

As Introduced

136th General Assembly

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H. B. No. 490

Representatives Schmidt, Williams

To amend sections 2953.21 and 2953.23 of the	1
Revised Code to expand the availability of	2
postconviction relief based on DNA testing	3
showing actual innocence.	4

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 2953.21 and 2953.23 of the	5
Revised Code be amended to read as follows:	6

Sec. 2953.21. (A) (1) (a) A person in any of the following	7
categories may file a petition in the court that imposed	8
sentence, stating the grounds for relief relied upon, and asking	9
the court to vacate or set aside the judgment or sentence or to	10
grant other appropriate relief:	11

(i) Any person who has been convicted of a criminal	12
offense or adjudicated a delinquent child and who claims that	13
there was such a denial or infringement of the person's rights	14
as to render the judgment void or voidable under the Ohio	15
Constitution or the Constitution of the United States;	16

(ii) Any person who has been convicted of a criminal	17
offense and sentenced to death and who claims that there was a	18
denial or infringement of the person's rights under either of	19
those Constitutions that creates a reasonable probability of an	20

altered verdict; 21

(iii) Any person who has been convicted of a criminal 22
offense that is a felony and ~~who is an offender for whom whose~~ 23
~~petition is based on qualifying DNA testing that was performed~~ 24
~~under sections 2953.71 to 2953.81 of the Revised Code or under~~ 25
~~former section 2953.82 of the Revised Code and analyzed in the~~ 26
~~context of and upon consideration of all available admissible~~ 27
~~evidence related to the person's case as described in division~~ 28
~~(D) of section 2953.74 of the Revised Code that~~ provided results 29
that establish, by clear and convincing evidence, actual 30
innocence of that felony offense or, if the person was sentenced 31
to death, establish, by clear and convincing evidence, actual 32
innocence of the aggravating circumstance or circumstances the 33
person was found guilty of committing and that is or are the 34
basis of that sentence of death; 35

(iv) Any person who has been convicted of aggravated 36
murder and sentenced to death for the offense and who claims 37
that the person had a serious mental illness at the time of the 38
commission of the offense and that as a result the court should 39
render void the sentence of death, with the filing of the 40
petition constituting the waiver described in division (A) (3) (b) 41
of this section. 42

(b) A petitioner under division (A) (1) (a) of this section 43
may file a supporting affidavit and other documentary evidence 44
in support of the claim for relief. 45

(c) As used in division (A) (1) (a) of this section: 46

(i) "Qualifying DNA testing" means either of the 47
following: 48

(I) DNA testing that was performed under sections 2953.71 49

to 2953.81 of the Revised Code or under former section 2953.82 50
of the Revised Code; 51

(II) DNA testing that was performed on or after the 52
effective date of this amendment at the request or on behalf of 53
the state or the prosecuting attorney of the county in which the 54
offender was convicted. 55

(ii) "Actual innocence" means that, had the results of the 56
DNA testing conducted under sections 2953.71 to 2953.81 of the 57
Revised Code or under former section 2953.82 of the Revised Code 58
in a context described in division (A) (1) (c) (i) of this section 59
been presented at trial, and had those results been analyzed in 60
the context of and upon consideration of all available 61
admissible evidence related to the person's case ~~as described in~~ 62
~~division (D) of section 2953.74 of the Revised Code,~~ no 63
reasonable factfinder would have found the petitioner guilty of 64
the offense of which the petitioner was convicted, or, if the 65
person was sentenced to death, no reasonable factfinder would 66
have found the petitioner guilty of the aggravating circumstance 67
or circumstances the petitioner was found guilty of committing 68
and that is or are the basis of that sentence of death. 69

~~(ii)~~ (iii) "Serious mental illness" has the same meaning as 70
in section 2929.025 of the Revised Code. 71

(d) As used in divisions (A) (1) (a) and (c) of this 72
section, "former section 2953.82 of the Revised Code" means 73
section 2953.82 of the Revised Code as it existed prior to July 74
6, 2010. 75

