

**As Introduced**

**132nd General Assembly**

**Regular Session**

**2017-2018**

**S. B. No. 40**

**Senators Eklund, Williams**

**Cosponsors: Senators LaRose, Schiavoni, Brown, Thomas, Coley, Yuko, Terhar**

---

**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 do one or more of the 222  
following: 223

(i) Exercise rational judgment in relation to the person's 224  
conduct; 225

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

more specifications of an aggravating circumstance listed in 255  
division (A) of section 2929.04 of the Revised Code may, before 256  
trial, raise the matter of the person's serious mental illness 257  
at the time of the alleged commission of the offense. If a 258  
person raises the matter of the person's serious mental illness 259  
at the time of the alleged commission of the offense, the court 260  
shall order an evaluation of the person in accordance with 261  
division (F) of this section and shall hold a pretrial hearing 262  
on the matter. The person who raises the matter may present 263  
evidence that the person had a serious mental illness at the 264  
time of the alleged commission of the offense, and the person 265  
has the burden of raising that matter and of going forward with 266  
the evidence relating to the diagnosis described in division (A) 267  
(1)(a) of this section and the impairment described in division 268  
(A)(1)(b) of this section. If the person submits prima facie 269  
evidence that the person has been diagnosed with a condition 270  
described in division (A)(1)(a) of this section and that the 271  
condition existed at the time of the alleged commission of the 272  
offense, it shall be rebuttably presumed that the condition 273  
significantly impaired the person's capacity at the time of the 274  
alleged offense in a manner described in division (A)(1)(b)(i), 275  
(ii), or (iii) of this section. 276

(D) If a person described in division (C) of this section 277  
raises the matter of the person's serious mental illness at the 278  
time of the alleged commission of the aggravated murder and 279  
submits prima facie evidence as described in that division that 280  
the person has been diagnosed with a condition described in 281  
division (A)(1)(a) of this section and that the condition 282  
existed at the time of the alleged commission of the offense, 283  
the prosecution shall have an opportunity to present evidence to 284  
contest the diagnosis, to rebut the presumption that the 285

condition, if present, significantly impaired the person's 286  
capacity at the time of the alleged commission of the offense in 287  
a manner described in division (A)(1)(b)(i), (ii), or (iii) of 288  
this section, or to both contest the diagnosis and rebut the 289  
presumption. The prosecution has the burden of proving, by a 290  
preponderance of the evidence, that the diagnosis of the 291  
condition described in division (A)(1)(a) of this section that 292  
was made of the person was erroneous or that the condition, if 293  
present, did not significantly impair the person's capacity at 294  
the time of the alleged offense in a manner described in 295  
division (A)(1)(b)(i), (ii), or (iii) of this section. 296

(E) If a person described in division (B) of this section 297  
raises the matter of the person's serious mental illness at the 298  
time of the alleged commission of the aggravated murder and 299  
submits prima facie evidence as described in that division that 300  
the person has been diagnosed with a condition described in 301  
division (A)(1)(a) of this section and that the condition 302  
existed at the time of the alleged commission of the offense, 303  
one of the following applies: 304

(1) Unless the court at the pretrial hearing finds that 305  
the prosecution has proved, by a preponderance of the evidence, 306  
that the diagnosis of the condition described in division (A)(1) 307  
(a) of this section that was made of the person was erroneous or 308  
that the condition, if present, did not significantly impair the 309  
person's capacity at the time of the alleged offense in a manner 310  
described in division (A)(1)(b)(i), (ii), or (iii) of this 311  
section, the court shall issue a finding that the person is 312  
ineligible for a sentence of death due to serious mental 313  
illness. 314

(2) If the court at the pretrial hearing finds that the 315

prosecution has proved, by a preponderance of the evidence, that 316  
the diagnosis of the condition described in division (A) (1) (a) 317  
of this section that was made of the person was erroneous or 318  
that the condition, if present, did not significantly impair the 319  
person's capacity at the time of the alleged offense in a manner 320  
described in division (A) (1) (b) (i), (ii), or (iii) of this 321  
section, one of the following applies: 322

(a) If the aggravated murder charge is not to be tried by 323  
a jury, the court shall issue a finding that the person is not 324  
ineligible for a sentence of death due to serious mental 325  
illness. 326

(b) If the aggravated murder charge is to be tried by a 327  
jury, the person may request that the matter of serious mental 328  
illness be submitted to the jury at trial. If the person does 329  
not request that the matter be submitted to the jury, the court 330  
shall issue a finding that the person is not ineligible for a 331  
sentence of death due to serious mental illness. If the person 332  
requests that the matter be submitted to the jury, the matter 333  
shall be submitted to the jury at trial, the procedures and 334  
rules regarding introduction of evidence and burden of proof at 335  
the pretrial hearing that are set forth in divisions (C) and (D) 336  
of this section apply, and the person in accordance with those 337  
procedures and rules may introduce all relevant evidence, 338  
including, but not limited to evidence that is different from or 339  
in addition to the evidence introduced at the pretrial hearing. 340  
If the matter is submitted to the jury at trial, one of the 341  
following applies: 342

(i) Unless the jury finds that the prosecution has proved, 343  
by a preponderance of the evidence, that the diagnosis of the 344  
condition described in division (A) (1) (a) of this section that 345

was made of the person was erroneous or that the condition, if 346  
present, did not significantly impair the person's capacity at 347  
the time of the alleged offense in a manner described in 348  
division (A) (1) (b) (i), (ii), or (iii) of this section, the court 349  
shall issue a finding that the person is ineligible for a 350  
sentence of death due to serious mental illness. 351

(ii) If the jury finds that the prosecution has proved, by 352  
a preponderance of the evidence, that the diagnosis of the 353  
condition described in division (A) (1) (a) of this section that 354  
was made of the person was erroneous or that the condition, if 355  
present, did not significantly impair the person's capacity at 356  
the time of the alleged offense in a manner described in 357  
division (A) (1) (b) (i), (ii), or (iii) of this section, the court 358  
shall issue a finding that the person is not ineligible for a 359  
sentence of death due to serious mental illness. 360

(F) (1) If a person described in division (C) of this 361  
section raises the matter of the person's serious mental illness 362  
at the time of the alleged commission of the aggravated murder 363  
as described in that division, the court shall order an 364  
evaluation of the person. Section 2929.024 of the Revised Code 365  
applies with respect to an evaluation ordered under this 366  
division. 367

