
DIGEST

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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 re prosecute 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)