

2021 Regular Session

SENATE BILL NO. 109

BY SENATOR FOIL (On Recommendation of the Louisiana State Law Institute)

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

CRIMINAL PROCEDURE. Provides relative to postconviction relief. (8/1/21)

1 AN ACT
2 To amend and reenact Code of Criminal Procedure Art. 923, Title XXXI-A of the Code of
3 Criminal Procedure, comprised of Code of Criminal Procedure Arts. 924 through
4 928, and Code of Criminal Procedure Arts. 926.1 and 930.1 through 930.9, to enact
5 Code of Criminal Procedure Arts. 880.1 and 930.10 through 930.27, to repeal Code
6 of Criminal Procedure Arts. 929 and 930, and to redesignate Code of Criminal
7 Procedure Arts. 926.1 and 931 through 934, relative to postconviction relief; to
8 provide for definitions, appeals, and venue; to provide for the contents of
9 applications for postconviction relief and the time limitations and procedures
10 applicable thereto; to provide for service and burden of proof; to provide for grounds
11 for postconviction relief; to provide for the production of information; to provide for
12 the waiver of the attorney-client privilege; to provide for actions required by the
13 court and parties; to provide for requests for more definite statements and procedural
14 objections; to provide for answers and responses; to provide for summary disposition
15 and evidentiary hearings; to provide for attendance by the applicant and appointment
16 of counsel; to provide for judgments and their review; to provide for custody; to
17 provide for status conferences; to provide for DNA testing; to provide for orders to

1 retain evidence; to provide for the duties of the clerk of the appellate court; to
2 provide for redesignations; to provide for applicability; and to provide for related
3 matters.

4 Be it enacted by the Legislature of Louisiana:

5 Section 1. Title XXXI-A of the Code of Criminal Procedure, comprised of Code of
6 Criminal Procedure Art. 924 through 928, is hereby amended and reenacted to read as
7 follows:

8 TITLE XXXI-A. ~~POST-CONVICTION~~ **POSTCONVICTION** RELIEF

9 **IN NONCAPITAL CASES**

10 **Art. 924. Scope of applicability**

11 **The provisions of this Title shall apply prospectively to applications for**
12 **noncapital postconviction relief that are filed on or after August 1, 2021. The**
13 **provisions of this Title shall not apply to capital cases.**

14 Comments - 2021

15 Prior to the 2021 revision, Title XXXI-A of the Code of Criminal Procedure
16 applied to postconviction relief in both capital and noncapital cases. As of the
17 effective date of the revision, Title XXXI-A applies only to postconviction relief in
18 noncapital cases, and Title XXXI-B applies to postconviction relief in capital cases.

19 Art. ~~924~~ **924.1**. Definitions

20 As used in this Title:

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

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

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

31 (4) **"Due diligence" means that the applicant has made reasonable efforts**

1 after conviction to discover in a timely manner any postconviction claims and
2 the facts and evidence upon which those claims may be based. An inquiry by the
3 court as to whether an applicant has exercised due diligence shall consider all
4 factors, including the circumstances of the applicant, the educational
5 background of the applicant, the applicant's access to counsel, the financial
6 resources of the applicant, the age of the applicant, and the mental abilities of
7 the applicant. The court shall also consider any information properly sought or
8 received from the state.

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

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

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

18 ~~(4)~~ **(8)** "Unknown sample" means a biological sample from an unknown
19 donor constituting evidence of the commission of an offense or tending to prove the
20 identity of the perpetrator of an offense.

21 Comments - 2021

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

26
27 (b) Inmates who are "imprisoned" as provided in Subparagraph (5) of this
28 Article are a subset of people who are in custody as defined in Subparagraph (2) of
29 this Article.

30
31 (c) "Particularized need" as provided in Subparagraph (6) of this Article was
32 defined by the Louisiana Supreme Court in State ex rel. Bernard v. Cr.D.C., 653 So.
33 2d 1174. (La. 1995).

34
35 (d) As used in this Title, and in accordance with Article 5 of this Code, the
36 word "shall" means mandatory.

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

3
4 Art. ~~924.1~~ **924.2**. Effect of appeal

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

8 Art. 925. Venue

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

11 Art. 926. ~~Petition~~ **Time limitations; exceptions; prejudicial delay**

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

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

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

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

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

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

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

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

30 D. ~~The petitioner shall use the uniform application for post conviction relief~~
31 ~~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 **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**
8 **922, shall be considered unless any of the following apply:**

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

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

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

27 **(2) The application contains a claim based upon a final ruling of an**
28 **appellate court establishing a new interpretation of constitutional law, the**
29 **applicant establishes that the interpretation is retroactively applicable to his**

1 case, and the application is filed within one year of the finality of such ruling.

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

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

18 Comments - 2021

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

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

32
33 (c) Depending upon the circumstances, a claim raised pursuant to the United
34 States Supreme Court's decision in Brady v. Maryland, 373 U.S. 83 (1963), may fall
35 within an exception to the two-year time limitation period.

