

1 SB47
2 130273-3
3 By Senator Ward
4 RFD: Judiciary
5 First Read: 01-MAR-11
6 PFD: 02/24/2011

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 To amend Sections 15-22-23 and 15-22-36 of the Code
12 of Alabama 1975, relating to the meetings and authority of the
13 Board of Pardons and Paroles; to provide for changes in
14 notification of victims; to provide for victims and other
15 persons to supply contact information for notification
16 purposes; to allow victims to choose to not be notified under
17 certain conditions; to require victims' and other individuals'
18 information be entered into the automated victim notification
19 system under certain conditions; and to add Section 15-22-36.2
20 to the Code of Alabama 1975, to create the Implementation Task
21 Force to support the implementation of a statewide automated
22 victim notification system.

23 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

24 Section 1. Sections 15-22-23 and 15-22-36 of the
25 Code of Alabama 1975, are amended to read as follows:

26 "§15-22-23.

1 "(a) Meetings of the Board of Pardons and Paroles
2 shall be held at the call of the chairman or as may be
3 determined by the board. Meetings set for the purpose of
4 conducting hearings and making determinations concerning
5 pardons, paroles, restorations of political and civil rights,
6 remission of fines and forfeitures, and revocations may be set
7 by the chairman, the board, or a panel of the board designated
8 for such purpose.

9 "(b) The Board of Pardons and Paroles shall have no
10 power or authority to tentatively approve, grant, or order any
11 pardon, parole or remission of fine or other forfeiture unless
12 and until all of the following conditions are met:

13 "(1) The action is taken in an open public meeting
14 of the board held after notice of the meeting has been given
15 to each member of the board in such manner as the board
16 directs; and

17 "(2) Due notice of the time, date, and place of the
18 meeting and the action to be considered has been given in
19 writing sent by U. S. mail, electronic transmission, or by
20 other commonly accepted method of delivery at least ~~seven~~ 30
21 days prior to the meeting to each of the following:

22 "a. The incumbent Attorney General.

23 "b. The district attorney who prosecuted and the
24 judge who presided over the case.

25 "c. The chief of police of the municipality wherein
26 the crime occurred, if the crime was committed in a
27 municipality with a police department.

1 "d. The sheriff of the county in which the crime was
2 committed.

3 "(3) If the district attorney who prosecuted the
4 case or the judge who presided over the case be not living or
5 serving, notice under subdivision (2) ~~a. and b.~~ shall be given
6 to ~~their successors in office~~ the district attorney and one of
7 the judges of the circuit in which the subject was convicted.

8 "(4) All persons who are required to be notified
9 under the provisions of this section have been allowed, at
10 their option, to either appear before the board or give their
11 views in writing.

12 "(c) "Due notice" as used in subdivision (b) (2) of
13 this section shall be defined to include all of the following:

14 "(1) The name of the prisoner or defendant involved.

15 "(2) The crime for which the prisoner or defendant
16 was convicted.

17 "(3) The date of the sentence.

18 "(4) The court in which the conviction occurred.

19 "(5) The sentence imposed, and the prisoner's actual
20 time in confinement, ~~without regard to the operation of any~~
21 ~~incentive or other good time law~~ and the prisoner's minimum
22 release date, as calculated by the Department of Corrections.

23 "(6) The action to be considered by the board.

24 "(7) The date, time, and location of the board
25 meeting at which the action is to be considered.

26 "(8) The right of ~~any interested person~~ any
27 individual to present his or her views to the board as

1 specified in ~~subdivision~~ subsection (b) (2), (3), and (4) of
2 this section or as otherwise permitted by the board's
3 operating rules.

4 "(d) All of the requirements set out in subsections
5 (b) and (c) ~~of this section~~ are express conditions to any
6 board action approving, granting, or ordering any pardon,
7 parole, remission of fine or other forfeiture, or restoration
8 of civil and political rights.

9 "§15-22-36.

10 "(a) In all cases, except treason and impeachment
11 and cases in which sentence of death is imposed and not
12 commuted, as is provided by law, the Board of Pardons and
13 Paroles shall have the authority and power, after conviction
14 and not otherwise, to grant pardons and paroles and to remit
15 fines and forfeitures.

16 "(b) Each member of the Board of Pardons and Paroles
17 favoring a pardon, parole, remission of a fine or forfeiture,
18 or restoration of civil and political rights shall enter in
19 the file his or her reasons in detail, which entry and the
20 order shall be public records, but all other portions of the
21 file shall be privileged.

