

2025 Regular Session

HOUSE BILL NO. 675 (Substitute for House Bill No. 572 by Representative  
Glorioso)

BY REPRESENTATIVE GLORIOSO

CRIMINAL/PROCEDURE: Provides relative to post conviction relief

## 1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 882(A), 925, 926(B) and (E),  
3 926.2(A) and (B)(2) and (3)(introductory paragraph) and (a), 927, 930(A) and (C),  
4 930.2, 930.4(article heading), (A), and (D) through (G), 930.5, 930.6(B),  
5 930.8(A)(introductory paragraph) and (2) through (5) and (B) through (E) and R.S.  
6 15:178, to enact Code of Criminal Procedure Articles 924(5) and (6), 926(F) and (G),  
7 926.4, 927.1, 930.4(H), 930.8(F), and 930.11, and to repeal Code of Criminal  
8 Procedure Articles 928, 930.6(C), 930.8(A)(6), and 930.10, relative to post  
9 conviction relief; to provide relative to the correction of an illegal sentence; to  
10 provide for procedures; to provide for definitions; to provide for appeals; to provide  
11 for applications; to provide for motions; to provide for summary disposition; to  
12 provide for judgments; to provide for grounds for relief; to provide relative to claims;  
13 to provide for duties of the court, district attorney, attorney general, and petitioner;  
14 to provide for time periods; to provide relative to time limitations; to provide for  
15 burden of proof; to provide relative to a writ of mandamus; to provide for the  
16 appointment of counsel in certain circumstances; and to provide for related matters.

17 Be it enacted by the Legislature of Louisiana:

18 Section 1. Code of Criminal Procedure Articles 882(A), 925, 926(B) and (E),  
19 926.2(A) and (B)(2) and (3)(introductory paragraph) and (a), 927, 930(A) and (C), 930.2,  
20 930.4(article heading), (A), and (D) through (G), 930.5, 930.6(B), 930.8(A)(introductory

paragraph) and (2) through (5) and (B) through (E) are hereby amended and reenacted and Code of Criminal Procedure Articles 924(5) and (6), 926(F) and (G), 926.4, 927.1, 930.4(H), 930.8(F), and 930.11 are hereby enacted to read as follows:

Art. 882. Correction of illegal sentence; review of illegal sentence

A. ~~An illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review.~~ 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. 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.

\* \* \*

Art. 924. Definitions

As used in this Title:

\* \* \*

(5) "Post conviction relief" means a procedure that allows an individual who has been convicted of a crime in this state to challenge the legality of his confinement. It is a form of post conviction habeas corpus and is a collateral action to test the detention of a criminal defendant after his sentence and conviction have become final.

(6) "Shell petition" means a petition that does not contain fully briefed claims for relief.

Art. 925. Venue

~~Applications~~ Except as provided in Article 930.8(B), applications for post conviction relief shall be filed in the parish in which the petitioner was convicted.

Art. 926. Petition

\* \* \*

B. The petition shall allege all of the following:

(1) The name of the person in custody and the place of custody, if known, or if not known, a statement to that effect;

(2) That the person is actually in custody, and the name of the place of custody, if known.

~~(2)~~ (3) The name of the custodian, if known, or if not known, a designation or description of him as far as possible;

~~(3)~~ (4) A statement of the grounds upon which relief is sought, alleged in good faith and specifying with reasonable particularity the factual basis for such relief;

~~(4)~~ (5) A statement of all prior applications for writs of habeas corpus or for post conviction relief filed by or on behalf of the person in custody in connection with his present custody; ~~and~~.

~~(5)~~ (6) All errors known or discoverable by the exercise of due diligence.

\* \* \*

E. 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.

F.(1) An individual shall be eligible for post conviction relief if he meets both of the following:

(a) He is currently serving a sentence of imprisonment or is on probation or parole pursuant to a conviction.

(b) He is in actual custody or under supervision of the division of probation and parole.

(2) An application for post conviction relief filed after the petitioner has completed his sentence shall be dismissed.

(3) Any claim alleged in an application that is procedurally barred or is frivolous on its face shall be dismissed.

E. G. Inexcusable failure of the petitioner to comply with the provisions of this Article may be a basis for dismissal of his application.

