

2020 Regular Session

HOUSE BILL NO. 223

BY REPRESENTATIVE BACALA

(On Recommendation of the Louisiana State Law Institute)

CRIMINAL/PROCEDURE: Provides relative to postconviction relief

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AN ACT

To amend and reenact Code of Criminal Procedure Article 923, Title XXXI-A of the Code of Criminal Procedure, to be comprised of Code of Criminal Procedure Articles 924 through 928, and Code of Criminal Procedure Articles 926.1 and 930.1 through 930.9, to enact Code of Criminal Procedure Articles 880.1 and 930.10 through 930.27, to repeal Code of Criminal Procedure Articles 929 and 930, and to redesignate Code of Criminal Procedure Articles 926.1 and 931 through 934, relative to postconviction relief; to provide for definitions, appeals, and venue; to provide for the contents of applications for postconviction relief and the time limitations and procedures applicable thereto; to provide for service and burden of proof; to provide for grounds for postconviction relief; to provide for the production of information; to provide for the waiver of the attorney-client privilege; to provide for actions required by the court and parties; to provide for requests for more definite statements and procedural objections; to provide for answers and responses; to provide for summary disposition and evidentiary hearings; to provide for attendance by the applicant and appointment of counsel; to provide for judgments and their review; to provide for custody; to provide for status conferences; to provide for DNA testing; to provide for orders to retain evidence; to provide for the duties of the clerk of the appellate court; to provide for redesignations; to provide for applicability; and to provide for related matters.

1 Be it enacted by the Legislature of Louisiana:

2 Section 1. Title XXXI-A of the Code of Criminal Procedure, comprised of Code of  
3 Criminal Procedure Articles 924 through 928, is hereby amended and reenacted to read as  
4 follows:

5 TITLE XXXI-A

6 ~~POST-CONVICTION~~ POSTCONVICTION RELIEF IN NONCAPITAL CASES

7 Art. 924. Scope of applicability

8 The provisions of this Title shall apply prospectively to applications for  
9 noncapital postconviction relief that are filed on or after the effective date of this  
10 Act. The provisions of this Title shall not apply to capital cases.

11 Comments - 2020

12 Prior to the 2020 revision, Title XXXI-A of the Code of Criminal Procedure  
13 applied to postconviction relief in both capital and noncapital cases. As of the  
14 effective date of the revision, Title XXXI-A applies only to postconviction relief in  
15 noncapital cases, and Title XXXI-B applies to postconviction relief in capital cases.

16 ~~Art. 924.~~ 924.1. Definitions

17 As used in this Title:

18 (1) ~~An "application "~~ Application for post conviction postconviction relief  
19 means a ~~petition pleading that complies with Article 927~~ filed by a person in custody  
20 ~~after sentence following conviction for the commission of an offense~~ seeking to have  
21 the noncapital criminal conviction and sentence set aside.

22 (2) "Custody" means involuntary detention or confinement, or probation or  
23 parole supervision, after sentence following conviction for the commission of ~~an~~ a  
24 criminal offense for which postconviction relief is sought.

25 (3) "DNA testing" means any method of testing and comparing  
26 deoxyribonucleic acid that would be admissible under the ~~Louisiana~~ Code of  
27 Evidence.

28 (4) "Due diligence" means that the applicant has made reasonable efforts  
29 after conviction to discover in a timely manner any postconviction claims and the  
30 facts and evidence upon which those claims may be based. An inquiry by the court  
31 as to whether an applicant has exercised due diligence shall consider all factors,

1 including the circumstances of the applicant, the educational background of the  
2 applicant, the applicant's access to counsel, the financial resources of the applicant,  
3 the age of the applicant, and the mental abilities of the applicant. The court shall also  
4 consider any information properly sought or received from the state.

5 (5) "Imprisoned" means involuntarily detained or confined in an institution  
6 without freedom to leave pursuant to a conviction for the commission of a criminal  
7 offense.

8 (6) "Particularized need" means specific claims of constitutional errors that  
9 require the requested documentation for support and have been set out by an  
10 applicant in a properly filed application for postconviction relief.

11 (7) "Procedural objection" means an assertion by the state of a procedural  
12 bar, which, if granted, would preclude the court from considering a claim in an  
13 application for postconviction relief.

14 ~~(4)~~(8) "Unknown sample" means a biological sample from an unknown  
15 donor constituting evidence of the commission of an offense or tending to prove the  
16 identity of the perpetrator of an offense.

17 Comments - 2020

18 (a) The interests of the state in postconviction proceedings may be  
19 represented by the district attorney, the attorney general, or both. "The state" means  
20 either the district attorney or the attorney general and is applicable to whoever is  
21 currently representing the interests of the state in the proceedings.

22 (b) Inmates who are "imprisoned" as provided in Subparagraph (5) of this  
23 Article are a subset of people who are in custody as defined in Subparagraph (2) of  
24 this Article.

25 (c) "Particularized need" as provided in Subparagraph (6) of this Article was  
26 defined by the Louisiana Supreme Court in State ex rel. Bernard v. Cr.D.C., 653 So.  
27 2d 1174. (La. 1995).

28 (d) As used in this Title, and in accordance with Article 5 of this Code, the  
29 word "shall" means mandatory.

30 (e) Nothing in this Title precludes a court from raising a procedural bar on  
31 its own motion.

1 Art. ~~924.1.~~ 924.2. Effect of appeal

2 An application for ~~post-conviction~~ postconviction relief shall not be  
3 ~~entertained~~ considered if the ~~petitioner~~ applicant may appeal the conviction and  
4 sentence ~~which~~ that he seeks to challenge, or if an appeal is pending.

5 Art. 925. Venue

6 Applications for ~~post-conviction~~ postconviction relief shall be filed in the  
7 district court of the parish in which the ~~petitioner~~ applicant was convicted.

8 Art. 926. Petition Time limitations; exceptions; prejudicial delay

9 ~~A. An application for post conviction relief shall be by written petition~~  
10 ~~addressed to the district court for the parish in which the petitioner was convicted.~~  
11 ~~A copy of the judgment of conviction and sentence shall be annexed to the petition,~~  
12 ~~or the petition shall allege that a copy has been demanded and refused.~~

13 ~~B. The petition shall allege:~~

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

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

18 ~~(3) A statement of the grounds upon which relief is sought, specifying with~~  
19 ~~reasonable particularity the factual basis for such relief;~~

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

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

24 ~~C. The application shall be signed by the petitioner and be accompanied by~~  
25 ~~his affidavit that the allegations contained in the petition are true to the best of his~~  
26 ~~information and belief.~~

27 ~~D. The petitioner shall use the uniform application for post conviction relief~~  
28 ~~approved by the Supreme Court of Louisiana. If the petitioner fails to use the~~

1 ~~uniform application, the court may provide the petitioner with the uniform~~  
2 ~~application and require its use.~~

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

5 A. No application for postconviction relief, including an application that  
6 seeks an out-of-time appeal, filed more than two years after the judgment of  
7 conviction and sentence has become final under the provisions of Article 914 or 922,  
8 shall be considered unless any of the following apply:

9 (1) The application alleges, and the applicant proves or the state admits, that  
10 the facts upon which the claim is predicated were not known to the applicant at the  
11 time of the judgment of conviction and were discovered by the applicant within two  
12 years prior to the filing of the application. For the purposes of this exception to the  
13 time limitation, facts that were known to any attorney for the applicant shall be  
14 presumed to have been known by the applicant unless the applicant rebuts this  
15 presumption by clear and convincing evidence. Facts that were contained in the  
16 record of the court proceedings concerning the conviction challenged in the  
17 application shall be deemed to have been known by the applicant. Further, for this  
18 exception to the time limitation to apply, the applicant shall also prove one of the  
19 following:

20 (a) That the applicant exercised due diligence in attempting to discover any  
21 postconviction claims or facts upon which any claims may be based.

22 (b) By clear and convincing evidence, that exceptional circumstances exist,  
23 that the interest of justice will be served by consideration of the claim based upon the  
24 previously unknown facts, and that the newly discovered facts in support of the claim  
25 are sufficiently compelling that an injustice will result if the claim is not considered.

26 (2) The application contains a claim based upon a final ruling of an appellate  
27 court establishing a new interpretation of constitutional law, the applicant establishes  
28 that the interpretation is retroactively applicable to his case, and the application is  
29 filed within one year of the finality of such ruling.

1           B. An application for postconviction relief that is timely filed, or that is  
 2           allowed under an exception to the time limitation as set forth in Paragraph A of this  
 3           Article, shall be dismissed after a contradictory hearing upon a showing by the state  
 4           of material prejudice to its ability to respond to, negate, or rebut the allegations of  
 5           the application, and that the prejudice has been caused by events not under the  
 6           control of the state that have transpired since the date of original conviction. This  
 7           defense to relief may be raised at any time prior to final submission to the district  
 8           court on the merits of the claim to which the defense is asserted.

9           C. At the time of sentencing, the court shall inform the defendant, either  
 10          verbally or in writing, of the two-year time limitation for filing postconviction relief.  
 11          If a written waiver of rights form is used during the acceptance of a guilty plea, the  
 12          notice required by this Paragraph may be included in the written waiver of rights.  
 13          The failure to inform the defendant of the time limitation does not constitute grounds  
 14          to vacate the conviction and sentence or remand the case for the purpose of  
 15          resentencing.

Comments - 2020

17           (a) For purposes of Subparagraph (A)(1) of this Article, an uncorroborated  
 18           statement by the applicant will generally be insufficient to meet the applicant's  
 19           burden of rebutting the presumption that facts known by the applicant's attorney  
 20           were also known to the applicant. Further, facts that were contained in the record of  
 21           the court proceedings concerning the conviction challenged in the application prior  
 22           to its filing shall be treated as if they were known to the applicant.

23           (b) The use of the word "exceptional" in Subsubparagraph (A)(1)(b) of this  
 24           Article establishes that the exception to the time limitation is not intended to apply  
 25           in an ordinary case solely on the basis that the applicant has discovered previously  
 26           unknown facts. A mere assertion that "exceptional circumstances" exist in the case  
 27           is insufficient to warrant application of the rare exception provided in this  
 28           Subsubparagraph.

29           (c) Depending upon the circumstances, a claim raised pursuant to the United  
 30           States Supreme Court's decision in *Brady v. Maryland*, 373 U.S. 83 (1963), may fall  
 31           within an exception to the two-year time limitation period.