(e) At any time in conjunction with the filing of a 76
petition for postconviction relief under division (A) of this 77
section by a person who has been sentenced to death, or with the 78

litigation of a petition so filed, the court, for good cause 79
shown, may authorize the petitioner in seeking the 80
postconviction relief and the prosecuting attorney of the county 81
served by the court in defending the proceeding, to take 82
depositions and to issue subpoenas and subpoenas duces tecum in 83
accordance with divisions (A) (1) (e), (A) (1) (f), and (C) of this 84
section, and to any other form of discovery as in a civil action 85
that the court in its discretion permits. The court may limit 86
the extent of discovery under this division. In addition to 87
discovery that is relevant to the claim and was available under 88
Criminal Rule 16 through conclusion of the original criminal 89
trial, the court, for good cause shown, may authorize the 90
petitioner or prosecuting attorney to take depositions and issue 91
subpoenas and subpoenas duces tecum in either of the following 92
circumstances: 93

(i) For any witness who testified at trial or who was 94
disclosed by the state prior to trial, except as otherwise 95
provided in this division, the petitioner or prosecuting 96
attorney shows clear and convincing evidence that the witness is 97
material and that a deposition of the witness or the issuing of 98
a subpoena or subpoena duces tecum is of assistance in order to 99
substantiate or refute the petitioner's claim that there is a 100
reasonable probability of an altered verdict. This division does 101
not apply if the witness was unavailable for trial or would not 102
voluntarily be interviewed by the defendant or prosecuting 103
attorney. 104

(ii) For any witness with respect to whom division (A) (1) 105
(e) (i) of this section does not apply, the petitioner or 106
prosecuting attorney shows good cause that the witness is 107
material and that a deposition of the witness or the issuing of 108
a subpoena or subpoena duces tecum is of assistance in order to 109

substantiate or refute the petitioner's claim that there is a 110
reasonable probability of an altered verdict. 111

(f) If a person who has been sentenced to death and who 112
files a petition for postconviction relief under division (A) of 113
this section requests postconviction discovery as described in 114
division (A)(1)(e) of this section or if the prosecuting 115
attorney of the county served by the court requests 116
postconviction discovery as described in that division, within 117
ten days after the docketing of the request, or within any other 118
time that the court sets for good cause shown, the prosecuting 119
attorney shall respond by answer or motion to the petitioner's 120
request or the petitioner shall respond by answer or motion to 121
the prosecuting attorney's request, whichever is applicable. 122

(g) If a person who has been sentenced to death and who 123
files a petition for postconviction relief under division (A) of 124
this section requests postconviction discovery as described in 125
division (A)(1)(e) of this section or if the prosecuting 126
attorney of the county served by the court requests 127
postconviction discovery as described in that division, upon 128
motion by the petitioner, the prosecuting attorney, or the 129
person from whom discovery is sought, and for good cause shown, 130
the court in which the action is pending may make any order that 131
justice requires to protect a party or person from oppression or 132
undue burden or expense, including but not limited to the orders 133
described in divisions (A)(1)(h)(i) to (viii) of this section. 134
The court also may make any such order if, in its discretion, it 135
determines that the discovery sought would be irrelevant to the 136
claims made in the petition; and if the court makes any such 137
order on that basis, it shall explain in the order the reasons 138
why the discovery would be irrelevant. 139

(h) If a petitioner, prosecuting attorney, or person from 140
whom discovery is sought makes a motion for an order under 141
division (A)(1)(g) of this section and the order is denied in 142
whole or in part, the court, on terms and conditions as are 143
just, may order that any party or person provide or permit 144
discovery as described in division (A)(1)(e) of this section. 145
The provisions of Civil Rule 37(A)(4) apply to the award of 146
expenses incurred in relation to the motion, except that in no 147
case shall a court require a petitioner who is indigent to pay 148
expenses under those provisions. 149

Before any person moves for an order under division (A)(1) 150
(g) of this section, that person shall make a reasonable effort 151
to resolve the matter through discussion with the petitioner or 152
prosecuting attorney seeking discovery. A motion for an order 153
under division (A)(1)(g) of this section shall be accompanied by 154
a statement reciting the effort made to resolve the matter in 155
accordance with this paragraph. 156

The orders that may be made under division (A)(1)(g) of 157
this section include, but are not limited to, any of the 158
following: 159

(i) That the discovery not be had; 160

(ii) That the discovery may be had only on specified terms 161
and conditions, including a designation of the time or place; 162

(iii) That the discovery may be had only by a method of 163
discovery other than that selected by the party seeking 164
discovery; 165

