

The Senate 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 for a serious offense or commutation of a death sentence to a life sentence; to provide for a
5 definition; to change provisions relating to notifications by the State Board of Pardons and
6 Paroles; to change provisions relating to the State Board of Pardons and Paroles procedure
7 and information gathering when considering the grant of pardon, clemency, or commutation
8 of a death sentence; to provide for exemptions from disclosure; to amend Code Section
9 50-13-9.1 of the Official Code of Georgia Annotated, relating to variance or waiver to rules,
10 so as to correct an incorrect reference; to provide for related matters; to repeal conflicting
11 laws; and for other purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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 "17-17-13.

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

27 has provided the State Board of Pardons and Paroles with a current mailing or e-mail
 28 address and telephone number. Failure of the victim to inform the board of a change of
 29 address or telephone number shall not void a decision of the board."

30 SECTION 2.

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

34 "42-9-20.1.

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

48 SECTION 3.

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

51 "(b)(1) As used in this subsection, the term 'serious offense' means:

52 (A) A serious violent felony as such term is defined in Code Section 17-10-6.1; or

53 (B) A felony offense of:

54 (i) False imprisonment in violation of Code Section 16-5-41 when the victim is not
 55 the child of the accused and the victim is less than 14 years of age;

56 (ii) Aggravated assault in violation of Code Section 16-5-21;

57 (iii) Aggravated battery in violation of Code Section 16-5-24;

58 (iv) Trafficking of persons for labor or sexual servitude in violation of Code Section
 59 16-5-46;

60 (v) Cruelty to children in violation of Code Section 16-5-70;

61 (vi) Stalking in violation of Code Section 16-5-90;

- 62 (vii) Aggravated stalking in violation of Code Section 16-5-91;
63 (viii) Exploitation and intimidation of disabled adults, elder persons, and residents
64 in violation of Code Section 16-5-102;
65 (ix) Sodomy in violation of Code Section 16-6-2;
66 (x) Statutory rape in violation of Code Section 16-6-3;
67 (xi) Child molestation in violation of Code Section 16-6-4;
68 (xii) Enticing a child for indecent purposes in violation of Code Section 16-6-5;
69 (xiii) Sexual assault of certain persons in violation of Code Section 16-6-5.1;
70 (xiv) Incest in violation of Code Section 16-6-22;
71 (xv) Sexual battery in violation of Code Section 16-6-22.1;
72 (xvi) Burglary in violation of Code Section 16-7-1;
73 (xvii) Home invasion in violation of Code Section 16-7-5;
74 (xviii) Arson in violation of Code Section 16-7-60;
75 (xix) Possession, manufacture, transport, distribution, possession with the intent to
76 distribute, or offering to distribute an explosive device in violation of Code Section
77 16-7-82;
78 (xx) Possessing, transporting, or receiving explosives or destructive devices with the
79 intent to kill, injure, or intimidate individuals or destroy public buildings in violation
80 of Code Section 16-7-88;
81 (xxi) Theft by receiving stolen property in violation of Code Section 16-8-7;
82 (xxii) Robbery in violation of Code Section 16-8-40;
83 (xxiii) Sexual exploitation of children in violation of Code Section 16-12-100;
84 (xxiv) Drug related objects in violation of Code Section 16-13-1;
85 (xxv) Approval by the federal Food and Drug Administration as prerequisite to
86 certain sales in violation of Code Section 16-13-4;
87 (xxvi) Purchase, possession, manufacture, distribution, or sale of controlled
88 substances or marijuana in violation of Code Section 16-13-30;
89 (xxvii) Licenses for sale, transfer, or purchase for resale of products containing
90 pseudoephedrine; reporting and record-keeping requirements in violation of Code
91 Section 16-13-30.4;
92 (xxviii) Possession of substances with intent to use or convey such substances for the
93 manufacture of Schedule I or Schedule II controlled substances in violation of Code
94 Section 16-13-30.5;
95 (xxix) Trafficking in cocaine, illegal drugs, marijuana, or methamphetamine in
96 violation of Code Section 16-13-31;
97 (xxx) Trafficking in ecstasy in violation of Code Section 16-13-31.1;
98 (xxxi) Transactions in drug related objects in violation of Code Section 16-13-32;

