

3/5/98 Judiciary  
FILED FEB 25 1998  
H. 3/19/98 Amend/Do Pass H. 851  
UNFINISHED BUSINESS CALENDAR

SENATE FILE 2339

BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 2163)

(p. 566)  
Passed Senate, Date 3/4/98  
Vote: Ayes 50 Nays 0

(p. 1325)  
Passed House, Date 4-7-98  
Vote: Ayes 96 Nays 1

(P. 1189) Approved April 21, 1998  
Passed 4-13-98  
Vote 45-1

A BILL FOR

- 1 An Act relating to an inmate's right to counsel in a
- 2 postconviction proceeding pertaining to a forfeiture of a
- 3 reduction in sentence or the unlawful holding of a person in
- 4 custody or restraint.
- 5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

SENATE FILE 2339

H-8511

- 1 Amend Senate File 2339, as passed by the Senate, as
- 2 follows:
- 3 1. Page 1, by striking lines 5 and 6, and
- 4 inserting the following: "~~expenses-of-legal~~
- 5 ~~representation, including stenographic, and printing,~~
- 6 ~~or-other-legal-services-or-consultation~~ expenses,
- 7 these costs".
- 8 2. Page 1, lines 7 and 8, by striking the words
- 9 "in the preparation of the application," and inserting
- 10 the following: "~~in-the-preparation-of-the~~
- 11 ~~application,~~".
- 12 3. Page 1, line 11, by striking the words "if the
- 13 applicant is unable to pay court" and inserting the
- 14 following: "the".
- 15 4. Page 1, lines 12 and 13, by striking the words
- 16 "those costs and expenses".
- 17 5. Page 1, line 15, by inserting after the word
- 18 "review" the following: "if the applicant is unable
- 19 to pay".

By COMMITTEE ON JUDICIARY  
LAMBERTI of [unclear] Chairperson

E-8511 FILED MARCH 19, 1998

Adopted 4-7-98  
(P. 1325)

1 Section 1. Section 822.5, Code 1997, is amended to read as  
2 follows:

3 822.5 PAYMENT OF COSTS.

4 1: If the applicant is unable to pay court costs and  
5 expenses of ~~legal representation~~, including stenographic,  
6 printing, or other ~~legal~~ services or consultation, these costs  
7 and expenses shall be made available to the applicant in the  
8 preparation of the application, in the trial court, and on  
9 review. Unless the applicant is confined in a state  
10 institution and is seeking relief under section 822.2,  
11 subsections 5 and 6, if the applicant is unable to pay court  
12 costs and expenses of legal representation those costs and  
13 expenses shall also be made available to the applicant in the  
14 preparation of the application, in the trial court, and on  
15 review. However, nothing in this section shall be interpreted  
16 to require payment of expenses of legal representation,  
17 including stenographic, printing, or other legal services or  
18 consultation, when the applicant is self-represented or is  
19 utilizing the services of an inmate.

20 ~~2:--If an applicant confined in a state institution seeks~~  
21 ~~relief under section 822.2, subsection 6, and the court finds~~  
22 ~~in favor of the applicant, or when relief is denied and costs~~  
23 ~~and expenses referred to in subsection 1 cannot be collected~~  
24 ~~from the applicant, these costs and expenses initially shall~~  
25 ~~be paid by the county in which the application was filed.--The~~  
26 ~~facts of payment and the proceedings on which it is based,~~  
27 ~~with a statement of the amount of costs and expenses incurred,~~  
28 ~~shall be submitted to the county in a timely manner with~~  
29 ~~approval in writing by the presiding or district judge~~  
30 ~~appended to the statement or endorsed on it, and shall be~~  
31 ~~certified by the clerk of the district court under seal to the~~  
32 ~~state executive council.--The executive council shall review~~  
33 ~~the proceedings and authorize reimbursement for the costs and~~  
34 ~~expenses or for that part which the executive council finds~~  
35 ~~justified, and shall notify the director of revenue and~~

1 finance-to-draw-a-warrant-to-the-county-treasurer-on-the-state  
2 general-fund-for-the-amount-authorized-

3 EXPLANATION

4 This bill strikes language which entitles an inmate to, and  
5 provides a payment mechanism for, counsel in postconviction  
6 relief actions based on the alleged unlawful forfeiture of  
7 good conduct time and the exhaustion of administrative  
8 remedies to regain the good conduct time reduction in sentence  
9 and in postconviction relief actions based on alleged unlawful  
10 custody or restraint due to the expiration of a person's  
11 sentence or revocation of probation, parole, or conditional  
12 release or some other alleged unlawful action.

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HOUSE AMENDMENT TO  
SENATE FILE 2339

S-5547

1 Amend Senate File 2339, as passed by the Senate, as  
2 follows:

3 1. Page 1, by striking lines 5 and 6, and  
4 inserting the following: "~~expenses-of-legal~~  
5 ~~representation, including stenographic, and printing,~~  
6 ~~or-other-legal-services-or-consultation~~ expenses,  
7 these costs".