(2) No statement that a person makes in an evaluation 368  
ordered under division (F) (1) of this section or in a pretrial 369  
hearing or a proceeding before a jury under divisions (C) to (E) 370  
of this section relating to the person's serious mental illness 371  
at the time of the alleged commission of the aggravated murder 372  
with which the person is charged shall be used against the 373  
person on the issue of guilt in any criminal action or 374  
proceeding, but, in a criminal action or proceeding, the 375

prosecutor or defense counsel may call as a witness any examiner 376  
who evaluated the person or prepared a report pursuant to a 377  
referral under this section. Neither the appointment nor the 378  
testimony of an examiner in an evaluation ordered under division 379  
(F) (1) of this section precludes the prosecutor or defense 380  
counsel from calling other witnesses or presenting other 381  
evidence on the issue of the person's serious mental illness at 382  
the time of the alleged commission of the aggravated murder or 383  
on competency or insanity issues. 384

(G) A person's pleading of not guilty by reason of 385  
insanity or incompetence to stand trial, or a finding after such 386  
a plea that the person is not insane or that the person is 387  
competent to stand trial, does not preclude the person from 388  
raising the matter of the person's serious mental illness at the 389  
time of the alleged commission of the offense pursuant to 390  
division (C) of this section and, if a person so raises that 391  
matter, does not limit or affect any of the procedures described 392  
in this section or the authority of a court to make any finding 393  
described in this section. 394

**Sec. 2929.03.** (A) If the indictment or count in the 395  
indictment charging aggravated murder does not contain one or 396  
more specifications of aggravating circumstances listed in 397  
division (A) of section 2929.04 of the Revised Code, then, 398  
following a verdict of guilty of the charge of aggravated 399  
murder, the trial court shall impose sentence on the offender as 400  
follows: 401

(1) Except as provided in division (A) (2) of this section, 402  
the trial court shall impose one of the following sentences on 403  
the offender: 404

(a) Life imprisonment without parole; 405

(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 435  
aggravating circumstances listed in division (A) of section 436  
2929.04 of the Revised Code, the verdict shall separately state 437  
~~whether~~ all of the following: 438

(1) Whether the accused is found guilty or not guilty of 439  
the principal charge ~~and, if;~~ 440

(2) If guilty of the principal charge, whether the 441  
offender was eighteen years of age or older at the time of the 442  
commission of the offense, ~~if the matter of age was raised by~~ 443  
the offender pursuant to section 2929.023 of the Revised Code, ~~and whether;~~ 444  
445

(3) If guilty of the principal charge, whether the 446  
offender was found under section 2929.025 of the Revised Code to 447  
be ineligible for a sentence of death due to serious mental 448  
illness if the matter of serious mental illness at the time of 449  
the commission of the offense was raised by the offender 450  
pursuant to that section; 451

(4) If guilty of the principal charge, whether the 452  
offender is guilty or not guilty of each specification. ~~The~~ 453

The jury shall be instructed on its duties in this regard. 454  
The instruction to the jury shall include an instruction that a 455  
specification shall be proved beyond a reasonable doubt in order 456  
to support a guilty verdict on the specification, but the 457  
instruction shall not mention the penalty that may be the 458  
consequence of a guilty or not guilty verdict on any charge or 459  
specification. 460

(C) (1) If the indictment or count in the indictment 461  
charging aggravated murder contains one or more specifications 462  
of aggravating circumstances listed in division (A) of section 463

2929.04 of the Revised Code, then, following a verdict of guilty 464  
of the charge but not guilty of each of the specifications, and 465  
regardless of whether the offender raised the matter of age 466  
pursuant to section 2929.023 of the Revised Code or the matter 467  
of serious mental illness at the time of the commission of the 468  
offense pursuant to section 2929.025 of the Revised Code, the 469  
trial court shall impose sentence on the offender as follows: 470

(a) Except as provided in division (C) (1) (b) of this 471  
section, the trial court shall impose one of the following 472  
sentences on the offender: 473

(i) Life imprisonment without parole; 474

(ii) Subject to division (C) (1) (a) (v) of this section, 475  
life imprisonment with parole eligibility after serving twenty 476  
years of imprisonment; 477

(iii) Subject to division (C) (1) (a) (v) of this section, 478  
life imprisonment with parole eligibility after serving twenty- 479  
five full years of imprisonment; 480

(iv) Subject to division (C) (1) (a) (v) of this section, 481  
life imprisonment with parole eligibility after serving thirty 482  
full years of imprisonment; 483

(v) If the victim of the aggravated murder was less than 484  
thirteen years of age, the offender also is convicted of or 485  
pleads guilty to a sexual motivation specification that was 486  
included in the indictment, count in the indictment, or 487  
information charging the offense, and the trial court does not 488  
impose a sentence of life imprisonment without parole on the 489  
offender pursuant to division (C) (1) (a) (i) of this section, the 490  
trial court shall sentence the offender pursuant to division (B) 491  
(3) of section 2971.03 of the Revised Code to an indefinite term 492

consisting of a minimum term of thirty years and a maximum term 493  
of life imprisonment. 494

(b) If the offender also is convicted of or pleads guilty 495  
to a sexual motivation specification and a sexually violent 496  
predator specification that are included in the indictment, 497  
count in the indictment, or information that charged the 498  
aggravated murder, the trial court shall impose upon the 499  
offender a sentence of life imprisonment without parole that 500  
shall be served pursuant to section 2971.03 of the Revised Code. 501

(2) (a) If the indictment or count in the indictment 502  
contains one or more specifications of aggravating circumstances 503  
listed in division (A) of section 2929.04 of the Revised Code 504  
and if the offender is found guilty of both the charge and one 505  
or more of the specifications, the penalty to be imposed on the 506  
offender shall be one of the following: 507

(i) Except as provided in division (C) (2) (a) (ii) or (iii), and 508  
subject to divisions (D) (1) and (E) of this section, the 509  
penalty to be imposed on the offender shall be death, life 510  
imprisonment without parole, life imprisonment with parole 511  
eligibility after serving twenty-five full years of 512  
imprisonment, or life imprisonment with parole eligibility after 513  
serving thirty full years of imprisonment. 514

