

**As Reported by the House Criminal Justice Committee**

**132nd General Assembly**

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**Sub. H. B. No. 81**

**Representatives Seitz, Antonio**

**Cosponsors: Representatives Dever, Miller, Hambley, Duffey, Brinkman, Blessing,  
Riedel, Lepore-Hagan, Smith, K., Ryan, Stein, Manning**

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**A BILL**

To amend sections 2929.02, 2929.022, 2929.024, 1  
2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 2  
and to enact section 2929.025 of the Revised 3  
Code to provide that a person convicted of 4  
aggravated murder who shows that the person had 5  
a serious mental illness at the time of 6  
committing the offense cannot be sentenced to 7  
death for the offense and to provide a mechanism 8  
for resentencing to a life sentence a person 9  
previously sentenced to death who proves that 10  
the person had a serious mental illness at the 11  
time of committing the offense. 12

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

**Section 1.** That sections 2929.02, 2929.022, 2929.024, 13  
2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 be amended and 14  
section 2929.025 of the Revised Code be enacted to read as 15  
follows: 16

**Sec. 2929.02.** (A) Whoever is convicted of or pleads guilty 17  
to aggravated murder in violation of section 2903.01 of the 18

Revised Code shall suffer death or be imprisoned for life, as 19  
determined pursuant to sections 2929.022, 2929.03, and 2929.04 20  
of the Revised Code, except that no person who raises the matter 21  
of age pursuant to section 2929.023 of the Revised Code and who 22  
is not found to have been eighteen years of age or older at the 23  
time of the commission of the offense and no person who raises 24  
the matter of the person's serious mental illness at the time of 25  
the alleged commission of the offense pursuant to section 26  
2929.025 of the Revised Code and is found under that section to 27  
be ineligible for a sentence of death due to serious mental 28  
illness shall suffer death. In addition, the offender may be 29  
fined an amount fixed by the court, but not more than twenty- 30  
five thousand dollars. 31

(B) (1) Except as otherwise provided in division (B) (2) or 32  
(3) of this section, whoever is convicted of or pleads guilty to 33  
murder in violation of section 2903.02 of the Revised Code shall 34  
be imprisoned for an indefinite term of fifteen years to life. 35

(2) Except as otherwise provided in division (B) (3) of 36  
this section, if a person is convicted of or pleads guilty to 37  
murder in violation of section 2903.02 of the Revised Code, the 38  
victim of the offense was less than thirteen years of age, and 39  
the offender also is convicted of or pleads guilty to a sexual 40  
motivation specification that was included in the indictment, 41  
count in the indictment, or information charging the offense, 42  
the court shall impose an indefinite prison term of thirty years 43  
to life pursuant to division (B) (3) of section 2971.03 of the 44  
Revised Code. 45

(3) If a person is convicted of or pleads guilty to murder 46  
in violation of section 2903.02 of the Revised Code and also is 47  
convicted of or pleads guilty to a sexual motivation 48

specification and a sexually violent predator specification that 49  
were included in the indictment, count in the indictment, or 50  
information that charged the murder, the court shall impose upon 51  
the offender a term of life imprisonment without parole that 52  
shall be served pursuant to section 2971.03 of the Revised Code. 53

(4) In addition, the offender may be fined an amount fixed 54  
by the court, but not more than fifteen thousand dollars. 55

(C) The court shall not impose a fine or fines for 56  
aggravated murder or murder which, in the aggregate and to the 57  
extent not suspended by the court, exceeds the amount which the 58  
offender is or will be able to pay by the method and within the 59  
time allowed without undue hardship to the offender or to the 60  
dependents of the offender, or will prevent the offender from 61  
making reparation for the victim's wrongful death. 62

(D) (1) In addition to any other sanctions imposed for a 63  
violation of section 2903.01 or 2903.02 of the Revised Code, if 64  
the offender used a motor vehicle as the means to commit the 65  
violation, the court shall impose upon the offender a class two 66  
suspension of the offender's driver's license, commercial 67  
driver's license, temporary instruction permit, probationary 68  
license, or nonresident operating privilege as specified in 69  
division (A) (2) of section 4510.02 of the Revised Code. 70

(2) As used in division (D) of this section, "motor 71  
vehicle" has the same meaning as in section 4501.01 of the 72  
Revised Code. 73

**Sec. 2929.022.** (A) If an indictment or count in an 74  
indictment charging a defendant with aggravated murder contains 75  
a specification of the aggravating circumstance of a prior 76  
conviction listed in division (A) (5) of section 2929.04 of the 77

Revised Code, the defendant may elect to have the panel of three 78  
judges, if the defendant waives trial by jury, or the trial 79  
judge, if the defendant is tried by jury, determine the 80  
existence of that aggravating circumstance at the sentencing 81  
hearing held pursuant to divisions (C) and (D) of section 82  
2929.03 of the Revised Code. 83

(1) If the defendant does not elect to have the existence 84  
of the aggravating circumstance determined at the sentencing 85  
hearing, the defendant shall be tried on the charge of 86  
aggravated murder, on the specification of the aggravating 87  
circumstance of a prior conviction listed in division (A) (5) of 88  
section 2929.04 of the Revised Code, and on any other 89  
specifications of an aggravating circumstance listed in division 90  
(A) of section 2929.04 of the Revised Code in a single trial as 91  
in any other criminal case in which a person is charged with 92  
aggravated murder and specifications. 93

(2) If the defendant does elect to have the existence of 94  
the aggravating circumstance of a prior conviction listed in 95  
division (A) (5) of section 2929.04 of the Revised Code 96  
determined at the sentencing hearing, then, following a verdict 97  
of guilty of the charge of aggravated murder, the panel of three 98  
judges or the trial judge shall: 99

(a) Hold a sentencing hearing pursuant to division (B) of 100  
this section, unless required to do otherwise under division (A) 101  
(2) (b) of this section; 102

(b) If the offender raises the matter of age at trial 103  
pursuant to section 2929.023 of the Revised Code and is not 104  
found at trial to have been eighteen years of age or older at 105  
the time of the commission of the offense or raises the matter 106  
of the offender's serious mental illness at the time of the 107

alleged commission of the offense pursuant to section 2929.025 108  
of the Revised Code and is found under that section to be 109  
ineligible for a sentence of death due to serious mental 110  
illness, conduct a hearing to determine if the specification of 111  
the aggravating circumstance of a prior conviction listed in 112  
division (A) (5) of section 2929.04 of the Revised Code is proven 113  
beyond a reasonable doubt. After conducting the hearing, the 114  
panel or judge shall proceed as follows: 115

(i) If that aggravating circumstance is proven beyond a 116  
reasonable doubt or if the defendant at trial was convicted of 117  
any other specification of an aggravating circumstance, the 118  
panel or judge shall impose sentence according to division (E) 119  
of section 2929.03 of the Revised Code. 120

(ii) If that aggravating circumstance is not proven beyond 121  
a reasonable doubt and the defendant at trial was not convicted 122  
of any other specification of an aggravating circumstance, 123  
except as otherwise provided in this division, the panel or 124  
judge shall impose sentence of life imprisonment with parole 125  
eligibility after serving twenty years of imprisonment on the 126  
offender. If that aggravating circumstance is not proven beyond 127  
a reasonable doubt, the defendant at trial was not convicted of 128  
any other specification of an aggravating circumstance, the 129  
victim of the aggravated murder was less than thirteen years of 130  
age, and the offender also is convicted of or pleads guilty to a 131  
sexual motivation specification that was included in the 132  
indictment, count in the indictment, or information charging the 133  
offense, the panel or judge shall sentence the offender pursuant 134  
to division (B) (3) of section 2971.03 of the Revised Code to an 135  
indefinite term consisting of a minimum term of thirty years and 136  
a maximum term of life imprisonment. 137

(B) At the sentencing hearing, the panel of judges, if the defendant was tried by a panel of three judges, or the trial judge, if the defendant was tried by jury, shall, when required pursuant to division (A) (2) of this section, first determine if the specification of the aggravating circumstance of a prior conviction listed in division (A) (5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt. If the panel of judges or the trial judge determines that the specification of the aggravating circumstance of a prior conviction listed in division (A) (5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt or if they do not determine that the specification is proven beyond a reasonable doubt but the defendant at trial was convicted of a specification of any other aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge and trial jury shall impose sentence on the offender pursuant to division (D) of section 2929.03 and section 2929.04 of the Revised Code. If the panel of judges or the trial judge does not determine that the specification of the aggravating circumstance of a prior conviction listed in division (A) (5) of section 2929.04 of the Revised Code is proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the panel of judges or the trial judge shall terminate the sentencing hearing and impose sentence on the offender as follows:

(1) Subject to division (B) (2) of this section, the panel or judge shall impose a sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender.