36
37 (d) The last sentence of Paragraph B of this Article, which was previously
38 Article 930.8, is intended to clarify when the state may raise this defense to relief.
39 Paragraph B otherwise retains existing law.

40

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 **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**
19 **or 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**
24 **as to why the applicant is unable to provide a copy of the judgment of conviction**
25 **and 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**
28 **filed on the first uniform application for postconviction relief form, and any**
29 **additional applications shall be filed on the second or subsequent uniform**

1 application for postconviction relief form.

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

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

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

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

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

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

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

Comments - 2021

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).

Art. 927.1. Service

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.

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.

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.

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.

Art. 927.2. Burden of proof

The applicant, in an application for postconviction relief, shall have the

1 burden of proving that relief should be granted.

2 Art. 927.3. Grounds

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

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

7 (2) The statute creating the offense for which the applicant was convicted
8 violates the Constitution of the United States of America or the Constitution of
9 Louisiana.

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

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

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

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

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

26 (c) An applicant's first claim of factual innocence pursuant to this
27 Subparagraph that would otherwise be barred from review on the merits by the
28 time limitation provided in Article 926 or the procedural objections provided
29 in Article 927.8 shall not be barred if the claim is contained in an application

1 **filed on or before December 31, 2022.**

2 **(d) An unsupported allegation of factual innocence made in a new**
 3 **application filed in accordance with this Subparagraph may be denied by the**
 4 **district court without the necessity of an answer or hearing and shall thereafter**
 5 **serve as a bar to further applications for postconviction relief in accordance**
 6 **with Article 927.8.**

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

12 Comments - 2021

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

24 (b) The fourth ground for relief is intended to codify *State v. Counterman*,
 25 475 So. 2d 336 (La. 1985) and its progeny.

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

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

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

43 **Art. 927.4. Production of information**

44 **A. In addition to receiving the appellate record as provided in Article**

1 923, upon conviction of a felony, a person is entitled to receive one free copy of
2 the following: the indictment, the district court minutes of the trial or guilty
3 plea, a transcript of the guilty plea, if applicable, the minutes of sentencing, and
4 the commitment papers for the proceeding that forms the basis for which an
5 application for postconviction relief may be filed.

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

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

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

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

29 (b) The documents cannot be obtained from prior counsel pursuant to

1 Paragraph C of this Article.

2 (2) A motion for production of documents filed in accordance with this
3 Paragraph shall allege a particularized need for the documents and identify the
4 documents sought with reasonable particularity. The court shall not order
5 production of the documents without first providing the custodian of the file
6 subject to the motion an opportunity to respond. If the motion for production
7 of documents is granted and the applicant is indigent, the documents shall be
8 provided free of cost to the applicant.

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

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

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

1 **G. Nothing in this Article is intended to alter the applicant's right to**
 2 **request information, which will not be free of cost, pursuant to the requirements**
 3 **of the Public Records Law.**

4 Comments - 2021

5 (a) Consistent with prior jurisprudence, Paragraph A of this Article
 6 establishes that inmates are entitled to receive certain court documents free of cost
 7 and without demonstrating particularized need. See State ex rel. Simmons v. State,
 8 647 So. 2d 1094 (La. 1994).

9 (b) "Particularized need" as used in Paragraph B of this Article is defined in
 10 Article 924.1 as "specific claims of constitutional errors that require the requested
 11 documentation for support and have been set out by an applicant in a properly filed
 12 application for postconviction relief."
 13 14

15 (c) Paragraph D of this Article, in combination with the definition of
 16 particularized need, requires an inmate to have a properly filed application for
 17 postconviction relief pending that requires documentation for its support before he
 18 may seek cost-free copies. See Landis v. Moreau, 779 So. 2d 691, 695 (La. 2001)
 19 (stating that this rule exists in order to prevent the state from having to "underwrite
 20 an inmate's efforts to overturn his conviction and sentence by providing him
 21 generally with documents to comb the record for error"). Additionally, a district
 22 court may decline to order production of documents in cases in which the only
 23 claims the documents could support are not cognizable on collateral review under the
 24 grounds of Article 927.3 or where the time limitations of Article 926 has expired and
 25 the application would not satisfy any exception to the time limitations. See State ex
 26 rel. Degreat v. State, 724 So. 2d 205 (La. 1998); see also State ex rel. Fleury v. State,
 27 661 So. 2d 488 (La. 1995).
 28 29

Art. 927.5. Privilege waiver

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

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

35 **A. Within sixty days after the date of the filing of an application for**
 36 **postconviction relief, the district court shall do one of the following for each**
 37 **claim alleged in the application:**

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

40 **(a) The claim, if established, would not entitle the applicant to relief, or**
 41 **fails to state a ground upon which relief can be granted pursuant to Article**

