

As Introduced

**127th General Assembly
Regular Session
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H. B. No. 459

Representative Hottinger

**Cosponsors: Representatives McGregor, J., Fessler, Gardner, Evans,
Combs, Flowers**

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A BILL

To amend section 313.19 of the Revised Code to 1
establish procedures for the commencement, 2
determination, and appeal of an action to change a 3
death certificate or coroner's verdict. 4

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

Section 1. That section 313.19 of the Revised Code be amended 5
to read as follows: 6

Sec. 313.19. (A) As used in this section: 7

(1) "Decedent" means the person whose death is recorded on a 8
death certificate. 9

(2)(a) "Interested party" means any of the following, except 10
as otherwise provided in division (A)(2)(b) of this section: 11

(i) The spouse of the decedent at the time of the decedent's 12
death; 13

(ii) A former spouse of the decedent if the former spouse can 14
show a substantial interest in the correctness of the death 15
certificate or coroner's verdict; 16

(iii) A natural or adopted child of the decedent; 17

(iv) An executor or other fiduciary appointed by a court to 18
care for the decedent's estate; 19

(v) The prosecuting attorney of the county in which the 20
decedent died. 21

(b) "Interested party" does not include any of the following: 22

(i) A person who has been convicted of or pleaded guilty to 23
any offense related to the death of the decedent unless and until 24
the conviction is overturned, vacated, or otherwise set aside and 25
the action overturning, vacating, or otherwise setting aside the 26
conviction is not subject to further appeal or trial; 27

(ii) A person, other than a prosecuting attorney, who in the 28
court's opinion is acting solely on behalf of another person who 29
is not an interested party in order to advance the claims of the 30
other person; 31

(iii) A corporation or other entity that is not a natural 32
person. 33

(3) "Substantial interest" means a contractual or other 34
financial interest of the person asserting the substantial 35
interest or of that person's heirs in the correctness of the death 36
certificate or coroner's verdict. 37

(4) "Offense related to the death of the decedent" means any 38
of the following: 39

(a) Aggravated murder, murder, voluntary manslaughter, 40
involuntary manslaughter, reckless homicide, negligent homicide, 41
aggravated vehicular homicide, vehicular homicide, or vehicular 42
manslaughter; 43

(b) An attempt to commit, complicity in committing, or 44
conspiracy to commit any of the offenses listed in division 45
(A)(4)(a) of this section; 46

(c) Perjury, obstructing justice, or tampering with evidence 47

in relation to any offense listed in division (A)(4)(a) or (b) of 48
this section. 49

(B) The cause of death and the manner and mode in which the 50
death occurred, as delivered by the coroner and incorporated in 51
the coroner's verdict and in the death certificate filed with the 52
division of vital statistics, shall be the legally accepted manner 53
and mode in which such death occurred, and the legally accepted 54
cause of death, unless pursuant to this section the court of 55
common pleas of the county in which the death occurred, after a 56
hearing, directs the coroner to change ~~his~~ the coroner's decision 57
as to such cause and manner and mode of death. 58

(C) A coroner may modify a death certificate or coroner's 59
verdict as allowed by law, but no court shall order a modification 60
of a death certificate or coroner's verdict except pursuant to 61
this section. 62

(D) An interested party may seek relief under this section by 63
filing a petition within three years after the decedent's death. 64
The three-year period is not tolled by the pendency of a criminal 65
prosecution, proceeding for post-conviction relief, or appeal 66
related to the death of the decedent. The petitioner shall name as 67
respondents the county coroner of the county in which the death 68
occurred and all other persons whom a diligent search would reveal 69
to be interested parties. The petition shall state in detail the 70
relief sought and be accompanied by affidavits supporting the 71
claims contained in the petition. If any issue raised in the 72
petition addresses matters that require expert opinion, one or 73
more of the affidavits shall be made by an expert whose 74
qualifications, as shown in the affidavit, appear to comply with 75
the provisions of the Rules of Evidence concerning expert 76
testimony. The petition shall be served in accordance with the 77
Rules of Civil Procedure. 78

(E)(1) No court shall hear a petition that is not filed 79

within the time prescribed by this section or extend the time 80
within which a petition may be filed. The court shall dismiss any 81
petition that fails to properly join and serve any interested 82
party if it appears to the court that the petitioner, through a 83
diligent search, should have identified that party as an 84
interested party. 85

(2) A court with which a petition has been filed under this 86
section shall dismiss the petition without a hearing if the 87
petition and accompanying affidavits present only evidence that is 88
substantially the same as evidence that was used or available for 89
use in a prior criminal proceeding or related collateral 90
proceeding by any interested party and if the court in the prior 91
proceeding entered a judgment adverse to the interested party's 92
claim. Evidence shall not be deemed unavailable for use in a prior 93
criminal proceeding or related collateral proceeding solely 94
because it was not presented in that proceeding or was excluded 95
from consideration by the trier of fact in that proceeding on 96
procedural grounds. 97

