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## DIGEST

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HB 159 Original

2024 Regular Session

Bacala

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

Present law (C.Cr.P. Art. 923) provides that when a decision of an appellate court becomes final, the clerk of court shall transmit a certified copy of the decree to the court from which the appeal was taken. Further provides that when the judgment is received by the lower court, it shall be filed and executed.

Proposed law changes the term "judgment" to "decree".

Proposed law provides that after the defendant's conviction and sentence become final pursuant to present law (C.Cr.P. Art. 922), the clerk of the court of appeal shall send an electronic copy of the appellate record free of cost to any defendant who is imprisoned and has requested a copy of his record.

Proposed law provides that the failure of the clerk of the court of appeal to comply with any of the requirements of proposed law does not extend the time to file an application for post conviction relief or constitute a cause of action, grounds to vacate the conviction or sentence, or grounds to remand the case for the purpose of resentencing. Further provides that the provisions of proposed law may be enforced by a writ of mandamus.

Proposed law provides that before transmission of the electronic copy of the record, the court of appeal shall redact all information not subject to public disclosure pursuant to present law (R.S. 46:1844(W)). Further provides that the court of appeal shall also redact the names, addresses, and identities of the jurors who participated in the case.

Proposed law provides that if the safety of a person or the public requires further redaction, or if a redaction would violate a constitutional right of the defendant, the aggrieved party may file a motion with the court of appeal.

Proposed law provides that the court of appeal may remand the motion to the lower court for the purpose of receiving evidence and ruling on the motion. Further provides that a ruling on the motion by the court of appeal or lower court may be reviewed only by writ application unless the ruling results in a declaration that a statute or ordinance is unconstitutional.

Present law (C.Cr.P. Art. 926.2(A)) provides that a petitioner who has been convicted of an offense may seek post conviction relief on the grounds that he is factually innocent of the offense for which

he was convicted.

Proposed law amends present law to provide a petitioner who has been convicted of an offense by a plea of either guilty or nolo contendere or who has been found guilty after a trial completed to verdict with the opportunity to seek post conviction relief on the grounds that he is factually innocent of the offense for which he was convicted.

Present law provides that a petitioner's first claim of factual innocence pursuant to present law that would otherwise be barred from review on the merits by the time limitation provided in present law (C.Cr.P. Art. 930.8) or the procedural objections provided in C.Cr.P. Art. 930.4 shall not be barred if the claim is contained in an application for post conviction relief filed on or before Dec. 31, 2022, and if the petitioner was convicted after a trial completed to verdict. Further provides that this exception to present law (C.Cr.P. Arts. 930.4 and 930.8) shall apply only to the claim of factual innocence brought under present law and shall not apply to any other claims raised by the petitioner.

Proposed law removes this reference from present law relative to the timing of the petitioner's first application for post conviction relief when the claim is factual innocence.

Present law provides that an application for post conviction relief filed pursuant to present law by a petitioner who pled guilty or nolo contendere to the offense of conviction or filed by any petitioner after Dec. 31, 2022, shall be subject to present law (C.Cr.P. Arts. 930.4 and 930.8).

Proposed law removes the reference to any application for post conviction relief filed after Dec. 31, 2022.

(Amends C.Cr.P. Arts. 923 and 926.2(A))