

**As Introduced**

**135th General Assembly**

**Regular Session**

**2023-2024**

**H. B. No. 221**

**Representatives Schmidt, Upchurch**

**Cosponsors: Representatives Humphrey, Seitz, Brewer, Williams, Hillyer, White,  
Dell'Aquila, Johnson**

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**A BILL**

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 denial or infringement of the person's rights under either of those Constitutions that creates a reasonable probability of an altered verdict;

(iii) Any person who has been convicted of a criminal offense that is a felony and ~~who is an offender for whom whose petition is based on qualifying DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the person's case as described in division (D) of section 2953.74 of the Revised Code 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 the aggravating circumstance or circumstances the person was found guilty of committing and that is or are the basis of that sentence of death;

(iv) 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 the waiver described in division (A) (3) (b) of this section.

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

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

(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 at the request or on 52  
behalf of the petitioner other than as described in division (A) 53  
(1)(c)(i)(I) of this section or at the request or on behalf of 54  
the state or any government entity. 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 persons designated by the court;	168 169
(vi) That a deposition after being sealed be opened only by order of the court;	170 171
(vii) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;	172 173 174
(viii) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.	175 176 177
(i) Any postconviction discovery authorized under division (A) (1) (e) of this section shall be completed not later than eighteen months after the start of the discovery proceedings unless, for good cause shown, the court extends that period for completing the discovery.	178 179 180 181 182
(j) Nothing in division (A) (1) (e) of this section authorizes, or shall be construed as authorizing, the relitigation, or discovery in support of relitigation, of any matter barred by the doctrine of res judicata.	183 184 185 186
(k) Division (A) (1) of this section does 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 a petition for postconviction relief, <u>provided that this division does not limit or preclude a person from doing either of the following:</u>	187 188 189 190 191 192
(i) <u>Filing a second or successive petition for postconviction relief when authorized under section 2953.23 of</u>	193 194

the Revised Code; 195

(ii) Filing a petition for postconviction relief that 196  
meets the requirements of division (A) (1) (a) of this section and 197  
that is based on DNA testing conducted at the request or on 198  
behalf of the state or any government entity, if the person 199  
previously filed a petition for postconviction relief based on 200  
DNA testing conducted at the request or on behalf of the state 201  
or any government entity before the effective date of this 202  
amendment. 203

(2) (a) Except as otherwise provided in section 2953.23 of 204  
the Revised Code, a petition under division (A) (1) (a) (i), (ii), 205  
or (iii) of this section shall be filed no later than three 206  
hundred sixty-five days after the date on which the trial 207  
transcript is filed in the court of appeals in the direct appeal 208  
of the judgment of conviction or adjudication or, if the direct 209  
appeal involves a sentence of death, the date on which the trial 210  
transcript is filed in the supreme court. If no appeal is taken, 211  
except as otherwise provided in section 2953.23 of the Revised 212  
Code, the petition shall be filed no later than three hundred 213  
sixty-five days after the expiration of the time for filing the 214  
appeal. 215

(b) Except as otherwise provided in section 2953.23 of the 216  
Revised Code, a petition under division (A) (1) (a) (iv) of this 217  
section shall be filed not later than three hundred sixty-five 218  
days after ~~the effective date of this amendment~~ April 12, 2021. 219

(3) (a) In a petition filed under division (A) (1) (a) (i), 220  
(ii), or (iii) of this section, a person who has been sentenced 221  
to death may ask the court to render void or voidable the 222  
judgment with respect to the conviction of aggravated murder or 223  
the specification of an aggravating circumstance or the sentence 224



of death. 225

(b) A person sentenced to death who files a petition under 226  
division (A) (1) (a) (iv) of this section may ask the court to 227  
render void the sentence of death and to order the resentencing 228  
of the person under division (A) of section 2929.06 of the 229  
Revised Code. If a person sentenced to death files such a 230  
petition and asks the court to render void the sentence of death 231  
and to order the resentencing of the person under division (A) 232  
of section 2929.06 of the Revised Code, the act of filing the 233  
petition constitutes a waiver of any right to be sentenced under 234  
the law that existed at the time the offense was committed and 235  
constitutes consent to be sentenced to life imprisonment without 236  
parole under division (A) of section 2929.06 of the Revised 237  
Code. 238