99 (xxxii) Transactions in drug related objects in violation of Code Section 16-13-32.1;
100 (xxxiii) Use of a communication facility in committing or facilitating commission of
101 an act which constitutes a felony in violation of Code Section 16-13-32.3;
102 (xxxiv) Manufacturing, distributing, dispensing, or possessing controlled substances
103 in, on, or near public or private schools in violation of Code Section 16-13-32.4;
104 (xxxv) Manufacturing, distributing, dispensing, or possessing controlled substances,
105 marijuana, or counterfeit substances near a park or housing project in violation of
106 Code Section 16-13-32.5;
107 (xxxvi) Manufacturing, distributing, dispensing, or possessing with intent to
108 distribute controlled substances or marijuana in, on, or within a drug-free commercial
109 zone in violation of Code Section 16-13-32.6;
110 (xxxvii) Unauthorized distribution and dispensation of a controlled substance in
111 violation of Code Section 16-13-42;
112 (xxxviii) Unauthorized distribution of a controlled substance in violation of Code
113 Section 16-13-43;
114 (xxxix) A violation of Article 3 of Chapter 13 of Title 16 involving dangerous drugs;
115 (xl) A violation of Chapter 14 of Title 16 involving racketeer influenced and corrupt
116 organizations; or
117 (xli) Participating in gang activity in violation of Code Section 16-15-4.
118 (2) A grant of ~~clemency~~, pardon, parole, or other relief from sentence shall be rendered
119 only by a written decision which shall be signed by at least the number of board members
120 required for the relief granted and which shall become a part of ~~the~~ such individual's
121 permanent record.
122 (3) Notwithstanding the provisions of Article 4 of Chapter 18 of Title 50 or any
123 provisions of this chapter relating to the confidentiality of records, a written decision
124 relating to a pardon for a serious offense or commutation of a death sentence shall:
125 (A) Include the board's findings which reflect the board's consideration of the evidence
126 offered that supports the board's decision; and
127 (B) Be available for public inspection."

128 **SECTION 4.**

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

132 "42-9-43.

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

- 135 (1) A report by the superintendent, warden, or jailer of the jail or state or county
 136 correctional institution in which the person has been confined upon the conduct of record
 137 of the person while in such jail or state or county correctional institution;
- 138 (2) The results of such physical and mental examinations as may have been made of the
 139 person;
- 140 (3) The extent to which the person appears to have responded to the efforts made to
 141 improve his or her social attitude;
- 142 (4) The industrial record of the person while confined, the nature of his or her
 143 occupations while so confined, and a recommendation as to the kind of work he or she
 144 is best fitted to perform and at which he or she is most likely to succeed when and if he
 145 or she is released;
- 146 (5) The educational programs in which the person has participated and the level of
 147 education which the person has attained based on standardized reading tests; ~~and~~
- 148 (6) The written statements or oral testimony, if any, of the district attorney of the circuit
 149 in which the person was sentenced expressing views and making any recommendation
 150 as to a pardon for a serious offense, as such term is defined in Code Section 42-9-42, or
 151 commutation of a death sentence;
- 152 ~~(6)~~(7) The written, oral, audiotaped, or videotaped testimony of the victim, the victim's
 153 family, or a witness having personal knowledge of the victim's personal characteristics,
 154 including any information prepared by the victim or any individual offering or preparing
 155 information on behalf of the victim, for the purpose of the board's consideration of a
 156 pardon or commutation of a death sentence if the victim has provided such information
 157 to the board; and
- 158 (8) If the person is or was required to register pursuant to Code Section 42-1-12, any
 159 court order issued releasing the person from registration requirements or residency or
 160 employment restrictions.
- 161 (b)(1) As used in this subsection, the term:
- 162 (A) 'Debilitating terminal illness' means a disease that cannot be cured or adequately
 163 treated and that is reasonably expected to result in death within 12 months.
- 164 (B) 'Entirely incapacitated' means an offender who:
- 165 (i) Requires assistance in order to perform two or more necessary daily life functions
 166 or who is completely immobile; and
- 167 (ii) Has such limited physical or mental ability, strength, or capacity that he or she
 168 poses an extremely low risk of physical threat to others or to the community.
- 169 (C) 'Necessary daily life function' means eating, breathing, dressing, grooming,
 170 toileting, walking, or bathing.

171 (2) The board may issue a medical reprieve to an entirely incapacitated person suffering
 172 a progressively debilitating terminal illness in accordance with Article IV, Section II,
 173 Paragraph II of the Constitution.

174 (c)(1) The board shall give at least 30 days' advance written notification to the district
 175 attorney of the circuit in which the person was sentenced whenever it considers making
 176 a final decision on a pardon for a serious offense, as such term is defined in Code Section
 177 42-9-42, and shall provide the district attorney an opportunity to submit information and
 178 file a written objection to such action.

179 (2) Within 72 hours of receiving a request to commute a death sentence, the board shall
 180 provide written notification to the district attorney of the circuit in which the person was
 181 sentenced of the date set for hearing such request and shall provide the district attorney
 182 an opportunity to submit information and file a written response to such request.

