

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas *As Engrossed: H2/22/13 H2/27/13 H3/8/13*
89th General Assembly **A Bill**
Regular Session, 2013

HOUSE BILL 1354

By: Representatives Branscum, Shepherd, Steel, Vines, Wright

For An Act To Be Entitled

AN ACT TO DEFINE THE TERM "INFAMOUS CRIME" FOR THE
PURPOSES OF WHO SHALL NOT BE A CANDIDATE FOR OR HOLD
PUBLIC OFFICE; AND FOR OTHER PURPOSES.

Subtitle

TO DEFINE THE TERM "INFAMOUS CRIME" FOR
THE PURPOSES OF WHO SHALL NOT BE A
CANDIDATE FOR OR HOLD PUBLIC OFFICE.

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

SECTION 1. DO NOT CODIFY. Legislative intent.

(1) Article 5, § 9, of the Constitution of the State of Arkansas states that "[n]o person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime, shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State."

(2) In interpreting that constitutional provision, the Supreme Court of Arkansas has "consistently recognized that a person convicted of a felony or one of the specifically enumerated offenses is disqualified from holding public office under Article 5, Section 9, of the Arkansas Constitution." State v. Oldner, 361 Ark. 316, 206 S.W.3d 818 (2005). However, while the Court has expounded on what constitutes an "infamous crime", such as when it spoke of an offense "indicative of great moral turpitude", State v. Irby, 190 Ark. 786, 81 S.W.2d 419 (1935), it has not until very recently attempted to define the term.

(3) In 2005, the Supreme Court determined that, aside from the specifically named crimes in Article 5, § 9, an "infamous crime" involved



dishonesty. Oldner, 361 Ark. at 327, 206 S.W.3d at 822. In 2010, the Supreme Court specifically held that theft constituted an "infamous crime". Edwards v. Campbell, 2010 Ark. 398, 370 S.W.3d 250 (2010). This, however, is as specific as the Supreme Court has gotten, as it further noted that "a crime is not considered infamous based on the available punishment but rather is considered infamous based on the underlying nature of that crime." Id.

(4) Because of the uncertainty associated with the term "infamous crime", and in the interests of educating the general public and potential office holders about who is or is not eligible to hold public office in this state, it is the intent of the General Assembly to define the term "infamous crime" for the purpose of assisting the judiciary in its further definitional refinements.

SECTION 2. DO NOT CODIFY. Legislative findings.

The General Assembly finds that:

(1) Article 5, § 9, of the Constitution of the State of Arkansas states that "[n]o person hereafter convicted of embezzlement of public money, bribery, forgery or other infamous crime, shall be eligible to the General Assembly or capable of holding any office of trust or profit in this State";

(2) A definition of "infamous crime" should also encompass those criminal offenses that lead to a loss of public confidence as well as offenses in the nature of perjury or subornation of perjury, false statement, criminal fraud, embezzlement, false pretense, or any other offense that involves some element of deceitfulness, untruthfulness, or falsification; and

(3) A reviewing court should also measure certain variables when determining what constitutes an "infamous crime", such as the attendant mental state of the offense, the particular circumstances surrounding the charged offense, the age and education of the person committing the offense, and, if the offense occurred before the person has assumed public office, the age of the person at the time of the conviction itself.

SECTION 3. Arkansas Code § 7-1-101 is amended to add a new definition to read as follows:

(35) "Infamous crimes" for the purposes of Arkansas Constitution Article 5, § 9, includes:

(A) A felony offense;

(B) A misdemeanor theft of property offense;

(C) Abuse of office, § 5-52-107;

(D) Tampering, § 5-53-110; or

(E) A misdemeanor offense in which the finder of fact was required to find, or the defendant to admit, an act of deceit, fraud, or false statement.

/s/Branscum