

**As Passed by the House**

**131st General Assembly**

**Regular Session**

**2015-2016**

**Am. Sub. S. B. No. 139**

**Senators Seitz, Williams**

**Cosponsors: Senators Tavares, Brown, LaRose, Eklund, Burke, Coley, Lehner, Manning, Schiavoni, Thomas Representatives Antonio, Arndt, Boyd, Buchy, Dever, Fedor, Manning, Perales, Rezabek, Rogers, Sheehy, Sweeney**

---

**A BILL**

To amend sections 2929.03, 2953.21, and 2953.23 of  
the Revised Code to require the clerk of a  
common pleas court to retain a copy of the  
original trial file when a death penalty is  
imposed, to specify that there is no page limit  
on petitions for postconviction relief in death  
penalty cases or in appeals of denials of such  
relief, to modify the time for filing an amended  
postconviction relief petition in death penalty  
cases, to provide for depositions and subpoenas  
during discovery in postconviction relief  
proceedings in death penalty cases, and to  
require a judge hearing a postconviction relief  
proceeding in a death penalty case to state  
specifically in the findings of fact and  
conclusions of law why each claim was either  
denied or granted.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

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

**Section 1.** That sections 2929.03, 2953.21, and 2953.23 of 18  
the Revised Code be amended to read as follows: 19

**Sec. 2929.03.** (A) If the indictment or count in the 20  
indictment charging aggravated murder does not contain one or 21  
more specifications of aggravating circumstances listed in 22  
division (A) of section 2929.04 of the Revised Code, then, 23  
following a verdict of guilty of the charge of aggravated 24  
murder, the trial court shall impose sentence on the offender as 25  
follows: 26

(1) Except as provided in division (A)(2) of this section, 27  
the trial court shall impose one of the following sentences on 28  
the offender: 29

(a) Life imprisonment without parole; 30

(b) Subject to division (A)(1)(e) of this section, life 31  
imprisonment with parole eligibility after serving twenty years 32  
of imprisonment; 33

(c) Subject to division (A)(1)(e) of this section, life 34  
imprisonment with parole eligibility after serving twenty-five 35  
full years of imprisonment; 36

(d) Subject to division (A)(1)(e) of this section, life 37  
imprisonment with parole eligibility after serving thirty full 38  
years of imprisonment; 39

(e) If the victim of the aggravated murder was less than 40  
thirteen years of age, the offender also is convicted of or 41  
pleads guilty to a sexual motivation specification that was 42  
included in the indictment, count in the indictment, or 43  
information charging the offense, and the trial court does not 44  
impose a sentence of life imprisonment without parole on the 45  
offender pursuant to division (A)(1)(a) of this section, the 46

trial court shall sentence the offender pursuant to division (B) 47  
(3) of section 2971.03 of the Revised Code to an indefinite term 48  
consisting of a minimum term of thirty years and a maximum term 49  
of life imprisonment that shall be served pursuant to that 50  
section. 51

(2) If the offender also is convicted of or pleads guilty 52  
to a sexual motivation specification and a sexually violent 53  
predator specification that are included in the indictment, 54  
count in the indictment, or information that charged the 55  
aggravated murder, the trial court shall impose upon the 56  
offender a sentence of life imprisonment without parole that 57  
shall be served pursuant to section 2971.03 of the Revised Code. 58

(B) If the indictment or count in the indictment charging 59  
aggravated murder contains one or more specifications of 60  
aggravating circumstances listed in division (A) of section 61  
2929.04 of the Revised Code, the verdict shall separately state 62  
whether the accused is found guilty or not guilty of the 63  
principal charge and, if guilty of the principal charge, whether 64  
the offender was eighteen years of age or older at the time of 65  
the commission of the offense, if the matter of age was raised 66  
by the offender pursuant to section 2929.023 of the Revised 67  
Code, and whether the offender is guilty or not guilty of each 68  
specification. The jury shall be instructed on its duties in 69  
this regard. The instruction to the jury shall include an 70  
instruction that a specification shall be proved beyond a 71  
reasonable doubt in order to support a guilty verdict on the 72  
specification, but the instruction shall not mention the penalty 73  
that may be the consequence of a guilty or not guilty verdict on 74  
any charge or specification. 75

(C) (1) If the indictment or count in the indictment 76

charging aggravated murder contains one or more specifications 77  
of aggravating circumstances listed in division (A) of section 78  
2929.04 of the Revised Code, then, following a verdict of guilty 79  
of the charge but not guilty of each of the specifications, and 80  
regardless of whether the offender raised the matter of age 81  
pursuant to section 2929.023 of the Revised Code, the trial 82  
court shall impose sentence on the offender as follows: 83

(a) Except as provided in division (C) (1) (b) of this 84  
section, the trial court shall impose one of the following 85  
sentences on the offender: 86

(i) Life imprisonment without parole; 87

(ii) Subject to division (C) (1) (a) (v) of this section, 88  
life imprisonment with parole eligibility after serving twenty 89  
years of imprisonment; 90

(iii) Subject to division (C) (1) (a) (v) of this section, 91  
life imprisonment with parole eligibility after serving twenty- 92  
five full years of imprisonment; 93

