

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)

## AN ACT

To amend and reenact Code of Criminal Procedure Art. 923, Title XXXI-A of the Code of Criminal Procedure, comprised of Code of Criminal Procedure Arts. 924 through 928, and Code of Criminal Procedure Arts. 926.1 and 930.1 through 930.9, to enact Code of Criminal Procedure Arts. 880.1 and 930.10 through 930.27, to repeal Code of Criminal Procedure Arts. 929 and 930, and to redesignate Code of Criminal Procedure Arts. 926.1 and 931 through 934, relative to postconviction relief; to provide for definitions, appeals, and venue; to provide for the contents of applications for postconviction relief and the time limitations and procedures applicable thereto; to provide for service and burden of proof; to provide for grounds for postconviction relief; to provide for the production of information; to provide for the waiver of the attorney-client privilege; to provide for actions required by the court and parties; to provide for requests for more definite statements and procedural objections; to provide for answers and responses; to provide for summary disposition and evidentiary hearings; to provide for attendance by the applicant and appointment of counsel; to provide for judgments and their review; to provide for custody; to 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

20 **Art. 924 ~~924.1~~. Definitions**

21 As used in this Title:

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

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

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

32 **(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.

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.

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).

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

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

## Art. 924.1 **924.2**. Effect of appeal

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

## Art. 925. Venue

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

#### Art. 926. Petition Time limitations; exceptions; prejudicial delay

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

B. The petition shall allege:

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

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

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

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

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

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

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

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.

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.

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 Sub subparagraph (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).

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

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

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

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

38           **Art. 927.4. Production of information**

39           **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.

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

Comments - 2021

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

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

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

## **Art. 927.5. Privilege waiver**

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

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

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

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

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

1           **927.3.**

2           (b) An examination of the application and record clearly refutes any  
3           factual basis for the claim.

4           (2) Order the applicant to respond with a more definite statement as to  
5           any claim for relief for which the court determines a more definite statement is  
6           needed. The applicant shall respond with a more definite statement within sixty  
7           days after the date of the order. The court may grant an extension of time for  
8           good cause shown.

9           (a) If a more definite statement as to the claim is not received, the court,  
10           within sixty days after the expiration of the time period for the applicant to  
11           respond, shall dismiss the claim pursuant to Subparagraph (A)(1) of this  
12           Article.

13           (b) If a more definite statement as to the claim is received, the court,  
14           within sixty days after receipt of the applicant's response, shall either dismiss  
15           the claim pursuant to Subparagraph (A)(1) of this Article or proceed in  
16           accordance with Subparagraph (A)(3) of this Article.

17           (3) Order the state to respond, if the court does not grant a dismissal  
18           upon the pleadings pursuant to Subparagraph (1) or (2) of this Paragraph,  
19           within sixty days after the date of the order, by filing a request for a more  
20           definite statement under Article 927.7, a procedural objection under Article  
21           927.8, or an answer on the merits of the claims for relief under Article 927.10.  
22           The court may grant an extension of time for good cause shown.

23           **B. A copy of any order shall be furnished to the applicant, his attorney,**  
24           **the state, and the custodian.**

25           Comments - 2021

26           Subsubparagraph (A)(1)(b) of this Article provides the district court with the  
27           ability to dismiss a claim in an application for postconviction relief when it is clear  
28           from the face of the application and record that there is no factual basis for the claim.  
29           If, however, further development or expansion of the record is necessary to assess  
30           the claim, dismissal upon the pleadings under this provision would be improper.

31           For example, a dismissal would be proper under Subsubparagraph (A)(1)(b)  
32           if the applicant alleged that his conviction was obtained in violation of his

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

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

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

18      **Art. 927.8. Procedural objections**

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

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

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

30      **(2) The application alleges a claim about which the applicant had**  
31      **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                   (2) If the court can dispose of one or more procedural objections  
2                   summarily, and the ruling would result in the dismissal of either the application  
3                   or all of the claims contained in the application, the court shall rule on those  
4                   procedural objections.

5                   (3) If the court cannot dispose of the procedural objections or the  
6                   application in accordance with Subparagraphs (1) and (2) of this Paragraph, the  
7                   court shall defer disposition of any procedural objections and shall issue an  
8                   order to both the state and the applicant scheduling further proceedings  
9                   pursuant to Article 927.12 for factual development of the procedural objections  
10                  that cannot be disposed of summarily. Within thirty days after the completion  
11                  of these proceedings, the court shall rule on all procedural objections together.