(3) In an action brought under this section, the court, in 98
its discretion and on any terms that it considers appropriate, may 99
permit a corporation or other entity to be joined as a permissible 100
party and to participate in the action if the court determines 101
that the joinder of the corporation or other entity is necessary 102
to protect the interests of the corporation or other entity. A 103
court's decision to grant or deny a request for joinder of a 104
permissible party under division (E)(2) of this section is final 105
and not appealable. 106

(F) If a petition is filed in a timely manner pursuant to 107
this section during the pendency of a criminal prosecution, 108
proceeding for post-conviction relief, or appeal related to the 109
death of the decedent, the court shall stay the proceedings on the 110
petition until the defendant in the criminal prosecution, the 111

petitioner in the proceeding for post-conviction relief, or the 112
appellant in the appeal has exhausted the defendant's, 113
petitioner's, or appellant's state and federal rights of direct 114
appeal and collateral review. 115

(G)(1) If the court finds that a petition filed pursuant to 116
this section meets all of the requirements set forth in this 117
section, the court shall set the petition for hearing. Before the 118
hearing the court may, but need not, do any of the following: 119

(a) Require that the coroner or any other party file and 120
serve an answer to the petition; 121

(b) Grant to any party the right to conduct discovery under 122
the Rules of Civil Procedure; 123

(c) Issue any order that the court considers necessary to a 124
fair determination. 125

(2) At the hearing the petitioner shall have the burden of 126
going forward with evidence and shall have the burden of proving 127
by clear and convincing evidence that the death certificate or 128
coroner's verdict is in error. The hearing shall be conducted 129
without a jury and in accordance with the Rules of Evidence. 130

(H) A dismissal of a petition for failure to comply with any 131
of the provisions of this section, or for failure of proof after a 132
hearing, is a dismissal with prejudice to the filing of another 133
petition related to the death certificate or coroner's verdict in 134
question by all named petitioners and against all persons whose 135
interest is in privity with any of the petitioners and all joined 136
parties, except that the prosecuting attorney, upon the discovery 137
of new evidence, may file one or more further petitions in the 138
interests of justice. The prosecuting attorney's failure or 139
refusal to file another petition is not subject to review by any 140
court. 141

(I) If a party to an action brought under this section 142

appeals the final decision of the court, the court of appeals 143
shall do one of the following: 144

(a) If the final decision modifies the death certificate or 145
coroner's verdict, conduct a review de novo; 146

(b) If the final decision affirms the correctness of the 147
death certificate or coroner's verdict, determine whether the 148
trial court abused its discretion with regard to an appealable 149
matter and either affirm the decision or remand the case to the 150
trial court for further proceedings. 151

(J) No change in a death certificate or coroner's verdict 152
made pursuant to this section shall be the basis of a new trial 153
for, or the withdrawal of any plea to, any offense related to the 154
death of the decedent unless one of the following applies: 155

(1) Both of the following apply: 156

(a) Either the petitioner shows that the petitioner was 157
unavoidably prevented from discovery of the facts upon which the 158
petition must rely to present the claim for relief or, subsequent 159
to the period described in division (D) of this section, a court 160
having binding authority over the court in which the petition was 161
filed recognized a new federal or state right that applies 162
retroactively to persons in the petitioner's situation, and the 163
petition asserts a claim based on that right. 164

(b) The petitioner shows by clear and convincing evidence 165
that no reasonable factfinder presented with the modified death 166
certificate or coroner's verdict would have found the petitioner 167
guilty of the offense of which the petitioner was convicted or to 168
which the petitioner pleaded guilty. 169

(2) The petitioner was convicted of or pleaded guilty to a 170
felony offense, the petitioner was in custody pursuant to the 171
conviction or guilty plea when the petition was filed, and an 172
analysis in the context and upon consideration of all available 173

admissible evidence related to the petitioner's case, including 174
the modified death certificate or coroner's verdict, establishes 175
the petitioner's actual innocence of that felony offense. 176

Section 2. That existing section 313.19 of the Revised Code 177
is hereby repealed. 178

Section 3. This act is intended to be a remedial measure. It 179
is the General Assembly's specific intent that this act apply to 180
all cases, including cases pending on the effective date of this 181
act, regardless of when the death at issue occurred. If a case 182
that is pending on the effective date of this act is dismissed 183
because of noncompliance with this act, the dismissal shall be 184
without prejudice to the filing of a new petition in compliance 185
with this act within thirty days after the dismissal. 186