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## DIGEST

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HB 675 Engrossed

2025 Regular Session

Glorioso

**Abstract:** Provides relative to post conviction relief procedures.

Present law (C.Cr.P. Art. 882) provides relative to illegal sentences.

Proposed law retains present law.

Present law (C.Cr.P. Art. 882(A)) provides that an illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review.

Proposed law amends present law to provide that if a sentence does not fall within the sentencing range authorized by law, the court may correct it within one year after the judgment of conviction and sentence has become final. Further provides that on direct review from conviction and imposition of sentence, an appellate court may vacate a sentence that was not authorized by law and remand to the trial court for re-sentencing.

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

Proposed law retains present law and defines the terms "post conviction relief" and "shell petition".

Present law (C.Cr.P. Art. 925) provides that applications for post conviction relief shall be filed in the parish in which the petitioner was convicted.

Proposed law retains present law and provides an exception for certain petitioners.

Present law (C.Cr.P. Art. 926) provides relative to petitions for post conviction relief.

Proposed law retains present law generally.

Proposed law provides that one of the items a petition is required to allege is that the person is actually in custody, and the name of the place of custody, if known. Further provides that a statement of the grounds upon which relief is sought shall be alleged in good faith.

Proposed law provides that the petition and any successive petitions shall be served upon both the attorney general and the district attorney for the parish where the defendant was convicted.

Proposed law provides that an individual shall be eligible for post conviction relief if he meets both

of the following:

- (1) He is currently serving a sentence of imprisonment or is on probation or parole pursuant to a conviction.
- (2) He is in actual custody or under supervision of the division of probation and parole.

Proposed law provides that any claim alleged in an application that is procedurally barred or is frivolous on its face shall be dismissed.

Present law (C.Cr.P. Art. 926.2) provides relative to post conviction relief on the grounds that the petitioner is factually innocent of the offense for which he was convicted.

Proposed law retains present law generally.

Present law provides that an application for post conviction relief filed pursuant to present law by a petitioner who pled guilty or nolo contendere to the offense of conviction or filed by any petitioner after Dec. 31, 2022, shall be subject to present law.

Proposed law amends present law to provide that a petitioner who pled guilty to the offense of conviction shall not be entitled to assert factual innocence.

Present law provides that a recantation of prior sworn testimony may be considered if corroborated by the evidence. Further provides that a recantation of prior sworn testimony cannot form the sole basis for relief pursuant to present law.

Proposed law retains present law and provides that a recantation shall not be sufficient to overcome the presumption of a valid conviction.

Proposed law (C.Cr.P. Art. 926.4) provides that by raising any claim of ineffective assistance of counsel, the defendant waives the attorney-client privilege as to any information necessary to allow the state to rebut the claim.

Present law (C.Cr.P. Art. 927) provides for the filing of procedural objections in response to an application for post conviction relief.

Proposed law retains present law generally.

Proposed law provides that the court shall conduct a preliminary review of all petitions for post conviction relief for compliance with the limitations for relief established in proposed law. Further provides for factors that the court is required to consider, among other things, in its review of the application.

Proposed law provides for the dismissal of application and duties of court.

Present law provides for procedures when an application is not dismissed.

Proposed law amends present law to provide that the district attorney may file procedural objections or an answer on the merits within 60 days, rather than 30 days.

Proposed law provides for service of the response to the attorney general if any objections are waived by the district attorney. Further provides that the attorney general shall have 30 days to file objections.

Proposed law provides that no hearing on the merits shall be ordered if procedural objections are filed by the district attorney or the attorney general.

Proposed law provides for notice to the attorney general if certain applications are filed and procedures for applications that cannot be summarily dismissed.

Proposed law (C.Cr.P. Art. 927.1) provides for duties of the petitioner regarding the abandonment of an application and what constitutes abandonment of an application. Further defines the term "pleading in furtherance of disposition of the application".

Present law (C.Cr.P. Art. 928) provides that an application for post conviction relief may be dismissed without an answer if the application fails to allege a claim which, if established, would entitle the petitioner to relief.

Proposed law repeals present law.

Present law (C.Cr.P. Art. 930) provides for evidentiary hearings.

Proposed law retains present law and provides that the evidentiary hearing shall be ordered within the time period provided in proposed law.