1 constitutional right to be present at trial, yet the record revealed that the applicant
2 was present every day of the trial. In contrast, a dismissal pursuant to this provision
3 may not be proper if the applicant asserts a claim for ineffective assistance of
4 counsel, because the effectiveness of counsel generally may not be determined from
5 the record without further factual development.
6

7 **Art. 927.7. Request for a more definite statement by the state**

8 **A. If the state files a request for a more definite statement as to any claim**
9 **for relief, the district court may order the applicant to respond with a more**
10 **definite statement within sixty days after the date of the order. The court may**
11 **grant an extension of time for good cause shown. If a more definite statement**
12 **is ordered by the court and not received, upon motion of the state, the claim**
13 **shall be dismissed by order of the court.**

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

19 **Art. 927.8. Procedural objections**

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

25 **B. Procedural objections are those provided by legislation or**
26 **jurisprudence, including the following:**

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

31 **(2) The application alleges a claim about which the applicant had**
32 **knowledge and inexcusably failed to raise in the proceedings leading to the**

1 conviction, in which event the claim shall be dismissed.

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

5 (4) The application contains a claim that is untimely pursuant to Article
6 926, in which event the claim shall be dismissed.

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

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

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

16 Art. 927.9. Disposition of procedural objections

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

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

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

1 postconviction relief is not dismissed upon procedural objections, the court shall
 2 order the state to file an answer on the merits of each claim that was not
 3 dismissed. The state shall file its answer within sixty days after the date of the
 4 order. The court may grant an extension of time for good cause shown.

5 B. Any responses to the state's answer shall be filed by the applicant
 6 within forty-five days after the date on which the answer was filed. The court
 7 may grant an extension of time for good cause shown. The applicant's response
 8 shall be strictly confined to rebuttal of the points raised in the state's answer.

9 Art. 927.11. Summary disposition

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

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

22 Comments - 2021

23
 24 (a) This Article continues to recognize that an evidentiary hearing is not
 25 required in all cases. Rather, in some cases the record will clearly sustain or refute
 26 the applicant's allegations, the contested factual matter may not be material to the
 27 outcome, or the expansion of the record without an evidentiary hearing will provide
 28 a sufficient basis for disposition of the claims raised in the application for
 29 postconviction relief.
 30

31 (b) Under Paragraph A of this Article, the court may grant an extension of
 32 time if the applicant shows good cause for failing to respond to the state's answer
 33 within the time period provided in Article 927.10. If the court grants such an
 34 extension and the applicant files a response within this additional time period, the
 35 court shall grant or deny relief as quickly thereafter as possible.
 36

37 Art. 927.12. Evidentiary hearing; factual development

1 would entitle him to relief, the court may appoint counsel.

2 B. The court shall appoint counsel for an indigent applicant when it
3 orders an evidentiary hearing on the merits of a claim or authorizes the taking
4 of depositions or requests for admissions of fact or genuineness of documents
5 for use as evidence in ruling upon the merits of the claim.

6 Art. 927.15. Rendition of judgment

7 A. The district court shall render judgment within sixty days after
8 submission of the case on the merits. A copy of the judgment granting or
9 denying relief shall be supported by written or oral reasons setting forth the
10 grounds on which the judgment is based. A copy of the judgment and the
11 written or transcribed reasons shall be furnished to the applicant, his attorney,
12 the state, and the custodian.

13 B. If the court determines pursuant to Article 927.11 or 927.12 that the
14 application for postconviction relief has merit, the court may order a new trial
15 or order a guilty plea to be withdrawn. In the event that the applicant is entitled
16 to an out-of-time appeal under the grounds set forth in Article 927.3(4), the
17 court shall order that the applicant have the right to appeal the conviction.

18 Art. 927.16. Custody pending retrial

19 Upon granting relief under an application for postconviction relief
20 vacating the conviction, the court shall order that the applicant be held in
21 custody pending a new trial if the court finds that there are legally sufficient
22 grounds upon which to re prosecute the applicant. In such a case, the applicant
23 shall be entitled to bail on the offense as though he has not been convicted of the
24 offense.

25 Art. 927.17. Departure from this Title

26 Upon joint motion of the applicant and the state, the district court may
27 deviate from the provisions of this Title.

