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Sub. S. B. No. 139

Senators Seitz, Williams

**Cosponsors: Senators Tavares, Brown, LaRose, Eklund, Burke, Coley, Lehner,
Manning, Schiavoni, Thomas**

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.

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

Section 1. That sections 2929.03, 2953.21, and 2953.23 of

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 imprisonment with parole eligibility after serving thirty full years of imprisonment;

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

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

(F) The court or the panel of three judges, when it imposes sentence of death, shall state in a separate opinion its specific findings as to the existence of any of the mitigating factors set forth in division (B) of section 2929.04 of the Revised Code, the existence of any other mitigating factors, the aggravating circumstances the offender was found guilty of committing, and the reasons why the aggravating circumstances the offender was found guilty of committing were sufficient to outweigh the mitigating factors. The court or panel, when it imposes life imprisonment or an indefinite term consisting of a

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 408

innocence" means that, had the results of the DNA testing 409
conducted under sections 2953.71 to 2953.81 of the Revised Code 410
or under former section 2953.82 of the Revised Code been 411
presented at trial, and had those results been analyzed in the 412
context of and upon consideration of all available admissible 413
evidence related to the person's case as described in division 414
(D) of section 2953.74 of the Revised Code, no reasonable 415
factfinder would have found the petitioner guilty of the offense 416
of which the petitioner was convicted, or, if the person was 417
sentenced to death, no reasonable factfinder would have found 418
the petitioner guilty of the aggravating circumstance or 419
circumstances the petitioner was found guilty of committing and 420
that is or are the basis of that sentence of death. 421

(c) As used in divisions (A) (1) (a) and (b) of this 422
section, "former section 2953.82 of the Revised Code" means 423
section 2953.82 of the Revised Code as it existed prior to July 424
6, 2010. 425

(d) At any time in conjunction with the filing of a 426
petition for postconviction relief under division (A) of this 427
section by a person who has been sentenced to death, or with the 428
litigation of a petition so filed, the court, for good cause 429
shown, may authorize the petitioner in seeking the 430
postconviction relief and the prosecuting attorney of the county 431
served by the court in defending the proceeding, to take 432
depositions and to issue subpoenas and subpoenas duces tecum in 433
accordance with divisions (A) (1) (d), (A) (1) (e), and (C) of this 434
section, and to any other form of discovery as in a civil action 435
that the court in its discretion permits. The court may limit 436
the extent of discovery under this division. In addition to 437
discovery that is relevant to the claim and was available under 438
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 469

attorney shall respond by answer or motion to the petitioner's 470
request or the petitioner shall respond by answer or motion to 471
the prosecuting attorney's request, whichever is applicable. 472

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

(g) If a petitioner, prosecuting attorney, or person from 490
whom discovery is sought makes a motion for an order under 491
division (A) (1) (f) of this section and the order is denied in 492
whole or in part, the court, on terms and conditions as are 493
just, may order that any party or person provide or permit 494
discovery as described in division (A) (1) (d) of this section. 495
The provisions of Civil Rule 37(A) (4) apply to the award of 496
expenses incurred in relation to the motion, except that in no 497
case shall a court require a petitioner who is indigent to pay 498
expenses under those provisions. 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) Nothing in division (A) (1) (d) of this section 528
authorizes, or shall be construed as authorizing, the 529
relitigation, or discovery in support of relitigation, of any 530
matter barred by the doctrine of res judicata. 531

(2) Except as otherwise provided in section 2953.23 of the 532
Revised Code, a petition under division (A) (1) of this section 533
shall be filed no later than three hundred sixty-five days after 534
the date on which the trial transcript is filed in the court of 535
appeals in the direct appeal of the judgment of conviction or 536
adjudication or, if the direct appeal involves a sentence of 537
death, the date on which the trial transcript is filed in the 538
supreme court. If no appeal is taken, except as otherwise 539
provided in section 2953.23 of the Revised Code, the petition 540
shall be filed no later than three hundred sixty-five days after 541
the expiration of the time for filing the appeal. 542

(3) In a petition filed under division (A) of this 543
section, a person who has been sentenced to death may ask the 544
court to render void or voidable the judgment with respect to 545
the conviction of aggravated murder or the specification of an 546
aggravating circumstance or the sentence of death. 547