\* \* \*

Art. 926.2. Factual innocence

A. A petitioner who has been convicted of an offense may seek post conviction relief on the grounds that he is factually innocent of the offense for which he was convicted. A petitioner's first claim of factual innocence pursuant to this Article that would otherwise be barred from review on the merits by the time limitation provided in Article 930.8 or the procedural objections provided in Article 930.4 shall not be barred if the claim is contained in an application for post conviction relief filed on or before December 31, 2022, and if the petitioner was convicted after a trial completed to verdict. This exception to Articles 930.4 and 930.8 shall apply only to the claim of factual innocence brought under this Article and shall not apply to any other claims raised by the petitioner. An application for post conviction relief filed pursuant to this Article by a petitioner who pled ~~guilty or~~ nolo contendere to the offense of conviction or filed by any petitioner after December 31, 2022, shall be subject to Articles 930.4 and 930.8. A petitioner who pled guilty to the offense of conviction shall not be entitled to assert factual innocence.

B.

\* \* \*

(2) A recantation of prior sworn testimony may be considered if corroborated by the evidence required by Subsubparagraph (1)(a) of this Paragraph. However, a recantation of prior sworn testimony cannot form the sole basis for relief pursuant to this Article, and shall not be sufficient to overcome the presumption of a valid conviction.

(3) If the petitioner pled ~~guilty or~~ nolo contendere to the offense of conviction, in addition to satisfying all of the criteria in this Paragraph and in any other applicable provision of law, the petitioner shall show both of the following to prove entitlement to relief:

1 (a) That, by reliable evidence, he consistently maintained his innocence until  
2 his plea of ~~guilty or~~ nolo contendere.

3 \* \* \*

4 Art. 926.4. Privilege waiver

5 By raising any claim of ineffective assistance of counsel, the defendant  
6 waives the attorney-client privilege as to any information necessary to allow the state  
7 to rebut the claim.

8 Art. 927. ~~Procedural~~ Action required after filing of application; procedural  
9 objections; answer

10 A.(1) The court shall conduct a preliminary review of all petitions for post  
11 conviction relief for compliance with the limitations for relief established in this  
12 Chapter. In conducting its review of the application, the court shall consider, among  
13 other things, all of the following:

14 (a) Whether the petitioner was in custody at the time the application for  
15 post-conviction relief was filed.

16 (b) Whether the application is timely pursuant to Article 930.8.

17 (c) Whether the application states adequate factual or legal grounds for  
18 relief.

19 (d) Whether the application states legal grounds for relief that are not  
20 meritorious.

21 (e) Whether the application states factual grounds which, if established, do  
22 not entitle the petitioner to relief.

23 (f) Whether the application states factual grounds that, if true, entitle the  
24 petitioner to relief but are so contradicted by the court record that the court is  
25 satisfied that the factual allegations are untrue.

26 (g) Whether each claim in the application is procedurally barred or frivolous  
27 on its face.

28 (2) If it is evident from the petition and any attached exhibits that the  
29 petitioner is not entitled to relief, the court shall dismiss the application. If the

1        application is not dismissed, the judge shall order an answer pursuant to Paragraph  
2        B of this Article. The fact that the court has not dismissed the application upon  
3        preliminary review shall not preclude the district attorney or the attorney general  
4        from subsequently raising objections on any of the grounds listed in Paragraph  
5        (A)(1) of this Article.

6                ~~A. B.~~ If an application ~~alleges a claim which, if established, would entitle the~~  
7        ~~petitioner to relief~~ is not dismissed pursuant to Paragraph A of this Article, the court  
8        shall order the custodian, through the district attorney in the parish in which the  
9        defendant was convicted, to file any procedural objections he may have, or an  
10       answer on the merits if there are no procedural objections, within a specified period  
11       not in excess of ~~thirty~~ sixty days. If any objections are waived by the district  
12       attorney, the response shall be provided to the attorney general concurrent with  
13       filing. The court's order shall include a copy of the application for post conviction  
14       relief and the attorney general shall have thirty days to file objections. If procedural  
15       objections are ~~timely~~ filed by the district attorney or the attorney general, no answer  
16       on the merits of the claim nor any hearing on the merits may be ordered until such  
17       objections have been considered and rulings thereon have become final.

18                ~~B. C.~~ In any order of the court requiring a response by the district attorney  
19        or attorney general pursuant to this Article, the court shall render specific rulings  
20        dismissing any claim which, if established as alleged, would not entitle the petitioner  
21        to relief, and shall order a response only as to such claim or claims which, if  
22        established as alleged, would entitle the petitioner to relief.

23                ~~C. D.~~ If the court orders an answer filed, the court need not order production  
24        of the petitioner except as provided in Article 930.

25                E. Subject to the provisions of Article 930.4(F), if the application is  
26        successive or supplemental to a previous application, the court shall send notice to  
27        the attorney general.