(2) If the victim of the aggravated murder was less than

thirteen years of age and the offender also is convicted of or 169  
pleads guilty to a sexual motivation specification that was 170  
included in the indictment, count in the indictment, or 171  
information charging the offense, the panel or judge shall 172  
sentence the offender pursuant to division (B)(3) of section 173  
2971.03 of the Revised Code to an indefinite term consisting of 174  
a minimum term of thirty years and a maximum term of life 175  
imprisonment. 176

**Sec. 2929.024.** ~~If (A) In a case described in division (B)~~ 177  
~~of this section, if~~ the court determines that ~~the defendant is~~ 178  
~~indigent and that~~ investigation services, experts, or other 179  
services are reasonably necessary for the proper representation 180  
of a defendant charged with aggravated murder at trial or at the 181  
sentencing hearing, the court shall authorize the defendant's 182  
counsel to obtain the necessary services for the defendant, and 183  
shall order that payment of the fees and expenses for the 184  
necessary services be made in the same manner that payment for 185  
appointed counsel is made pursuant to Chapter 120. of the 186  
Revised Code. If the court determines that the necessary 187  
services had to be obtained prior to court authorization for 188  
payment of the fees and expenses for the necessary services, the 189  
court may, after the services have been obtained, authorize the 190  
defendant's counsel to obtain the necessary services and order 191  
that payment of the fees and expenses for the necessary services 192  
be made as provided in this section. 193

(B) Division (A) of this section applies in a case in 194  
which either of the following apply: 195

(1) The court determines that the defendant is indigent. 196

(2) The defendant is described in division (C) of section 197  
2929.025 of the Revised Code and raises the matter of the 198

defendant's serious mental illness at the time of the alleged 199  
commission of the aggravated murder as described in that 200  
division. 201

**Sec. 2929.025.** (A) As used in this section: 202

(1) A person has a "serious mental illness" if both of the 203  
following apply with respect to the person, subject to division 204  
(A) (2) of this section: 205

(a) The person has been diagnosed as described in division 206  
(B) of this section with one or more of the following 207  
conditions: 208

(i) Schizophrenia; 209

(ii) Schizoaffective disorder; 210

(iii) Bipolar disorder; 211

(iv) Major depressive disorder; 212

(v) Delusional disorder. 213

(b) At the time of the alleged aggravated murder with 214  
which the person is charged, the condition or conditions 215  
described in division (A) (1) (a) of this section with which the 216  
person has been diagnosed, while not meeting the standard to be 217  
found not guilty by reason of insanity as defined in section 218  
2901.01 of the Revised Code or the standard to be found 219  
incompetent to stand trial as described in division (G) of 220  
section 2945.37 of the Revised Code, nevertheless significantly 221  
impaired the person's capacity to exercise rational judgment in 222  
relation to the person's conduct with respect to either of the 223  
following: 224

(i) Conforming the person's conduct to the requirements of 225

<u>law;</u>	226
<u>(ii) Appreciating the nature, consequences, or</u>	227
<u>wrongfulness of the person's conduct.</u>	228
<u>(2) A disorder manifested primarily by repeated criminal</u>	229
<u>conduct or attributable solely to the acute effects of voluntary</u>	230
<u>use of alcohol or any other drug of abuse does not, standing</u>	231
<u>alone, constitute a "serious mental illness" for purposes of</u>	232
<u>division (A) (1) of this section.</u>	233
<u>(3) "Examiner" means a person who makes an evaluation</u>	234
<u>ordered under division (F) (1) of this section.</u>	235
<u>(4) "Prosecutor" means a prosecuting attorney who has</u>	236
<u>authority to prosecute a charge of aggravated murder that is</u>	237
<u>before the court.</u>	238
<u>(B) The diagnosis of a person with a condition or</u>	239
<u>conditions described in division (A) (1) (a) of this section may</u>	240
<u>be made at any time prior to, on, or after the day of the</u>	241
<u>alleged aggravated murder with which the person is charged or</u>	242
<u>the day on which the person pursuant to division (C) of this</u>	243
<u>section raises the matter of the person's serious mental illness</u>	244
<u>at the time of the alleged commission of that aggravated murder.</u>	245
<u>Diagnosis of the condition or conditions after the date of the</u>	246
<u>alleged aggravated murder with which the person is charged does</u>	247
<u>not preclude the person from presenting evidence that the person</u>	248
<u>had a serious mental illness at the time of the alleged</u>	249
<u>commission of that offense.</u>	250
<u>(C) A person charged with aggravated murder and one or</u>	251
<u>more specifications of an aggravating circumstance listed in</u>	252
<u>division (A) of section 2929.04 of the Revised Code may, before</u>	253
<u>trial, raise the matter of the person's serious mental illness</u>	254

at the time of the alleged commission of the offense. If a 255  
person raises the matter of the person's serious mental illness 256  
at the time of the alleged commission of the offense, the court 257  
shall order an evaluation of the person in accordance with 258  
division (F) of this section and shall hold a pretrial hearing 259  
on the matter. The person who raises the matter may present 260  
evidence that the person had a serious mental illness at the 261  
time of the alleged commission of the offense, and the person 262  
has the burden of raising that matter and of going forward with 263  
the evidence relating to the diagnosis described in division (A) 264  
(1) (a) of this section and the impairment described in division 265  
(A) (1) (b) of this section. 266

(D) If a person described in division (C) of this section 267  
raises the matter of the person's serious mental illness at the 268  
time of the alleged commission of the aggravated murder and 269  
submits evidence that the person has been diagnosed with one or 270  
more of the conditions set forth in division (A) (1) (a) of this 271  
section and that the condition or conditions diagnosed 272  
significantly impaired the person's capacity at the time of the 273  
alleged offense in a manner described in division (A) (1) (b) of 274  
this section, the prosecution shall have an opportunity to 275  
present evidence to contest the diagnosis. The defendant has the 276  
burden of proving, by a preponderance of the evidence, that the 277  
person has been diagnosed with one or more of the conditions set 278  
forth in division (A) (1) (a) of this section and that the 279  
condition or conditions diagnosed significantly impaired the 280  
person's capacity at the time of the alleged offense in a manner 281  
described in division (A) (1) (b) of this section. 282

(E) (1) Unless the court at the pretrial hearing finds that 283  
the defendant has proved, by a preponderance of the evidence, 284  
that the person has been diagnosed with one or more of the 285

conditions set forth in division (A)(1)(a) of this section and 286  
that the condition or conditions diagnosed significantly 287  
impaired the person's capacity at the time of the alleged 288  
offense in a manner described in division (A)(1)(b) of this 289  
section, the court shall issue a finding that the person is not 290  
ineligible for a sentence of death due to serious mental 291  
illness. 292

(2) If the court at the pretrial hearing finds that the 293  
defendant has proved, by a preponderance of the evidence, that 294  
the person has been diagnosed with one or more of the conditions 295  
set forth in division (A)(1)(a) of this section and that the 296  
condition or conditions diagnosed significantly impaired the 297  
person's capacity at the time of the alleged offense in a manner 298  
described in division (A)(1)(b) of this section, the court shall 299  
issue a finding that the person is ineligible for a sentence of 300  
death due to serious mental illness. 301

(F)(1) If a person described in division (C) of this 302  
section raises the matter of the person's serious mental illness 303  
at the time of the alleged commission of the aggravated murder 304  
as described in that division, the court shall order an 305  
evaluation of the person. Section 2929.024 of the Revised Code 306  
applies with respect to an evaluation ordered under this 307  
division. 308

(2) No statement that a person makes in an evaluation 309  
ordered under division (F)(1) of this section or in a pretrial 310  
hearing under divisions (C) to (E) of this section relating to 311  
the person's serious mental illness at the time of the alleged 312  
commission of the aggravated murder with which the person is 313  
charged shall be used against the person on the issue of guilt 314  
in any criminal action or proceeding, but, in a criminal action 315

or proceeding, the prosecutor or defense counsel may call as a 316  
witness any examiner who evaluated the person or prepared a 317  
report pursuant to a referral under this section. Neither the 318  
appointment nor the testimony of an examiner in an evaluation 319  
ordered under division (F)(1) of this section precludes the 320  
prosecutor or defense counsel from calling other witnesses or 321  
presenting other evidence on the issue of the person's serious 322  
mental illness at the time of the alleged commission of the 323  
aggravated murder or on competency or insanity issues. 324

(G) A person's pleading of not guilty by reason of 325  
insanity or incompetence to stand trial, or a finding after such 326  
a plea that the person is not insane or that the person is 327  
competent to stand trial, does not preclude the person from 328  
raising the matter of the person's serious mental illness at the 329  
time of the alleged commission of the offense pursuant to 330  
division (C) of this section and, if a person so raises that 331  
matter, does not limit or affect any of the procedures described 332  
in this section or the authority of a court to make any finding 333  
described in this section. 334

**Sec. 2929.03.** (A) If the indictment or count in the 335  
indictment charging aggravated murder does not contain one or 336  
more specifications of aggravating circumstances listed in 337  
division (A) of section 2929.04 of the Revised Code, then, 338  
following a verdict of guilty of the charge of aggravated 339  
murder, the trial court shall impose sentence on the offender as 340  
follows: 341

(1) Except as provided in division (A)(2) of this section, 342  
the trial court shall impose one of the following sentences on 343  
the offender: 344

(a) Life imprisonment without parole; 345

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

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

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

(e) 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 (A) (1) (a) of this section, the trial court 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 that shall be served pursuant to that section.

(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, the trial court shall impose upon the offender a sentence of life imprisonment without parole that shall be served pursuant to section 2971.03 of the Revised Code.

