

JUDICIARY: Mann, Chair: Doyle and Ritsema

Judiciary 3/17/76 Amend (5582) v. J. Pass
3/27 (A 1671)

SENATE FILE **2108**
BY MANN

FILED FEB 4 1986

Passed Senate, Date 3-12-86 (p. 693) Passed House, Date 4-2-86 (p. 1143)

Vote: Ayes 38 Nays 9 Vote: Ayes 63 Nays 26

Approved April 22, 1986 (p. 1336)

Repassed Senate 4-9-86 (p. 1148)
20-10

A BILL FOR

1 An Act relating to the reprieve, pardon, commutation of sentence,
2 remission of fines and forfeitures, or restoration of the
3 rights of citizenship of a person convicted of a criminal
4 offense.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25

S.F. 2108

1 Section 1. Section 57.1, subsection 2, paragraph c, Code
2 1985, is amended to read as follows:

3 c. That prior to the election the incumbent had been duly
4 convicted of an infamous crime, and that the judgment had not
5 been reversed, annulled, or set aside, nor the incumbent
6 pardoned or restored to the rights of citizenship by the
7 governor under ~~section-248-12~~ chapter 248A, at the time of the
8 election.

9 Sec. 2. NEW SECTION. 248A.1 POWER OF GOVERNOR.

10 Except as provided in this chapter, the power of the
11 governor under the constitution to grant a reprieve, pardon,
12 commutation of sentence, remission of fines and forfeitures,
13 or restoration of the rights of citizenship shall not be
14 impaired.

15 Sec. 3. NEW SECTION. 248A.2 RIGHT OF APPLICATION.

16 A person convicted of a criminal offense has the right to
17 make application to the board of parole for recommendation or
18 to the governor for a reprieve, pardon, commutation of
19 sentence, remission of fines or forfeitures, or restoration of
20 rights of citizenship at any time following the conviction.

21 Sec. 4. NEW SECTION. 248A.3 RECOMMENDATIONS BY BOARD OF
22 PAROLE.

23 1. The board of parole shall periodically review all ap-
24 plications by persons convicted of criminal offenses and shall
25 recommend to the governor the reprieve, pardon, commutation of
26 sentence, remission of fines or forfeitures, or restoration of
27 the rights of citizenship who have by their conduct given
28 satisfactory evidence that they will become or continue to be
29 law-abiding citizens.

30 2. The board of parole shall, upon request of the
31 governor, take charge of all correspondence in reference to an
32 application filed with the governor and shall, after careful
33 investigation, provide the governor with the board's advice
34 and recommendation concerning any person for whom the board
35 has not previously issued a recommendation.

1 3. All recommendations and advice of the board of parole
2 shall be entered in the proper records of the board.

3 Sec. 5. NEW SECTION. 248A.4 RESPONSE TO RECOMMENDATION.

4 The governor shall respond to all recommendations made by
5 the board of parole within thirty days of the receipt of the
6 recommendation. The response shall state whether or not the
7 recommendation will be granted and shall specifically set out
8 the reasons for such action. If the governor does not grant
9 the recommendation, the recommendation shall remain with the
10 governor and shall be reviewed at least annually. Any recom-
11 mendation may be withdrawn by the board of parole at any time
12 prior to its being granted. However, if the board withdraws a
13 recommendation, a statement of the withdrawal, and the reasons
14 upon which it was based, shall be entered in the proper
15 records of the board.

16 Sec. 6. NEW SECTION. 248A.5 EVIDENCE -- PUBLICATION --
17 TESTIMONY.

18 1. When an application or recommendation is made to the
19 governor for a reprieve, pardon, commutation of sentence,
20 remission of fines and forfeitures, or restoration of rights
21 of citizenship, the governor may require the judge or clerk of
22 the appropriate court, or the county attorney or attorney
23 general by whom the action was prosecuted, to furnish the
24 governor without delay a copy of the minutes of evidence taken
25 on the trial, and any other facts having reference to the
26 propriety of the governor's exercise of the governor's powers
27 in the premises.

28 2. Before granting an application or recommendation for
29 the pardon of a person sentenced to life imprisonment, the
30 governor shall cause a notice containing the reasons assigned
31 for the granting of the pardon to be published in two news-
32 papers of general circulation, one of which shall be published
33 at the capital and the other in the county in which the
34 conviction was entered, once each week for four consecutive
35 weeks, the last publication to be at least twenty days prior

1 to the final granting of the pardon.

