

2025 Regular Session

HOUSE BILL NO. 572

BY REPRESENTATIVE GLORIOSO

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

CRIMINAL/PROCEDURE: Provides relative to post conviction relief

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 882(A) and R.S. 15:178, to enact
3 Chapter 2-A of Title III of Book VII of the Code of Civil Procedure, to be comprised
4 of Articles 3832 through 3853, and to repeal Title XXXI-A of the Code of Criminal
5 Procedure, comprised of Articles 924 through 930.10, relative to post conviction
6 relief; to provide relative to the correction of an illegal sentence; to provide for
7 procedures; to provide for definitions; to provide for appeals; to provide for
8 applications; to provide for motions; to provide for summary disposition; to provide
9 for judgments; to provide for grounds for relief; to provide relative to claims; to
10 provide for duties of the court, district attorney, attorney general, and petitioner; to
11 provide for time periods; to provide relative to time limitations; to provide for burden
12 of proof; to provide for redesignations; to provide relative to a writ of mandamus;
13 to provide for the appointment of counsel in certain circumstances; and to provide
14 for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. Code of Criminal Procedure Article 882(A) is hereby amended and
17 reenacted to read as follows:

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

19 A. ~~An illegal sentence may be corrected at any time by the court that~~
20 ~~imposed the sentence or by an appellate court on review.~~ If a sentence does not fall

1 within the sentencing range authorized by law, the court may correct it within one
2 year after the judgment of conviction and sentence has become final. On direct
3 review from conviction and imposition of sentence, an appellate court may vacate
4 a sentence that was not authorized by law and remand to the trial court for
5 re-sentencing.

6 * * *

7 Section 2. Chapter 2-A of Title III of Book VII of the Code of Civil Procedure,
8 comprised of Articles 3832 through 3853, is hereby enacted to read as follows:

9 CHAPTER 2-A. POST CONVICTION RELIEF

10 Art. 3832. Definitions

11 As used in this Chapter:

12 (1) An "application for post conviction relief" means a petition filed by a
13 person in custody after sentence following conviction for the commission of an
14 offense seeking to have the conviction and sentence set aside.

15 (2) "Custody" means detention or confinement, or probation or parole
16 supervision, after sentence following conviction for the commission of an offense.

17 (3) "DNA testing" means any method of testing and comparing
18 deoxyribonucleic acid that would be admissible under the Code of Evidence.

19 (4) "Unknown sample" means a biological sample from an unknown donor
20 constituting evidence of the commission of an offense or tending to prove the
21 identity of the perpetrator of an offense.

22 Art. 3833. Effect of appeal

23 An application for post conviction relief shall not be entertained if the
24 petitioner may appeal the conviction and sentence which he seeks to challenge, or
25 if an appeal is pending.

26 Art. 3834. Venue

27 Except as provided in Article 3851(B), applications for post conviction relief
28 shall be filed in the parish where the petitioner was convicted.

1 Art. 3835. Petition

2 A. An application for post conviction relief shall be by written petition
3 addressed to the district court for the parish where the petitioner was convicted. A
4 copy of the judgment of conviction and sentence shall be annexed to the petition, or
5 the petition shall allege that a copy has been demanded and refused.

6 B. The petition shall allege all of the following:

7 (1) The name of the person in custody.

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

10 (3) The name of the custodian, if known, or if not known, a designation or
11 description of him as far as possible.

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

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

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

18 C. The application shall be signed by the petitioner and be accompanied by
19 his affidavit that the allegations contained in the petition are true to the best of his
20 information and belief.

21 D. The petitioner shall use the uniform application for post conviction relief
22 approved by the Louisiana Supreme Court. If the petitioner fails to use the uniform
23 application, the court may provide the petitioner with the uniform application and
24 require its use.

25 E. The petition and any successive petitions shall be served upon both the
26 attorney general and the district attorney for the parish where the defendant was
27 convicted.

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

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

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

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

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

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

11 H. A petition for post conviction relief shall be conducted as a civil
12 proceeding and shall be subject to the provisions of this Code.

13 Art. 3836. Application for DNA testing

14 A.(1) Prior to August 31, 2030, a person convicted of a felony may file an
15 application under the provisions of this Article for post-conviction relief requesting
16 DNA testing of an unknown sample secured in relation to the offense for which the
17 person was convicted. On or after August 31, 2030, a petitioner may request DNA
18 testing under the rules for filing an application for post-conviction relief as provided
19 in Article 3848 or 3851.

