

- 3 1. By inserting in line one (1) after the word "fees" the words
 4 " , including any award of attorney fees to a court-appointed attorney,".
 5 2. By adding to the end thereof the following:
 6 "This section shall be retroactive to January 1, 1966 and shall be
 7 operative from that date."
- 1 SEC. 3. Section seven hundred eighty-nine point twenty (789.20),
 2 Code 1966, is hereby amended as follows:
 3 1. By inserting in line two (2) after the word "fees" the words
 4 " , including any award of attorney fees to a court-appointed attorney,".
 5 2. By inserting in line five (5) after the word "institution" the
 6 words " , or for a crime committed by such inmate while placed outside
 7 the walls or confines of the institution under the control and direction
 8 of a warden, supervisor, officer, or employee thereof, or for a crime
 9 committed by such inmate during an escape or other unauthorized
 10 departure from such institution or from the control of a warden,
 11 supervisor, officer, or employee thereof, wherever the said inmate may
 12 have been placed by authorized personnel thereof,".
 13 3. By inserting in line seven (7) after the word "fees" the words
 14 " , including an award of attorney fees to a court-appointed attorney,".
 15 4. By adding at the end thereof the following:
 16 "This section shall be retroactive to January 1, 1966, and shall be
 17 operative from that date."

Approved May 1, 1970.

CHAPTER 1276

POST-CONVICTION PROCEDURE

S. F. 444

AN ACT relating to post-conviction procedure.

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

- 1 SECTION 1. The provisions of sections six hundred sixty-three
 2 point one (663.1) through six hundred sixty-three point forty-four
 3 (663.44) of the Code, inclusive, as amended by this Act, shall not
 4 apply to persons convicted of, or sentenced for, a public offense.
- 1 SEC. 2. Any person who has been convicted of, or sentenced for,
 2 a public offense and who claims that:
 3 1. The conviction or sentence was in violation of the Constitution
 4 of the United States or the Constitution or laws of this state;
 5 2. The court was without jurisdiction to impose sentence;
 6 3. The sentence exceeds the maximum authorized by law;
 7 4. There exists evidence of material facts, not previously pre-
 8 sented and heard, that requires vacation of the conviction or sentence
 9 in the interest of justice;
 10 5. His sentence has expired, his probation, parole, or conditional
 11 release has been unlawfully revoked, or he is otherwise unlawfully
 12 held in custody or other restraint; or
 13 6. The conviction or sentence is otherwise subject to collateral

14 attack upon any ground of alleged error formerly available under any
15 common law, statutory or other writ, motion, petition, proceeding,
16 or remedy; may institute, without paying a filing fee, a proceeding
17 under this Act to secure relief.

18 This remedy is not a substitute for nor does it affect any remedy,
19 incident to the proceedings in the trial court, or of direct review of
20 the sentence or conviction. Except as otherwise provided in this Act,
21 it comprehends and takes the place of all other common law, statutory,
22 or other remedies formerly available for challenging the validity of the
23 conviction or sentence. It shall be used exclusively in place of them.

1 SEC. 3. A proceeding is commenced by filing an application veri-
2 fied by the applicant with the clerk of the court in which the convic-
3 tion or sentence took place. An application may be filed at any time.
4 Facts within the personal knowledge of the applicant and the authen-
5 ticity of all documents and exhibits included in or attached to the
6 application must be sworn to affirmatively as true and correct. The
7 supreme court may prescribe the form of the application and verifica-
8 tion. The clerk shall docket the application upon its receipt and
9 promptly bring it to the attention of the court and deliver a copy to
10 the county attorney and the attorney general.

1 SEC. 4. The application shall identify the proceedings in which
2 the applicant was convicted, give the date of the entry of the judg-
3 ment of conviction or sentence complained of, specifically set forth
4 the grounds upon which the application is based, and clearly state
5 the relief desired. Facts within the personal knowledge of the appli-
6 cant shall be set forth separately from other allegations of facts and
7 shall be verified as provided in section three (3) of this Act. Affi-
8 davits, records, or other evidence supporting its allegations shall be
9 attached to the application or the application shall recite why they
10 are not attached. The application shall identify all previous pro-
11 ceedings, together with the grounds therein asserted, taken by the
12 applicant to secure relief from his conviction or sentence. Argument,
13 citations, and discussion of authorities are unnecessary.

1 SEC. 5. If the applicant is unable to pay court costs and expenses
2 of representation, including stenographic, printing, and legal serv-
3 ices, these costs and expenses shall be made available to the applicant
4 in the preparation of the application, in the trial court, and on review.