(ii) Except as provided in division (C) (2) (a) (iii) of this 515  
section, if the victim of the aggravated murder was less than 516  
thirteen years of age, the offender also is convicted of or 517  
pleads guilty to a sexual motivation specification that was 518  
included in the indictment, count in the indictment, or 519  
information charging the offense, and the trial court does not 520  
impose a sentence of death or life imprisonment without parole 521  
on the offender pursuant to division (C) (2) (a) (i) of this 522

section, the penalty to be imposed on the offender shall be an 523  
indefinite term consisting of a minimum term of thirty years and 524  
a maximum term of life imprisonment that shall be imposed 525  
pursuant to division (B) (3) of section 2971.03 of the Revised 526  
Code and served pursuant to that section. 527

(iii) If the offender also is convicted of or pleads 528  
guilty to a sexual motivation specification and a sexually 529  
violent predator specification that are included in the 530  
indictment, count in the indictment, or information that charged 531  
the aggravated murder, the penalty to be imposed on the offender 532  
shall be death or life imprisonment without parole that shall be 533  
served pursuant to section 2971.03 of the Revised Code. 534

(b) A penalty imposed pursuant to division (C) (2) (a) (i), 535  
(ii), or (iii) of this section shall be determined pursuant to 536  
divisions (D) and (E) of this section and shall be determined by 537  
one of the following: 538

(i) By the panel of three judges that tried the offender 539  
upon the offender's waiver of the right to trial by jury; 540

(ii) By the trial jury and the trial judge, if the 541  
offender was tried by jury. 542

(D) (1) Death may not be imposed as a penalty for 543  
aggravated murder if the offender raised the matter of age at 544  
trial pursuant to section 2929.023 of the Revised Code and was 545  
not found at trial to have been eighteen years of age or older 546  
at the time of the commission of the offense or raised the 547  
matter of the offender's serious mental illness at the time of 548  
the commission of the offense pursuant to section 2929.025 of 549  
the Revised Code and was found under that section to be 550  
ineligible for a sentence of death due to serious mental 551

illness. When death may be imposed as a penalty for aggravated 552  
murder, the court shall proceed under this division. When death 553  
may be imposed as a penalty, the court, upon the request of the 554  
defendant, shall require a pre-sentence investigation to be made 555  
and, upon the request of the defendant, shall require a mental 556  
examination to be made, and shall require reports of the 557  
investigation and of any mental examination submitted to the 558  
court, pursuant to section 2947.06 of the Revised Code. No 559  
statement made or information provided by a defendant in a 560  
mental examination or proceeding conducted pursuant to this 561  
division shall be disclosed to any person, except as provided in 562  
this division, or be used in evidence against the defendant on 563  
the issue of guilt in any retrial. A pre-sentence investigation 564  
or mental examination shall not be made except upon request of 565  
the defendant. Copies of any reports prepared under this 566  
division shall be furnished to the court, to the trial jury if 567  
the offender was tried by a jury, to the prosecutor, and to the 568  
offender or the offender's counsel for use under this division. 569  
The court, and the trial jury if the offender was tried by a 570  
jury, shall consider any report prepared pursuant to this 571  
division and furnished to it and any evidence raised at trial 572  
that is relevant to the aggravating circumstances the offender 573  
was found guilty of committing or to any factors in mitigation 574  
of the imposition of the sentence of death, shall hear testimony 575  
and other evidence that is relevant to the nature and 576  
circumstances of the aggravating circumstances the offender was 577  
found guilty of committing, the mitigating factors set forth in 578  
division (B) of section 2929.04 of the Revised Code, and any 579  
other factors in mitigation of the imposition of the sentence of 580  
death, and shall hear the statement, if any, of the offender, 581  
and the arguments, if any, of counsel for the defense and 582  
prosecution, that are relevant to the penalty that should be 583

imposed on the offender. The defendant shall be given great 584  
latitude in the presentation of evidence of the mitigating 585  
factors set forth in division (B) of section 2929.04 of the 586  
Revised Code and of any other factors in mitigation of the 587  
imposition of the sentence of death. If the offender chooses to 588  
make a statement, the offender is subject to cross-examination 589  
only if the offender consents to make the statement under oath 590  
or affirmation. 591

The defendant shall have the burden of going forward with 592  
the evidence of any factors in mitigation of the imposition of 593  
the sentence of death. The prosecution shall have the burden of 594  
proving, by proof beyond a reasonable doubt, that the 595  
aggravating circumstances the defendant was found guilty of 596  
committing are sufficient to outweigh the factors in mitigation 597  
of the imposition of the sentence of death. 598

(2) Upon consideration of the relevant evidence raised at 599  
trial, the testimony, other evidence, statement of the offender, 600  
arguments of counsel, and, if applicable, the reports submitted 601  
pursuant to division (D)(1) of this section, the trial jury, if 602  
the offender was tried by a jury, shall determine whether the 603  
aggravating circumstances the offender was found guilty of 604  
committing are sufficient to outweigh the mitigating factors 605  
present in the case. If the trial jury unanimously finds, by 606  
proof beyond a reasonable doubt, that the aggravating 607  
circumstances the offender was found guilty of committing 608  
outweigh the mitigating factors, the trial jury shall recommend 609  
to the court that the sentence of death be imposed on the 610  
offender. Absent such a finding, the jury shall recommend that 611  
the offender be sentenced to one of the following: 612

(a) Except as provided in division (D)(2)(b) or (c) of 613

this section, to life imprisonment without parole, life 614  
imprisonment with parole eligibility after serving twenty-five 615  
full years of imprisonment, or life imprisonment with parole 616  
eligibility after serving thirty full years of imprisonment; 617

(b) Except as provided in division (D)(2)(c) of this 618  
section, if the victim of the aggravated murder was less than 619  
thirteen years of age, the offender also is convicted of or 620  
pleads guilty to a sexual motivation specification that was 621  
included in the indictment, count in the indictment, or 622  
information charging the offense, and the jury does not 623  
recommend a sentence of life imprisonment without parole 624  
pursuant to division (D)(2)(a) of this section, to an indefinite 625  
term consisting of a minimum term of thirty years and a maximum 626  
term of life imprisonment to be imposed pursuant to division (B) 627  
(3) of section 2971.03 of the Revised Code and served pursuant 628  
to that section. 629