20 (2) Notwithstanding the provisions of Subparagraph (1) of this Paragraph,
21 in cases in which the defendant has been sentenced to death prior to August 15,
22 2001, the application for DNA testing under the provisions of this Article may be
23 filed at any time.

24 B. An application filed under the provisions of this Article shall comply with
25 the provisions of Article 926 and shall allege all of the following:

26 (1) A factual explanation of why there is an articulable doubt, based on
27 competent evidence whether or not introduced at trial, as to the guilt of the petitioner
28 in that DNA testing will resolve the doubt and establish the innocence of the
29 petitioner.

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

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

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

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

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

16 (2) The application has been timely filed.

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

19 D. Relief under this Article shall not be granted when the court finds that
20 there is a substantial question as to the integrity of the evidence to be tested.

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

24 F. Once an application has been filed and the court determines the location
25 of the evidence sought to be tested, the court shall serve a copy of the application on
26 the district attorney and the law enforcement agency which has possession of the
27 evidence to be tested, including but not limited to sheriffs, the office of state police,
28 local police agencies, and crime laboratories. If the court grants relief under this
29 Article and orders DNA testing the court shall also issue such orders as are

1 appropriate to obtain the necessary samples to be tested and to protect their integrity.
2 The testing shall be conducted by a laboratory mutually agreed upon by the district
3 attorney and the petitioner. If the parties cannot agree, the court shall designate a
4 laboratory to perform the tests that is accredited in forensic DNA analysis by an
5 accrediting body that is a signatory to the International Laboratory Accreditation
6 Cooperation Mutual Recognition Arrangements for Testing Laboratories (ILAC
7 MRA) and requires conformance to an accreditation program based on the
8 international standard ISO/IEC 17025 with an accreditation scope in the field of
9 forensic science testing in the discipline of biology, and that is compliant with the
10 current version of the Federal Bureau of Investigations Quality Assurance Standards
11 for Forensic DNA Testing Laboratories.

12 G. If the court orders the testing performed at a private laboratory, the
13 district attorney shall have the right to withhold a sufficient portion of any unknown
14 sample for purposes of his independent testing. Under such circumstances, the
15 petitioner shall submit DNA samples to the district attorney for purposes of
16 comparison with the unknown sample retained by the district attorney. A laboratory
17 selected to perform the analysis shall, if possible, retain and maintain the integrity
18 of a sufficient portion of the unknown sample for replicate testing. If after initial
19 examination of the evidence, but before actual testing, the laboratory decides that
20 there is insufficient evidentially significant material for replicate tests, then it shall
21 notify the district attorney in writing of its finding. If the petitioner and district
22 attorney cannot agree, the court shall determine which laboratory as required by
23 Paragraph F of this Article is best suited to conduct the testing and shall fashion its
24 order to allow the laboratory conducting the tests to consume the entirety of the
25 unknown sample for testing purposes if necessary.

26 H.(1) The results of the DNA testing ordered under this Article shall be filed
27 by the laboratory with the court and served upon the petitioner and the district
28 attorney. The court may, in its discretion, order production of the underlying facts
29 or data and laboratory notes.

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

5 (3) After service of the application on the district attorney and the law
6 enforcement agency in possession of the evidence, the clerks of court of each parish
7 and all law enforcement agencies, including but not limited to district attorneys,
8 sheriffs, the office of state police, local police agencies, and crime laboratories, shall
9 preserve until August 31, 2030, all items of evidence in their possession which are
10 known to contain biological material that can be subjected to DNA testing, in all
11 cases that, as of August 15, 2001, have been concluded by a verdict of guilty or a
12 plea of guilty.

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

19 (5) Notwithstanding the provisions of Subparagraphs (3) and (4) of this
20 Paragraph, after service of the application on the district attorney and the law
21 enforcement agency in possession of the evidence, the clerks of court of each parish
22 and all law enforcement agencies, including but not limited to district attorneys,
23 sheriffs, the office of state police, local police agencies, and crime laboratories may
24 forward for proper storage and preservation all items of evidence described in
25 Subparagraph (3) of this Paragraph to a laboratory that is accredited by an
26 accrediting body that is a signatory to the International Laboratory Accreditation
27 Cooperation Mutual Recognition Arrangements for Testing Laboratories (ILAC
28 MRA) and requires conformance to an accreditation program based on the
29 international standard ISO/IEC 17025 with an accreditation scope in the field of

1 forensic science testing in the discipline of biology, and that is compliant with the
2 current version of the Federal Bureau of Investigations Quality Assurance Standards
3 for Forensic DNA Testing Laboratories.

