

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas  
2 87th General Assembly  
3 Regular Session, 2009  
4

As Engrossed: H3/30/09

# A Bill

HOUSE BILL 2245

5 By: Representative Maloch  
6  
7

## For An Act To Be Entitled

9 AN ACT TO REQUIRE *SENTENCE* REVIEW FOR ALL PERSONS  
10 SERVING LIFE WITHOUT PAROLE FOR CAPITAL MURDER OR  
11 A LIFE SENTENCE FOR A CLASS Y FELONY COMMITTED  
12 WHEN THE PERSON WAS UNDER EIGHTEEN YEARS OF AGE;  
13 AND FOR OTHER PURPOSES.  
14

## Subtitle

15 *TO REQUIRE SENTENCE* REVIEW FOR ALL  
16 PERSONS SERVING LIFE WITHOUT PAROLE FOR  
17 CAPITAL MURDER OR A LIFE SENTENCE FOR A  
18 CLASS Y FELONY COMMITTED WHEN THE PERSON  
19 WAS UNDER EIGHTEEN YEARS OF AGE.  
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23 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
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### SECTION 1. NOT TO BE CODIFIED.

25 Whereas, historically, courts in the United States have recognized the  
26 undeniable differences between adult and youth offenders; and  
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28 Whereas, some juveniles have pleaded guilty and agreed to a sentence of  
29 life without parole in order to avoid the possibility of the death penalty;  
30 and

31 Whereas, in the 2005 case of Roper v. Simmons, 543 U.S. 551 (2005), the  
32 Supreme Court of the United States abolished the use of the death penalty for  
33 juveniles, with Justice Kennedy declaring the differences between juveniles  
34 and adults to be "marked and well understood"; and

35 Whereas, the majority of youths sentenced to life without parole are  
36 first-time offenders; and



1       Whereas, less than one percent (1%) of the prison population in  
2 Arkansas is made up of inmates sentenced to life or life without parole for  
3 crimes committed before eighteen (18) years of age; and

4       Whereas, it is proper for juvenile offenders to have a possibility of  
5 parole or reduced sentence after a meaningful review by the Parole Board,  
6 considering the circumstances of the crime, the age of the offender at the  
7 time of the crime, the conduct of the inmate during the time of  
8 incarceration, the rehabilitation of the inmate, the health of the inmate,  
9 and other factors relevant to the board.

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11       SECTION 2. Arkansas Code § 16-93-207 is amended to read as follows:

12       16-93-207. Applications for pardon, commutation of sentence, and  
13 remission of fines and forfeitures.

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

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

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

26       (b) If the Governor does not grant an application for pardon,  
27 commutation of sentence, or remission of fine or forfeiture within two  
28 hundred forty (240) days of the Governor's receipt of the recommendation of  
29 the Parole Board regarding the application, the application shall be deemed  
30 denied by the Governor, and any pardon, commutation of sentence, or remission  
31 of fine or forfeiture granted after the two-hundred-forty-day period shall be  
32 null and void.

33       (c)(1)(A) Except as provided in subdivision (c)(3) and subsection (d)  
34 of this section, if an application for pardon, commutation of sentence, or  
35 remission of fine or forfeiture is denied in writing by the Governor, the  
36 person filing the application shall not be eligible to file a new application

1 for pardon, commutation of sentence, or remission of fine or forfeiture  
2 related to the same offense for a period of four (4) years from the date of  
3 filing the application that was denied.

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

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

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

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

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

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

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

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

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

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

31 (d)(1) Except as provided in subdivision (d)(3) of this section, if an  
32 application for pardon, commutation of sentence, or remission of fine or  
33 forfeiture of a person sentenced to life imprisonment without parole is  
34 denied in writing by the Governor, the person filing the application shall  
35 not be eligible to file a new application for pardon, commutation of  
36 sentence, or remission of fine or forfeiture related to the same offense for

1 a period of six (6) years from the date of the denial.

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

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

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

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

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

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

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

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

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

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

30 (1) Was convicted of:

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

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

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

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

1 sentence.

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

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

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

8 (A) The applicant's name;

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

10 (C) The sentence imposed upon the applicant;

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

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

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

15 (2) Reprieves may be granted as presently provided by law.  
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17 SECTION 3. Arkansas Code § 16-93-607(b) and (c), concerning parole  
18 eligibility for felonies committed after April 1, 1983, are amended to read  
19 as follows:

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

25 (c) A person who commits felonies on or after April 1, 1983, and who  
26 shall be convicted and incarcerated for that felony, shall be eligible for  
27 release on parole as follows:

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

35 (2) An inmate classified as a first offender under § 16-93-606,  
36 except ~~one~~ an inmate under the age of twenty-one (21) years as described in

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

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

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

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

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

34 (i) Either:

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

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

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

5 (B) For an inmate who was sentenced to life imprisonment  
6 without parole to become eligible for parole under the terms of subdivision  
7 (c)(6)(A) of this section, the inmate's sentence must first be reduced to  
8 life imprisonment under § 5-4-607.

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

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

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

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23 /s/ Maloch  
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