(B) If the indictment or count in the indictment charging

aggravated murder contains one or more specifications of 375  
aggravating circumstances listed in division (A) of section 376  
2929.04 of the Revised Code, the verdict shall separately state 377  
~~whether~~ all of the following: 378

(1) Whether the accused is found guilty or not guilty of 379  
the principal charge ~~and, if;~~ 380

(2) If guilty of the principal charge, whether the 381  
offender was eighteen years of age or older at the time of the 382  
commission of the offense, ~~if the matter of age was raised by~~ 383  
the offender pursuant to section 2929.023 of the Revised Code, ~~and whether;~~ 384  
385

(3) If guilty of the principal charge, whether the 386  
offender was found under section 2929.025 of the Revised Code to 387  
be ineligible for a sentence of death due to serious mental 388  
illness if the matter of serious mental illness at the time of 389  
the commission of the offense was raised by the offender 390  
pursuant to that section; 391

(4) If guilty of the principal charge, whether the 392  
offender is guilty or not guilty of each specification. ~~The~~ 393

The jury shall be instructed on its duties in this regard. 394  
The instruction to the jury shall include an instruction that a 395  
specification shall be proved beyond a reasonable doubt in order 396  
to support a guilty verdict on the specification, but the 397  
instruction shall not mention the penalty that may be the 398  
consequence of a guilty or not guilty verdict on any charge or 399  
specification. 400

(C) (1) If the indictment or count in the indictment 401  
charging aggravated murder contains one or more specifications 402  
of aggravating circumstances listed in division (A) of section 403

2929.04 of the Revised Code, then, following a verdict of guilty 404  
of the charge but not guilty of each of the specifications, and 405  
regardless of whether the offender raised the matter of age 406  
pursuant to section 2929.023 of the Revised Code or the matter 407  
of serious mental illness at the time of the commission of the 408  
offense pursuant to section 2929.025 of the Revised Code, the 409  
trial court shall impose sentence on the offender as follows: 410

(a) Except as provided in division (C)(1)(b) of this 411  
section, the trial court shall impose one of the following 412  
sentences on the offender: 413

(i) Life imprisonment without parole; 414

(ii) Subject to division (C)(1)(a)(v) of this section, 415  
life imprisonment with parole eligibility after serving twenty 416  
years of imprisonment; 417

(iii) Subject to division (C)(1)(a)(v) of this section, 418  
life imprisonment with parole eligibility after serving twenty- 419  
five full years of imprisonment; 420

(iv) Subject to division (C)(1)(a)(v) of this section, 421  
life imprisonment with parole eligibility after serving thirty 422  
full years of imprisonment; 423

(v) If the victim of the aggravated murder was less than 424  
thirteen years of age, the offender also is convicted of or 425  
pleads guilty to a sexual motivation specification that was 426  
included in the indictment, count in the indictment, or 427  
information charging the offense, and the trial court does not 428  
impose a sentence of life imprisonment without parole on the 429  
offender pursuant to division (C)(1)(a)(i) of this section, the 430  
trial court shall sentence the offender pursuant to division (B) 431  
(3) of section 2971.03 of the Revised Code to an indefinite term 432

consisting of a minimum term of thirty years and a maximum term 433  
of life imprisonment. 434

(b) If the offender also is convicted of or pleads guilty 435  
to a sexual motivation specification and a sexually violent 436  
predator specification that are included in the indictment, 437  
count in the indictment, or information that charged the 438  
aggravated murder, the trial court shall impose upon the 439  
offender a sentence of life imprisonment without parole that 440  
shall be served pursuant to section 2971.03 of the Revised Code. 441

(2) (a) If the indictment or count in the indictment 442  
contains one or more specifications of aggravating circumstances 443  
listed in division (A) of section 2929.04 of the Revised Code 444  
and if the offender is found guilty of both the charge and one 445  
or more of the specifications, the penalty to be imposed on the 446  
offender shall be one of the following: 447

(i) Except as provided in division (C) (2) (a) (ii) or (iii), and 448  
subject to divisions (D) (1) and (E) of this section, the 449  
penalty to be imposed on the offender shall be death, life 450  
imprisonment without parole, life imprisonment with parole 451  
eligibility after serving twenty-five full years of 452  
imprisonment, or life imprisonment with parole eligibility after 453  
serving thirty full years of imprisonment. 454

(ii) Except as provided in division (C) (2) (a) (iii) of this 455  
section, if the victim of the aggravated murder was less than 456  
thirteen years of age, the offender also is convicted of or 457  
pleads guilty to a sexual motivation specification that was 458  
included in the indictment, count in the indictment, or 459  
information charging the offense, and the trial court does not 460  
impose a sentence of death or life imprisonment without parole 461  
on the offender pursuant to division (C) (2) (a) (i) of this 462

section, the penalty to be imposed on the offender shall be an 463  
indefinite term consisting of a minimum term of thirty years and 464  
a maximum term of life imprisonment that shall be imposed 465  
pursuant to division (B) (3) of section 2971.03 of the Revised 466  
Code and served pursuant to that section. 467

(iii) If the offender also is convicted of or pleads 468  
guilty to a sexual motivation specification and a sexually 469  
violent predator specification that are included in the 470  
indictment, count in the indictment, or information that charged 471  
the aggravated murder, the penalty to be imposed on the offender 472  
shall be death or life imprisonment without parole that shall be 473  
served pursuant to section 2971.03 of the Revised Code. 474

(b) A penalty imposed pursuant to division (C) (2) (a) (i), 475  
(ii), or (iii) of this section shall be determined pursuant to 476  
divisions (D) and (E) of this section and shall be determined by 477  
one of the following: 478

(i) By the panel of three judges that tried the offender 479  
upon the offender's waiver of the right to trial by jury; 480

(ii) By the trial jury and the trial judge, if the 481  
offender was tried by jury. 482

(D) (1) Death may not be imposed as a penalty for 483  
aggravated murder if the offender raised the matter of age at 484  
trial pursuant to section 2929.023 of the Revised Code and was 485  
not found at trial to have been eighteen years of age or older 486  
at the time of the commission of the offense or raised the 487  
matter of the offender's serious mental illness at the time of 488  
the commission of the offense pursuant to section 2929.025 of 489  
the Revised Code and was found under that section to be 490  
ineligible for a sentence of death due to serious mental 491

illness. When death may be imposed as a penalty for aggravated 492  
murder, the court shall proceed under this division. When death 493  
may be imposed as a penalty, the court, upon the request of the 494  
defendant, shall require a pre-sentence investigation to be made 495  
and, upon the request of the defendant, shall require a mental 496  
examination to be made, and shall require reports of the 497  
investigation and of any mental examination submitted to the 498  
court, pursuant to section 2947.06 of the Revised Code. No 499  
statement made or information provided by a defendant in a 500  
mental examination or proceeding conducted pursuant to this 501  
division shall be disclosed to any person, except as provided in 502  
this division, or be used in evidence against the defendant on 503  
the issue of guilt in any retrial. A pre-sentence investigation 504  
or mental examination shall not be made except upon request of 505  
the defendant. Copies of any reports prepared under this 506  
division shall be furnished to the court, to the trial jury if 507  
the offender was tried by a jury, to the prosecutor, and to the 508  
offender or the offender's counsel for use under this division. 509  
The court, and the trial jury if the offender was tried by a 510  
jury, shall consider any report prepared pursuant to this 511  
division and furnished to it and any evidence raised at trial 512  
that is relevant to the aggravating circumstances the offender 513  
was found guilty of committing or to any factors in mitigation 514  
of the imposition of the sentence of death, shall hear testimony 515  
and other evidence that is relevant to the nature and 516  
circumstances of the aggravating circumstances the offender was 517  
found guilty of committing, the mitigating factors set forth in 518  
division (B) of section 2929.04 of the Revised Code, and any 519  
other factors in mitigation of the imposition of the sentence of 520  
death, and shall hear the statement, if any, of the offender, 521  
and the arguments, if any, of counsel for the defense and 522  
prosecution, that are relevant to the penalty that should be 523

imposed on the offender. The defendant shall be given great 524  
latitude in the presentation of evidence of the mitigating 525  
factors set forth in division (B) of section 2929.04 of the 526  
Revised Code and of any other factors in mitigation of the 527  
imposition of the sentence of death. If the offender chooses to 528  
make a statement, the offender is subject to cross-examination 529  
only if the offender consents to make the statement under oath 530  
or affirmation. 531

The defendant shall have the burden of going forward with 532  
the evidence of any factors in mitigation of the imposition of 533  
the sentence of death. The prosecution shall have the burden of 534  
proving, by proof beyond a reasonable doubt, that the 535  
aggravating circumstances the defendant was found guilty of 536  
committing are sufficient to outweigh the factors in mitigation 537  
of the imposition of the sentence of death. 538

(2) Upon consideration of the relevant evidence raised at 539  
trial, the testimony, other evidence, statement of the offender, 540  
arguments of counsel, and, if applicable, the reports submitted 541  
pursuant to division (D)(1) of this section, the trial jury, if 542  
the offender was tried by a jury, shall determine whether the 543  
aggravating circumstances the offender was found guilty of 544  
committing are sufficient to outweigh the mitigating factors 545  
present in the case. If the trial jury unanimously finds, by 546  
proof beyond a reasonable doubt, that the aggravating 547  
circumstances the offender was found guilty of committing 548  
outweigh the mitigating factors, the trial jury shall recommend 549  
to the court that the sentence of death be imposed on the 550  
offender. Absent such a finding, the jury shall recommend that 551  
the offender be sentenced to one of the following: 552