28 Comments - 2021

29 Nothing in this Article authorizes the district court to deviate from the
30 provisions of this Title except upon joint motion of the parties. If the district court

1 deviates from these provisions without the consent of both the applicant and the
2 state, either party may file a motion with the district court to remedy the deviation
3 or seek a writ of mandamus to a court with supervisory jurisdiction.
4

5 Art. 928. ~~Dismissal upon the pleadings~~ **Review of district court judgments**

6 ~~The application may be dismissed without an answer if the application fails~~
7 ~~to allege a claim which, if established, would entitle the petitioner to relief.~~

8 **A. The applicant may invoke the supervisory jurisdiction of the appellate**
9 **court if the district court dismisses the application or otherwise denies relief on**
10 **an application for postconviction relief. No appeal lies from a judgment**
11 **dismissing an application or otherwise denying relief.**

12 **B. If a judgment granting relief declares a statute or ordinance**
13 **unconstitutional, the state may appeal to the supreme court. If relief is granted**
14 **on any other ground, the state may invoke the supervisory jurisdiction of the**
15 **appellate court.**

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

18 Section 2. Code of Criminal Procedure Art. 930.1 through 930.9 are hereby amended
19 and reenacted, and Code of Criminal Procedure Art. 930.10 through 930.27 are hereby
20 enacted, to read as follows:

21 **TITLE XXXI-B. POSTCONVICTION RELIEF IN CAPITAL CASES**

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

23 **Scope of applicability**

24 ~~A copy of the judgment granting or denying relief and written or transcribed~~
25 ~~reasons for the judgment shall be furnished to the petitioner, the district attorney, and~~
26 ~~the custodian. **The provisions of this Title shall apply to all capital cases that**~~
27 ~~**become final under Article 930.2 on or after August 1, 2021. In capital cases that**~~
28 ~~**become final prior to August 1, 2021, applications for capital postconviction**~~
29 ~~**relief shall be governed by Title XXXI-A as it existed prior to August 1, 2021.**~~

30 Comments - 2021

31 Prior to the 2021 revision, Title XXXI-A of the Code of Criminal Procedure
32 applied to postconviction relief in both capital and noncapital cases. As of the

1 effective date of the revision, Title XXXI-A applies only to postconviction relief in
2 noncapital cases, and Title XXXI-B applies to postconviction relief in capital cases.

3
4 Art. 930.2. ~~Burden of proof~~ **Commencement of proceedings on capital**
5 **postconviction relief**

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

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

19 Art. 930.3. ~~Grounds~~ **Definitions**

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

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

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

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

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

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

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

31 ~~(7) The results of DNA testing performed pursuant to an application granted~~

1 under Article 926.1 proves by clear and convincing evidence that the petitioner is
2 factually innocent of the crime for which he was convicted.

3 As used in this Title:

4 (1) "Application for capital postconviction relief" means a pleading that
5 complies with Article 930.10 filed by a person in custody under sentence of
6 death seeking to have the capital criminal conviction and sentence set aside.

7 (2) "DNA testing" means any method of testing and comparing
8 deoxyribonucleic acid that would be admissible under the Code of Evidence.

9 (3) "Due diligence" means that the applicant and counsel have made
10 reasonable efforts after conviction to discover in a timely manner any
11 postconviction claims and the facts and evidence upon which those claims may
12 be based. An inquiry by the court as to whether an applicant and counsel have
13 exercised due diligence shall consider all factors, including the circumstances
14 of the applicant and counsel, the educational background of the applicant, the
15 applicant's access to counsel, the financial resources of the applicant, the
16 financial resources provided to counsel, the age of the applicant, and the mental
17 abilities of the applicant. The court shall also consider any information properly
18 sought or received from the state.

19 (4) "Imprisoned" means involuntarily detained or confined in an
20 institution without freedom to leave pursuant to a conviction for the commission
21 of a criminal offense.

22 (5) "Procedural objection" means an assertion by the state of a
23 procedural bar, which, if granted, would preclude the court from considering
24 a claim in an application for capital postconviction relief.

25 (6) "Unknown sample" means a biological sample from an unknown
26 donor constituting evidence of the commission of an offense or tending to prove
27 the identity of the perpetrator of an offense.

28 Comments - 2021

29 (a) The interests of the state in capital postconviction proceedings may be
30 represented by the district attorney, the attorney general, or both. "The state" means

1 either the district attorney or the attorney general and is applicable to whoever is
2 currently representing the interests of the state in the proceedings.

3 (b) As used in this Title, and in accordance with Article 5 of this Code, the
4 word "shall" means mandatory.

5
6 (c) Nothing in this Title precludes a court from raising a procedural bar on
7 its own motion.

8
9 Art. 930.4. ~~Repetitive applications~~ **Preliminary and comprehensive applications**
10 **for capital postconviction relief**

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

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

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

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

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

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

28 **A preliminary application for capital postconviction relief is an original**
29 **application for capital postconviction relief that complies with Article 930.10**
30 **and states the general grounds upon which relief is sought. The preliminary**
31 **application need not specify the factual basis for such relief.**

32 **B. A comprehensive application for capital postconviction relief is a**
33 **substantive application for capital postconviction relief that sets forth the**

1 factual basis for each claim, the legal grounds for each claim, and the specific
2 relief sought for each claim.

3 Art. 930.5. Custody pending retrial; bail **Effect of appeal**

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

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

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

13 Art. 930.6. Review of trial court judgments **Appointment of counsel**

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

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

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

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

1 entity routinely employed by the Louisiana Public Defender Board to provide
 2 representation for applicants in capital postconviction matters, this order shall
 3 also be served on that entity.

