



Amber Hardesty

*Bill Analysis*  
*Legislative Service Commission*

## **H.B. 459**

127th General Assembly  
(As Introduced)

**Reps. Hottinger, J. McGregor, Fessler, Gardner, Evans, Combs, Flowers**

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### **BILL SUMMARY**

- Allows an interested party to file a petition to modify a death certificate or coroner's verdict within three years after the decedent's death.
  - Requires the court of common pleas of the county in which the death occurred to hold a hearing under specified procedures to direct the coroner to change the cause and manner and mode of death.
  - Establishes procedures for the dismissal of a petition and the appeal of the final decision of the court relating to the petition.
  - Specifies when a change in a death certificate or coroner's verdict may be the basis of a new trial for, or the withdrawal of any plea to, any offense related to the death of the decedent.
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### **CONTENT AND OPERATION**

#### **Manner of death on death certificate or coroner's verdict: current law**

(R.C. 313.19(B))

Under current law, the cause of death and the manner and mode in which the death occurred as shown in the death certificate and in the coroner's verdict is the legally accepted manner and mode in which the death occurred, and the legally accepted cause of death, unless the court of common pleas of the county in which the death occurred, after a hearing, directs the coroner to change the coroner's decision as to the cause and manner and mode of death. Current law does not specify any procedures related to the hearing.

### **Modification of death certificate or coroner's verdict**

(R.C. 313.19(B) and (C))

To modify the death certificate or coroner's verdict, the bill requires the court of common pleas of the county in which the death occurred to hold a hearing under specified procedures to direct the coroner to change the cause and manner and mode of death. The bill allows a coroner to modify a death certificate or coroner's verdict as allowed by law, but prohibits a court from ordering such a modification except pursuant to the bill.

### **Interested party**

(R.C. 313.19(A)(2), (3), and (4) and (E)(3))

Generally, the bill allows an interested party to file a petition to modify a death certificate or coroner's verdict. An "interested party" is any of the following:

- The decedent's spouse at the time of the decedent's death;
- A former spouse of the decedent if the former spouse can show a substantial interest<sup>1</sup> in the correctness of the death certificate or coroner's verdict;
- A natural or adopted child of the decedent;
- An executor or other court-appointed fiduciary caring for the decedent's estate; or
- The prosecuting attorney of the county in which the decedent died.

"Interested party" excludes the following:

- A person who has been convicted of or pleaded guilty to any offense related to the death of the decedent<sup>2</sup> unless and until the conviction is

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<sup>1</sup> "Substantial interest" means a contractual or other financial interest of the person asserting the substantial interest or of that person's heirs in the correctness of the death certificate or coroner's verdict.

<sup>2</sup> "Offense related to the death of the decedent" means any of the following: (1) aggravated murder, murder, voluntary manslaughter, involuntary manslaughter, reckless homicide, negligent homicide, aggravated vehicular homicide, vehicular homicide, or vehicular manslaughter, (2) an attempt to commit, complicity in committing, or conspiracy to commit any of the offenses listed in (1), or (3) perjury, obstructing justice, or tampering with evidence in relation to any offense listed in (1) or (2).

overturned, vacated, or otherwise set aside and that action is not subject to further appeal or trial;

- A person, other than a prosecuting attorney, who in the court's opinion is acting solely on behalf of another person who is not an interested party in order to advance the claims of the other person; and
- A corporation or other entity that is not a natural person. However, the court, in its discretion and on any terms that it considers appropriate, can permit a corporation or other entity to be joined if the court determines its joinder is necessary to protect the interests of the corporation or other entity. A court's decision to grant or deny such a joinder request is final and not appealable.

### **Filing of petition**

(R.C. 313.19(A)(1), (D), (E)(1), and (F))

An interested party must file a petition to modify a death certificate or coroner's verdict within three years after the decedent's<sup>3</sup> death. A court cannot hear a petition that is not timely filed or extend the three-year period. However, if a petition is timely filed during the pendency of a criminal prosecution, proceeding for post-conviction relief, or appeal relating to the death of the decedent, the court must stay the proceedings until the defendant, petitioner, or appellant has exhausted the defendant's, petitioner's, or appellant's state and federal rights of direct appeal and collateral review.