32           (d) The last sentence of Paragraph B of this Article, which was previously  
 33           Article 930.8, is intended to clarify when the state may raise this defense to relief.  
 34           Paragraph B otherwise retains existing law.

1           Art. 927. ~~Procedural objections; answer~~ Application and procedure

2                   A. ~~If an application alleges a claim which, if established, would entitle the~~  
3                   ~~petitioner to relief, the court shall order the custodian, through the district attorney~~  
4                   ~~in the parish in which the defendant was convicted, to file any procedural objections~~  
5                   ~~he may have, or an answer on the merits if there are no procedural objections, within~~  
6                   ~~a specified period not in excess of thirty days. If procedural objections are timely~~  
7                   ~~filed, no answer on the merits of the claim may be ordered until such objections have~~  
8                   ~~been considered and rulings thereon have become final.~~

9                   B. ~~In any order of the court requiring a response by the district attorney~~  
10                  ~~pursuant to this Article, the court shall render specific rulings dismissing any claim~~  
11                  ~~which, if established as alleged, would not entitle the petitioner to relief, and shall~~  
12                  ~~order a response only as to such claim or claims which, if established as alleged,~~  
13                  ~~would entitle the petitioner to relief.~~

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

16                  A. An application for postconviction relief shall be filed using the uniform  
17                  application for postconviction relief forms approved by the Supreme Court of  
18                  Louisiana. The application shall include all of the following, either on the form or  
19                  attached pages:

- 20                   (1) The name of the applicant.
- 21                   (2) The place where the applicant is in custody at the time of filing.
- 22                   (3) The name of the custodian of the applicant.
- 23                   (4) A copy of the judgment of conviction and sentence or an explanation as  
24                   to why the applicant is unable to provide a copy of the judgment of conviction and  
25                   sentence.
- 26                   (5) A statement as to whether the application is the applicant's first  
27                   application for postconviction relief. The applicant's first application shall be filed  
28                   on the first uniform application for postconviction relief form, and any additional

1        applications shall be filed on the second or subsequent uniform application for  
2        postconviction relief form.

3                (6) To the best of the applicant's information and belief, a list of all prior  
4        petitions and applications for postconviction relief filed by or on behalf of the  
5        applicant in connection with his present custody.

6                (7) A statement of all claims upon which relief is sought, specifying with  
7        reasonable particularity the factual basis for such relief.

8                (8) To the best of the applicant's information and belief, a list of the names  
9        of all attorneys who have represented the applicant with respect to the conviction  
10       being challenged.

11               (9) A statement signed by the applicant or an attorney for the applicant  
12       certifying that the contents of the application are true to the best of the signatory's  
13       information and belief.

14               B. If the applicant fails to use the uniform application for postconviction  
15       relief form as required by Paragraph A of this Article, the clerk of court shall notify  
16       the applicant that he must refile within sixty days after the date of the clerk's notice  
17       using the correct form supplied by the clerk. If the uniform application is filed within  
18       sixty days, the uniform application and the original application will be deemed filed  
19       on the date upon which the original application was filed. Although all applicants are  
20       required to use the uniform application forms, applicants may attach additional  
21       information to the uniform application forms at the time of filing.

22               C. Inexcusable failure of the applicant to comply with the provisions of  
23       Paragraphs A and B of this Article may be a basis for dismissal of the application.

24               D. Upon the filing of an application for postconviction relief by a person in  
25       custody, the clerk of court shall provide a copy of the application to the court and  
26       serve the state by mail or electronic means.

27               E. No supplementation or amendment of the application shall be allowed  
28       except with leave of court.

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Comments - 2020

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Many applications for postconviction relief are erroneously titled as another type of filing. For example, applications for postconviction relief are frequently misidentified as writs of habeas corpus (e.g. State ex rel. Lay v. State, 184 So. 3d 1271 (La. 2016)), motions to withdraw a guilty plea (e.g. State ex rel. Noble v. State, 2016 WL 3128804 (La. 2016)), motions to quash (e.g. State ex rel. Walgamotte v. State, 177 So. 3d 705 (La. 2015)), motions for new trial (e.g. State ex rel. Schjenken v. State, 175 So. 3d 959 (La. 2015)), reconsideration denied, 178 So. 3d 555 (La. 2015)), or motions to correct an illegal sentence (e.g. State ex rel. Edwards v. State, 184 So. 3d 1281 (La. 2016)). The law recognizes, however, "the title of a pleading does not matter, but rather courts should look through the caption of pleadings in order to ascertain their substance and to do substantial justice." State v. Sanders, 648 So. 2d 1272, 1284 (La. 1994) (citation and internal quotation marks omitted).

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Art. 927.1. Service

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A. The state may be represented by the district attorney for the district in which the applicant was convicted, the attorney general, or both. Initial service of an application for postconviction relief shall be made on the district attorney unless the attorney general is representing the state. All subsequent filings or orders shall be served on whoever represents the state in the postconviction proceeding.

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B. If counsel appears for the applicant in the postconviction proceeding, service of filings and orders on the applicant shall be made on both the applicant and his counsel, unless service on the applicant is waived by the applicant in writing.

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C. Unless otherwise provided, all filings made during the course of the postconviction proceeding shall be served by the filing party on the opposing party.

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D. All service on the applicant or his counsel shall be made by mail, in open court, or by electronic means, if available. Within fifteen days after the filing, the clerk of court shall serve all orders, notices, and dispositions on the applicant by mail at the institution where he is imprisoned or, if represented by counsel, through counsel for the applicant. The clerk shall simultaneously serve counsel for the state.

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Art. 927.2. Burden of proof

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The applicant in an application for postconviction relief shall have the burden of proving that relief should be granted.

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Art. 927.3. Grounds

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If the applicant is in custody after sentence for conviction for an offense,

1 relief shall be granted only on the following grounds:

2 (1) The conviction was obtained in violation of the Constitution of the  
3 United States of America or the Constitution of Louisiana.

4 (2) The statute creating the offense for which the applicant was convicted  
5 violates the Constitution of the United States of America or the Constitution of  
6 Louisiana.

7 (3) The results of DNA testing performed pursuant to the provisions of  
8 Article 931 prove by clear and convincing evidence that the applicant is factually  
9 innocent of the crime for which the applicant was convicted.

10 (4) The applicant was improperly deprived of the right to appeal.

11 (5) The limitations on the institution of prosecution had expired.

12 (6)(a) The applicant presents new, reliable, and exculpatory scientific,  
13 physical, or nontestimonial documentary evidence that was not known or  
14 discoverable at or prior to trial and that, when viewed in light of all the relevant  
15 evidence, proves by clear and convincing evidence that the applicant is factually  
16 innocent of the crime for which the applicant was convicted and of any felony  
17 offense that was a responsive verdict at the time of the conviction.

18 (b) The clear and convincing evidence necessary to support a claim for  
19 factual innocence under this Subparagraph shall be new, material, and  
20 noncumulative. A recantation of prior sworn testimony without the corroborating  
21 evidence required by Subsubparagraph (a) of this Subparagraph shall not be  
22 sufficient to overcome the presumption of a valid conviction.

23 (c) An applicant's first claim of factual innocence pursuant to this  
24 Subparagraph that would otherwise be barred from review on the merits by the time  
25 limitation provided in Article 926 or the procedural objections provided in Article  
26 927.8 shall not be barred if the claim is contained in an application filed on or before  
27 December 31, 2021.

28 (d) An unsupported allegation of factual innocence made in a new  
29 application filed in accordance with this Subparagraph may be denied by the district

1 court without the necessity of an answer or hearing and shall thereafter serve as a bar  
2 to further applications for postconviction relief in accordance with Article 927.8.

3 (e) An applicant who is determined to be factually innocent may not be tried  
4 again for the same crime for which the applicant was convicted or for any felony  
5 offense that was a responsive verdict at the time of the conviction. A new  
6 prosecution for any other offense may be instituted within the time established by  
7 Article 576.

8 Comments - 2020

9 (a) Included among the claims that may be raised in an application for  
10 postconviction relief are claims of ineffective assistance of trial and appellate  
11 counsel in violation of constitutional standards. Claims of ineffective assistance of  
12 counsel are often reserved for collateral proceedings. See *Massaro v. United States*,  
13 538 U.S. 500, 505 (2003). Ineffective assistance claims frequently depend on  
14 evidence outside the trial record. Direct appeals without expansion of the record may  
15 not be as useful as other proceedings for developing the factual basis for the claim.  
16 Appellate counsel's performance can also form the basis of a claim for ineffective  
17 assistance of counsel. See *Evitts v. Lucey*, 469 U.S. 387 (1985). See also *Woods v.*  
18 *Etherton*, --- U.S. ---, 136 S.Ct. 1149 (2016).

19 (b) The fourth ground for relief is intended to codify *State v. Counterman*,  
20 475 So. 2d 336 (La. 1985) and its progeny.

21 (c) Consistent with prior jurisprudence, this Article, which is based on  
22 former Article 930.3, does not include the words "and sentenced" in Subparagraph  
23 (2). This Article continues to recognize that sentencing-related claims, including  
24 challenges to habitual offender proceedings, are not cognizable grounds for  
25 postconviction review. See *State ex rel. Melinie v. State*, 665 So. 2d 1172 (La. 1996);  
26 *State v. Shepard*, 917 So. 2d 1086 (La. 2005); *State v. Cotton*, 45 So. 3d 1030 (La.  
27 2010). Collateral review of sentences that have become final is governed by Article  
28 882.

29 (d) The separate ground for postconviction relief for double jeopardy under  
30 former Article 930.3(3) has not been included in this Article, but an applicant is not  
31 precluded from alleging a double jeopardy violation under Subparagraph (1) of this  
32 Article.

33 (e) The reference to Article 576 in Subsubparagraph (6)(e) is intended to  
34 refer only to the time limitations provided by that Article.

35 Art. 927.4. Production of information

36 A. In addition to receiving the appellate record as provided in Article 923,  
37 upon conviction of a felony, a person is entitled to receive one free copy of the  
38 following: the indictment, the district court minutes of the trial or guilty plea, a  
39 transcript of the guilty plea, if applicable, the minutes of sentencing, and the

1        commitment papers for the proceeding that forms the basis for which an application  
2        for postconviction relief may be filed.

