

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: S2/16/05

A Bill

SENATE BILL 313

5 By: Senators J. Bookout, Baker, *Trusty*
6 By: *Representative Clemons*
7

For An Act To Be Entitled

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9
10 AN ACT TO AMEND PROVISIONS CONCERNING CLEMENCY
11 PROCEDURES; AND FOR OTHER PURPOSES.
12

Subtitle

13
14 AN ACT TO AMEND PROVISIONS CONCERNING
15 CLEMENCY PROCEDURES.
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18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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20 SECTION 1. Arkansas Code § 5-4-607(d) is repealed:

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

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

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

33 ~~(B) Applications dismissed under this subdivision~~
34 ~~(a)(4)(C) shall not be included in determining future eligibility.~~
35

36 SECTION 2. Arkansas Code § 16-21-106(c), pertaining to notices to



1 victims of crimes, is amended to read as follows:

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

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

11

12 SECTION 3. Arkansas Code § 16-93-204 is amended to read as follows:

13 16-93-204. Executive clemency.

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

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

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

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

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

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

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

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

36 (C) The subpoena shall be served and returned in the same

1 manner as subpoenas in civil actions in the circuit courts are served and
2 returned.

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

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

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

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

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

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

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

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

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

36 (4) The recommendations shall not be binding upon the board in

1 advising the Governor whether to grant a pardon or commute a sentence, but
2 shall be maintained in the inmate's file.

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

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

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

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

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

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

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

25
26 SECTION 4. Arkansas Code § 16-93-207(b), pertaining to applications
27 for pardon, commutation of sentence, or remission of fine, is amended to read
28 as follows:

29 (b) If the Governor does not grant an application for pardon,
30 commutation of sentence, or remission of fine or forfeiture within ~~one~~
31 ~~hundred twenty (120)~~ three hundred sixty-five (365) days of the Governor's
32 receipt of the recommendation of the Post Prison Transfer Board regarding the
33 application, the application shall be deemed denied by the Governor, and any
34 pardon, commutation of sentence, or remission of fine or forfeiture granted
35 after the ~~one hundred twenty-day~~ three-hundred-sixty-five-day period shall be
36 null and void.

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/s/ J. Bookout