(a) Except as provided in division (D)(2)(b) or (c) of 553

this section, to life imprisonment without parole, life 554  
imprisonment with parole eligibility after serving twenty-five 555  
full years of imprisonment, or life imprisonment with parole 556  
eligibility after serving thirty full years of imprisonment; 557

(b) Except as provided in division (D)(2)(c) of this 558  
section, if the victim of the aggravated murder was less than 559  
thirteen years of age, the offender also is convicted of or 560  
pleads guilty to a sexual motivation specification that was 561  
included in the indictment, count in the indictment, or 562  
information charging the offense, and the jury does not 563  
recommend a sentence of life imprisonment without parole 564  
pursuant to division (D)(2)(a) of this section, to an indefinite 565  
term consisting of a minimum term of thirty years and a maximum 566  
term of life imprisonment to be imposed pursuant to division (B) 567  
(3) of section 2971.03 of the Revised Code and served pursuant 568  
to that section. 569

(c) If the offender also is convicted of or pleads guilty 570  
to a sexual motivation specification and a sexually violent 571  
predator specification that are included in the indictment, 572  
count in the indictment, or information that charged the 573  
aggravated murder, to life imprisonment without parole. 574

If the trial jury recommends that the offender be 575  
sentenced to life imprisonment without parole, life imprisonment 576  
with parole eligibility after serving twenty-five full years of 577  
imprisonment, life imprisonment with parole eligibility after 578  
serving thirty full years of imprisonment, or an indefinite term 579  
consisting of a minimum term of thirty years and a maximum term 580  
of life imprisonment to be imposed pursuant to division (B)(3) 581  
of section 2971.03 of the Revised Code, the court shall impose 582  
the sentence recommended by the jury upon the offender. If the 583

sentence is an indefinite term consisting of a minimum term of 584  
thirty years and a maximum term of life imprisonment imposed as 585  
described in division (D) (2) (b) of this section or a sentence of 586  
life imprisonment without parole imposed under division (D) (2) 587  
(c) of this section, the sentence shall be served pursuant to 588  
section 2971.03 of the Revised Code. If the trial jury 589  
recommends that the sentence of death be imposed upon the 590  
offender, the court shall proceed to impose sentence pursuant to 591  
division (D) (3) of this section. 592

(3) Upon consideration of the relevant evidence raised at 593  
trial, the testimony, other evidence, statement of the offender, 594  
arguments of counsel, and, if applicable, the reports submitted 595  
to the court pursuant to division (D) (1) of this section, if, 596  
after receiving pursuant to division (D) (2) of this section the 597  
trial jury's recommendation that the sentence of death be 598  
imposed, the court finds, by proof beyond a reasonable doubt, or 599  
if the panel of three judges unanimously finds, by proof beyond 600  
a reasonable doubt, that the aggravating circumstances the 601  
offender was found guilty of committing outweigh the mitigating 602  
factors, it shall impose sentence of death on the offender. 603  
Absent such a finding by the court or panel, the court or the 604  
panel shall impose one of the following sentences on the 605  
offender: 606

(a) Except as provided in division (D) (3) (b) of this 607  
section, one of the following: 608

(i) Life imprisonment without parole; 609

(ii) Subject to division (D) (3) (a) (iv) of this section, 610  
life imprisonment with parole eligibility after serving twenty- 611  
five full years of imprisonment; 612

(iii) Subject to division (D) (3) (a) (iv) of this section, 613  
life imprisonment with parole eligibility after serving thirty 614  
full years of imprisonment; 615

(iv) If the victim of the aggravated murder was less than 616  
thirteen years of age, the offender also is convicted of or 617  
pleads guilty to a sexual motivation specification that was 618  
included in the indictment, count in the indictment, or 619  
information charging the offense, and the trial court does not 620  
impose a sentence of life imprisonment without parole on the 621  
offender pursuant to division (D) (3) (a) (i) of this section, the 622  
court or panel shall sentence the offender pursuant to division 623  
(B) (3) of section 2971.03 of the Revised Code to an indefinite 624  
term consisting of a minimum term of thirty years and a maximum 625  
term of life imprisonment. 626

(b) If the offender also is convicted of or pleads guilty 627  
to a sexual motivation specification and a sexually violent 628  
predator specification that are included in the indictment, 629  
count in the indictment, or information that charged the 630  
aggravated murder, life imprisonment without parole that shall 631  
be served pursuant to section 2971.03 of the Revised Code. 632

(E) If the offender ~~raised the matter of age at trial~~ 633  
~~pursuant to section 2929.023 of the Revised Code,~~ was convicted 634  
of aggravated murder and one or more specifications of an 635  
aggravating circumstance listed in division (A) of section 636  
2929.04 of the Revised Code, and if the offender either raised 637  
the matter of age at trial pursuant to section 2929.023 of the 638  
Revised Code and was not found at trial to have been eighteen 639  
years of age or older at the time of the commission of the 640  
offense or raised the matter of the offender's serious mental 641  
illness at the time of the commission of the offense pursuant to 642

section 2929.025 of the Revised Code and was found under that 643  
section to be ineligible for a sentence of death due to serious 644  
mental illness, the court or the panel of three judges shall not 645  
impose a sentence of death on the offender. Instead, the court 646  
or panel shall impose one of the following sentences on the 647  
offender: 648

(1) Except as provided in division (E) (2) of this section, 649  
one of the following: 650

(a) Life imprisonment without parole; 651

(b) Subject to division (E) ~~(2)~~ (1) (d) of this section, life 652  
imprisonment with parole eligibility after serving twenty-five 653  
full years of imprisonment; 654

(c) Subject to division (E) ~~(2)~~ (1) (d) of this section, life 655  
imprisonment with parole eligibility after serving thirty full 656  
years of imprisonment; 657

(d) If the victim of the aggravated murder was less than 658  
thirteen years of age, the offender also is convicted of or 659  
pleads guilty to a sexual motivation specification that was 660  
included in the indictment, count in the indictment, or 661  
information charging the offense, and the trial court does not 662  
impose a sentence of life imprisonment without parole on the 663  
offender pursuant to division (E) ~~(2)~~ (1) (a) of this section, the 664  
court or panel shall sentence the offender pursuant to division 665  
(B) (3) of section 2971.03 of the Revised Code to an indefinite 666  
term consisting of a minimum term of thirty years and a maximum 667  
term of life imprisonment. 668

(2) If the offender also is convicted of or pleads guilty 669  
to a sexual motivation specification and a sexually violent 670  
predator specification that are included in the indictment, 671

count in the indictment, or information that charged the 672  
aggravated murder, life imprisonment without parole that shall 673  
be served pursuant to section 2971.03 of the Revised Code. 674

(F) The court or the panel of three judges, when it 675  
imposes sentence of death, shall state in a separate opinion its 676  
specific findings as to the existence of any of the mitigating 677  
factors set forth in division (B) of section 2929.04 of the 678  
Revised Code, the existence of any other mitigating factors, the 679  
aggravating circumstances the offender was found guilty of 680  
committing, and the reasons why the aggravating circumstances 681  
the offender was found guilty of committing were sufficient to 682  
outweigh the mitigating factors. The court or panel, when it 683  
imposes life imprisonment or an indefinite term consisting of a 684  
minimum term of thirty years and a maximum term of life 685  
imprisonment under division (D) of this section, shall state in 686  
a separate opinion its specific findings of which of the 687  
mitigating factors set forth in division (B) of section 2929.04 688  
of the Revised Code it found to exist, what other mitigating 689  
factors it found to exist, what aggravating circumstances the 690  
offender was found guilty of committing, and why it could not 691  
find that these aggravating circumstances were sufficient to 692  
outweigh the mitigating factors. For cases in which a sentence 693  
of death is imposed for an offense committed before January 1, 694  
1995, the court or panel shall file the opinion required to be 695  
prepared by this division with the clerk of the appropriate 696  
court of appeals and with the clerk of the supreme court within 697  
fifteen days after the court or panel imposes sentence. For 698  
cases in which a sentence of death is imposed for an offense 699  
committed on or after January 1, 1995, the court or panel shall 700  
file the opinion required to be prepared by this division with 701  
the clerk of the supreme court within fifteen days after the 702

court or panel imposes sentence. The judgment in a case in which 703  
a sentencing hearing is held pursuant to this section is not 704  
final until the opinion is filed. 705

(G) (1) Whenever the court or a panel of three judges 706  
imposes a sentence of death for an offense committed before 707  
January 1, 1995, the clerk of the court in which the judgment is 708  
rendered shall make and retain a copy of the entire record in 709  
the case, and shall deliver the original of the entire record in 710  
the case to the appellate court. 711

(2) Whenever the court or a panel of three judges imposes 712  
a sentence of death for an offense committed on or after January 713  
1, 1995, the clerk of the court in which the judgment is 714  
rendered shall make and retain a copy of the entire record in 715  
the case, and shall deliver the original of the entire record in 716  
the case to the supreme court. 717