183 (3) The board may also make such other investigation as it may deem necessary in order
 184 to be fully informed about the person.

185 (d)(1) Before releasing any person on parole, granting a pardon, or commuting a death
 186 sentence, the board may have the person appear before it and may personally examine
 187 him or her. Thereafter, upon consideration and consider any information it deems
 188 relevant or necessary. When objections to relief have been tendered, the board may hold
 189 a hearing and consider oral testimony. Upon consideration of the records, papers,
 190 documents, and oral testimony submitted, the board shall make its findings and determine
 191 whether or not such person shall be granted a pardon, parole, or other relief within the
 192 power of the board; and the board shall determine the terms and conditions thereof.

193 (2) Notice of the board's determination shall be given to such person and to the person
 194 being considered, the correctional official having him or her in custody, if applicable, the
 195 district attorney who submitted any information or objection, and the victim in
 196 accordance with Code Section 17-17-13.

197 (e) If a person in custody is granted a pardon or a parole, the correctional ~~officials~~ official
 198 having ~~the~~ such person in custody, upon notification thereof, shall inform him or her of the
 199 terms and conditions thereof and shall, in strict accordance therewith, release the person.

200 ~~(f) The board shall send written notification of the parole decision to the victim or, if the~~
 201 ~~victim is no longer living, to the family of the victim."~~

202 SECTION 5.

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

205 "42-9-46.
 206 Notwithstanding any other provisions of law to the contrary, if the board is to consider any
 207 case in which an inmate has failed to serve the time required by law for automatic initial
 208 consideration, the board shall notify in writing, at least ten days prior to consideration, the
 209 sentencing judge, the district attorney of the county in which the person was sentenced, and
 210 any victim of crimes against the person or, if such victim is deceased, the spouse, children,
 211 or parents of the deceased victim if such person's ~~name and address are~~ contact information
 212 is provided on the impact statement pursuant to Code Section ~~17-10-1.1~~ 17-17-13. The
 213 sentencing judge, district attorney, or victim or, if such victim is deceased, the spouse,
 214 children, or parents of the deceased victim may appear at a hearing held by the board or
 215 make a written statement to the board expressing their views and making their
 216 recommendation as to whether the person should be paroled."

217 **SECTION 6.**

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

220 "42-9-47.
 221 Within 72 hours after the board reaches a final decision to parole an inmate, the district
 222 attorney, the presiding judge, the sheriff of each county in which the inmate was tried,
 223 convicted, and sentenced, the local law enforcement authorities of the county of the last
 224 residence of the inmate prior to incarceration, and the victim of crimes against the person
 225 shall be notified of the decision by the chairman of the board. Such notice to the victim
 226 shall be mailed or e-mailed to the victim's address ~~as if such information is provided for~~
 227 ~~in subsection (c) of~~ pursuant to Code Section ~~17-10-1.1~~ 17-17-13. Failure of the
 228 ~~prosecuting attorney to provide an address of the victim or failure of the~~ victim to inform
 229 the board of a change of address shall not void a parole date set by the board."

230 **SECTION 7.**

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

234 "(b)(1) ~~Except as provided in paragraph (2) of this subsection and subsection (d) of this~~
 235 Code section, all ~~Att~~ information, both oral and written, received by the members of the
 236 board in the performance of their duties under this chapter and all records, papers, and
 237 documents coming into their possession by reason of the performance of their duties
 238 under this chapter shall be classified as confidential state secrets until declassified by the
 239 board; ~~provided, however, that the.~~ In making a determination as to whether any

240 information, records, papers, or documents in the possession of the board should be
 241 declassified, the board shall consider whether declassification of such materials would
 242 assist law enforcement or aid in the protection of the public and whether, in the board's
 243 judgment, the public benefit of declassifying such information outweighs other
 244 considerations relative to confidentiality and privacy.

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

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

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

253 (C) Information as provided in paragraph (3) of subsection (b) of Code Section
 254 42-9-42; and

255 (D) Any other information which has been declassified by the board."

256 **SECTION 8.**

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

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

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

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

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

267 ~~(4)~~(3) Any rule or regulation is promulgated or adopted by the Department of
 268 Community Health;

269 ~~(5)~~(4) Any rule or regulation is promulgated or adopted by the Department of
 270 Agriculture;

271 ~~(6)~~(5) Any rules, regulations, standards, or procedures are adopted or promulgated by the
 272 Department of Natural Resources for the protection of the natural resources, environment,
 273 or vital areas of this state; or

274 ~~(7)~~(6) The granting of a waiver or variance would be harmful to the public health, safety,
 275 or welfare."

276

SECTION 9.

277

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