

---

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

---

DIGEST

SB 109 Original

2021 Regular Session

Foil

Proposed law (C.Cr.P. Art. 924) provides for scope of applicability of Title XXXI-A of the Code of Criminal Procedure relative to postconviction relief in noncapital cases.

Present law (C.Cr.P. Art. 924) provides for definitions.

Proposed law (C.Cr.P. Art. 924.1) retains present law but defines additional terms, makes semantic changes, and updates cross-references.

Present law (C.Cr.P. Arts. 924.2 and 925) provides for the effect of an appeal and venue.

Proposed law retains present law but makes semantic changes.

Present law (C.Cr.P. Art. 930.8(A)) sets forth the time limitations applicable to applications for postconviction relief and the exceptions to those time limitations.

Proposed law (C.Cr.P. Art. 926(A)) changes the exceptions provided by present law by clarifying that facts that were known to the applicant's attorney are presumed to have been known by the applicant, and facts that were contained in the record are deemed to have been known by the applicant. Proposed law also makes semantic changes and requires the applicant to prove that he exercised due diligence or that exceptional circumstances exist and the interest of justice will be served by consideration of the claim.

Present law (C.Cr.P. Art. 930.8(B) and (C)) provides for the dismissal of a timely filed application for postconviction relief if the state would be materially prejudiced in its ability to respond to, negate, or rebut the petitioner's allegations and requires the court to inform the defendant of the prescriptive period for postconviction relief.

Proposed law (C.Cr.P. Art. 926(B) and (C)) retain present law but clarifies that the material prejudice defense provided by present law can be raised at any time prior to final submission of the case on the merits and that the failure of the court to inform the defendant of the prescriptive period does not constitute grounds to vacate the conviction and sentence or remand for resentencing.

Present law (C.Cr.P. Art. 926) sets forth the required contents of a petition for postconviction relief.

Proposed law (C.Cr.P. Art. 927) retains present law but makes semantic changes and also requires the applicant to state whether this is his first application for postconviction relief as well as to provide a list of all of the attorneys who represented the applicant. Proposed law further provides for the notification of an applicant who fails to use the uniform form and for a copy of the application

to be provided to the court and served on the state.

Proposed law (C.Cr.P. Art. 927.1) provides for the service of the application for postconviction relief and all subsequent filings or orders on the state, the applicant, and his attorney.

Present law (C.Cr.P. Art. 930.2) provides that the petitioner has the burden of proving that relief should be granted.

Proposed law (C.Cr.P. Art. 927.2) retains present law but makes semantic changes.

Present law (C.Cr.P. Art. 930.3) sets forth the grounds for postconviction relief.

Proposed law (C.Cr.P. Art. 927.3) changes present law by deleting the grounds for relief based on double jeopardy and the unconstitutional ex post facto application of law.

Proposed law also makes semantic changes, updates cross-references, and adds a ground for relief based on new evidence of factual innocence.

Proposed law (C.Cr.P. Art. 927.4) provides for the production of information in postconviction relief cases.

Proposed law (C.Cr.P. Art. 927.5) provides for the waiver of the attorney-client privilege if the application for postconviction relief is based on a claim of ineffective assistance of counsel.

Present law (C.Cr.P. Art. 928) provides that an application may be dismissed upon the pleadings if it fails to allege a claim which, if established, would entitle the petitioner to relief.

Proposed law (C.Cr.P. Art. 927.6) changes present law by imposing a 60-day time limitation within which the district court must act to dismiss the claim on the pleadings, order the applicant to respond with a more definite statement, or order the state to respond. Proposed law further permits the court to dismiss the claim if the applicant raises a claim which, if established, would not entitle him to relief, or if the applicant fails to state a ground upon which relief can be granted, or if an examination of the application and record clearly refutes any factual basis for the claim.

Proposed law (C.Cr.P. Art. 927.7) sets forth the circumstances under which the state can request that the applicant provide a more definite statement as to any claim for relief and imposes a 60-day time period within which the applicant must respond to the request, or if the request is denied, within which the state must file procedural objections or an answer.

Proposed law (C.Cr.P. Art. 927.8) sets forth the circumstances under which the state may assert procedural objections and requires the applicant to respond to the state's procedural objections within 45 days.

Proposed law (C.Cr.P. Art. 927.9) provides for the disposition of procedural objections by the court and requires the court to rule on procedural objections summarily if possible or to defer disposition,

order further factual development, and rule on all procedural objections together.

Proposed law (C.Cr.P. Art. 927.10) sets forth the circumstances under which the court is to order to the state to answer on the merits of each claim within 60 days and provides that any responses to the state's answer must be filed within 45 days.