(iv) That certain matters not be inquired into or that the 166
scope of the discovery be limited to certain matters; 167

(v) That discovery be conducted with no one present except 168

persons designated by the court; 169

(vi) That a deposition after being sealed be opened only 170
by order of the court; 171

(vii) That a trade secret or other confidential research, 172
development, or commercial information not be disclosed or be 173
disclosed only in a designated way; 174

(viii) That the parties simultaneously file specified 175
documents or information enclosed in sealed envelopes to be 176
opened as directed by the court. 177

(i) Any postconviction discovery authorized under division 178
(A) (1) (e) of this section shall be completed not later than 179
eighteen months after the start of the discovery proceedings 180
unless, for good cause shown, the court extends that period for 181
completing the discovery. 182

(j) Nothing in division (A) (1) (e) of this section 183
authorizes, or shall be construed as authorizing, the 184
relitigation, or discovery in support of relitigation, of any 185
matter barred by the doctrine of res judicata. 186

(k) Division (A) (1) of this section does not apply to any 187
person who has been convicted of a criminal offense and 188
sentenced to death and who has unsuccessfully raised the same 189
claims in a petition for postconviction relief, provided that 190
this division does not limit or preclude a person from filing a 191
second or successive petition for postconviction relief when 192
authorized under section 2953.23 of the Revised Code. 193

(2) (a) Except as otherwise provided in section 2953.23 of 194
the Revised Code, a petition under division (A) (1) (a) (i), (ii), 195
or (iii) of this section shall be filed no later than three 196
hundred sixty-five days after the date on which the trial 197

transcript is filed in the court of appeals in the direct appeal 198
of the judgment of conviction or adjudication or, if the direct 199
appeal involves a sentence of death, the date on which the trial 200
transcript is filed in the supreme court. If no appeal is taken, 201
except as otherwise provided in section 2953.23 of the Revised 202
Code, the petition shall be filed no later than three hundred 203
sixty-five days after the expiration of the time for filing the 204
appeal. 205

(b) Except as otherwise provided in section 2953.23 of the 206
Revised Code, a petition under division (A) (1) (a) (iv) of this 207
section shall be filed not later than three hundred sixty-five 208
days after ~~the effective date of this amendment~~ April 12, 2021. 209

(3) (a) In a petition filed under division (A) (1) (a) (i), 210
(ii), or (iii) of this section, a person who has been sentenced 211
to death may ask the court to render void or voidable the 212
judgment with respect to the conviction of aggravated murder or 213
the specification of an aggravating circumstance or the sentence 214
of death. 215

(b) A person sentenced to death who files a petition under 216
division (A) (1) (a) (iv) of this section may ask the court to 217
render void the sentence of death and to order the resentencing 218
of the person under division (A) of section 2929.06 of the 219
Revised Code. If a person sentenced to death files such a 220
petition and asks the court to render void the sentence of death 221
and to order the resentencing of the person under division (A) 222
of section 2929.06 of the Revised Code, the act of filing the 223
petition constitutes a waiver of any right to be sentenced under 224
the law that existed at the time the offense was committed and 225
constitutes consent to be sentenced to life imprisonment without 226
parole under division (A) of section 2929.06 of the Revised 227

Code. 228

(4) A petitioner shall state in the original or amended 229
petition filed under division (A) of this section all grounds 230
for relief claimed by the petitioner. Except as provided in 231
section 2953.23 of the Revised Code, any ground for relief that 232
is not so stated in the petition is waived. 233

(5) If the petitioner in a petition filed under division 234
(A)(1)(a)(i), (ii), or (iii) of this section was convicted of or 235
pleaded guilty to a felony, the petition may include a claim 236
that the petitioner was denied the equal protection of the laws 237
in violation of the Ohio Constitution or the United States 238
Constitution because the sentence imposed upon the petitioner 239
for the felony was part of a consistent pattern of disparity in 240
sentencing by the judge who imposed the sentence, with regard to 241
the petitioner's race, gender, ethnic background, or religion. 242
If the supreme court adopts a rule requiring a court of common 243
pleas to maintain information with regard to an offender's race, 244
gender, ethnic background, or religion, the supporting evidence 245
for the petition shall include, but shall not be limited to, a 246
copy of that type of information relative to the petitioner's 247
sentence and copies of that type of information relative to 248
sentences that the same judge imposed upon other persons. 249