8 2. Page 1, lines 7 and 8, by striking the words  
9 "in the preparation of the application," and inserting  
10 the following: "~~in-the-preparation-of-the~~  
11 ~~application,~~".

12 3. Page 1, line 11, by striking the words "if the  
13 applicant is unable to pay court" and inserting the  
14 following: "the".

15 4. Page 1, lines 12 and 13, by striking the words  
16 "those costs and expenses".

17 5. Page 1, line 15, by inserting after the word  
18 "review" the following: "if the applicant is unable  
19 to pay".

RECEIVED FROM THE HOUSE

S-5547 FILED APRIL 7, 1998

*Senate Concurred*  
4-13-98 (P. 1189)

McKean  
Maddox  
Fraise

SSB 2163

Judiciary

Succeeded By

SF/HF 2339

SENATE FILE \_\_\_\_\_  
BY (PROPOSED COMMITTEE ON  
JUDICIARY BILL BY  
CHAIRPERSON MCKEAN)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

A BILL FOR

1 An Act relating to an inmate's right to counsel in a  
2 postconviction proceeding pertaining to a forfeiture of a  
3 reduction in sentence.

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

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1 Section 1. Section 822.5, Code 1997, is amended to read as  
2 follows:

3 822.5 PAYMENT OF COSTS.

4 ~~1-~~ If the applicant is unable to pay court costs and  
5 expenses of ~~legal representation~~, including stenographic,  
6 printing, or other ~~legal~~ services or consultation, these costs  
7 and expenses shall be made available to the applicant in the  
8 preparation of the application, in the trial court, and on  
9 review. Unless the applicant is confined in a state  
10 institution and is seeking relief under section 822.2,  
11 subsection 6, if the applicant is unable to pay court costs  
12 and expenses of legal representation those costs and expenses  
13 shall also be made available to the applicant in the  
14 preparation of the application, in the trial court, and on  
15 review. However, nothing in this section shall be interpreted  
16 to require payment of expenses of legal representation,  
17 including stenographic, printing, or other legal services or  
18 consultation, when the applicant is self-represented or is  
19 utilizing the services of an inmate.

20 ~~2.--If-an-applicant-confined-in-a-state-institution-seeks~~  
21 ~~relief-under-section-822.2,subsection-6, and-the-court-finds~~  
22 ~~in-favor-of-the-applicant, or-when-relief-is-denied-and-costs~~  
23 ~~and-expenses-referred-to-in-subsection-1-cannot-be-collected~~  
24 ~~from-the-applicant, these-costs-and-expenses-initially-shall~~  
25 ~~be-paid-by-the-county-in-which-the-application-was-filed.--The~~  
26 ~~facts-of-payment-and-the-proceedings-on-which-it-is-based,~~  
27 ~~with-a-statement-of-the-amount-of-costs-and-expenses-incurred,~~  
28 ~~shall-be-submitted-to-the-county-in-a-timely-manner-with~~  
29 ~~approval-in-writing-by-the-presiding-or-district-judge~~  
30 ~~appended-to-the-statement-or-endorsed-on-it, and-shall-be~~  
31 ~~certified-by-the-clerk-of-the-district-court-under-seal-to-the~~  
32 ~~state-executive-council.--The-executive-council-shall-review~~  
33 ~~the-proceedings-and-authorize-reimbursement-for-the-costs-and~~  
34 ~~expenses-or-for-that-part-which-the-executive-council-finds~~  
35 ~~justified, and-shall-notify-the-director-of-revenue-and~~

2163

~~1 finance-to-draw-a-warrant-to-the-county-treasurer-on-the-state  
2 general-fund-for-the-amount-authorized-~~

3 EXPLANATION

4 This bill strikes language which entitles an inmate to, and  
5 provides a payment mechanism for, counsel in postconviction  
6 relief actions based on the alleged unlawful forfeiture of  
7 good conduct time and the exhaustion of administrative  
8 remedies to regain the good conduct time reduction in  
9 sentence.

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SENATE FILE 2339

AN ACT

RELATING TO AN INMATE'S RIGHT TO COUNSEL IN A POST-  
CONVICTION PROCEEDING PERTAINING TO A FORFEITURE  
OF A REDUCTION IN SENTENCE OR THE UNLAWFUL HOLDING  
OF A PERSON IN CUSTODY OR RESTRAINT.

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

Section 1. Section 822.5, Code 1997, is amended to read as follows:

822.5 PAYMENT OF COSTS.

1. If the applicant is unable to pay court costs and expenses of legal representation, including stenographic, and printing, or other legal services or consultation expenses, these costs and expenses shall be made available to the applicant in the preparation of the application, in the trial court, and on review. Unless the applicant is confined in a state institution and is seeking relief under section 822.2, subsections 5 and 6, 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.

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

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

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 2339, Seventy-seventh General Assembly.

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MARY PAT GUNDERSON  
Secretary of the Senate

Approved , 1998

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TERRY E. BRANSTAD  
Governor