

March 12, 1969

SENATE FILE 444

Passed on File

By MOWRY

Judiciary 3-12 - do pass 5-13
Rescind " 1-13, Pass 1-22
Senate, Pass 2-24

Passed House, Date *1-26-70* Passed ^{House} Senate, Date *4-3-70*

Vote: Ayes *55* Nays *2* Vote: Ayes *23* Nays *15*

Approved *April 13, 1970*

A BILL FOR

1 An Act relating to post-conviction procedure.

2 *Be It Enacted by the General Assembly of the State of Iowa:*

3 Section 1. The provisions of sections six hundred sixty-
4 three point one (663.1) through six hundred sixty-three point
5 forty-four (663.44) of the Code, inclusive, as amended by
6 this Act, shall not apply to persons convicted of, or sen-
7 tenced for, a public offense.

8 Sec. 2. Any person who has been convicted of, or sen-
9 tenced for, a public offense and who claims that:

10 1. The conviction or sentence was in violation of the Con-
11 stitution of the United States or the Constitution or laws of
12 this state;

13 2. The court was without jurisdiction to impose sentence;

14 3. The sentence exceeds the maximum authorized by law;

15 4. There exists evidence of material facts, not previously
16 presented and heard, that requires vacation of the conviction
17 or sentence in the interest of justice;

18 5. His sentence has expired, his probation, parole, or
19 conditional release has been unlawfully revoked, or he is
20 otherwise unlawfully held in custody or other restraint; or

21 6. The conviction or sentence is otherwise subject to
22 collateral attack upon any ground of alleged error formerly
23 available under any common law, statutory or other writ,
24 motion, petition, proceeding, or remedy; may institute,
25 without paying a filing fee, a proceeding under this Act

1 to secure relief.

2 This remedy is not a substitute for nor does it affect any
3 remedy, incident to the proceedings in the trial court, or
4 of direct review of the sentence or conviction. Except as
5 otherwise provided in this Act, it comprehends and takes the
6 place of all other common law, statutory, or other remedies
7 formerly available for challenging the validity of the con-
8 viction or sentence. It shall be used exclusively in place
9 of them.

10 Sec. 3. A proceeding is commenced by filing an applica-
11 tion verified by the applicant with the clerk of the court
12 in which the conviction or sentence took place. An applica-
13 tion may be filed at any time. Facts within the personal
14 knowledge of the applicant and the authenticity of all docu-
15 ments and exhibits included in or attached to the application
16 must be sworn to affirmatively as true and correct. The
17 supreme court may prescribe the form of the application and
18 verification. The clerk shall docket the application upon
19 its receipt and promptly bring it to the attention of the
20 court and deliver a copy to the county attorney and the
21 attorney general.

22 Sec. 4. The application shall identify the proceedings
23 in which the applicant was convicted, give the date of the
24 entry of the judgment of conviction or sentence complained
25 of, specifically set forth the grounds upon which the appli-
26 cation is based, and clearly state the relief desired. Facts
27 within the personal knowledge of the applicant shall be set
28 forth separately from other allegations of facts and shall
29 be verified as provided in section three (3) of this Act.
30 Affidavits, records, or other evidence supporting its allega-
31 tions shall be attached to the application or the applica-
32 tion shall recite why they are not attached. The applica-
33 tion shall identify all previous proceedings, together with
34 the grounds therein asserted, taken by the applicant to
35 secure relief from his conviction or sentence. Argument,

1 citations, and discussion of authorities are unnecessary.

2 Sec. 5. If the applicant is unable to pay court costs
3 and expenses of representation, including stenographic, print-
4 ing, and legal services, these costs and expenses shall be
5 made available to the applicant in the preparation of the
6 application, in the trial court, and on review.

7 Sec. 6. Within thirty days after the docketing of the
8 application, or within any further time the court may fix,
9 the state shall respond by answer or by motion which may be
10 supported by affidavits. At any time prior to entry of
11 judgment the court may grant leave to withdraw the applica-
12 tion. The court may make appropriate orders for amendment
13 of the application or any pleading or motion, for pleading
14 over, for filing further pleadings or motions, or for extend-
15 ing the time of the filing of any pleading. In considering
16 the application the court shall take account of substance
17 regardless of defects of form. If the application is not
18 accompanied by the record of the proceedings challenged
19 therein, the respondent shall file with its answer the record
20 or portions thereof that are material to the questions raised
21 in the application.

22 When a court is satisfied, on the basis of the application,
23 the answer or motion, and the record, that the applicant is
24 not entitled to post-conviction relief and no purpose would
25 be served by any further proceedings, it may indicate to the
26 parties its intention to dismiss the application and its
27 reasons for dismissal. The applicant shall be given an op-
28 portunity to reply to the proposed dismissal. In light of
29 the reply, or on default thereof, the court may order the
30 application dismissed or grant leave to file an amended ap-
31 plication or direct that the proceedings otherwise continue.
32 Disposition on the pleadings and record is not proper if a
33 material issue of fact exists.

