

- (2) In a court having two judges, the other judge of that court shall be appointed.
- (3) In a court having more than two judges, another judge of that court shall be appointed through a random process as provided by the local rules of court.

Proposed law prohibits any limit to the right of the state or of the petitioner to seek recusal of any appointed judge pursuant to the provisions of present law.

Proposed law authorizes the district court, upon motion of the state or the petitioner, to order the testing or examination of any evidence relevant to the offense of conviction in the custody and control of the clerk of court, the state, or the investigating law enforcement agency.

Proposed law requires that a motion made only by the petitioner, may only be granted following a contradictory hearing at which the petitioner is required to establish that good cause exists for the testing or examination.

Present law requires that if the petitioner is in custody after sentence for conviction for an offense, relief be granted only on any of the following grounds:

- (1) The conviction was obtained in violation of the constitution of the United States or the state of Louisiana.
- (2) The court exceeded its jurisdiction.
- (3) The conviction or sentence subjected him to double jeopardy.
- (4) The limitations on the institution of prosecution had expired.
- (5) The statute creating the offense for which he was convicted and sentenced is unconstitutional.
- (6) The conviction or sentence constitute the ex post facto application of law in violation of the constitution of the United States or the state of Louisiana.
- (7) The results of DNA testing performed pursuant to an application granted under present law 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 another ground for relief if the petitioner is determined by clear and convincing evidence to be factually innocent under proposed law.

Proposed law authorizes the district attorney and the petitioner, with the approval of the district court, to jointly enter into any post conviction plea agreement for the purpose of amending the petitioner's conviction, sentence, or habitual offender status. Proposed law provides that the terms of any post conviction plea agreement be in writing, be filed into the district court record, and be

agreed to by the district attorney and the petitioner in open court. Proposed law requires the court, prior to accepting the post conviction plea agreement, to address the petitioner personally in open court, inform him of and determine that he understands the rights that he is waiving by entering into the post conviction plea agreement, and determine that the plea is voluntary and is not the result of force or threats or of promises apart from the post conviction plea agreement.

Proposed law allows the state the option to affirmatively waive any procedural objection, if the waiver is express, in writing, and filed into the district court record.

Present law prohibits any application for post conviction relief, including applications which seek an out-of-time appeal, from being considered if it is filed more than two years after the judgment of conviction, but within two years of discovery, and sentence has become final under the provisions of present law, 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 is required to prove that he exercised diligence in attempting to discover any post-conviction claims that may exist. "Diligence" for the purposes of present law is a subjective inquiry that must take into account the circumstances of the petitioner. Those circumstances include but are not limited to:
 - (a) The educational background of the petitioner.
 - (b) The petitioner's access to formally trained inmate counsel.
 - (c) The financial resources of the petitioner.
 - (d) The age of the petitioner.
 - (e) The mental abilities of the petitioner.
 - (f) Whether the interests of justice will be served by the consideration of new evidence.
- (2) The claim asserted in the petition is based upon a final ruling of an appellate court establishing a theretofore 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 October 1, 2001, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.
- (4) The person asserting the claim has been sentenced to death.

Proposed law retains present law and adds the following circumstances:

- (1) The petitioner qualifies for the exception to timeliness in present law relative to DNA testing.
- (2) The petitioner qualifies for the exception to timeliness in proposed law relative to factual innocence.

Proposed law allows the state to affirmatively waive any objection to the timeliness of the application for post conviction relief filed by the petitioner, if the waiver is express and in writing and filed by the state into the district court record.

Proposed law provides that upon joint motion of the petitioner and the district attorney, the district court may deviate from any provision of present law post-conviction relief.

Effective August 1, 2021.

(Amends C.Cr.P. Art. 930.3; adds C.Cr.P. Art. 926.2, 926.3, 930.4(G), 930.8(A)(5) and (6) and (D), and 930.10)