

House Bill 71

By: Representatives Tanner of the 9th, Golick of the 40th, Caldwell of the 131st, Atwood of the 179th, Oliver of the 82nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 17 of Title 17 and Chapter 9 of Title 42 of the Official Code of Georgia
2 Annotated, relating to the Crime Victims' Bill of Rights and pardons and paroles,
3 respectively, so as to provide for input and transparency relative to the granting of a pardon
4 or commutation of a death sentence to a life sentence; to change provisions relating to
5 notifications by the State Board of Pardons and Paroles; to change provisions relating to the
6 State Board of Pardons and Paroles procedure and information gathering when considering
7 the grant of pardon, clemency, or commutation of a death sentence; to provide for
8 exemptions from disclosure; to amend Code Section 50-13-9.1 of the Official Code of
9 Georgia Annotated, relating to variance or waiver to rules, so as to correct an incorrect
10 reference; to provide for related matters; to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 style="text-align:center">**SECTION 1.**

13 Chapter 17 of Title 17 of the Official Code of Georgia Annotated, relating to the Crime
14 Victims' Bill of Rights, is amended by revising Code Section 17-17-13, relating to
15 notification of impending parole or clemency proceedings, as follows:

16 "17-17-13.

17 The State Board of Pardons and Paroles shall give 20 days' advance notification to a victim
18 whenever it considers making a final decision to grant parole, ~~or any other manner of~~
19 ~~executive clemency action to~~ release a defendant for a period exceeding 60 days, or grant
20 a pardon; and the board shall provide the victim with an opportunity to file a written
21 objection to such action. Within 72 hours of receiving a request to commute a death
22 sentence, the State Board of Pardons and Paroles shall provide notification to a victim of
23 the date set for hearing such request and provide such victim an opportunity to file a
24 written response to such request. No notification to the victim need be given unless the
25 victim has expressed ~~objection to release or has expressed~~ a desire for such notification and
26 has provided the State Board of Pardons and Paroles with a current mailing or e-mail

27 address and telephone number. Failure of the victim to inform the board of a change of
 28 address or telephone number shall not void a decision of the board."

29 **SECTION 2.**

30 Chapter 9 of Title 42 of the Official Code of Georgia Annotated, relating to pardons and
 31 paroles, is amended by revising Code Section 42-9-20.1, relating to public access to
 32 information regarding paroled felons residing within this state, as follows:

33 "42-9-20.1.

34 Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50 or any provisions of
 35 this chapter relating to the confidentiality of records, the State Board of Pardons and
 36 Paroles shall develop and implement a system whereby any interested citizen of this state
 37 shall be permitted to contact the board through an electronic calling system or by other
 38 means and receive information relating to persons who have been convicted of a felony,
 39 who have been paroled, and whose current addresses are within the State of Georgia. With
 40 respect to each parolee, the board shall provide the parolee's name, sex, date of birth,
 41 current address, crime or crimes for which the parolee was convicted, and the beginning
 42 and ending dates of such person's parole. ~~The board shall not release any information~~
 43 ~~regarding a person who has previously been paroled and whose civil rights have been~~
 44 ~~restored.~~ The board shall be authorized to charge a reasonable fee to cover the costs of
 45 providing such information. The board shall be authorized to promulgate rules and
 46 regulations to carry out the provisions of this Code section."

47 **SECTION 3.**

48 Said chapter is further amended by revising subsection (b) of Code Section 42-9-42, relating
 49 to the procedure for granting relief from sentence, conditions, and prerequisites, as follows:

50 "(b)(1) A grant of ~~clemency~~, pardon, parole, or other relief from sentence shall be
 51 rendered only by a written decision which shall be signed by at least the number of board
 52 members required for the relief granted and which shall become a part of ~~the~~ such
 53 individual's permanent record.

54 (2) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50 or any
 55 provisions of this chapter relating to the confidentiality of records, a written decision
 56 granting a pardon or commuting a death sentence shall:

57 (A) Include the board's findings which reflect the board's consideration of the evidence
 58 offered that supports the board's decision;

59 (B) Indicate each board member's vote on the decision; and

60 (C) Be available for public inspection."

61 **SECTION 4.**

62 Said chapter is further amended by revising Code Section 42-9-43, relating to information
 63 to be considered by the board generally, investigation, granting relief, and notice to victim,
 64 as follows:

65 "42-9-43.