1 SEC. 6. Within thirty days after the docketing of the application,
2 or within any further time the court may fix, the state shall respond
3 by answer or by motion which may be supported by affidavits. At any
4 time prior to entry of judgment the court may grant leave to with-
5 draw the application. The court may make appropriate orders for
6 amendment of the application or any pleading or motion, for pleading
7 over, for filing further pleadings or motions, or for extending the
8 time of the filing of any pleading. In considering the application the
9 court shall take account of substance regardless of defects of form.
10 If the application is not accompanied by the record of the proceed-
11 ings challenged therein, the respondent shall file with its answer the
12 record or portions thereof that are material to the questions raised in
13 the application.

14 When a court is satisfied, on the basis of the application, the answer
15 or motion, and the record, that the applicant is not entitled to post-
16 conviction relief and no purpose would be served by any further
17 proceedings, it may indicate to the parties its intention to dismiss the
18 application and its reasons for dismissal. The applicant shall be
19 given an opportunity to reply to the proposed dismissal. In light
20 of the reply, or on default thereof, the court may order the applica-
21 tion dismissed or grant leave to file an amended application or direct
22 that the proceedings otherwise continue. Disposition on the plead-
23 ings and record is not proper if a material issue of fact exists.

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

1 SEC. 7. The application shall be heard in, and before any judge
2 of, the court in which the conviction or sentence took place. A rec-
3 ord of the proceedings shall be made and preserved. All rules and
4 statutes applicable in civil proceedings including pre-trial and dis-
5 covery procedures are available to the parties. The court may re-
6 ceive proof of affidavits, depositions, oral testimony, or other evi-
7 dence, and may order the applicant brought before it for the hearing.
8 If the court finds in favor of the applicant, it shall enter an appropri-
9 ate order with respect to the conviction or sentence in the former
10 proceedings, and any supplementary orders as to arraignment, re-
11 trial, custody, bail, discharge, correction of sentence, or other mat-
12 ters that may be necessary and proper. The court shall make spe-
13 cific findings of fact, and state expressly its conclusions of law, relat-
14 ing to each issue presented. This order is a final judgment.

1 SEC. 8. All grounds for relief available to an applicant under this
2 Act must be raised in his original, supplemental or amended applica-
3 tion. Any ground finally adjudicated or not raised, or knowingly,
4 voluntarily, and intelligently waived in the proceeding that resulted
5 in the conviction or sentence, or in any other proceeding the appli-
6 cant has taken to secure relief, may not be the basis for a subsequent
7 application, unless the court finds a ground for relief asserted which
8 for sufficient reason was not asserted or was inadequately raised in
9 the original, supplemental, or amended application.

1 SEC. 9. A final judgment entered under this Act may be reviewed
2 by the supreme court of this state on appeal, brought either by the
3 applicant or by the state within sixty days from the entry of the judg-
4 ment.

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

1 SEC. 11. This Act may be cited as the uniform post-conviction
2 procedure act.

1 SEC. 12. Section six hundred sixty-three point one (663.1), Code
2 1966, is hereby amended by striking from subsection four (4), line
3 one (1), the word "imprisonment" and inserting in lieu thereof the
4 word "restraint".

1 SEC. 13. Section six hundred sixty-three point five (663.5), Code
2 1966, is hereby amended as follows:

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

4 2. By inserting in line two (2) after the word "institution" the
5 words ", other than a penal institution,".

1 SEC. 14. Section six hundred sixty-three point eight (663.8),
2 Code 1966, is hereby amended as follows:

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

5 2. By striking from line seven (7) the comma and inserting in lieu
6 thereof a colon.

7 3. By striking line eight (8).

1 SEC. 15. Section six hundred sixty-three point eleven (663.11),
2 Code 1966, is hereby amended by striking from line five (5) the words
3 "imprisoned or".

1 SEC. 16. Section six hundred sixty-three point eighteen (663.18),
2 Code 1966, is hereby repealed.

1 SEC. 17. Section six hundred sixty-three point thirty-six (663.36),
2 Code 1966, is hereby amended as follows:

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

5 2. By striking line four (4).

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

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

1 SEC. 19. Section six hundred sixty-three point thirty-eight
2 (663.38), Code 1966, is hereby amended as follows:

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

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

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

1 SEC. 20. Section six hundred sixty-three point thirty-nine
2 (663.39), Code 1966, is hereby repealed.

1 SEC. 21. Section six hundred sixty-three point forty-four (663.44),
2 Code 1966, as amended by chapter four hundred ten (410), section
3 one (1), Acts of the Sixty-second General Assembly, is hereby fur-
4 ther amended as follows:

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

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

Approved April 13, 1970.