(c) If the offender also is convicted of or pleads guilty 630  
to a sexual motivation specification and a sexually violent 631  
predator specification that are included in the indictment, 632  
count in the indictment, or information that charged the 633  
aggravated murder, to life imprisonment without parole. 634

If the trial jury recommends that the offender be 635  
sentenced to life imprisonment without parole, life imprisonment 636  
with parole eligibility after serving twenty-five full years of 637  
imprisonment, life imprisonment with parole eligibility after 638  
serving thirty full years of imprisonment, or an indefinite term 639  
consisting of a minimum term of thirty years and a maximum term 640  
of life imprisonment to be imposed pursuant to division (B)(3) 641  
of section 2971.03 of the Revised Code, the court shall impose 642  
the sentence recommended by the jury upon the offender. If the 643

sentence is an indefinite term consisting of a minimum term of 644  
thirty years and a maximum term of life imprisonment imposed as 645  
described in division (D) (2) (b) of this section or a sentence of 646  
life imprisonment without parole imposed under division (D) (2) 647  
(c) of this section, the sentence shall be served pursuant to 648  
section 2971.03 of the Revised Code. If the trial jury 649  
recommends that the sentence of death be imposed upon the 650  
offender, the court shall proceed to impose sentence pursuant to 651  
division (D) (3) of this section. 652

(3) Upon consideration of the relevant evidence raised at 653  
trial, the testimony, other evidence, statement of the offender, 654  
arguments of counsel, and, if applicable, the reports submitted 655  
to the court pursuant to division (D) (1) of this section, if, 656  
after receiving pursuant to division (D) (2) of this section the 657  
trial jury's recommendation that the sentence of death be 658  
imposed, the court finds, by proof beyond a reasonable doubt, or 659  
if the panel of three judges unanimously finds, by proof beyond 660  
a reasonable doubt, that the aggravating circumstances the 661  
offender was found guilty of committing outweigh the mitigating 662  
factors, it shall impose sentence of death on the offender. 663  
Absent such a finding by the court or panel, the court or the 664  
panel shall impose one of the following sentences on the 665  
offender: 666

(a) Except as provided in division (D) (3) (b) of this 667  
section, one of the following: 668

(i) Life imprisonment without parole; 669

(ii) Subject to division (D) (3) (a) (iv) of this section, 670  
life imprisonment with parole eligibility after serving twenty- 671  
five full years of imprisonment; 672

(iii) Subject to division (D) (3) (a) (iv) of this section, 673  
life imprisonment with parole eligibility after serving thirty 674  
full years of imprisonment; 675

(iv) If the victim of the aggravated murder was less than 676  
thirteen years of age, the offender also is convicted of or 677  
pleads guilty to a sexual motivation specification that was 678  
included in the indictment, count in the indictment, or 679  
information charging the offense, and the trial court does not 680  
impose a sentence of life imprisonment without parole on the 681  
offender pursuant to division (D) (3) (a) (i) of this section, the 682  
court or panel shall sentence the offender pursuant to division 683  
(B) (3) of section 2971.03 of the Revised Code to an indefinite 684  
term consisting of a minimum term of thirty years and a maximum 685  
term of life imprisonment. 686

(b) If the offender also is convicted of or pleads guilty 687  
to a sexual motivation specification and a sexually violent 688  
predator specification that are included in the indictment, 689  
count in the indictment, or information that charged the 690  
aggravated murder, life imprisonment without parole that shall 691  
be served pursuant to section 2971.03 of the Revised Code. 692

(E) If the offender ~~raised the matter of age at trial~~ 693  
~~pursuant to section 2929.023 of the Revised Code,~~ was convicted 694  
of aggravated murder and one or more specifications of an 695  
aggravating circumstance listed in division (A) of section 696  
2929.04 of the Revised Code, and if the offender either raised 697  
the matter of age at trial pursuant to section 2929.023 of the 698  
Revised Code and was not found at trial to have been eighteen 699  
years of age or older at the time of the commission of the 700  
offense or raised the matter of the offender's serious mental 701  
illness at the time of the commission of the offense pursuant to 702

section 2929.025 of the Revised Code and was found under that 703  
section to be ineligible for a sentence of death due to serious 704  
mental illness, the court or the panel of three judges shall not 705  
impose a sentence of death on the offender. Instead, the court 706  
or panel shall impose one of the following sentences on the 707  
offender: 708

(1) Except as provided in division (E)(2) of this section, 709  
one of the following: 710

(a) Life imprisonment without parole; 711

(b) Subject to division (E)~~(2)~~(1)(d) of this section, life 712  
imprisonment with parole eligibility after serving twenty-five 713  
full years of imprisonment; 714

(c) Subject to division (E)~~(2)~~(1)(d) of this section, life 715  
imprisonment with parole eligibility after serving thirty full 716  
years of imprisonment; 717

(d) If the victim of the aggravated murder was less than 718  
thirteen years of age, the offender also is convicted of or 719  
pleads guilty to a sexual motivation specification that was 720  
included in the indictment, count in the indictment, or 721  
information charging the offense, and the trial court does not 722  
impose a sentence of life imprisonment without parole on the 723  
offender pursuant to division (E)~~(2)~~(1)(a) of this section, the 724  
court or panel shall sentence the offender pursuant to division 725  
(B)(3) of section 2971.03 of the Revised Code to an indefinite 726  
term consisting of a minimum term of thirty years and a maximum 727  
term of life imprisonment. 728

(2) If the offender also is convicted of or pleads guilty 729  
to a sexual motivation specification and a sexually violent 730  
predator specification that are included in the indictment, 731

count in the indictment, or information that charged the 732  
aggravated murder, life imprisonment without parole that shall 733  
be served pursuant to section 2971.03 of the Revised Code. 734