Present law (C.Cr.P. Art. 929) provides for the summary disposition of an application for postconviction relief.

Proposed law (C.Cr.P. Art. 927.11) changes present law by requiring the court to summarily grant or deny relief within a certain period of time from the filing of the answer and by deleting the provision that allowed the taking of oral depositions and the use of other discovery mechanisms, which are now contained in proposed law (C.Cr.P. Art. 927.12).

Present law (C.Cr.P. Art. 930) sets forth the circumstances under which an evidentiary hearing for the taking of testimony or other evidence can be ordered and provides that the petitioner is entitled to be present at evidentiary hearings unless certain exceptions apply.

Proposed law (C.Cr.P. Art. 927.12) changes present law by deleting the requirement that the petitioner be present at the evidentiary hearing and the provision that prohibited the court from conducting an evidentiary hearing prior to ruling on all procedural objections, since these provisions are now contained elsewhere. Proposed law provides for the taking of oral depositions and the use of other discovery mechanisms and further provides that the district court should consider the rules of evidence but that these rules do not strictly apply.

Present law (C.Cr.P. Art. 930.9) provides that if the petitioner for postconviction relief is incarcerated, his presence may be obtained through teleconference, video link, or other visual remote technology.

Proposed law (C.Cr.P. Art. 927.13) retains present law but makes semantic changes and further provides that absent an express waiver and subject to certain exceptions, the applicant is entitled to be physically present at an evidentiary hearing.

Present law (C.Cr.P. Art. 930.7) sets forth the circumstances under which courts are permitted and are required to appoint counsel to represent a petitioner for postconviction relief.

Proposed law (C.Cr.P. Art. 927.14) retains present law but makes semantic changes.

Present law (C.Cr.P. Art. 930.1) provides that a copy of the judgment granting or denying postconviction relief and the written or transcribed reasons therefor are to be furnished to the petitioner, the district attorney, and the custodian.

Proposed law (C.Cr.P. Art. 927.15) retains present law but makes semantic changes and requires the district court to render judgment within 60 days after submission of the case on the merits. Proposed law further sets forth the relief that may be granted by the court.

Present law (C.Cr.P. Art. 930.5) provides that if the court grants relief under an application for postconviction relief, the petitioner is to be held in custody pending a new trial under certain circumstances, in which case the petitioner is entitled to bail.

Proposed law (C.Cr.P. Art. 927.16) retains present law but makes semantic changes and requires a finding by the court that there are legally sufficient grounds upon which to re prosecute the applicant.

Proposed law (C.Cr.P. Art. 927.17) allows the district court to deviate from these provisions upon joint motion by the parties.

Present law (C.Cr.P. Art. 930.6) provides for appellate or supervisory review of trial court judgments.

Proposed law (C.Cr.P. Art. 928) retains present law but makes semantic changes.

Proposed law (C.Cr.P. Arts. 930.1-930.27) set forth the procedures that apply in capital postconviction relief cases.

Present law (C.Cr.P. Art. 926.1) sets forth the requirements applicable to applications for DNA testing.

Proposed law (C.Cr.P. Art. 931) retains present law but makes semantic changes and updates cross-references. Proposed law further provides the standard of proof relevant to questions concerning the chain of custody of evidence and provides that where there is an insufficient sample of the evidence to be tested, the lab cannot proceed without the consent of both parties or an order from the court.

Proposed law (C.Cr.P. Art. 880.1) requires evidence to be retained by the clerk of court, the state, and law enforcement agencies when a sentence of death or life imprisonment is imposed. Proposed law further provides that in all other cases, the court in its discretion can enter an order to retain evidence.

Present law (C.Cr.P. Art. 923) requires the clerk of the appellate court to transmit a certified copy of the appellate court's decision to the court from which the appeal was taken.

Proposed law retains present law and also provides for the transmission of an electronic copy of the appellate record by the clerk of the appellate court once the defendant's conviction and sentence become final, provided that the defendant is imprisoned and has requested a copy of the record.

Present law (C.Cr.P. Arts. 931-934) provide for definitions for purposes of the Code of Criminal Procedure.

Proposed law redesignates present law.

Effective August 1, 2021.

(Amends C.Cr.P. Arts. 923, 924-928, 926.1, and 930.1-930.9; adds C.Cr.P. Arts. 880.1 and 930.10-930.27; repeals C.Cr.P. Arts. 929 and 930; redesignates C.Cr.P. Arts. 926.1 and 931-934)