



Ohio Legislative Service Commission

Bill Analysis

Dennis M. Papp

S.B. 139

131st General Assembly
(As Introduced)

Sens. Seitz and Williams, Tavares, Brown, LaRose, Eklund

BILL SUMMARY

- Requires the clerk of a common pleas court to retain a copy of the original trial file when a death penalty is imposed.
- Specifies that there is no page limit on petitions for postconviction relief in death penalty cases or in appeals of denials of such relief.
- Provides for depositions and subpoenas during discovery in postconviction relief proceedings.
- Requires a judge hearing a postconviction relief proceeding to state specifically in the findings of fact and conclusions of law why each claim was either denied or granted.

CONTENT AND OPERATION

Retention of copy of record in death penalty case

The bill requires the clerk of a court of common pleas or a panel of three judges of a court of common pleas that imposes a sentence of death to make and retain a copy of the entire record in the case, before delivering the record to an appellate court or the Supreme Court. Under the bill, as under existing law, the clerk then must deliver the entire record to the appellate court if the aggravated murder that is the basis of the sentence was committed before January 1, 1995, and must deliver the entire record to the Supreme Court if the aggravated murder that is the basis of the sentence was committed on or after January 1, 1995.¹ Currently, the Ohio Supreme Court has exclusive jurisdiction in direct appeals in cases in which a death penalty has been

¹ R.C. 2929.03(G).

imposed,² but prior to January 1, 1995, courts of appeals and the Supreme Court both were required to review death penalty cases on direct appeal.³

Postconviction relief proceedings

Generally; basis for filing petition

The bill modifies the grounds that may be the basis of a postconviction relief proceeding, which is a type of collateral challenge of a criminal conviction or delinquent child adjudication. Currently, a person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights *as to render the judgment void or voidable* under the Ohio or U.S. Constitution may file a petition in the court that imposed sentence asking the court to vacate or set aside the judgment or sentence or grant other appropriate relief. Under the bill, such a person who claims that there was a denial or infringement of the person's rights under the Ohio or U.S. Constitution *that creates a reasonable probability of an altered verdict* may file a petition requesting the postconviction relief. Continuing law also permits a petition for postconviction relief to be filed for specified DNA-related claims.⁴

No page limit on original petitions in death penalty cases

The bill specifies that, notwithstanding any law or court rule to the contrary, there is no limit on the number of pages in, or on the length of, a petition requesting postconviction relief filed by a person who has been sentenced to death.⁵ The Revised Code currently does not impose, or address whether there is, a limit on the number of pages in, or on the length of, such a petition.

Depositions and subpoenas during discovery

The bill enacts procedures governing depositions and subpoenas during discovery in postconviction relief proceedings. It specifies that, at any time prior to or in conjunction with the filing of a petition for postconviction relief or with the litigation of a petition so filed, the petitioner is entitled to discovery in seeking the postconviction relief.

² Article IV, Sections 2(B)(2)(c) and 3(B)(2), Ohio Constitution, and R.C. 2929.05.

³ Former Article IV, Sections 2(B)(2)(a)(ii) and 3(B)(2), Ohio Constitution, and former R.C. 2929.05.

⁴ R.C. 2953.21(A)(1)(a).

⁵ R.C. 2953.21(A)(6).



In addition to discovery provided by Criminal Rule 16 (see "**Background**," below), if the petition alleges a constitutional denial or infringement of rights that creates a reasonable probability of an altered verdict, the petitioner is entitled to depositions and the right to issue subpoenas in either of the following circumstances:⁶

(1) For any witness who testified at trial or who was disclosed by the state prior to trial, the petitioner shows clear and convincing evidence that the witness is material and that a deposition of the witness or the issuing of a subpoena is of assistance in order to substantiate the petitioner's claim that there is a reasonable probability of an altered verdict, except that this provision does not apply if the witness was unavailable for trial or would not voluntarily be interviewed by the defendant;

(2) For any witness with respect to whom clause (1) does not apply, the petitioner shows good cause that the witness is material and that a deposition of the witness or the issuing of a subpoena is of assistance in order to substantiate the petitioner's claim that there is a reasonable probability of an altered verdict.