**Sec. 2929.04.** (A) Imposition of the death penalty for 718  
aggravated murder is precluded unless one or more of the 719  
following is specified in the indictment or count in the 720  
indictment pursuant to section 2941.14 of the Revised Code and 721  
proved beyond a reasonable doubt: 722

(1) The offense was the assassination of the president of 723  
the United States or a person in line of succession to the 724  
presidency, the governor or lieutenant governor of this state, 725  
the president-elect or vice president-elect of the United 726  
States, the governor-elect or lieutenant governor-elect of this 727  
state, or a candidate for any of the offices described in this 728  
division. For purposes of this division, a person is a candidate 729  
if the person has been nominated for election according to law, 730  
if the person has filed a petition or petitions according to law 731  
to have the person's name placed on the ballot in a primary or 732

general election, or if the person campaigns as a write-in	733
candidate in a primary or general election.	734
(2) The offense was committed for hire.	735
(3) The offense was committed for the purpose of escaping	736
detection, apprehension, trial, or punishment for another	737
offense committed by the offender.	738
(4) The offense was committed while the offender was under	739
detention or while the offender was at large after having broken	740
detention. As used in division (A)(4) of this section,	741
"detention" has the same meaning as in section 2921.01 of the	742
Revised Code, except that detention does not include	743
hospitalization, institutionalization, or confinement in a	744
mental health facility or intellectual disabilities facility	745
unless at the time of the commission of the offense either of	746
the following circumstances apply:	747
(a) The offender was in the facility as a result of being	748
charged with a violation of a section of the Revised Code.	749
(b) The offender was under detention as a result of being	750
convicted of or pleading guilty to a violation of a section of	751
the Revised Code.	752
(5) Prior to the offense at bar, the offender was	753
convicted of an offense an essential element of which was the	754
purposeful killing of or attempt to kill another, or the offense	755
at bar was part of a course of conduct involving the purposeful	756
killing of or attempt to kill two or more persons by the	757
offender.	758
(6) The victim of the offense was a law enforcement	759
officer, as defined in section 2911.01 of the Revised Code, whom	760
the offender had reasonable cause to know or knew to be a law	761

enforcement officer as so defined, and either the victim, at the 762  
time of the commission of the offense, was engaged in the 763  
victim's duties, or it was the offender's specific purpose to 764  
kill a law enforcement officer as so defined. 765

(7) The offense was committed while the offender was 766  
committing, attempting to commit, or fleeing immediately after 767  
committing or attempting to commit kidnapping, rape, aggravated 768  
arson, aggravated robbery, or aggravated burglary, and either 769  
the offender was the principal offender in the commission of the 770  
aggravated murder or, if not the principal offender, committed 771  
the aggravated murder with prior calculation and design. 772

(8) The victim of the aggravated murder was a witness to 773  
an offense who was purposely killed to prevent the victim's 774  
testimony in any criminal proceeding and the aggravated murder 775  
was not committed during the commission, attempted commission, 776  
or flight immediately after the commission or attempted 777  
commission of the offense to which the victim was a witness, or 778  
the victim of the aggravated murder was a witness to an offense 779  
and was purposely killed in retaliation for the victim's 780  
testimony in any criminal proceeding. 781

(9) The offender, in the commission of the offense, 782  
purposefully caused the death of another who was under thirteen 783  
years of age at the time of the commission of the offense, and 784  
either the offender was the principal offender in the commission 785  
of the offense or, if not the principal offender, committed the 786  
offense with prior calculation and design. 787

(10) The offense was committed while the offender was 788  
committing, attempting to commit, or fleeing immediately after 789  
committing or attempting to commit terrorism. 790

(B) If one or more of the aggravating circumstances listed 791  
in division (A) of this section is specified in the indictment 792  
or count in the indictment and proved beyond a reasonable doubt, 793  
~~and~~ if the offender did not raise the matter of age pursuant to 794  
section 2929.023 of the Revised Code or ~~if~~ the offender, after 795  
raising ~~the~~ that matter of age, was found at trial to have been 796  
eighteen years of age or older at the time of the commission of 797  
the offense, and if the offender did not raise the matter of the 798  
offender's serious mental illness at the time of the commission 799  
of the offense pursuant to section 2929.025 of the Revised Code 800  
or the offender after raising that matter was found by the court 801  
to not be ineligible for a sentence of death, the court, trial 802  
jury, or panel of three judges shall consider, and weigh against 803  
the aggravating circumstances proved beyond a reasonable doubt, 804  
the nature and circumstances of the offense, the history, 805  
character, and background of the offender, and all of the 806  
following factors: 807

(1) Whether the victim of the offense induced or 808  
facilitated it; 809

(2) Whether it is unlikely that the offense would have 810  
been committed, but for the fact that the offender was under 811  
duress, coercion, or strong provocation; 812

(3) Whether, at the time of committing the offense, the 813  
offender, because of a mental disease or defect, lacked 814  
substantial capacity to appreciate the criminality of the 815  
offender's conduct or to conform the offender's conduct to the 816  
requirements of the law; 817

(4) The youth of the offender; 818

(5) The offender's lack of a significant history of prior 819

criminal convictions and delinquency adjudications; 820

(6) If the offender was a participant in the offense but 821  
not the principal offender, the degree of the offender's 822  
participation in the offense and the degree of the offender's 823  
participation in the acts that led to the death of the victim; 824

(7) Any other factors that are relevant to the issue of 825  
whether the offender should be sentenced to death. 826

(C) The defendant shall be given great latitude in the 827  
presentation of evidence of the factors listed in division (B) 828  
of this section and of any other factors in mitigation of the 829  
imposition of the sentence of death. 830

The existence of any of the mitigating factors listed in 831  
division (B) of this section does not preclude the imposition of 832  
a sentence of death on the offender but shall be weighed 833  
pursuant to divisions (D) (2) and (3) of section 2929.03 of the 834  
Revised Code by the trial court, trial jury, or the panel of 835  
three judges against the aggravating circumstances the offender 836  
was found guilty of committing. 837

**Sec. 2929.06.** (A) (1) If a sentence of death imposed upon 838  
an offender is set aside, nullified, ~~or vacated because the, or~~ 839  
voided for any of the following reasons, the trial court that 840  
sentenced the offender shall conduct a hearing to resentence the 841  
offender in accordance with division (A) (2) of this section: 842

(a) The court of appeals, in a case in which a sentence of 843  
death was imposed for an offense committed before January 1, 844  
1995, or the supreme court, in ~~eases~~ a case in which the supreme 845  
court reviews the sentence upon appeal, could not affirm the 846  
sentence of death under the standards imposed by section 2929.05 847  
of the Revised Code, ~~is set aside, nullified, or vacated for~~ 848

the. 849

(b) The sole reason that the statutory procedure for 850  
imposing the sentence of death that is set forth in sections 851  
2929.03 and 2929.04 of the Revised Code is unconstitutional. 852

(c) The sentence of death is set aside, nullified, or 853  
vacated pursuant to division (C) of section 2929.05 of the 854  
Revised Code, ~~or is set aside, nullified, or vacated because a.~~ 855

(d) A court has determined that the offender is a person 856  
with an intellectual disability under standards set forth in 857  
decisions of the supreme court of this state or the United 858  
States supreme court, ~~the trial court that sentenced the~~ 859  
~~offender shall conduct a hearing to resentence the offender.~~ 860

(e) The sentence of death is voided by a court pursuant to 861  
division (H) of section 2953.21 of the Revised Code. 862

(2) At the a resentencing hearing conducted under division 863  
(A) (1) of this section, the court shall impose upon the offender 864  
a sentence of life imprisonment or an indefinite term consisting 865  
of a minimum term of thirty years and a maximum term of life 866  
imprisonment that is determined as specified in this division. 867  
If division (D) of section 2929.03 of the Revised Code, at the 868  
time the offender committed the aggravated murder for which the 869  
sentence of death was imposed, required the imposition when a 870  
sentence of death was not imposed of a sentence of life 871  
imprisonment without parole or a sentence of an indefinite term 872  
consisting of a minimum term of thirty years and a maximum term 873  
of life imprisonment to be imposed pursuant to division (A) or 874  
(B) (3) of section 2971.03 of the Revised Code and served 875  
pursuant to that section, the court shall impose the sentence so 876  
required. In all other cases, the sentences of life imprisonment 877

that are available at the hearing, and from which the court 878  
shall impose sentence, shall be the same sentences of life 879  
imprisonment that were available under division (D) of section 880  
2929.03 or under section 2909.24 of the Revised Code at the time 881  
the offender committed the offense for which the sentence of 882  
death was imposed. Nothing in this division regarding the 883  
resentencing of an offender shall affect the operation of 884  
section 2971.03 of the Revised Code. 885