### **Content of petition**

(R.C. 313.19(D))

The petitioner must name as respondents the county coroner of the county in which the death occurred and all other persons whom a diligent search would reveal to be interested parties. The petition must state in detail the relief sought and be accompanied by affidavits supporting its claims. If the petition raises any issue that requires an expert opinion, an expert, whose qualifications, as shown in the affidavit, appear to comply with the Rules of Evidence concerning expert testimony, must make one or more of the affidavits. The petition must be served in accordance with the Rules of Civil Procedure.

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<sup>3</sup> "Decedent" means the person whose death is recorded on a death certificate.

### Dismissal of petition

(R.C. 313.19(E)(1), (E)(2), and (H))

The court must dismiss any petition that fails to properly join and serve any interested party if it appears to the court that the petitioner, through a diligent search, should have identified that party as an interested party. The court must also dismiss the petition without a hearing if the petition and accompanying affidavits present only evidence that is substantially the same as evidence that was used or available for use in a prior criminal proceeding or related collateral proceeding by any interested party and if the court in the prior proceeding entered a judgment adverse to the interested party's claim. Evidence must not be deemed unavailable for use in a prior criminal proceeding or related collateral proceeding solely because it was not presented in that proceeding or was excluded from consideration by the trier of fact in that proceeding on procedural grounds.

A dismissal of a petition for failure to comply with any of the bill's provisions, or for failure of proof after a hearing, is a dismissal with prejudice to the filing of another petition related to the death certificate or coroner's verdict by all named petitioners and against all persons whose interest is in privity with any of the petitioners and all joined parties, except that the prosecuting attorney, upon the discovery of new evidence, can file one or more further petitions in the interests of justice. The prosecuting attorney's failure or refusal to file another petition is not subject to review by any court.

### Hearing procedures

(R.C. 313.19(G))

If the court finds that a petition meets all of the appropriate requirements, the court must set the petition for hearing. Before the hearing, the court can, but need not, do any of the following:

- Require that the coroner or any other party file and serve an answer to the petition;
- Grant to any party the right to conduct discovery under the Rules of Civil Procedure; and
- Issue any order that the court considers necessary to a fair determination.

At the hearing, the petitioner has the burden of going forward with evidence and has the burden of proving by clear and convincing evidence that the

death certificate or coroner's verdict is in error. The hearing must be conducted without a jury and in accordance with the Rules of Evidence.

**Appeal of final decision related to petition**

(R.C. 313.19(I))

If a party appeals the final decision of the court, the court of appeals must do one of the following:

- If the final decision modifies the death certificate or coroner's verdict, conduct a new trial on the entire case; or
- If the final decision affirms the correctness of the death certificate or coroner's verdict, determine whether the trial court abused its discretion with regard to an appealable matter and either affirm the decision or remand the case to the trial court for further proceedings.

**New trial due to change in death certificate or coroner's verdict**

(R.C. 313.19(J))

A change in a death certificate or coroner's verdict made pursuant to the bill's provision may not be the basis of a new trial for, or the withdrawal of any plea to, any offense related to the death of the decedent unless one of the following applies:

- Both of the following apply:
  - Either:
    - The petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petition must rely to present the claim for relief; or
    - Following the three-year period described under "**Filing of petition**" above, a court having binding authority over the court in which the petition was filed 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.
  - The petitioner shows by clear and convincing evidence that no reasonable factfinder presented with the modified death certificate or coroner's verdict would have found the petitioner guilty of the

offense of which the petitioner was convicted or to which the petitioner pleaded guilty.

- The petitioner was convicted of or pleaded guilty to a felony offense, the petitioner was in custody pursuant to the conviction or guilty plea when the petition was filed, and an analysis in the context and upon consideration of all available admissible evidence related to the petitioner's case, including the modified death certificate or coroner's verdict, establishes the petitioner's actual innocence of that felony offense.

**Remedial nature of bill**

(Section 3)

The bill is meant to be a remedial measure and specifies that the General Assembly intends the bill to apply to all cases, including cases pending on the bill's effective date, regardless of when the death at issue occurred. If a case pending on the bill's effective date is dismissed because of noncompliance with the bill, the dismissal is without prejudice to the filing of a new petition in compliance with the bill within 30 days after the dismissal.

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**HISTORY**

ACTION	DATE
Introduced	01-30-08

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