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

18                  D. The court shall rule in writing on each procedural objection. A copy  
19                  of the order granting or denying a dismissal upon procedural objections shall  
20                  be furnished to the applicant, his attorney, the state, and the custodian.

21                  Comments - 2021

22                  (a) Under Paragraph B of this Article, the court may grant an extension of  
23                  time if the applicant shows good cause for failing to respond to the state's procedural  
24                  objections within the time period provided in Article 927.8. If the court grants such  
25                  an extension and the applicant files responses within this additional time period, the  
26                  court shall dispose of the procedural objections as quickly thereafter as possible.  
27

28                  (b) Under Paragraph C of this Article, except as provided by agreement of the  
29                  parties or in the interest of justice, an evidentiary hearing on the merits is required  
30                  only after the final disposition of any and all procedural objections filed by the state  
31                  and a determination by the court that summary disposition under Article 927.11 is  
32                  not appropriate.  
33

34                  **Art. 927.10. Answer and responses**

35                  A. If a more definite statement is not requested, or if the application for

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          **Art. 927.12. Evidentiary hearing; factual development**

1           A. If the court determines that there are questions of fact that cannot  
2           properly be resolved pursuant to Articles 927.6 and 927.11, the court may order  
3           oral depositions of any witness, including the applicant, under conditions  
4           specified by the court; permit a party to propound requests for admissions of  
5           fact and genuineness of documents; or require a party to provide evidence of the  
6           authenticity of any record submitted to the court.

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

11          C. The rules provided in the Code of Evidence shall not strictly apply to  
12          proceedings conducted under this Title, but the district court may consider  
13          those rules in determining the applicability of testimonial privileges and in  
14          assessing the reliability of evidence.

15           Comments - 2021

16  
17          (a) An evidentiary hearing on the merits of the claim should address only  
18          genuinely contested factual issues that cannot be resolved on the record. Disputed  
19          facts that are not material to the outcome do not warrant an evidentiary hearing.

20  
21          (b) Pursuant to Article 927.13(A), the applicant shall be physically present  
22          at any evidentiary hearing conducted in accordance with Paragraph B of this Article.

23  
24          Art. 927.13. Attendance by the applicant

25  
26          A. In the absence of an express waiver, the applicant is entitled to be  
27          physically present at an evidentiary hearing, unless the only evidence to be  
28          received is duly authenticated records, transcripts, depositions or portions  
29          thereof, admissions of facts, or joint stipulations.

30  
31          B. With the exception of evidentiary hearings, if an applicant for  
32          postconviction relief is incarcerated, the applicant's presence at postconviction  
33          relief proceedings may be obtained by teleconference, video link, or other visual  
34          remote technology if necessary.

35  
36          Art. 927.14. Right to counsel

37  
38          A. If the applicant is indigent and alleges a claim which, if established,

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

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

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

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

Art. 930.4. Repetitive applications Preliminary and comprehensive applications

for capital postconviction relief

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

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

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

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

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

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

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

B. A comprehensive application for capital postconviction relief is a 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 reprocsecute 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

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

Comments - 2021

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

#### Art. 930.7. Right to counsel **Enrollment of counsel**

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

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

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

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

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

Art. 930.8. Time limitations; exceptions; prejudicial delay Status conferences and 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 prescriptive period for post-conviction relief either verbally or in writing. If a written waiver of rights form is used during the acceptance of a guilty plea, the notice required by this Paragraph may be included in the written waiver of rights.~~

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

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

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

11 Art. 930.9. Attendance by the petitioner Venue

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

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

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

32          Art. 930.11. Time limitations for comprehensive application; exceptions;  
33          prejudicial delay

34          A. A comprehensive application for capital postconviction relief shall be  
35          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

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

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

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

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

## Art. 930.16. Privilege waiver

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

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

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

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

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

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

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

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

## **Art. 930.18. Procedural objections**

**A. If it is required to respond to a claim in an application for capital 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                  (b) If the court cannot determine the factual issues pursuant to summary  
13                  disposition, an evidentiary hearing shall be held in accordance with Article 930.22.  
14

15                  Art. 930.22. Evidentiary hearing; factual development

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

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

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

30                  Comments - 2021  
31

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                  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          **Art. 930.27. Review of district court judgments**

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

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

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

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

26           Art. 926.1. Application for DNA testing

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

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

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

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

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

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

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

## Comments - 2021

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

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

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

**B. After the defendant's conviction and sentence becomes final pursuant to Article 922, the clerk of the court of appeal shall send an electronic copy of the appellate record free of cost to any defendant who is imprisoned as defined 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)