4 (6) Except in the case of willful or wanton misconduct or gross negligence,
5 no clerk of court or law enforcement officer or law enforcement agency, including
6 but not limited to any district attorney, sheriff, the office of state police, local police
7 agency, or crime laboratory which is responsible for the storage or preservation of
8 any item of evidence in compliance with either the requirements of Subparagraph (3)
9 of this Paragraph or R.S. 15:621 shall be held civilly or criminally liable for the
10 unavailability or deterioration of any such evidence to the extent that adequate or
11 proper testing cannot be performed on the evidence.

12 I. The DNA profile of the petitioner obtained under this Article shall be sent
13 by the district attorney to the state police for inclusion in the state DNA data base
14 established pursuant to R.S. 15:605. The petitioner may seek removal of his DNA
15 record pursuant to R.S. 15:614.

16 J. The petitioner, in addition to other service requirements, shall mail a copy
17 of the application requesting DNA testing to the Department of Public Safety and
18 Corrections, corrections services, office of adult services. If the court grants relief
19 under this Article, the court shall mail a copy of the order to the Department of
20 Public Safety and Corrections, corrections services, office of adult services. The
21 Department of Public Safety and Corrections, corrections services, office of adult
22 services, shall keep a copy of all records sent to them pursuant to this Subsection and
23 report to the legislature before January 1, 2003, on the number of petitions filed and
24 the number of orders granting relief.

25 K. There is hereby created in the state treasury a special fund designated as
26 the DNA Testing Post-Conviction Relief for Indigents Fund. The fund shall consist
27 of money specially appropriated by the legislature. No other public money may be
28 used to pay for the DNA testing authorized under the provisions of this Article. The
29 fund shall be administered by the office of the state public defender. The fund shall

1 be segregated from all other funds and shall be used exclusively for the purposes
2 established under the provisions of this Article. If the court finds that a petitioner
3 under this Article is indigent, the fund shall pay for the testing as authorized in the
4 court order.

5 Art. 3837. Factual innocence

6 A. A petitioner who has been convicted of an offense may seek post
7 conviction relief on the grounds that he is factually innocent of the offense for which
8 he was convicted. A petitioner's first claim of factual innocence pursuant to this
9 Article that would otherwise be barred from review on the merits by the time
10 limitation provided in Article 3851 or the procedural objections provided in Article
11 3847 shall not be barred if the claim is contained in an application for post
12 conviction relief filed on or before December 31, 2022, and if the petitioner was
13 convicted after a trial completed to verdict. This exception to Articles 3847 and
14 3851 shall apply only to the claim of factual innocence brought under this Article
15 and shall not apply to any other claims raised by the petitioner. An application for
16 post conviction relief filed pursuant to this Article by a petitioner who pled nolo
17 contendere to the offense of conviction or filed by any petitioner after December 31,
18 2022, shall be subject to Articles 3847 and 3851. A petitioner who pled guilty to the
19 offense of conviction shall not be entitled to assert factual innocence.

20 B.(1)(a) To assert a claim of factual innocence under this Article, a petitioner
21 shall present new, reliable, and noncumulative evidence that would be legally
22 admissible at trial and that was not known or discoverable at or prior to trial and that
23 is either:

24 (i) Scientific, forensic, physical, or nontestimonial documentary evidence.

25 (ii) Testimonial evidence that is corroborated by evidence of the type
26 described in Item (i) of this Subsubparagraph.

27 (b) To prove entitlement to relief under this Article, the petitioner shall
28 present evidence that satisfies all of the criteria in Subsubparagraph (a) of this
29 Subparagraph and that, when viewed in light of all of the relevant evidence,

1 including the evidence that was admitted at trial and any evidence that may be
2 introduced by the state in any response that it files or at any evidentiary hearing,
3 proves by clear and convincing evidence that, had the new evidence been presented
4 at trial, no rational juror would have found the petitioner guilty beyond a reasonable
5 doubt of either the offense of conviction or of any felony offense that was a
6 responsive verdict to the offense of conviction at the time of the conviction.

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

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

16 (a) That, by reliable evidence, he consistently maintained his innocence until
17 his plea of nolo contendere.

18 (b) That he could not have known of or discovered his evidence of factual
19 innocence prior to pleading nolo contendere.

20 C.(1) A grant of post conviction relief pursuant to this Article shall not
21 prevent the petitioner from being retried for the offense of conviction, for a lesser
22 offense based on the same facts, or for any other offense.

