

2020 Regular Session

SENATE BILL NO. 360

BY SENATOR CONNICK

CRIMINAL JUSTICE. Provides a non-DNA-based factually innocent standard for seeking post conviction relief. (8/1/20)

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 927, 930.3, 930.4, and 930.8,
3 and to enact Code of Criminal Procedure Articles 926.2, 926.3, and 930.10, to
4 provide relative to post conviction relief; to provide for a factual innocence,
5 non-DNA-based claim for post conviction relief; to provide relative to the standard,
6 the procedure, and the grounds for granting a claim; and to provide for related
7 matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Articles 927, 930.3, 930.4, and 930.8 are
10 hereby amended and reenacted and Code of Criminal Procedure Articles 926.2, 926.3, and
11 930.10 are hereby enacted to read as follows:

12 **Art. 926.2. Factual innocence**

13 **A. A petitioner may seek post conviction relief on the grounds that he is**
14 **factually innocent of the crime for which he was convicted. A petitioner's first**
15 **claim of factual innocence pursuant to this Article that would otherwise be**
16 **barred from review on the merits by the time limitation provided in Article**
17 **930.8(A) or the procedural objections provided in Article 930.4 shall not be**

1 barred if the claim is contained in an application for post conviction relief filed
2 on or before December 31, 2021. This exception to Articles 930.8(A) and 930.4
3 shall only apply to the claim of factual innocence brought under this Article and
4 shall not apply to any other claims raised by the petitioner. After
5 December 31, 2021, applications for post conviction relief filed pursuant to this
6 Article shall be subject to Articles 930.8(A) and 930.4.

7 B. To prove factual innocence under this Article, a petitioner must
8 present new, reliable, material, noncumulative, 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 of the
11 relevant evidence, proves by clear and convincing evidence that had the new
12 evidence been presented at trial no rational jury would have found the
13 petitioner guilty beyond a reasonable doubt of either the offense of conviction
14 or of any responsive offense. Recantations of trial witnesses shall not be
15 sufficient to meet this burden.

16 C. The court may deny post conviction relief under this Article without
17 an answer by the state or by summary disposition, but shall not grant post
18 conviction relief under this Article without an answer by the state and first
19 affording the state and the petitioner an evidentiary hearing, which the state
20 may affirmatively waive in writing. The denial of a claim of factual innocence
21 made under this Article shall thereafter serve as a bar to further applications
22 for post conviction relief in accordance with Articles 930.8(A) or 930.4.

23 D. Notwithstanding any provision of law to the contrary, the provisions
24 of Article 930.8(B) shall apply to any application for post conviction relief
25 brought under this Article.

26 E. A grant of post conviction relief under this Article shall in no way
27 prevent the petitioner from being retried for the offense of conviction, for a
28 lesser offense based on the same facts, or for any other offense.

29 Art. 926.3. Motion for testing of evidence

Proposed law retains present law and creates an additional claim for post conviction relief for non-DNA-based factual innocence.

Proposed law provides that a petitioner's first claim of non-DNA-based factual innocence that would otherwise be barred from review on the merits by present law time limitations or procedural objections for repetitive applications shall not be barred if the claim is filed on or before December 31, 2021. Provides that the exception to present law shall only apply to the claim of factual innocence brought under proposed law and shall not apply to any other claims raised by the petitioner. Provides that after December 31, 2021, applications for post conviction relief filed under proposed law shall be subject to present law time limitations and procedural objections.

Proposed law requires a petitioner to present new, reliable, material, noncumulative, and exculpatory scientific, physical, or nontestimonial documentary evidence that was not known or discoverable at or prior to trial and that, when viewed in light of all of the relevant evidence, proves by clear and convincing evidence that had the new evidence been presented at trial no rational jury would have found the petitioner guilty beyond a reasonable doubt of either the offense of conviction or of any responsive offense. Provides that recantations of trial witnesses shall not be sufficient to meet the petitioner's burden of proof.

Proposed law authorizes a court to deny the claim for post conviction relief without an answer by the state or by summary disposition, but prohibits the court from granting the claim without an answer by the state and first affording the state and the petitioner an evidentiary hearing, which the state may affirmatively waive in writing. Provides that a denial of the claim shall thereafter serve as a bar to further applications for post conviction relief in accordance with present law regarding time limitations and procedural objections for repetitive applications.

Proposed law provides that in accordance with present law the court shall dismiss an application if the state can show it was materially prejudiced in its ability to respond to, negate, or rebut the allegations of the petition caused by events not under the control of the state which have transpired since the date of original conviction.

Proposed law provides that a grant of post conviction relief under proposed law shall in no way prevent the petitioner from being retried for the offense of conviction, for a lesser offense based on the same facts, or for any other offense.

Proposed law provides that upon motion of the state or upon joint motion of the state and the petitioner, the district court may order the testing or examination of any evidence relevant to the offense of conviction in the custody and control of the clerk of court, the state, or the investigating law enforcement agency.

Present law provides that if an application alleges a claim which, if established, would entitle the petitioner to relief, the court shall order the custodian, through the district attorney in the parish in which the defendant was convicted, to file any procedural objections he may have, or an answer on the merits if there are no procedural objections, within a specified period not in excess of 30 days.

Proposed law retains present law but provides an exception for a response to a petitioner's claim under proposed law to allow the district attorney 120 days to file any procedural objections or answer on the merits.

Present law regarding procedural objections to post conviction relief applications, provides:

- (1) Unless required in the interest of justice, any claim for relief that was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence shall not be considered.

- (2) If the application alleges a claim of which the petitioner had knowledge and inexcusably failed to raise in the proceedings leading to conviction, the court shall deny relief.
- (3) If the application alleges a claim which the petitioner raised in the trial court and inexcusably failed to pursue on appeal, the court shall deny relief.
- (4) A successive application shall be dismissed if it fails to raise a new or different claim or if it raises a new or different claim that was inexcusably omitted from a prior application.

Present law provides that if the court considers dismissing an application for failure of the petitioner to raise the claim in the proceedings leading to conviction, failure to urge the claim on appeal, or failure to include the claim in a prior application, the court shall order the petitioner to state reasons for his failure. If the court finds that the failure was excusable, it shall consider the merits of the claim.

Proposed law retains present law and authorizes the state to affirmatively waive any procedural objections. Requires that such waiver be expressed in writing and filed by the state into the district court record.

Present law provides that 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 the judgment of conviction and sentence has become final under the provisions of present law. Present law provides certain enumerated exceptions to the two-year time limitation.

Proposed law retains present law and adds two more exceptions for a petitioner who asserts a claim based on present law DNA or proposed law non-DNA-based factual innocence.

Proposed law authorizes the state to affirmatively waive any objection to the timeliness of an application for post conviction relief provided such waiver is expressed in writing and filed by the state into the district court record.

Proposed law grants discretion to the district court, upon the joint motion of the petitioner and the district attorney, to deviate from the provisions of post conviction relief law.

Effective August 1, 2020.

(Amends C.Cr.P. Arts. 927, 930.3, 930.4 and 930.8; adds C.Cr.P. Arts. 926.2, 926.3, and 930.10)