66 (a) The board, in considering any case within its power, shall cause to be brought before
 67 it all pertinent information on the person in question. Included therein shall be:

68 (1) A report by the superintendent, warden, or jailer of the jail or state or county
 69 correctional institution in which the person has been confined upon the conduct of record
 70 of the person while in such jail or state or county correctional institution;

71 (2) The results of such physical and mental examinations as may have been made of the
 72 person;

73 (3) The extent to which the person appears to have responded to the efforts made to
 74 improve his or her social attitude;

75 (4) The industrial record of the person while confined, the nature of his or her
 76 occupations while so confined, and a recommendation as to the kind of work he or she
 77 is best fitted to perform and at which he or she is most likely to succeed when and if he
 78 or she is released;

79 (5) The educational programs in which the person has participated and the level of
 80 education which the person has attained based on standardized reading tests; ~~and~~

81 (6) The written statements or oral testimony of the district attorney of the county in
 82 which the person was sentenced expressing views and making any recommendation as
 83 to the granting of a pardon or commutation of a death sentence;

84 ~~(6)(7)~~ The written, oral, audiotaped, or videotaped testimony of the victim, the victim's
 85 family, or a witness having personal knowledge of the victim's personal characteristics,
 86 including any information prepared by the victim or the victim's family, for the purpose
 87 of the board's consideration of granting a pardon or commutation of a death sentence if
 88 the victim has provided such information to the board; and

89 (8) If the person is or was required to register pursuant to Code Section 42-1-12, any
 90 court order issued releasing the person from registration requirements or residency or
 91 employment restrictions.

92 (b)(1) As used in this subsection, the term:

93 (A) 'Debilitating terminal illness' means a disease that cannot be cured or adequately
 94 treated and that is reasonably expected to result in death within 12 months.

95 (B) 'Entirely incapacitated' means an offender who:

96 (i) Requires assistance in order to perform two or more necessary daily life functions
 97 or who is completely immobile; and

- 98 (ii) Has such limited physical or mental ability, strength, or capacity that he or she
 99 poses an extremely low risk of physical threat to others or to the community.
- 100 (C) 'Necessary daily life function' means eating, breathing, dressing, grooming,
 101 toileting, walking, or bathing.
- 102 (2) The board may issue a medical reprieve to an entirely incapacitated person suffering
 103 a progressively debilitating terminal illness in accordance with Article IV, Section II,
 104 Paragraph II of the Constitution.
- 105 (c)(1) The board shall give at least 30 days' advance written notification to the district
 106 attorney of the circuit in which the person was sentenced whenever it considers making
 107 a final decision to grant a pardon and shall provide the district attorney an opportunity to
 108 submit information and file a written objection to such action.
- 109 (2) Within 72 hours of receiving a request to commute a death sentence, the board shall
 110 provide written notification to the district attorney of the circuit in which the person was
 111 sentenced of the date set for hearing such request and shall provide the district attorney
 112 an opportunity to submit information and file a written response to such request.
- 113 (3) The board may also make such other investigation as it may deem necessary in order
 114 to be fully informed about the person.
- 115 (d)(1) Before releasing any person on parole, granting a pardon, or commuting a death
 116 sentence, the board may have the person appear before it and may personally examine
 117 him or her. Thereafter, upon consideration and consider any testimony it deems relevant
 118 or necessary. When objections to relief have been tendered, the board may hold a hearing
 119 and consider oral testimony. Upon consideration of the evidence submitted, the board
 120 shall make its findings and determine whether or not such person shall be granted a
 121 pardon, parole, or other relief within the power of the board; and the board shall
 122 determine the terms and conditions thereof. When the decision involves a pardon or
 123 commutation of a death sentence, the decision shall be available for public inspection as
 124 provided in Code Section 42-9-42.
- 125 (2) Notice of the board's determination shall be given to such person and to the person
 126 being considered, the correctional official having him or her in custody, if applicable, the
 127 district attorney who submitted any information or objection, and the victim in
 128 accordance with Code Section 17-17-13.
- 129 (e) If a person in custody is granted a pardon or a parole, the correctional ~~officials~~ official
 130 having ~~the~~ such person in custody, upon notification thereof, shall inform him or her of the
 131 terms and conditions thereof and shall, in strict accordance therewith, release the person.
- 132 (f) ~~The board shall send written notification of the parole decision to the victim or, if the~~
 133 ~~victim is no longer living, to the family of the victim."~~

134 **SECTION 5.**

135 Said chapter is further amended by revising Code Section 42-9-46, relating to cases in which
 136 inmate has failed to serve time required for automatic initial consideration, as follows:

137 "42-9-46.