(6) Notwithstanding any law or court rule to the contrary, 250
there is no limit on the number of pages in, or on the length 251
of, a petition filed under division (A)(1)(a)(i), (ii), (iii), 252
or (iv) of this section by a person who has been sentenced to 253
death. If any court rule specifies a limit on the number of 254
pages in, or on the length of, a petition filed under division 255
(A)(1)(a)(i), (ii), (iii), or (iv) of this section or on a 256
prosecuting attorney's response to such a petition by answer or 257

motion and a person who has been sentenced to death files a 258
petition that exceeds the limit specified for the petition, the 259
prosecuting attorney may respond by an answer or motion that 260
exceeds the limit specified for the response. 261

(B) The clerk of the court in which the petition for 262
postconviction relief and, if applicable, a request for 263
postconviction discovery described in division (A) (1) (e) of this 264
section is filed shall docket the petition and the request and 265
bring them promptly to the attention of the court. The clerk of 266
the court in which the petition for postconviction relief and, 267
if applicable, a request for postconviction discovery described 268
in division (A) (1) (e) of this section is filed immediately shall 269
forward a copy of the petition and a copy of the request if 270
filed by the petitioner to the prosecuting attorney of the 271
county served by the court. If the request for postconviction 272
discovery is filed by the prosecuting attorney, the clerk of the 273
court immediately shall forward a copy of the request to the 274
petitioner or the petitioner's counsel. 275

(C) If a person who has been sentenced to death and who 276
files a petition for postconviction relief under division (A) (1) 277
(a) (i), (ii), (iii), or (iv) of this section requests a 278
deposition or the prosecuting attorney in the case requests a 279
deposition, and if the court grants the request under division 280
(A) (1) (e) of this section, the court shall notify the petitioner 281
or the petitioner's counsel and the prosecuting attorney. The 282
deposition shall be conducted pursuant to divisions (B), (D), 283
and (E) of Criminal Rule 15. Notwithstanding division (C) of 284
Criminal Rule 15, the petitioner is not entitled to attend the 285
deposition. The prosecuting attorney shall be permitted to 286
attend and participate in any deposition. 287

(D) The court shall consider a petition that is timely 288
filed within the period specified in division (A)(2) of this 289
section even if a direct appeal of the judgment is pending. 290
Before granting a hearing on a petition filed under division (A) 291
(1)(a)(i), (ii), (iii), or (iv) of this section, the court shall 292
determine whether there are substantive grounds for relief. In 293
making such a determination, the court shall consider, in 294
addition to the petition, the supporting affidavits, and the 295
documentary evidence, all the files and records pertaining to 296
the proceedings against the petitioner, including, but not 297
limited to, the indictment, the court's journal entries, the 298
journalized records of the clerk of the court, and the court 299
reporter's transcript. The court reporter's transcript, if 300
ordered and certified by the court, shall be taxed as court 301
costs. If the court dismisses the petition, it shall make and 302
file findings of fact and conclusions of law with respect to 303
such dismissal. If the petition was filed by a person who has 304
been sentenced to death, the findings of fact and conclusions of 305
law shall state specifically the reasons for the dismissal of 306
the petition and of each claim it contains. 307

(E) Within ten days after the docketing of the petition, 308
or within any further time that the court may fix for good cause 309
shown, the prosecuting attorney shall respond by answer or 310
motion. Division (A)(6) of this section applies with respect to 311
the prosecuting attorney's response. Within twenty days from the 312
date the issues are raised, either party may move for summary 313
judgment. The right to summary judgment shall appear on the face 314
of the record. 315

(F) Unless the petition and the files and records of the 316
case show the petitioner is not entitled to relief, the court 317
shall proceed to a prompt hearing on the issues even if a direct 318

appeal of the case is pending. If the court notifies the parties 319
that it has found grounds for granting relief, either party may 320
request an appellate court in which a direct appeal of the 321
judgment is pending to remand the pending case to the court. 322

