

2021 Regular Session

HOUSE BILL NO. 346

BY REPRESENTATIVE GAINES

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

CRIMINAL/PROCEDURE: Provides relative to post-conviction relief or parole when a verdict is rendered by a non-unanimous jury

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AN ACT

To amend and reenact Code of Criminal Procedure Article 930.8(A)(2) and to enact Code of Criminal Procedure Articles 930.3(8) and 930.8(A)(5) and R.S. 15:574.4(K), relative to post-conviction relief; to provide relative to the grounds for post-conviction relief; to provide relative to time limitations for post-conviction relief; to provide relative to time limitations for post-conviction relief when the applicant has a non-unanimous jury verdict; to allow certain persons convicted by a non-unanimous jury verdict to be eligible for parole consideration; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 930.8(A)(2) is hereby amended and reenacted and Code of Criminal Procedure Articles 930.3(8) and 930.8(A)(5) are hereby enacted to read as follows:

Art. 930.3. Grounds

If the petitioner is in custody after sentence for conviction for an offense, relief shall be granted only on the following grounds:

* * *

(8) The petitioner has not been granted parole eligibility under R.S. 15:574.4(K).

* * *

1 Art. 930.8. Time limitations; exceptions; prejudicial delay

2 A. No application for post-conviction relief, including applications which
3 seek an out-of-time appeal, shall be considered if it is filed more than two years after
4 the judgment of conviction and sentence has become final under the provisions of
5 Article 914 or 922, unless any of the following apply:

6 * * *

7 (2) The claim asserted in the petition is based upon a final ruling of an
8 appellate court establishing a theretofore unknown interpretation of constitutional
9 law and petitioner establishes that this interpretation is retroactively applicable to his
10 case, and the petition is either filed within one year of the ~~finality of such ruling~~ final
11 ruling containing the unknown interpretation of constitutional law or within one year
12 of a final ruling of an appellate court establishing the retroactive application of such
13 a ruling to final convictions.

14 * * *

15 (5) The application alleges, and the petitioner shows, that the conviction was
16 rendered by a verdict from a non-unanimous jury, that the petition was filed prior to
17 April 20, 2023, and that the petitioner has not been granted parole under R.S.
18 15:574.4(K).

19 * * *

20 Section 2. R.S. 15:574.4(K) is hereby enacted to read as follows:

21 §574.4. Parole; eligibility; juvenile offenders

22 * * *

23 K. Notwithstanding any other provision of law to the contrary, any person
24 -serving a sentence for a conviction rendered by a verdict from a non-unanimous jury
25 shall be entitled to a parole hearing before the committee on parole within one
26 hundred eighty days of the person providing acceptable documentation of a
27 non-unanimous verdict to the Department of Public Safety and Corrections.
28 Acceptable documents may include court minutes, portions of court transcripts,
29 polling slips, references to a non-unanimous verdict in judicial orders, and affidavits.

1 Any person who is granted parole under this Subsection shall waive any further right
 2 to post-conviction relief under Code of Criminal Procedure Articles 930.3(8) and
 3 930.8(5). The provisions of this Subsection shall supersede and control to the extent
 4 of any conflict with any other provision of law.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

HB 346 Original

2021 Regular Session

Gaines

Abstract: Provides an additional ground for post-conviction relief when an applicant is convicted by a non-unanimous jury verdict; adds to the list of exceptions when an application shall be considered if the application is filed more than two years after the judgment of conviction; requires a parole hearing for persons convicted by a non-unanimous jury verdict; and specifies what documents are acceptable in requesting such parole hearing.

Present law provides that post-conviction relief shall be granted only on the following grounds:

- (1) The conviction was obtained in violation of the U.S. or La. constitution.
- (2) The court exceeded its jurisdiction.
- (3) The conviction or sentence subjected the petitioner to double jeopardy.
- (4) The limitations on the institution of prosecution had expired.
- (5) The statute creating the offense for which the petitioner was convicted and sentenced is unconstitutional.
- (6) The conviction or sentence constitute the ex post facto application of law in violation of the U.S. or La. constitution.
- (7) The results of DNA testing performed pursuant to an application granted under C.Cr.P. Art. 926.1 proves by clear and convincing evidence that the petitioner is factually innocent of the crime for which he was convicted.

Proposed law retains present law and adds when the petitioner has not been granted parole under proposed law as a ground for when post-conviction relief shall be granted.

Present law also provides that no application for post-conviction relief shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of C.Cr.P. Arts. 914 or 922, unless any of the following apply:

- (1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any post-conviction claims that may exist. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery.

- (2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing an unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.
- (3) The application would already be barred by the provisions of present law, 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.
- (4) The person asserting the claim has been sentenced to death.

Proposed law retains present law.

Proposed law specifies that the petition shall be filed either within one year of the final ruling containing the unknown interpretation of constitutional law or within one year of the final ruling establishing the retroactive application when the claim asserted in the petition is based upon a final ruling of an appellate court establishing an unknown interpretation of constitutional law and the petitioner establishes that the interpretation is retroactively applicable to his case.

Proposed law adds that when the application alleges and petitioner shows the conviction was rendered by a verdict from a non-unanimous jury, the petition was filed prior to April 20, 2023, and the petitioner has not been granted parole under proposed law.

Proposed law requires that any person serving a sentence for a conviction rendered by a verdict from a non-unanimous jury shall have a parole hearing before the committee within 180 days of the person providing acceptable documentation of the non-unanimous jury verdict to the Dept. of Public Safety and Corrections.

Proposed law further provides that acceptable documents may include court minutes, portions of court transcripts, polling slips, references to a non-unanimous verdict in judicial order, and affidavits.

Proposed law specifies that any person granted parole under proposed law shall waive any further right to post-conviction relief under C.Cr.P. Arts. 930.3(8) and 930.8(5).

Proposed law specifies that proposed law supersedes and controls to the extent of any conflict with any other provision of law.

(Amends C.Cr.P. Art. 930.8(A)(2); Adds C.Cr.P. Arts. 930.3(8) and 930.8(A)(5) and R.S. 15:574.4(K))