Present law (C.Cr.P. Art. 930.2) provides that the petitioner in an application for post conviction relief shall have the burden of proving that relief should be granted.

Proposed law retains present law and provides that the state has no burden of proof in a post conviction relief proceeding.

Present law (C.Cr.P. Art. 930.4) provides relative to repetitive applications for post conviction relief.

Proposed law retains present law generally.

Proposed law provides that if a repetitive application alleges a claim seeking to apply a new rule of criminal procedure that has been held by the U.S. Supreme Court and the La. Supreme Court to be non-retroactive, the court shall deny relief.

Proposed law provides for procedures relative to service and notice when a petitioner attempts or

requests to amend an application for post conviction relief.

Present law (C.Cr.P. Art. 930.5) provides that if a court grants relief under an application for post conviction relief, the court shall order that the petitioner be held in custody pending a new trial if it appears that there are legally sufficient grounds upon which to re prosecute the petitioner.

Proposed law amends present law to remove the reference to legally sufficient grounds for re prosecution.

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

Proposed law retains present law.

Present law further permits the state to appeal to the supreme court or court of appeal under circumstances and permits the district court or court of appeal to stay a judgment granting relief when a an application for writ or appeal is pending.

Proposed law removes these provisions and provides that the district attorney and the attorney general shall have a right to suspensively appeal any order granting post conviction relief.

Present law (C.Cr.P. Art. 930.8) provides for time limitations and exceptions pertaining to applications post conviction.

Proposed law retains present law generally.

Proposed law provides relative to facts known by a petitioner who files an application for post conviction relief more than one year, rather than two years, after the judgment of conviction and sentence has become final under present law. Further provides for duties of the petitioner.

Proposed law removes the following from the time limitation exceptions for the filing of a post conviction relief application:

- (1) An application that would already be barred by present law (C.Cr.P. Art. 930.8), but the application is filed on or before Oct. 1, 2001, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.
- (2) The person asserting the claim has been sentenced to death.

Proposed law provides that a petitioner who has been sentenced to death shall file any application for post conviction relief that contains a new claim, pleading, or other legal matter no later than seven days prior to the execution date of the petitioner. Further provides that such applications shall be filed directly with the La. Supreme Court.

Proposed law provides for the dismissal of an application based upon prejudice, what constitutes dismissal, the burden of the petitioner, and the effect of a final judgment of dismissal.

Proposed law provides that any attempt to reconsider or vacate a conviction or sentence that falls outside the time limits of present law (C.Cr.P. Art. 882) shall be treated as an application for post conviction relief. Further provides for if post conviction relief has already been sought, any such claim shall be treated as a repetitive petition and subject to all the limitations and restrictions set forth in proposed law.

Present law (C.Cr.P. Art. 930.10) provides for post conviction plea agreements between the district attorney and the approval, with the approval of the district court.

Proposed law repeals present law.

Proposed law (C.Cr.P. Art. 930.11) provides for time periods that courts of appropriate jurisdiction, the district attorney, and the attorney general are to adhere to in post conviction proceedings. Further provides for the right to seek a writ of mandamus to compel a court to issue a requested ruling within a specified time period.

Present law (R.S. 15:578) provides for the enrollment of counsel by the office of the state public defender to represent a defendant on direct appeal and in any state post conviction proceedings in a capital case in which the jury imposed the death penalty.

Proposed law amends present law to provide that the court shall, within 30 days of the imposition of the sentence of death, order the office of the state public defender to have enrolled at least one attorney for direct appeal and at least one separate attorney for state post conviction proceedings.

Proposed law directs the La. State Law Institute to renumber the provisions of present law (C.Cr.P. Art. 924) so as to properly place proposed law (C.Cr.P. Art. 924(5) and (6)).

(Amends C.Cr.P. Arts. 882(A), 925, 926(B) and (E), 926.2(A) and (B)(2) and (3)(intro. para.) and (a), 927, 930(A) and (C), 930.2, 930.4(art. heading), (A), and (D)-(G), 930.5, 930.6(B), 930.8(A)(intro. para.) and (2)-(5) and (B)-(E) and R.S. 15:178; Adds C.Cr.P. Arts. 924(5) and (6), 926(F) and (G), 926.4, 927.1, 930.4(H), 930.8(F), and 930.11; Repeals C.Cr.P. Arts. 928, 930.6(C), 930.8(A)(6), and 930.10)