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## DIGEST

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HB 346 Original

2021 Regular Session

Gaines

**Abstract:** Provides an additional ground for post-conviction relief when an applicant is convicted by a non-unanimous jury verdict; adds to the list of exceptions when an application shall be considered if the application is filed more than two years after the judgment of conviction; requires a parole hearing for persons convicted by a non-unanimous jury verdict; and specifies what documents are acceptable in requesting such parole hearing.

Present law provides that post-conviction relief shall be granted only on the following grounds:

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

Proposed law retains present law and adds when the petitioner has not been granted parole under proposed law as a ground for when post-conviction relief shall be granted.

Present law also provides that no application for post-conviction relief shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of C.Cr.P. Arts. 914 or 922, unless any of the following apply:

- (1) The application alleges, and the petitioner proves or the state admits, that the facts upon which the claim is predicated were not known to the petitioner or his prior attorneys. Further, the petitioner shall prove that he exercised diligence in attempting to discover any

post-conviction claims that may exist. New facts discovered pursuant to this exception shall be submitted to the court within two years of discovery.

- (2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing an unknown interpretation of constitutional law and petitioner establishes that this interpretation is retroactively applicable to his case, and the petition is filed within one year of the finality of such ruling.
- (3) The application would already be barred by the provisions of present law, but the application is filed on or before Oct. 1, 2001, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.
- (4) The person asserting the claim has been sentenced to death.

Proposed law retains present law.

Proposed law specifies that the petition shall be filed either within one year of the final ruling containing the unknown interpretation of constitutional law or within one year of the final ruling establishing the retroactive application when the claim asserted in the petition is based upon a final ruling of an appellate court establishing an unknown interpretation of constitutional law and the petitioner establishes that the interpretation is retroactively applicable to his case.

Proposed law adds that when the application alleges and petitioner shows the conviction was rendered by a verdict from a non-unanimous jury, the petition was filed prior to April 20, 2023, and the petitioner has not been granted parole under proposed law.

Proposed law requires that any person serving a sentence for a conviction rendered by a verdict from a non-unanimous jury shall have a parole hearing before the committee within 180 days of the person providing acceptable documentation of the non-unanimous jury verdict to the Dept. of Public Safety and Corrections.

Proposed law further provides that acceptable documents may include court minutes, portions of court transcripts, polling slips, references to a non-unanimous verdict in judicial order, and affidavits.

Proposed law specifies that any person granted parole under proposed law shall waive any further right to post-conviction relief under C.Cr.P. Arts. 930.3(8) and 930.8(5).

Proposed law specifies that proposed law supersedes and controls to the extent of any conflict with any other provision of law.

(Amends C.Cr.P. Art. 930.8(A)(2); Adds C.Cr.P. Arts. 930.3(8) and 930.8(A)(5) and R.S. 15:574.4(K))