23 (2) If the petitioner waives his right to a jury trial and elects to be tried by
24 a judge, the district judge who granted post conviction relief pursuant to this Article
25 shall be recused and the case shall be allotted to a different judge in accordance with
26 applicable law and rules of court.

27 (3) If the district judge denied post conviction relief pursuant to this Article
28 and an appellate court later reversed the ruling of the district judge and granted post
29 conviction relief pursuant to this Article, and if the petitioner waives his right to a

1 jury trial and elects to be tried by a judge, upon the petitioner's motion the district
2 judge who denied post conviction relief shall be recused and the case shall be allotted
3 to a different judge in accordance with applicable law and rules of court.

4 Art. 3838. Motion for testing of evidence

5 A. Upon motion of the state or the petitioner, the district court may order the
6 testing or examination of any evidence relevant to the offense of conviction in the
7 custody and control of the clerk of court, the state, or the investigating law
8 enforcement agency.

9 B. If the motion is made by the petitioner and the state does not expressly
10 consent to the testing or examination, a motion made under this Article shall be
11 granted only following a contradictory hearing at which the petitioner shall establish
12 that good cause exists for the testing or examination. If the state does not expressly
13 consent to the testing or examination and the motion made under this Article is
14 granted following the contradictory hearing, the district attorney and investigating
15 law enforcement agency shall not be ordered to bear any of the costs associated with
16 the testing or examination.

17 Art. 3839. Privilege waiver

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

21 Art. 3840. Action required after filing of application; procedural objections; answer

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

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

28 (b) Whether the application is timely pursuant to Article 3851.

1 (c) Whether the application states adequate factual or legal grounds for
2 relief.

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

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

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

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

12 (2) If it is evident from the petition and any attached exhibits that the
13 petitioner is not entitled to relief, the court shall dismiss the application. If the
14 application is not dismissed, the judge shall order an answer pursuant to Paragraph
15 B of this Article. The fact that the court has not dismissed the application upon
16 preliminary review shall not preclude the district attorney or the attorney general
17 from subsequently raising objections on any of the grounds listed in Paragraph
18 (A)(1) of this Article.

19 B. If an application is not dismissed pursuant to Paragraph A of this Article,
20 the court shall order the custodian, through the district attorney in the parish where
21 the defendant was convicted, to file any procedural objections he may have, or an
22 answer on the merits if there are no procedural objections, within a specified period
23 not in excess of sixty days. If any objections are waived by the district attorney, the
24 response shall be provided to the attorney general concurrent with filing. The court's
25 order shall include a copy of the application for post conviction relief and the
26 attorney general shall have thirty days to file objections. If procedural objections are
27 filed by the district attorney or the attorney general, no answer on the merits of the
28 claim nor any hearing on the merits shall be ordered until such objections have been
29 considered and rulings thereon have become final.

1 C. In any order of the court requiring the district attorney or attorney general
2 to respond pursuant to this Article, the court shall render specific rulings dismissing
3 any claim that would not entitle the petitioner to relief if established as alleged, and
4 shall order a response only as to such claim or claims that would entitle the petitioner
5 to relief if established as alleged.

6 D. If the court orders an answer filed, the court need not order production of
7 the petitioner except as provided in Article 3843.

8 E. Subject to the provisions of Article 3847(F), if the application is
9 successive or supplemental to a previous application, the court shall send notice to
10 the attorney general.

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

14 G.(1) The attorney general, in his discretion, may assume responsibility for
15 responding to state petitions for post conviction relief and federal habeas corpus
16 petitions arising from any conviction. At the discretion of the attorney general, he
17 may work on a reasonable transition plan with each district attorney to assume these
18 duties or particular cases.

19 (2) In all capital cases pending as of July 1, 2025, the attorney general shall
20 assume responsibility for responding to any petitions for post conviction relief,
21 including supplemental or amending petitions, federal habeas corpus petitions, and
22 any matters arising from or related to a capital sentence that is final after direct
23 review.

24 Art. 3841. Abandonment of application

25 A. After filing an application for post conviction relief, the petitioner is
26 responsible for seeking a ruling on his application and pursuing his claims. Failure
27 to actively seek a ruling on an application for post conviction relief after it has been
28 filed shall constitute abandonment of the application, resulting in the dismissal of the
29 application.