(B) Whenever any court of this state or any federal court 886  
sets aside, nullifies, or vacates a sentence of death imposed 887  
upon an offender because of error that occurred in the 888  
sentencing phase of the trial and if division (A) of this 889  
section does not apply, the trial court that sentenced the 890  
offender shall conduct a new hearing to resentence the offender. 891  
If the offender was tried by a jury, the trial court shall 892  
impanel a new jury for the hearing. If the offender was tried by 893  
a panel of three judges, that panel or, if necessary, a new 894  
panel of three judges shall conduct the hearing. At the hearing, 895  
the court or panel shall follow the procedure set forth in 896  
division (D) of section 2929.03 of the Revised Code in 897  
determining whether to impose upon the offender a sentence of 898  
death, a sentence of life imprisonment, or an indefinite term 899  
consisting of a minimum term of thirty years and a maximum term 900  
of life imprisonment. If, pursuant to that procedure, the court 901  
or panel determines that it will impose a sentence other than a 902  
sentence of death, the court or panel shall impose upon the 903  
offender one of the sentences of life imprisonment that could 904  
have been imposed at the time the offender committed the offense 905  
for which the sentence of death was imposed, determined as 906  
specified in this division, or an indefinite term consisting of 907  
a minimum term of thirty years and a maximum term of life 908

imprisonment that is determined as specified in this division. 909  
If division (D) of section 2929.03 of the Revised Code, at the 910  
time the offender committed the aggravated murder for which the 911  
sentence of death was imposed, required the imposition when a 912  
sentence of death was not imposed of a sentence of life 913  
imprisonment without parole or a sentence of an indefinite term 914  
consisting of a minimum term of thirty years and a maximum term 915  
of life imprisonment to be imposed pursuant to division (A) or 916  
(B) (3) of section 2971.03 of the Revised Code and served 917  
pursuant to that section, the court or panel shall impose the 918  
sentence so required. In all other cases, the sentences of life 919  
imprisonment that are available at the hearing, and from which 920  
the court or panel shall impose sentence, shall be the same 921  
sentences of life imprisonment that were available under 922  
division (D) of section 2929.03 or under section 2909.24 of the 923  
Revised Code at the time the offender committed the offense for 924  
which the sentence of death was imposed. 925

(C) If a sentence of life imprisonment without parole 926  
imposed upon an offender pursuant to section 2929.021 or 2929.03 927  
of the Revised Code is set aside, nullified, or vacated for the 928  
sole reason that the statutory procedure for imposing the 929  
sentence of life imprisonment without parole that is set forth 930  
in sections 2929.03 and 2929.04 of the Revised Code is 931  
unconstitutional, the trial court that sentenced the offender 932  
shall conduct a hearing to resentence the offender to life 933  
imprisonment with parole eligibility after serving twenty-five 934  
full years of imprisonment or to life imprisonment with parole 935  
eligibility after serving thirty full years of imprisonment. 936

(D) Nothing in this section limits or restricts the rights 937  
of the state to appeal any order setting aside, nullifying, or 938  
vacating a conviction or sentence of death, when an appeal of 939

that nature otherwise would be available. 940

(E) This section, as amended by H.B. 184 of the 125th 941  
general assembly, shall apply to all offenders who have been 942  
sentenced to death for an aggravated murder that was committed 943  
on or after October 19, 1981, or for terrorism that was 944  
committed on or after May 15, 2002. This section, as amended by 945  
H.B. 184 of the 125th general assembly, shall apply equally to 946  
all such offenders sentenced to death prior to, on, or after 947  
March 23, 2005, including offenders who, on March 23, 2005, are 948  
challenging their sentence of death and offenders whose sentence 949  
of death has been set aside, nullified, or vacated by any court 950  
of this state or any federal court but who, as of March 23, 951  
2005, have not yet been resentenced. 952

**Sec. 2953.21.** (A) (1) (a) A person in any of the following 953  
categories may file a petition in the court that imposed 954  
sentence, stating the grounds for relief relied upon, and asking 955  
the court to vacate or set aside the judgment or sentence or to 956  
grant other appropriate relief: 957

(i) Any person who has been convicted of a criminal 958  
offense or adjudicated a delinquent child and who claims that 959  
there was such a denial or infringement of the person's rights 960  
as to render the judgment void or voidable under the Ohio 961  
Constitution or the Constitution of the United States, ~~and any;~~ 962

(ii) Any person who has been convicted of a criminal 963  
offense and sentenced to death and who claims that there was a 964  
denial or infringement of the person's rights under either of 965  
those Constitutions that creates a reasonable probability of an 966  
altered verdict, ~~and any;~~ 967

(iii) Any person who has been convicted of a criminal 968

offense that is a felony and who is an offender for whom DNA 969  
testing that was performed under sections 2953.71 to 2953.81 of 970  
the Revised Code or under former section 2953.82 of the Revised 971  
Code and analyzed in the context of and upon consideration of 972  
all available admissible evidence related to the person's case 973  
as described in division (D) of section 2953.74 of the Revised 974  
Code provided results that establish, by clear and convincing 975  
evidence, actual innocence of that felony offense or, if the 976  
person was sentenced to death, establish, by clear and 977  
convincing evidence, actual innocence of the aggravating 978  
circumstance or circumstances the person was found guilty of 979  
committing and that is or are the basis of that sentence of 980  
death, ~~may file a petition in the court that imposed sentence,~~ 981  
~~stating the grounds for relief relied upon, and asking the court~~ 982  
~~to vacate or set aside the judgment or sentence or to grant~~ 983  
~~other appropriate relief;~~ 984

(iv) Any person who has been convicted of aggravated 985  
murder and sentenced to death for the offense and who claims 986  
that the person had a serious mental illness at the time of the 987  
commission of the offense and that as a result the court should 988  
render void the sentence of death. 989

~~The~~ (b) A petitioner under division (A) (1) (a) of this 990  
section may file a supporting affidavit and other documentary 991  
evidence in support of the claim for relief. 992

~~(b)(c)~~ As used in division (A) (1) (a) of this section, 993  
"actual: 994

(i) "Actual innocence" means that, had the results of the 995  
DNA testing conducted under sections 2953.71 to 2953.81 of the 996  
Revised Code or under former section 2953.82 of the Revised Code 997  
been presented at trial, and had those results been analyzed in 998

the context of and upon consideration of all available 999  
admissible evidence related to the person's case as described in 1000  
division (D) of section 2953.74 of the Revised Code, no 1001  
reasonable factfinder would have found the petitioner guilty of 1002  
the offense of which the petitioner was convicted, or, if the 1003  
person was sentenced to death, no reasonable factfinder would 1004  
have found the petitioner guilty of the aggravating circumstance 1005  
or circumstances the petitioner was found guilty of committing 1006  
and that is or are the basis of that sentence of death. 1007

(ii) "Serious mental illness" has the same meaning as in 1008  
section 2929.025 of the Revised Code. 1009

~~(e)~~(d) As used in divisions (A) (1) (a) and ~~(b)~~(c) of this 1010  
section, "former section 2953.82 of the Revised Code" means 1011  
section 2953.82 of the Revised Code as it existed prior to July 1012  
6, 2010. 1013

~~(d)~~(e) At any time in conjunction with the filing of a 1014  
petition for postconviction relief under division (A) of this 1015  
section by a person who has been sentenced to death, or with the 1016  
litigation of a petition so filed, the court, for good cause 1017  
shown, may authorize the petitioner in seeking the 1018  
postconviction relief and the prosecuting attorney of the county 1019  
served by the court in defending the proceeding, to take 1020  
depositions and to issue subpoenas and subpoenas duces tecum in 1021  
accordance with divisions (A) (1) ~~(d)~~(e), (A) (1) ~~(e)~~(f), and (C) of 1022  
this section, and to any other form of discovery as in a civil 1023  
action that the court in its discretion permits. The court may 1024  
limit the extent of discovery under this division. In addition 1025  
to discovery that is relevant to the claim and was available 1026  
under Criminal Rule 16 through conclusion of the original 1027  
criminal trial, the court, for good cause shown, may authorize 1028

the petitioner or prosecuting attorney to take depositions and 1029  
issue subpoenas and subpoenas duces tecum in either of the 1030  
following circumstances: 1031

(i) For any witness who testified at trial or who was 1032  
disclosed by the state prior to trial, except as otherwise 1033  
provided in this division, the petitioner or prosecuting 1034  
attorney shows clear and convincing evidence that the witness is 1035  
material and that a deposition of the witness or the issuing of 1036  
a subpoena or subpoena duces tecum is of assistance in order to 1037  
substantiate or refute the petitioner's claim that there is a 1038  
reasonable probability of an altered verdict. This division does 1039  
not apply if the witness was unavailable for trial or would not 1040  
voluntarily be interviewed by the defendant or prosecuting 1041  
attorney. 1042

(ii) For any witness with respect to whom division (A) (1) 1043  
~~(d)~~ (e) (i) of this section does not apply, the petitioner or 1044  
prosecuting attorney shows good cause that the witness is 1045  
material and that a deposition of the witness or the issuing of 1046  
a subpoena or subpoena duces tecum is of assistance in order to 1047  
substantiate or refute the petitioner's claim that there is a 1048  
reasonable probability of an altered verdict. 1049

~~(e)~~ (f) If a person who has been sentenced to death and who 1050  
files a petition for postconviction relief under division (A) of 1051  
this section requests postconviction discovery as described in 1052  
division (A) (1) ~~(d)~~ (e) of this section or if the prosecuting 1053  
attorney of the county served by the court requests 1054  
postconviction discovery as described in that division, within 1055  
ten days after the docketing of the request, or within any other 1056  
time that the court sets for good cause shown, the prosecuting 1057  
attorney shall respond by answer or motion to the petitioner's 1058

request or the petitioner shall respond by answer or motion to 1059  
the prosecuting attorney's request, whichever is applicable. 1060