(F) The court or the panel of three judges, when it 735  
imposes sentence of death, shall state in a separate opinion its 736  
specific findings as to the existence of any of the mitigating 737  
factors set forth in division (B) of section 2929.04 of the 738  
Revised Code, the existence of any other mitigating factors, the 739  
aggravating circumstances the offender was found guilty of 740  
committing, and the reasons why the aggravating circumstances 741  
the offender was found guilty of committing were sufficient to 742  
outweigh the mitigating factors. The court or panel, when it 743  
imposes life imprisonment or an indefinite term consisting of a 744  
minimum term of thirty years and a maximum term of life 745  
imprisonment under division (D) of this section, shall state in 746  
a separate opinion its specific findings of which of the 747  
mitigating factors set forth in division (B) of section 2929.04 748  
of the Revised Code it found to exist, what other mitigating 749  
factors it found to exist, what aggravating circumstances the 750  
offender was found guilty of committing, and why it could not 751  
find that these aggravating circumstances were sufficient to 752  
outweigh the mitigating factors. For cases in which a sentence 753  
of death is imposed for an offense committed before January 1, 754  
1995, the court or panel shall file the opinion required to be 755  
prepared by this division with the clerk of the appropriate 756  
court of appeals and with the clerk of the supreme court within 757  
fifteen days after the court or panel imposes sentence. For 758  
cases in which a sentence of death is imposed for an offense 759  
committed on or after January 1, 1995, the court or panel shall 760  
file the opinion required to be prepared by this division with 761  
the clerk of the supreme court within fifteen days after the 762

court or panel imposes sentence. The judgment in a case in which 763  
a sentencing hearing is held pursuant to this section is not 764  
final until the opinion is filed. 765

(G) (1) Whenever the court or a panel of three judges 766  
imposes a sentence of death for an offense committed before 767  
January 1, 1995, the clerk of the court in which the judgment is 768  
rendered shall make and retain a copy of the entire record in 769  
the case, and shall deliver the original of the entire record in 770  
the case to the appellate court. 771

(2) Whenever the court or a panel of three judges imposes 772  
a sentence of death for an offense committed on or after January 773  
1, 1995, the clerk of the court in which the judgment is 774  
rendered shall make and retain a copy of the entire record in 775  
the case, and shall deliver the original of the entire record in 776  
the case to the supreme court. 777

**Sec. 2929.04.** (A) Imposition of the death penalty for 778  
aggravated murder is precluded unless one or more of the 779  
following is specified in the indictment or count in the 780  
indictment pursuant to section 2941.14 of the Revised Code and 781  
proved beyond a reasonable doubt: 782

(1) The offense was the assassination of the president of 783  
the United States or a person in line of succession to the 784  
presidency, the governor or lieutenant governor of this state, 785  
the president-elect or vice president-elect of the United 786  
States, the governor-elect or lieutenant governor-elect of this 787  
state, or a candidate for any of the offices described in this 788  
division. For purposes of this division, a person is a candidate 789  
if the person has been nominated for election according to law, 790  
if the person has filed a petition or petitions according to law 791  
to have the person's name placed on the ballot in a primary or 792

general election, or if the person campaigns as a write-in	793
candidate in a primary or general election.	794
(2) The offense was committed for hire.	795
(3) The offense was committed for the purpose of escaping	796
detection, apprehension, trial, or punishment for another	797
offense committed by the offender.	798
(4) The offense was committed while the offender was under	799
detention or while the offender was at large after having broken	800
detention. As used in division (A)(4) of this section,	801
"detention" has the same meaning as in section 2921.01 of the	802
Revised Code, except that detention does not include	803
hospitalization, institutionalization, or confinement in a	804
mental health facility or intellectual disabilities facility	805
unless at the time of the commission of the offense either of	806
the following circumstances apply:	807
(a) The offender was in the facility as a result of being	808
charged with a violation of a section of the Revised Code.	809
(b) The offender was under detention as a result of being	810
convicted of or pleading guilty to a violation of a section of	811
the Revised Code.	812
(5) Prior to the offense at bar, the offender was	813
convicted of an offense an essential element of which was the	814
purposeful killing of or attempt to kill another, or the offense	815
at bar was part of a course of conduct involving the purposeful	816
killing of or attempt to kill two or more persons by the	817
offender.	818
(6) The victim of the offense was a law enforcement	819
officer, as defined in section 2911.01 of the Revised Code, whom	820
the offender had reasonable cause to know or knew to be a law	821

enforcement officer as so defined, and either the victim, at the 822  
time of the commission of the offense, was engaged in the 823  
victim's duties, or it was the offender's specific purpose to 824  
kill a law enforcement officer as so defined. 825

(7) The offense was committed while the offender was 826  
committing, attempting to commit, or fleeing immediately after 827  
committing or attempting to commit kidnapping, rape, aggravated 828  
arson, aggravated robbery, or aggravated burglary, and either 829  
the offender was the principal offender in the commission of the 830  
aggravated murder or, if not the principal offender, committed 831  
the aggravated murder with prior calculation and design. 832

(8) The victim of the aggravated murder was a witness to 833  
an offense who was purposely killed to prevent the victim's 834  
testimony in any criminal proceeding and the aggravated murder 835  
was not committed during the commission, attempted commission, 836  
or flight immediately after the commission or attempted 837  
commission of the offense to which the victim was a witness, or 838  
the victim of the aggravated murder was a witness to an offense 839  
and was purposely killed in retaliation for the victim's 840  
testimony in any criminal proceeding. 841

(9) The offender, in the commission of the offense, 842  
purposefully caused the death of another who was under thirteen 843  
years of age at the time of the commission of the offense, and 844  
either the offender was the principal offender in the commission 845  
of the offense or, if not the principal offender, committed the 846  
offense with prior calculation and design. 847

(10) The offense was committed while the offender was 848  
committing, attempting to commit, or fleeing immediately after 849  
committing or attempting to commit terrorism. 850

(B) If one or more of the aggravating circumstances listed 851  
in division (A) of this section is specified in the indictment 852  
or count in the indictment and proved beyond a reasonable doubt, 853  
~~and~~ if the offender did not raise the matter of age pursuant to 854  
section 2929.023 of the Revised Code or ~~if~~ the offender, after 855  
raising ~~the~~ that matter of age, was found at trial to have been 856  
eighteen years of age or older at the time of the commission of 857  
the offense, and if the offender did not raise the matter of the 858  
offender's serious mental illness at the time of the commission 859  
of the offense pursuant to section 2929.025 of the Revised Code 860  
or the offender after raising that matter was found by the court 861  
to not be ineligible for a sentence of death, the court, trial 862  
jury, or panel of three judges shall consider, and weigh against 863  
the aggravating circumstances proved beyond a reasonable doubt, 864  
the nature and circumstances of the offense, the history, 865  
character, and background of the offender, and all of the 866  
following factors: 867