1           F. If the court has determined that the application cannot be summarily  
2           dismissed, the court shall determine after an answer is filed whether an evidentiary  
3           hearing is necessary and shall set a status conference within sixty days.

4           Art. 927.1. Abandonment of application

5           A. After filing an application for post conviction relief, the petitioner is  
6           responsible for seeking a ruling on his application and pursuing his claims. Failure  
7           to actively seek a ruling on an application for post conviction relief after it has been  
8           filed shall constitute abandonment of the application, resulting in the dismissal of the  
9           application.

10          B. An application for post conviction relief shall be deemed to be abandoned  
11          when the petitioner fails to file any pleading in furtherance of disposition of the  
12          application for a period of two years after the last decision on direct review becomes  
13          final, irrespective of the stage of the proceedings.

14          C. This Article shall be operative without a formal order two years after the  
15          last decision on direct review becomes final. On ex parte motion of the district  
16          attorney or the attorney general, accompanied by an affidavit that states that action  
17          has not been timely taken, the court shall enter a formal order of dismissal as of the  
18          date of the application's abandonment.

19          D. If the petitioner has a shell petition pending as of July 1, 2025, he shall  
20          submit a fully-briefed petition to the court within one hundred eighty days of July  
21          1, 2025. Any application for post conviction relief filed before July 1, 2023, shall  
22          be dismissed, set for a hearing, or otherwise adjudicated within one hundred eighty  
23          days of July 1, 2025, unless the court has good cause to establish a later date,  
24          provided however that the claims shall be fully adjudicated no later than one year  
25          from the date of filing or amendment. The district attorney or the attorney general  
26          shall have a right to seek mandamus to enforce this Paragraph.

27          E. For the purposes of this Article, "pleading in furtherance of disposition  
28          of the application" means a filing that seeks the trial court's ruling on the merits of  
29          the application or a claim asserted therein, such as a motion to set the case on the

1        docket, a motion seeking an order, or an application for writ of mandamus seeking  
2        a ruling on the application.

3                                \*           \*           \*

4        Art. 930. Evidentiary hearing

5                A. An evidentiary hearing for the taking of testimony or other evidence shall  
6        be ordered within the time period provided in Article 930.11 whenever there are  
7        questions of fact which cannot properly be resolved pursuant to Articles 928 and  
8        929. The petitioner, in absence of an express waiver, is entitled to be present at such  
9        hearing, unless the only evidence to be received is evidence as permitted pursuant  
10       to ~~Subsection~~ Paragraph B of this Section Article, and the petitioner has been or will  
11       be provided with copies of such evidence and an opportunity to respond thereto in  
12       writing.

13                               \*           \*           \*

14               C. No evidentiary hearing on the merits of a claim shall be ordered or  
15        conducted, nor shall any proffer of evidence be received over the objection of the  
16        respondent, and no ruling upon procedural objections to the petition shall purport to  
17        address the merits of the claim over the objection of the respondent, unless the court  
18        has first ruled upon all procedural objections raised by the respondent within the time  
19        period provided in Article 930.11, and such rulings have become final. Any  
20        language in a ruling on procedural objections raised by the respondent which  
21        purports to address the merits of the claim shall be deemed as null, void, and of no  
22        effect.

23                               \*           \*           \*

24        Art. 930.2. Burden of proof

25               The petitioner in an application for post conviction relief shall have the  
26        burden of proving that relief should be granted. The state has no burden of proof in  
27        a post conviction relief proceeding.

28                               \*           \*           \*

29        Art. 930.4. ~~Repetitive~~ Jurisdictional bars to relief; repetitive applications



1           A. ~~Unless required in the interest of justice, any~~ Any claim for relief which  
2           was fully litigated in an appeal from the proceedings leading to the judgment of  
3           conviction and sentence shall not be considered.

4   \*           \*           \*

5           D. If the application alleges a claim seeking to apply a new rule of criminal  
6           procedure that has been held by the United States Supreme Court and the Louisiana  
7           Supreme Court to be non-retroactive, the court shall deny relief.

8           E. A successive application shall be dismissed if it fails to raise a new or  
9           different claim.

10          E. F. A successive application shall be dismissed if it raises a new or  
11          different claim that was inexcusably omitted from a prior application.