(4) A petitioner shall state in the original or amended 548
petition filed under division (A) of this section all grounds 549
for relief claimed by the petitioner. Except as provided in 550
section 2953.23 of the Revised Code, any ground for relief that 551
is not so stated in the petition is waived. 552

(5) If the petitioner in a petition filed under division 553
(A) of this section was convicted of or pleaded guilty to a 554
felony, the petition may include a claim that the petitioner was 555
denied the equal protection of the laws in violation of the Ohio 556
Constitution or the United States Constitution because the 557

sentence imposed upon the petitioner for the felony was part of 558
a consistent pattern of disparity in sentencing by the judge who 559
imposed the sentence, with regard to the petitioner's race, 560
gender, ethnic background, or religion. If the supreme court 561
adopts a rule requiring a court of common pleas to maintain 562
information with regard to an offender's race, gender, ethnic 563
background, or religion, the supporting evidence for the 564
petition shall include, but shall not be limited to, a copy of 565
that type of information relative to the petitioner's sentence 566
and copies of that type of information relative to sentences 567
that the same judge imposed upon other persons. 568

(6) Notwithstanding any law or court rule to the contrary, 569
there is no limit on the number of pages in, or on the length 570
of, a petition filed under division (A) of this section by a 571
person who has been sentenced to death. If any court rule 572
specifies a limit on the number of pages in, or on the length 573
of, a petition filed under division (A) of this section or on a 574
prosecuting attorney's response to such a petition by answer or 575
motion and a person who has been sentenced to death files a 576
petition that exceeds the limit specified for the petition, the 577
prosecuting attorney may respond by an answer or motion that 578
exceeds the limit specified for the response. 579

(B) The clerk of the court in which the petition for 580
postconviction relief and, if applicable, a request for 581
postconviction discovery described in division (A) (1) (d) of this 582
section is filed shall docket the petition and the request and 583
bring ~~it~~ them promptly to the attention of the court. The clerk 584
of the court in which the petition for postconviction relief 585
and, if applicable, a request for postconviction discovery 586
described in division (A) (1) (d) of this section is filed 587
immediately shall forward a copy of the petition and a copy of 588

the request if filed by the petitioner to the prosecuting 589
attorney of ~~that~~ the county served by the court. If the request 590
for postconviction discovery is filed by the prosecuting 591
attorney, the clerk of the court immediately shall forward a 592
copy of the request to the petitioner or the petitioner's 593
counsel. 594

(C) If a person who has been sentenced to death and who 595
files a petition for postconviction relief under division (A) of 596
this section requests a deposition or the prosecuting attorney 597
in the case requests a deposition, and if the court grants the 598
request under division (A)(1)(d) of this section, the court 599
shall notify the petitioner or the petitioner's counsel and the 600
prosecuting attorney. The deposition shall be conducted pursuant 601
to divisions (B), (D), and (E) of Criminal Rule 15. 602
Notwithstanding division (C) of Criminal Rule 15, the petitioner 603
is not entitled to attend the deposition. The prosecuting 604
attorney shall be permitted to attend and participate in any 605
deposition. 606

(D) The court shall consider a petition that is timely 607
filed under division (A)(2) of this section even if a direct 608
appeal of the judgment is pending. Before granting a hearing on 609
a petition filed under division (A) of this section, the court 610
shall determine whether there are substantive grounds for 611
relief. In making such a determination, the court shall 612
consider, in addition to the petition, the supporting 613
affidavits, and the documentary evidence, all the files and 614
records pertaining to the proceedings against the petitioner, 615
including, but not limited to, the indictment, the court's 616
journal entries, the journalized records of the clerk of the 617
court, and the court reporter's transcript. The court reporter's 618
transcript, if ordered and certified by the court, shall be 619

taxed as court costs. If the court dismisses the petition, it 620
shall make and file findings of fact and conclusions of law with 621
respect to such dismissal. If the petition was filed by a person 622
who has been sentenced to death, the findings of fact and 623
conclusions of law shall state specifically the reasons for the 624
dismissal of the petition and of each claim it contains. 625

~~(D)~~ (E) Within ten days after the docketing of the 626
petition, or within any further time that the court may fix for 627
good cause shown, the prosecuting attorney shall respond by 628
answer or motion. Division (A) (6) of this section applies with 629
respect to the prosecuting attorney's response. Within twenty 630
days from the date the issues are raised, either party may move 631
for summary judgment. The right to summary judgment shall appear 632
on the face of the record. 633