With respect to a petition filed under division (A)(1)(a) 323
(iv) of this section, the procedures and rules regarding 324
introduction of evidence and burden of proof at the pretrial 325
hearing that are set forth in divisions (C), (D), and (F) of 326
section 2929.025 of the Revised Code apply in considering the 327
petition. With respect to such a petition, the grounds for 328
granting relief are that the person has been diagnosed with one 329
or more of the conditions set forth in division (A)(1)(a) of 330
section 2929.025 of the Revised Code and that, at the time of 331
the aggravated murder that was the basis of the sentence of 332
death, the condition or conditions significantly impaired the 333
person's capacity in a manner described in division (A)(1)(b) of 334
that section. 335

(G) A petitioner who files a petition under division (A) 336
(1)(a)(i), (ii), (iii), or (iv) of this section may amend the 337
petition as follows: 338

(1) If the petition was filed by a person who has been 339
sentenced to death, at any time that is not later than one 340
hundred eighty days after the petition is filed, the petitioner 341
may amend the petition with or without leave or prejudice to the 342
proceedings. 343

(2) If division (G)(1) of this section does not apply, at 344
any time before the answer or motion is filed, the petitioner 345
may amend the petition with or without leave or prejudice to the 346
proceedings. 347

(3) The petitioner may amend the petition with leave of 348
court at any time after the expiration of the applicable period 349
specified in division (G) (1) or (2) of this section. 350

(H) If the court does not find grounds for granting 351
relief, it shall make and file findings of fact and conclusions 352
of law and shall enter judgment denying relief on the petition. 353
If the petition was filed by a person who has been sentenced to 354
death, the findings of fact and conclusions of law shall state 355
specifically the reasons for the denial of relief on the 356
petition and of each claim it contains. If no direct appeal of 357
the case is pending and the court finds grounds for relief or if 358
a pending direct appeal of the case has been remanded to the 359
court pursuant to a request made pursuant to division (F) of 360
this section and the court finds grounds for granting relief, it 361
shall make and file findings of fact and conclusions of law and 362
shall enter a judgment that vacates and sets aside the judgment 363
in question, and, in the case of a petitioner who is a prisoner 364
in custody, except as otherwise described in this division, 365
shall discharge or resentence the petitioner or grant a new 366
trial as the court determines appropriate. If the court finds 367
grounds for relief in the case of a petitioner who filed a 368
petition under division (A) (1) (a) (iv) of this section, the court 369
shall render void the sentence of death and order the 370
resentencing of the offender under division (A) of section 371
2929.06 of the Revised Code. If the petitioner has been 372
sentenced to death, the findings of fact and conclusions of law 373
shall state specifically the reasons for the finding of grounds 374
for granting the relief, with respect to each claim contained in 375
the petition. The court also may make supplementary orders to 376
the relief granted, concerning such matters as rearraignment, 377
retrial, custody, and bail. If the trial court's order granting 378

the petition is reversed on appeal and if the direct appeal of 379
the case has been remanded from an appellate court pursuant to a 380
request under division (F) of this section, the appellate court 381
reversing the order granting the petition shall notify the 382
appellate court in which the direct appeal of the case was 383
pending at the time of the remand of the reversal and remand of 384
the trial court's order. Upon the reversal and remand of the 385
trial court's order granting the petition, regardless of whether 386
notice is sent or received, the direct appeal of the case that 387
was remanded is reinstated. 388

(I) Upon the filing of a petition pursuant to division (A) 389
(1)(a)(i), (ii), (iii), or (iv) of this section by a person 390
sentenced to death, only the supreme court may stay execution of 391
the sentence of death. 392

(J)(1) If a person sentenced to death intends to file a 393
petition under this section, the court shall appoint counsel to 394
represent the person upon a finding that the person is indigent 395
and that the person either accepts the appointment of counsel or 396
is unable to make a competent decision whether to accept or 397
reject the appointment of counsel. The court may decline to 398
appoint counsel for the person only upon a finding, after a 399
hearing if necessary, that the person rejects the appointment of 400
counsel and understands the legal consequences of that decision 401
or upon a finding that the person is not indigent. 402

(2) The court shall not appoint as counsel under division 403
(J)(1) of this section an attorney who represented the 404
petitioner at trial in the case to which the petition relates 405
unless the person and the attorney expressly request the 406
appointment. The court shall appoint as counsel under division 407
(J)(1) of this section only an attorney who is certified under 408