12          F. G. Any attempt or request by a petitioner to supplement or amend the  
13          application shall be subject to all of the limitations and restrictions set forth in this  
14          Article. In addition to serving the district attorney for the jurisdiction where the  
15          underlying conviction was obtained, any subsequent, successive, amending, or  
16          supplemental application ~~filed after the first application for post conviction relief~~  
17          shall be served by the petitioner on the district attorney and the attorney general. If  
18          the court subsequently orders any hearing on the application, the court shall send  
19          notice to the district attorney and attorney general at least sixty days in advance of  
20          the hearing ~~on the application. Both the district attorney and the attorney general~~  
21          ~~shall have a right to suspensively appeal any order granting relief~~ date.

22          G. H. ~~All of the~~ The limitations set forth in this Article shall be jurisdictional  
23          and shall not be waived or excused by the court or the district attorney.

24          Art. 930.5. Custody pending retrial; bail

25          A. If a court grants relief under an application for post conviction relief, the  
26          court shall order that the petitioner be held in custody pending a new trial ~~if it~~  
27          ~~appears that there are legally sufficient grounds upon which to re prosecute the~~  
28          petitioner.

1           B. In such a case, the petitioner shall be entitled to bail on the offense as  
2           though he has not been convicted of the offense.

3           Art. 930.6. Review of trial court judgments

4                                   \*           \*           \*

5           ~~B. If a statute or ordinance is declared unconstitutional, the state may appeal~~  
6           ~~to the supreme court. If relief is granted on any other ground, the state may invoke~~  
7           ~~the supervisory jurisdiction of the court of appeal.~~

8           ~~C. Pending the state's application for writs, or pending the state's appeal, the~~  
9           ~~district court or the court of appeal may stay the judgment granting relief. The~~  
10          ~~district attorney and the attorney general shall have a right to suspensively appeal~~  
11          ~~any order granting post conviction relief.~~

12                                   \*           \*           \*

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

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

18                                   \*           \*           \*

19           (2) Facts that were known to any attorney for the petitioner shall be  
20           presumed to have been known by the petitioner unless the petitioner rebuts this  
21           presumption by clear and convincing evidence. Facts that were contained in the  
22           record of the court proceedings concerning the conviction challenged in the  
23           application shall be deemed to have been known by the petitioner. The provisions of  
24           this Subparagraph are applicable if the petitioner proves either of the following:

25           (a) That the petitioner exercised due diligence in attempting to discover any  
26           post conviction claims or facts upon which any claims may be based.

27           (b)(i) That exceptional circumstances exist, the interest of justice will be  
28           served by consideration of the claim based upon the previously unknown facts, and

1        the newly discovered facts in support of the claim are sufficiently compelling that  
2        manifest injustice will result if the claim is not considered.

3                (ii) The petitioner shall have the burden of proving the provisions of this  
4        Subsubparagraph by clear and convincing evidence.

5                ~~(2)~~ (3) The claim asserted in the petition is based upon a final ruling of an  
6        appellate court establishing a theretofore unknown interpretation of constitutional  
7        law and petitioner establishes that this interpretation is retroactively applicable to his  
8        case, and the petition is filed within one year of the finality of such ruling.

9                ~~(3) The application would already be barred by the provisions of this Article,~~  
10       ~~but the application is filed on or before October 1, 2001, and the date on which the~~  
11       ~~application was filed is within three years after the judgment of conviction and~~  
12       ~~sentence has become final.~~

13                ~~(4) The person asserting the claim has been sentenced to death.~~

14                ~~(5)~~ (4) The petitioner qualifies for the exception to timeliness in Article  
15       926.1.

16                ~~(6)~~ (5) The petitioner qualifies for the exception to timeliness in Article  
17       926.2.

18                B. When the petitioner has been sentenced to death, any application for post  
19       conviction relief that contains a new claim, pleading, or other legal matter shall be  
20       filed no later than seven days prior to the execution date of the petitioner. Such  
21       applications shall be filed directly with the Louisiana Supreme Court.

22                ~~B. C.~~ An application for post conviction relief which is timely filed, or which  
23       is allowed under an exception to the time limitation as set forth in Paragraph A of  
24       this Article, shall be dismissed upon a showing by the state of prejudice to its ability  
25       to respond to, negate, or rebut the allegations of the petition caused by events not  
26       under the control of the state which have transpired since the date of original  
27       conviction, if the court finds, after a hearing limited to that issue, that the state's  
28       ability to respond to, negate, or rebut such allegations has been materially prejudiced  
29       thereby. Failure to timely seek a hearing that is allowed by law or failure to timely

1 pursue claims shall be presumed prejudicial if the delay exceeds two years. The  
2 petitioner shall bear the burden of rebutting the presumption of prejudice. A final  
3 judgment dismissing an application based upon prejudice shall be a final  
4 adjudication of state post conviction relief for purposes of exhaustion of state court  
5 remedies and federal habeas corpus proceedings.

