

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

# A Bill

SENATE BILL 313

4  
5 By: Senators J. Bookout, Baker  
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## For An Act To Be Entitled

8  
9 AN ACT TO AMEND PROVISIONS CONCERNING CLEMENCY  
10 PROCEDURES; AND FOR OTHER PURPOSES.  
11

## Subtitle

12  
13 AN ACT TO AMEND PROVISIONS CONCERNING  
14 CLEMENCY PROCEDURES.  
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17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
18

19 SECTION 1. Arkansas Code § 5-4-607(d) is repealed:

20 ~~(d)(1) Any person who has been convicted of capital murder, § 5-10-~~  
21 ~~101, or of any Class Y or Class A felony, excluding nonviolent offenses under~~  
22 ~~the Uniform Controlled Substances Act, § 5-64-101 et seq., and who makes an~~  
23 ~~application shall not be eligible to reapply for a period of four (4) years~~  
24 ~~after the date the application was denied, except that a person whose~~  
25 ~~application was denied by the Governor after receiving a majority vote by the~~  
26 ~~Post Prison Transfer Board in favor of the application is eligible to reapply~~  
27 ~~one (1) year after the date the application was denied by the Governor.~~

28 ~~(2) Applications made prior to July 30, 1999, shall be included~~  
29 ~~in determining whether a person is eligible to reapply.~~

30 ~~(3)(A) Applications pending on July 30, 1999, that do not meet~~  
31 ~~the requirements of this subdivision (a)(4) shall be dismissed.~~

32 ~~(B) Applications dismissed under this subdivision~~  
33 ~~(a)(4)(C) shall not be included in determining future eligibility.~~  
34

35 SECTION 2. Arkansas Code § 16-21-106(c), pertaining to notices to  
36 victims of crimes, is amended to read as follows:



1 (c)(1) The prosecuting attorney of the county from which the inmate  
2 was committed shall notify the Post Prison Transfer Board at the time of  
3 commitment of the desire of the victim, or member of the victim's family, to  
4 be notified of any future parole or clemency hearings and to forward to the  
5 board the last known address and telephone number of the victim or member of  
6 the victim's family.

7 (2) It shall be the responsibility of the victim or his next of  
8 kin to notify the board after the date of commitment of any change in regard  
9 to the desire to be notified of any future parole or clemency hearings.

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11 SECTION 3. Arkansas Code § 16-93-201, pertaining to the Post Prison  
12 Transfer Board, is amended to add a new subsection to read as follows:

13 (e) The Attorney General shall be the legal advisor of the Post Prison  
14 Transfer Board in conjunction with the board's in-house staff attorney.

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16 SECTION 4. Arkansas Code § 16-93-204 is amended to read as follows:  
17 16-93-204. Executive clemency.

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

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

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

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

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

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

36 (2)(A) The subpoena shall be directed to any sheriff, coroner,

1 or constable of the county where the designated witness resides or is found.

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

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

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

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

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

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

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

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

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

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

1 commutation of sentence.

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

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

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

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

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

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

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

21 (B) The notification to the victim or the victim's next of  
22 kin shall not be required if the conviction occurred more than ten (10) years  
23 prior to the issuance of the notice under subdivision (e)(1)(A) of this  
24 section.

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

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30 SECTION 5. Arkansas Code § 16-93-207(b), pertaining to applications  
31 for pardon, commutation of sentence, or remission of fine, is amended to read  
32 as follows:

33 (b) If the Governor does not grant an application for pardon,  
34 commutation of sentence, or remission of fine or forfeiture within ~~one~~  
35 ~~hundred twenty (120)~~ three hundred sixty-five (365) days of the Governor's  
36 receipt of the recommendation of the Post Prison Transfer Board regarding the

1 application, the application shall be deemed denied by the Governor, and any  
2 pardon, commutation of sentence, or remission of fine or forfeiture granted  
3 after the ~~one hundred twenty day~~ three-hundred-sixty-five-day period shall be  
4 null and void.

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