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**SENATE COMMITTEE AMENDMENTS**

2021 Regular Session

Amendments proposed by Senate Committee on Judiciary C to Original Senate Bill No. 186  
by Senator Smith

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1 AMENDMENT NO. 1

2 On page 1, line 2, after "930.3" insert "and 930.8(A)(1)"

3 AMENDMENT NO. 2

4 On page 1, line 10, after "930.3" delete "is" and insert "and 930.8(A)(1) are"

5 AMENDMENT NO. 3

6 On page 1, delete lines 14 through 16 and insert the following:

7 **"A. A petitioner, who has been convicted of an offense, may seek post**  
8 **conviction relief on"**

9 AMENDMENT NO. 4

10 On page 2, line 3, after "**Article 930.8**" delete "**(A)**"

11 AMENDMENT NO. 5

12 On page 2, line 5, after "**2022**" insert "**, and if the petitioner was convicted after a trial**  
13 **completed to verdict"**

14 AMENDMENT NO. 6

15 On page 2, line 6, after "**Article 930.8**" delete "**(A)**"

16 AMENDMENT NO. 7

17 On page 2, delete lines 8 through 29 and insert the following:

18 **"petitioner. An application for post conviction relief filed pursuant to this**  
19 **Article by a petitioner who pled guilty or nolo contendere to the offense of**  
20 **conviction or filed by any petitioner after December 31, 2022, shall be subject**  
21 **to Articles 930.4 and 930.8.**

22 **B.(1)(a) To assert a claim of factual innocence under this Article, a**  
23 **petitioner must present new, reliable, and noncumulative evidence that would**  
24 **be legally admissible at trial and that was not known or discoverable at or prior**  
25 **to trial and that is either:**

26 **(i) Scientific, forensic, physical, or nontestimonial documentary evidence.**

27 **(ii) Testimonial evidence that is corroborated by evidence of the type**  
28 **described in Part (i) of this Subparagraph.**

29 **(b) To prove entitlement to relief under this Article, the petitioner must**  
30 **present evidence that satisfies all of the criteria in Subsubparagraph (B)(1)(a)**  
31 **of this Article and that, when viewed in light of all of the relevant evidence,**  
32 **including the evidence that was admitted at trial and any evidence that may be**  
33 **introduced by the state in any response that it files or at any evidentiary**  
34 **hearing, proves by clear and convincing evidence that, had the new evidence**  
35 **been presented at trial, no rational juror would have found the petitioner guilty**  
36 **beyond a reasonable doubt of either the offense of conviction or of any felony**  
37 **offense that was a responsive verdict to the offense of conviction at the time of**  
38 **the conviction.**

1           **(2) A recantation of prior sworn testimony may be considered if**  
2 **corroborated by the evidence required by Subsubparagraph (B)(1)(a) of this**  
3 **Article. However, a recantation of prior sworn testimony cannot form the sole**  
4 **basis for relief pursuant to this Article.**

5           **(3) If the petitioner pled guilty or nolo contendere to the offense of**  
6 **conviction, in addition to satisfying all of the criteria in Paragraph (B) of this**  
7 **Article and in any other applicable provision of law, the petitioner shall show**  
8 **both of the following to prove entitlement to relief:**

9           **(a) That, by reliable evidence, he consistently maintained his innocence**  
10 **until his plea of guilty or nolo contendere.**

11           **(b) That he could not have known of or discovered his evidence of factual**  
12 **innocence prior to pleading guilty or nolo contendere.**

13           **C.(1) A grant of post conviction relief pursuant to this Article shall not**  
14 **prevent the petitioner from being retried for the offense of conviction, for a**  
15 **lesser offense based on the same facts, or for any other offense.**

16           **(2) If the petitioner waives his right to a jury trial and elects to be tried**  
17 **by a judge, the district judge who granted post conviction relief pursuant to this**  
18 **Article shall be recused and the case shall be allotted to a different judge in**  
19 **accordance with applicable law and rules of court.**

20           **(3) If the district judge denied post conviction relief pursuant to this**  
21 **Article and an appellate court later reversed the ruling of the district judge and**  
22 **granted post conviction relief pursuant to this Article, and if the petitioner**  
23 **waives his right to a jury trial and elects to be tried by a judge, upon the**  
24 **petitioner's motion the district judge who denied post conviction relief shall be**  
25 **recused and the case shall be allotted to a different judge in accordance with**  
26 **applicable law and rules of court."**

27 AMENDMENT NO. 8

28 On page 3, delete lines 1 through 16

29 AMENDMENT NO. 9

30 On page 3, line 27, delete "state" and insert "district attorney and investigating law  
31 enforcement agency"

32 AMENDMENT NO. 10

33 On page 4, at the beginning of line 2, delete "A."

34 AMENDMENT NO. 11

35 On page 4, delete lines 18 through 29

36 AMENDMENT NO. 12

37 On page 5, delete line 1

38 AMENDMENT NO. 13

39 On page 5, delete line 14 and insert the following:

40           (1) The application alleges, and the petitioner proves or the state admits, that  
41 the facts upon which the claim is predicated were not known to the petitioner or his  
42 prior attorneys. Further, the petitioner shall prove that he exercised diligence in  
43 attempting to discover any post-conviction claims that may exist. "Diligence" for the  
44 purposes of this Article is a subjective inquiry that must take into account the  
45 circumstances of the petitioner. Those circumstances shall include but are not limited  
46 to the educational background of the petitioner, the petitioner's access to formally  
47 trained inmate counsel, the financial resources of the petitioner, the age of the  
48 petitioner, the mental abilities of the petitioner, or whether the interests of justice will

1 be served by the consideration of new evidence. New facts discovered pursuant to  
2 this exception shall be submitted to the court within two years of discovery. **If the**  
3 **petitioner pled guilty or nolo contendere to the offense of conviction and is**  
4 **seeking relief pursuant to Code of Criminal Procedure Article 926.2 and five**  
5 **years or more have elapsed since the petitioner pled guilty or nolo contendere**  
6 **to the offense of conviction, he shall not be eligible for the exception provided**  
7 **for by this Subparagraph.**

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9 AMENDMENT NO. 14

10 On page 5, line 16, after "926.1" delete "(A)"

11 AMENDMENT NO. 15

12 On page 5, line 18, after "926.2" delete "(A)"

13 AMENDMENT NO. 16

14 On page 5, delete lines 26 through 28 and insert the following:

15 **"Art. 930.10. Departure from this Title; post conviction plea agreements**  
16 **A. Upon joint motion of the petitioner and the district attorney, the**  
17 **district court may deviate from any of the provisions of this Title.**  
18 **B. Notwithstanding the provisions of Code of Criminal Procedure Article**  
19 **930.3 or any provision of law to the contrary, the district attorney and the**  
20 **petitioner may, with the approval of the district court, jointly enter into any**  
21 **post conviction plea agreement for the purpose of amending the petitioner's**  
22 **conviction, sentence, or habitual offender status. The terms of any post**  
23 **conviction plea agreement pursuant to this Paragraph shall be in writing, shall**  
24 **be filed into the district court record, and shall be agreed to by the district**  
25 **attorney and the petitioner in open court. The court shall, prior to accepting the**  
26 **post conviction plea agreement, address the petitioner personally in open court,**  
27 **inform him of and determine that he understands the rights that he is waiving**  
28 **by entering into the post conviction plea agreement, and determine that the plea**  
29 **is voluntary and is not the result of force or threats, or of promises apart from**  
30 **the post conviction plea agreement."**