22 "(c) No pardon shall relieve one from civil and
23 political disabilities unless specifically expressed in the
24 pardon. No pardon shall be granted unless the prisoner has
25 successfully completed at least three years of permanent
26 parole or until the expiration of his or her sentence if his
27 or her sentence was for less than three years. Notwithstanding

1 the foregoing, a pardon based on innocence may be granted upon
2 the unanimous affirmative vote of the board following receipt
3 and filing of clear proof of his or her innocence of the crime
4 for which he or she was convicted and the written approval of
5 the judge who tried his or her case or district attorney or
6 with the written approval of a circuit judge in the circuit
7 where he or she was convicted if the judge who tried his or
8 her case is dead or no longer serving.

9 "(d) The Board of Pardons and Paroles shall have no
10 power to grant a pardon, order a parole, remit a fine or
11 forfeiture, or restore civil and political rights until 30
12 days' notice that the prisoner is being considered therefor
13 has been given by the board to the Attorney General, the judge
14 who presided over the case, and the district attorney who
15 tried the subject's case, the chief of police in the
16 municipality in which the crime occurred, if the crime was
17 committed in an incorporated area with a police department,
18 and to the sheriff of the county where convicted, and to the
19 same officials of the county where the crime occurred if
20 different from the county of conviction; provided, however,
21 that if they are dead or not serving, the notice shall be
22 given to the district attorney, incumbent sheriff, and one of
23 the judges of the circuit in which the subject was convicted.
24 The board shall also be required to provide the same notice to
25 the Crime Victims Compensation Commission.

26 "(e) (1) Until and unless at least 30 days' written
27 notice of the board's action to be considered has been given

1 by the board to the victim named in the indictment, ~~or if the~~
2 ~~victim is deceased as a result of the offense, the victim's~~
3 ~~immediate family, the victim's representative, or any other~~
4 interested individual, after the board has received a request
5 through the automated victim notification system or otherwise
6 upon direct request made to the board or other authorized
7 individual 30 days or more in advance of the board's action to
8 be considered for notice from the victim, victim's
9 representative, or other interested individual, including the
10 preferred mode of notification, the Board of Pardons and
11 Paroles shall have no power or authority to in any way approve
12 or order any parole, pardon, remission of fine or forfeiture,
13 restoration of civil and political rights, furlough, leave or
14 early release of a person convicted of the following offenses:

15 "a. A Class A felony.

16 "b. Any felony committed prior to the first day of
17 January, 1980, which if committed after the first day of
18 January, 1980, would be designated a Class A felony.

19 "c. Any felony involving violence, death, or any
20 physical injury to the person of another.

21 "d. Any felony involving unlawful sexual assault or
22 other unlawful sexual conduct on the person of another.

23 "e. Any felony involving sexual assault, or a lewd
24 or lascivious act upon a child under the age of 16 years or
25 attempt thereof.

26 "f. Sexual abuse or any other criminal conduct
27 committed prior to the first day of January, 1980, which if

1 committed after the first day of January, 1980, would be
2 defined as sexual abuse under the Alabama Criminal Code.

3 "g. Child abuse or any criminal conduct committed
4 prior to the first day of January, 1980, which if committed
5 after the first day of January, 1980, would be defined as
6 child abuse under the Alabama Criminal Code.

7 "h. Sodomy or any criminal conduct committed prior
8 to the first day of January, 1980, which if committed after
9 the first day of January, 1980, would be defined as sodomy
10 under the Alabama Criminal Code.

11 "i. Any violation of Section 13A-6-69, as amended.

12 "(2) If, however, the victim, victim's
13 representative, or other interested individual has not been
14 registered for notice through the automated victim
15 notification system or otherwise made a direct request to the
16 board for notice or to another authorized individual, the
17 victim's information has not been updated, or a particular
18 mode of notification has not been requested at least 30 days
19 or more in advance of the board's action to be considered, the
20 board shall not be limited in power or authority in any way to
21 approve or order any parole, pardon, remission of fine or
22 forfeiture, restoration of civil and political rights,
23 furlough, leave, or early release of a person convicted of the
24 offenses named in subsection (e)(1)a. to i., inclusive.

