

## CHAPTER 822

### POSTCONVICTION PROCEDURE

Referred to in [§814.7](#), [815.9](#), [815.11](#)

This chapter not enacted as a part of this title;  
transferred from chapter 663A in Code 1993

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#### 822.1 Statutes not applicable to convicted persons.

The provisions of [sections 663.1 through 663.44](#), inclusive, shall not apply to persons convicted of, or sentenced for, a public offense.

[C71, 73, 75, 77, 79, 81, §663A.1]  
C93, §822.1

#### 822.2 Situations where law applicable.

1. Any person who has been convicted of, or sentenced for, a public offense and who claims any of the following may institute, without paying a filing fee, a proceeding under [this chapter](#) to secure relief:

- a. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.
- b. The court was without jurisdiction to impose sentence.
- c. The sentence exceeds the maximum authorized by law.
- d. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- e. The person's sentence has expired, or probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held in custody or other restraint.
- f. The person's reduction of sentence pursuant to [sections 903A.1 through 903A.7](#) has been unlawfully forfeited and the person has exhausted the appeal procedure of [section 903A.3, subsection 2](#).
- g. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error formerly available under any common law, statutory or other writ, motion, petition, proceeding, or remedy, except alleged error relating to restitution, court costs, or fees under [section 904.702](#) or [chapter 815](#) or [910](#).
- h. The results of DNA profiling ordered pursuant to an application filed under [section 81.10](#) would have changed the outcome of the trial or voided the factual basis of a guilty plea had the profiling been conducted prior to the conviction.

2. This remedy is not a substitute for nor does it affect any remedy, incident to the proceedings in the trial court, or of direct review of the sentence or conviction. Except as otherwise provided in [this chapter](#), it comprehends and takes the place of all other common law, statutory, or other remedies formerly available for challenging the validity of the conviction or sentence. It shall be used exclusively in place of them.

[C71, 73, 75, 77, 79, 81, §663A.2; [81 Acts, ch 198, §1, 2](#)]

[83 Acts, ch 147, §10, 14](#); [86 Acts, ch 1075, §3](#)

C93, §822.2

[2006 Acts, ch 1010, §162](#); [2019 Acts, ch 149, §7](#)

Referred to in [§822.3](#), [822.3A](#), [822.5](#), [822.7](#), [822.9](#)

**822.3 How to commence proceeding — limitation.**

A proceeding is commenced by filing an application verified by the applicant with the clerk of the district court in which the conviction or sentence took place. However, if the applicant is seeking relief under [section 822.2, subsection 1](#), paragraph “f”, the application shall be filed with the clerk of the district court of the county in which the applicant is being confined within ninety days from the date the disciplinary decision is final. All other applications must be filed within three years from the date the conviction or decision is final or, in the event of an appeal, from the date the writ of procedendo is issued. However, this limitation does not apply to a ground of fact or law that could not have been raised within the applicable time period. For purposes of [this section](#), a ground of fact includes the results of DNA profiling ordered pursuant to an application filed under [section 81.10](#). An allegation of ineffective assistance of counsel in a prior case under this chapter shall not toll or extend the limitation periods in this section nor shall such claim relate back to a prior filing to avoid the application of the limitation periods. Facts within the personal knowledge of the applicant and the authenticity of all documents and exhibits included in or attached to the application must be sworn to affirmatively as true and correct. The supreme court may prescribe the form of the application and verification. The clerk shall docket the application upon its receipt and promptly bring it to the attention of the court and deliver a copy to the county attorney and the attorney general.

[C71, 73, 75, 77, 79, 81, §663A.3]

[84 Acts, ch 1193, §1](#); [89 Acts, ch 96, §1](#)

C93, §822.3

[2006 Acts, ch 1010, §163](#); [2019 Acts, ch 140, §34](#); [2019 Acts, ch 149, §8](#)

Referred to in [§602.8102\(115\)](#), [822.4](#)

**822.3A Pro se filings by applicants currently represented by counsel.**

1. An applicant seeking relief under [section 822.2](#) who is currently represented by counsel shall not file any pro se document, including an application, brief, reply brief, or motion, in any Iowa court. The court shall not consider, and opposing counsel shall not respond to, such pro se filings.

2. [This section](#) does not prohibit an applicant for postconviction relief from proceeding without the assistance of counsel.

3. A represented applicant for postconviction relief may file a pro se motion seeking disqualification of counsel, which a court may grant upon a showing of good cause.

[2019 Acts, ch 140, §35](#)

See also §814.6A

**822.4 Facts to be presented.**

The application shall identify the proceedings in which the applicant was convicted, give the date of the entry of the judgment of conviction or sentence complained of, specifically set forth the grounds upon which the application is based, and clearly state the relief desired. Facts within the personal knowledge of the applicant shall be set forth separately from other allegations of facts and shall be verified as provided in [section 822.3](#). Affidavits, records, or other evidence supporting its allegations shall be attached to the application or the application shall recite why they are not attached. The application shall identify all previous proceedings, together with the grounds therein asserted, taken by the applicant to secure relief from the conviction or sentence. Argument, citations, and discussion of authorities are unnecessary.

[C71, 73, 75, 77, 79, 81, §663A.4]

C93, §822.4

**822.5 Payment of costs.**

If the applicant is unable to pay court costs and stenographic and printing expenses, these costs and expenses shall be made available to the applicant in the trial court, and on review. Unless the applicant is confined in a state institution and is seeking relief under [section 822.2, subsection 1](#), paragraphs “e” and “f”, the costs and expenses of legal representation shall also be made available to the applicant in the preparation of the application, in the trial court, and on review if the applicant is unable to pay. However, nothing in [this section](#) shall be interpreted to require payment of expenses of legal representation, including stenographic,

printing, or other legal services or consultation, when the applicant is self-represented or is utilizing the services of an inmate.

