

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 S3/18/05 S4/1/05

# A Bill

SENATE BILL 313

5 By: *Senators Glover, J. Bookout, Baker, Trusty, Wilkinson*  
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.  
16  
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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 Arkansas Code § 5-4-607(d) is repealed: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.~~  
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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.

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

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

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

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

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

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

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

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

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

32 (2) Send notice of its intention to the circuit court judge who  
33 presided over the applicant's trial, the prosecuting attorney and sheriff of  
34 the county in which the applicant was convicted, and, if applicable, to the  
35 victim or the victim's next of kin if the victim or the victim's next of kin  
36 registered for notification with the prosecuting attorney under § 16-21-

1 106(c).

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

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

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

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19 SECTION 5. Arkansas Code § 16-93-207(c) and (d), pertaining to  
20 executive clemency procedure, are amended to read as follows:

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

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

32 (d) If an application for pardon, commutation of sentence, or  
33 remission of fine is granted, the Governor shall:

34 (1) Include in his or her written order the reasons for granting  
35 the application; and

36 (2) File with the Senate and the House of Representatives a copy

1 of the order that includes:

2 (A) The applicant's name;

3 (B) The offense of which the applicant was convicted;

4 (C) The sentence imposed upon the applicant;

5 (D) The date that the sentence was imposed;

6 (E) The effective date of the pardon, commutation of

7 sentence, or remission of fine.

8 ~~(d)~~(e) This section shall not apply to reprieves, and reprieves may be  
9 granted as presently provided by law.

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11 /s/ Glover

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