2 3. The governor may take testimony as the governor deems
3 advisable relating to any application or recommendation. A
4 person who provides written or oral testimony pursuant to this
5 subsection is subject to chapter 720.

6 4. With regard to an application for the restoration of
7 the rights of citizenship, the warden or superintendent, upon
8 request of the governor, shall furnish the governor with a
9 statement of the person's deportment during the period of im-
10 prisonment and a recommendation as to the propriety of
11 restoration.

12 Sec. 7. NEW SECTION. 248A.6 CARRYING OUT OF INSTRUMENT -
13 - FILING.

14 1. Pardons, commutations of sentences, remissions of fines
15 and forfeitures, and restorations of rights of citizenship
16 shall be issued in duplicate. Reprieves shall be issued in
17 triplicate.

18 2. In the case of a pardon, commutation of sentence, or
19 reprieve, if the person is in custody, the executive
20 instruments shall be forwarded to the officer having custody
21 of the person. The officer, upon receipt of the instruments,
22 shall do the following:

23 a. Retain one copy of the instrument.

24 b. Enter the appropriate notations on the records of the
25 office.

26 c. Carry out the orders of the instrument.

27 d. On one copy, make a written return as required by the
28 order and forward the copy to the clerk of court where the
29 judgment is of record.

30 e. In the case of reprieves, deliver the third copy to the
31 person whose sentence is reprieved.

32 3. In the case of a remission of fines and forfeitures,
33 restoration of rights of citizenship, or a pardon, commutation
34 of sentence, or reprieve, if the person is not in custody, one
35 copy of the executive instrument shall be delivered to the

1 person and one copy to the clerk of court where the judgment
2 is of record.

3 4. The clerk of court shall, upon receipt of the copy of
4 the executive instrument, immediately file and preserve the
5 copy in the clerk's office and note the filing on the judgment
6 docket of the case, except that remissions of fines and
7 forfeitures shall be spread at length on the record books of
8 the court, and indexed in the same manner as the original
9 case.

10 Sec. 8. Section 331.756, subsection 52, Code Supplement
11 1985, is amended to read as follows:

12 52. Furnish, upon request of the governor, a copy of the
13 minutes of evidence and other pertinent facts relating to an
14 application for a pardon, reprieve, commutation, or remission
15 of a fine or forfeiture as provided in section ~~248-9~~ 248A.5.

16 Sec. 9. Section 602.8102, subsection 46, Code Supplement
17 1985, is amended to read as follows:

18 46. Carry out duties relating to the pardons,
19 commutations, remission of fines and forfeitures, and
20 restoration of citizenship as provided in sections ~~248-9~~
21 248A.5 and ~~248-17~~ 248A.6.

22 Sec. 10. Chapter 248, Code 1985, is repealed.

23 EXPLANATION

24 Sections 2 through 7 of this bill replace the current
25 chapter of the Code relating to the reprieve, pardon, com-
26 mutation of sentence, remission of fines and forfeitures, or
27 restoration of the rights of citizenship of a person convicted
28 of a criminal offense.

29 Section 2 provides that the power of the governor to take
30 action, as provided by the Constitution and this chapter, is
31 not impaired by any other provision of law.

32 Section 3 provides that all convicted persons have the
33 right to make application to the board of parole or governor
34 for recommendation and action.

35 Section 4 provides that the board of parole will

1 periodically review applications and make appropriate
2 recommendations, will take charge of correspondence and advise
3 the governor upon request, and maintain proper records of such
4 activities.

5 Section 5 provides that the governor must respond within 30
6 days to any recommendation, annually review recommendations
7 not granted, and allows the board of parole to withdraw
8 recommendations.

9 Section 6 provides for the gathering of evidence and
10 testimony relating to applications and for the publication of
11 notice of the pending action to pardon a person sentenced to
12 life imprisonment.

13 Section 7 provides for the procedure for carrying out the
14 orders, filing the copies, and entering the appropriate no-
15 tations on the records of the case.

16 Sections 1, 8, and 9 make corresponding reference changes
17 to the sections of the Code relating to qualifications of
18 elected officials, duties of a county attorney, and duties of
19 the clerk of court.

20 Section 10 repeals the present chapter 248.

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

SENATE FILE 2108

H-5582

1 Amend Senate File 2108 as passed by the Senate as
2 follows:

3 1. Page 1, by inserting before line 1, the
4 following:

5 "Sec. ____ . Section 48.30, Code 1985, is amended to
6 read as follows:

7 48.30 NOTIFICATION OF CHANGES IN REGISTRATION.