(4) A petitioner shall state in the original or amended 239  
petition filed under division (A) of this section all grounds 240  
for relief claimed by the petitioner. Except as provided in 241  
section 2953.23 of the Revised Code, any ground for relief that 242  
is not so stated in the petition is waived. 243

(5) If the petitioner in a petition filed under division 244  
(A) (1) (a) (i), (ii), or (iii) of this section was convicted of or 245  
pleaded guilty to a felony, the petition may include a claim 246  
that the petitioner was denied the equal protection of the laws 247  
in violation of the Ohio Constitution or the United States 248  
Constitution because the sentence imposed upon the petitioner 249  
for the felony was part of a consistent pattern of disparity in 250  
sentencing by the judge who imposed the sentence, with regard to 251  
the petitioner's race, gender, ethnic background, or religion. 252  
If the supreme court adopts a rule requiring a court of common 253  
pleas to maintain information with regard to an offender's race, 254

gender, ethnic background, or religion, the supporting evidence 255  
for the petition shall include, but shall not be limited to, a 256  
copy of that type of information relative to the petitioner's 257  
sentence and copies of that type of information relative to 258  
sentences that the same judge imposed upon other persons. 259

(6) Notwithstanding any law or court rule to the contrary, 260  
there is no limit on the number of pages in, or on the length 261  
of, a petition filed under division (A) (1) (a) (i), (ii), (iii), 262  
or (iv) of this section by a person who has been sentenced to 263  
death. If any court rule specifies a limit on the number of 264  
pages in, or on the length of, a petition filed under division 265  
(A) (1) (a) (i), (ii), (iii), or (iv) of this section or on a 266  
prosecuting attorney's response to such a petition by answer or 267  
motion and a person who has been sentenced to death files a 268  
petition that exceeds the limit specified for the petition, the 269  
prosecuting attorney may respond by an answer or motion that 270  
exceeds the limit specified for the response. 271

(B) The clerk of the court in which the petition for 272  
postconviction relief and, if applicable, a request for 273  
postconviction discovery described in division (A) (1) (e) of this 274  
section is filed shall docket the petition and the request and 275  
bring them promptly to the attention of the court. The clerk of 276  
the court in which the petition for postconviction relief and, 277  
if applicable, a request for postconviction discovery described 278  
in division (A) (1) (e) of this section is filed immediately shall 279  
forward a copy of the petition and a copy of the request if 280  
filed by the petitioner to the prosecuting attorney of the 281  
county served by the court. If the request for postconviction 282  
discovery is filed by the prosecuting attorney, the clerk of the 283  
court immediately shall forward a copy of the request to the 284  
petitioner or the petitioner's counsel. 285

(C) If a person who has been sentenced to death and who 286  
files a petition for postconviction relief under division (A) (1) 287  
(a) (i), (ii), (iii), or (iv) of this section requests a 288  
deposition or the prosecuting attorney in the case requests a 289  
deposition, and if the court grants the request under division 290  
(A) (1) (e) of this section, the court shall notify the petitioner 291  
or the petitioner's counsel and the prosecuting attorney. The 292  
deposition shall be conducted pursuant to divisions (B), (D), 293  
and (E) of Criminal Rule 15. Notwithstanding division (C) of 294  
Criminal Rule 15, the petitioner is not entitled to attend the 295  
deposition. The prosecuting attorney shall be permitted to 296  
attend and participate in any deposition. 297