3                B. If the applicant seeks documents which can be found only through  
4        information contained in the district court record or to which the applicant is not  
5        entitled pursuant to Paragraph A of this Article, the applicant shall file a motion for  
6        production of specific documents with the district court. If the applicant is indigent  
7        and alleges a particularized need for the documents, the documents shall be provided  
8        free of cost to the applicant.

9                C. If the applicant seeks documents that can be found through information  
10       contained in prior counsel's file, the applicant shall request the file from prior  
11       counsel. Upon a showing by the applicant that prior counsel's file was not received  
12       within sixty days after the applicant's request, the applicant may file an ex parte  
13       motion for production of prior counsel's file with the district court. If the court finds  
14       that the applicant has requested the file from prior counsel, and prior counsel has not  
15       provided a copy to the applicant, the court shall order prior counsel to provide the  
16       file or a copy of the file free of cost to the applicant within thirty days after the date  
17       of the order. A copy of the order shall be furnished to the applicant, his attorney, and  
18       the state.

19               D.(1) If the applicant seeks documents that can be found only through  
20       information contained in the file of the district attorney, the attorney general, or a  
21       law enforcement agency, the applicant may file a motion for production of  
22       documents with the district court alleging facts that, if established, would satisfy  
23       both of the following conditions:

24               (a) The documents have not been previously produced to the applicant or his  
25       current attorney.

26               (b) The documents cannot be obtained from prior counsel pursuant to  
27       Paragraph C of this Article.

28               (2) A motion for production of documents filed in accordance with this  
29       Paragraph shall allege a particularized need for the documents and identify the

1 documents sought with reasonable particularity. The court shall not order production  
2 of the documents without first providing the custodian of the file subject to the  
3 motion an opportunity to respond. If the motion for production of documents is  
4 granted and the applicant is indigent, the documents shall be provided free of cost  
5 to the applicant.

6 (3) The custodian of the file subject to an order to produce documents may  
7 file a motion with the district court to modify or vacate any order for production of  
8 documents within sixty days after the date of the order on the ground of privilege or  
9 on the ground that production of the documents would be unreasonable, oppressive,  
10 or unduly burdensome. The custodian may redact or seek a protective order with  
11 regard to any information that is confidential, privileged, or otherwise protected by  
12 law. The custodian shall not be compelled to produce the documents until the ruling  
13 on the motion to modify or vacate has become final.

14 E. If the court has received a motion filed pursuant to this Article seeking  
15 documents related to any claim in a pending application for postconviction relief, the  
16 court shall not dismiss the application before deciding the motion, unless both can  
17 be decided simultaneously.

18 F. Notwithstanding the time limitations provided in this Title, if a court  
19 orders production of documents as a result of a motion filed pursuant to this Article,  
20 the court shall give the parties a reasonable opportunity, not to exceed ninety days,  
21 to review any documents that are produced and make additional filings based upon  
22 those documents. The state shall have sixty days to file a response to any timely  
23 additional filing made by the applicant. Upon motion of either party, the court may  
24 grant an extension of these time periods for good cause shown.

25 G. Nothing in this Article is intended to alter the applicant's right to request  
26 information, which will not be free of cost, pursuant to the requirements of the Public  
27 Records Act, R.S. 44:1 et seq.

28 Comments - 2020

29 (a) Consistent with prior jurisprudence, Paragraph A of this Article  
30 establishes that inmates are entitled to receive certain court documents free of cost

1 and without demonstrating particularized need. See State ex rel. Simmons v. State,  
2 647 So. 2d 1094 (La. 1994).

3 (b) "Particularized need" as used in Paragraph B of this Article is defined in  
4 Article 924.1 as "specific claims of constitutional errors that require the requested  
5 documentation for support and have been set out by an applicant in a properly filed  
6 application for postconviction relief."

7 (c) Paragraph D of this Article, in combination with the definition of  
8 particularized need, requires an inmate to have a properly filed application for  
9 postconviction relief pending that requires documentation for its support before he  
10 may seek cost-free copies. See Landis v. Moreau, 779 So. 2d 691, 695 (La. 2001)  
11 (stating that this rule exists in order to prevent the state from having to "underwrite  
12 an inmate's efforts to overturn his conviction and sentence by providing him  
13 generally with documents to comb the record for error"). Additionally, a district  
14 court may decline to order production of documents in cases in which the only  
15 claims the documents could support are not cognizable on collateral review under the  
16 grounds of Article 927.3 or where the time limitations of Article 926 has expired and  
17 the application would not satisfy any exception to the time limitations. See State ex  
18 rel. Degreat v. State, 724 So. 2d 205 (La. 1998); see also State ex rel. Fleury v.  
19 State, 661 So. 2d 488 (La. 1995).

20 Article 927.5. Privilege waiver

21 If an application for postconviction relief is based in whole or in part upon  
22 a claim of ineffective assistance of counsel or breach of duty by an attorney for the  
23 applicant, the attorney-client privilege is waived to the limited extent of information  
24 necessary to respond to the claim.

25 Art. 927.6. Action required by district court after application is filed

26 A. Within sixty days after the date of the filing of an application for  
27 postconviction relief, the district court shall do one of the following for each claim  
28 alleged in the application:

29 (1) Dismiss the claim without an answer or the necessity of a hearing if  
30 either of the following is true:

31 (a) The claim, if established, would not entitle the applicant to relief, or fails  
32 to state a ground upon which relief can be granted pursuant to Article 927.3.

33 (b) An examination of the application and record clearly refutes any factual  
34 basis for the claim.

35 (2) Order the applicant to respond with a more definite statement as to any  
36 claim for relief for which the court determines a more definite statement is needed.



1 extension of time for good cause shown. If a more definite statement is ordered by  
2 the court and not received, upon motion of the state, the claim shall be dismissed by  
3 order of the court.

4 B. If the district court denies the request of the state for a more definite  
5 statement, or if the applicant files a more definite statement pursuant to Paragraph  
6 A of this Article, the court shall order the state to file a procedural objection or an  
7 answer within sixty days after the date of the order. The court may grant an extension  
8 of time for good cause shown.

9 Art. 927.8. Procedural objections

10 A. If it is required to respond to a claim in an application for postconviction  
11 relief, the state may file any procedural objection alleging that a procedural bar  
12 precludes the court from considering the merits of that claim. Any procedural  
13 objection shall set forth the factual basis for the objection and shall be filed at any  
14 time prior to the answer or with the answer.

15 B. Procedural objections are those provided by legislation or jurisprudence,  
16 including the following:

17 (1) The application alleges a claim for relief that was fully litigated in an  
18 appeal from the proceedings leading to the judgment of conviction and sentence, in  
19 which event the claim shall be dismissed unless consideration of the claim is  
20 required in the interest of justice.

21 (2) The application alleges a claim about which the applicant had knowledge  
22 and inexcusably failed to raise in the proceedings leading to the conviction, in which  
23 event the claim shall be dismissed.

24 (3) The application alleges a claim that the applicant raised in the district  
25 court and inexcusably failed to pursue on appeal, in which event the claim shall be  
26 dismissed.

27 (4) The application contains a claim that is untimely pursuant to Article 926,  
28 in which event the claim shall be dismissed.

1           (5) The application is a successive application that fails to raise a new or  
2           different claim, in which event the application shall be dismissed.

3           (6) The application is a successive application that raises a new or different  
4           claim that was inexcusably omitted from a prior application, in which event the  
5           claim shall be dismissed.

6           C. Any responses to the state's procedural objections shall be filed by the  
7           applicant within forty-five days after the date on which the procedural objections  
8           were filed. The court may grant an extension of time for good cause shown.

9           Art. 927.9. Disposition of procedural objections

10           A. A claim for relief on the merits raised in an application for postconviction  
11           relief shall be dismissed without an answer or the necessity of a hearing if the court  
12           determines that a procedural objection precludes the court from considering the  
13           merits of that claim.

14           B. The court shall dispose of the procedural objections no sooner than sixty  
15           days nor longer than one hundred twenty days after the date on which the procedural  
16           objections were filed, except that the court may dispose of the procedural objections  
17           sooner than sixty days if the court has received from the applicant a response to the  
18           procedural objections or a waiver of the right to file such a response. The court may  
19           grant an extension of time for good cause shown. Procedural objections shall be  
20           disposed of in the following manner:

21           (1) If the court can dispose of all procedural objections summarily, the court  
22           shall rule on the procedural objections.

23           (2) If the court can dispose of one or more procedural objections summarily,  
24           and the ruling would result in the dismissal of either the application or all of the  
25           claims contained in the application, the court shall rule on those procedural  
26           objections.

27           (3) If the court cannot dispose of the procedural objections or the application  
28           in accordance with Subparagraphs (1) and (2) of this Paragraph, the court shall defer  
29           disposition of any procedural objections and shall issue an order to both the state and

1 the applicant scheduling further proceedings pursuant to Article 927.12 for factual  
2 development of the procedural objections that cannot be disposed of summarily.  
3 Within thirty days after the completion of these proceedings, the court shall rule on  
4 all procedural objections together.

5 C. The court shall rule on all procedural objections prior to any evidentiary  
6 hearing or proffer of any evidence that exclusively relates to the merits of the claims  
7 for relief. Except as provided by agreement of the applicant and the state or in the  
8 interest of justice, a response by the state shall not be ordered, and evidentiary  
9 hearings shall neither be ordered nor conducted on the merits, until the rulings on the  
10 procedural objections have become final.

11 D. The court shall rule in writing on each procedural objection. A copy of  
12 the order granting or denying a dismissal upon procedural objections shall be  
13 furnished to the applicant, his attorney, the state, and the custodian.

14 Comments - 2020

15 (a) Under Paragraph B of this Article, the court may grant an extension of  
16 time if the applicant shows good cause for failing to respond to the state's procedural  
17 objections within the time period provided in Article 927.8. If the court grants such  
18 an extension and the applicant files responses within this additional time period, the  
19 court shall dispose of the procedural objections as quickly thereafter as possible.

20 (b) Under Paragraph C of this Article, except as provided by agreement of  
21 the parties or in the interest of justice, an evidentiary hearing on the merits is  
22 required only after the final disposition of any and all procedural objections filed by  
23 the state and a determination by the court that summary disposition under Article  
24 927.11 is not appropriate.

