



# Iowa General Assembly

## 2005 Legal Updates

Legislative Services Agency – Legal Services Division

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**Purpose.** *Legal update briefings are prepared by the nonpartisan Legal Services Division of the Legislative Services Agency. A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative matters of recent court decisions, Attorney General Opinions, regulatory actions, federal actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. Although a briefing may identify issues for consideration by the General Assembly, a briefing should not be interpreted as advocating any particular course of action.*

### EXECUTIVE ORDER NO. 42 - RESTORATION OF VOTING RIGHTS

[http://www.governor.state.ia.us/legal/41\\_45/EO\\_42.pdf](http://www.governor.state.ia.us/legal/41_45/EO_42.pdf)

**Governor's Executive Order.** Governor Vilsack has announced that on July 4, 2005, he will sign Executive Order No. 42, which will grant a blanket restoration of the right to vote and hold public office to persons who are disqualified from registering to vote because of conviction for a felony or aggravated misdemeanor. The order will apply to those offenders who by July 4, 2005, have completely discharged their sentences, including any accompanying term of probation, parole, or supervised release. The order will direct the Department of Corrections, after July 4, 2005, to forward to the Governor's Office each month a list of offenders who have completely discharged their sentences and the Governor "without undue delay" shall consider granting a restoration of the right to vote and hold public office to these persons.

**Infamous Crime.** Article II, section 5, of the Iowa Constitution provides, in part, that "[N]o . . . person convicted of any infamous crime, shall be entitled to the privilege of an elector." The Iowa Supreme Court has in past cases defined "infamous crime" as "[A]ny crime punishable by imprisonment in the penitentiary . . ." (*State v. Haubrich*, 83 N.W.2d 451 (1957)). In 1985, the Office of Attorney General issued an opinion analyzing what the phrases "infamous crime" and "imprisonment in the penitentiary" mean in light of revisions of the criminal code subsequent to the Supreme Court ruling. (O.A.G. 85-6-7) In 1994, the General Assembly defined "infamous crime" as an offense classified as a felony under Iowa law or under federal law. (1994 Acts, ch. 1180, enacting Code section 39.3, new subsection 8). The Secretary of State's website under "Guidelines for Registering Voters" states that to register to vote in Iowa, a person must not have been convicted of a felony (unless the person's rights have been restored).

**Governor's Authority Under Constitution and Statute.** The Governor's authority to issue pardons, reprieves, and commutations is derived from Article IV, section 6, of the Iowa Constitution, which provides, in part, that "[T]he governor shall have power to grant reprieves, commutations, and pardons, after conviction, for all offences except treason and cases of impeachment, subject to such regulations as may be provided by law." Restoration of the right to vote and hold public office is considered part of the Governor's pardoning power. Code chapter 914, "Reprieves, Pardons, Commutations, Remissions, and Restorations of Rights," provides that "[T]he 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." The chapter establishes a process for applying for and granting reprieves, pardons, commutations, remissions, and restoration of rights.

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