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

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

10 D. If the petitioner has a shell petition pending as of July 1, 2025, he shall
11 submit a fully-briefed petition to the court within one hundred eighty days of July
12 1, 2025. Any application for post conviction relief filed before July 1, 2023, shall
13 be dismissed, set for a hearing, or otherwise adjudicated within one hundred eighty
14 days of July 1, 2025, unless the court has good cause to establish a later date,
15 provided however that the claims shall be fully adjudicated no later than one year
16 from the date of filing or amendment. The district attorney or the attorney general
17 shall have a right to seek mandamus to enforce this Paragraph.

18 E. For the purposes of this Article, the following terms shall have the
19 following meanings:

20 (1) "Pleading in furtherance of disposition of the application" is a filing that
21 seeks the trial court's ruling on the merits of the application or a claim asserted
22 therein, such as a motion to set the case on the docket, a motion seeking an order, or
23 an application for writ of mandamus seeking a ruling on the application.

24 (2) "Shell petition" is any petition for post conviction relief that does not
25 fully assert and brief all claims for relief.

26 Art. 3842. Summary disposition

27 A. If the court determines that the factual and legal issues can be resolved
28 based upon the application and answer, and supporting documents, including
29 relevant transcripts, depositions, and other reliable documents submitted by either

1 party or available to the court, the court may grant or deny relief without further
2 proceedings.

3 B. For good cause, oral depositions of the petitioner and witnesses may be
4 taken under conditions specified by the court. The court may authorize requests for
5 admissions of fact and of genuineness of documents. In such matters, the court shall
6 be guided by this Code.

7 Art. 3843. Evidentiary hearing

8 A. An evidentiary hearing for the taking of testimony or other evidence shall
9 be ordered within the time period provided in Article 3853 whenever there are
10 questions of fact which cannot properly be resolved pursuant to Article 3842. The
11 petitioner, in absence of an express waiver, is entitled to be present at such hearing,
12 unless the only evidence to be received is evidence as permitted pursuant to
13 Paragraph B of this Article, and the petitioner has been or will be provided with
14 copies of such evidence and an opportunity to respond thereto in writing.

15 B. Duly authenticated records, transcripts, depositions, documents, or
16 portions thereof, or admissions of facts may be received in evidence.

17 C. No evidentiary hearing on the merits of a claim shall be ordered or
18 conducted, nor shall any proffer of evidence be received over the objection of the
19 respondent, and no ruling upon procedural objections to the petition shall purport to
20 address the merits of the claim over the objection of the respondent, unless the court
21 has first ruled upon all procedural objections raised by the respondent within the time
22 period provided in Article 3853(A), and such rulings have become final. Any
23 language in a ruling on procedural objections raised by the respondent which
24 purports to address the merits of the claim shall be deemed as null, void, and of no
25 effect.

26 Art. 3844. Judgment granting or denying relief under Articles 3842 and 3843

27 A copy of the judgment granting or denying relief and written or transcribed
28 reasons for the judgment shall be furnished to the petitioner, the district attorney, and
29 the custodian.

1 Art. 3845. Burden of proof

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

5 Art. 3846. Grounds

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

8 (1) The conviction was obtained in violation of the constitution of the United
9 States or the state of Louisiana.

10 (2) The court exceeded its jurisdiction.

11 (3) The conviction or sentence subjected him to double jeopardy.

12 (4) The limitations on the institution of prosecution had expired.

13 (5) The statute creating the offense for which he was convicted and
14 sentenced is unconstitutional.

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

17 (7) The results of DNA testing performed pursuant to an application granted
18 under Article 3836 proves by clear and convincing evidence that the petitioner is
19 factually innocent of the crime for which he was convicted.

20 (8) The petitioner is determined by clear and convincing evidence to be
21 factually innocent under Article 3837.

22 Art. 3847. Jurisdictional bars to relief; repetitive applications

23 A. Any claim for relief which was fully litigated in an appeal from the
24 proceedings leading to the judgment of conviction and sentence shall not be
25 considered.

26 B. If the application alleges a claim of which the petitioner had knowledge
27 and inexcusably failed to raise in the proceedings leading to conviction, the court
28 shall deny relief.

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

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

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

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

10 G. Any attempt or request by a petitioner to supplement or amend an
11 application for post conviction relief shall be subject to all of the limitations and
12 restrictions set forth in this Article. In addition to serving the district attorney for the
13 jurisdiction where the underlying conviction was obtained, any subsequent,
14 successive, amending, or supplemental application shall be served by the petitioner
15 on the district attorney and the attorney general. If the court subsequently orders any
16 hearing on the application, the court shall send notice to the district attorney and
17 attorney general at least sixty days in advance of the hearing date.