8 The clerk of the district court shall promptly
9 notify the county commissioner of registration of
10 changes of name and of convictions of infamous-crimes
11 or felonies, as defined in section 701.7, of legal
12 declarations of incompetence made after a proceeding
13 held pursuant to section 229.27, and of diagnosis of
14 severe or profound mental retardation of persons of
15 voting age. The clerk of the district court shall
16 also notify the county commissioner of registration of
17 the restoration of citizenship of a person who has
18 been convicted of an-infamous-crime-or a felony and of
19 the finding that a person is of good mental health.
20 The notice will not restore voter registration. The
21 county commissioner of registration shall notify the
22 person whose citizenship has been restored or who has
23 been declared to be in good mental health that the
24 person's registration to vote was canceled and the
25 person must register again to become a qualified
26 elector.

27 Sec. ____ . Section 48.31, subsection 4, Code 1985,
28 is amended to read as follows:

29 4. The clerk of district court sends notification
30 of an elector's conviction of an-infamous-crime-or a
31 felony, as defined in section 701.7."

32 2. Page 1, line 4, by striking the words "an
33 infamous crime" and inserting the words "an-infamous
34 crime a felony, as defined in section 701.7".

35 3. Page 1, line 10, by striking the words "Except
36 as provided in this chapter, the" and inserting the
37 word "The".

38 4. Page 2, line 5, by striking the word "thirty"
39 and inserting the word "ninety".

40 5. Page 2, lines 9 and 10, by striking the words
41 "remain with the governor and shall be reviewed at
42 least annually" and inserting the following: "be
43 returned to the board of parole and may be refiled
44 with the governor at any time".

45 6. By striking page 2, line 28 through page 3,
46 line 1.

47 7. Page 4, by inserting after line 9, the
48 following:

49 "Sec. ____ . Section 277.29, Code 1985, is amended
50 to read as follows:

H-5582

Page Two

1 277.29 VACANCIES.

2 Failure to elect at the proper election or to
3 appoint within the time fixed by law or the failure of
4 the officer elected or appointed to qualify within the
5 time prescribed by law; the incumbent ceasing for any
6 reason to be a resident of the district or removing
7 residence from the subdistrict; the resignation or
8 death of incumbent or of the officer-elect; the
9 removal of the incumbent from, or forfeiture of, the
10 office, or the decision of a competent tribunal
11 declaring the office vacant; the conviction of
12 incumbent of an-infamous-crime a felony, as defined in
13 section 701.7, or of any public offense involving the
14 violation of the incumbent's oath of office, shall
15 constitute a vacancy."

16 8. By numbering and renumbering as necessary.

BY COMMITTEE ON JUDICIARY
AND LAW ENFORCEMENT

H-5582 FILED MARCH 27, 1986

Adopted 4/2 (J 1143)

HOUSE AMENDMENT TO
SENATE FILE 2108

S-5589

1 Amend Senate File 2108 as passed by the Senate as
2 follows:

3 1. Page 1, by inserting before line 1, the
4 following:

5 "Sec. ____ . Section 48.30, Code 1985, is amended to
6 read as follows:

7 48.30 NOTIFICATION OF CHANGES IN REGISTRATION.

8 The clerk of the district court shall promptly
9 notify the county commissioner of registration of
10 changes of name and of convictions of ~~infamous-crimes~~
11 ~~or felonies, as defined in section 701.7,~~ of legal
12 declarations of incompetence made after a proceeding
13 held pursuant to section 229.27, and of diagnosis of
14 severe or profound mental retardation of persons of
15 voting age. The clerk of the district court shall
16 also notify the county commissioner of registration of
17 the restoration of citizenship of a person who has
18 been convicted of ~~an-infamous-crime-or~~ a felony and of
19 the finding that a person is of good mental health.
20 The notice will not restore voter registration. The
21 county commissioner of registration shall notify the
22 person whose citizenship has been restored or who has
23 been declared to be in good mental health that the
24 person's registration to vote was canceled and the
25 person must register again to become a qualified
26 elector.

27 Sec. ____ . Section 48.31, subsection 4, Code 1985,
28 is amended to read as follows:

29 4. The clerk of district court sends notification
30 of an elector's conviction of ~~an-infamous-crime-or~~ a
31 felony, as defined in section 701.7."

32 2. Page 1, line 4, by striking the words "an
33 infamous crime" and inserting the words "~~an-infamous~~
34 ~~crime a felony, as defined in section 701.7~~".

