

2024 Second Extraordinary Session

HOUSE BILL NO. 4

BY REPRESENTATIVES EMERSON AND MIKE JOHNSON

CRIMINAL/PROCEDURE: Provides relative to changes for post conviction relief procedures (Item #17)

1 AN ACT

2 To amend and reenact Code of Criminal Procedure Articles 930.4(F) and (G) and  
3 930.8(A)(1) and (D) and to enact Code of Criminal Procedure Article 930.8(E),  
4 relative to procedures utilized in post conviction proceedings; to provide relative to  
5 the timeliness of post conviction applications; to provide relative to the procedural  
6 requirements of post conviction applications; to provide relative to the exceptions to  
7 the time limitations of post conviction applications; and to provide for related  
8 matters.

9 Be it enacted by the Legislature of Louisiana:

10 Section 1. Code of Criminal Procedure Articles 930.4(F) and (G) and 930.8(A)(1)  
11 and (D) are hereby amended and reenacted and Code of Criminal Procedure Article 930.8(E)  
12 is hereby enacted to read as follows:

13 Art. 930.4. Repetitive applications

14 \* \* \*

15 F. ~~If the court considers dismissing an application for failure of the petitioner~~  
16 ~~to raise the claim in the proceedings leading to conviction, failure to urge the claim~~  
17 ~~on appeal, or failure to include the claim in a prior application, the court shall order~~  
18 ~~the petitioner to state reasons for his failure. If the court finds that the failure was~~  
19 ~~excusable, it shall consider the merits of the claim. Any attempt or request by a~~  
20 ~~petitioner to supplement or amend the application shall be subject to all of the~~  
21 ~~limitations and restrictions set forth in this Article. In addition to serving the district~~

1 attorney for the jurisdiction where the underlying conviction was obtained, any  
2 application filed after the first application for post conviction relief shall be served  
3 on the district attorney and the attorney general at least sixty days in advance of the  
4 hearing on the application. Both the district attorney and the attorney general shall  
5 have a right to suspensively appeal any order granting relief.

6 G. ~~Notwithstanding any provision of this Title to the contrary, the state may~~  
7 ~~affirmatively waive any procedural objection pursuant to this Article. Such waiver~~  
8 ~~shall be express and in writing and filed by the state into the district court record.~~  
9 All of the limitations set forth in this Article shall be jurisdictional and shall not be  
10 waived or excused by the court or the district attorney.

11 \* \* \*

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

13 A. No application for post conviction relief, including applications which  
14 seek an out-of-time appeal, shall be considered if it is filed more than two years after  
15 the judgment of conviction and sentence has become final under the provisions of  
16 Article 914 or 922, unless any of the following apply:

17 (1) The application alleges, and the petitioner proves or the state admits, that  
18 the facts upon which the claim is predicated were not known to the petitioner or his  
19 prior attorneys. Further, the petitioner shall prove that he exercised diligence in  
20 attempting to discover any post conviction claims that may exist. "Diligence" for the  
21 purposes of this Article is a subjective inquiry that shall take into account the  
22 circumstances of the petitioner. Those circumstances shall include but are not  
23 limited to the educational background of the petitioner, the petitioner's access to  
24 formally trained inmate counsel, the financial resources of the petitioner, the age of  
25 the petitioner, the mental abilities of the petitioner, or whether the interests of justice  
26 will be served by the consideration of new evidence. New facts discovered pursuant  
27 to this exception shall be submitted to the court within ~~two years~~ one year of  
28 discovery. If the petitioner pled guilty or nolo contendere to the offense of  
29 conviction ~~and is seeking relief pursuant to Article 926.2 and five years or more have~~

1 ~~elapsed since the petitioner pled guilty or nolo contendere to the offense of~~  
2 ~~conviction, he shall not be eligible for the exception provided for by this~~  
3 Subparagraph.

4 \* \* \*

5 D. ~~Notwithstanding any provision of this Title to the contrary, the state may~~  
6 ~~affirmatively waive any objection to the timeliness under Paragraph A of this Article~~  
7 ~~of the application for post conviction relief filed by the petitioner. Such waiver shall~~  
8 ~~be express and in writing and filed by the state into the district court record. Any~~  
9 ~~attempt or request by a petitioner to supplement or amend the application shall be~~  
10 ~~subject to all of the limitations and restrictions as set forth in this Article.~~

11 E. All of the limitations set forth in this Article shall be jurisdictional and  
12 shall not be waived or excused by the court or the district attorney.