4 Comments - 2021

5 When the applicant's conviction and sentence become final, the clerk of court
 6 must file the decree of the Louisiana Supreme Court and the order of the United
 7 States Supreme Court denying relief into the record of the district court.
 8

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

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

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

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

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

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

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

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

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

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

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

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

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

1 conviction, if the court finds, after a hearing limited to that issue, that the state's
2 ability to respond to, negate, or rebut such allegations has been materially prejudiced
3 thereby.

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

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

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

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

23 Art. 930.9. Attendance by the petitioner Venue

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

27 **Applications for capital postconviction relief shall be filed in the district**
28 **court of the parish in which the applicant was indicted.**

29 **Art. 930.10. Time for filing preliminary application; form of application**

1 **A. A preliminary application for capital postconviction relief shall be by**
 2 **written application filed within one hundred eighty days after the applicant's**
 3 **conviction and death sentence becoming final under Article 930.2.**

4 **B. The preliminary application shall allege:**

5 **(1) The name of the applicant.**

6 **(2) The place where the applicant is in custody at the time of filing.**

7 **(3) The name of the custodian of the applicant.**

8 **(4) In accordance with Article 930.4(A), the general grounds upon which**
 9 **relief is sought, but the preliminary application need not specify the factual**
 10 **basis for such relief.**

11 **C. The preliminary application shall include a statement signed by the**
 12 **applicant or counsel certifying that the contents of the application are true to**
 13 **the best of the signatory's information and belief.**

14 **D. Upon the filing of a preliminary application for capital postconviction**
 15 **relief, the clerk of court shall provide a copy of the application to the district**
 16 **judge and serve the state by mail or electronic means.**

17 Comments - 2021

18 (a) The filing of a preliminary application for capital **postconviction** relief
 19 in accordance with this Article is intended to preserve an applicant's rights in federal
 20 habeas corpus proceedings. The preliminary application constitutes a "properly filed
 21 application for State post-conviction or other collateral review" for the purposes of
 22 28 U.S.C. 2244(d)(2) and tolls the applicant's one-year period of limitation for filing
 23 an application for writ of habeas corpus in federal court under 28 U.S.C. 2244(d)
 24 from the time it is filed through the litigation of a comprehensive application for
 25 capital **postconviction** relief in both the district court and the Louisiana Supreme
 26 Court.

27
 28 (b) Although Paragraph D requires the clerk of court to provide the district
 29 judge with a copy of the preliminary application for capital **postconviction** relief, no
 30 action is required to be taken by the district court with respect to the preliminary
 31 application other than the issuance of an order setting a status conference in
 32 accordance with Article 930.8.

33
 34 **Art. 930.11. Time limitations for comprehensive application; exceptions;**
 35 **prejudicial delay**

36 **A. A comprehensive application for capital postconviction relief shall be**
 37 **considered timely if it is filed within four years after the judgment of conviction**

1 and sentence have become final under the provisions of Article 930.2.

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

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

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

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

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

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

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

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

29 (2) The application contains a claim based upon a final ruling of an

1 appellate court establishing a new interpretation of constitutional law, the
2 applicant establishes that the interpretation is retroactively applicable to his
3 case, and the application is filed within one year of the finality of such ruling.

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

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

18 Art. 930.12. Service

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

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

26 Art. 930.13. Burden of proof

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

29 Art. 930.14. Grounds

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

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

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

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

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

12 (5)(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
21 corroborating evidence required by Subsubparagraph (a) of this Subparagraph
22 shall not be sufficient to overcome the presumption of a valid conviction.

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

28 (d) An applicant who is determined to be factually innocent may not be
29 tried again for the same crime for which the applicant was convicted or for any

1 felony offense that was a responsive verdict at the time of the conviction. A new
 2 prosecution for any other offense may be instituted within the time established
 3 by Article 576.

4 (6)(a) The applicant proves by clear and convincing evidence of the
 5 nature described in Subsubparagraph (5)(a) of this Article that he is factually
 6 innocent of all of the applicable elements within R.S. 14:30 other than both of
 7 the following:

8 (i) That the applicant committed the killing of a human being.

9 (ii) That the applicant had specific intent to kill or to inflict great bodily
 10 harm.

11 (b) If postconviction relief is granted under this Subparagraph, the relief
 12 is that the offender shall be punished by life imprisonment without benefit of
 13 parole, probation, or suspension of sentence.

14 Comments - 2021

15 The reference to Article 576 in Subsubparagraph (5)(d) is intended to refer
 16 only to the time limitations provided by that Article.