[C71, 73, 75, 77, 79, 81, §663A.5; 82 Acts, ch 1108, §1]

91 Acts, ch 219, §18

C93, §822.5

98 Acts, ch 1016, §1, 3; 98 Acts, ch 1132, §1; 2006 Acts, ch 1010, §164

Referred to in §610A.1

#### **822.6 Determination of relief.**

1. Within thirty days after the docketing of the application, or within any further time the court may fix, the state shall respond by answer or by motion which may be supported by affidavits. At any time prior to entry of judgment the court may grant leave to withdraw the application. The court may make appropriate orders for amendment of the application or any pleading or motion, for pleading over, for filing further pleadings or motions, or for extending the time of the filing of any pleading. In considering the application the court shall take account of substance regardless of defects of form.

2. When a court is satisfied, on the basis of the application, the answer or motion, and the record, that the applicant is not entitled to postconviction relief and no purpose would be served by any further proceedings, the court may indicate to the parties its intention to dismiss the application and the reasons for dismissal. The applicant shall be given an opportunity to reply to the proposed dismissal. In light of the reply, or on default thereof, the court may order the application dismissed or grant leave to file an amended application or direct that the proceedings otherwise continue. Disposition on the pleadings and record is not proper if a material issue of fact exists.

3. The court may grant a motion by either party for summary disposition of the application, when it appears from the pleadings, depositions, answers to interrogatories, and admissions and agreements of fact, together with any affidavits submitted, that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

[C71, 73, 75, 77, 79, 81, §663A.6]

C93, §822.6

2018 Acts, ch 1041, §127; 2019 Acts, ch 24, §95; 2019 Acts, ch 45, §1; 2019 Acts, ch 140, §36

#### **822.6A Underlying trial court record part of application.**

The underlying trial court record containing the conviction for which an applicant seeks postconviction relief, as well as the court file containing any previous application filed by the applicant relating to the same conviction, shall automatically become part of the record in a claim for postconviction relief under [this chapter](#).

2019 Acts, ch 45, §2

#### **822.6B Electronic access to trial court records.**

1. Upon the filing of an application, the clerk of the district court shall make the underlying trial court record accessible to the applicant's attorney, the county attorney, and the attorney general, without the necessity of a court order. If the underlying trial court record is not available in electronic format, the clerk of the district court shall convert the record to an electronic format and make the record available to the applicant's attorney, the county attorney, and the attorney general, without the necessity of a court order.

2. Upon request by an attorney of record, the clerk of the district court shall make the court file containing any previous application filed by the applicant relating to the same conviction accessible to the applicant's attorney, the county attorney, and the attorney general, without the necessity of a court order. If the court file containing any previous application is not available in an electronic format, the clerk of the district court shall convert the court file containing any previous application to an electronic format and make the court file containing any previous application available to the applicant's attorney, the county attorney, and the attorney general, without the necessity of a court order.

2019 Acts, ch 45, §3

**822.6C Associated costs.**

Costs shall not be charged to the applicant, the applicant's attorney, the county attorney, or the attorney general for converting a court file to an electronic format or for otherwise providing access to a court file under [this chapter](#).

[2019 Acts, ch 45, §4](#)

**822.7 Court to hear application.**

The application shall be heard in, and before any judge of the court in which the conviction or sentence took place. However, if the applicant is seeking relief under [section 822.2, subsection 1](#), paragraph “f”, the application shall be heard in, and before any judge of the court of the county in which the applicant is being confined. A record of the proceedings shall be made and preserved. All rules and statutes applicable in civil proceedings including pretrial and discovery procedures are available to the parties. The court may receive proof of affidavits, depositions, oral testimony, or other evidence, and may order the applicant brought before it for the hearing. If the court finds in favor of the applicant, it shall enter an appropriate order with respect to the conviction or sentence in the former proceedings, and any supplementary orders as to rearraignment, retrial, custody, bail, discharge, correction of sentence, or other matters that may be necessary and proper. The court shall make specific findings of fact, and state expressly its conclusions of law, relating to each issue presented. This order is a final judgment.

[C71, 73, 75, 77, 79, 81, §663A.7; [81 Acts, ch 198, §3](#)]

C93, §822.7

[2006 Acts, ch 1010, §165](#)

**822.8 Grounds must be all-inclusive.**

All grounds for relief available to an applicant under [this chapter](#) must be raised in the applicant's original, supplemental or amended application. Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

[C71, 73, 75, 77, 79, 81, §663A.8]

C93, §822.8

**822.9 Appeal.**

An appeal from a final judgment entered under [this chapter](#) may be taken, perfected, and prosecuted either by the applicant or by the state in the manner and within the time after judgment as provided in the rules of appellate procedure for appeals from final judgments in criminal cases. However, if a party is seeking an appeal under [section 822.2, subsection 1](#), paragraph “f”, the appeal shall be by writ of certiorari.

[C71, 73, 75, 77, 79, 81, §663A.9]

[85 Acts, ch 157, §3](#); [90 Acts, ch 1043, §1](#); [92 Acts, ch 1212, §38](#)

C93, §822.9

[96 Acts, ch 1018, §1](#); [2006 Acts, ch 1010, §166](#)

**822.10 Rule of construction.**

[This chapter](#) shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

[C71, 73, 75, 77, 79, 81, §663A.10]

C93, §822.10

**822.11 Citation.**

[This chapter](#) may be cited as the “*Uniform Postconviction Procedure Act*”.

[C71, 73, 75, 77, 79, 81, §663A.11]

C93, §822.11