

2021 Regular Session

HOUSE BILL NO. 123

BY REPRESENTATIVE BRYANT

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 930.5 and to enact Code of  
3 Criminal Procedure Articles 926.2, 930.3(8), 930.4(G), 930.8(A)(5), and 930.10,  
4 relative to post-conviction relief; to provide for motions; to provide for DNA testing;  
5 to establish burdens of proof; to provide for filing deadlines; to provide for  
6 safeguards against double jeopardy; to provide for waivers; to provide for plea  
7 agreements; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. Code of Criminal Procedure Article 930.5 is hereby amended and  
10 reenacted and Code of Criminal Procedure Articles 926.2, 930.3(8), 930.4(G), 930.8(A)(5),  
11 and 930.10 are enacted to read as follows:

12 Art. 926.2. Motion to test evidence

13 Upon motion of the state or the petitioner, the district court may order the  
14 testing or examination of any evidence relevant to the offense of conviction in the  
15 custody and control of the clerk of court, the state, or an investigating law  
16 enforcement agency. If the state does not expressly consent to the testing or  
17 examination, a motion made under this Article shall only be granted following a  
18 contradictory hearing at which the petitioner shall establish that good cause exists  
19 for the testing or examination.

20 \* \* \*

1 Art. 930.3. Grounds

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

4 \* \* \*

5 (8)(a) The petitioner presents reliable evidence that was not presented prior  
6 to conviction and, in light of all the evidence, proves by clear and convincing  
7 evidence that no reasonable finder of fact would convict the petitioner of the crime  
8 for which he was convicted.

9 (b) A petitioner’s first claim pursuant to this ground that would otherwise be  
10 barred from review on the merits by any procedural objection provided in Article  
11 930.4 or the time limitation provided in Article 930.8 shall not be barred if the claim  
12 is contained in an application filed on or before July 31, 2023.

13 Art. 930.4. Repetitive applications

14 \* \* \*

15 G. A successive application shall not be denied pursuant to this Article if the  
16 petitioner presents reliable evidence that was not presented prior to conviction and,  
17 in light of all the evidence, proves that it is more likely than not that no reasonable  
18 finder of fact would convict the petitioner of the crime for which he was convicted.

19 Art. 930.5. Custody pending retrial; bail

20 A. If a court grants relief under an application for post conviction relief, the  
21 court shall order that the petitioner be held in custody pending a new trial if it  
22 appears that there are legally sufficient grounds upon which to reprosecute the  
23 petitioner.

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

26 C. If a petitioner is granted relief under Article 930.3(7) or (8), the petitioner  
27 may not be retried for the same criminal offense.

28 \* \* \*

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

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

6 \* \* \*

7 (5) The petitioner presents reliable evidence that was not presented prior to  
8 conviction and, in light of all the evidence, proves that it is more likely than not that  
9 no reasonable finder of fact would convict the petitioner of the crime for which he  
10 was convicted.

11 \* \* \*

12 Art. 930.10. Waiver and departure from this title

13 A. Notwithstanding any provision of this Title to the contrary, the state may  
14 affirmatively waive any of the Article 930.4 procedural objections or the Article  
15 930.8 timeliness objection. Such waiver shall be express and in writing and filed by  
16 the state into the district court record.

17 B. Upon joint motion of the petitioner and the district attorney, the district  
18 court may deviate from the provisions of this Title.

19 C. Notwithstanding any provision of law to the contrary, the district attorney  
20 and the petitioner may, with the approval of the district court, jointly enter into any  
21 post-conviction plea agreement for the purpose of amending the petitioner's  
22 conviction, sentence, or habitual offender status. The terms of any post-conviction  
23 plea agreement under this Paragraph shall be in writing, shall be filed into the district  
24 court record, and shall be agreed to by the district attorney and the petitioner in open  
25 court.

26 D. The court shall prior to accepting the post-conviction plea agreement  
27 address the petitioner personally in open court, inform him of and determine that he  
28 understands the rights that he is waiving by entering into the post-conviction plea

1 agreement, and determine that the plea is voluntary and is not the result of force or  
2 threats or of promises apart from the post-conviction plea agreement.

3 E. This Article does not restrict the district court's discretion under Article  
4 3.

#### 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 123 Original

2021 Regular Session

Bryant

**Abstract:** Provides petitioners with additional procedures for post-conviction relief.

Proposed law allows for motions by either the state or the petitioner for testing of relevant evidence. Provides for a contradictory hearing if the state does not expressly consent to testing where the petitioner must establish the existence of good cause for testing relevant evidence.

Present law provides relief for a petitioner in custody after conviction for an offense only on any of the following grounds:

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

Proposed law retains present law and includes the petitioner's presentation of clear and convincing reliable evidence, as provided in present law (C.Cr.P. Art. 930.3), that no reasonable finder of fact would convict the petitioner of the crime for which he was convicted. Provides that a petitioner's first claim pursuant to this ground is not barred if the claim is filed in an application on or before July 31, 2023.

Present law provides for a petitioner's repetitive applications for claims of relief.

Proposed law retains present law and provides that a successive application for a claim of relief shall not be denied if the petitioner presents reliable evidence that was not presented prior to conviction and proves that it is more likely than not that no reasonable finder of fact would convict the petitioner of the crime for which he was convicted.

Present law provides for a petitioner granted post-conviction relief to be held in custody pending a new trial if it appears that there are legally sufficient grounds upon which to reprosecute the petitioner. Present law entitles the petitioner to bail on the offense.

Proposed law provides that a petitioner granted relief because of either DNA testing or presentation of clear and convincing reliable evidence, as provided in present law (C.Cr.P. Art. 930.4), that no reasonable finder of fact would convict the petitioner of the crime for which he was convicted may not be retried for the same criminal offense.

Present law provides for time limitations where 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 unless any of the following apply:

- (1) The application alleges, and is further proved by the petitioner or admitted by the state, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys.
- (2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing an unknown interpretation of constitutional law, the petitioner establishes that this interpretation is retroactively applicable to his case and the petition is filed within one year of the final ruling.
- (3) The application would already be barred, but the application is filed on or before Oct. 1, 2001, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.
- (4) The person asserting the claim has been sentenced to death.

Proposed law retains present law and adds an exception to the present law time limitations which authorize the petitioner to present reliable evidence that was not presented prior to conviction, and the petitioner proves that it is more likely than not that no reasonable finder of fact would convict the petitioner of the crime for which he was convicted.

Proposed law provides for the state's affirmative waiver of any procedural or timeliness objections. Allows for agreement between the district attorney and the petitioner to jointly enter into any post-conviction plea agreement for the purpose of amending the petitioner's conviction, sentence, or habitual offender status with the approval of the district court.

(Amends C.Cr.P. Art. 930.5; Adds C.Cr.P. Arts. 926.2, 930.3(8), 930.4(G), 930.8(A)(5), and 930.10)