

McKean  
Fraise  
Tinsman

SSB 1105  
Judiciary

Succeeded By  
SENATE/HOUSE FILE SP/HF 225  
BY (PROPOSED ATTORNEY GENERAL BILL)

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

**A BILL FOR**

1 An Act relating to an indigent criminal defendant seeking  
2 postconviction relief and to the applicability of the Iowa  
3 administrative procedures Act to postconviction actions.

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

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1 Section 1. Section 822.1, Code 2001, is amended to read as  
2 follows:

3 822.1 STATUTES NOT APPLICABLE TO CONVICTED PERSONS.

4 The provisions of sections 663.1 through 663.44, inclusive,  
5 shall not apply to persons convicted of, or sentenced for, a  
6 public offense. Chapter 17A shall not apply to an applicant  
7 seeking relief under section 822.2, subsection 5, for an  
8 unlawful revocation of parole or other conditional release.

9 Sec. 2. Section 822.5, Code 2001, is amended to read as  
10 follows:

11 822.5 PAYMENT OF COSTS.

12 1. If the Except as provided in subsection 2, if an  
13 applicant is unable to pay court costs and stenographic and  
14 printing expenses, and the costs of legal representation,  
15 these costs and expenses shall be made available to the  
16 applicant in the trial court, and on review. ~~Unless the~~  
17 ~~applicant is confined in a state institution and is seeking~~  
18 ~~relief under section 822.2, subsections 5 and 6, the costs and~~  
19 ~~expenses of legal representation shall also be made available~~  
20 ~~to the applicant in the preparation of the application, in the~~  
21 ~~trial court, and on review if the applicant is unable to pay.~~

22 2. If an applicant seeking relief from the revocation of a  
23 conditional release other than probation and parole under  
24 section 822.2, subsection 5, or from the forfeiture of a  
25 reduction of sentence under section 822.2, subsection 6, is  
26 unable to pay court costs, all the costs and expenses shall be  
27 made available to the applicant as provided in subsection 1,  
28 except the costs of legal representation which shall not be  
29 provided at state expense.

30 3. However, nothing in this This section shall not be  
31 interpreted to require payment of expenses of legal  
32 representation, including stenographic, printing, or other  
33 legal services or consultation, when the applicant is self-  
34 represented or is utilizing the services of an inmate.

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EXPLANATION

1105

1 This bill relates to a criminal defendant seeking  
2 postconviction relief.

3 The bill provides that a defendant whose parole or  
4 conditional release has been unlawfully revoked may only file  
5 an action for postconviction relief notwithstanding the  
6 requirements of the Iowa administrative procedures Act in Code  
7 chapter 17A. The bill eliminates the applicability of  
8 numerous procedural requirements enumerated under chapter 17A  
9 which may be applicable to a postconviction action filed under  
10 Code chapter 822, including where to file an action and  
11 certain mailing requirements for judicial review.

12 The bill effectively provides that Code chapter 822 shall  
13 be the exclusive means for commencing an action for  
14 postconviction relief if a defendant's parole or conditional  
15 release has been unlawfully revoked. Current law provides  
16 that an action for postconviction relief shall be commenced  
17 within three years of a defendant's parole or conditional  
18 release being revoked and shall be filed in the county where  
19 the offender's conviction took place.

20 The bill also provides that an indigent defendant seeking  
21 postconviction relief is not entitled to legal representation  
22 at state expense, if the defendant is seeking relief from a  
23 decision to revoke a conditional release from prison other  
24 than probation or parole. The bill also provides that a  
25 person is not entitled to legal representation at state  
26 expense if the person is seeking relief from a forfeiture of a  
27 reduction in sentence due to prison disciplinary action.  
28 Current law and the remainder of the bill generally otherwise  
29 provide that a defendant seeking postconviction relief is  
30 entitled to have the court costs, stenographic and printing  
31 costs, and legal representation costs paid at state expense,  
32 if the defendant is unable to pay for these costs.

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## Department of Justice

THOMAS J. MILLER  
ATTORNEY GENERAL

ADDRESS REPLY TO:  
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DES MOINES, IOWA 50319  
TELEPHONE: 515-281-5164  
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### MEMORANDUM

**TO:** Members of the General Assembly  
**FROM:** Anne M. Bunz, Legislative Liaison  
**DATE:** January 8, 2001  
**SUBJECT:** Post-conviction Relief

This bill provides that appointed counsel is available at state expense for post-conviction relief actions except those challenging revocation of work release and prison disciplinary action.

Current statute is unclear whether or not the State of Iowa should incur the expense of an attorney for inmates who challenge work release and prison disciplinary charges.

H- 3/22/01 Judiciary

FILED FEB 19

SENATE FILE 225  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1105)

Passed Senate, Date (P.765) 3-21-01 Passed House, Date \_\_\_\_\_  
Vote: Ayes 49 Nays 0 Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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SENATE FILE 225

S-3195

1 Amend Senate File 225 as follows:

2 1. Page 1, by inserting after line 8 the  
3 following:

4 "Sec. \_\_\_\_\_. Section 822.2, Code 2001, is amended by  
5 adding the following new subsection:

6 NEW SUBSECTION. 4A. There exists fingerprint or  
7 DNA evidence that was not tested at the time of trial  
8 because testing was not available to the person."

9 2. Page 1, by inserting after line 34 the  
10 following:

11 "Sec. \_\_\_\_\_. NEW SECTION. 822A.1 PRESERVATION OF  
12 EVIDENCE.

13 1. After the completion of a criminal case or  
14 appeal or the time for appeal has expired, the law  
15 enforcement agency responsible for gathering  
16 fingerprint or DNA evidence from the crime scene shall  
17 be responsible for the storage, chain of custody, and  
18 preservation of such evidence for a period of five  
19 years.

20 2. Evidence preserved under subsection 1 may be  
21 disposed of prior to the expiration of five years, if,  
22 after giving notice to the defendant in the underlying  
23 criminal case, the county attorney or the attorney  
24 general makes an application to the court, and the  
25 court determines by the preponderance of the evidence  
26 any of the following:

27 a. The evidence to be preserved has no significant  
28 value for fingerprint or DNA analysis and may be  
29 returned to the rightful owner of the property or  
30 destroyed if no rightful owner can be found.

31 b. There is a sufficient amount of fingerprint or  
32 DNA evidence already preserved if future testing is  
33 required.

34 c. The evidence to be preserved is too large or is  
35 made of an unusual material that makes it impractical  
36 for a law enforcement agency to preserve.

37 d. The defendant consents to the evidence being  
38 destroyed."

39 3. By renumbering as necessary.

By MICHAEL E. GRONSTAL

S-3195 FILED MARCH 20, 2001

W/10

3/21/01

(P. 764)