25 "~~(2)~~(3) The notice shall be given by U.S. mail,
26 certified mail, return receipt requested, U.S. mail,
27 electronic transmission, or by other commonly accepted method

1 of delivery, upon a request made through the automated victim
2 notification system or otherwise upon direct request made to
3 the board or other authorized individual 30 days or more in
4 advance of the board's action to be considered and shall
5 include:

6 "a. The name of the prisoner or defendant involved.

7 "b. The crime for which the prisoner or defendant
8 was convicted.

9 "c. The date of the sentence.

10 "d. The court in which the conviction occurred.

11 "e. The sentence imposed.

12 "f. The actual time the prisoner has been held in
13 confinement and the prisoner's minimum release date, as
14 computed by the Department of Corrections, ~~without regard to~~
15 ~~the operation of any incentive good time, or other good time~~
16 ~~laws.~~

17 "g. The action to be considered by the board.

18 "h. The date, time, and location of the board
19 meeting at which the action is to be considered.

20 "i. ~~A statement that all persons required to be~~
21 ~~notified under the provisions of this section will be allowed,~~
22 ~~at their option, to either appear before the board or give~~
23 ~~their views in writing.~~ The right of the victim named in the
24 indictment, a victim's representative, or if the victim is
25 deceased as a result of the offense, the victim's immediate
26 family, as defined by the board's operating rules, or, in the
27 event there is no immediate family, a relative of a victim, if

1 any, to present his or her views to the board in person or in
2 writing.

3 "Notice for robbery victims who were robbed while on
4 duty as an employee of a business establishment shall be
5 sufficient if mailed to the last address provided by the
6 victim or as otherwise noted on the indictment or in the board
7 files.

8 ~~"(3) Provided however, if the victim is a child the~~
9 ~~notice shall be given to the parents of the victim, or in the~~
10 ~~event there is no parent, to the guardian of the victim. If~~
11 ~~the victim was a minor at the time of the offense, but has~~
12 ~~attained majority by the time the notice is sent, the notice~~
13 ~~shall be directed to the victim. Provided further, if the~~
14 ~~victim is deceased as a result of the offense, the notice~~
15 ~~shall be given to the surviving members of the victim's~~
16 ~~immediate family, as defined by the operating procedures of~~
17 ~~the Board of Pardons and Paroles, or in the event there is no~~
18 ~~immediate family, to a relative of the victim, if any.~~
19 ~~Provided further, such notice may be waived in writing by any~~
20 ~~person who is entitled to receive such notice.~~

21 "(4) ~~If the victim requests not to be notified, a~~
22 ~~certified notice shall be sent to the victim confirming that~~
23 ~~request and advising him or her that no further notices of~~
24 ~~board hearings shall be sent unless he or she subsequently~~
25 ~~contacts the board and submits a written request to be~~
26 ~~notified of hearings in the future. Mailing of the certified~~
27 ~~notice shall constitute confirmation unless the certification~~

1 ~~is returned due to an incorrect address. If a victim, victim's~~
2 ~~representative, or otherwise interested individual requests~~
3 ~~not to be notified, the request shall be made to the Board of~~
4 ~~Pardons and Paroles in writing or by electronic signature.~~
5 ~~Confirmation of a request to not be notified shall be provided~~
6 ~~to the victim so requesting. After a request is received, the~~
7 ~~board shall provide no further notifications, unless and until~~
8 ~~the victim, victim's representative, or otherwise interested~~
9 ~~individual subsequently requests future notifications, at~~
10 ~~least 30 days in advance of the board's action to be~~
11 ~~considered through the automated victim notification system~~
12 ~~designated by the board or by contacting the board or other~~
13 ~~authorized individual in writing, in person, or by telephone.~~

14 " (5) ~~The board shall exercise due diligence to~~
15 ~~locate victims to notify them of hearings. If all attempts to~~
16 ~~locate a victim have failed and the agent of the board has~~
17 ~~certified that due diligence has been exercised, no future~~
18 ~~attempts shall be required to locate that victim. At any time~~
19 ~~the victim may contact the board and request that the board~~
20 ~~notify the victim of all future hearings. Should a victim,~~
21 ~~victim's representative, or otherwise interested person wish~~
22 ~~to receive notice of any specific board hearing and action~~
23 ~~taken by the board, if any, in a specific case, the individual~~
24 ~~may register to request the notice through the automated~~
25 ~~victim notification system or otherwise request notice by~~
26 ~~making a direct request to the board or other authorized~~
27 ~~individual to receive notice at least 30 days in advance of~~

1 the board's action to be considered. The individual shall be
2 required to designate his or her preferred mode or modes of
3 communication.