(D) The court shall consider a petition that is timely 298  
filed within the period specified in division (A) (2) of this 299  
section even if a direct appeal of the judgment is pending. 300  
Before granting a hearing on a petition filed under division (A) 301  
(1) (a) (i), (ii), (iii), or (iv) of this section, the court shall 302  
determine whether there are substantive grounds for relief. In 303  
making such a determination, the court shall consider, in 304  
addition to the petition, the supporting affidavits, and the 305  
documentary evidence, all the files and records pertaining to 306  
the proceedings against the petitioner, including, but not 307  
limited to, the indictment, the court's journal entries, the 308  
journalized records of the clerk of the court, and the court 309  
reporter's transcript. The court reporter's transcript, if 310  
ordered and certified by the court, shall be taxed as court 311  
costs. If the court dismisses the petition, it shall make and 312  
file findings of fact and conclusions of law with respect to 313  
such dismissal. If the petition was filed by a person who has 314  
been sentenced to death, the findings of fact and conclusions of 315  
law shall state specifically the reasons for the dismissal of 316

the petition and of each claim it contains. 317

(E) Within ten days after the docketing of the petition, 318  
or within any further time that the court may fix for good cause 319  
shown, the prosecuting attorney shall respond by answer or 320  
motion. Division (A) (6) of this section applies with respect to 321  
the prosecuting attorney's response. Within twenty days from the 322  
date the issues are raised, either party may move for summary 323  
judgment. The right to summary judgment shall appear on the face 324  
of the record. 325

(F) Unless the petition and the files and records of the 326  
case show the petitioner is not entitled to relief, the court 327  
shall proceed to a prompt hearing on the issues even if a direct 328  
appeal of the case is pending. If the court notifies the parties 329  
that it has found grounds for granting relief, either party may 330  
request an appellate court in which a direct appeal of the 331  
judgment is pending to remand the pending case to the court. 332

With respect to a petition filed under division (A) (1) (a) 333  
(iv) of this section, the procedures and rules regarding 334  
introduction of evidence and burden of proof at the pretrial 335  
hearing that are set forth in divisions (C), (D), and (F) of 336  
section 2929.025 of the Revised Code apply in considering the 337  
petition. With respect to such a petition, the grounds for 338  
granting relief are that the person has been diagnosed with one 339  
or more of the conditions set forth in division (A) (1) (a) of 340  
section 2929.025 of the Revised Code and that, at the time of 341  
the aggravated murder that was the basis of the sentence of 342  
death, the condition or conditions significantly impaired the 343  
person's capacity in a manner described in division (A) (1) (b) of 344  
that section. 345

(G) A petitioner who files a petition under division (A) 346

(1) (a) (i), (ii), (iii), or (iv) of this section may amend the 347  
petition as follows: 348

(1) If the petition was filed by a person who has been 349  
sentenced to death, at any time that is not later than one 350  
hundred eighty days after the petition is filed, the petitioner 351  
may amend the petition with or without leave or prejudice to the 352  
proceedings. 353

(2) If division (G) (1) of this section does not apply, at 354  
any time before the answer or motion is filed, the petitioner 355  
may amend the petition with or without leave or prejudice to the 356  
proceedings. 357

(3) The petitioner may amend the petition with leave of 358  
court at any time after the expiration of the applicable period 359  
specified in division (G) (1) or (2) of this section. 360

(H) If the court does not find grounds for granting 361  
relief, it shall make and file findings of fact and conclusions 362  
of law and shall enter judgment denying relief on the petition. 363  
If the petition was filed by a person who has been sentenced to 364  
death, the findings of fact and conclusions of law shall state 365  
specifically the reasons for the denial of relief on the 366  
petition and of each claim it contains. If no direct appeal of 367  
the case is pending and the court finds grounds for relief or if 368  
a pending direct appeal of the case has been remanded to the 369  
court pursuant to a request made pursuant to division (F) of 370  
this section and the court finds grounds for granting relief, it 371  
shall make and file findings of fact and conclusions of law and 372  
shall enter a judgment that vacates and sets aside the judgment 373  
in question, and, in the case of a petitioner who is a prisoner 374  
in custody, except as otherwise described in this division, 375  
shall discharge or resentence the petitioner or grant a new 376