25 Art. 927.10. Answer and responses

26 A. If a more definite statement is not requested, or if the application for  
27 postconviction relief is not dismissed upon procedural objections, the court shall  
28 order the state to file an answer on the merits of each claim that was not dismissed.  
29 The state shall file its answer within sixty days after the date of the order. The court  
30 may grant an extension of time for good cause shown.

31 B. Any responses to the state's answer shall be filed by the applicant within  
32 forty-five days after the date on which the answer was filed. The court may grant an

1 extension of time for good cause shown. The applicant's response shall be strictly  
2 confined to rebuttal of the points raised in the state's answer.

3 Art. 927.11. Summary disposition

4 A. If the court determines that the factual and legal issues can be resolved  
5 based upon the application, answer, response, and supporting documents, including  
6 relevant transcripts, depositions, and other reliable documents submitted by either  
7 party or available to the court, the court shall grant or deny relief without further  
8 proceedings no sooner than sixty days nor longer than ninety days after the date on  
9 which the answer was filed, except that the court may grant or deny relief sooner  
10 than sixty days if the court has received from the applicant a response to the answer  
11 or a waiver of the right to file such a response. The court may grant an extension of  
12 time for good cause shown.

13 B. A copy of the order granting or denying relief shall be furnished to the  
14 applicant, his attorney, the state, and the custodian.

15 Comments - 2020

16 (a) This Article continues to recognize that an evidentiary hearing is not  
17 required in all cases. Rather, in some cases the record will clearly sustain or refute  
18 the applicant's allegations, the contested factual matter may not be material to the  
19 outcome, or the expansion of the record without an evidentiary hearing will provide  
20 a sufficient basis for disposition of the claims raised in the application for  
21 postconviction relief.

22 (b) Under Paragraph A of this Article, the court may grant an extension of  
23 time if the applicant shows good cause for failing to respond to the state's answer  
24 within the time period provided in Article 927.10. If the court grants such an  
25 extension and the applicant files a response within this additional time period, the  
26 court shall grant or deny relief as quickly thereafter as possible.

27 Art. 927.12. Evidentiary hearing; factual development

28 A. If the court determines that there are questions of fact that cannot properly  
29 be resolved pursuant to Articles 927.6 and 927.11, the court may order oral  
30 depositions of any witness, including the applicant, under conditions specified by the  
31 court; permit a party to propound requests for admissions of fact and genuineness of  
32 documents; or require a party to provide evidence of the authenticity of any record  
33 submitted to the court.





1 application for postconviction relief. No appeal lies from a judgment dismissing an  
2 application or otherwise denying relief.

3 B. If a judgment granting relief declares a statute or ordinance  
4 unconstitutional, the state may appeal to the supreme court. If relief is granted on  
5 any other ground, the state may invoke the supervisory jurisdiction of the appellate  
6 court.

7 C. Pending the state's application for writs, or the state's appeal, the district  
8 court or the appellate court may stay the judgment granting relief.

9 Section 2. Code of Criminal Procedure Articles 930.1 through 930.9 are hereby  
10 amended and reenacted and Code of Criminal Procedure Articles 930.10 through 930.27 are  
11 hereby enacted to read as follows:

12 TITLE XXXI-B. POSTCONVICTION RELIEF IN CAPITAL CASES

13 ~~Art. 930.1. Judgment granting or denying relief under Articles 928, 929, and 930~~

14 Scope of applicability

15 ~~A copy of the judgment granting or denying relief and written or transcribed~~  
16 ~~reasons for the judgment shall be furnished to the petitioner, the district attorney, and~~  
17 ~~the custodian.~~

18 The provisions of this Title shall apply to all capital cases that become final  
19 under Article 930.2 on or after the effective date of this Act. In capital cases that  
20 become final prior to the effective date of this Act, applications for capital  
21 postconviction relief shall be governed by Title XXXI-A as it existed prior to the  
22 effective date of this Act.

23 Comments - 2020

24 Prior to the 2020 revision, Title XXXI-A of the Code of Criminal Procedure  
25 applied to postconviction relief in both capital and noncapital cases. As of the  
26 effective date of the revision, Title XXXI-A applies only to postconviction relief in  
27 noncapital cases, and Title XXXI-B applies to postconviction relief in capital cases.

28 Art. 930.2. ~~Burden of proof~~ Commencement of proceedings on capital  
29 postconviction relief

30 ~~The petitioner in an application for post conviction relief shall have the~~  
31 ~~burden of proving that relief should be granted.~~

1           After a defendant's conviction and death sentence are affirmed by the  
2           Louisiana Supreme Court, that judgment becomes final on direct review when either:  
3           (1) the defendant fails to timely petition the United States Supreme Court for  
4           certiorari or (2) that Court denies his petition for certiorari. Upon finality, the clerk  
5           of court of the Louisiana Supreme Court shall transmit a certified copy of the  
6           Louisiana Supreme Court's decree, and a copy of the order of the United States  
7           Supreme Court denying certiorari, if any, to the clerk of the district court from which  
8           the appeal was taken. The clerk of court shall file these copies into the trial record  
9           of the proceedings and shall forward a copy to the district judge. Capital  
10           postconviction proceedings commence when the capital conviction and sentence  
11           become final.

12           Art. 930.3. Grounds Definitions

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

15           ~~(1) The conviction was obtained in violation of the constitution of the United~~  
16           ~~States or the state of Louisiana;~~

17           ~~(2) The court exceeded its jurisdiction;~~

18           ~~(3) The conviction or sentence subjected him to double jeopardy;~~

19           ~~(4) The limitations on the institution of prosecution had expired;~~

20           ~~(5) The statute creating the offense for which he was convicted and~~  
21           ~~sentenced is unconstitutional; or~~

22           ~~(6) The conviction or sentence constitute the ex post facto application of law~~  
23           ~~in violation of the constitution of the United States or the state of Louisiana.~~

24           ~~(7) The results of DNA testing performed pursuant to an application granted~~  
25           ~~under Article 926.1 proves by clear and convincing evidence that the petitioner is~~  
26           ~~factually innocent of the crime for which he was convicted.~~

27           As used in this Title:



1           Art. 930.4. ~~Repetitive applications~~ Preliminary and comprehensive applications for  
2                                   capital postconviction relief

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

6                           B. ~~If the application alleges a claim of which the petitioner had knowledge~~  
7                   ~~and inexcusably failed to raise in the proceedings leading to conviction, the court~~  
8                   ~~shall deny relief.~~

9                           C. ~~If the application alleges a claim which the petitioner raised in the trial~~  
10                   ~~court and inexcusably failed to pursue on appeal, the court shall deny relief.~~

11                          D. ~~A successive application shall be dismissed if it fails to raise a new or~~  
12                   ~~different claim.~~

13                          E. ~~A successive application shall be dismissed if it raises a new or different~~  
14                   ~~claim that was inexcusably omitted from a prior application.~~

15                          F. ~~If the court considers dismissing an application for failure of the petitioner~~  
16                   ~~to raise the claim in the proceedings leading to conviction, failure to urge the claim~~  
17                   ~~on appeal, or failure to include the claim in a prior application, the court shall order~~  
18                   ~~the petitioner to state reasons for his failure. If the court finds that the failure was~~  
19                   ~~excusable, it shall consider the merits of the claim.~~

20                          A. A preliminary application for capital postconviction relief is an original  
21                   application for capital postconviction relief that complies with Article 930.10 and  
22                   states the general grounds upon which relief is sought. The preliminary application  
23                   need not specify the factual basis for such relief.

24                          B. A comprehensive application for capital postconviction relief is a  
25                   substantive application for capital postconviction relief that sets forth the factual  
26                   basis for each claim, the legal grounds for each claim, and the specific relief sought  
27                   for each claim.

1 Art. 930.5. ~~Custody pending retrial; bail~~ Effect of appeal

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

6 ~~In such a case, the petitioner shall be entitled to bail on the offense as though~~  
7 ~~he has not been convicted of the offense.~~

8 An application for capital postconviction relief shall not be considered if the  
9 applicant may appeal the conviction and sentence that he seeks to challenge, or if an  
10 appeal is pending.

11 Art. 930.6. ~~Review of trial court judgments~~ Appointment of counsel

12 ~~A. The petitioner may invoke the supervisory jurisdiction of the court of~~  
13 ~~appeal if the trial court dismisses the application or otherwise denies relief on an~~  
14 ~~application for post conviction relief. No appeal lies from a judgment dismissing an~~  
15 ~~application or otherwise denying relief.~~

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

19 ~~C. Pending the state's application for writs, or pending the state's appeal, the~~  
20 ~~district court or the court of appeal may stay the judgment granting relief.~~

21 When the applicant's conviction and sentence become final in accordance  
22 with Article 930.2, the district court shall issue an order to the state public defender  
23 ordering the appointment of two capital postconviction counsel. All applicants  
24 sentenced to death with a final judgment affirming their sentence and conviction in  
25 accordance with Article 930.2 shall be presumed indigent for purposes of capital  
26 postconviction relief. This order shall also be served on the prosecuting authority and  
27 the applicant. If the district court is aware of an entity routinely employed by the  
28 Louisiana Public Defender Board to provide representation for applicants in capital  
29 postconviction matters, this order shall also be served on that entity.

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Comments - 2020

When the applicant's conviction and sentence become final, the clerk of court must file the decree of the Louisiana Supreme Court and the order of the United States Supreme Court denying relief into the record of the district court.

Art. 930.7. ~~Right to counsel~~ Enrollment of counsel

~~A. If the petitioner is indigent and alleges a claim which, if established, would entitle him to relief, the court may appoint counsel.~~

~~B. The court may appoint counsel for an indigent petitioner when it orders an evidentiary hearing, authorizes the taking of depositions, or authorizes requests for admissions of fact or genuineness of documents, when such evidence is necessary for the disposition of procedural objections raised by the respondent.~~

~~C. The court shall appoint counsel for an indigent petitioner when it orders an evidentiary hearing on the merits of a claim, or authorizes the taking of depositions or requests for admissions of fact or genuineness of documents for use as evidence in ruling upon the merits of the claim.~~

A. Within thirty days after the filing of the district court's order for appointment, or the final deadline for assignment of counsel if an extension is obtained, the Louisiana Public Defender Board's assigned counsel shall file a motion to enroll as counsel of record on behalf of the applicant.

