

RÉSUMÉ DIGEST

ACT 393 (HB 675)

2025 Regular Session

Glorioso

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

New law retains existing law and defines the terms "post conviction relief" and "shell petition".

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

New law retains existing law generally.

New 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.

New 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.

New 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.

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

Existing 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.

New law provides that an offender who enters a guilty plea before Aug. 1, 2025, shall be subject to existing law and new law relative to applications for post conviction relief.

New law otherwise retains existing law.

Prior law provided that an application for post conviction relief filed pursuant to existing law by a petitioner who pled guilty or nolo contendere to the offense of conviction or filed by any petitioner after Dec. 31, 2022, was subject to existing law.

New law amends prior law to provide that a petitioner who pled guilty to the offense of conviction on or after Aug. 1, 2025, shall not be entitled to assert a claim of factual innocence in any application for post conviction relief.

Existing 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 existing law.

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

New 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.

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

New law retains existing law generally.

New 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 new law. Further provides for factors that the court is required to consider, among other things, in its review of the application.

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

Prior law provided for procedures when an application is not dismissed.

New law amends prior 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 shall be provided to the attorney general even if the district attorney waives or does not file procedural objections.

New 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.

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

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

New 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".

Prior law (C.Cr.P. Art. 928) provided for the dismissal of an application for post conviction relief without an answer if the application failed to allege a claim which, if established, would have entitled the petitioner to relief.

New law repeals prior law.

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

New law retains existing law and provides that the evidentiary hearing shall be ordered within the time period provided in new law.

Existing 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.

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

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

New law retains existing law generally.

New 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.

New law provides for procedures relative to service and notice when a petitioner attempts or requests to amend an application for post conviction relief.

Prior law (C.Cr.P. Art. 930.5) provided that if a court granted relief under an application for post conviction relief, the court was required to order that the petitioner be held in custody

pending a new trial if it appeared that there were legally sufficient grounds upon which to reprosecute the petitioner.

New law amends prior law to remove the reference to legally sufficient grounds for reprosecution.

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

New law retains existing law.

Prior law permitted the state to appeal to the supreme court or court of appeal under certain circumstances and permitted the district court or court of appeal to stay a judgment granting relief when an application for writ or appeal was pending.

New 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.

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

New law (C.Cr.P. Art. 930.8(A)(2)) provides relative to facts known by a petitioner who files an application for post conviction relief and for duties of the petitioner.

Prior law (C.Cr.P. Art. 930.8(A)(3)) provided an exception to the time limitations when the application was already barred by existing law, but the application was filed on or before Oct. 1, 2001, and the date on which the application was filed was within three years after the judgment of conviction and the sentence has become final.

New law changes the date from Oct. 1, 2001, to Aug. 1, 2027, and the amount of time from three years to two years.

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

New 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.

New 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.

New 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.

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

New law repeals prior law.

New 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 extension of these time periods, the right to seek a writ of mandamus to compel a court to issue a requested ruling within a specified time period, and that the reviewing court may order the lower court to submit a per curiam opinion.

Existing law (R.S. 15:169) provides for the representation of capital defendants.

New law retains existing law generally and provides that the state public defender may request supplemental funding from the Joint Legislative Committee on the Budget (JLCB), through distribution from the Overcollections Fund, on a case by case basis. Further provides for the submission of a report from the state public defender and the attorney general to the JLCB prior to it taking action on a request.

Prior law (R.S. 15:578) provided 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 had imposed the death penalty.

New law amends prior 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.

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

Effective August 1, 2025.

(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)