

FIRST REGULAR SESSION

HOUSE BILL NO. 1127

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE MCGHEE.

2505L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal section 217.800, RSMo, and to enact in lieu thereof one new section relating to the right to clemency in capital cases.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Section 217.800, RSMo, is repealed and one new section enacted in lieu thereof, to be known as section 217.800, to read as follows:

217.800. 1. In all cases in which the governor is authorized by the constitution to grant pardons, he **or she** may grant the same, with such conditions and under such restrictions as he **or she** may think proper.

2. All applications for pardon, commutation of sentence or reprieve shall be referred to the board for investigation. The board shall investigate each such case and submit to the governor a report of its investigation, with all other information the board may have relating to the applicant together with any recommendations the board deems proper to make.

3. In cases in which the applicant is under sentence of death and seeks pardon, commutation of sentence, or reprieve under the constitution or this section, the applicant shall be entitled to the assistance of counsel as guaranteed by Article I, Section 18(a), of the constitution. Counsel shall have the right to interview and obtain statements relating to the application from both prisoners and employees of the department of corrections and from other persons. The full board shall conduct a hearing relating to the application at which the applicant shall be allowed to be personally present and to be represented by counsel. At the hearing, the applicant shall be allowed to adduce testimony and otherwise to offer evidence.

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **4. After the hearing, the board shall make a recommendation whether the**
18 **application should be granted, having regard to at least the following substantive**
19 **predicates:**

20 **(1) The strength or weakness of the evidence of applicant's guilt of the underlying**
21 **offense or offenses, including evidence not presented or considered at trial or in subsequent**
22 **judicial proceedings;**

23 **(2) The strength or weakness of the evidence of the aggravating factors that the**
24 **jury or, in a bench-tried case, the judge found in support of the punishment verdict;**

25 **(3) The strength or weakness of the evidence, if any, that executing the applicant**
26 **will in fact deter future capital offenses;**

27 **(4) The evidence of the impact of the underlying offense on the family of the**
28 **decedent in the underlying case and of the execution on the family of the applicant;**

29 **(5) The wishes of the survivors of the decedent in the underlying case and of the**
30 **family of the applicant;**

31 **(6) Whether the applicant has received independent judicial review on the merits**
32 **of all of the available constitutional objections to the conviction and the sentence of death**
33 **or both;**

34 **(7) Whether the race of the decedent or the race of the applicant or both played any**
35 **role in the applicant's sentencing;**

36 **(8) Whether the applicant received the effective assistance of counsel at every stage**
37 **in the judicial proceedings in the underlying case, including but not limited to pretrial**
38 **motions, discovery, trial, sentencing, direct appeal, state post-conviction relief, federal**
39 **habeas corpus, and any other matters touching or concerning the sentence of death**
40 **(including the manner of its infliction);**

41 **(9) Whether the conviction or sentence or both were a product of geographical**
42 **disparity in charging or sentencing;**

43 **(10) Whether the underlying case against the applicant involved eyewitness**
44 **identification;**

45 **(11) Whether the underlying case against the applicant involved a "confession"**
46 **obtained during custodial interrogation;**

47 **(12) Whether the applicant suffered from mental illness at the time of the conduct**
48 **for which he or she was convicted and sentenced to death;**

49 **(13) The applicant's age at the time of the conduct for which he or she was**
50 **convicted and sentenced to death;**

51 **(14) Whether there is a means of inflicting any sentence of death that would**
52 **accomplish the statutory goal of extinguishing the life of the applicant with an appreciably**
53 **lower likelihood of causing unnecessary pain or suffering on the part of the applicant;**

54 **(15) Whether the delay in executing the sentence of death, other than any delay**
55 **fairly attributable to frivolous or merely dilatory litigation, has resulted in an additional**
56 **sanction rendering the execution of the applicant surplus punishment in respect to**
57 **deterrence or retribution or both; and**

58 **(16) Any other information or consideration supporting residual doubt of guilt or**
59 **in extenuation or mitigation of punishment.**

60 **5. If the board recommends that a person under sentence of death be pardoned,**
61 **that a sentence of death be commuted, or that a reprieve be issued, the person under**
62 **sentence of death shall not be executed unless the governor issues an order explaining why**
63 **the recommendation of the board is not being followed. The recommendation of the board**
64 **and any written order by the governor shall be "open records" within the meaning of**
65 **chapter 610, RSMo. Under no circumstances shall the governor be required to deny an**
66 **applicant's application for pardon, commutation of sentence, or reprieve in respect to a**
67 **sentence of death or any other sentence.**

68 **[3.] 6. The department of corrections shall notify the central repository, as provided in**
69 **sections 43.500 to 43.530, RSMo, of any action of the governor granting a pardon, commutation**
70 **of sentence, or reprieve.**

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