

ARKANSAS SENATE
85th General Assembly - Regular Session, 2005
Amendment Form

Subtitle of Senate Bill No. 190

"AN ACT TO REQUIRE THE GOVERNOR TO PROVIDE SPECIFIC REASONS FOR
GRANTING CLEMENCY AND TO NOTIFY VICTIMS AND OTHERS OF THE INTENT TO
GRANT CLEMENCY."

Amendment No. 2 to Senate Bill No. 190.

Amend Senate Bill No. 190 as engrossed, S2/2/05 (version: 02-02-2005 08:26):

Page 1, line 6, delete Representative J. Johnson as a cosponsor

AND

Page 1, delete lines 10 through 13, and substitute the following:
"AN ACT TO AMEND PROVISIONS CONCERNING CLEMENCY PROCEDURES; TO REQUIRE
NOTIFICATION OF SPECIFIC REASONS FOR GRANTING CLEMENCY; AND FOR OTHER
PURPOSES."

AND

Page 1, delete lines 16 through 19, and substitute the following:
" AN ACT TO AMEND PROVISIONS CONCERNING CLEMENCY PROCEDURES AND TO REQUIRE
NOTIFICATION OF SPECIFIC REASONS FOR GRANTING CLEMENCY."

AND

Delete everything after the Enacting Clause and substitute the following:
"SECTION 1. Arkansas Code § 16-93-204 is amended to read as follows:
16-93-204. Executive clemency.

(a)(1)(A) All applications for pardon, commutation of sentence,
reprieve, respite, or remission of fine or forfeiture shall be signed by the
applicant under oath.

(B) For purposes of § 5-53-102, the application shall be
deemed an official proceeding.

(2) An applicant shall obtain and include with his or her
application a certified copy of the applicant's judgment and commitment order
or comparable document.

(3) Applications shall be referred to the Post Prison Transfer
Board for investigation.



(b) The Post Prison Transfer Board shall thereupon investigate each case and shall submit to the Governor its recommendation, a report of the investigation, and all other information the ~~Post Prison Transfer Board~~ board may have regarding the applicant.

(c)(1) As part of the board's investigation, the chair of the board or his or her designee shall have the power to issue oaths and subpoena witnesses to appear and testify and to bring before the board any relevant books, papers, records, or documents.

(2)(A) The subpoena shall be directed to any sheriff, coroner, or constable of the county where the designated witness resides or is found.

(B) The endorsed affidavit on the subpoena of any person eighteen (18) years of age or older shall be proof of the service of the subpoena.

(C) The subpoena shall be served and returned in the same manner as subpoenas in civil actions in the circuit courts are served and returned.

(3) The fees and mileage expenses as prescribed by law for witnesses in civil cases shall be paid by the Department of Community Correction.

(4)(A) If any person subject to a subpoena issued under this section fails or refuses to testify or answer to any matter regarding which the person may be lawfully interrogated, any circuit court in this state on application of the chair of the board shall issue an attachment for the person and compel him or her to comply with the subpoena, appear before the board, and produce such testimony and documents as may be required.

(B) The circuit court may hold the person in contempt as in civil cases.

(5) It is a violation for a witness to refuse or neglect to appear and testify, punishable upon conviction by a fine of not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500).

(6) Any person knowingly testifying falsely under oath before the board to any matter that is material to a lawful inquiry by the board under this section may be charged with perjury under § 5-53-102.

~~(e)(1)~~(d)(1) Before the Post Prison Transfer Board shall consider an application for a pardon or recommend a commutation of sentence, the board shall solicit the written or oral recommendation of the committing court, the prosecuting attorney, and the sheriff of the county from which the person was committed.

(2)(A) Before considering an application for a pardon or recommending a commutation of sentence of a person who was convicted of capital murder, § 5-10-101, or a Class Y, Class A, or Class B felony, the board shall notify the victim of the crime or the victim's next of kin, if he or she files a request for notice with the prosecuting attorney.

(B) When the board provides notice under subsection (c) of this section, the board shall solicit the written or oral recommendations of the victim or his or her next of kin regarding the granting of a pardon or commutation of sentence.

(3) The board shall retain a copy of the recommendations in the board's file.

(4) The recommendations shall not be binding upon the board in advising the Governor whether to grant a pardon or commute a sentence, but shall be maintained in the inmate's file.

(5)(A) If a hearing will be held on the application, the board shall notify the victim or his or her next of kin of the date, time, and place of the hearing.

(B) The notice shall be given when soliciting the recommendations of the victim of the crime or his or her next of kin.

(e) At least thirty (30) days before submitting to the Governor a recommendation that an application for pardon, commutation of sentence, or remission of fine or forfeiture be granted, the board shall:

(1) Issue a public notice of its intention to make such a recommendation;

(2) Send notice of its intention to the circuit court judge who presided over the applicant's trial, the prosecuting attorney, and sheriff of the county in which the applicant was convicted, and, if applicable, to the victim or the victim's next of kin; and

(3) Send to the Governor any documents and a summary of any testimony that support the board's recommendation that an application for pardon, commutation of sentence, or remission of fine or forfeiture be granted.