When a person who files a petition for postconviction relief files a request for postconviction discovery, in addition to the existing duties required with respect to the petition, the clerk of the court in which the request is filed must docket the request, bring it promptly to the attention of the court, and immediately forward a copy of it to the prosecuting attorney of the county served by the court.⁷ Within ten days after the docketing of the request for postconviction discovery, or within any other time that the court sets for good cause shown, the prosecuting attorney must respond by answer or motion.⁸

If a person who files a petition for postconviction relief requests a deposition and the court grants the request under the criteria described above, the court must notify the petitioner or the petitioner's counsel and the prosecuting attorney. The deposition must be conducted pursuant to Criminal Rule 15(B) to (E) (see "**Background**," below). The prosecuting attorney must be permitted to attend and participate in any deposition.⁹

⁶ R.C. 2953.21(A)(1)(d).

⁷ R.C. 2953.21(B).

⁸ R.C. 2953.21(A)(1)(e).

⁹ R.C. 2953.21(C).

Specific statement of why each claim was either denied or granted

Regarding dismissal of petition

Under continuing law, before granting a hearing on a petition for postconviction relief, the court must determine whether there are substantive grounds for relief. In making the determination, it must consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings, including the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript. If the court dismisses the petition, it must make and file findings of fact and conclusions of law with respect to such dismissal.

The bill requires that the findings of fact and conclusions of law regarding the dismissal must state specifically the reasons for the dismissal of the petition and of each claim it contains.¹⁰

Regarding denial or grant of claim

Under continuing law, unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court must hold a hearing on the issues. If the court does not find grounds for granting relief, it must make and file findings of fact and conclusions of law and enter judgment denying relief on the petition. If the court finds grounds for granting relief, it must make and file findings of fact and conclusions of law and enter a judgment that vacates and sets aside the judgment in question. In the case of a petitioner who is in custody, the court must discharge or resentence the petitioner or grant a new trial as the court determines appropriate.

With respect to a denial of the claim, the bill requires that the findings of fact and conclusions of law state specifically the reasons for the denial of relief on the petition and of each claim it contains. With respect to a grant of the relief requested, the bill requires that the findings of fact and conclusions of law state specifically the reasons for the finding of grounds for granting the relief, with respect to each claim contained in the petition.¹¹

No page limit on postconviction relief appeal petitions in death penalty cases

The bill specifies that if a postconviction relief petition by a person who has been sentenced to death is denied and the person appeals the judgment, notwithstanding any law or court rule to the contrary, there is no limit on the number of pages in, or on the

¹⁰ R.C. 2953.21(D).

¹¹ R.C. 2953.21(F) and (H).



length of, a notice of appeal or petition related to an appeal filed by the person. Under continuing law, an order awarding or denying relief sought in a postconviction petition so filed is a final judgment and may be appealed pursuant to R.C. Chapter 2953.¹² The Revised Code currently does not impose, or address whether there is, a limit on the number of pages in, or on the length of, such a petition.

Background

Criminal Rules

Criminal Rule 15 provides for, and governs the taking of, depositions in criminal cases. Divisions (B) to (E) of the Rule, cited in the bill, provide for:¹³ (1) notice to parties of the time and place of a requested deposition, (2) the right of the defendant to attend the deposition, (3) the right of the defendant to have counsel assigned and, in specified circumstances, to have expenses of the deposition paid out of public funds, and (4) the taking of the deposition in the manner provided in civil cases and the right of the prosecution and defense to full examination of witnesses.

Criminal Rule 16 provides for, and establishes procedures governing, discovery in criminal cases.

HISTORY

ACTION	DATE
Introduced	04-06-15

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¹² R.C. 2953.53(B).

¹³ Criminal Rule 15(B) to (E), not in the bill.

