
DIGEST

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HB 390 Original

2021 Regular Session

Jefferson

Abstract: Adds when a sentence was obtained in violation of the U.S. or La. constitution to the list of grounds for which post-conviction relief shall be granted, and provides that new facts submitted in support of a petition for post-conviction relief shall be submitted prior to July 31, 2023.

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 adds when the sentence was obtained in violation of the U.S. or La. constitution to the list of grounds for which 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, the 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.

With regard to the new facts discovered pursuant to the present law exception, proposed law provides that facts in support of a first claim brought pursuant to proposed law shall be submitted prior to July 31, 2023.

(Amends C.Cr.P. Arts. 930.3 and 930.8(A)(1))