(1) Whether the victim of the offense induced or 868  
facilitated it; 869

(2) Whether it is unlikely that the offense would have 870  
been committed, but for the fact that the offender was under 871  
duress, coercion, or strong provocation; 872

(3) Whether, at the time of committing the offense, the 873  
offender, because of a mental disease or defect, lacked 874  
substantial capacity to appreciate the criminality of the 875  
offender's conduct or to conform the offender's conduct to the 876  
requirements of the law; 877

(4) The youth of the offender; 878

(5) The offender's lack of a significant history of prior 879

criminal convictions and delinquency adjudications; 880

(6) If the offender was a participant in the offense but 881  
not the principal offender, the degree of the offender's 882  
participation in the offense and the degree of the offender's 883  
participation in the acts that led to the death of the victim; 884

(7) Any other factors that are relevant to the issue of 885  
whether the offender should be sentenced to death. 886

(C) The defendant shall be given great latitude in the 887  
presentation of evidence of the factors listed in division (B) 888  
of this section and of any other factors in mitigation of the 889  
imposition of the sentence of death. 890

The existence of any of the mitigating factors listed in 891  
division (B) of this section does not preclude the imposition of 892  
a sentence of death on the offender but shall be weighed 893  
pursuant to divisions (D) (2) and (3) of section 2929.03 of the 894  
Revised Code by the trial court, trial jury, or the panel of 895  
three judges against the aggravating circumstances the offender 896  
was found guilty of committing. 897

**Sec. 2929.06.** (A) (1) If a sentence of death imposed upon 898  
an offender is set aside, nullified, ~~or vacated because the, or~~ 899  
voided for any of the following reasons, the trial court that 900  
sentenced the offender shall conduct a hearing to resentence the 901  
offender in accordance with division (A) (2) of this section: 902

(a) The court of appeals, in a case in which a sentence of 903  
death was imposed for an offense committed before January 1, 904  
1995, or the supreme court, in ~~eases~~ a case in which the supreme 905  
court reviews the sentence upon appeal, could not affirm the 906  
sentence of death under the standards imposed by section 2929.05 907  
of the Revised Code, ~~is set aside, nullified, or vacated for~~ 908

the. 909

(b) The sole reason that the statutory procedure for 910  
imposing the sentence of death that is set forth in sections 911  
2929.03 and 2929.04 of the Revised Code is unconstitutional. 912

(c) The sentence of death is set aside, nullified, or 913  
vacated pursuant to division (C) of section 2929.05 of the 914  
Revised Code, ~~or is set aside, nullified, or vacated because a.~~ 915

(d) A court has determined that the offender is a person 916  
with an intellectual disability under standards set forth in 917  
decisions of the supreme court of this state or the United 918  
States supreme court, ~~the trial court that sentenced the~~ 919  
~~offender shall conduct a hearing to resentence the offender.~~ 920

(e) The sentence of death is voided by a court pursuant to 921  
division (G) of section 2953.21 of the Revised Code. 922

(2) At the a resentencing hearing conducted under division 923  
(A) (1) of this section, the court shall impose upon the offender 924  
a sentence of life imprisonment or an indefinite term consisting 925  
of a minimum term of thirty years and a maximum term of life 926  
imprisonment that is determined as specified in this division. 927  
If division (D) of section 2929.03 of the Revised Code, at the 928  
time the offender committed the aggravated murder for which the 929  
sentence of death was imposed, required the imposition when a 930  
sentence of death was not imposed of a sentence of life 931  
imprisonment without parole or a sentence of an indefinite term 932  
consisting of a minimum term of thirty years and a maximum term 933  
of life imprisonment to be imposed pursuant to division (A) or 934  
(B) (3) of section 2971.03 of the Revised Code and served 935  
pursuant to that section, the court shall impose the sentence so 936  
required. In all other cases, the sentences of life imprisonment 937

that are available at the hearing, and from which the court 938  
shall impose sentence, shall be the same sentences of life 939  
imprisonment that were available under division (D) of section 940  
2929.03 or under section 2909.24 of the Revised Code at the time 941  
the offender committed the offense for which the sentence of 942  
death was imposed. Nothing in this division regarding the 943  
resentencing of an offender shall affect the operation of 944  
section 2971.03 of the Revised Code. 945

(B) Whenever any court of this state or any federal court 946  
sets aside, nullifies, or vacates a sentence of death imposed 947  
upon an offender because of error that occurred in the 948  
sentencing phase of the trial and if division (A) of this 949  
section does not apply, the trial court that sentenced the 950  
offender shall conduct a new hearing to resentence the offender. 951  
If the offender was tried by a jury, the trial court shall 952  
impanel a new jury for the hearing. If the offender was tried by 953  
a panel of three judges, that panel or, if necessary, a new 954  
panel of three judges shall conduct the hearing. At the hearing, 955  
the court or panel shall follow the procedure set forth in 956  
division (D) of section 2929.03 of the Revised Code in 957  
determining whether to impose upon the offender a sentence of 958  
death, a sentence of life imprisonment, or an indefinite term 959  
consisting of a minimum term of thirty years and a maximum term 960  
of life imprisonment. If, pursuant to that procedure, the court 961  
or panel determines that it will impose a sentence other than a 962  
sentence of death, the court or panel shall impose upon the 963  
offender one of the sentences of life imprisonment that could 964  
have been imposed at the time the offender committed the offense 965  
for which the sentence of death was imposed, determined as 966  
specified in this division, or an indefinite term consisting of 967  
a minimum term of thirty years and a maximum term of life 968

imprisonment that is determined as specified in this division. 969  
If division (D) of section 2929.03 of the Revised Code, at the 970  
time the offender committed the aggravated murder for which the 971  
sentence of death was imposed, required the imposition when a 972  
sentence of death was not imposed of a sentence of life 973  
imprisonment without parole or a sentence of an indefinite term 974  
consisting of a minimum term of thirty years and a maximum term 975  
of life imprisonment to be imposed pursuant to division (A) or 976  
(B) (3) of section 2971.03 of the Revised Code and served 977  
pursuant to that section, the court or panel shall impose the 978  
sentence so required. In all other cases, the sentences of life 979  
imprisonment that are available at the hearing, and from which 980  
the court or panel shall impose sentence, shall be the same 981  
sentences of life imprisonment that were available under 982  
division (D) of section 2929.03 or under section 2909.24 of the 983  
Revised Code at the time the offender committed the offense for 984  
which the sentence of death was imposed. 985