(f) Whether the board recommends that an application for pardon, commutation of sentence, or remission of fine or forfeiture be granted or denied by the Governor, the board shall issue public notice of each recommendation.

SECTION 2. Arkansas Code § 16-93-207 is amended to read as follows:

~~16-93-207. Applications for pardon, commutation of sentence, and remission of fines and forfeitures~~ Executive clemency procedures for the Governor.

(a)(1)(A) At least ~~thirty (30)~~ sixty (60) days before granting an application for pardon, commutation of sentence, or remission of fine or forfeiture, the Governor shall file with the Secretary of State a notice of his intention to grant such application.

(B)(i) The Governor shall also direct the Department of Correction to: ~~send~~

(a) Send notice in writing of his the Governor's intention to grant clemency to the judge, the prosecuting attorney, and the sheriff or chief law enforcement officer of the arresting agency of the county in which the applicant was convicted; and, if applicable,

(b) Attempt to send notice to the victim or the victim's next of kin.

~~(ii) The notification to the victim or the victim's next of kin shall not be required if the conviction occurred more than ten (10) years prior to the filing of the notice under subdivision (a)(1)(A) of this section of intent to grant clemency shall contain specific reasons for the Governor's intent to grant clemency.~~

(iii) Prior to granting clemency, the Governor shall accept any objections to the clemency application or the Governor's intent to grant clemency which are submitted in writing to the Governor's office within thirty (30) days of the filing of the notice of intention to grant clemency described in subdivision (a)(1)(A) of this section by:

(a) The sheriff or chief law enforcement officer of the arresting agency of the county in which the applicant was

convicted;

(b) The prosecuting attorney for the county in which the applicant was convicted; or

(c) The victim of the crime or the victim's next of kin.

(2) The filing of such notice shall not preclude the Governor from later denying the application, but any pardon, commutation of sentence, or remission of fine or forfeiture granted without filing such notice shall be null and void.

(b) If the Governor does not grant an application for pardon, commutation of sentence, or remission of fine or forfeiture within ~~one hundred twenty (120)~~ two hundred forty (240) days of the Governor's receipt of the recommendation of the Post Prison Transfer Board regarding the application, the application shall be deemed denied by the Governor, and any pardon, commutation of sentence, or remission of fine or forfeiture granted after the ~~one hundred twenty day period~~ two hundred forty-day period shall be null and void.

(c)(1) If an application for pardon, commutation of sentence, or remission of fine or forfeiture is denied in writing by the Governor, the person filing the application shall not be eligible to file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense for a period of four (4) years from the date of the denial.

(2) If an application for pardon, commutation of sentence, or remission of fine or forfeiture is deemed denied by the Governor pursuant to subsection (b) of this section, the person filing the application may immediately file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense.

(d) ~~This section shall not apply to reprieves, and reprieves may be granted as presently provided by law~~ Upon granting an application for executive clemency whether by pardon, commutation of sentence, or remission of fine or forfeiture, the Governor shall describe in writing and in detail, upon the face of the document granting clemency, the specific reasons for granting clemency.

SECTION 3. Legislative intent.

(a) It is the intent of the General Assembly that the Governor fully inform the public, the victim or the victim's next of kin, prosecutors, and law enforcement agencies of his or her rationale for granting executive clemency.

(b) A victim or the victim's next of kin especially have the right to be notified in writing of the clemency granted to a person who has inflicted harm upon the victim.

(c) Persons who sought justice on behalf of the victim or the victim's next of kin should be involved in informing the Governor of any objections to clemency applications.

(d) It is in the best interests of the citizens of the State of Arkansas that the Governor:

(1) Carefully consider the facts and circumstances surrounding a particular crime;

(2) Carefully consider the consequences of granting clemency to a person who was convicted of harming those whom the law seeks to protect;

and

(3) Describe in detail to the citizens of the State of Arkansas the specific reasons for the exercise of the power of executive clemency.

SECTION 4. EMERGENCY CLAUSE. It is found and determined by the General Assembly of the State of Arkansas that the granting of clemency is a matter of great public importance; that procedures for the Governor are necessary due to the volume of requests for clemency to ensure that the interested parties are properly informed of the reasons for granting clemency; and that this act is immediately necessary in order to provide a proper procedure for exercising the power of executive clemency as prescribed by the Constitution and the laws of the State of Arkansas. Therefore, an emergency is declared to exist and this act being immediately necessary for the preservation of the public peace, health, and safety shall become effective on:

(1) The date of its approval by the Governor;

(2) If the bill is neither approved nor vetoed by the Governor, the expiration of the period of time during which the Governor may veto the bill; or

(3) If the bill is vetoed by the Governor and the veto is overridden, the date the last house overrides the veto."

The Amendment was read the first time, rules suspended and read the second time and _____

By: Senator Glover

GRH/GRH - 02-22-2005 17:21

GRH222

Secretary