4 "(6) Prior to the sentencing of any defendant
5 convicted of the offenses named in subsection (e)(1)a. to i.,
6 inclusive, and only after the most recent victim information
7 has been furnished to the Board of Pardons and Paroles
8 pursuant to Section 12-17-184(9), in those cases, the
9 probation and parole officer assigned to prepare a
10 pre-sentence investigation report shall register the most
11 recent information for the victim named in the indictment into
12 the automated victim notification system designated by the
13 board. In case of a homicide, the information of immediate
14 family members shall be entered into the automated victim
15 notification system designated by the board. If a surviving
16 victim is a minor, information for parents or guardians shall
17 be entered into the automated victim notification system
18 designated by the board. The probation and parole officer
19 assigned to prepare a pre-sentence investigation report shall
20 then report to the sentencing court that all most current
21 victim information has been so registered. The sentencing
22 court shall then record into the case record that the victim
23 information has been entered into the automated victim
24 notification system.

25 "(7) For those cases in which a defendant has been
26 convicted and sentenced prior to the implementation task force
27 determining that the automated victim notification system

1 complies with the requirements of this act, for any homicide,
2 and Class A felony, except Burglary I in which no victim was
3 present, or any criminal sex offense, as defined by Section
4 15-20-21(4), the board shall exercise due diligence to locate
5 the victim or victims and register the most recent victim
6 information into the automated victim notification system
7 designated by the board. If all attempts to locate a victim,
8 or in case of a homicide to locate immediate family member or
9 members, have failed and the agent of the board has certified
10 that due diligence has been exercised, no future location
11 attempts shall be required.

12 "(f) After any board action is taken granting any
13 pardon or parole, the board shall promptly notify all persons
14 who ~~are entitled to~~ timely requested notice, pursuant to ~~any~~
15 ~~provision of~~ this section as to the action taken by the board
16 and the conditions, if any, of any such parole or pardon via
17 electronic notification through the automated victim
18 notification system or posting publicly on a state agency
19 website."

20 Section 2. Section 15-22-36.2 is added to the Code
21 of Alabama 1975, to read as follows:

22 §15-22-36.2. Implementation Task Force.

23 There is hereby created the Implementation Task
24 Force to guide and support the implementation of a statewide
25 automated victim notification system in Alabama. The task
26 force shall be composed of two representatives of victims'
27 rights organizations designated by the Attorney General and at

1 least one designee from each of the following: The Board of
2 Pardons and Paroles, the Department of Corrections, the
3 Alabama Criminal Justice Information Center, the Alabama Crime
4 Victims Compensation Commission, the District Attorneys
5 Association or a district attorney representative, the
6 Attorney General, and any other entity or organization as
7 deemed appropriate by a majority vote of the current
8 representatives composing the task force. The task force shall
9 elect a chair to function as the administrative head. The task
10 force shall meet initially no more than 60 days from the
11 effective date of this act at the call of the Attorney
12 General. The task force shall meet not less than once a month
13 prior to January 1, 2012, quarterly after January 1, 2012,
14 until December 31, 2015, and otherwise at the call of the
15 chair or a majority vote of the current task force
16 representatives. Pursuant to this act, the task force shall be
17 responsible for overseeing the development and integration of
18 a process to automatically update victim information into the
19 automated victim notification system on a continual basis. The
20 task force shall also oversee a statewide public education and
21 awareness campaign for the implementation of the automated
22 victim notification system and shall be charged with
23 confirming, by majority vote, that the automated victim
24 notification system complies with the requirements of this
25 act. Approval from the task force shall not be required for
26 the validity of any action taken by any entity represented on
27 the task force in the exercise of any of the power or

1 authority granted to it by the Legislature. The task force
2 shall be dissolved effective December 31, 2015.

3 Section 3. The Board of Pardons and Paroles shall
4 have authority to carry out the enforcement of this act.

5 Section 4. This act shall become effective on
6 January 1, 2012, following its passage and approval by the
7 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate
committee on Judiciary..... 01-MAR-11

Read for the second time and placed on the calen-
dar with 1 substitute and..... 27-APR-11

Read for the third time and passed as amended 25-MAY-11

Yeas 28
Nays 1

Patrick Harris
Secretary