(iv) Subject to division (C) (1) (a) (v) of this section, 94  
life imprisonment with parole eligibility after serving thirty 95  
full years of imprisonment; 96

(v) If the victim of the aggravated murder was less than 97  
thirteen years of age, the offender also is convicted of or 98  
pleads guilty to a sexual motivation specification that was 99  
included in the indictment, count in the indictment, or 100  
information charging the offense, and the trial court does not 101  
impose a sentence of life imprisonment without parole on the 102  
offender pursuant to division (C) (1) (a) (i) of this section, the 103  
trial court shall sentence the offender pursuant to division (B) 104  
(3) of section 2971.03 of the Revised Code to an indefinite term 105

consisting of a minimum term of thirty years and a maximum term 106  
of life imprisonment. 107

(b) If the offender also is convicted of or pleads guilty 108  
to a sexual motivation specification and a sexually violent 109  
predator specification that are included in the indictment, 110  
count in the indictment, or information that charged the 111  
aggravated murder, the trial court shall impose upon the 112  
offender a sentence of life imprisonment without parole that 113  
shall be served pursuant to section 2971.03 of the Revised Code. 114

(2) (a) If the indictment or count in the indictment 115  
contains one or more specifications of aggravating circumstances 116  
listed in division (A) of section 2929.04 of the Revised Code 117  
and if the offender is found guilty of both the charge and one 118  
or more of the specifications, the penalty to be imposed on the 119  
offender shall be one of the following: 120

(i) Except as provided in division (C) (2) (a) (ii) or (iii) 121  
of this section, the penalty to be imposed on the offender shall 122  
be death, life imprisonment without parole, life imprisonment 123  
with parole eligibility after serving twenty-five full years of 124  
imprisonment, or life imprisonment with parole eligibility after 125  
serving thirty full years of imprisonment. 126

(ii) Except as provided in division (C) (2) (a) (iii) of this 127  
section, if the victim of the aggravated murder was less than 128  
thirteen years of age, the offender also is convicted of or 129  
pleads guilty to a sexual motivation specification that was 130  
included in the indictment, count in the indictment, or 131  
information charging the offense, and the trial court does not 132  
impose a sentence of death or life imprisonment without parole 133  
on the offender pursuant to division (C) (2) (a) (i) of this 134  
section, the penalty to be imposed on the offender shall be an 135

indefinite term consisting of a minimum term of thirty years and 136  
a maximum term of life imprisonment that shall be imposed 137  
pursuant to division (B) (3) of section 2971.03 of the Revised 138  
Code and served pursuant to that section. 139

(iii) If the offender also is convicted of or pleads 140  
guilty to a sexual motivation specification and a sexually 141  
violent predator specification that are included in the 142  
indictment, count in the indictment, or information that charged 143  
the aggravated murder, the penalty to be imposed on the offender 144  
shall be death or life imprisonment without parole that shall be 145  
served pursuant to section 2971.03 of the Revised Code. 146

(b) A penalty imposed pursuant to division (C) (2) (a) (i), 147  
(ii), or (iii) of this section shall be determined pursuant to 148  
divisions (D) and (E) of this section and shall be determined by 149  
one of the following: 150

(i) By the panel of three judges that tried the offender 151  
upon the offender's waiver of the right to trial by jury; 152

(ii) By the trial jury and the trial judge, if the 153  
offender was tried by jury. 154

(D) (1) Death may not be imposed as a penalty for 155  
aggravated murder if the offender raised the matter of age at 156  
trial pursuant to section 2929.023 of the Revised Code and was 157  
not found at trial to have been eighteen years of age or older 158  
at the time of the commission of the offense. When death may be 159  
imposed as a penalty for aggravated murder, the court shall 160  
proceed under this division. When death may be imposed as a 161  
penalty, the court, upon the request of the defendant, shall 162  
require a pre-sentence investigation to be made and, upon the 163  
request of the defendant, shall require a mental examination to 164

be made, and shall require reports of the investigation and of 165  
any mental examination submitted to the court, pursuant to 166  
section 2947.06 of the Revised Code. No statement made or 167  
information provided by a defendant in a mental examination or 168  
proceeding conducted pursuant to this division shall be 169  
disclosed to any person, except as provided in this division, or 170  
be used in evidence against the defendant on the issue of guilt 171  
in any retrial. A pre-sentence investigation or mental 172  
examination shall not be made except upon request of the 173  
defendant. Copies of any reports prepared under this division 174  
shall be furnished to the court, to the trial jury if the 175  
offender was tried by a jury, to the prosecutor, and to the 176  
offender or the offender's counsel for use under this division. 177  
The court, and the trial jury if the offender was tried by a 178  
jury, shall consider any report prepared pursuant to this 179  
division and furnished to it and any evidence raised at trial 180  
that is relevant to the aggravating circumstances the offender 181  
was found guilty of committing or to any factors in mitigation 182  
of the imposition of the sentence of death, shall hear testimony 183  
and other evidence that is relevant to the nature and 184  
circumstances of the aggravating circumstances the offender was 185  
found guilty of committing, the mitigating factors set forth in 186  
division (B) of section 2929.04 of the Revised Code, and any 187  
other factors in mitigation of the imposition of the sentence of 188  
death, and shall hear the statement, if any, of the offender, 189  
and the arguments, if any, of counsel for the defense and 190  
prosecution, that are relevant to the penalty that should be 191  
imposed on the offender. The defendant shall be given great 192  
latitude in the presentation of evidence of the mitigating 193  
factors set forth in division (B) of section 2929.04 of the 194  
Revised Code and of any other factors in mitigation of the 195  
imposition of the sentence of death. If the offender chooses to 196

make a statement, the offender is subject to cross-examination 197  
only if the offender consents to make the statement under oath 198  
or affirmation. 199