B. The state may be represented by the district attorney for the district in which the application was convicted, the attorney general, or both. The prosecutorial entity that prosecuted the applicant at trial is presumed to represent the state in capital postconviction proceedings absent an order of recusal or similar order. Within thirty days after the filing of the district court's order, the state shall file a notice designating counsel for the state.

Art. 930.8. ~~Time limitations; exceptions; prejudicial delay~~ Status conferences and reports

~~A. No application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after~~

1 the judgment of conviction and sentence has become final under the provisions of  
2 Article 914 or 922, unless any of the following apply:

3 (1) The application alleges, and the petitioner proves or the state admits, that  
4 the facts upon which the claim is predicated were not known to the petitioner or his  
5 prior attorneys. Further, the petitioner shall prove that he exercised diligence in  
6 attempting to discover any post-conviction claims that may exist. "Diligence" for the  
7 purposes of this Article is a subjective inquiry that must take into account the  
8 circumstances of the petitioner. Those circumstances shall include but are not  
9 limited to the educational background of the petitioner, the petitioner's access to  
10 formally trained inmate counsel, the financial resources of the petitioner, the age of  
11 the petitioner, the mental abilities of the petitioner, or whether the interests of justice  
12 will be served by the consideration of new evidence. New facts discovered pursuant  
13 to this exception shall be submitted to the court within two years of discovery.

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

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

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

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

1 ability to respond to, negate, or rebut such allegations has been materially prejudiced  
2 thereby.

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

7 A. Within thirty days after the enrollment of capital postconviction counsel,  
8 the district court shall issue an order setting an initial status conference to be held  
9 within thirty days after the order. The initial status conference shall involve counsel  
10 for the applicant and counsel for the state.

11 B. Within six months after the initial status conference, and within six  
12 months after each subsequent status conference, the district court shall schedule a  
13 periodic status conference with counsel for the applicant and counsel for the state.  
14 The district court shall also report to the Louisiana Supreme Court every six months  
15 with respect to the status of the application for capital postconviction relief.

16 C. Unless the district court provides otherwise, the initial and periodic status  
17 conferences required by this Article may take place in person or by telephone, video  
18 conference, or other remote electronic means and shall be recorded. The lack of a  
19 recording shall not be grounds for capital postconviction relief under Article 930.14  
20 for either party.

21 Art. 930.9. ~~Attendance by the petitioner~~ Venue

22 ~~In the event that the petitioner for post-conviction relief is incarcerated, he~~  
23 ~~may be present at post-conviction relief proceedings by teleconference, video link,~~  
24 ~~or other visual remote technology.~~

25 Applications for capital postconviction relief shall be filed in the district court  
26 of the parish in which the applicant was indicted.

27 Art. 930.10. Time for filing preliminary application; form of application



1           A. A comprehensive application for capital postconviction relief shall be  
2           considered timely if it is filed within four years after the judgment of conviction and  
3           sentence have become final under the provisions of Article 930.2.

4           B. An existing claim in the comprehensive application may be supplemented  
5           only with leave of court. The state shall be entitled to a reasonable opportunity to  
6           respond to the applicant's supplement.

7           C. A comprehensive application for capital postconviction relief may not be  
8           supplemented with additional claims unless either of the following apply:

9                   (1) The supplemental claim is submitted no later than one hundred eighty  
10                  days after the filing of the original comprehensive application and leave of court is  
11                  granted for good cause shown following a contradictory hearing.

12                  (2) The supplemental claim meets the criteria listed in Paragraph D of this  
13                  Article.

14           D. No comprehensive application for capital postconviction relief filed more  
15           than four years after the judgment of conviction and sentence has become final under  
16           the provisions of Article 930.2 shall be considered unless any of the following apply:

17                   (1) The application alleges, and the applicant proves or the state admits, that  
18                  the facts upon which the claim is predicated were not known to the applicant. New  
19                  facts discovered pursuant to this exception shall be submitted to the court within two  
20                  years of discovery. Facts that were contained in the record of the court proceedings  
21                  concerning the conviction challenged in the application shall be deemed to have been  
22                  known by the applicant. Further, for this exception to the time limitation to apply,  
23                  the applicant shall also prove one of the following:

24                          (a) That the applicant and his counsel exercised due diligence in attempting  
25                          to discover any postconviction claims or facts upon which any claims may be based.

26                          (b) That the application raises a new or different claim that was not  
27                          inexcusably omitted from a prior application.

28                   (2) The application contains a claim based upon a final ruling of an appellate  
29                   court establishing a new interpretation of constitutional law, the applicant establishes

1 that the interpretation is retroactively applicable to his case, and the application is  
2 filed within one year of the finality of such ruling.

3 E. If the district court considers dismissing a claim or application for failure  
4 of the applicant to meet one of the exceptions, the court shall order the applicant to  
5 state why he meets an exception. If the court finds that the applicant meets an  
6 exception, the district court shall consider the merits of the claim.

7 F. A claim or application for capital postconviction relief that is timely filed,  
8 or that is allowed under an exception to the time limitation as set forth in this Article,  
9 shall be dismissed after a contradictory hearing upon a showing by the state of  
10 material prejudice to its ability to respond to, negate, or rebut the allegations of the  
11 application, and that the prejudice has been caused by events not under the control  
12 of the state that have transpired since the date of original conviction. This defense  
13 to relief may be raised at any time prior to final submission to the district court on  
14 the merits of the claim to which the defense is asserted.

15 Art. 930.12. Service

16 A. Initial service of an application for capital postconviction relief shall be  
17 made on the district attorney unless the attorney general is representing the state. All  
18 subsequent filings or orders shall be served on whoever represents the state in the  
19 capital postconviction proceeding.

20 B. All other service shall be made by mail, in open court, or by electronic  
21 means, if available. Within fifteen days after the filing, the clerk of court shall serve  
22 all orders, notices, and dispositions on counsel.

23 Art. 930.13. Burden of proof

24 The applicant in an application for capital postconviction relief shall have the  
25 burden of proving that relief should be granted.

26 Art. 930.14. Grounds

27 Capital postconviction relief shall be granted only on the following grounds:

28 (1) The conviction or death sentence was obtained in violation of the  
29 Constitution of the United States of America or the Constitution of Louisiana.

1           (2) The statute creating the offense or penalty for which the applicant was  
2           convicted or sentenced violates the Constitution of the United States of America or  
3           the Constitution of Louisiana.

4           (3) The results of DNA testing performed pursuant to the provisions of  
5           Article 931 prove by clear and convincing evidence that the applicant is factually  
6           innocent of the crime for which the applicant was convicted.

7           (4) The applicant was improperly deprived of the right to appeal.

8           (5)(a) The applicant presents new, reliable, and exculpatory scientific,  
9           physical, or nontestimonial documentary evidence that was not known or  
10           discoverable at or prior to trial and that, when viewed in light of all the relevant  
11           evidence, proves by clear and convincing evidence that the applicant is factually  
12           innocent of the crime for which the applicant was convicted and of any felony  
13           offense that was a responsive verdict at the time of the conviction.

14           (b) The clear and convincing evidence necessary to support a claim for  
15           factual innocence under this Subparagraph shall be new, material, and  
16           noncumulative. A recantation of prior sworn testimony without the corroborating  
17           evidence required by Subsubparagraph (a) of this Subparagraph shall not be  
18           sufficient to overcome the presumption of a valid conviction.

19           (c) An unsupported allegation of factual innocence made in a new  
20           application filed in accordance with this Subparagraph may be denied by the district  
21           court without the necessity of an answer or hearing and shall thereafter serve as a bar  
22           to further applications for postconviction relief in accordance with Article 930.18.

23           (d) An applicant who is determined to be factually innocent may not be tried  
24           again for the same crime for which the applicant was convicted or for any felony  
25           offense that was a responsive verdict at the time of the conviction. A new  
26           prosecution for any other offense may be instituted within the time established by  
27           Article 576.



1           C.(1) At any time following the filing of a preliminary application for capital  
2           postconviction relief, a court may, for good cause, issue a subpoena duces tecum  
3           ordering a person to produce designated books, papers, documents, data or any other  
4           tangible things in his possession or under his control. The court may designate the  
5           time, manner, and place of production, including production at a hearing, or within  
6           a designated period, and may direct the person to produce the items directly to the  
7           requesting party.

8           (2) The subpoena shall be served in accordance with Article 734 or 735, and  
9           a return shall be made by the sheriff in accordance with Article 736. The party  
10          requesting the subpoena shall also provide notice of the request to the opposing  
11          party. Either the opposing party or the person subject to the subpoena may file a  
12          motion to vacate or modify the subpoena if compliance would be unreasonable or  
13          oppressive.

14          (3) A motion for a subpoena duces tecum may be filed and adjudicated, and  
15          the subpoena may be issued, ex parte as follows:

16          (a) Prior to the issuance of the subpoena, the opposing party shall be given  
17          notice of the filing of the ex parte motion with a general description of the requested  
18          information and shall be provided an opportunity to be heard in order to oppose the  
19          ex parte subpoena, except for good cause as provided in Subparagraph (4) of this  
20          Paragraph.

21          (b) If the opposing party opposes the ex parte subpoena, the district court  
22          shall conduct an in camera review to determine whether disclosing the information  
23          to the opposing party would be fundamentally unfair. If the court makes such a  
24          determination, the court shall provide written or transcribed reasons. If the court fails  
25          to make such a determination and instead determines that the ex parte subpoena is  
26          not necessary, the requesting party may withdraw the motion for the subpoena;  
27          otherwise, the opposing party shall be allowed to participate in the hearing as to  
28          whether the subpoena should be issued.



1        Art. 930.16. Privilege waiver

2                If an application for capital postconviction relief is based in whole or in part  
3        upon a claim of ineffective assistance of counsel or breach of duty by counsel for the  
4        applicant, the attorney-client privilege is waived to the limited extent of information  
5        necessary to respond to the claim.

6        Art. 930.17. Action required by district court after application is filed

7                A. Within ninety days after the date of the filing of a comprehensive  
8        application for capital postconviction relief, the district court shall do one of the  
9        following for each claim alleged in the application:

10                (1) Dismiss the claim without an answer or the necessity of a hearing if  
11        either of the following is true:

12                (a) The claim, if established, would not entitle the applicant to relief, or fails  
13        to state a ground upon which relief can be granted pursuant to Article 930.14.

