

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.

Act 1975 of the Regular Session

As Engrossed: S2/16/05 S3/18/05 S4/1/05

A Bill

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

SENATE BILL 313

4
5 By: *Senators Glover, J. Bookout, Baker, Trusty, Wilkinson*

6 By: Representative Clemons
7
8

9 **For An Act To Be Entitled**

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

13 **Subtitle**

14 AN ACT TO AMEND PROVISIONS CONCERNING
15 CLEMENCY PROCEDURES.
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

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 Arkansas Code § 5-4-607(d) is repealed: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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1 SECTION 2. Arkansas Code § 16-21-106(c), pertaining to notices to
2 victims of crimes, is amended to read as follows:

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

9 (2) It shall be the responsibility of the victim or his next of
10 kin to notify the board after the date of commitment of any change in regard
11 to the desire to be notified of any future parole or clemency hearings.
12

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

14 16-93-204. Executive clemency.

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

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

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

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

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

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

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

35 (B) The endorsed affidavit on the subpoena of any person
36 shall be proof of the service of the subpoena.

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

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

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

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

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

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

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

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

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

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

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

1 registered for notification with the prosecuting attorney under § 16-21-
2 106(c).

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

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

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

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

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

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

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

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

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