

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 85th General Assembly  
3 Regular Session, 2005  
4

As Engrossed: S2/2/05 S2/24/05

# A Bill

SENATE BILL 190

5 By: Senator Glover  
6  
7

## For An Act To Be Entitled

8  
9 AN ACT TO AMEND PROVISIONS CONCERNING CLEMENCY  
10 PROCEDURES; TO REQUIRE NOTIFICATION OF SPECIFIC  
11 REASONS FOR GRANTING CLEMENCY; AND FOR OTHER  
12 PURPOSES.  
13

### Subtitle

14  
15 AN ACT TO AMEND PROVISIONS CONCERNING  
16 CLEMENCY PROCEDURES AND TO REQUIRE  
17 NOTIFICATION OF SPECIFIC REASONS FOR  
18 GRANTING CLEMENCY.  
19  
20

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
22

23 SECTION 1. Arkansas Code § 16-93-204 is amended to read as follows:  
24 16-93-204. Executive clemency.

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

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

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

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

35 (b) The Post Prison Transfer Board shall thereupon investigate each  
36 case and shall submit to the Governor its recommendation, a report of the



1 investigation, and all other information the ~~Post Prison Transfer Board~~ board  
2 may have regarding the applicant.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1  
2 SECTION 2. Arkansas Code § 16-93-207 is amended to read as follows:

3 16-93-207. ~~Applications for pardon, commutation of sentence, and~~  
4 ~~remission of fines and forfeitures~~ Executive clemency procedures for the  
5 Governor.

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

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

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

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

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

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

29 (a) The sheriff or chief law enforcement  
30 officer of the arresting agency of the county in which the applicant was  
31 convicted;

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

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

36 (2) The filing of such notice shall not preclude the Governor

1 from later denying the application, but any pardon, commutation of sentence,  
2 or remission of fine or forfeiture granted without filing such notice shall  
3 be null and void.

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

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

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

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

29  
30 SECTION 3. Legislative intent.

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

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

1 harm upon the victim.

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

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

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

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

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

14  
15 SECTION 4. EMERGENCY CLAUSE. It is found and determined by the  
16 General Assembly of the State of Arkansas that the granting of clemency is a  
17 matter of great public importance; that procedures for the Governor are  
18 necessary due to the volume of requests for clemency to ensure that the  
19 interested parties are properly informed of the reasons for granting  
20 clemency; and that this act is immediately necessary in order to provide a  
21 proper procedure for exercising the power of executive clemency as prescribed  
22 by the Constitution and the laws of the State of Arkansas. Therefore, an  
23 emergency is declared to exist and this act being immediately necessary for  
24 the preservation of the public peace, health, and safety shall become  
25 effective on:

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

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

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

32  
33 /s/ Glover  
34  
35  
36