
DIGEST

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Hodges

HB No. 385

Abstract: Amends provisions regarding the application for and granting of post-conviction relief.

Present law provides procedures for post-conviction relief.

Present law provides that an application for post-conviction relief may be dismissed without an answer if the application fails to allege a claim which, if established, would entitle the petitioner to relief.

Proposed law provides that a shell petition shall be dismissed in its entirety unless it is supplemented within 90 days, and defines a "shell petition" as a petition that fails to assert any specific factual allegations in support of a claim.

Present law provides that no application for post-conviction relief, including applications which seek an out-of-time appeal, shall be considered if it is filed more than two years after the judgment of conviction and sentence has become final 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 or his attorney.

Proposed law changes the time period from two years to one year.

Proposed law provides that the petitioner shall prove that he exercised due diligence in attempting to discover any post-conviction claims that may exist after trial and that he attempted to file his post-conviction application within the time limitation provided for post-conviction relief. Once discovered, facts shall be submitted to the court with due diligence, not to exceed 90 days from the date of discovery.

Present law 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. If the court finds that the failure was excusable, it shall consider the merits of the claim.

Proposed law repeals this provision of present law.

Present law provides that the court may deny relief for claims which were known at trial but not

raised on appeal, claims raised at trial but not appealed, new claims which were not raised in subsequent applications, or claims which raise new issues which could have been raised in previous applications.

Proposed law provides that the court shall deny relief for those same reasons.

(Amends C.Cr.P. Arts. 928, 930.4(B), (C), (D), and (E), 930.8(A)(intro. para.) and (1); Repeals C.Cr.P. Art. 930.4(F))