

JAN 16 1997
JUDICIARY

HOUSE FILE 38
BY BOGGESS

Passed House, Date _____ Passed Senate, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act to exclude claims of unlawful forfeiture of a reduction of
2 sentence from the grounds for postconviction relief and making
3 related changes.

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

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

HF 38

1 Section 1. Section 822.2, subsection 6, Code 1997, is
2 amended by striking the subsection.

3 Sec. 2. Section 822.3, Code 1997, is amended to read as
4 follows:

5 822.3 HOW TO COMMENCE PROCEEDING -- LIMITATION.

6 A proceeding is commenced by filing an application verified
7 by the applicant with the clerk of the district court in which
8 the conviction or sentence took place. ~~However, if the~~
9 ~~applicant is seeking relief under section 822.2, subsection 6,~~
10 ~~the application shall be filed with the clerk of the district~~
11 ~~court of the county in which the applicant is being confined~~
12 ~~within ninety days from the date the disciplinary decision is~~
13 ~~final. -- All other applications~~ Applications must be filed
14 within three years from the date the conviction or decision is
15 final or, in the event of an appeal, from the date the writ of
16 procedendo is issued. However, this limitation does not apply
17 to a ground of fact or law that could not have been raised
18 within the applicable time period. Facts within the personal
19 knowledge of the applicant and the authenticity of all
20 documents and exhibits included in or attached to the
21 application must be sworn to affirmatively as true and
22 correct. The supreme court may prescribe the form of the
23 application and verification. The clerk shall docket the
24 application upon its receipt and promptly bring it to the
25 attention of the court and deliver a copy to the county
26 attorney and the attorney general.

27 Sec. 3. Section 822.5, subsection 2, Code 1997, is amended
28 to read as follows:

29 2. If an applicant confined in a state institution seeks
30 relief ~~under section 822.2, subsection 6, and the court finds~~
31 ~~in favor of the applicant, or when,~~ but relief is denied and
32 costs and expenses referred to in subsection 1 cannot be
33 collected from the applicant, these costs and expenses
34 initially shall be paid by the county in which the application
35 was filed. The facts of payment and the proceedings on which

1 it is based, with a statement of the amount of costs and
2 expenses incurred, shall be submitted to the county in a
3 timely manner with approval in writing by the presiding or
4 district judge appended to the statement or endorsed on it,
5 and shall be certified by the clerk of the district court
6 under seal to the state executive council. The executive
7 council shall review the proceedings and authorize
8 reimbursement for the costs and expenses or for that part
9 which the executive council finds justified, and shall notify
10 the director of revenue and finance to draw a warrant to the
11 county treasurer on the state general fund for the amount
12 authorized.

13 Sec. 4. Section 822.7, Code 1997, is amended to read as
14 follows:

15 822.7 COURT TO HEAR APPLICATION.

16 The application shall be heard in, and before any judge of
17 the court in which the conviction or sentence took place.
18 ~~However, if the applicant is seeking relief under section~~
19 ~~822.2, subsection 6, the application shall be heard in, and~~
20 ~~before any judge of the court of the county in which the~~
21 ~~applicant is being confined.~~ A record of the proceedings
22 shall be made and preserved. All rules and statutes
23 applicable in civil proceedings including pretrial and
24 discovery procedures are available to the parties. The court
25 may receive proof of affidavits, depositions, oral testimony,
26 or other evidence, and may order the applicant brought before
27 it for the hearing. If the court finds in favor of the
28 applicant, it shall enter an appropriate order with respect to
29 the conviction or sentence in the former proceedings, and any
30 supplementary orders as to rearraignment, retrial, custody,
31 bail, discharge, correction of sentence, or other matters that
32 may be necessary and proper. The court shall make specific
33 findings of fact, and state expressly its conclusions of law,
34 relating to each issue presented. This order is a final
35 judgment.

1 Sec. 5. Section 822.9, Code 1997, is amended to read as
2 follows:

3 822.9 APPEAL.

4 An appeal from a final judgment entered under this chapter
5 may be taken, perfected, and prosecuted either by the
6 applicant or by the state in the manner and within the time
7 after judgment as provided in the rules of appellate procedure
8 for appeals from final judgments in criminal cases. However,
9 ~~if a party is seeking an appeal under section 822.2,~~
10 ~~subsection 6, the appeal shall be by writ of certiorari.~~

11 EXPLANATION

12 This bill repeals the provision in the postconviction
13 relief chapter, chapter 822, which allows a person who has
14 been convicted and sentenced of a public offense to make a
15 claim, for purposes of seeking relief from imposition of a
16 sentence, that the person's reduction of sentence was
17 unlawfully forfeited. Reductions of sentences for good
18 conduct while incarcerated or due to jail time served prior to
19 conviction and sentencing are governed by chapter 903A. The
20 bill also deletes references and procedures associated with
21 postconviction actions based on claims of unlawful forfeiture
22 of reductions of sentence.

23
24
25
26
27
28
29
30
31
32
33
34
35