~~(E)~~ (F) Unless the petition and the files and records of 634
the case show the petitioner is not entitled to relief, the 635
court shall proceed to a prompt hearing on the issues even if a 636
direct appeal of the case is pending. If the court notifies the 637
parties that it has found grounds for granting relief, either 638
party may request an appellate court in which a direct appeal of 639
the judgment is pending to remand the pending case to the court. 640

~~(F)~~ At (G) A petitioner who files a petition under 641
division (A) of this section may amend the petition as follows: 642

(1) If the petition was filed by a person who has been 643
sentenced to death, at any time that is not later than one 644
hundred eighty days after the petition is filed, the petitioner 645
may amend the petition with or without leave or prejudice to the 646
proceedings. 647

(2) If division (G) (1) of this section does not apply, at 648

any time before the answer or motion is filed, the petitioner 649
may amend the petition with or without leave or prejudice to the 650
proceedings. ~~The~~ 651

(3) The petitioner may amend the petition with leave of 652
court at any time ~~thereafter~~ after the expiration of the 653
applicable period specified in division (G) (1) or (2) of this 654
section. 655

~~(G)~~ (H) If the court does not find grounds for granting 656
relief, it shall make and file findings of fact and conclusions 657
of law and shall enter judgment denying relief on the petition. 658
If the petition was filed by a person who has been sentenced to 659
death, the findings of fact and conclusions of law shall state 660
specifically the reasons for the denial of relief on the 661
petition and of each claim it contains. If no direct appeal of 662
the case is pending and the court finds grounds for relief or if 663
a pending direct appeal of the case has been remanded to the 664
court pursuant to a request made pursuant to division ~~(E)~~ (F) of 665
this section and the court finds grounds for granting relief, it 666
shall make and file findings of fact and conclusions of law and 667
shall enter a judgment that vacates and sets aside the judgment 668
in question, and, in the case of a petitioner who is a prisoner 669
in custody, shall discharge or resentence the petitioner or 670
grant a new trial as the court determines appropriate. If the 671
petitioner has been sentenced to death, the findings of fact and 672
conclusions of law shall state specifically the reasons for the 673
finding of grounds for granting the relief, with respect to each 674
claim contained in the petition. The court also may make 675
supplementary orders to the relief granted, concerning such 676
matters as rearraignment, retrial, custody, and bail. If the 677
trial court's order granting the petition is reversed on appeal 678
and if the direct appeal of the case has been remanded from an 679

appellate court pursuant to a request under division ~~(E)~~(F) of 680
this section, the appellate court reversing the order granting 681
the petition shall notify the appellate court in which the 682
direct appeal of the case was pending at the time of the remand 683
of the reversal and remand of the trial court's order. Upon the 684
reversal and remand of the trial court's order granting the 685
petition, regardless of whether notice is sent or received, the 686
direct appeal of the case that was remanded is reinstated. 687

~~(H)~~(I) Upon the filing of a petition pursuant to division 688
(A) of this section by a person sentenced to death, only the 689
supreme court may stay execution of the sentence of death. 690

~~(I)~~(J) (1) If a person sentenced to death intends to file a 691
petition under this section, the court shall appoint counsel to 692
represent the person upon a finding that the person is indigent 693
and that the person either accepts the appointment of counsel or 694
is unable to make a competent decision whether to accept or 695
reject the appointment of counsel. The court may decline to 696
appoint counsel for the person only upon a finding, after a 697
hearing if necessary, that the person rejects the appointment of 698
counsel and understands the legal consequences of that decision 699
or upon a finding that the person is not indigent. 700

(2) The court shall not appoint as counsel under division 701
~~(I)~~(J) (1) of this section an attorney who represented the 702
petitioner at trial in the case to which the petition relates 703
unless the person and the attorney expressly request the 704
appointment. The court shall appoint as counsel under division 705
~~(I)~~(J) (1) of this section only an attorney who is certified 706
under Rule 20 of the Rules of Superintendence for the Courts of 707
Ohio to represent indigent defendants charged with or convicted 708
of an offense for which the death penalty can be or has been 709

imposed. The ineffectiveness or incompetence of counsel during 710
proceedings under this section does not constitute grounds for 711
relief in a proceeding under this section, in an appeal of any 712
action under this section, or in an application to reopen a 713
direct appeal. 714

