

SENATE BILL NO. 186

BY SENATOR SMITH AND REPRESENTATIVES BRYANT, GOUDEAU, MARCELLE
AND MARINO

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Article 930.3 and 930.8(A)(1) and to
3 enact Code of Criminal Procedure Articles 926.2, 926.3, 930.4(G), 930.8(A)(5) and
4 (6) and (D), and 930.10, relative to post conviction relief; to provide for a petitioner's
5 claim of factual innocence; to provide for exceptions; to provide for evidence; to
6 provide for appointment of judges; to provide for motions of testing evidence; to
7 provide for grounds for relief; to provide for burden of proof; to provide for joint
8 motions; to provide for waiver; to provide for time limitations; and to provide for
9 related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Code of Criminal Procedure Article 930.3 and 930.8(A)(1) are hereby
12 amended and reenacted and Code of Criminal Procedure Articles 926.2, 926.3, 930.4(G),
13 930.8(A)(5) and (6) and (D), and 930.10 are hereby enacted to read as follows:

14 **Art. 926.2. Factual innocence**

15 **A. A petitioner, who has been convicted of an offense, may seek post**
16 **conviction relief on the grounds that he is factually innocent of the offense for**
17 **which he was convicted. A petitioner's first claim of factual innocence pursuant**
18 **to this Article that would otherwise be barred from review on the merits by the**
19 **time limitation provided in Article 930.8 or the procedural objections provided**
20 **in Article 930.4 shall not be barred if the claim is contained in an application for**
21 **post conviction relief filed on or before December 31, 2022, and if the petitioner**
22 **was convicted after a trial completed to verdict. This exception to Articles 930.4**
23 **and 930.8 shall apply only to the claim of factual innocence brought under this**

1 Article and shall not apply to any other claims raised by the petitioner. An
2 application for post conviction relief filed pursuant to this Article by a
3 petitioner who pled guilty or nolo contendere to the offense of conviction or filed
4 by any petitioner after December 31, 2022, shall be subject to Articles 930.4 and
5 930.8.

6 B.(1)(a) To assert a claim of factual innocence under this Article, a
7 petitioner shall present new, reliable, and noncumulative evidence that would
8 be legally admissible at trial and that was not known or discoverable at or prior
9 to trial and that is either:

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

11 (ii) Testimonial evidence that is corroborated by evidence of the type
12 described in Item (i) of this Subsubparagraph.

13 (b) To prove entitlement to relief under this Article, the petitioner shall
14 present evidence that satisfies all of the criteria in Subsubparagraph (a) of this
15 Subparagraph and that, when viewed in light of all of the relevant evidence,
16 including the evidence that was admitted at trial and any evidence that may be
17 introduced by the state in any response that it files or at any evidentiary
18 hearing, proves by clear and convincing evidence that, had the new evidence
19 been presented at trial, no rational juror would have found the petitioner guilty
20 beyond a reasonable doubt of either the offense of conviction or of any felony
21 offense that was a responsive verdict to the offense of conviction at the time of
22 the conviction.

23 (2) A recantation of prior sworn testimony may be considered if
24 corroborated by the evidence required by Subsubparagraph (1)(a) of this
25 Paragraph. However, a recantation of prior sworn testimony cannot form the
26 sole basis for relief pursuant to this Article.

27 (3) If the petitioner pled guilty or nolo contendere to the offense of
28 conviction, in addition to satisfying all of the criteria in this Paragraph and in
29 any other applicable provision of law, the petitioner shall show both of the
30 following to prove entitlement to relief:

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

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

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

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

12 (3) If the district judge denied post conviction relief pursuant to this
13 Article and an appellate court later reversed the ruling of the district judge and
14 granted post conviction relief pursuant to this Article, and if the petitioner
15 waives his right to a jury trial and elects to be tried by a judge, upon the
16 petitioner's motion the district judge who denied post conviction relief shall be
17 recused and the case shall be allotted to a different judge in accordance with
18 applicable law and rules of court.

19 Art. 926.3. Motion for testing of evidence

20 A. Upon motion of the state or the petitioner, the district court may
21 order the testing or examination of any evidence relevant to the offense of
22 conviction in the custody and control of the clerk of court, the state, or the
23 investigating law enforcement agency.

