

The House Committee on Judiciary Non-civil offers the following substitute to HB 71:

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 relating to:

57 (A) A pardon shall:

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

60 (ii) Indicate each board member's vote on the decision; and

61 (iii) Be available for public inspection; and

- 62 (B) A commutation of a death sentence shall:
 63 (i) Include the board's findings which reflect the board's consideration of the evidence
 64 offered that supports the board's decision;
 65 (ii) Indicate the board's vote on the decision; and
 66 (iii) Be available for public inspection."

67 **SECTION 4.**

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

71 "42-9-43.

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

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

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

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

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

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

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

90 ~~(6)(7)~~ The written, oral, audiotaped, or videotaped testimony of the victim, the victim's
 91 family, or a witness having personal knowledge of the victim's personal characteristics,
 92 including any information prepared by the victim or the victim's family, for the purpose
 93 of the board's consideration of a pardon or commutation of a death sentence if the victim
 94 has provided such information to the board; and

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

- 98 (b)(1) As used in this subsection, the term:
- 99 (A) 'Debilitating terminal illness' means a disease that cannot be cured or adequately
100 treated and that is reasonably expected to result in death within 12 months.
- 101 (B) 'Entirely incapacitated' means an offender who:
- 102 (i) Requires assistance in order to perform two or more necessary daily life functions
103 or who is completely immobile; and
- 104 (ii) Has such limited physical or mental ability, strength, or capacity that he or she
105 poses an extremely low risk of physical threat to others or to the community.
- 106 (C) 'Necessary daily life function' means eating, breathing, dressing, grooming,
107 toileting, walking, or bathing.
- 108 (2) The board may issue a medical reprieve to an entirely incapacitated person suffering
109 a progressively debilitating terminal illness in accordance with Article IV, Section II,
110 Paragraph II of the Constitution.
- 111 (c)(1) The board shall give at least 30 days' advance written notification to the district
112 attorney of the circuit in which the person was sentenced whenever it considers making
113 a final decision on a pardon and shall provide the district attorney an opportunity to
114 submit information and file a written objection to such action.
- 115 (2) Within 72 hours of receiving a request to commute a death sentence, the board shall
116 provide written notification to the district attorney of the circuit in which the person was
117 sentenced of the date set for hearing such request and shall provide the district attorney
118 an opportunity to submit information and file a written response to such request.
- 119 (3) The board may also make such other investigation as it may deem necessary in order
120 to be fully informed about the person.
- 121 (d)(1) Before releasing any person on parole, granting a pardon, or commuting a death
122 sentence, the board may have the person appear before it and may personally examine
123 him or her. Thereafter, upon consideration and consider any testimony it deems relevant
124 or necessary. When objections to relief have been tendered, the board may hold a hearing
125 and consider oral testimony. Upon consideration of the records, papers, documents, and
126 oral testimony submitted, the board shall make its findings and determine whether or not
127 such person shall be granted a pardon, parole, or other relief within the power of the
128 board; and the board shall determine the terms and conditions thereof. When the decision
129 involves a pardon or commutation of a death sentence, the decision shall be available for
130 public inspection as provided in Code Section 42-9-42.
- 131 (2) Notice of the board's determination shall be given to such person and to the person
132 being considered, the correctional official having him or her in custody, if applicable, the
133 district attorney who submitted any information or objection, and the victim in
134 accordance with Code Section 17-17-13.

135 (e) If a person in custody is granted a pardon or a parole, the correctional ~~officials~~ official
 136 having ~~the~~ such person in custody, upon notification thereof, shall inform him or her of the
 137 terms and conditions thereof and shall, in strict accordance therewith, release the person.
 138 ~~(f) The board shall send written notification of the parole decision to the victim or, if the~~
 139 ~~victim is no longer living, to the family of the victim."~~

140 SECTION 5.

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

143 "42-9-46.

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

155 SECTION 6.

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

158 "42-9-47.

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

168 **SECTION 7.**

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

172 "(b)(1) Except as provided in paragraph (2) of this subsection and subsection (d) of this
 173 Code section, all AH information, both oral and written, received by the members of the
 174 board in the performance of their duties under this chapter and all records, papers, and
 175 documents coming into their possession by reason of the performance of their duties
 176 under this chapter shall be classified as confidential state secrets until declassified by the
 177 board; provided, however, that the

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

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

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

186 (C) Information as provided in paragraph (2) of subsection (b) of Code Section
 187 42-9-42; and

188 (D) To the public, all records, papers, and documents coming into the board's
 189 possession and considered by the board in granting or denying a pardon or commuting
 190 a death sentence, provided that such records, papers, and documents shall remain
 191 confidential and shall not be subject to subpoena or disclosure pursuant to Article 4 of
 192 Chapter 18 of Title 50 until after the board has reached a decision regarding such
 193 pardon or death sentence, and provided, further, that the following shall not be subject
 194 to subpoena or disclosure unless declassified by the board:

195 (i) Any written statements or information provided directly or indirectly by or on
 196 behalf of a victim that was created on or after the date the defendant was sentenced;

197 (ii) Any information provided pursuant to Code Section 42-5-36;

198 (iii) Any information provided by the Department of Corrections that would
 199 jeopardize the safety and security of a department facility, an employee of such
 200 facility, an inmate, or a probationer; and

201 (iv) Any internal communication among board members."

202 **SECTION 8.**

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

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

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

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

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

213 ~~(4)~~(3) Any rule or regulation is promulgated or adopted by the Department of
214 Community Health;

215 ~~(5)~~(4) Any rule or regulation is promulgated or adopted by the Department of
216 Agriculture;

217 ~~(6)~~(5) Any rules, regulations, standards, or procedures are adopted or promulgated by the
218 Department of Natural Resources for the protection of the natural resources, environment,
219 or vital areas of this state; or

220 ~~(7)~~(6) The granting of a waiver or variance would be harmful to the public health, safety,
221 or welfare."

222 **SECTION 9.**

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