Rule 20 of the Rules of Superintendence for the Courts of Ohio 409
to represent indigent defendants charged with or convicted of an 410
offense for which the death penalty can be or has been imposed. 411
The ineffectiveness or incompetence of counsel during 412
proceedings under this section does not constitute grounds for 413
relief in a proceeding under this section, in an appeal of any 414
action under this section, or in an application to reopen a 415
direct appeal. 416

(3) Division (J) of this section does not preclude 417
attorneys who represent the state of Ohio from invoking the 418
provisions of 28 U.S.C. 154 with respect to capital cases that 419
were pending in federal habeas corpus proceedings prior to July 420
1, 1996, insofar as the petitioners in those cases were 421
represented in proceedings under this section by one or more 422
counsel appointed by the court under this section or section 423
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 424
appointed counsel meet the requirements of division (J) (2) of 425
this section. 426

(K) Subject to the appeal of a sentence for a felony that 427
is authorized by section 2953.08 of the Revised Code, the remedy 428
set forth in this section is the exclusive remedy by which a 429
person may bring a collateral challenge to the validity of a 430
conviction or sentence in a criminal case or to the validity of 431
an adjudication of a child as a delinquent child for the 432
commission of an act that would be a criminal offense if 433
committed by an adult or the validity of a related order of 434
disposition. 435

Sec. 2953.23. (A) Whether a hearing is or is not held on a 436
petition filed pursuant to section 2953.21 of the Revised Code, 437
a court may not entertain a petition filed after the expiration 438

of the period prescribed in division (A) of that section or a 439
second petition or successive petitions for similar relief on 440
behalf of a petitioner unless division (A)(1) or (2) of this 441
section applies: 442

(1) Both of the following apply: 443

(a) Either the petitioner shows that the petitioner was 444
unavoidably prevented from discovery of the facts upon which the 445
petitioner must rely to present the claim for relief, or, 446
subsequent to the period prescribed in division (A)(2) of 447
section 2953.21 of the Revised Code or to the filing of an 448
earlier petition, the United States Supreme Court recognized a 449
new federal or state right that applies retroactively to persons 450
in the petitioner's situation, and the petition asserts a claim 451
based on that right. 452

(b) The petitioner shows by clear and convincing evidence 453
that, but for constitutional error at trial, no reasonable 454
factfinder would have found the petitioner guilty of the offense 455
of which the petitioner was convicted or, if the claim 456
challenges a sentence of death that, but for constitutional 457
error at the sentencing hearing, no reasonable factfinder would 458
have found the petitioner eligible for the death sentence. 459

(2) All of the following apply: 460

(a) The petitioner was convicted of a felony,~~the~~ 461
~~petitioner is an offender for whom.~~ 462

(b) The petitioner's petition is based on qualifying DNA 463
~~testing was performed under sections 2953.71 to 2953.81 of the~~ 464
~~Revised Code or under former section 2953.82 of the Revised Code~~ 465
~~and analyzed in the context of and upon consideration of all~~ 466
~~available admissible evidence related to the inmate's case as~~ 467

~~described in division (D) of section 2953.74 of the Revised
Code, and the.~~

(c) The results of the qualifying 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.

~~As used in this division, "actual innocence" has the same
meaning as in division (A) (1) (c) of section 2953.21 of the
Revised Code, and "former section 2953.82 of the Revised Code"
has the same meaning as in division (A) (1) (d) of section 2953.21
of the Revised Code.~~

(B) An order awarding or denying relief sought in a
petition filed pursuant to section 2953.21 of the Revised Code
is a final judgment and may be appealed pursuant to Chapter
2953. of the Revised Code.

If a petition filed pursuant to section 2953.21 of the
Revised Code 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 length of, a notice of appeal or
briefs related to an appeal filed by the person. If any court
rule specifies a limit on the number of pages in, or on the
length of, a notice of appeal or briefs described in this
division or on a prosecuting attorney's response or briefs with
respect to such an appeal and a person who has been sentenced to
death files a notice of appeal or briefs that exceed the limit
specified for the petition, the prosecuting attorney may file a

response or briefs that exceed the limit specified for the 498
answer or briefs. 499

(C) As used in division (A) (2) of this section, "actual 500
innocence" and "qualifying DNA testing" have the same meanings 501
as in division (A) (1) (c) of section 2953.21 of the Revised Code. 502

Section 2. That existing sections 2953.21 and 2953.23 of 503
the Revised Code are hereby repealed. 504