24 B. If the motion is made by the petitioner and the state does not expressly
25 consent to the testing or examination, a motion made under this Article shall be
26 granted only following a contradictory hearing at which the petitioner shall
27 establish that good cause exists for the testing or examination. If the state does
28 not expressly consent to the testing or examination and the motion made under
29 this Article is granted following the contradictory hearing, the district attorney
30 and investigating law enforcement agency shall not be ordered to bear any of

1 **the costs associated with the testing or examination.**

2 * * *

3 Art. 930.3. Grounds

4 If the petitioner is in custody after sentence for conviction for an offense,
5 relief shall be granted only on the following grounds:

6 (1) The conviction was obtained in violation of the constitution of the United
7 States or the state of Louisiana;

8 (2) The court exceeded its jurisdiction;

9 (3) The conviction or sentence subjected him to double jeopardy;

10 (4) The limitations on the institution of prosecution had expired;

11 (5) The statute creating the offense for which he was convicted and sentenced
12 is unconstitutional;

13 (6) The conviction or sentence constitute the ex post facto application of law
14 in violation of the constitution of the United States or the state of Louisiana.

15 (7) The results of DNA testing performed pursuant to an application granted
16 under Article 926.1 proves by clear and convincing evidence that the petitioner is
17 factually innocent of the crime for which he was convicted.

18 **(8) The petitioner is determined by clear and convincing evidence to be**
19 **factually innocent under Article 926.2.**

20 Art. 930.4. Repetitive applications

21 * * *

22 **G. Notwithstanding any provision of this Title to the contrary, the state**
23 **may affirmatively waive any procedural objection pursuant to this Article. Such**
24 **waiver shall be express and in writing and filed by the state into the district**
25 **court record.**

26 * * *

27 Art. 930.8. Time limitations; exceptions; prejudicial delay

28 A. No application for post conviction relief, including applications which
29 seek an out-of-time appeal, shall be considered if it is filed more than two years after
30 the judgment of conviction and sentence has become final under the provisions of

1 Article 914 or 922, unless any of the following apply:

2 (1) The application alleges, and the petitioner proves or the state admits, that
 3 the facts upon which the claim is predicated were not known to the petitioner or his
 4 prior attorneys. Further, the petitioner shall prove that he exercised diligence in
 5 attempting to discover any post-conviction claims that may exist. "Diligence" for the
 6 purposes of this Article is a subjective inquiry that **must shall** take into account the
 7 circumstances of the petitioner. Those circumstances shall include but are not limited
 8 to the educational background of the petitioner, the petitioner's access to formally
 9 trained inmate counsel, the financial resources of the petitioner, the age of the
 10 petitioner, the mental abilities of the petitioner, or whether the interests of justice will
 11 be served by the consideration of new evidence. New facts discovered pursuant to
 12 this exception shall be submitted to the court within two years of discovery. **If the**
 13 **petitioner pled guilty or nolo contendere to the offense of conviction and is**
 14 **seeking relief pursuant to Code of Criminal Procedure Article 926.2 and five**
 15 **years or more have elapsed since the petitioner pled guilty or nolo contendere**
 16 **to the offense of conviction, he shall not be eligible for the exception provided**
 17 **for by this Subparagraph.**

18 * * *

19 **(5) The petitioner qualifies for the exception to timeliness in Article**
 20 **926.1.**

21 **(6) The petitioner qualifies for the exception to timeliness in Article**
 22 **926.2.**

23 * * *

24 **D. Notwithstanding any provision of this Title to the contrary, the state**
 25 **may affirmatively waive any objection to the timeliness under Paragraph A of**
 26 **this Article of the application for post conviction relief filed by the petitioner.**
 27 **Such waiver shall be express and in writing and filed by the state into the**
 28 **district court record.**

29 * * *

30 **Art. 930.10. Departure from this Title; post conviction plea agreements**

1 A. Upon joint motion of the petitioner and the district attorney, the
2 district court may deviate from any of the provisions of this Title.

3 B. Notwithstanding the provisions of Code of Criminal Procedure Article
4 930.3 or any provision of law to the contrary, the district attorney and the
5 petitioner may, with the approval of the district court, jointly enter into any
6 post conviction plea agreement for the purpose of amending the petitioner's
7 conviction, sentence, or habitual offender status. The terms of any post
8 conviction plea agreement pursuant to this Paragraph shall be in writing, shall
9 be filed into the district court record, and shall be agreed to by the district
10 attorney and the petitioner in open court. The court shall, prior to accepting the
11 post conviction plea agreement, address the petitioner personally in open court,
12 inform him of and determine that he understands the rights that he is waiving
13 by entering into the post conviction plea agreement, and determine that the plea
14 is voluntary and is not the result of force or threats, or of promises apart from
15 the post conviction plea agreement.

PRESIDENT OF THE SENATE

SPEAKER OF THE HOUSE OF REPRESENTATIVES

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____