The defendant shall have the burden of going forward with 200  
the evidence of any factors in mitigation of the imposition of 201  
the sentence of death. The prosecution shall have the burden of 202  
proving, by proof beyond a reasonable doubt, that the 203  
aggravating circumstances the defendant was found guilty of 204  
committing are sufficient to outweigh the factors in mitigation 205  
of the imposition of the sentence of death. 206

(2) Upon consideration of the relevant evidence raised at 207  
trial, the testimony, other evidence, statement of the offender, 208  
arguments of counsel, and, if applicable, the reports submitted 209  
pursuant to division (D)(1) of this section, the trial jury, if 210  
the offender was tried by a jury, shall determine whether the 211  
aggravating circumstances the offender was found guilty of 212  
committing are sufficient to outweigh the mitigating factors 213  
present in the case. If the trial jury unanimously finds, by 214  
proof beyond a reasonable doubt, that the aggravating 215  
circumstances the offender was found guilty of committing 216  
outweigh the mitigating factors, the trial jury shall recommend 217  
to the court that the sentence of death be imposed on the 218  
offender. Absent such a finding, the jury shall recommend that 219  
the offender be sentenced to one of the following: 220

(a) Except as provided in division (D)(2)(b) or (c) of 221  
this section, to life imprisonment without parole, life 222  
imprisonment with parole eligibility after serving twenty-five 223  
full years of imprisonment, or life imprisonment with parole 224  
eligibility after serving thirty full years of imprisonment; 225

(b) Except as provided in division (D)(2)(c) of this 226



section, if the victim of the aggravated murder was less than 227  
thirteen years of age, the offender also is convicted of or 228  
pleads guilty to a sexual motivation specification that was 229  
included in the indictment, count in the indictment, or 230  
information charging the offense, and the jury does not 231  
recommend a sentence of life imprisonment without parole 232  
pursuant to division (D)(2)(a) of this section, to an indefinite 233  
term consisting of a minimum term of thirty years and a maximum 234  
term of life imprisonment to be imposed pursuant to division (B) 235  
(3) of section 2971.03 of the Revised Code and served pursuant 236  
to that section. 237

(c) If the offender also is convicted of or pleads guilty 238  
to a sexual motivation specification and a sexually violent 239  
predator specification that are included in the indictment, 240  
count in the indictment, or information that charged the 241  
aggravated murder, to life imprisonment without parole. 242

If the trial jury recommends that the offender be 243  
sentenced to life imprisonment without parole, life imprisonment 244  
with parole eligibility after serving twenty-five full years of 245  
imprisonment, life imprisonment with parole eligibility after 246  
serving thirty full years of imprisonment, or an indefinite term 247  
consisting of a minimum term of thirty years and a maximum term 248  
of life imprisonment to be imposed pursuant to division (B)(3) 249  
of section 2971.03 of the Revised Code, the court shall impose 250  
the sentence recommended by the jury upon the offender. If the 251  
sentence is an indefinite term consisting of a minimum term of 252  
thirty years and a maximum term of life imprisonment imposed as 253  
described in division (D)(2)(b) of this section or a sentence of 254  
life imprisonment without parole imposed under division (D)(2) 255  
(c) of this section, the sentence shall be served pursuant to 256  
section 2971.03 of the Revised Code. If the trial jury 257

recommends that the sentence of death be imposed upon the 258  
offender, the court shall proceed to impose sentence pursuant to 259  
division (D) (3) of this section. 260

(3) Upon consideration of the relevant evidence raised at 261  
trial, the testimony, other evidence, statement of the offender, 262  
arguments of counsel, and, if applicable, the reports submitted 263  
to the court pursuant to division (D) (1) of this section, if, 264  
after receiving pursuant to division (D) (2) of this section the 265  
trial jury's recommendation that the sentence of death be 266  
imposed, the court finds, by proof beyond a reasonable doubt, or 267  
if the panel of three judges unanimously finds, by proof beyond 268  
a reasonable doubt, that the aggravating circumstances the 269  
offender was found guilty of committing outweigh the mitigating 270  
factors, it shall impose sentence of death on the offender. 271  
Absent such a finding by the court or panel, the court or the 272  
panel shall impose one of the following sentences on the 273  
offender: 274

(a) Except as provided in division (D) (3) (b) of this 275  
section, one of the following: 276

(i) Life imprisonment without parole; 277

(ii) Subject to division (D) (3) (a) (iv) of this section, 278  
life imprisonment with parole eligibility after serving twenty- 279  
five full years of imprisonment; 280

(iii) Subject to division (D) (3) (a) (iv) of this section, 281  
life imprisonment with parole eligibility after serving thirty 282  
full years of imprisonment; 283