(C) If a sentence of life imprisonment without parole 986  
imposed upon an offender pursuant to section 2929.021 or 2929.03 987  
of the Revised Code is set aside, nullified, or vacated for the 988  
sole reason that the statutory procedure for imposing the 989  
sentence of life imprisonment without parole that is set forth 990  
in sections 2929.03 and 2929.04 of the Revised Code is 991  
unconstitutional, the trial court that sentenced the offender 992  
shall conduct a hearing to resentence the offender to life 993  
imprisonment with parole eligibility after serving twenty-five 994  
full years of imprisonment or to life imprisonment with parole 995  
eligibility after serving thirty full years of imprisonment. 996

(D) Nothing in this section limits or restricts the rights 997  
of the state to appeal any order setting aside, nullifying, or 998  
vacating a conviction or sentence of death, when an appeal of 999

that nature otherwise would be available. 1000

(E) This section, as amended by H.B. 184 of the 125th 1001  
general assembly, shall apply to all offenders who have been 1002  
sentenced to death for an aggravated murder that was committed 1003  
on or after October 19, 1981, or for terrorism that was 1004  
committed on or after May 15, 2002. This section, as amended by 1005  
H.B. 184 of the 125th general assembly, shall apply equally to 1006  
all such offenders sentenced to death prior to, on, or after 1007  
March 23, 2005, including offenders who, on March 23, 2005, are 1008  
challenging their sentence of death and offenders whose sentence 1009  
of death has been set aside, nullified, or vacated by any court 1010  
of this state or any federal court but who, as of March 23, 1011  
2005, have not yet been resentenced. 1012

**Sec. 2953.21.** (A) (1) (a) A person in any of the following 1013  
categories may file a petition in the court that imposed 1014  
sentence, stating the grounds for relief relied upon, and asking 1015  
the court to vacate or set aside the judgment or sentence or to 1016  
grant other appropriate relief: 1017

(i) Any person who has been convicted of a criminal 1018  
offense or adjudicated a delinquent child and who claims that 1019  
there was such a denial or infringement of the person's rights 1020  
as to render the judgment void or voidable under the Ohio 1021  
Constitution or the Constitution of the United States, ~~and any;~~ 1022

(ii) Any person who has been convicted of a criminal 1023  
offense and sentenced to death and who claims that there was a 1024  
denial or infringement of the person's rights under either of 1025  
those Constitutions that creates a reasonable probability of an 1026  
altered verdict, ~~and any;~~ 1027

(iii) Any person who has been convicted of a criminal 1028

offense that is a felony and who is an offender for whom DNA 1029  
testing that was performed under sections 2953.71 to 2953.81 of 1030  
the Revised Code or under former section 2953.82 of the Revised 1031  
Code and analyzed in the context of and upon consideration of 1032  
all available admissible evidence related to the person's case 1033  
as described in division (D) of section 2953.74 of the Revised 1034  
Code provided results that establish, by clear and convincing 1035  
evidence, actual innocence of that felony offense or, if the 1036  
person was sentenced to death, establish, by clear and 1037  
convincing evidence, actual innocence of the aggravating 1038  
circumstance or circumstances the person was found guilty of 1039  
committing and that is or are the basis of that sentence of 1040  
death, ~~may file a petition in the court that imposed sentence,~~ 1041  
~~stating the grounds for relief relied upon, and asking the court~~ 1042  
~~to vacate or set aside the judgment or sentence or to grant~~ 1043  
~~other appropriate relief;~~ 1044

(iv) Any person who has been convicted of aggravated 1045  
murder and sentenced to death for the offense and who claims 1046  
that the person had a serious mental illness at the time of the 1047  
commission of the offense and that as a result the court should 1048  
render void the sentence of death. 1049

~~The~~ (b) A petitioner under division (A) (1) (a) of this 1050  
section may file a supporting affidavit and other documentary 1051  
evidence in support of the claim for relief. 1052

~~(b)(c)~~ As used in division (A) (1) (a) of this section, 1053  
"actual: 1054

(i) "Actual innocence" means that, had the results of the 1055  
DNA testing conducted under sections 2953.71 to 2953.81 of the 1056  
Revised Code or under former section 2953.82 of the Revised Code 1057  
been presented at trial, and had those results been analyzed in 1058

the context of and upon consideration of all available 1059  
admissible evidence related to the person's case as described in 1060  
division (D) of section 2953.74 of the Revised Code, no 1061  
reasonable factfinder would have found the petitioner guilty of 1062  
the offense of which the petitioner was convicted, or, if the 1063  
person was sentenced to death, no reasonable factfinder would 1064  
have found the petitioner guilty of the aggravating circumstance 1065  
or circumstances the petitioner was found guilty of committing 1066  
and that is or are the basis of that sentence of death. 1067

(ii) "Serious mental illness" has the same meaning as in 1068  
section 2929.025 of the Revised Code. 1069

~~(e)~~(d) As used in divisions (A) (1) (a) and ~~(b)~~(c) of this 1070  
section, "former section 2953.82 of the Revised Code" means 1071  
section 2953.82 of the Revised Code as it existed prior to July 1072  
6, 2010. 1073

~~(d)~~(e) At any time in conjunction with the filing of a 1074  
petition for postconviction relief under division (A) of this 1075  
section by a person who has been sentenced to death, or with the 1076  
litigation of a petition so filed, the court, for good cause 1077  
shown, may authorize the petitioner in seeking the 1078  
postconviction relief and the prosecuting attorney of the county 1079  
served by the court in defending the proceeding, to take 1080  
depositions and to issue subpoenas and subpoenas duces tecum in 1081  
accordance with divisions (A) (1) ~~(d)~~(e), (A) (1) ~~(e)~~(f), and (C) of 1082  
this section, and to any other form of discovery as in a civil 1083  
action that the court in its discretion permits. The court may 1084  
limit the extent of discovery under this division. In addition 1085  
to discovery that is relevant to the claim and was available 1086  
under Criminal Rule 16 through conclusion of the original 1087  
criminal trial, the court, for good cause shown, may authorize 1088

the petitioner or prosecuting attorney to take depositions and 1089  
issue subpoenas and subpoenas duces tecum in either of the 1090  
following circumstances: 1091

