

Hall of the House of Representatives
87th General Assembly - Regular Session, 2009
Amendment Form

Subtitle of House Bill No. 2245

"AN ACT TO REQUIRE PAROLE REVIEW FOR ALL PERSONS SERVING LIFE WITHOUT
PAROLE FOR CAPITAL MURDER OR A LIFE SENTENCE FOR A CLASS Y FELONY
COMMITTED WHEN THE PERSON WAS UNDER EIGHTEEN YEARS OF AGE."

Amendment No. 1 to House Bill No. 2245.

Amend House Bill No. 2245 as originally introduced:

Page 1, line 9, delete "PAROLE" and substitute "SENTENCE"

AND

Page 1, line 16, delete "AN ACT TO REQUIRE PAROLE" and substitute " TO
REQUIRE SENTENCE"

AND

Delete Section 2 and substitute the following:

"SECTION 2. Arkansas Code § 16-93-207 is amended to read as follows:
16-93-207. Applications for pardon, commutation of sentence, and
remission of fines and forfeitures.

(a)(1)(A) At least thirty (30) days before granting an application for
pardon, commutation of sentence, or remission of fine or forfeiture, the
Governor shall file with the Secretary of State a notice of his or her
intention to grant the application.

(B) The Governor shall also direct the Department of
Correction to send notice of his or her intention to the judge, the
prosecuting attorney, and the sheriff of the county in which the applicant
was convicted and, if applicable, to the victim or the victim's next of kin.

(2) The filing of the notice shall not preclude the Governor
from later denying the application, but any pardon, commutation of sentence,
or remission of fine or forfeiture granted without filing the notice shall be
null and void.

(b) If the Governor does not grant an application for pardon,
commutation of sentence, or remission of fine or forfeiture within two
hundred forty (240) days of the Governor's receipt of the recommendation of
the Parole Board regarding the application, the application shall be deemed
denied by the Governor, and any pardon, commutation of sentence, or remission



of fine or forfeiture granted after the two-hundred-forty-day period shall be null and void.

(c)(1)(A) Except as provided in subdivision (c)(3) and subsection (d) of this section, if an application for pardon, commutation of sentence, or remission of fine or forfeiture is denied in writing by the Governor, the person filing the application shall not be eligible to file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense for a period of four (4) years from the date of filing the application that was denied.

(B) Any person who made an application for pardon, commutation of sentence, or remission of fine or forfeiture that was denied on or after July 1, 2004, shall be eligible to file a new application four (4) years after the date of filing the application that was denied.

(2) If an application for pardon, commutation of sentence, or remission of fine or forfeiture is denied by the Governor pursuant to subsection (b) of this section, the person filing the application may immediately file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense.

(3)(A) The Parole Board may waive the waiting period for filing a new application for pardon, commutation of sentence, or remission of fine or forfeiture described in subdivision (c)(1)(A) of this section if:

(i) It has been at least twelve (12) months after the date of filing the application that was denied; and

(ii) The Parole Board determines that the person whose application was denied has established that:

(a) New material evidence relating to the person's guilt or punishment has been discovered;

(b) The person's physical or mental health has substantially deteriorated; or

(c) Other meritorious circumstances justify a waiver of the waiting period.

(B)(i) The Board of Corrections shall promulgate rules that will establish policies and procedures for waiver of the waiting period.

(ii) The Board of Corrections may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(d)(1) Except as provided in subdivision (d)(3) of this section, if an application for pardon, commutation of sentence, or remission of fine or forfeiture of a person sentenced to life imprisonment without parole is denied in writing by the Governor, the person filing the application shall not be eligible to file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense for a period of six (6) years from the date of the denial.

(2) If an application for pardon, commutation of sentence, or remission of fine or forfeiture of a person sentenced to life imprisonment without parole is denied by the Governor pursuant to subsection (b) of this section, the person filing the application may immediately file a new application for pardon, commutation of sentence, or remission of fine or forfeiture related to the same offense.

(3)(A) The Parole Board or the Governor may waive the waiting period for filing a new application for pardon, commutation of sentence, or remission of fine or forfeiture described in subdivision (d)(1) of this

section if:

(i) It has been at least twelve (12) months after the date of filing the application that was denied; and

(ii) The Parole Board determines that the person whose application was denied has established that:

(a) New material evidence relating to the person's guilt or punishment has been discovered;

(b) The person's physical or mental health has substantially deteriorated; or

(c) Other meritorious circumstances justify a waiver of the waiting period.

(B)(i) The Board of Corrections shall promulgate rules that will establish policies and procedures for waiver of the waiting period.

(ii) The Board of Corrections may make additions, amendments, changes, or alterations to the rules in accordance with the Arkansas Administrative Procedure Act, § 25-15-201 et seq.