34 The court may grant a motion by either party for summary
35 disposition of the application, when it appears from the

1 pleadings, depositions, answers to interrogatories, and ad-
2 missions and agreements of fact, together with any affidavits
3 submitted, that there is no genuine issue of material fact
4 and the moving party is entitled to judgment as a matter of
5 law.

6 Sec. 7. The application shall be heard in, and before
7 any judge of, the court in which the conviction or sentence
8 took place. A record of the proceedings shall be made and
9 preserved. All rules and statutes applicable in civil pro-
10 ceedings including pre-trial and discovery procedures are
11 available to the parties. The court may receive proof of
12 affidavits, depositions, oral testimony, or other evidence,
13 and may order the applicant brought before it for the hear-
14 ing. If the court finds in favor of the applicant, it shall
15 enter an appropriate order with respect to the conviction or
16 sentence in the former proceedings, and any supplementary
17 orders as to rearraignment, retrial, custody, bail, discharge,
18 correction of sentence, or other matters that may be neces-
19 sary and proper. The court shall make specific findings of
20 fact, and state expressly its conclusions of law, relating
21 to each issue presented. This order is a final judgment.

22 Sec. 8. All grounds for the relief available to an applicant
23 under this Act must be raised in his original, supplemental
24 or amended application. Any ground finally adjudicated or
25 not raised, or knowingly, voluntarily, and intelligently
26 waived in the proceeding that resulted in the conviction or
27 sentence, or in any other proceeding the applicant has taken
28 to secure relief, may not be the basis for a subsequent ap-
29 plication, unless the court finds a ground for relief asserted
30 which for sufficient reason was not asserted or was inad-
31 equately raised in the original, supplemental, or amended
32 application.

33 Sec. 9. A final judgment entered under this Act may be
34 reviewed by the supreme court of this state on appeal, brought
35 either by the applicant or by the state within sixty days from

1 the entry of the judgment.

2 Sec. 10. This Act shall be so interpreted and construed
3 as to effectuate its general purpose to make uniform the law
4 of those states which enact it.

5 Sec. 11. This Act may be cited as the uniform post-
6 conviction procedure act.

7 Sec. 12. Section six hundred sixty-three point one
8 (663.1), Code 1966, is hereby amended by striking from sub-
9 section four (4), line one (1), the word "imprisonment" and
10 inserting in lieu thereof the word "restraint".

11 Sec. 13. Section six hundred sixty-three point five
12 (663.5), Code 1966, is hereby amended as follows:

13 1. By striking from line one (1) the words "an inmate
14 of or".

15 2. By inserting in line two (2) after the word "institu-
16 tion" the words ", other than a penal institution,".

17 Sec. 14. Section six hundred sixty-three point eight
18 (663.8), Code 1966, is hereby amended as follows:

19 1. By striking from line seven (7) the words "the sheriff
20 of, etc. (or to".

21 2. By striking from line seven (7) the comma and insert-
22 ing in lieu thereof a colon.

23 3. By striking line eight (8).

24 Sec. 15. Section six hundred sixty-three point eleven
25 (663.11), Code 1966, is hereby amended by striking from line
26 five (5) the words "imprisoned or".

27 Sec. 16. Section six hundred sixty-three point eighteen
28 (663.18), Code 1966, is hereby repealed.

29 Sec. 17. Section six hundred sixty-three point thirty-
30 six (663.36), Code 1966, is hereby amended as follows:

31 1. By striking from line three (3) the words "of the
32 grand jury in finding a bill of".

33 2. By striking line four (4).

34 3. By striking from line five (5) the words "a cause,
35 nor".

1 Sec. 18. Section six hundred sixty-three point thirty-
2 seven (663.37), Code 1966, is hereby amended by striking
3 from line two (2) the word "detention" and inserting in lieu
4 thereof the word "confinement".

5 Sec. 19. Section six hundred sixty-three point thirty-
6 eight (663.38), Code 1966, is hereby amended as follows:

7 1. By striking from line four (4) the words "to bail,".

8 2. By striking from line five (5) the words "either for
9 the offense charged or".

10 3. By striking from line six (6) the words "any other,".

11 Sec. 20. Section six hundred sixty-three point thirty-
12 nine (663.39), Code 1966, is hereby repealed.

13 Sec. 21. Section six hundred sixty-three point forty-four
14 (663.44), Code 1966, as amended by chapter four hundred ten
15 (410), section one (1), Acts of the Sixty-second General
16 Assembly, is hereby further amended as follows:

17 1. By striking from line four (4) the words "warrant of
18 arrest or".

19 2. By striking from line eleven (11) the words "an inmate
20 of" and inserting in lieu thereof the words "confined in".

EXPLANATION OF SENATE FILE 444

This bill, entitled the Uniform Post-Conviction Procedure Act, will take the place of any present procedure for post-conviction review of a criminal conviction or sentence. The Iowa statutory writ of habeas corpus is retained to be used in civil actions, such as detention and custody of juveniles, or commitment to mental health institutions. The Uniform Act is designed to be as comprehensive as all prior remedies, and to prevent state prisoners from seeking federal habeas corpus because of some alleged defect in the state statute.