trial as the court determines appropriate. If the court finds 377  
grounds for relief in the case of a petitioner who filed a 378  
petition under division (A) (1) (a) (iv) of this section, the court 379  
shall render void the sentence of death and order the 380  
resentencing of the offender under division (A) of section 381  
2929.06 of the Revised Code. If the petitioner has been 382  
sentenced to death, the findings of fact and conclusions of law 383  
shall state specifically the reasons for the finding of grounds 384  
for granting the relief, with respect to each claim contained in 385  
the petition. The court also may make supplementary orders to 386  
the relief granted, concerning such matters as rearraignment, 387  
retrial, custody, and bail. If the trial court's order granting 388  
the petition is reversed on appeal and if the direct appeal of 389  
the case has been remanded from an appellate court pursuant to a 390  
request under division (F) of this section, the appellate court 391  
reversing the order granting the petition shall notify the 392  
appellate court in which the direct appeal of the case was 393  
pending at the time of the remand of the reversal and remand of 394  
the trial court's order. Upon the reversal and remand of the 395  
trial court's order granting the petition, regardless of whether 396  
notice is sent or received, the direct appeal of the case that 397  
was remanded is reinstated. 398

(I) Upon the filing of a petition pursuant to division (A) 399  
(1) (a) (i), (ii), (iii), or (iv) of this section by a person 400  
sentenced to death, only the supreme court may stay execution of 401  
the sentence of death. 402

(J) (1) If a person sentenced to death intends to file a 403  
petition under this section, the court shall appoint counsel to 404  
represent the person upon a finding that the person is indigent 405  
and that the person either accepts the appointment of counsel or 406  
is unable to make a competent decision whether to accept or 407

reject the appointment of counsel. The court may decline to 408  
appoint counsel for the person only upon a finding, after a 409  
hearing if necessary, that the person rejects the appointment of 410  
counsel and understands the legal consequences of that decision 411  
or upon a finding that the person is not indigent. 412

(2) The court shall not appoint as counsel under division 413  
(J) (1) of this section an attorney who represented the 414  
petitioner at trial in the case to which the petition relates 415  
unless the person and the attorney expressly request the 416  
appointment. The court shall appoint as counsel under division 417  
(J) (1) of this section only an attorney who is certified under 418  
Rule 20 of the Rules of Superintendence for the Courts of Ohio 419  
to represent indigent defendants charged with or convicted of an 420  
offense for which the death penalty can be or has been imposed. 421  
The ineffectiveness or incompetence of counsel during 422  
proceedings under this section does not constitute grounds for 423  
relief in a proceeding under this section, in an appeal of any 424  
action under this section, or in an application to reopen a 425  
direct appeal. 426

(3) Division (J) of this section does not preclude 427  
attorneys who represent the state of Ohio from invoking the 428  
provisions of 28 U.S.C. 154 with respect to capital cases that 429  
were pending in federal habeas corpus proceedings prior to July 430  
1, 1996, insofar as the petitioners in those cases were 431  
represented in proceedings under this section by one or more 432  
counsel appointed by the court under this section or section 433  
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 434  
appointed counsel meet the requirements of division (J) (2) of 435  
this section. 436

(K) Subject to the appeal of a sentence for a felony that 437

is authorized by section 2953.08 of the Revised Code, the remedy 438  
set forth in this section is the exclusive remedy by which a 439  
person may bring a collateral challenge to the validity of a 440  
conviction or sentence in a criminal case or to the validity of 441  
an adjudication of a child as a delinquent child for the 442  
commission of an act that would be a criminal offense if 443  
committed by an adult or the validity of a related order of 444  
disposition. 445

**Sec. 2953.23.** (A) Whether a hearing is or is not held on a 446  
petition filed pursuant to section 2953.21 of the Revised Code, 447  
a court may not entertain a petition filed after the expiration 448  
of the period prescribed in division (A) of that section or a 449  
second petition or successive petitions for similar relief on 450  
behalf of a petitioner unless division (A) (1) or (2) of this 451  
section applies: 452

