

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 H4/1/09 H4/3/09

# 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, commutation, remission of fine, or  
28 forfeiture may be applied for by an inmate at least one (1) time every three  
29 (3) years who was convicted of:

30 (1) Capital Murder, § 5-10-101, sentenced to life imprisonment  
31 without parole, was under eighteen (18) years of age at the time of the  
32 commission of the offense, and has served at least twenty (20) years of his  
33 or her sentence; or

34 (2) A Class Y felony, sentenced to life imprisonment, was under  
35 eighteen (18) years of age at the time of the commission of the offense, and  
36 has served at least twenty (20) years of his or her sentence.

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

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

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

7                    (A) *The applicant's name;*

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

9                    (C) *The sentence imposed upon the applicant;*

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

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

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

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

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*/s/ Maloch*

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