(iv) If the victim of the aggravated murder was less than 284  
thirteen years of age, the offender also is convicted of or 285  
pleads guilty to a sexual motivation specification that was 286

included in the indictment, count in the indictment, or 287  
information charging the offense, and the trial court does not 288  
impose a sentence of life imprisonment without parole on the 289  
offender pursuant to division (D) (3) (a) (i) of this section, the 290  
court or panel shall sentence the offender pursuant to division 291  
(B) (3) of section 2971.03 of the Revised Code to an indefinite 292  
term consisting of a minimum term of thirty years and a maximum 293  
term of life imprisonment. 294

(b) If the offender also is convicted of or pleads guilty 295  
to a sexual motivation specification and a sexually violent 296  
predator specification that are included in the indictment, 297  
count in the indictment, or information that charged the 298  
aggravated murder, life imprisonment without parole that shall 299  
be served pursuant to section 2971.03 of the Revised Code. 300

(E) If the offender raised the matter of age at trial 301  
pursuant to section 2929.023 of the Revised Code, was convicted 302  
of aggravated murder and one or more specifications of an 303  
aggravating circumstance listed in division (A) of section 304  
2929.04 of the Revised Code, and was not found at trial to have 305  
been eighteen years of age or older at the time of the 306  
commission of the offense, the court or the panel of three 307  
judges shall not impose a sentence of death on the offender. 308  
Instead, the court or panel shall impose one of the following 309  
sentences on the offender: 310

(1) Except as provided in division (E) (2) of this section, 311  
one of the following: 312

(a) Life imprisonment without parole; 313

(b) Subject to division (E) (2) (d) of this section, life 314  
imprisonment with parole eligibility after serving twenty-five 315

full years of imprisonment; 316

(c) Subject to division (E) (2) (d) of this section, life 317  
imprisonment with parole eligibility after serving thirty full 318  
years of imprisonment; 319

(d) If the victim of the aggravated murder was less than 320  
thirteen years of age, the offender also is convicted of or 321  
pleads guilty to a sexual motivation specification that was 322  
included in the indictment, count in the indictment, or 323  
information charging the offense, and the trial court does not 324  
impose a sentence of life imprisonment without parole on the 325  
offender pursuant to division (E) (2) (a) of this section, the 326  
court or panel shall sentence the offender pursuant to division 327  
(B) (3) of section 2971.03 of the Revised Code to an indefinite 328  
term consisting of a minimum term of thirty years and a maximum 329  
term of life imprisonment. 330

(2) If the offender also is convicted of or pleads guilty 331  
to a sexual motivation specification and a sexually violent 332  
predator specification that are included in the indictment, 333  
count in the indictment, or information that charged the 334  
aggravated murder, life imprisonment without parole that shall 335  
be served pursuant to section 2971.03 of the Revised Code. 336

(F) The court or the panel of three judges, when it 337  
imposes sentence of death, shall state in a separate opinion its 338  
specific findings as to the existence of any of the mitigating 339  
factors set forth in division (B) of section 2929.04 of the 340  
Revised Code, the existence of any other mitigating factors, the 341  
aggravating circumstances the offender was found guilty of 342  
committing, and the reasons why the aggravating circumstances 343  
the offender was found guilty of committing were sufficient to 344  
outweigh the mitigating factors. The court or panel, when it 345

imposes life imprisonment or an indefinite term consisting of a 346  
minimum term of thirty years and a maximum term of life 347  
imprisonment under division (D) of this section, shall state in 348  
a separate opinion its specific findings of which of the 349  
mitigating factors set forth in division (B) of section 2929.04 350  
of the Revised Code it found to exist, what other mitigating 351  
factors it found to exist, what aggravating circumstances the 352  
offender was found guilty of committing, and why it could not 353  
find that these aggravating circumstances were sufficient to 354  
outweigh the mitigating factors. For cases in which a sentence 355  
of death is imposed for an offense committed before January 1, 356  
1995, the court or panel shall file the opinion required to be 357  
prepared by this division with the clerk of the appropriate 358  
court of appeals and with the clerk of the supreme court within 359  
fifteen days after the court or panel imposes sentence. For 360  
cases in which a sentence of death is imposed for an offense 361  
committed on or after January 1, 1995, the court or panel shall 362  
file the opinion required to be prepared by this division with 363  
the clerk of the supreme court within fifteen days after the 364  
court or panel imposes sentence. The judgment in a case in which 365  
a sentencing hearing is held pursuant to this section is not 366  
final until the opinion is filed. 367

(G) (1) Whenever the court or a panel of three judges 368  
imposes a sentence of death for an offense committed before 369  
January 1, 1995, the clerk of the court in which the judgment is 370  
rendered shall make and retain a copy of the entire record in 371  
the case, and shall deliver the original of the entire record in 372  
the case to the appellate court. 373

(2) Whenever the court or a panel of three judges imposes 374  
a sentence of death for an offense committed on or after January 375  
1, 1995, the clerk of the court in which the judgment is 376

rendered shall make and retain a copy of the entire record in 377  
the case, and shall deliver the original of the entire record in 378  
the case to the supreme court. 379