14                (b) An examination of the application and record clearly refutes any factual  
15        basis for the claim.

16                (2) Order the state to respond, if the court does not order dismissal based  
17        upon the pleadings pursuant to Subparagraph (1) of this Paragraph, within one year  
18        from the date of the order, by filing an answer on the merits of the claims for relief  
19        under Article 930.20. In lieu of filing an answer to a specific claim, the state may file  
20        a procedural objection as to that claim within six months of the order. The court may  
21        grant an extension of time for good cause shown.

22                B. A copy of any order shall be in writing and furnished to the applicant, his  
23        counsel, the state, and the custodian pursuant to Article 930.12.

24        Art. 930.18. Procedural objections

25                A. If it is required to respond to a claim in an application for capital  
26        postconviction relief, the state may file any procedural objection alleging that a  
27        procedural bar precludes the court from considering the merits of that claim. Any  
28        procedural objection shall set forth the factual basis for the objection and shall be  
29        filed at any time prior to the answer or with the answer.

1           B. Procedural objections are those provided by legislation or jurisprudence,  
2           including the following:

3           (1) The application alleges a claim for relief that was fully litigated in an  
4           appeal from the proceedings leading to the judgment of conviction and sentence, in  
5           which event the claim shall be dismissed unless consideration of the claim is  
6           required in the interest of justice.

7           (2) The application alleges a claim about which the applicant had knowledge  
8           and inexcusably failed to raise in the proceedings leading to the conviction, in which  
9           event the claim shall be dismissed.

10          (3) The application alleges a claim that the applicant raised in the district  
11          court and inexcusably failed to pursue on appeal, in which event the claim shall be  
12          dismissed.

13          (4) The application contains a claim that is untimely pursuant to Article  
14          930.11, in which event the claim shall be dismissed.

15          (5) The application is a successive application that fails to raise a new or  
16          different claim, in which event the application shall be dismissed.

17          (6) The application is a successive application that raises a new or different  
18          claim that was inexcusably omitted from a prior application, in which event the  
19          claim shall be dismissed.

20          C. Any responses to the state's procedural objections shall be filed by the  
21          applicant within ninety days after the date on which the procedural objections were  
22          filed. The court may grant an extension of time for good cause shown.

23          Art. 930.19. Disposition of procedural objections

24          A. A claim for relief on the merits raised in an application for capital  
25          postconviction relief shall be dismissed without an answer or the necessity of a  
26          hearing if the court determines that a procedural objection precludes the court from  
27          considering the merits of that claim.

28          B. The court shall dispose of the procedural objections no sooner than  
29          ninety-five days nor longer than one hundred twenty days after the date on which the



1 only after the final disposition of any and all procedural objections filed by the state  
2 and a determination by the court that summary disposition under Article 930.21 is  
3 not appropriate.

4 Art. 930.20. Answer and responses

5 A. The state shall file its answer within the time period set in Article  
6 930.17(A)(2). In the event that the state elected to file procedural objections and  
7 there is a final order denying those objections, the state shall file an answer within  
8 sixty days after the date of the order with respect to any claim for which all  
9 procedural objections have been denied if it has not already done so. The court may  
10 grant an extension of time for good cause shown.

11 B. Any responses to the state's answer shall be filed by the applicant within  
12 ninety days after the date on which the answer was filed. The court may grant an  
13 extension of time for good cause shown.

14 Art. 930.21. Summary disposition

15 A. If the court determines that the factual and legal issues can be resolved  
16 based upon the application, answer, response, and supporting documents, including  
17 relevant transcripts, depositions, and other reliable documents submitted by either  
18 party or available to the court, the court shall grant or deny relief as to an individual  
19 claim without further proceedings no sooner than ninety-five days nor longer than  
20 one hundred twenty days after the date on which the answer was filed, or if an  
21 extension of time is granted for the applicant to respond to the answer, no sooner  
22 than five days nor longer than thirty days after the date on which the applicant's  
23 response to the answer is filed.

24 B. If the court grants or denies relief as to an individual claim pursuant to  
25 this Article, the court's ruling shall include a ruling on all matters that the court  
26 determines can be disposed of summarily. A copy of the order granting or denying  
27 relief shall be furnished to the applicant, his counsel, the state, and the custodian  
28 pursuant to Article 930.12.

29 Comments - 2020

30 (a) This Article continues to recognize that an evidentiary hearing is not  
31 required in all cases. Rather, in some cases the record will clearly sustain or refute

1 the applicant's allegations, the contested factual matter may not be material to the  
2 outcome, or the expansion of the record without an evidentiary hearing will provide  
3 a sufficient basis for disposition of the claims raised in the application for capital  
4 postconviction relief.

5 (b) If the court cannot determine the factual issues pursuant to summary  
6 disposition, an evidentiary hearing shall be held in accordance with Article 930.22.

7 Art. 930.22. Evidentiary hearing; factual development

8 A. If the court determines that there are questions of fact that cannot properly  
9 be resolved pursuant to Articles 930.17 and 930.21, the court may order oral  
10 depositions of any witness, including the applicant, under conditions specified by the  
11 court; permit a party to propound requests for admissions of fact and genuineness of  
12 documents; or require a party to provide evidence of the authenticity of any record  
13 submitted to the court.

14 B. In addition, the court may order an evidentiary hearing for the taking of  
15 testimony or other evidence. At such a hearing, duly authenticated records,  
16 transcripts, depositions, or portions thereof, or admissions of facts or joint  
17 stipulations may be received in evidence.

18 C. The rules provided in the Code of Evidence shall not strictly apply to  
19 proceedings conducted under this Title, but the district court may consider those  
20 rules in determining the applicability of testimonial privileges and in assessing the  
21 reliability of evidence.

22 Comments - 2020

23 (a) An evidentiary hearing is required only when there are contested factual  
24 issues that are material and cannot be resolved on the record.

25 (b) Pursuant to Article 930.23(A), the applicant shall be physically present  
26 at any evidentiary hearing conducted in accordance with Paragraph B of this Article.

27 Art. 930.23. Attendance by the applicant

28 A. In the absence of an express waiver, the applicant is entitled to be  
29 physically present at an evidentiary hearing.

30 B. With the exception of evidentiary hearings, the applicant's presence at  
31 capital postconviction relief proceedings may be obtained by teleconference, video  
32 link, or other visual remote technology if necessary.

1        Art. 930.24. Rendition of judgment

2            A. The district court shall render judgment within sixty days after  
3        submission of the case on the merits. A copy of the judgment granting or denying  
4        relief shall be supported by written or oral reasons setting forth the grounds on which  
5        the judgment is based. A copy of the judgment and the written or transcribed reasons  
6        shall be furnished to the applicant, his counsel, the state, and the custodian pursuant  
7        to Article 930.12.

8            B. If the court determines pursuant to Article 930.21 or 930.22 that the  
9        application for capital postconviction relief has merit, the court may order a new  
10       trial, order a new sentencing hearing, or order a guilty plea to be withdrawn. In the  
11       event that the applicant is entitled to an out-of-time appeal under the grounds set  
12       forth in Article 930.14(4), the court shall order that the applicant have the right to  
13       appeal the conviction.

14       Art. 930.25. Custody pending retrial

15           A. Upon granting relief under an application for capital postconviction relief  
16        and reversing the underlying conviction, the court shall order that the applicant be  
17        held in custody pending the state's appeal or application for supervisory writs. After  
18        the court's ruling becomes final, the court shall order that the applicant be held in  
19        custody pending a new trial if the court finds that there are legally sufficient grounds  
20        upon which to re prosecute the applicant.

21           B. In such a case, the applicant shall be entitled to bail on the offense as  
22        though he has not been convicted of the offense.

23           C. Upon granting relief on an application for capital postconviction relief  
24        and reversing the underlying sentence, the court shall order that the applicant be held  
25        in custody pending the state's appeal or application for supervisory writs. After the  
26        court's ruling becomes final, the court shall order that the applicant be held in  
27        custody pending a new penalty phase proceeding.

28       Art. 930.26. Departure from this Title



1           2001, the application for DNA testing under the provisions of this Article may be  
2           filed at any time.

3                   B. An application filed under the provisions of this Article shall ~~comply with~~  
4           ~~the provisions of~~ contain the information required by Article 926 927 or 930.10 of  
5           this Code and shall allege all of the following:

6                   (1) A factual explanation of why there is an articulable doubt, based on  
7           competent evidence whether or not introduced at trial, as to the guilt of the ~~petitioner~~  
8           ~~in applicant and~~ that DNA testing will resolve the doubt and establish the innocence  
9           of the ~~petitioner~~ applicant.

10                  (2) The factual circumstances establishing the timeliness of the application.

11                  (3) The identification of the particular evidence for which DNA testing is  
12           sought.

13                  (4) That the applicant is factually innocent of the crime for which he was  
14           convicted, in the form of an affidavit signed by the ~~petitioner~~ applicant under penalty  
15           of perjury.

16                   C. In addition to any other reason established by legislation or jurisprudence,  
17           and whether based on the ~~petition~~ application and answer or after contradictory  
18           hearing, the court shall dismiss any application filed pursuant to this Article unless  
19           it finds all of the following:

20                   (1) There is an articulable doubt based on competent evidence, whether or  
21           not introduced at trial, as to the guilt of the ~~petitioner~~ applicant and there is a  
22           reasonable likelihood that the requested DNA testing will resolve the doubt and  
23           establish the innocence of the ~~petitioner~~ applicant. In making this finding the court  
24           shall evaluate and consider the evidentiary importance of the DNA sample to be  
25           tested.

26                   (2) The application has been timely filed.

27                   (3) The evidence to be tested is available and in a condition that would  
28           permit DNA testing.

1           D. Relief under this Article shall not be granted when the court finds by a  
2           preponderance of the evidence that there is a substantial question as to the ~~integrity~~  
3           chain of custody of the evidence to be tested.

4           E. Relief under this Article shall not be granted solely because there is  
5           evidence currently available for DNA testing but the testing was not available or was  
6           not done at the time of the conviction.