(3) Division ~~(I)~~(J) of this section does not preclude 715
attorneys who represent the state of Ohio from invoking the 716
provisions of 28 U.S.C. 154 with respect to capital cases that 717
were pending in federal habeas corpus proceedings prior to July 718
1, 1996, insofar as the petitioners in those cases were 719
represented in proceedings under this section by one or more 720
counsel appointed by the court under this section or section 721
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 722
appointed counsel meet the requirements of division ~~(I)~~(J)(2) of 723
this section. 724

~~(J)~~(K) Subject to the appeal of a sentence for a felony 725
that is authorized by section 2953.08 of the Revised Code, the 726
remedy set forth in this section is the exclusive remedy by 727
which a person may bring a collateral challenge to the validity 728
of a conviction or sentence in a criminal case or to the 729
validity of an adjudication of a child as a delinquent child for 730
the commission of an act that would be a criminal offense if 731
committed by an adult or the validity of a related order of 732
disposition. 733

Sec. 2953.23. (A) Whether a hearing is or is not held on a 734
petition filed pursuant to section 2953.21 of the Revised Code, 735
a court may not entertain a petition filed after the expiration 736
of the period prescribed in division (A) of that section or a 737
second petition or successive petitions for similar relief on 738
behalf of a petitioner unless division (A)(1) or (2) of this 739

section applies: 740

(1) Both of the following apply: 741

(a) Either the petitioner shows that the petitioner was 742
unavoidably prevented from discovery of the facts upon which the 743
petitioner must rely to present the claim for relief, or, 744
subsequent to the period prescribed in division (A) (2) of 745
section 2953.21 of the Revised Code or to the filing of an 746
earlier petition, the United States Supreme Court recognized a 747
new federal or state right that applies retroactively to persons 748
in the petitioner's situation, and the petition asserts a claim 749
based on that right. 750

(b) The petitioner shows by clear and convincing evidence 751
that, but for constitutional error at trial, no reasonable 752
factfinder would have found the petitioner guilty of the offense 753
of which the petitioner was convicted or, if the claim 754
challenges a sentence of death that, but for constitutional 755
error at the sentencing hearing, no reasonable factfinder would 756
have found the petitioner eligible for the death sentence. 757

(2) The petitioner was convicted of a felony, the 758
petitioner is an offender for whom DNA testing was performed 759
under sections 2953.71 to 2953.81 of the Revised Code or under 760
former section 2953.82 of the Revised Code and analyzed in the 761
context of and upon consideration of all available admissible 762
evidence related to the inmate's case as described in division 763
(D) of section 2953.74 of the Revised Code, and the results of 764
the DNA testing establish, by clear and convincing evidence, 765
actual innocence of that felony offense or, if the person was 766
sentenced to death, establish, by clear and convincing evidence, 767
actual innocence of the aggravating circumstance or 768
circumstances the person was found guilty of committing and that 769

is or are the basis of that sentence of death. 770

As used in this division, "actual innocence" has the same 771
meaning as in division (A) (1) (b) of section 2953.21 of the 772
Revised Code, and "former section 2953.82 of the Revised Code" 773
has the same meaning as in division (A) (1) (c) of section 2953.21 774
of the Revised Code. 775

(B) An order awarding or denying relief sought in a 776
petition filed pursuant to section 2953.21 of the Revised Code 777
is a final judgment and may be appealed pursuant to Chapter 778
2953. of the Revised Code. 779

If a petition filed pursuant to section 2953.21 of the 780
Revised Code by a person who has been sentenced to death is 781
denied and the person appeals the judgment, notwithstanding any 782
law or court rule to the contrary, there is no limit on the 783
number of pages in, or on the length of, a notice of appeal or 784
briefs related to an appeal filed by the person. If any court 785
rule specifies a limit on the number of pages in, or on the 786
length of, a notice of appeal or briefs described in this 787
division or on a prosecuting attorney's response or briefs with 788
respect to such an appeal and a person who has been sentenced to 789
death files a notice of appeal or briefs that exceed the limit 790
specified for the petition, the prosecuting attorney may file a 791
response or briefs that exceed the limit specified for the 792
answer or briefs. 793

Section 2. That existing sections 2929.03, 2953.21, and 794
2953.23 of the Revised Code are hereby repealed. 795