18 H. The limitations set forth in this Article shall be jurisdictional and shall not
19 be waived or excused by the court or the district attorney.

20 Art. 3848. Custody pending retrial; bail

21 A. If a court grants relief under an application for post conviction relief, the
22 court shall order that the petitioner be held in custody pending a new trial.

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

25 Art. 3849. Review of trial court judgments

26 A. The petitioner may invoke the supervisory jurisdiction of the court of
27 appeal if the trial court dismisses the application or otherwise denies relief on an
28 application for post conviction relief. No appeal lies from a judgment dismissing an
29 application or otherwise denying relief.

1 B. The district attorney and the attorney general shall have a right to
2 suspensively appeal any order granting post conviction relief.

3 Art. 3850. Right to counsel

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

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

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

14 Art. 3851. Time limitations; exceptions; prejudicial delay

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

19 (1) The application alleges, and the petitioner proves or the state admits, that
20 the facts upon which the claim is predicated were not known to the petitioner or his
21 prior attorneys. Further, the petitioner shall prove that he exercised diligence in
22 attempting to discover any post conviction claims that may exist. "Diligence" for the
23 purposes of this Article is a subjective inquiry that shall take into account the
24 circumstances of the petitioner. Those circumstances shall include but are not
25 limited to the educational background of the petitioner, the petitioner's access to
26 formally trained inmate counsel, the financial resources of the petitioner, the age of
27 the petitioner, the mental abilities of the petitioner, or whether the interests of justice
28 will be served by the consideration of new evidence. New facts discovered pursuant
29 to this exception shall be submitted to the court within two years of discovery. If the

1 petitioner pled guilty or nolo contendere to the offense of conviction and is seeking
2 relief pursuant to Article 3837 and five years or more have elapsed since the
3 petitioner pled guilty or nolo contendere to the offense of conviction, the petitioner
4 shall not be eligible for the exception provided for by this Subparagraph.

5 (2) Facts that were known to any attorney for the petitioner shall be
6 presumed to have been known by the petitioner unless the petitioner rebuts this
7 presumption by clear and convincing evidence. Facts that were contained in the
8 record of the court proceedings concerning the conviction challenged in the
9 application shall be deemed to have been known by the petitioner. The provisions of
10 this subparagraph are applicable if the petitioner proves either of the following:

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

13 (b)(i) That exceptional circumstances exist, the interest of justice will be
14 served by consideration of the claim based upon the previously unknown facts, and
15 the newly discovered facts in support of the claim are sufficiently compelling that
16 manifest injustice will result if the claim is not considered.

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

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

23 (4) The petitioner qualifies for the exception to timeliness in Article 3836.

24 (5) The petitioner qualifies for the exception to timeliness in Article 3837.

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

1 C. An application for post conviction relief which is timely filed, or which
2 is allowed under an exception to the time limitation as set forth in Paragraph A of
3 this Article, shall be dismissed upon a showing by the state of prejudice to its ability
4 to respond to, negate, or rebut the allegations of the petition caused by events not
5 under the control of the state which have transpired since the date of original
6 conviction, if the court finds, after a hearing limited to that issue, that the state's
7 ability to respond to, negate, or rebut such allegations has been materially prejudiced
8 thereby. Failure to timely seek a hearing that is allowed by law or failure to timely
9 pursue claims shall be presumed prejudicial if the delay exceeds two years. The
10 petitioner shall bear the burden of rebutting the presumption of prejudice. A final
11 judgment dismissing an application based upon prejudice shall be a final
12 adjudication of state post conviction relief for purposes of exhaustion of state court
13 remedies and federal habeas corpus proceedings.

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

18 E. Any attempt or request by a petitioner to supplement or amend an
19 application for post conviction relief shall be subject to all of the limitations and
20 restrictions as set forth in this Article. Any attempt to reconsider or vacate a
21 conviction or sentence that falls outside the time limits of Article 882 shall be treated
22 as an application for post conviction relief. If post conviction relief has already been
23 sought, any such claim shall be treated as a repetitive petition for post conviction
24 relief that is subject to all the limitations and restrictions set forth in this Chapter.

25 F. All of the limitations set forth in this Article shall be jurisdictional and
26 shall not be waived or excused by the court or the district attorney.

1 Art. 3852. Attendance by the petitioner

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

5 Art. 3853. Time delays applicable to this Chapter; writ of mandamus

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

8 (1) The court shall conduct the preliminary review provided in Article 3840
9 within thirty days of the filing of application.