~~(f)~~(g) If a person who has been sentenced to death and who 1061  
files a petition for postconviction relief under division (A) of 1062  
this section requests postconviction discovery as described in 1063  
division (A) (1) ~~(d)~~(e) of this section or if the prosecuting 1064  
attorney of the county served by the court requests 1065  
postconviction discovery as described in that division, upon 1066  
motion by the petitioner, the prosecuting attorney, or the 1067  
person from whom discovery is sought, and for good cause shown, 1068  
the court in which the action is pending may make any order that 1069  
justice requires to protect a party or person from oppression or 1070  
undue burden or expense, including but not limited to the orders 1071  
described in divisions (A) (1) ~~(g)~~(h) (i) to (viii) of this 1072  
section. The court also may make any such order if, in its 1073  
discretion, it determines that the discovery sought would be 1074  
irrelevant to the claims made in the petition; and if the court 1075  
makes any such order on that basis, it shall explain in the 1076  
order the reasons why the discovery would be irrelevant. 1077

~~(g)~~(h) If a petitioner, prosecuting attorney, or person 1078  
from whom discovery is sought makes a motion for an order under 1079  
division (A) (1) ~~(f)~~(g) of this section and the order is denied in 1080  
whole or in part, the court, on terms and conditions as are 1081  
just, may order that any party or person provide or permit 1082  
discovery as described in division (A) (1) ~~(d)~~(e) of this section. 1083  
The provisions of Civil Rule 37(A) (4) apply to the award of 1084  
expenses incurred in relation to the motion, except that in no 1085  
case shall a court require a petitioner who is indigent to pay 1086  
expenses under those provisions. 1087

Before any person moves for an order under division (A) (1) 1088

~~(f)~~(g) of this section, that person shall make a reasonable 1089  
effort to resolve the matter through discussion with the 1090  
petitioner or prosecuting attorney seeking discovery. A motion 1091  
for an order under division (A) (1) ~~(f)~~(g) of this section shall 1092  
be accompanied by a statement reciting the effort made to 1093  
resolve the matter in accordance with this paragraph. 1094

The orders that may be made under division (A) (1) ~~(f)~~(g) of 1095  
this section include, but are not limited to, any of the 1096  
following: 1097

(i) That the discovery not be had; 1098

(ii) That the discovery may be had only on specified terms 1099  
and conditions, including a designation of the time or place; 1100

(iii) That the discovery may be had only by a method of 1101  
discovery other than that selected by the party seeking 1102  
discovery; 1103

(iv) That certain matters not be inquired into or that the 1104  
scope of the discovery be limited to certain matters; 1105

(v) That discovery be conducted with no one present except 1106  
persons designated by the court; 1107

(vi) That a deposition after being sealed be opened only 1108  
by order of the court; 1109

(vii) That a trade secret or other confidential research, 1110  
development, or commercial information not be disclosed or be 1111  
disclosed only in a designated way; 1112

(viii) That the parties simultaneously file specified 1113  
documents or information enclosed in sealed envelopes to be 1114  
opened as directed by the court. 1115

~~(h)~~(i) Any postconviction discovery authorized under 1116  
division (A) (1) ~~(d)~~(e) of this section shall be completed not 1117  
later than eighteen months after the start of the discovery 1118  
proceedings unless, for good cause shown, the court extends that 1119  
period for completing the discovery. 1120

~~(i)~~(j) Nothing in division (A) (1) ~~(d)~~(e) of this section 1121  
authorizes, or shall be construed as authorizing, the 1122  
relitigation, or discovery in support of relitigation, of any 1123  
matter barred by the doctrine of res judicata. 1124

~~(j)~~(k) Division (A) (1) of this section does not apply to 1125  
any person who has been convicted of a criminal offense and 1126  
sentenced to death and who has unsuccessfully raised the same 1127  
claims in a petition for postconviction relief. 1128

(2) (a) Except as otherwise provided in section 2953.23 of 1129  
the Revised Code, a petition under division (A) (1) (a) (i), (ii), 1130  
or (iii) of this section shall be filed no later than three 1131  
hundred sixty-five days after the date on which the trial 1132  
transcript is filed in the court of appeals in the direct appeal 1133  
of the judgment of conviction or adjudication or, if the direct 1134  
appeal involves a sentence of death, the date on which the trial 1135  
transcript is filed in the supreme court. If no appeal is taken, 1136  
except as otherwise provided in section 2953.23 of the Revised 1137  
Code, the petition shall be filed no later than three hundred 1138  
sixty-five days after the expiration of the time for filing the 1139  
appeal. 1140

(b) Except as otherwise provided in section 2953.23 of the 1141  
Revised Code, a petition under division (A) (1) (a) (iv) of this 1142  
section shall be filed not later than three hundred sixty-five 1143  
days after the effective date of this amendment. 1144

(3) In a petition filed under division (A) (1) (a) (i), (ii), 1145  
or (iii) of this section, a person who has been sentenced to 1146  
death may ask the court to render void or voidable the judgment 1147  
with respect to the conviction of aggravated murder or the 1148  
specification of an aggravating circumstance or the sentence of 1149  
death. A person sentenced to death who files a petition under 1150  
division (A) (1) (a) (iv) of this section may ask the court to 1151  
render void the sentence of death and to order the resentencing 1152  
of the person under division (A) of section 2929.06 of the 1153  
Revised Code. 1154

(4) A petitioner shall state in the original or amended 1155  
petition filed under division (A) of this section all grounds 1156  
for relief claimed by the petitioner. Except as provided in 1157  
section 2953.23 of the Revised Code, any ground for relief that 1158  
is not so stated in the petition is waived. 1159

(5) If the petitioner in a petition filed under division 1160  
(A) (1) (a) (i), (ii), or (iii) of this section was convicted of or 1161  
pleaded guilty to a felony, the petition may include a claim 1162  
that the petitioner was denied the equal protection of the laws 1163  
in violation of the Ohio Constitution or the United States 1164  
Constitution because the sentence imposed upon the petitioner 1165  
for the felony was part of a consistent pattern of disparity in 1166  
sentencing by the judge who imposed the sentence, with regard to 1167  
the petitioner's race, gender, ethnic background, or religion. 1168  
If the supreme court adopts a rule requiring a court of common 1169  
pleas to maintain information with regard to an offender's race, 1170  
gender, ethnic background, or religion, the supporting evidence 1171  
for the petition shall include, but shall not be limited to, a 1172  
copy of that type of information relative to the petitioner's 1173  
sentence and copies of that type of information relative to 1174  
sentences that the same judge imposed upon other persons. 1175

(6) Notwithstanding any law or court rule to the contrary, 1176  
there is no limit on the number of pages in, or on the length 1177  
of, a petition filed under division (A) (1) (a) (i), (ii), (iii), 1178  
or (iv) of this section by a person who has been sentenced to 1179  
death. If any court rule specifies a limit on the number of 1180  
pages in, or on the length of, a petition filed under division 1181  
(A) (1) (a) (i), (ii), (iii), or (iv) of this section or on a 1182  
prosecuting attorney's response to such a petition by answer or 1183  
motion and a person who has been sentenced to death files a 1184  
petition that exceeds the limit specified for the petition, the 1185  
prosecuting attorney may respond by an answer or motion that 1186  
exceeds the limit specified for the response. 1187

(B) The clerk of the court in which the petition for 1188  
postconviction relief and, if applicable, a request for 1189  
postconviction discovery described in division (A) (1) ~~(d)~~ (e) of 1190  
this section is filed shall docket the petition and the request 1191  
and bring them promptly to the attention of the court. The clerk 1192  
of the court in which the petition for postconviction relief 1193  
and, if applicable, a request for postconviction discovery 1194  
described in division (A) (1) ~~(d)~~ (e) of this section is filed 1195  
immediately shall forward a copy of the petition and a copy of 1196  
the request if filed by the petitioner to the prosecuting 1197  
attorney of the county served by the court. If the request for 1198  
postconviction discovery is filed by the prosecuting attorney, 1199  
the clerk of the court immediately shall forward a copy of the 1200  
request to the petitioner or the petitioner's counsel. 1201

(C) If a person who has been sentenced to death and who 1202  
files a petition for postconviction relief under division (A) (1) 1203  
(a) (i), (ii), (iii), or (iv) of this section requests a 1204  
deposition or the prosecuting attorney in the case requests a 1205  
deposition, and if the court grants the request under division 1206

(A) (1) ~~(d)~~ (e) of this section, the court shall notify the  
petitioner or the petitioner's counsel and the prosecuting  
attorney. The deposition shall be conducted pursuant to  
divisions (B), (D), and (E) of Criminal Rule 15. Notwithstanding  
division (C) of Criminal Rule 15, the petitioner is not entitled  
to attend the deposition. The prosecuting attorney shall be  
permitted to attend and participate in any deposition.