138 Notwithstanding any other provisions of law to the contrary, if the board is to consider any
 139 case in which an inmate has failed to serve the time required by law for automatic initial
 140 consideration, the board shall notify in writing, at least ten days prior to consideration, the
 141 sentencing judge, the district attorney of the county in which the person was sentenced, and
 142 any victim of crimes against the person or, if such victim is deceased, the spouse, children,
 143 or parents of the deceased victim if such person's ~~name and address are~~ contact information
 144 is provided on the impact statement pursuant to Code Section ~~17-10-1.1~~ 17-17-13. The
 145 sentencing judge, district attorney, or victim or, if such victim is deceased, the spouse,
 146 children, or parents of the deceased victim may appear at a hearing held by the board or
 147 make a written statement to the board expressing their views and making their
 148 recommendation as to whether the person should be paroled."

149 **SECTION 6.**

150 Said chapter is further amended by revising Code Section 42-9-47, relating to notification
 151 of decision to parole inmate, as follows:

152 "42-9-47.

153 Within 72 hours after the board reaches a final decision to parole an inmate, the district
 154 attorney, the presiding judge, the sheriff of each county in which the inmate was tried,
 155 convicted, and sentenced, the local law enforcement authorities of the county of the last
 156 residence of the inmate prior to incarceration, and the victim of crimes against the person
 157 shall be notified of the decision by the chairman of the board. Such notice to the victim
 158 shall be mailed or e-mailed to the victim's address ~~as if such information is provided for~~
 159 ~~in subsection (c) of~~ pursuant to Code Section ~~17-10-1.1~~ 17-17-13. Failure of the
 160 ~~prosecuting attorney to provide an address of the victim or failure of the~~ victim to inform
 161 the board of a change of address shall not void a parole date set by the board."

162 **SECTION 7.**

163 Said chapter is further amended by revising subsection (b) of Code Section 42-9-53, relating
 164 to preservation of documents, classification of information and documents, divulgence of
 165 confidential state secrets, and conduct of hearings, as follows:

166 "(b)(1) Except as provided in paragraph (2) of this subsection and subsection (d) of this
 167 Code section, all AH information, both oral and written, received by the members of the
 168 board in the performance of their duties under this chapter and all records, papers, and

169 documents coming into their possession by reason of the performance of their duties
 170 under this chapter shall be classified as confidential state secrets until declassified by the
 171 board; ~~provided, however, that the~~

172 (2) The board shall be authorized to disclose, upon request:

173 (A) To to an alleged violator of parole or conditional release, the evidence introduced
 174 against him or her at a final hearing on the matter of revocation of parole or conditional
 175 release; ~~provided, further, that the board may make supervision~~

176 (B) Supervision records of the board available to probation officials employed with the
 177 Department of Corrections and the Sexual Offender Registration Review Board,
 178 provided that the same shall remain confidential and not available to any other person
 179 or subject to subpoena unless declassified by the board;

180 (C) Information as provided in paragraph (2) of subsection (b) of Code Section
 181 42-9-42; and

182 (D) To the public, all records, papers, and documents considered by the board in
 183 granting or denying a pardon or commuting a death sentence, other than:

184 (i) Any written statements or information provided directly or indirectly by or on
 185 behalf of a victim that was created on or after the date the defendant was sentenced,
 186 provided that such records, papers, and documents shall remain confidential and
 187 shall not be subject to subpoena until after the board has reached a decision
 188 regarding a pardon or death sentence; and

189 (ii) Any information provided pursuant to Code Section 42-5-36 or provided from
 190 the Department of Corrections that would jeopardize the safety and security of a
 191 department facility, an employee of such facility, an inmate, or a probationer."

192 SECTION 8.

193 Code Section 50-13-9.1 of the Official Code of Georgia Annotated, relating to variance or
 194 waiver to rules, is amended by revising subsection (h) as follows:

195 "(h) This Code section shall not apply, and no variance or waiver shall be sought or
 196 authorized, when:

197 (1) Any agency rule or regulation has been adopted or promulgated in order to
 198 implement or promote a federally delegated program;

199 (2) Any rule or regulation is promulgated or adopted by the Department of Corrections
 200 concerning any institutional operations or inmate activities;

201 ~~(3) Any rule or regulation is promulgated or adopted by the State Board of Pardons and~~
 202 ~~Paroles regarding clemency considerations and actions;~~

203 ~~(4)~~(3) Any rule or regulation is promulgated or adopted by the Department of
 204 Community Health;

205 ~~(5)~~(4) Any rule or regulation is promulgated or adopted by the Department of
206 Agriculture;
207 ~~(6)~~(5) Any rules, regulations, standards, or procedures are adopted or promulgated by the
208 Department of Natural Resources for the protection of the natural resources, environment,
209 or vital areas of this state; or
210 ~~(7)~~(6) The granting of a waiver or variance would be harmful to the public health, safety,
211 or welfare."

212 **SECTION 9.**

213 All laws and parts of laws in conflict with this Act are repealed.