**Sec. 2953.21.** (A) (1) (a) Any person who has been convicted 380  
of a criminal offense or adjudicated a delinquent child and who 381  
claims that there was such a denial or infringement of the 382  
person's rights as to render the judgment void or voidable under 383  
the Ohio Constitution or the Constitution of the United States, 384  
any person who has been convicted of a criminal offense and 385  
sentenced to death and who claims that there was a denial or 386  
infringement of the person's rights under either of those 387  
Constitutions that creates a reasonable probability of an 388  
altered verdict, and any person who has been convicted of a 389  
criminal offense that is a felony and who is an offender for 390  
whom DNA testing that was performed under sections 2953.71 to 391  
2953.81 of the Revised Code or under former section 2953.82 of 392  
the Revised Code and analyzed in the context of and upon 393  
consideration of all available admissible evidence related to 394  
the person's case as described in division (D) of section 395  
2953.74 of the Revised Code provided results that establish, by 396  
clear and convincing evidence, actual innocence of that felony 397  
offense or, if the person was sentenced to death, establish, by 398  
clear and convincing evidence, actual innocence of the 399  
aggravating circumstance or circumstances the person was found 400  
guilty of committing and that is or are the basis of that 401  
sentence of death, may file a petition in the court that imposed 402  
sentence, stating the grounds for relief relied upon, and asking 403  
the court to vacate or set aside the judgment or sentence or to 404  
grant other appropriate relief. The petitioner may file a 405  
supporting affidavit and other documentary evidence in support 406  
of the claim for relief. 407

(b) As used in division (A) (1) (a) of this section, "actual innocence" means that, had the results of the DNA testing conducted under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code been presented at trial, and had those results been 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, 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 that sentence of death.

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

(d) At any time in conjunction with the filing of a petition for postconviction relief under division (A) of this section by a person who has been sentenced to death, or with the litigation of a petition so filed, the court, for good cause shown, may authorize the petitioner in seeking the postconviction relief and the prosecuting attorney of the county served by the court in defending the proceeding, to take depositions and to issue subpoenas and subpoenas duces tecum in accordance with divisions (A) (1) (d), (A) (1) (e), and (C) of this section, and to any other form of discovery as in a civil action that the court in its discretion permits. The court may limit the extent of discovery under this division. In addition to discovery that is relevant to the claim and was available under

Criminal Rule 16 through conclusion of the original criminal 439  
trial, the court, for good cause shown, may authorize the 440  
petitioner or prosecuting attorney to take depositions and issue 441  
subpoenas and subpoenas duces tecum in either of the following 442  
circumstances: 443

(i) For any witness who testified at trial or who was 444  
disclosed by the state prior to trial, except as otherwise 445  
provided in this division, the petitioner or prosecuting 446  
attorney shows clear and convincing evidence that the witness is 447  
material and that a deposition of the witness or the issuing of 448  
a subpoena or subpoena duces tecum is of assistance in order to 449  
substantiate or refute the petitioner's claim that there is a 450  
reasonable probability of an altered verdict. This division does 451  
not apply if the witness was unavailable for trial or would not 452  
voluntarily be interviewed by the defendant or prosecuting 453  
attorney. 454

(ii) For any witness with respect to whom division (A)(1) 455  
(d)(i) of this section does not apply, the petitioner or 456  
prosecuting attorney shows good cause that the witness is 457  
material and that a deposition of the witness or the issuing of 458  
a subpoena or subpoena duces tecum is of assistance in order to 459  
substantiate or refute the petitioner's claim that there is a 460  
reasonable probability of an altered verdict. 461

(e) If a person who has been sentenced to death and who 462  
files a petition for postconviction relief under division (A) of 463  
this section requests postconviction discovery as described in 464  
division (A)(1)(d) of this section or if the prosecuting 465  
attorney of the county served by the court requests 466  
postconviction discovery as described in that division, within 467  
ten days after the docketing of the request, or within any other 468



time that the court sets for good cause shown, the prosecuting attorney shall respond by answer or motion to the petitioner's request or the petitioner shall respond by answer or motion to the prosecuting attorney's request, whichever is applicable. 469  
470  
471  
472

(f) If a person who has been sentenced to death and who files a petition for postconviction relief under division (A) of this section requests postconviction discovery as described in division (A)(1)(d) of this section or if the prosecuting attorney of the county served by the court requests postconviction discovery as described in that division, upon motion by the petitioner, the prosecuting attorney, or the person from whom discovery is sought, and for good cause shown, the court in which the action is pending may make any order that justice requires to protect a party or person from oppression or undue burden or expense, including but not limited to the orders described in divisions (A)(1)(g)(i) to (viii) of this section. The court also may make any such order if, in its discretion, it determines that the discovery sought would be irrelevant to the claims made in the petition; and if the court makes any such order on that basis, it shall explain in the order the reasons why the discovery would be irrelevant. 473  
474  
475  
476  
477  
478  
479  
480  
481  
482  
483  
484  
485  
486  
487  
488  
489

(g) If a petitioner, prosecuting attorney, or person from whom discovery is sought makes a motion for an order under division (A)(1)(f) of this section and the order is denied in whole or in part, the court, on terms and conditions as are just, may order that any party or person provide or permit discovery as described in division (A)(1)(d) of this section. The provisions of Civil Rule 37(A)(4) apply to the award of expenses incurred in relation to the motion, except that in no case shall a court require a petitioner who is indigent to pay expenses under those provisions. 490  
491  
492  
493  
494  
495  
496  
497  
498  
499