17 Art. 930.15. Production of information

18 A. After the conviction of a capital crime and the imposition of a
 19 sentence of death have become final, a person is entitled to receive one copy free
 20 of cost of all records within the file of the prosecution team that have not been
 21 previously produced and would constitute public records under Public Records
 22 Law. Any records produced pursuant to this Paragraph may be produced
 23 electronically.

24 B. If the applicant seeks documents that can be found through
 25 information contained in prior counsel's file, the applicant shall request the file
 26 from prior counsel. Upon a showing by the applicant that prior counsel's file
 27 was not received within sixty days after the applicant's request, the applicant
 28 may file an ex parte motion for production of prior counsel's file with the
 29 district court. If the court finds that the applicant has requested the file from
 30 prior counsel, and prior counsel has not provided a copy to the applicant, the
 31 applicant shall be deemed to have requested the file from the district court.

1 court shall order prior counsel to provide the file or a copy of the file free of cost
2 to the applicant within thirty days after the date of the order. A copy of the
3 order shall be furnished to the applicant, his counsel, and the state.

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

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

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

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

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

1 the motion for the subpoena; otherwise, the opposing party shall be allowed to
2 participate in the hearing as to whether the subpoena should be issued.

3 (4)(a) "Good cause" for the issuance of an ex parte subpoena duces
4 tecum shall be met, and the proceedings shall be conducted ex parte, in either
5 of the following cases:

6 (i) Where the requesting party submits a legally valid release of
7 information signed by the relevant individual and satisfies all legal
8 requirements for production of that information or the requesting party is
9 otherwise entitled to the requested information without court order.

10 (ii) Where the requesting party is the applicant and the subpoena
11 requires the production of the applicant's confidential, personal, private, or
12 privileged information.

13 (5) When an ex parte subpoena is issued, the court shall order that the
14 requested information be produced directly to the requesting party. The ex
15 parte motion, order, and subpoena duces tecum shall be filed under seal.

16 D. Nothing in this Article is intended to alter the applicant's right to
17 request information, which will not be free of cost, pursuant to the requirements
18 of the Public Records Law.

19 E. For good cause, oral depositions of witnesses may be taken under
20 conditions specified by the court. The court may authorize requests for
21 admissions of fact and genuineness of documents. In such matters, the court
22 shall be guided by the Code of Civil Procedure. The determination of good
23 cause may be based upon an ex parte showing.

24 Comments - 2021

25 (a) The term "prosecution team" as used in Paragraph A of this Article refers
26 to the investigative and prosecutorial personnel who have acted on the government's
27 behalf in the case. See State v. Louviere, 833 So. 2d 885, 896-97 (La. 2002).

28
29 (b) The "general description of the requested information" required by
30 Subsubparagraph (C)(3)(a) of this Article is intended to provide the state with
31 sufficient information to determine whether to object to the issuance of an ex parte
32 subpoena. The general description will not necessarily require disclosure of the
33 recipient of the subpoena.
34

1 (c) Paragraph E of this Article gives the district court flexibility to authorize
2 the use of familiar civil discovery procedures to complete the record. The
3 determination of "good cause" to employ such devices rests largely with the district
4 court and may be based upon an ex parte showing.
5

6 **Art. 930.16. Privilege waiver**

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

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

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

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

17 **(a) The claim, if established, would not entitle the applicant to relief, or**
18 **fails to state a ground upon which relief can be granted pursuant to Article**
19 **930.14.**

20 **(b) An examination of the application and record clearly refutes any**
21 **factual basis for the claim.**

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

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

30 **Art. 930.18. Procedural objections**

31 **A. If it is required to respond to a claim in an application for capital**
32 **postconviction relief, the state may file any procedural objection alleging that**

1 a procedural bar precludes the court from considering the merits of that claim.

2 Any procedural objection shall set forth the factual basis for the objection and
3 shall be filed at any time prior to the answer or with the answer.

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

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

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

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

16 (4) The application contains a claim that is untimely pursuant to Article
17 930.11, in which event the claim shall be dismissed.

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

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

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

26 Art. 930.19. Disposition of procedural objections

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

1 from considering the merits of that claim.

2 B. The court shall dispose of the procedural objections no sooner than
3 ninety-five days nor longer than one hundred twenty days after the date on
4 which the procedural objections were filed, or if an extension of time is granted
5 for the applicant to respond to the procedural objections, no sooner than five
6 days nor longer than thirty days after the date on which the applicant's
7 response is filed. Procedural objections shall be disposed of in the following
8 manner:

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

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

15 (3) If the court cannot dispose of the procedural objections or the
16 application in accordance with Subparagraphs (1) and (2) of this Paragraph, the
17 court shall defer disposition of any procedural objections and shall issue an
18 order to both the state and the applicant scheduling further proceedings
19 pursuant to Article 930.22 for factual development of the procedural objections
20 that cannot be disposed of summarily. Within thirty days after the completion
21 of these proceedings, the court shall rule on all procedural objections together.