(e) An application for pardon or commutation of sentence shall be considered by the Parole Board at least one (1) time every three (3) years for a person who:

(1) Was convicted of:

(A) Capital murder, § 5-10-101, and sentenced to life imprisonment without parole; or

(B) A Class Y felony and sentenced to life imprisonment;

(2) Was under eighteen (18) years of age at the time of the commission of the offense; and

(3) Has served at least twenty (20) years of his or her sentence.

(f) If an application for pardon, commutation of sentence, or remission of fine is granted, the Governor shall:

(1) Include in his or her written order the reasons for granting the application; and

(2) File with the Senate and the House of Representatives a copy of the order that includes:

(A) The applicant's name;

(B) The offense of which the applicant was convicted;

(C) The sentence imposed upon the applicant;

(D) The date that the sentence was imposed; and

(E) The effective date of the pardon, commutation of sentence, or remission of fine.

~~(f)~~(g)(1) This section shall not apply to reprieves.

(2) Reprieves may be granted as presently provided by law.

SECTION 3. Arkansas Code § 16-93-607(b) and (c), concerning parole eligibility for felonies committed after April 1, 1983, are amended to read as follows:

(b) A person who committed a felony prior to April 1, 1983, and who ~~were~~ was convicted and incarcerated for that felony, shall be eligible for release on parole in accordance with the parole eligibility law in effect at the time the crime was committed, except for a person to whom subdivision (c)(6)(A) of this section applies.

(c) A person who commits felonies on or after April 1, 1983, and who shall be convicted and incarcerated for that felony, shall be eligible for

release on parole as follows:

(1) An inmate under sentence of death or life imprisonment without parole is not eligible for release on parole but may be pardoned or have ~~their~~ his or her sentence commuted by the Governor, as provided by law. An inmate sentenced to life imprisonment is not eligible for release on parole unless the sentence is commuted to a term of years by executive clemency. Upon commutation, the inmate is eligible for release on parole as provided in this section;

(2) An inmate classified as a first offender under § 16-93-606, except ~~one~~ an inmate under the age of twenty-one (21) years as described in subsection (d) of this section ~~and except one~~ or an inmate who pleads guilty or has been convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of one-third (1/3) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances. However, if the trier of fact determines that a deadly weapon was used in the commission of the crime, a first offender twenty-one (21) years of age or older is not eligible for release on parole until a minimum of one-half (1/2) of the sentence is served, with credit for good-time allowances;

(3) An inmate classified as a second offender under § 16-93-606 ~~and~~ or one an inmate who pleads guilty or was convicted of a Class Y felony, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of one-half (1/2) of his or her sentence shall have been served, with credit for good-time allowances, or one-half (1/2) of the time to which the sentence is commuted by executive clemency is served, with credit for good-time allowances;

(4) An inmate classified as a third offender under § 16-93-606, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for release on parole until a minimum of three-fourths (3/4) of his or her sentence shall have been served, with credit for good-time allowances, or three-fourths (3/4) of the time to which the sentence is commuted by executive clemency shall have been served, with credit for good-time allowances; ~~and~~

(5) An inmate classified as a fourth offender under § 16-93-606, upon entering a correctional institution in this state under sentence from a circuit court, is not eligible for parole, but he or she shall be entitled to good-time allowances as provided by law; ~~and~~

(6)(A) Notwithstanding other laws governing commutation and parole of persons sentenced to life imprisonment or life imprisonment without parole, an inmate shall be eligible for release on parole after serving twenty (20) years of his or her sentence if he or she was:

(i) Either:

(a) Convicted of capital murder, § 5-10-101, and sentenced to life imprisonment without parole; or

(b) Convicted of a Class Y felony and sentenced to life imprisonment; and

(ii) Under eighteen (18) years of age at the time of the commission of the offense.

(B) For an inmate who was sentenced to life imprisonment without parole to become eligible for parole under the terms of subdivision

(c)(6)(A) of this section, the inmate's sentence must first be reduced to life imprisonment under § 5-4-607.

(C) Unless a sentence of an inmate paroled under subdivision (c)(6)(A) of this section is subsequently commuted by the governor to a term of years, the period of eligibility for parole is for life.

(D) This subdivision (c)(6) does not guarantee a right to parole although if parole is denied, the person is eligible to request parole every three (3) years after the date of his or her initial review.

(E) This subdivision (c)(6) applies to an inmate who meets the requirements of subdivision (c)(6)(A) of this section whether convicted and sentenced before or after the effective date of this act.”

The Amendment was read _____

By: Representative Maloch
BPG/BCS - 03-27-2009 15:17
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Chief Clerk