Before any person moves for an order under division (A) (1) 500  
(f) of this section, that person shall make a reasonable effort 501  
to resolve the matter through discussion with the petitioner or 502  
prosecuting attorney seeking discovery. A motion for an order 503  
under division (A) (1) (f) of this section shall be accompanied by 504  
a statement reciting the effort made to resolve the matter in 505  
accordance with this paragraph. 506

The orders that may be made under division (A) (1) (f) of 507  
this section include, but are not limited to, any of the 508  
following: 509

(i) That the discovery not be had; 510

(ii) That the discovery may be had only on specified terms 511  
and conditions, including a designation of the time or place; 512

(iii) That the discovery may be had only by a method of 513  
discovery other than that selected by the party seeking 514  
discovery; 515

(iv) That certain matters not be inquired into or that the 516  
scope of the discovery be limited to certain matters; 517

(v) That discovery be conducted with no one present except 518  
persons designated by the court; 519

(vi) That a deposition after being sealed be opened only 520  
by order of the court; 521

(vii) That a trade secret or other confidential research, 522  
development, or commercial information not be disclosed or be 523  
disclosed only in a designated way; 524

(viii) That the parties simultaneously file specified 525  
documents or information enclosed in sealed envelopes to be 526  
opened as directed by the court. 527

(h) Any postconviction discovery authorized under division (A) (1) (d) 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. 528  
529  
530  
531  
532

(i) Nothing in division (A) (1) (d) 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. 533  
534  
535  
536

(j) 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. 537  
538  
539  
540

(2) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A) (1) of this section shall be filed no later than three hundred sixty-five days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in section 2953.23 of the Revised Code, the petition shall be filed no later than three hundred sixty-five days after the expiration of the time for filing the appeal. 541  
542  
543  
544  
545  
546  
547  
548  
549  
550  
551

(3) In a petition filed under division (A) of this section, a person who has been sentenced to death may ask the court to render void or voidable the judgment with respect to the conviction of aggravated murder or the specification of an aggravating circumstance or the sentence of death. 552  
553  
554  
555  
556

(4) A petitioner shall state in the original or amended 557  
petition filed under division (A) of this section all grounds 558  
for relief claimed by the petitioner. Except as provided in 559  
section 2953.23 of the Revised Code, any ground for relief that 560  
is not so stated in the petition is waived. 561

(5) If the petitioner in a petition filed under division 562  
(A) of this section was convicted of or pleaded guilty to a 563  
felony, the petition may include a claim that the petitioner was 564  
denied the equal protection of the laws in violation of the Ohio 565  
Constitution or the United States Constitution because the 566  
sentence imposed upon the petitioner for the felony was part of 567  
a consistent pattern of disparity in sentencing by the judge who 568  
imposed the sentence, with regard to the petitioner's race, 569  
gender, ethnic background, or religion. If the supreme court 570  
adopts a rule requiring a court of common pleas to maintain 571  
information with regard to an offender's race, gender, ethnic 572  
background, or religion, the supporting evidence for the 573  
petition shall include, but shall not be limited to, a copy of 574  
that type of information relative to the petitioner's sentence 575  
and copies of that type of information relative to sentences 576  
that the same judge imposed upon other persons. 577

(6) Notwithstanding any law or court rule to the contrary, 578  
there is no limit on the number of pages in, or on the length 579  
of, a petition filed under division (A) of this section by a 580  
person who has been sentenced to death. If any court rule 581  
specifies a limit on the number of pages in, or on the length 582  
of, a petition filed under division (A) of this section or on a 583  
prosecuting attorney's response to such a petition by answer or 584  
motion and a person who has been sentenced to death files a 585  
petition that exceeds the limit specified for the petition, the 586  
prosecuting attorney may respond by an answer or motion that 587

exceeds the limit specified for the response. 588

(B) The clerk of the court in which the petition for 589  
postconviction relief and, if applicable, a request for 590  
postconviction discovery described in division (A) (1) (d) of this 591  
section is filed shall docket the petition and the request and 592  
bring ~~it~~ them promptly to the attention of the court. The clerk 593  
of the court in which the petition for postconviction relief 594  
and, if applicable, a request for postconviction discovery 595  
described in division (A) (1) (d) of this section is filed 596  
immediately shall forward a copy of the petition and a copy of 597  
the request if filed by the petitioner to the prosecuting 598  
attorney of ~~that~~ the county served by the court. If the request 599  
for postconviction discovery is filed by the prosecuting 600  
attorney, the clerk of the court immediately shall forward a 601  
copy of the request to the petitioner or the petitioner's 602  
counsel. 603

(C) If a person who has been sentenced to death and who 604  
files a petition for postconviction relief under division (A) of 605  
this section requests a deposition or the prosecuting attorney 606  
in the case requests a deposition, and if the court grants the 607  
request under division (A) (1) (d) of this section, the court 608  
shall notify the petitioner or the petitioner's counsel and the 609  
prosecuting attorney. The deposition shall be conducted pursuant 610  
to divisions (B), (D), and (E) of Criminal Rule 15. 611  
Notwithstanding division (C) of Criminal Rule 15, the petitioner 612  
is not entitled to attend the deposition. The prosecuting 613  
attorney shall be permitted to attend and participate in any 614  
deposition. 615