35 3. Page 1, line 10, by striking the words "Except
36 as provided in this chapter, the" and inserting the
37 word "The".

38 4. Page 2, line 5, by striking the word "thirty"
39 and inserting the word "ninety".

40 5. Page 2, lines 9 and 10, by striking the words
41 "remain with the governor and shall be reviewed at
42 least annually" and inserting the following: "be
43 returned to the board of parole and may be refiled
44 with the governor at any time".

45 6. By striking page 2, line 28 through page 3,
46 line 1.

47 7. Page 4, by inserting after line 9, the
48 following:

49 "Sec. ____ . Section 277.29, Code 1985, is amended
50 to read as follows:

1 277.29 VACANCIES.

2 Failure to elect at the proper election or to
3 appoint within the time fixed by law or the failure of
4 the officer elected or appointed to qualify within the
5 time prescribed by law; the incumbent ceasing for any
6 reason to be a resident of the district or removing
7 residence from the subdistrict; the resignation or
8 death of incumbent or of the officer-elect; the
9 removal of the incumbent from, or forfeiture of, the
10 office, or the decision of a competent tribunal
11 declaring the office vacant; the conviction of
12 incumbent of an infamous-crime a felony, as defined in
13 section 701.7, or of any public offense involving the
14 violation of the incumbent's oath of office, shall
15 constitute a vacancy."

16 8. By numbering and renumbering as necessary.

S-5589 Filed April 4, 1986

REC'D FROM THE HOUSE

Senate concurred 4/9 (S. 1148)

SENATE FILE 2108

AN ACT

RELATING TO THE REPRIEVE, PARDON, COMMUTATION OF SENTENCE,
REMISSION OF FINES AND FORFEITURES, OR RESTORATION OF THE
RIGHTS OF CITIZENSHIP OF A PERSON CONVICTED OF A CRIMINAL
OFFENSE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 48.30, Code 1985, is amended to read as follows:

48.30 NOTIFICATION OF CHANGES IN REGISTRATION.

The clerk of the district court shall promptly notify the county commissioner of registration of changes of name and of convictions of ~~infamous-crimes-or felonies~~, as defined in section 701.7, of legal declarations of incompetence made after a proceeding held pursuant to section 229.27, and of diagnosis of severe or profound mental retardation of persons of voting age. The clerk of the district court shall also notify the county commissioner of registration of the restoration of citizenship of a person who has been convicted

of an ~~infamous-crime-or a felony~~ and of the finding that a person is of good mental health. The notice will not restore voter registration. The county commissioner of registration shall notify the person whose citizenship has been restored or who has been declared to be in good mental health that the person's registration to vote was canceled and the person must register again to become a qualified elector.

Sec. 2. Section 48.31, subsection 4, Code 1985, is amended to read as follows:

4. The clerk of district court sends notification of an elector's conviction of an ~~infamous-crime-or a felony~~, as defined in section 701.7.

Sec. 3. Section 57.1, subsection 2, paragraph c, Code 1985, is amended to read as follows:

c. That prior to the election the incumbent had been duly convicted of an ~~infamous-crime or a felony~~, as defined in section 701.7, and that the judgment had not been reversed, annulled, or set aside, nor the incumbent pardoned or restored to the rights of citizenship by the governor under ~~section-248-12~~ chapter 248A, at the time of the election.

Sec. 4. NEW SECTION. 248A.1 POWER OF GOVERNOR.

The power of the governor under the constitution to grant a reprieve, pardon, commutation of sentence, remission of fines and forfeitures, or restoration of the rights of citizenship shall not be impaired.

Sec. 5. NEW SECTION. 248A.2 RIGHT OF APPLICATION.

A person convicted of a criminal offense has the right to make application to the board of parole for recommendation or to the governor for a reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of rights of citizenship at any time following the conviction.

Sec. 6. NEW SECTION. 248A.3 RECOMMENDATIONS BY BOARD OF PAROLE.

1. The board of parole shall periodically review all applications by persons convicted of criminal offenses and shall

recommend to the governor the reprieve, pardon, commutation of sentence, remission of fines or forfeitures, or restoration of the rights of citizenship who have by their conduct given satisfactory evidence that they will become or continue to be law-abiding citizens.

2. The board of parole shall, upon request of the governor, take charge of all correspondence in reference to an application filed with the governor and shall, after careful investigation, provide the governor with the board's advice and recommendation concerning any person for whom the board has not previously issued a recommendation.