6 ~~C. D.~~ At the time of sentencing, the trial court shall inform the defendant of  
7 the prescriptive period for post-conviction relief either verbally or in writing. If a  
8 written waiver of rights form is used during the acceptance of a guilty plea, the  
9 notice required by this Paragraph may be included in the written waiver of rights.

10 ~~D. E.~~ Any attempt or request by a petitioner to supplement or amend the  
11 application shall be subject to all of the limitations and restrictions as set forth in this  
12 Article. Any attempt to reconsider or vacate a conviction or sentence that falls  
13 outside the time limits of Article 882 shall be treated as an application for post  
14 conviction relief. If post conviction relief has already been sought, any such claim  
15 shall be treated as a repetitive petition for post conviction relief that is subject to all  
16 the limitations and restrictions set forth in this Article.

17 ~~E. F.~~ All of the limitations set forth in this Article shall be jurisdictional and  
18 shall not be waived or excused by the court or the district attorney.

19 \* \* \*

20 Art. 930.11. Time delays applicable to this Title; writ of mandamus

21 A. The court of appropriate jurisdiction shall adhere to the following time  
22 periods in post conviction proceedings:

23 (1) The court shall conduct the preliminary review provided in Article 927  
24 within thirty days of the filing of application.

25 (2) When ruling on procedural objections that have been filed pursuant to  
26 Article 927, the court shall issue its ruling within thirty days of receipt of such  
27 objections.

1           (3) If the court determines that no evidentiary hearing is necessary, it shall  
2           issue its ruling on the merits of any remaining claim alleged in the application within  
3           thirty days of the state's answer on the merits.

4           (4) When the court determines that there are questions of fact which cannot  
5           properly be resolved pursuant to Article 929, it shall conduct an evidentiary hearing  
6           provided in Article 930 within one hundred eighty days of such determination and  
7           issue a ruling on the merits of any remaining claim within thirty days following the  
8           conclusion of such hearing.

9           B. The district attorney and the attorney general shall adhere to the following  
10          time periods in post conviction proceedings:

11          (1) The district attorney shall have sixty days to file procedural objections  
12          pursuant to Article 927, unless he waives such objections.

13          (2) If an answer is required, the district attorney shall have sixty days from  
14          the court's ruling on procedural objections to file an answer on the merits pursuant  
15          to Article 927.

16          (3) The attorney general shall have thirty days to file procedural objections  
17          pursuant to Article 927 if the district attorney waives such objections.

18          C. If a petitioner who has been sentenced to death invokes the supervisory  
19          jurisdiction of a court of appeal, the court of appeal shall issue a ruling within one  
20          hundred eighty days of receipt of such application.

21          D. If a petitioner invokes the supervisory jurisdiction of the Louisiana  
22          Supreme Court, the supreme court shall rule on an application for a writ of review  
23          within one hundred eighty days of receipt.

24          E. The state or petitioner shall have the right to seek a writ of mandamus to  
25          compel a court to issue a requested ruling within a specified period not to exceed  
26          thirty days if that court has not issued a ruling within the deadlines provided in this  
27          Chapter.

28          Section 2. R.S. 15:178 is hereby amended and reenacted to read as follows:

29          §178. Appointment of appellate and post-conviction counsel in death penalty case

1           In a capital case in which the trial counsel was provided to an indigent  
2           defendant and in which the jury imposed the death penalty, the court, ~~after~~ within  
3           thirty days of the imposition of the sentence of death, shall ~~appoint~~ order the office;  
4           ~~which shall promptly cause~~ of the state public defender to have enrolled ~~counsel~~ to  
5           ~~represent the defendant on~~ at least one attorney for direct appeal and ~~in any~~ at least  
6           one separate attorney for state ~~post-conviction~~ post conviction proceedings, ~~if~~  
7           appropriate.

8           Section 3. Code of Criminal Procedure Articles 928, 930.6(C), 930.8(A)(6), and  
9           930.10 are hereby repealed in their entirety.

10          Section 4. The Louisiana State Law Institute is hereby authorized and directed to  
11          renumber the subparagraphs of Code of Criminal Procedure Article 924 so as to properly  
12          place Code of Criminal Procedure Article 924(5) and (6) as enacted by this Act.

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#### 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)]

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HB 675 Original

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)