(D) The court shall consider a petition that is timely 616  
filed under division (A) (2) of this section even if a direct 617

appeal of the judgment is pending. Before granting a hearing on 618  
a petition filed under division (A) of this section, the court 619  
shall determine whether there are substantive grounds for 620  
relief. In making such a determination, the court shall 621  
consider, in addition to the petition, the supporting 622  
affidavits, and the documentary evidence, all the files and 623  
records pertaining to the proceedings against the petitioner, 624  
including, but not limited to, the indictment, the court's 625  
journal entries, the journalized records of the clerk of the 626  
court, and the court reporter's transcript. The court reporter's 627  
transcript, if ordered and certified by the court, shall be 628  
taxed as court costs. If the court dismisses the petition, it 629  
shall make and file findings of fact and conclusions of law with 630  
respect to such dismissal. If the petition was filed by a person 631  
who has been sentenced to death, the findings of fact and 632  
conclusions of law shall state specifically the reasons for the 633  
dismissal of the petition and of each claim it contains. 634

~~(D)~~ (E) Within ten days after the docketing of the 635  
petition, or within any further time that the court may fix for 636  
good cause shown, the prosecuting attorney shall respond by 637  
answer or motion. Division (A) (6) of this section applies with 638  
respect to the prosecuting attorney's response. Within twenty 639  
days from the date the issues are raised, either party may move 640  
for summary judgment. The right to summary judgment shall appear 641  
on the face of the record. 642

~~(E)~~ (F) Unless the petition and the files and records of 643  
the case show the petitioner is not entitled to relief, the 644  
court shall proceed to a prompt hearing on the issues even if a 645  
direct appeal of the case is pending. If the court notifies the 646  
parties that it has found grounds for granting relief, either 647  
party may request an appellate court in which a direct appeal of 648

the judgment is pending to remand the pending case to the court. 649

~~(F) At~~ (G) A petitioner who files a petition under 650  
division (A) of this section may amend the petition as follows: 651

(1) If the petition was filed by a person who has been 652  
sentenced to death, at any time that is not later than one 653  
hundred eighty days after the petition is filed, the petitioner 654  
may amend the petition with or without leave or prejudice to the 655  
proceedings. 656

(2) If division (G) (1) of this section does not apply, at 657  
any time before the answer or motion is filed, the petitioner 658  
may amend the petition with or without leave or prejudice to the 659  
proceedings. ~~The~~ 660

(3) The petitioner may amend the petition with leave of 661  
court at any time ~~thereafter~~ after the expiration of the 662  
applicable period specified in division (G) (1) or (2) of this 663  
section. 664

~~(G)~~ (H) If the court does not find grounds for granting 665  
relief, it shall make and file findings of fact and conclusions 666  
of law and shall enter judgment denying relief on the petition. 667  
If the petition was filed by a person who has been sentenced to 668  
death, the findings of fact and conclusions of law shall state 669  
specifically the reasons for the denial of relief on the 670  
petition and of each claim it contains. If no direct appeal of 671  
the case is pending and the court finds grounds for relief or if 672  
a pending direct appeal of the case has been remanded to the 673  
court pursuant to a request made pursuant to division ~~(E)~~ (F) of 674  
this section and the court finds grounds for granting relief, it 675  
shall make and file findings of fact and conclusions of law and 676  
shall enter a judgment that vacates and sets aside the judgment 677

in question, and, in the case of a petitioner who is a prisoner 678  
in custody, shall discharge or resentence the petitioner or 679  
grant a new trial as the court determines appropriate. If the 680  
petitioner has been sentenced to death, the findings of fact and 681  
conclusions of law shall state specifically the reasons for the 682  
finding of grounds for granting the relief, with respect to each 683  
claim contained in the petition. The court also may make 684  
supplementary orders to the relief granted, concerning such 685  
matters as rearraignment, retrial, custody, and bail. If the 686  
trial court's order granting the petition is reversed on appeal 687  
and if the direct appeal of the case has been remanded from an 688  
appellate court pursuant to a request under division ~~(E)~~ (F) of 689  
this section, the appellate court reversing the order granting 690  
the petition shall notify the appellate court in which the 691  
direct appeal of the case was pending at the time of the remand 692  
of the reversal and remand of the trial court's order. Upon the 693  
reversal and remand of the trial court's order granting the 694  
petition, regardless of whether notice is sent or received, the 695  
direct appeal of the case that was remanded is reinstated. 696

~~(H)~~ (I) Upon the filing of a petition pursuant to division 697  
(A) of this section by a person sentenced to death, only the 698  
supreme court may stay execution of the sentence of death. 699

