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Bill Analysis

Version: As Introduced

Primary Sponsors: Reps. Schmidt and Upchurch

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SUMMARY

- Expands who may file a petition for post-conviction relief by doing the following:
  - Allowing a person to file a petition based on DNA testing performed at the request or on behalf of the petitioner or at the request or on the behalf of the state or any government entity, rather than only DNA testing performed at the request of an eligible offender;
  - Allowing a person to file a petition without requiring that the DNA testing must be analyzed in the context of and upon consideration of all admissible evidence.
- Provides that certain prohibitions on filing a petition for post-conviction relief apply only if they do not preclude a person from doing either of the following:
  - Filing a second or successive petition for post-conviction relief when authorized;
  - Filing a petition for post-conviction relief that meets the requirements for a petition for post-conviction relief and that is based on DNA testing conducted at the request or on behalf of the state or any government entity, if the person previously filed a petition based on DNA testing conducted at the request or on behalf of the state or any government entity before the effective date of the bill.

DETAILED ANALYSIS

Post-conviction relief

Petition based on DNA testing

Under current law, a person in any of the following categories may file a petition in the court that imposed a sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief:[1]

1. Any 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 Constitution or the United States Constitution;

2. Any person who has been convicted of a criminal offense and sentenced to death and who claims that there was a denial or infringement of the person's rights under the Ohio Constitution or the United States Constitution that creates a reasonable probability of an altered verdict;

3. Any person who has been convicted of a criminal offense that is a felony and who is an offender for whom DNA testing was performed at the request of an eligible offender and analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in the law on DNA testing performed at the request of an eligible offender, and provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of the person's sentence;

4. Any person who has been convicted of aggravated murder and sentenced to death for the offense and who claims that the person had a serious mental illness at the time of the commission of the offense and that as a result the court should render void the sentence of death, with the filing of the petition constituting a waiver of any right to be sentenced under the law that existed at the time of the offense was committed and constituting consent to be sentenced to life imprisonment without parole.

The bill modifies (3) to apply to any person who has been convicted of a criminal offense that is a felony and whose petition is based on qualifying DNA testing that provided results that establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish by clear and convincing evidence, actual innocence of

[1] R.C. 2953.21(A)(1)(a).

the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of the person's sentence.[2]

In making the above changes, the bill expands who may file a petition for post-conviction relief in three ways. First, under current law, "DNA testing" only included DNA testing performed at the request of an eligible offender. Under the bill, "qualifying DNA testing" includes DNA testing performed at the request of an eligible offender and DNA testing performed at the request or on behalf of the petitioner or at the request or on behalf of the state or any government entity.[3]

Second, under current law, DNA testing had to be analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in the law on DNA testing performed at the request of an eligible offender. Those provisions provide that if an eligible offender submits an application for DNA testing, the court, in determining whether the "outcome determinative" criterion have been satisfied, must consider all available admissible evidence. Under the bill, both of these requirements are eliminated.[4]

Third, under current law, "actual innocence" means that, had the results of the DNA testing performed at the request of the eligible offender been presented at trial, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related the person's case as described in the law on DNA testing performed at the request of an eligible offender, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted, or if the person was sentenced to death, no reasonable factfinder would have found the petitioner guilty of the aggravating circumstance or circumstances the petitioner was found guilty of committing and that is or are the basis of the sentence of death. Under the bill, as above, the reference to "DNA testing" is replaced by the expanded definition of "qualifying DNA testing." Also, the bill retains the requirement that DNA testing be analyzed in the context and upon all admissible evidence related to the person's case, but eliminates the requirement that it must be analyzed as described in the law on DNA testing performed at the request of an eligible offender.[5]

Late or successive petition based on DNA testing

Under current law, a court may not entertain a petition filed after a specified time period or a second petition or successive petition for similar relief unless (1) or (2) applies:[6]

5. Both of the following apply:

[2] R.C. 2953.21(A)(1)(a)(iii).

[3] R.C. 2953.21(A)(1)(a)(iii) and (c)(i).

[4] R.C. 2953.21(A)(1)(a)(iii).

[5] R.C. 2953.21(A)(1)(c)(ii).

[6] R.C. 2953.23(A).

a. Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to the specified time period or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right;

b. The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

6. The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing performed at the request of an eligible offender and analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in the law on DNA testing, and the results of the DNA testing establish, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.

The bill modifies (2) to apply if all of the following apply: (a) the petitioner was convicted of a felony, (b) the petitioner's petition is based on qualifying DNA testing, (c) the results of the qualifying DNA testing established, by clear and convincing evidence, actual innocence of that felony offense or, if the person was sentenced to death, establish, by clear and convincing evidence, actual innocence of the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death.[7]

In making the above changes, the bill expands who may file a late or second or successive petition for post-conviction relief in the same three ways as noted above (see, "**Petition based on DNA testing**," above).[8]

The bill also specifies the that above changes are remedial and apply retroactively with respect to any petition that satisfies the criteria set forth above as it exists on or after the effective date or the criteria set forth above as it is existed prior to the effective date, regardless of when the subject felony offense was committed and regardless of when the petitioner previously filed the petition.[9]

[7] R.C. 2953.23(A)(2).

[8] R.C. 2953.23(A)(2) and (D).

[9] R.C. 2953.23(C).

Previous petition based on DNA testing

Under current law, the provisions relating to post-conviction relief do not apply to any person who has been convicted of a criminal offense and sentenced to death and who has unsuccessfully raised the same claims in the petition for post-conviction relief. The bill adds that this provision applies as long as it does not preclude a person from doing either of the following:[10]

- Filing a second or successive petition for post-conviction relief when authorized (see, "**Time for filing petition for post-conviction release and DNA testing**," above);
- Filing a petition for post-conviction relief that meets the requirements for a petition and that is based on DNA testing conducted at the request or on behalf of the state or any government entity, if the person previously filed a petition for post-conviction relief based on DNA testing conducted at the request or on behalf of the state or any government entity before the effective date of the bill.

HISTORY

Action	Date
Introduced	03-01-22

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[10] R.C. 2953.21(A)(1)(k).