10 (2) When ruling on procedural objections that have been filed pursuant to
11 Article 3840, the court shall issue its ruling within thirty days of receipt of such
12 objections.

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

16 (4) When the court determines that there are questions of fact which cannot
17 properly be resolved pursuant to Article 3842, it shall conduct an evidentiary hearing
18 provided in Article 3843 within one hundred eighty days of such determination and
19 issue a ruling on the merits of any remaining claim within thirty days following the
20 conclusion of such hearing.

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

23 (1) The district attorney shall have sixty days to file procedural objections
24 pursuant to Article 3840, unless he waives such objections.

25 (2) If an answer is required, the district attorney shall have sixty days from
26 the court's ruling on procedural objections to file an answer on the merits pursuant
27 to Article 3840.

28 (3) The attorney general shall have thirty days to file procedural objections
29 pursuant to Article 3840 if the district attorney waives such objections.

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

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

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

11 Section 3. R.S. 15:178 is hereby amended and reenacted to read as follows:

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

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

20 Section 4. Title XXXI-A of the Code of Criminal Procedure, comprised of Articles
21 924 through 930.10, is hereby repealed in its entirety.

22 Section 5. The Louisiana State Law Institute is hereby directed to change and
23 redesignate any cross-references to Title XXXI-A of the Code of Criminal Procedure and
24 the Articles contained therein, consistent with the provisions of this Act.

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 572 Original

2025 Regular Session

Glorioso

Abstract: Provides relative to post conviction relief.

Present law (C.Cr.P. Art. 882) provides relative to illegal sentences.

Proposed law retains present law.

Present law (C.Cr.P. Art. 882(A)) provides that an illegal sentence may be corrected at any time by the court that imposed the sentence or by an appellate court on review.

Proposed law amends present law to provide that if a sentence does not fall within the sentencing range authorized by law, the court may correct it within one year after the judgment of conviction and sentence has become final. Further provides that on direct review from conviction and imposition of sentence, an appellate court may vacate a sentence that was not authorized by law and remand to the trial court for re-sentencing.

Present law (C.Cr.P. Arts. 924, 924.1, 926.1, 926.3, 929, 930.1, 930.3, 930.7, and 930.9) provides for procedures, definitions, appeals, applications, motions, summary disposition, judgments, grounds for relief, and rights relative to post conviction relief.

Proposed law retains present law and provides a redesignation of these provisions within the Code of Civil Procedure rather than the Code of Criminal Procedure.

Present law (C.Cr.P. Art. 925) provides that applications for post conviction relief shall be filed in the parish in which the petitioner was convicted.

Proposed law retains present law and provides an exception for certain petitioners.

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

Proposed law retains present law generally.

Proposed law provides that one of the items a petition is required to allege is that the person is actually in custody, and the name of the place of custody, if known. Further provides that a statement of the grounds upon which relief is sought shall be alleged in good faith.

Proposed law provides that the petition and any successive petitions shall be served upon both the attorney general and the district attorney for the parish where the defendant was convicted.

Proposed law provides that an individual shall be eligible for post conviction relief if he meets both of the following:

- (1) He is currently serving a sentence of imprisonment or is on probation or parole pursuant to a conviction.
- (2) He is in actual custody or under supervision of the division of probation and parole.

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

Proposed law provides that a petition for post conviction relief shall be conducted as a civil proceeding and shall be subject to the provisions of the Code of Civil Procedure.

Present law (C.Cr.P. Art. 926.2) provides relative to post conviction relief on the grounds that the petitioner is factually innocent of the offense for which he was convicted.

Proposed law retains present law generally.

Present law provides that an application for post conviction relief filed pursuant to present law by a petitioner who pled guilty or nolo contendere to the offense of conviction or filed by any petitioner after Dec. 31, 2022, shall be subject to present law.

Proposed law amends present law to provide that a petitioner who pled guilty to the offense of conviction shall not be entitled to assert factual innocence.

Present law provides that a recantation of prior sworn testimony may be considered if corroborated by the evidence. Further provides that a recantation of prior sworn testimony cannot form the sole basis for relief pursuant to present law.

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

Proposed law provides that by raising any claim of ineffective assistance of counsel, the defendant waives the attorney-client privilege as to any information necessary to allow the state to rebut the claim.

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

Proposed law retains present law generally.

Proposed law provides that the court shall conduct a preliminary review of all petitions for post conviction relief for compliance with the limitations for relief established in proposed law. Further provides for factors that the court is required to consider, among other things, in its review of the application.

