

GREEN SHEET REDIGEST

HB 675

2025 Regular Session

Glorioso

CRIMINAL/PROCEDURE: Provides relative to post conviction relief

DIGEST

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. 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 provides that an offender who enters a guilty plea before Aug. 1, 2025, will be subject to present law and proposed law relative to applications for post-conviction relief. Proposed law otherwise retains present law.

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 on or after Aug. 1, 2025, will not be entitled to assert a claim of factual innocence in any application for post conviction relief.

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 and provides that the district attorney's response will be provided to the attorney general even if the district attorney waives or does not file procedural objections.

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 reprosecute the petitioner.

Proposed law amends present law to remove the reference to legally sufficient grounds for 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 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 provides that an application that would already be barred by present law (C.Cr.P. Art. 930.8), but the application is filed on or before Aug. 1, 2027, and the date on which the application was filed is within two years after the judgment of conviction and sentence has become final will be subject to present law exemptions.

Proposed law removes applications that assert the offender has been sentenced to death from present law exceptions to filing post-conviction relief. Proposed law otherwise retains present law.

Proposed law provides that when the petitioner has been sentenced to death, all appellate review of post-conviction relief applications, including supervisory review of post-conviction relief applications, shall be filed directly with the La. Supreme Court.

Proposed law provides that when an execution warrant has been issued, any application for post-conviction relief that contains a new claim, pleading, or other legal matter shall be filed no later than 45 days prior to the execution date of the petitioner. Further provides a ruling on such applications shall be issued no later than 21 days prior to the execution date of the petitioner and that the exclusive means of review shall be a writ application filed directly with the La. Supreme Court within seven days of the ruling on the application.

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. Proposed law provides that the reviewing court may order the lower court to submit a per curiam opinion.

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. 926(B) and (E), 926.2(A) and (B)(2) and (3)(intro. para.), 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)-(4) 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), 930.11, and R.S. 15:169(C); Repeals C.Cr.P. Arts. 928, 930.6(C), and 930.10)

Summary of Amendments Adopted by House

The House Floor Amendments to the engrossed bill:

1. Make technical changes.
2. Restore present law (C.Cr.P. Art. 882(A)) provisions relative to correction of illegal sentence.
3. Clarify that a petitioner who pleads guilty to an offense shall not be entitled to assert a claim of factual innocence in any application for post conviction relief that is filed on or after Aug. 1, 2025.
4. Make mandatory, rather than permissive, the ordering of any answer on the merits of the claim or any hearing on the merits until procedural objections have been considered and rulings thereon have become final.
5. Clarify when an application for post conviction relief is deemed abandoned.
6. Clarify that the limitations under proposed law relative to abandonment do not preclude the filing of an application that meets an exception to the time limitations provided in present law (C.Cr.P. Art. 930.8).
7. Provide that claims contained in any application for post conviction relief that is filed before July 1, 2023, shall be fully adjudicated no later than July 1, 2026, rather than one year from the date of filing or amendment.
8. Provide for a time period of 45 days to file an application for post conviction relief when an execution warrant has been issued and provide for other procedures relative to the filing of such applications.
9. Clarify when an application for post conviction relief after the issuance of execution warrant shall be adjudicated and the exclusive means of reviewing such applications.
10. Clarify what constitutes prejudicial conduct relative to an application for post conviction relief that is either timely filed or filed pursuant to present law (C.Cr.P. Art. 930.8).
11. Relative to the exhaustion of state court remedies and federal habeas corpus proceedings, clarify that a final judgment dismissing an application based upon prejudice shall be a final adjudication of state post conviction claims in the application, rather than post conviction relief.

12. Relative to supervisory review, remove provisions of proposed law relative to supervisory jurisdiction of appellate courts and requires a petitioner who has been sentenced to death to seek supervisory review directly from the La. Supreme Court.
13. Require the La. Supreme Court, when its supervisory jurisdiction is invoked and the petitioner has an active death warrant, to issue a ruling prior to the effective date of that warrant.

Summary of Amendments Adopted by Senate

Committee Amendments Proposed by Senate Committee on Judiciary C to the reengrossed bill

1. Make technical changes.
2. Restore present law (C.Cr.P. Art. 925) provisions relative to venue.
3. Provide that an offender who pled guilty before Aug. 21, 2025, is subject to present law and proposed law relative to repetitive applications and time limitations.
4. Provide that a petitioner who pleads guilty on or after Aug. 21, 2025, is not entitled to assert a claim of factual innocence.
5. Delete proposed law changes relative to assertions of factual innocence.
6. Change the application date and reduce the time limit for present law exemptions relative to late applications.
7. Provide that a failure to timely request a hearing is presumed prejudicial to an application for post-conviction relief.
8. Delete proposed law changes relative to motions to reconsider or vacate.
9. Provide for submission of per curiam opinions.
10. Provide for additional funding to public defenders to litigate post-conviction relief applications in capital cases.