3. All recommendations and advice of the board of parole shall be entered in the proper records of the board.

Sec. 7. NEW SECTION. 248A.4 RESPONSE TO RECOMMENDATION.

The governor shall respond to all recommendations made by the board of parole within ninety days of the receipt of the recommendation. The response shall state whether or not the recommendation will be granted and shall specifically set out the reasons for such action. If the governor does not grant the recommendation, the recommendation shall be returned to the board of parole and may be refiled with the governor at any time. Any recommendation may be withdrawn by the board of parole at any time prior to its being granted. However, if the board withdraws a recommendation, a statement of the withdrawal, and the reasons upon which it was based, shall be entered in the proper records of the board.

Sec. 8. NEW SECTION. 248A.5 EVIDENCE -- PUBLICATION -- TESTIMONY.

1. When an application or recommendation is made to the governor for a reprieve, pardon, commutation of sentence, remission of fines and forfeitures, or restoration of rights of citizenship, the governor may require the judge or clerk of the appropriate court, or the county attorney or attorney general by whom the action was prosecuted, to furnish the governor without delay a copy of the minutes of evidence taken

on the trial, and any other facts having reference to the propriety of the governor's exercise of the governor's powers in the premises.

2. The governor may take testimony as the governor deems advisable relating to any application or recommendation. A person who provides written or oral testimony pursuant to this subsection is subject to chapter 720.

3. With regard to an application for the restoration of the rights of citizenship, the warden or superintendent, upon request of the governor, shall furnish the governor with a statement of the person's deportment during the period of imprisonment and a recommendation as to the propriety of restoration.

Sec. 9. NEW SECTION. 248A.6 CARRYING OUT OF INSTRUMENT - - FILING.

1. Pardons, commutations of sentences, remissions of fines and forfeitures, and restorations of rights of citizenship shall be issued in duplicate. Reprieves shall be issued in triplicate.

2. In the case of a pardon, commutation of sentence, or reprieve, if the person is in custody, the executive instruments shall be forwarded to the officer having custody of the person. The officer, upon receipt of the instruments, shall do the following:

- a. Retain one copy of the instrument.
- b. Enter the appropriate notations on the records of the office.
- c. Carry out the orders of the instrument.
- d. On one copy, make a written return as required by the order and forward the copy to the clerk of court where the judgment is of record.
- e. In the case of reprieves, deliver the third copy to the person whose sentence is reprieved.

3. In the case of a remission of fines and forfeitures, restoration of rights of citizenship, or a pardon, commutation

of sentence, or reprieve, if the person is not in custody, one copy of the executive instrument shall be delivered to the person and one copy to the clerk of court where the judgment is of record.

4. The clerk of court shall, upon receipt of the copy of the executive instrument, immediately file and preserve the copy in the clerk's office and note the filing on the judgment docket of the case, except that remissions of fines and forfeitures shall be spread at length on the record books of the court, and indexed in the same manner as the original case.

Sec. 10. Section 277.29, Code 1985, is amended to read as follows:

277.29 VACANCIES.

Failure to elect at the proper election or to appoint within the time fixed by law or the failure of the officer elected or appointed to qualify within the time prescribed by law; the incumbent ceasing for any reason to be a resident of the district or removing residence from the subdistrict; the resignation or death of incumbent or of the officer-elect; the removal of the incumbent from, or forfeiture of, the office, or the decision of a competent tribunal declaring the office vacant; the conviction of incumbent of an infamous crime a felony, as defined in section 701.7, or of any public offense involving the violation of the incumbent's oath of office, shall constitute a vacancy.

Sec. 11. Section 331.756, subsection 52, Code Supplement 1985, is amended to read as follows:

52. Furnish, upon request of the governor, a copy of the minutes of evidence and other pertinent facts relating to an application for a pardon, reprieve, commutation, or remission of a fine or forfeiture as provided in section 248-9 248A.5.

Sec. 12. Section 602.8102, subsection 46, Code Supplement 1985, is amended to read as follows:

46. Carry out duties relating to the pardons, commutations, remission of fines and forfeitures, and restoration of citizenship as provided in sections 248-9 248A.5 and 248-17 248A.6.

Sec. 13. Chapter 248, Code 1985, is repealed.

ROBERT T. ANDERSON
President of the Senate

DONALD D. AVENSON
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2108, Seventy-first General Assembly.

K. MARIE THAYER
Secretary of the Senate

Approved April 22, 1986

TERRY E. BRANSTAD
Governor