(1) Both of the following apply: 453

(a) Either the petitioner shows that the petitioner was 454  
unavoidably prevented from discovery of the facts upon which the 455  
petitioner must rely to present the claim for relief, or, 456  
subsequent to the period prescribed in division (A) (2) of 457  
section 2953.21 of the Revised Code or to the filing of an 458  
earlier petition, the United States Supreme Court recognized a 459  
new federal or state right that applies retroactively to persons 460  
in the petitioner's situation, and the petition asserts a claim 461  
based on that right. 462

(b) The petitioner shows by clear and convincing evidence 463  
that, but for constitutional error at trial, no reasonable 464  
factfinder would have found the petitioner guilty of the offense 465  
of which the petitioner was convicted or, if the claim 466  
challenges a sentence of death that, but for constitutional 467



error at the sentencing hearing, no reasonable factfinder would 468  
have found the petitioner eligible for the death sentence. 469

(2) All of the following apply: 470

(a) The petitioner was convicted of a felony,~~the~~ 471  
~~petitioner is an offender for whom.~~ 472

(b) The petitioner's petition is based on qualifying DNA 473  
~~testing was performed under sections 2953.71 to 2953.81 of the~~ 474  
~~Revised Code or under former section 2953.82 of the Revised Code~~ 475  
~~and analyzed in the context of and upon consideration of all~~ 476  
~~available admissible evidence related to the inmate's case as~~ 477  
~~described in division (D) of section 2953.74 of the Revised~~ 478  
~~Code, and the.~~ 479

(c) The results of the qualifying DNA testing establish, 480  
by clear and convincing evidence, actual innocence of that 481  
felony offense or, if the person was sentenced to death, 482  
establish, by clear and convincing evidence, actual innocence of 483  
the aggravating circumstance or circumstances the person was 484  
found guilty of committing and that is or are the basis of that 485  
sentence of death. 486

~~As used in this division, "actual innocence" has the same~~ 487  
~~meaning as in division (A) (1) (c) of section 2953.21 of the~~ 488  
~~Revised Code, and "former section 2953.82 of the Revised Code"~~ 489  
~~has the same meaning as in division (A) (1) (d) of section 2953.21~~ 490  
~~of the Revised Code.~~ 491

(B) An order awarding or denying relief sought in a 492  
petition filed pursuant to section 2953.21 of the Revised Code 493  
is a final judgment and may be appealed pursuant to Chapter 494  
2953. of the Revised Code. 495

If a petition filed pursuant to section 2953.21 of the 496

Revised Code by a person who has been sentenced to death is 497  
denied and the person appeals the judgment, notwithstanding any 498  
law or court rule to the contrary, there is no limit on the 499  
number of pages in, or on the length of, a notice of appeal or 500  
briefs related to an appeal filed by the person. If any court 501  
rule specifies a limit on the number of pages in, or on the 502  
length of, a notice of appeal or briefs described in this 503  
division or on a prosecuting attorney's response or briefs with 504  
respect to such an appeal and a person who has been sentenced to 505  
death files a notice of appeal or briefs that exceed the limit 506  
specified for the petition, the prosecuting attorney may file a 507  
response or briefs that exceed the limit specified for the 508  
answer or briefs. 509

(C) Division (A) (2) of this section, as it exists on and 510  
after the effective date of this amendment, is remedial and it 511  
applies retroactively and with respect to any petition that 512  
satisfies the criteria set forth in divisions (A) (2) (a) to (c) 513  
of this section as they exist on and after that effective date 514  
or the criteria set forth in division (A) (2) of this section as 515  
it existed prior to that effective date, regardless of when the 516  
subject felony offense was committed and regardless of whether 517  
the petitioner previously filed any petition pursuant to 518  
sections 2953.21 to 2953.23 of the Revised Code. 519

(D) As used in division (A) (2) of this section, "actual 520  
innocence" and "qualifying DNA testing" have the same meanings 521  
as in division (A) (1) (c) of section 2953.21 of the Revised Code. 522

**Section 2.** That existing sections 2953.21 and 2953.23 of 523  
the Revised Code are hereby repealed. 524