~~(I)~~ (J) (1) If a person sentenced to death intends to file a 700  
petition under this section, the court shall appoint counsel to 701  
represent the person upon a finding that the person is indigent 702  
and that the person either accepts the appointment of counsel or 703  
is unable to make a competent decision whether to accept or 704  
reject the appointment of counsel. The court may decline to 705  
appoint counsel for the person only upon a finding, after a 706  
hearing if necessary, that the person rejects the appointment of 707  
counsel and understands the legal consequences of that decision 708



or upon a finding that the person is not indigent. 709

(2) The court shall not appoint as counsel under division 710  
~~(I)~~(J) (1) of this section an attorney who represented the 711  
petitioner at trial in the case to which the petition relates 712  
unless the person and the attorney expressly request the 713  
appointment. The court shall appoint as counsel under division 714  
~~(I)~~(J) (1) of this section only an attorney who is certified 715  
under Rule 20 of the Rules of Superintendence for the Courts of 716  
Ohio to represent indigent defendants charged with or convicted 717  
of an offense for which the death penalty can be or has been 718  
imposed. The ineffectiveness or incompetence of counsel during 719  
proceedings under this section does not constitute grounds for 720  
relief in a proceeding under this section, in an appeal of any 721  
action under this section, or in an application to reopen a 722  
direct appeal. 723

(3) Division ~~(I)~~(J) of this section does not preclude 724  
attorneys who represent the state of Ohio from invoking the 725  
provisions of 28 U.S.C. 154 with respect to capital cases that 726  
were pending in federal habeas corpus proceedings prior to July 727  
1, 1996, insofar as the petitioners in those cases were 728  
represented in proceedings under this section by one or more 729  
counsel appointed by the court under this section or section 730  
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 731  
appointed counsel meet the requirements of division ~~(I)~~(J) (2) of 732  
this section. 733

~~(J)~~(K) Subject to the appeal of a sentence for a felony 734  
that is authorized by section 2953.08 of the Revised Code, the 735  
remedy set forth in this section is the exclusive remedy by 736  
which a person may bring a collateral challenge to the validity 737  
of a conviction or sentence in a criminal case or to the 738

validity of an adjudication of a child as a delinquent child for 739  
the commission of an act that would be a criminal offense if 740  
committed by an adult or the validity of a related order of 741  
disposition. 742

**Sec. 2953.23.** (A) Whether a hearing is or is not held on a 743  
petition filed pursuant to section 2953.21 of the Revised Code, 744  
a court may not entertain a petition filed after the expiration 745  
of the period prescribed in division (A) of that section or a 746  
second petition or successive petitions for similar relief on 747  
behalf of a petitioner unless division (A)(1) or (2) of this 748  
section applies: 749

(1) Both of the following apply: 750

(a) Either the petitioner shows that the petitioner was 751  
unavoidably prevented from discovery of the facts upon which the 752  
petitioner must rely to present the claim for relief, or, 753  
subsequent to the period prescribed in division (A)(2) of 754  
section 2953.21 of the Revised Code or to the filing of an 755  
earlier petition, the United States Supreme Court recognized a 756  
new federal or state right that applies retroactively to persons 757  
in the petitioner's situation, and the petition asserts a claim 758  
based on that right. 759

(b) The petitioner shows by clear and convincing evidence 760  
that, but for constitutional error at trial, no reasonable 761  
factfinder would have found the petitioner guilty of the offense 762  
of which the petitioner was convicted or, if the claim 763  
challenges a sentence of death that, but for constitutional 764  
error at the sentencing hearing, no reasonable factfinder would 765  
have found the petitioner eligible for the death sentence. 766

(2) The petitioner was convicted of a felony, the 767

petitioner is an offender for whom DNA testing was performed 768  
under sections 2953.71 to 2953.81 of the Revised Code or under 769  
former section 2953.82 of the Revised Code and analyzed in the 770  
context of and upon consideration of all available admissible 771  
evidence related to the inmate's case as described in division 772  
(D) of section 2953.74 of the Revised Code, and the results of 773  
the DNA testing establish, by clear and convincing evidence, 774  
actual innocence of that felony offense or, if the person was 775  
sentenced to death, establish, by clear and convincing evidence, 776  
actual innocence of the aggravating circumstance or 777  
circumstances the person was found guilty of committing and that 778  
is or are the basis of that sentence of death. 779

As used in this division, "actual innocence" has the same 780  
meaning as in division (A) (1) (b) of section 2953.21 of the 781  
Revised Code, and "former section 2953.82 of the Revised Code" 782  
has the same meaning as in division (A) (1) (c) of section 2953.21 783  
of the Revised Code. 784

(B) An order awarding or denying relief sought in a 785  
petition filed pursuant to section 2953.21 of the Revised Code 786  
is a final judgment and may be appealed pursuant to Chapter 787  
2953. of the Revised Code. 788

If a petition filed pursuant to section 2953.21 of the 789  
Revised Code by a person who has been sentenced to death is 790  
denied and the person appeals the judgment, notwithstanding any 791  
law or court rule to the contrary, there is no limit on the 792  
number of pages in, or on the length of, a notice of appeal or 793  
briefs related to an appeal filed by the person. If any court 794  
rule specifies a limit on the number of pages in, or on the 795  
length of, a notice of appeal or briefs described in this 796  
division or on a prosecuting attorney's response or briefs with 797

respect to such an appeal and a person who has been sentenced to 798  
death files a notice of appeal or briefs that exceed the limit 799  
specified for the petition, the prosecuting attorney may file a 800  
response or briefs that exceed the limit specified for the 801  
answer or briefs. 802

**Section 2.** That existing sections 2929.03, 2953.21, and 803  
2953.23 of the Revised Code are hereby repealed. 804