7           F. Once an application has been filed and the court determines the location  
8           of the evidence sought to be tested, the court shall serve a copy of the application on  
9           the ~~district attorney~~ state and the law enforcement agency ~~which that~~ that has possession  
10          of the evidence to be tested, including but not limited to sheriffs, the office of state  
11          police, local police agencies, and crime laboratories. If the court ~~grants relief under~~  
12          ~~this Article and~~ orders DNA testing the court shall also issue such orders as are  
13          appropriate to determine the DNA profile of the applicant, to obtain the necessary  
14          samples to be tested, and to protect ~~their~~ the integrity of the samples obtained. The  
15          testing shall be conducted by a laboratory mutually agreed upon by the ~~district~~  
16          ~~attorney~~ state and the ~~petitioner~~ applicant. If the parties cannot agree, the court shall  
17          designate a laboratory to perform the tests that is accredited in forensic DNA  
18          analysis by an accrediting body that is a signatory to the International Laboratory  
19          Accreditation Cooperation Mutual Recognition Arrangements for Testing  
20          Laboratories (ILAC MRA) and requires conformance to an accreditation program  
21          based on the international standard ISO/IEC 17025 with an accreditation scope in the  
22          field of forensic science testing in the discipline of biology, and that is compliant  
23          with the current version of the Federal Bureau of Investigations Quality Assurance  
24          Standards for Forensic DNA Testing Laboratories.

25          G. If in accordance with Paragraph F of this Article the court orders the  
26          testing performed at a private laboratory, the ~~district attorney~~ state shall have the  
27          right to withhold or obtain a sufficient portion of any unknown sample for purposes  
28          of ~~his~~ its independent testing. Under such circumstances, the ~~petitioner~~ applicant  
29          shall submit DNA samples to the ~~district attorney~~ state for purposes of comparison

1 with the unknown sample retained by the ~~district attorney~~ law enforcement agency.  
 2 A laboratory selected to perform the analysis shall, if possible, retain and maintain  
 3 the integrity of a sufficient portion of the unknown sample for replicate testing. If  
 4 after initial examination of the evidence, but before actual testing, the laboratory  
 5 decides that there is insufficient ~~evidentially significant~~ material for replicate tests,  
 6 then it shall notify the ~~district attorney~~ state and the applicant or his counsel in  
 7 writing of its finding. The laboratory shall take no further steps in examination or  
 8 testing unless the state and the applicant consent in writing or the court authorizes  
 9 the testing after a contradictory hearing. If the ~~petitioner~~ applicant and ~~district~~  
 10 ~~attorney~~ state cannot agree, the court shall determine which laboratory as required  
 11 by Paragraph F of this Article is best suited to conduct the testing and shall fashion  
 12 its order to allow the laboratory conducting the tests to consume the entirety of the  
 13 unknown sample for testing purposes if necessary.

14 H.(1) The results of the DNA testing ordered under this Article shall be filed  
 15 by the laboratory with the court and served upon the ~~petitioner~~ applicant and the  
 16 ~~district attorney~~ state. The court may, in its discretion, order production of the  
 17 underlying facts or data and laboratory notes, and any other evidence relating to the  
 18 testing as the court may deem appropriate.

19 (2) After service of the application on the ~~district attorney~~ state and the law  
 20 enforcement agency in possession of the evidence, no evidence shall be destroyed  
 21 that is relevant to a case in which an application for DNA testing has been filed until  
 22 the case has been finally resolved by the court.

23 (3) After service of the application on the ~~district attorney~~ state and the law  
 24 enforcement agency in possession of the evidence, the clerks of court of each parish  
 25 and all law enforcement agencies, including but not limited to ~~district attorneys~~ the  
 26 state, sheriffs, the office of state police, local police agencies, and crime laboratories  
 27 shall preserve until August 31, 2024, all items of evidence in their possession ~~which~~  
 28 that are known to contain biological material that can be subjected to DNA testing,

1 in all cases that, as of August 15, 2001, have been concluded by a verdict of guilty  
2 or a plea of guilty.

3 (4) In all cases in which the defendant has been sentenced to death prior to  
4 August 15, 2001, the clerks of court of each parish and all law enforcement agencies,  
5 including but not limited to district attorneys, sheriffs, the office of state police, local  
6 police agencies, and crime laboratories shall preserve, until the execution of sentence  
7 is completed, all items of evidence in their possession which are known to contain  
8 biological material that can be subjected to DNA testing.

9 (5) Notwithstanding the provisions of Subparagraphs (3) and (4) of this  
10 Paragraph, after service of the application on the ~~district attorney~~ state and the law  
11 enforcement agency in possession of the evidence, the clerks of court of each parish  
12 and all law enforcement agencies, including but not limited to ~~district attorneys~~ the  
13 state, sheriffs, the office of state police, local police agencies, and crime laboratories  
14 may forward for proper storage and preservation all items of evidence described in  
15 Subparagraph (3) of this Paragraph to a laboratory that is accredited by an  
16 accrediting body that is a signatory to the International Laboratory Accreditation  
17 Cooperation Mutual Recognition Arrangements for Testing Laboratories (ILAC  
18 MRA) and requires conformance to an accreditation program based on the  
19 international standard ISO/IEC 17025 with an accreditation scope in the field of  
20 forensic science testing in the discipline of biology, and that is compliant with the  
21 current version of the Federal Bureau of Investigations Quality Assurance Standards  
22 for Forensic DNA Testing Laboratories.

23 (6) Except in the case of willful or wanton misconduct or gross negligence,  
24 no clerk of court or law enforcement officer or law enforcement agency, including  
25 but not limited to ~~any district attorney~~, the state or any sheriff, the office of state  
26 police, local police agency, or crime laboratory ~~which~~ that is responsible for the  
27 storage or preservation of any item of evidence in compliance with either the  
28 requirements of Subparagraph (3) of this Paragraph or R.S. 15:621 shall be held  
29 civilly or criminally liable for the unavailability or deterioration of any such

1 evidence to the extent that adequate or proper testing cannot be performed on the  
2 evidence.

3 I. The DNA profile of the ~~petitioner~~ applicant obtained pursuant to court  
4 order under this Article shall be sent by the ~~district attorney~~ obtaining agency to the  
5 state police for inclusion in the state DNA data base established pursuant to R.S.  
6 15:605. The ~~petitioner~~ applicant may seek removal of his DNA record pursuant to  
7 R.S. 15:614.

8 J. The ~~petitioner~~ applicant, in addition to other service requirements, shall  
9 mail a copy of the application requesting DNA testing to the Department of Public  
10 Safety and Corrections, ~~Corrections Services~~ correction services, office of adult  
11 services. If the court grants relief under this Article, the court shall mail a copy of  
12 the order to the Department of Public Safety and Corrections, ~~Corrections Services~~  
13 correction services, office of adult services. The Department of Public Safety and  
14 Corrections, ~~Corrections Services~~ correction services, office of adult services, shall  
15 keep a copy of all records sent to them pursuant to this ~~Subsection~~ Paragraph and  
16 report to the legislature ~~before January 1, 2003~~, each year on the number of ~~petitions~~  
17 applications filed and the number of orders granting relief.

18 K. There is hereby created in the state treasury a special fund designated as  
19 the DNA Testing ~~Post-Conviction~~ Postconviction Relief for Indigents Fund. The  
20 fund shall consist of money specially appropriated by the legislature. No other  
21 public money may be used to pay for the DNA testing authorized under the  
22 provisions of this Article. The fund shall be administered by the Louisiana Public  
23 Defender Board. The fund shall be segregated from all other funds and shall be used  
24 exclusively for the purposes established under the provisions of this Article. If the  
25 court finds that a ~~petitioner~~ an applicant under this Article is indigent, and has made  
26 a timely request for testing, the fund shall pay for the testing as authorized in the  
27 ~~court order~~ court's orders.

28 Comments - 2020

29 (a) Paragraph B of this Article requires an application filed under this Article  
30 to contain the information required by Article 927 or 930.10; however, the uniform

1 application for postconviction relief form does not have to be used by the applicant  
2 in requesting DNA testing pursuant this Article.

3 (b) As provided in Paragraph D of this Article, if the evidence to be tested  
4 has been in the custody of a clerk of court or law enforcement agency since it was  
5 collected, a court should presume there is no substantial question as to the chain of  
6 custody of the evidence.

7 Section 4. Code of Criminal Procedure Article 923 is hereby amended and reenacted  
8 and Code of Criminal Procedure Article 880.1 is hereby enacted, to read as follows:

9 Art. 880.1. Order to retain evidence

10 A. If a sentence of death or life imprisonment is imposed, the court shall  
11 order the clerk, the state, and the appropriate law enforcement agency or agencies,  
12 including criminalistics laboratories, to retain all evidence, records, and transcripts  
13 relating to the case until the sentence is executed, served, or set aside.

14 B. In other cases, the court may enter such an order as it may deem  
15 appropriate in the interest of justice.

16 Comments - 2020

17 A state actor that violates the provisions of this Article may subject itself to  
18 contempt of court, if appropriate. See Articles 20 through 25. This statutory duty is  
19 not intended to alter the test to determine whether the failure to preserve potentially  
20 useful evidence violates a criminal defendant's right to due process of law. See State  
21 v. Lindsey, 543 So. 2d 886, 890-892 (La. 1989), cert. denied, 494 U.S. 1074 (1990)  
22 (approving Arizona v. Youngblood, 488 U.S. 51, 58 (1988); California v. Trombetta,  
23 467 U.S. 479 (1984)); see also State v. Manning, 885 So.2d 1044, 1094, n. 33 (La.  
24 2004).

25 \* \* \*

26 Art. 923. Duty of clerk as to final decisions in appellate court

27 A. When a decision of an appellate court becomes final, the clerk of court  
28 shall transmit a certified copy of the decree to the court from which the appeal was  
29 taken. When the judgment is received by the lower court, it shall be filed and  
30 executed.

31 B. After the defendant's conviction and sentence becomes final pursuant to  
32 Article 922, the clerk of the court of appeal shall send an electronic copy of the  
33 appellate record free of cost to any defendant who is imprisoned as defined in Article  
34 924.1 and has requested a copy of his record.

1           C. The failure of the clerk of the court of appeal to comply with any of the  
2           requirements of Paragraph B of this Article does not extend the time to file an  
3           application for postconviction relief or constitute a cause of action, grounds to vacate  
4           the conviction or sentence, or grounds to remand the case for the purpose of  
5           resentencing. The provisions of Paragraph B may be enforced by a writ of  
6           mandamus.