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

28 D. The court shall rule in writing on each procedural objection. A copy
29 of the order granting or denying a dismissal upon procedural objections shall

1 be furnished to the applicant, his counsel, the state, and the custodian pursuant
2 to Article 930.12.

3 Comments - 2021

4 Under Paragraph C of this Article, except as provided by agreement of the
5 parties or in the interest of justice, an evidentiary hearing on the merits is required
6 only after the final disposition of any and all procedural objections filed by the state
7 and a determination by the court that summary disposition under Article 930.21 is
8 not appropriate.

9
10 Art. 930.20. Answer and responses

11 A. The state shall file its answer within the time period set in Article
12 930.17(A)(2). In the event that the state elected to file procedural objections and
13 there is a final order denying those objections, the state shall file an answer
14 within sixty days after the date of the order with respect to any claim for which
15 all procedural objections have been denied if it has not already done so. The
16 court may grant an extension of time for good cause shown.

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

20 Art. 930.21. Summary disposition

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

31 B. If the court grants or denies relief as to an individual claim pursuant
32 to this Article, the court's ruling shall include a ruling on all matters that the

1 court determines can be disposed of summarily. A copy of the order granting
 2 or denying relief shall be furnished to the applicant, his counsel, the state, and
 3 the custodian pursuant to Article 930.12.

4 Comments - 2021

5
 6 (a) This Article continues to recognize that an evidentiary hearing is not
 7 required in all cases. Rather, in some cases the record will clearly sustain or refute
 8 the applicant's allegations, the contested factual matter may not be material to the
 9 outcome, or the expansion of the record without an evidentiary hearing will provide
 10 a sufficient basis for disposition of the claims raised in the application for capital
 11 **postconviction** relief.

12
 13 (b) If the court cannot determine the factual issues pursuant to summary
 14 disposition, an evidentiary hearing shall be held in accordance with Article 930.22.

15
 16 **Art. 930.22. Evidentiary hearing; factual development**

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

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

27 **C. The rules provided in the Code of Evidence shall not strictly apply to**
 28 **proceedings conducted under this Title, but the district court may consider**
 29 **those rules in determining the applicability of testimonial privileges and in**
 30 **assessing the reliability of evidence.**

31 Comments - 2021

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

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

36
 37
 38 **Art. 930.23. Attendance by the applicant**

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

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

6 Art. 930.24. Rendition of judgment

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

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

19 Art. 930.25. Custody pending retrial

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

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

28 C. Upon granting relief on an application for capital postconviction relief
29 and reversing the underlying sentence, the court shall order that the applicant

1 be held in custody pending the state's appeal or application for supervisory
 2 writs. After the court's ruling becomes final, the court shall order that the
 3 applicant be held in custody pending a new penalty phase proceeding.

4 Art. 930.26. Departure from this Title

5 Upon joint motion of the applicant and the state, the district court shall
 6 deviate from the provisions of this Title.

7 Comments - 2021

8 Nothing in this Article authorizes the district court to deviate from the
 9 provisions of this Title except upon joint motion of the parties. If the district court
 10 deviates from these provisions without the consent of both the applicant and the
 11 state, either party may file a motion with the district court to remedy the deviation
 12 or seek a writ of mandamus to a court with supervisory jurisdiction.
 13

14 Art. 930.27. Review of district court judgments

15 A. The applicant may invoke the supervisory jurisdiction of the supreme
 16 court if the district court dismisses the application or otherwise denies relief on
 17 an application for capital postconviction relief. No appeal lies from a judgment
 18 dismissing an application or otherwise denying relief.

19 B. If a judgment granting relief declares a statute or ordinance
 20 unconstitutional, the state may appeal to the supreme court. If relief is granted
 21 on any other ground, the state may invoke the supervisory jurisdiction of the
 22 supreme court.

23 C. Pending the state's application for writs, or the state's appeal, the
 24 district court or the supreme court may stay the judgment granting relief.

25 Section 3. Code of Criminal Procedure Art. 926.1 is hereby amended and reenacted
 26 to read as follows:

27 Art. 926.1. Application for DNA testing

28 A.(1) Prior to August 31, 2024, a person convicted of a felony may file an
 29 application under the provisions of this Article for ~~post-conviction~~ **postconviction**
 30 relief requesting DNA testing of an unknown sample secured in relation to the
 31 offense for which he was convicted. On or after August 31, 2024, an applicant may
 32 request DNA testing under the rules for filing an application for ~~post-conviction~~

1 **postconviction** relief as provided in Article ~~930.4 or 930.8~~ **926 or 930.11(D)** of this
2 Code.

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

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

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

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

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

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

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

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

29 (2) The application has been timely filed.