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

Present law provides for procedures when an application is not dismissed.

Proposed law amends present law to provide that the district attorney may file procedural objections or an answer on the merits within 60 days, rather than 30 days.

Proposed law provides for service of the response to the attorney general if any objections are waived by the district attorney. Further provides that the attorney general shall have 30 days to file objections.

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

Proposed law provides for notice to the attorney general if certain applications are filed, procedures for applications that cannot be summarily dismissed, and the attorney general's assumption of responsibility relative to state petitions and capital cases pending as of July 1, 2025.

Present law (C.Cr.P. Art. 928) provides that an application for post conviction relief may be dismissed without an answer if the application fails to allege a claim which, if established, would entitle the petitioner to relief.

Proposed law repeals present law.

Proposed law provides for duties of the petitioner regarding the abandonment of an application and what constitutes abandonment of an application. Further defines the terms "pleading in furtherance of disposition of the application" and "shell petition".

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

Proposed law retains present law and provides that the evidentiary hearing shall be ordered within the time period provided in proposed law.

Present law (C.Cr.P. Art. 930.2) provides that the petitioner in an application for post conviction relief shall have the burden of proving that relief should be granted.

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

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

Proposed law retains present law generally.

Proposed law provides that if a repetitive application alleges a claim seeking to apply a new rule of criminal procedure that has been held by the U.S. Supreme Court and the La. Supreme Court to be non-retroactive, the court shall deny relief.

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

Present law (C.Cr.P. Art. 930.5) provides that if a court grants relief under an application for post conviction relief, the court shall order that the petitioner be held in custody pending a new trial if it appears that there are legally sufficient grounds upon which to re prosecute the petitioner.

Proposed law amends present law to remove the reference to legally sufficient grounds for re prosecution.

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

Proposed law retains present law.

Present law further permits the state to appeal to the supreme court or court of appeal under circumstances and permits the district court or court of appeal to stay a judgment granting relief when a an application for writ or appeal is pending.

Proposed law removes these provisions and provides that the district attorney and the attorney general shall have a right to suspensively appeal any order granting post conviction relief.

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

Proposed law retains present law generally.

Proposed law provides relative to facts known by a petitioner who files an application for post conviction relief more than one year after the judgment of conviction and sentence has become final under present law. Further provides for duties of the petitioner.

Proposed law provides that a petitioner who has been sentenced to death shall file any application for post conviction relief that contains a new claim, pleading, or other legal matter no later than seven days prior to the execution date of the petitioner. Further provides that such applications shall be filed directly with the La. Supreme Court.

Proposed law provides for the dismissal of an application based upon prejudice, what constitutes dismissal, the burden of the petitioner, and the effect of a final judgment of dismissal.

Proposed law provides that any attempt to reconsider or vacate a conviction or sentence that falls outside the time limits of present law (C.Cr.P. Art. 882) shall be treated as an application for post conviction relief. Further provides for if post conviction relief has already been sought, any such claim shall be treated as a repetitive petition and subject to all the limitations and restrictions set forth in proposed law.

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

Proposed law repeals present law.

Proposed law provides for time periods that courts of appropriate jurisdiction, the district attorney, and the attorney general are to adhere to in post conviction proceedings. Further provides for the right to seek a writ of mandamus to compel a court to issue a requested ruling within a specified time period.

Proposed law moves the amended provisions of present law (C.Cr.P. Arts. 925, 926, 926.2, 927, 930, 930.2, 930.4, 930.5, 930.6, and 930.8) and enacts the provisions of proposed law relative to abandonment of application and right of mandamus in post conviction proceedings within the Code of Civil Procedure rather than the Code of Criminal Procedure.

Present law (R.S. 15:578) provides for the enrollment of counsel by the office of the state public defender to represent a defendant on direct appeal and in any state post conviction proceedings in a capital case in which the jury imposed the death penalty.

Proposed law amends present law to provide that the court shall, within 30 days of the imposition of the sentence of death, order the office of the state public defender to have enrolled at least one attorney for direct appeal and at least one separate attorney for state post conviction proceedings.

Proposed law directs the La. State Law Institute to change and redesignate any cross-references to repealed law (Title XXXI-A of the Code of Criminal Procedure and the Articles contained therein), consistent with the provisions of proposed law.

(Amends C.Cr.P. Art. 882(A) and R.S. 15:178; Adds C.C.P. Arts. 3832-3853; Repeals C.Cr.P. Arts. 924-930.10)