7           D. Prior to the transmission of the electronic copy of the record, the court of  
8           appeal shall redact all information not subject to public disclosure pursuant to R.S.  
9           46:1844(W). The court of appeal shall also redact the names, addresses, and  
10          identities of the jurors who participated in the case. If the safety of a person or the  
11          public requires further redaction, or if a redaction would violate a constitutional right  
12          of the defendant, the aggrieved party may file a motion with the court of appeal. The  
13          court of appeal may remand the motion to the district court for the purpose of  
14          receiving evidence and ruling on the motion. A ruling on the motion by the court of  
15          appeal or district court may be reviewed by writ application only, unless the ruling  
16          results in a declaration that a statute or ordinance is unconstitutional.

17          Section 5. Code of Criminal Procedure Articles 929 and 930 are hereby repealed in  
18          their entirety.

19          Section 6. The Louisiana State Law Institute is hereby directed to redesignate Code  
20          of Criminal Procedure Articles 931 through 934 as Code of Criminal Procedure Articles 936  
21          through 939.

22          Section 7. (A) The Louisiana State Law Institute is hereby directed to redesignate  
23          the provisions of Code of Criminal Procedure Article 926.1, as amended and reenacted by  
24          Section 3 of this Act, as Code of Criminal Procedure Article 931.

25          (B) The Louisiana State Law Institute is hereby directed to designate the provisions  
26          of Code of Criminal Procedure Article 931, as redesignated by Subsection (A) of this  
27          Section, as "TITLE XXXI-C. DNA TESTING".

## 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 223 Original

2020 Regular Session

Bacala

**Abstract:** Provides for the reorganization and revision of the Code of Criminal Procedure Articles on postconviction relief and related matters.

Proposed law (C.Cr.P. Art. 924) provides for scope of applicability of Title XXXI-A regarding postconviction relief in noncapital cases.

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

Proposed law (C.Cr.P. Art. 924.1) retains present law but defines additional terms, makes semantic changes, and updates cross-references.

Present law (C.Cr.P. Arts. 924.2 and 925) provides for the effect of an appeal and venue.

Proposed law retains present law but makes semantic changes.

Present law (C.Cr.P. Art. 930.8(A)) sets forth the time limitations applicable to applications for postconviction relief and the exceptions to those time limitations.

Proposed law (C.Cr.P. Art. 926(A)) changes the exceptions provided by present law by clarifying that facts that were known to the applicant's attorney are presumed to have been known by the applicant, and facts that were contained in the record are deemed to have been known by the applicant. Proposed law also makes semantic changes and requires the applicant to prove that he exercised due diligence or that exceptional circumstances exist and the interest of justice will be served by consideration of the claim.

Present law (C.Cr.P. Art. 930.8(B) and (C)) provides for the dismissal of a timely filed application for postconviction relief if the state would be materially prejudiced in its ability to respond to, negate, or rebut the petitioner's allegations and requires the court to inform the defendant of the prescriptive period for postconviction relief.

Proposed law (C.Cr.P. Art. 926(B) and (C)) retains present law but clarifies that the material prejudice defense provided by present law can be raised at any time prior to final submission of the case on the merits and that the failure of the court to inform the defendant of the prescriptive period does not constitute grounds to vacate the conviction and sentence or remand for resentencing.

Present law (C.Cr.P. Art. 926) sets forth the required contents of a petition for postconviction relief.

Proposed law (C.Cr.P. Art. 927) retains present law but makes semantic changes and also requires the applicant to state whether this is his first application for postconviction relief as well as to provide a list of all of the attorneys who represented the applicant. Proposed law further provides for the notification of an applicant who fails to use the uniform form and for a copy of the application to be provided to the court and served on the state.

Proposed law (C.Cr.P. Art. 927.1) provides for the service of the application for postconviction relief and all subsequent filings or orders on the state, the applicant, and his attorney.

Present law (C.Cr.P. Art. 930.2) provides that the petitioner shall have the burden of proving that relief should be granted.

Proposed law (C.Cr.P. Art. 927.2) retains present law but makes semantic changes.

Present law (C.Cr.P. Art. 930.3) sets forth the grounds for postconviction relief.

Proposed law (C.Cr.P. Art. 927.3) changes present law by deleting the grounds for relief based on double jeopardy and the unconstitutional ex post facto application of law. Proposed law also makes semantic changes, updates cross-references, and adds a ground for relief based on new evidence of factual innocence.

Proposed law (C.Cr.P. Art. 927.4) provides for the production of information in postconviction relief cases.

Proposed law (C.Cr.P. Art. 927.5) provides for the waiver of the attorney-client privilege if the application for postconviction relief is based on a claim of ineffective assistance of counsel.

Present law (C.Cr.P. Art. 928) provides that an application may be dismissed upon the pleadings if it fails to allege a claim which, if established, would entitle the petitioner to relief.

Proposed law (C.Cr.P. Art. 927.6) changes present law by imposing a 60-day time limitation within which the district court must act to dismiss the claim on the pleadings, order the applicant to respond with a more definite statement, or order the state to respond. Proposed law further permits the court to dismiss the claim if the applicant raises a claim which, if established, would not entitle him to relief, or if the applicant fails to state a ground upon which relief can be granted, or if an examination of the application and record clearly refutes any factual basis for the claim.

Proposed law (C.Cr.P. Art. 927.7) sets forth the circumstances under which the state can request that the applicant provide a more definite statement as to any claim for relief and imposes a 60-day time period within which the applicant must respond to the request, or if the request is denied, within which the state must file procedural objections or an answer.

Proposed law (C.Cr.P. Art. 927.8) sets forth the circumstances under which the state may assert procedural objections and requires the applicant to respond to the state's procedural objections within 45 days.

Proposed law (C.Cr.P. Art. 927.9) provides for the disposition of procedural objections by the court and requires the court to rule on procedural objections summarily if possible or to defer disposition, order further factual development, and rule on all procedural objections together.

Proposed law (C.Cr.P. Art. 927.10) sets forth the circumstances under which the court shall order to the state to answer on the merits of each claim within 60 days and provides that any responses to the state's answer shall be filed within 45 days.

Present law (C.Cr.P. Art. 929) provides for the summary disposition of an application for postconviction relief.

Proposed law (C.Cr.P. Art. 927.11) changes present law by requiring the court to summarily grant or deny relief within a certain period of time from the filing of the answer and by deleting the provision that allowed the taking of oral depositions and the use of other discovery mechanisms, which are now contained in proposed law (C.Cr.P. Art. 927.12).

Present law (C.Cr.P. Art. 930) sets forth the circumstances under which an evidentiary hearing for the taking of testimony or other evidence can be ordered and provides that the petitioner is entitled to be present at evidentiary hearings unless certain exceptions apply.

Proposed law (C.Cr.P. Art. 927.12) changes present law by deleting the requirement that the petitioner be present at the evidentiary hearing and the provision that prohibited the court from conducting an evidentiary hearing prior to ruling on all procedural objections, since these provisions are now contained elsewhere. Proposed law provides for the taking of oral depositions and the use of other discovery mechanisms and further provides that the district court should consider the rules of evidence but that these rules shall not strictly apply.

Present law (C.Cr.P. Art. 930.9) provides that if the petitioner for postconviction relief is incarcerated, his presence may be obtained through teleconference, video link, or other visual remote technology.

Proposed law (C.Cr.P. Art. 927.13) retains present law but makes semantic changes and further provides that absent an express waiver and subject to certain exceptions, the applicant is entitled to be physically present at an evidentiary hearing.

Present law (C.Cr.P. Art. 930.7) sets forth the circumstances under which courts are permitted and are required to appoint counsel to represent a petitioner for postconviction relief.

Proposed law (C.Cr.P. Art. 927.14) retains present law but makes semantic changes.

Present law (C.Cr.P. Art. 930.1) provides that a copy of the judgment granting or denying postconviction relief and the written or transcribed reasons therefor shall be furnished to the petitioner, the district attorney, and the custodian.

Proposed law (C.Cr.P. Art. 927.15) retains present law but makes semantic changes and requires the district court to render judgment within 60 days after submission of the case on the merits. Proposed law further sets forth the relief that may be granted by the court.

Present law (C.Cr.P. Art. 930.5) provides that if the court grants relief under an application for postconviction relief, the petitioner shall be held in custody pending a new trial under certain circumstances, in which case the petitioner shall be entitled to bail.

Proposed law (C.Cr.P. Art. 927.16) retains present law but makes semantic changes and requires a finding by the court that there are legally sufficient grounds upon which to prosecute the applicant.

Proposed law (C.Cr.P. Art. 927.17) allows the district court to deviate from these provisions upon joint motion by the parties.

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

Proposed law (C.Cr.P. Art. 928) retains present law but makes semantic changes.

Proposed law (C.Cr.P. Art. 930.1-930.27) sets forth the procedures that apply in capital postconviction relief cases.

Present law (C.Cr.P. Art. 926.1) sets forth the requirements applicable to applications for DNA testing.

Proposed law (C.Cr.P. Art. 931) retains present law but makes semantic changes and updates cross-references. Proposed law further provides the standard of proof relevant to questions concerning the chain of custody of evidence and provides that where there is an insufficient

sample of the evidence to be tested, the lab shall not proceed without the consent of both parties or an order from the court.

Proposed law (C.Cr.P. Art. 880.1) requires evidence to be retained by the clerk of court, the state, and law enforcement agencies when a sentence of death or life imprisonment is imposed. Proposed law further provides that in all other cases, the court in its discretion can enter an order to retain evidence.

Present law (C.Cr.P. Art. 923) requires the clerk of the appellate court to transmit a certified copy of the appellate court's decision to the court from which the appeal was taken.

Proposed law retains present law and also provides for the transmission of an electronic copy of the appellate record by the clerk of the appellate court once the defendant's conviction and sentence become final, provided that the defendant is imprisoned and has requested a copy of the record.

Present law (C.Cr.P. Arts. 931-934) provides for definitions for purposes of the Code of Criminal Procedure.

Proposed law redesignates present law.

(Amends C.Cr.P. Arts. 923, 924-928, 926.1, and 930.1-930.9; Adds C.Cr.P. Arts. 880.1 and 930.10-930.27; Repeals C.Cr.P. Arts. 929 and 930; Redesignates C.Cr.P. Arts. 926.1 and 931-934)