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

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

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

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

27 G. If **in accordance with Paragraph F of this Article** the court orders the
28 testing performed at a private laboratory, the ~~district attorney~~ **state** shall have the
29 right to withhold **or obtain** a sufficient portion of any unknown sample for purposes

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

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

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

25 (3) After service of the application on the ~~district attorney~~ state and the law
 26 enforcement agency in possession of the evidence, the clerks of court of each parish
 27 and all law enforcement agencies, including but not limited to ~~district attorneys~~ the
 28 state, sheriffs, the office of state police, local police agencies, and crime laboratories
 29 shall preserve until August 31, 2024, all items of evidence in their possession ~~which~~

1 that are known to contain biological material that can be subjected to DNA testing,
2 in all cases that, as of August 15, 2001, have been concluded by a verdict of guilty
3 or a plea of guilty.

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

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

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

1 civilly or criminally liable for the unavailability or deterioration of any such
2 evidence to the extent that adequate or proper testing cannot be performed on the
3 evidence.

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

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

19 K. There is hereby created in the state treasury a special fund designated as
20 the DNA Testing ~~Post-Conviction~~ **Postconviction** Relief for Indigents Fund. The
21 fund shall consist of money specially appropriated by the legislature. No other public
22 money may be used to pay for the DNA testing authorized under the provisions of
23 this Article. The fund shall be administered by the Louisiana Public Defender Board.
24 The fund shall be segregated from all other funds and shall be used exclusively for
25 the purposes established under the provisions of this Article. If the court finds that
26 a ~~petitioner~~ **an applicant** under **this** Article ~~926.1 of this Code~~ is indigent, **and has**
27 **made a timely request for testing**, the fund shall pay for the testing as authorized
28 in the ~~court order~~ **court's orders**.

29 Comments - 2021
30

1 (a) Paragraph B of this Article requires an application filed under this Article
2 to contain the information required by Article 927 or 930.10; however, the uniform
3 application for postconviction relief form does not have to be used by the applicant
4 in requesting DNA testing pursuant this Article.
5

6 (b) As provided in Paragraph D of this Article, if the evidence to be tested has
7 been in the custody of a clerk of court or law enforcement agency since it was
8 collected, a court should presume there is no substantial question as to the chain of
9 custody of the evidence.
10

11 Section 4. Code of Criminal Procedure Art. 923 is hereby amended and reenacted,
12 and Code of Criminal Procedure Art. 880.1 is hereby enacted, to read as follows:

13 **Art. 880.1. Order to retain evidence**

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

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

21 Comments - 2021

22 A state actor that violates the provisions of this Article may subject itself to contempt
23 of court, if appropriate. See Articles 20 through 25. This statutory duty is not intended to
24 alter the test to determine whether the failure to preserve potentially useful evidence violates
25 a criminal defendant's right to due process of law. See *State v. Lindsey*, 543 So. 2d 886,
26 890-892 (La. 1989), cert. denied, 494 U.S. 1074 (1990) (approving *Arizona v. Youngblood*,
27 488 U.S. 51, 58 (1988); *California v. Trombetta*, 467 U.S. 479 (1984)); see also *State v.*
28 *Manning*, 885 So.2d 1044, 1094, n. 33 (La. 2004).
29

30 * * *

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

32 **A.** When a decision of an appellate court becomes final, the clerk of court
33 shall transmit a certified copy of the decree to the court from which the appeal was
34 taken. When the judgment is received by the lower court, it shall be filed and
35 executed.

36 **B. After the defendant's conviction and sentence becomes final pursuant**
37 **to Article 922, the clerk of the court of appeal shall send an electronic copy of**
38 **the appellate record free of cost to any defendant who is imprisoned as defined**
39 **in Article 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**
2 **the requirements of Paragraph B of this Article does not extend the time to file**
3 **an application for postconviction relief or constitute a cause of action, grounds**
4 **to vacate the conviction or sentence, or grounds to remand the case for the**
5 **purpose of resentencing. The provisions of Paragraph B may be enforced by a**
6 **writ of mandamus.**

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

18 Section 5. Code of Criminal Procedure Art. 929 and 930 are hereby repealed.

19 Section 6. The Louisiana State Law Institute is hereby directed to redesignate Code
20 of Criminal Procedure Art. 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 the
23 provisions of Code of Criminal Procedure Art. 926.1, as amended and reenacted by Section
24 3 of this Act, as Code of Criminal Procedure Art. 931.

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

The original instrument and the following digest, which constitutes no part of the legislative instrument, were prepared by Alden A. Clement Jr.

DIGEST

SB 109 Original

2021 Regular Session

Foil

Proposed law (C.Cr.P. Art. 924) provides for scope of applicability of Title XXXI-A of the Code of Criminal Procedure relative to 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)) retain 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 has 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 is to 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 must 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 do 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 are to 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 is to be held in custody pending a new trial under certain circumstances, in which case the petitioner is 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 re 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. Arts. 930.1-930.27) set 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 cannot 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) provide for definitions for purposes of the Code of Criminal Procedure.

Proposed law redesignates present law.

Effective August 1, 2021.

(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)