided, said records shall be confidential and shall not be disclosed except to the above named persons and except as provided now by an Act of the General Assembly providing for the disclosure of the records of the State Board of Pardons and Paroles in certain instances.

(Acts 1956, pp. 580, 583.)

Editorial Note

The proviso in the last sentence is here set forth in the language of the General Assembly. Reference is apparently to § 77-533 (b). See § 77-535 and Editorial Note thereunder.

77-541 Practice of law before State Board of Pardons and Paroles

Only duly licensed attorneys who are active members in good standing of the State Bar of Georgia shall be permitted to appear or practice in any matter before the State Board of Pardons and Paroles for a fee, money or other remuneration.

(Acts 1968, p. 1193.)

Cross References

Penalty for violation of section, see § 77-9914.

77-542 Record to be kept of persons contacting members of State Board of Pardons and Paroles on behalf of prisoners

The State Board of Pardons and Paroles shall maintain a complete written record of every person contacting any member of the board on behalf of a prisoner, which record shall be indexed; and a copy of such record shall be placed in the prisoner's file. Such register shall include the name and address of the person contracting the board member, and the reason for contracting such board member.

(Acts 1968, p. 1193.)

77-543 Removal for cause of members of State Board of Pardons and Paroles; definitions

When used in this law [§§ 77-543 through 77-546], unless the context requires otherwise:

(a) "Board" shall mean the Board of Pardons and Paroles.

(b) "Committee" or "removal committee" shall mean the Governor, Lieutenant Governor, and Attorney General exercising the powers granted to them under Article V, Section I, Paragraph XI of the Constitution of the State of Georgia (§ 2-3011).

(c) "Member" shall mean any additional members added to the Board of Pardons and Paroles by the General Assembly, any successors to present members, and all members of the board who are subsequently appointed to fill vacancies.

(Acts 1973, pp. 727, 728.)

77-544 Same; rules and regulations; promulgation

The removal committee is authorized to promulgate rules and regulations pertaining to the removal for cause of members of the Board of Pardons and Paroles.

(Acts 1973, pp. 727, 728.)

77-545 Same; rules and regulations; contents

Rules and regulations promulgated by the committee may include, but are not restricted to, the procedures to be observed in removing members of the board for cause and determinations as to what conduct by a board member shall be cause for removal.

(Acts 1973, pp. 727, 728.)

77-546 Same; Administrative Procedure Act not applicable to removal committee

The removal committee is not an agency within the meaning of section 3A-102 (a) of the Georgia Administrative Procedure Act and the Georgia Administrative Procedure Act shall not be applicable to the removal committee.

(Acts 1973, pp. 727, 728.)

77-547 Unlawful for members of General Assembly or other State elective or appointive official to accept compensation for appearing before State Board of Pardons and Paroles

It shall be unlawful for members of the General Assembly or any other State elective or appointive official to accept any compensation for appearing before the State Board of Pardons and Paroles in behalf of a person under the jurisdiction of said Board and seeking a decision on behalf of such person. Nothing herein shall be construed so as to prohibit:

1. Members of the General Assembly, State elective or appointive

officials from appearing before such Board when their official duties require them to do so;

2. Members of the General Assembly, State elective or appointive officials from requesting information from, and presenting information to the State Board of Pardons and Paroles on behalf of constituents when no compensation, gift, favor or anything of value is accepted, either directly or indirectly, for such services.

(Acts 1974, p. 471.)

77-548 Same; exceptions

Nothing herein shall be construed to apply to the acceptance of compensation, expenses and allowances received by members of the General Assembly or any other State elective or appointive official for his duties as such member or official.

(Acts 1974, pp. 471, 472.)

END