



or nolo contendere.

- (2) That he could not have known of or discovered his evidence of factual innocence prior to pleading guilty or nolo contendere.

Proposed law provides that a grant of post conviction relief pursuant to proposed law does not prevent the petitioner from being retried for the offense of conviction, for a lesser offense based on the same facts, or for any other offense.

Proposed law provides that if the petitioner waives his right to a jury trial and elects to be tried by a judge, the district judge who granted post conviction relief pursuant to proposed law will be recused and the case will be allotted to a different judge in accordance with applicable present law and rules of court.

Proposed law provides that if the district judge denied post conviction relief pursuant to proposed law and an appellate court later reversed the ruling of the district judge and granted post conviction relief pursuant to proposed law, and if the petitioner waives his right to a jury trial and elects to be tried by a judge, upon the petitioner's motion the district judge who denied post conviction relief will be recused and the case will be allotted to a different judge in accordance with applicable present law and rules of court.

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 further provides that if the motion is made by the petitioner, it can be granted only after a contradictory hearing at which the petitioner shall establish that good cause exists for the testing or examination. Proposed law further provides that if the state does not expressly consent to the testing or examination and the motion made pursuant to proposed law is granted, the district attorney and investigation law enforcement agency cannot be ordered to bear any costs of 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.

Present law provides that, unless required in the interest of justice, any claim for relief that was fully litigated in an appeal from the proceedings leading to the judgment of conviction and sentence will not be considered.

Proposed law retains present law and adds that another ground for relief is that the petitioner is determined by clear and convincing evidence to be factually innocent under proposed law.

Present law provides that no application for post conviction relief will be considered if filed more than two years after the judgment of conviction and sentence have become final under present law, unless 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.

Proposed law retains present law and adds that, if the petitioner pled guilty or nolo contendere to the offense of conviction and is seeking relief pursuant to proposed law relative to claims of factual innocence and five years or more have elapsed since the petitioner pled guilty or nolo contendere to the offense of conviction, he is not eligible for the exception to timeliness provided for by present law.

Present law provides that 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, including the educational background of the petitioner, the petitioner's access to formally trained inmate counsel, the financial resources of the petitioner, the age of the petitioner, the mental abilities of the petitioner, and whether the interests of justice will be served by the consideration of new evidence.

Proposed law retains present law relative to the petitioner exercise of diligence in attempting to discover any post-conviction claims.

Proposed law makes it mandatory that the subjective inquiry of "diligence" take into account the circumstances of the petitioner.

Present law provides that no application for post conviction relief will be considered if filed more than two years after the judgment of conviction and sentence have become final under present law, unless:

- (1) 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.

- (2) The application would already be barred by the provisions of present law, but the application is filed on or before 10/1/01, and the date on which the application was filed is within three years after the judgment of conviction and sentence has become final.
- (3) 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 or proposed law relative to post conviction relief.

Proposed law provides that, notwithstanding any provision of present law or proposed law, the district attorney and the petitioner may, with the approval of the district court, jointly enter into any post conviction plea agreement for the purpose of amending the petitioner's conviction, sentence, or habitual offender status, which agreement must be in writing, filed into the district court record, and agreed to by the district attorney and the petitioner in open court. Proposed law further provides that the court, prior to accepting the post conviction plea agreement, must 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 itself.

Effective August 1, 2021.

(Amends C.Cr.P. Art. 930.3 and 930.8(A)(1); adds C.Cr.P. Art. 926.2, 926.3, 930.4(G), 930.8(A)(5) and (6) and (D), and 930.10)

### Summary of Amendments Adopted by Senate

#### Committee Amendments Proposed by Senate Committee on Judiciary C to the original bill

1. Adds proposed law relative to post conviction relief that are specific to a petitioner

who pleaded guilty or nolo contendere.

2. Provides relative to scientific, forensic, physical, and certain testimonial evidence in support of a factual innocence claim under proposed law.
3. Provides that a recantation of prior sworn testimony of the petitioner can be considered under certain circumstances.
4. Provides relative to costs of testing or examination of evidence pursuant to proposed law.
5. Deletes provisions of proposed law relative to joint post conviction plea agreements.
6. Adds proposed law relative to post conviction plea agreements.
7. Makes technical changes to proposed law.

#### Senate Floor Amendments to engrossed bill

1. Makes technical changes.