
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 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 retains present law except it makes present law applicable to information known by the defendant 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.

Proposed law defines "diligence" as a subjective inquiry that must take into account the circumstances of the petitioner. Those circumstances shall include, but are not limited to 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, or whether the interests of justice will be served by the consideration of new evidence. Requires new facts discovered to be submitted to the court within two years of discovery.

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.

Effective August 1, 2014.

(Amends C.Cr.P. Arts. 930.4(B), (C), (D), and (E), and 930.8(A)(1))

Summary of Amendments Adopted by House

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

1. Removed the proposed law definition of "shell petition" and provisions requiring the dismissal of a "shell petition".
2. Removed proposed law one-year time limitation on application for post-conviction relief.
3. Changed references from "due diligence" to "diligence" and defined "diligence".
4. Changed time period for filing the discovery of new evidence from 90 days to two years from the date of discovery.