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

(E) Within ten days after the docketing of the petition,  
or within any further time that the court may fix for good cause  
shown, the prosecuting attorney shall respond by answer or  
motion. Division (A) (6) of this section applies with respect to

the prosecuting attorney's response. Within twenty days from the 1238  
date the issues are raised, either party may move for summary 1239  
judgment. The right to summary judgment shall appear on the face 1240  
of the record. 1241

(F) Unless the petition and the files and records of the 1242  
case show the petitioner is not entitled to relief, the court 1243  
shall proceed to a prompt hearing on the issues even if a direct 1244  
appeal of the case is pending. If the court notifies the parties 1245  
that it has found grounds for granting relief, either party may 1246  
request an appellate court in which a direct appeal of the 1247  
judgment is pending to remand the pending case to the court. 1248

With respect to a petition filed under division (A) (1) (a) 1249  
(iv) of this section, the procedures and rules regarding 1250  
introduction of evidence and burden of proof at the pretrial 1251  
hearing that are set forth in divisions (C), (D), and (F) of 1252  
section 2929.025 of the Revised Code apply in considering the 1253  
petition. With respect to such a petition, the grounds for 1254  
granting relief are that the person has been diagnosed with one 1255  
or more of the conditions set forth in division (A) (1) (a) of 1256  
section 2929.025 of the Revised Code and that, at the time of 1257  
the aggravated murder that was the basis of the sentence of 1258  
death, the condition or conditions significantly impaired the 1259  
person's capacity in a manner described in division (A) (1) (b) of 1260  
that section. 1261

(G) A petitioner who files a petition under division (A) 1262  
(1) (a) (i), (ii), (iii), or (iv) of this section may amend the 1263  
petition as follows: 1264

(1) If the petition was filed by a person who has been 1265  
sentenced to death, at any time that is not later than one 1266  
hundred eighty days after the petition is filed, the petitioner 1267

may amend the petition with or without leave or prejudice to the 1268  
proceedings. 1269

(2) If division (G)(1) of this section does not apply, at 1270  
any time before the answer or motion is filed, the petitioner 1271  
may amend the petition with or without leave or prejudice to the 1272  
proceedings. 1273

(3) The petitioner may amend the petition with leave of 1274  
court at any time after the expiration of the applicable period 1275  
specified in division (G)(1) or (2) of this section. 1276

(H) If the court does not find grounds for granting 1277  
relief, it shall make and file findings of fact and conclusions 1278  
of law and shall enter judgment denying relief on the petition. 1279  
If the petition was filed by a person who has been sentenced to 1280  
death, the findings of fact and conclusions of law shall state 1281  
specifically the reasons for the denial of relief on the 1282  
petition and of each claim it contains. If no direct appeal of 1283  
the case is pending and the court finds grounds for relief or if 1284  
a pending direct appeal of the case has been remanded to the 1285  
court pursuant to a request made pursuant to division (F) of 1286  
this section and the court finds grounds for granting relief, it 1287  
shall make and file findings of fact and conclusions of law and 1288  
shall enter a judgment that vacates and sets aside the judgment 1289  
in question, and, in the case of a petitioner who is a prisoner 1290  
in custody, except as otherwise described in this division, 1291  
shall discharge or resentence the petitioner or grant a new 1292  
trial as the court determines appropriate. If the court finds 1293  
grounds for relief in the case of a petitioner who filed a 1294  
petition under division (A)(1)(a)(iv) of this section, the court 1295  
shall render void the sentence of death and order the 1296  
resentencing of the offender under division (A) of section 1297

2929.06 of the Revised Code. If the petitioner has been 1298  
sentenced to death, the findings of fact and conclusions of law 1299  
shall state specifically the reasons for the finding of grounds 1300  
for granting the relief, with respect to each claim contained in 1301  
the petition. The court also may make supplementary orders to 1302  
the relief granted, concerning such matters as rearraignment, 1303  
retrial, custody, and bail. If the trial court's order granting 1304  
the petition is reversed on appeal and if the direct appeal of 1305  
the case has been remanded from an appellate court pursuant to a 1306  
request under division (F) of this section, the appellate court 1307  
reversing the order granting the petition shall notify the 1308  
appellate court in which the direct appeal of the case was 1309  
pending at the time of the remand of the reversal and remand of 1310  
the trial court's order. Upon the reversal and remand of the 1311  
trial court's order granting the petition, regardless of whether 1312  
notice is sent or received, the direct appeal of the case that 1313  
was remanded is reinstated. 1314

(I) Upon the filing of a petition pursuant to division (A) 1315  
(1)(a)(i), (ii), (iii), or (iv) of this section by a person 1316  
sentenced to death, only the supreme court may stay execution of 1317  
the sentence of death. 1318

(J) (1) If a person sentenced to death intends to file a 1319  
petition under this section, the court shall appoint counsel to 1320  
represent the person upon a finding that the person is indigent 1321  
and that the person either accepts the appointment of counsel or 1322  
is unable to make a competent decision whether to accept or 1323  
reject the appointment of counsel. The court may decline to 1324  
appoint counsel for the person only upon a finding, after a 1325  
hearing if necessary, that the person rejects the appointment of 1326  
counsel and understands the legal consequences of that decision 1327  
or upon a finding that the person is not indigent. 1328

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

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

(K) Subject to the appeal of a sentence for a felony that is authorized by section 2953.08 of the Revised Code, the remedy set forth in this section is the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case or to the validity of an adjudication of a child as a delinquent child for the commission of an act that would be a criminal offense if

committed by an adult or the validity of a related order of 1360  
disposition. 1361

**Sec. 2953.23.** (A) Whether a hearing is or is not held on a 1362  
petition filed pursuant to section 2953.21 of the Revised Code, 1363  
a court may not entertain a petition filed after the expiration 1364  
of the period prescribed in division (A) of that section or a 1365  
second petition or successive petitions for similar relief on 1366  
behalf of a petitioner unless division (A) (1) or (2) of this 1367  
section applies: 1368

(1) Both of the following apply: 1369

(a) Either the petitioner shows that the petitioner was 1370  
unavoidably prevented from discovery of the facts upon which the 1371  
petitioner must rely to present the claim for relief, or, 1372  
subsequent to the period prescribed in division (A) (2) of 1373  
section 2953.21 of the Revised Code or to the filing of an 1374  
earlier petition, the United States Supreme Court recognized a 1375  
new federal or state right that applies retroactively to persons 1376  
in the petitioner's situation, and the petition asserts a claim 1377  
based on that right. 1378

(b) The petitioner shows by clear and convincing evidence 1379  
that, but for constitutional error at trial, no reasonable 1380  
factfinder would have found the petitioner guilty of the offense 1381  
of which the petitioner was convicted or, if the claim 1382  
challenges a sentence of death that, but for constitutional 1383  
error at the sentencing hearing, no reasonable factfinder would 1384  
have found the petitioner eligible for the death sentence. 1385

(2) The petitioner was convicted of a felony, the 1386  
petitioner is an offender for whom DNA testing was performed 1387  
under sections 2953.71 to 2953.81 of the Revised Code or under 1388

former section 2953.82 of the Revised Code and analyzed in the 1389  
context of and upon consideration of all available admissible 1390  
evidence related to the inmate's case as described in division 1391  
(D) of section 2953.74 of the Revised Code, and the results of 1392  
the DNA testing establish, by clear and convincing evidence, 1393  
actual innocence of that felony offense or, if the person was 1394  
sentenced to death, establish, by clear and convincing evidence, 1395  
actual innocence of the aggravating circumstance or 1396  
circumstances the person was found guilty of committing and that 1397  
is or are the basis of that sentence of death. 1398

As used in this division, "actual innocence" has the same 1399  
meaning as in division (A) (1) ~~(b)~~ (c) of section 2953.21 of the 1400  
Revised Code, and "former section 2953.82 of the Revised Code" 1401  
has the same meaning as in division (A) (1) ~~(e)~~ (d) of section 1402  
2953.21 of the Revised Code. 1403

(B) An order awarding or denying relief sought in a 1404  
petition filed pursuant to section 2953.21 of the Revised Code 1405  
is a final judgment and may be appealed pursuant to Chapter 1406  
2953. of the Revised Code. 1407

If a petition filed pursuant to section 2953.21 of the 1408  
Revised Code by a person who has been sentenced to death is 1409  
denied and the person appeals the judgment, notwithstanding any 1410  
law or court rule to the contrary, there is no limit on the 1411  
number of pages in, or on the length of, a notice of appeal or 1412  
briefs related to an appeal filed by the person. If any court 1413  
rule specifies a limit on the number of pages in, or on the 1414  
length of, a notice of appeal or briefs described in this 1415  
division or on a prosecuting attorney's response or briefs with 1416  
respect to such an appeal and a person who has been sentenced to 1417  
death files a notice of appeal or briefs that exceed the limit 1418

specified for the petition, the prosecuting attorney may file a 1419  
response or briefs that exceed the limit specified for the 1420  
answer or briefs. 1421

**Section 2.** That existing sections 2929.02, 2929.022, 1422  
2929.024, 2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 of the 1423  
Revised Code are hereby repealed. 1424

**Section 3.** Notwithstanding section 1.50 of the Revised 1425  
Code, if any provision of a section as amended or enacted by 1426  
this act is determined to be unconstitutional or otherwise 1427  
invalid in a final judgment by a court of last resort, the 1428  
remainder of the enactments and amendments made in Section 1 of 1429  
this act are void. 1430