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DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 4 Engrossed                      2024 Second Extraordinary Session                      Emerson

**Abstract:** Provides relative to post conviction relief procedures.

Present law (C.Cr.P. Art. 930.4) generally provides for the procedures governing repetitive applications for post conviction relief.

Present law (C.Cr.P. Art. 930.4(F)) provides that if the court considers dismissing an application for failure of the petitioner to raise the claim in the proceedings leading to conviction, failure to urge the claim on appeal, or failure to include the claim in a prior application, the court shall order the petitioner to state reasons for his failure. Further provides that if the court finds that the failure was excusable, it shall consider the merits of the claim.

Proposed law removes this provision of present law and provides that any attempt or request by a petitioner to supplement or amend the application shall be subject to all of the limitations and restrictions set forth in proposed law.

Proposed law further provides that in addition to serving the district attorney for the jurisdiction where the underlying conviction was obtained, any application filed after the first application for post-conviction relief shall be served on the district attorney and the attorney general at least 60 days in advance of the hearing on the application. Further provides that both the district attorney and the attorney general shall have a right to suspensively appeal any order granting relief.

Present law (C.Cr.P. Art. 930.4(G)) provides that notwithstanding any provision of present law (C.Cr.P.) to the contrary, the state may affirmatively waive any procedural objection

pursuant to present law (C.Cr.P. Art. 930.4). Further provides that such waiver shall be express and in writing and filed by the state into the district court record.

Proposed law removes this provision of present law and provides that all of the limitations set forth in present law (C.Cr.P. Art. 930.4) shall be jurisdictional and shall not be waived or excused by the court or the district attorney.

Present law (C.Cr.P. Art. 930.8) generally provides for time limitations for post conviction relief applications and for exceptions to these time limitations.

Present law (C.Cr.P. Art. 930.8(A)) provides for circumstances where an application for post conviction relief shall be considered even if it is filed more than two years after the judgment of conviction and sentence has become final under the provisions of present law (C.Cr.P. Arts. 914 or 922).

Present law (C.Cr.P. Art. 930.8(A)(1)) provides that one of these circumstances is when 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 provides that the petitioner shall prove that he exercised diligence in attempting to discover any post conviction claims that may exist and that new facts discovered pursuant to this exception shall be submitted to the court within two years of discovery.

Proposed law reduces the time period for discovery of new facts from two years to one year.

Present law (C.Cr.P. Art. 930.8(A)(1)) further provides that if the petitioner pled guilty or nolo contendere to the offense of conviction and is seeking relief pursuant to present law (C.Cr.P. Art. 926.2) and five years or more have elapsed since the petitioner pled guilty or nolo contendere to the offense of conviction, he shall not be eligible for the exception provided by present law (C.Cr.P. Art. 930.8(A)(1)).

Proposed law removes the condition that five years or more need to have elapsed since the petitioner pled guilty or nolo contendere to the offense of conviction and provides that a petitioner shall not be eligible for the exception provided in present law (C.Cr.P. Art. 930.8(A)(1)) if the petitioner pled guilty or nolo contendere to the offense of conviction.

Present law (C.Cr.P. Art. 930.8(D)) provides that notwithstanding any provision of present law (C.Cr.P.) to the contrary, the state may affirmatively waive any procedural objection pursuant to present law (C.Cr.P. Art. 930.8(A)). Further provides that such waiver shall be express and in writing and filed by the state into the district court record.

Proposed law removes this provision of present law and provides that any attempt or request by a petitioner to supplement or amend the application shall be subject to all of the limitations and restrictions as set forth in present law (C.Cr.P. Art. 930.8).

Proposed law (C.Cr.P. Art. 930.8(E)) provides that all of the limitations set forth in present law (C.Cr.P. Art. 930.8) shall be jurisdictional and shall not be waived or excused by the court or the district attorney.

(Amends C.Cr.P. Arts. 930.4(F) and (G) and 930.8(A)(1) and (D); Adds C.Cr.P. Art. 930.8(E))

#### Summary of Amendments Adopted by House

The Committee Amendments Proposed by House Committee on Administration of Criminal Justice to the original bill:

1. Provide that proposed law limitations are jurisdictional.

2. Clarify that in addition to serving the district attorney for the jurisdiction where the underlying conviction was obtained, any application filed after the first application for post-conviction relief shall be served on the district attorney and the attorney general at least 60 days in advance of the hearing on the application.
3. Provide that both the district attorney and the attorney general shall have a right to suspensively appeal any order granting relief.