(i) For any witness who testified at trial or who was 1092  
disclosed by the state prior to trial, except as otherwise 1093  
provided in this division, the petitioner or prosecuting 1094  
attorney shows clear and convincing evidence that the witness is 1095  
material and that a deposition of the witness or the issuing of 1096  
a subpoena or subpoena duces tecum is of assistance in order to 1097  
substantiate or refute the petitioner's claim that there is a 1098  
reasonable probability of an altered verdict. This division does 1099  
not apply if the witness was unavailable for trial or would not 1100  
voluntarily be interviewed by the defendant or prosecuting 1101  
attorney. 1102

(ii) For any witness with respect to whom division (A) (1) 1103  
~~(d)~~ (e) (i) of this section does not apply, the petitioner or 1104  
prosecuting attorney shows good cause that the witness is 1105  
material and that a deposition of the witness or the issuing of 1106  
a subpoena or subpoena duces tecum is of assistance in order to 1107  
substantiate or refute the petitioner's claim that there is a 1108  
reasonable probability of an altered verdict. 1109

~~(e)~~ (f) If a person who has been sentenced to death and who 1110  
files a petition for postconviction relief under division (A) of 1111  
this section requests postconviction discovery as described in 1112  
division (A) (1) ~~(d)~~ (e) of this section or if the prosecuting 1113  
attorney of the county served by the court requests 1114  
postconviction discovery as described in that division, within 1115  
ten days after the docketing of the request, or within any other 1116  
time that the court sets for good cause shown, the prosecuting 1117  
attorney shall respond by answer or motion to the petitioner's 1118

request or the petitioner shall respond by answer or motion to 1119  
the prosecuting attorney's request, whichever is applicable. 1120

~~(f)~~ (g) If a person who has been sentenced to death and who 1121  
files a petition for postconviction relief under division (A) of 1122  
this section requests postconviction discovery as described in 1123  
division (A) (1) ~~(d)~~ (e) of this section or if the prosecuting 1124  
attorney of the county served by the court requests 1125  
postconviction discovery as described in that division, upon 1126  
motion by the petitioner, the prosecuting attorney, or the 1127  
person from whom discovery is sought, and for good cause shown, 1128  
the court in which the action is pending may make any order that 1129  
justice requires to protect a party or person from oppression or 1130  
undue burden or expense, including but not limited to the orders 1131  
described in divisions (A) (1) ~~(g)~~ (h) (i) to (viii) of this 1132  
section. The court also may make any such order if, in its 1133  
discretion, it determines that the discovery sought would be 1134  
irrelevant to the claims made in the petition; and if the court 1135  
makes any such order on that basis, it shall explain in the 1136  
order the reasons why the discovery would be irrelevant. 1137

~~(g)~~ (h) If a petitioner, prosecuting attorney, or person 1138  
from whom discovery is sought makes a motion for an order under 1139  
division (A) (1) ~~(f)~~ (g) of this section and the order is denied in 1140  
whole or in part, the court, on terms and conditions as are 1141  
just, may order that any party or person provide or permit 1142  
discovery as described in division (A) (1) ~~(d)~~ (e) of this section. 1143  
The provisions of Civil Rule 37(A) (4) apply to the award of 1144  
expenses incurred in relation to the motion, except that in no 1145  
case shall a court require a petitioner who is indigent to pay 1146  
expenses under those provisions. 1147

Before any person moves for an order under division (A) (1) 1148

~~(f)~~(g) of this section, that person shall make a reasonable 1149  
effort to resolve the matter through discussion with the 1150  
petitioner or prosecuting attorney seeking discovery. A motion 1151  
for an order under division (A) (1) ~~(f)~~(g) of this section shall 1152  
be accompanied by a statement reciting the effort made to 1153  
resolve the matter in accordance with this paragraph. 1154

The orders that may be made under division (A) (1) ~~(f)~~(g) of 1155  
this section include, but are not limited to, any of the 1156  
following: 1157

(i) That the discovery not be had; 1158

(ii) That the discovery may be had only on specified terms 1159  
and conditions, including a designation of the time or place; 1160

(iii) That the discovery may be had only by a method of 1161  
discovery other than that selected by the party seeking 1162  
discovery; 1163

(iv) That certain matters not be inquired into or that the 1164  
scope of the discovery be limited to certain matters; 1165

(v) That discovery be conducted with no one present except 1166  
persons designated by the court; 1167

(vi) That a deposition after being sealed be opened only 1168  
by order of the court; 1169

(vii) That a trade secret or other confidential research, 1170  
development, or commercial information not be disclosed or be 1171  
disclosed only in a designated way; 1172

(viii) That the parties simultaneously file specified 1173  
documents or information enclosed in sealed envelopes to be 1174  
opened as directed by the court. 1175

~~(h)~~(i) Any postconviction discovery authorized under 1176  
division (A) (1) ~~(d)~~(e) of this section shall be completed not 1177  
later than eighteen months after the start of the discovery 1178  
proceedings unless, for good cause shown, the court extends that 1179  
period for completing the discovery. 1180

~~(i)~~(j) Nothing in division (A) (1) ~~(d)~~(e) of this section 1181  
authorizes, or shall be construed as authorizing, the 1182  
relitigation, or discovery in support of relitigation, of any 1183  
matter barred by the doctrine of res judicata. 1184

~~(j)~~(k) Division (A) (1) of this section does not apply to 1185  
any person who has been convicted of a criminal offense and 1186  
sentenced to death and who has unsuccessfully raised the same 1187  
claims in a petition for postconviction relief. 1188

(2) (a) Except as otherwise provided in section 2953.23 of 1189  
the Revised Code, a petition under division (A) (1) (a) (i), (ii), 1190  
or (iii) of this section shall be filed no later than three 1191  
hundred sixty-five days after the date on which the trial 1192  
transcript is filed in the court of appeals in the direct appeal 1193  
of the judgment of conviction or adjudication or, if the direct 1194  
appeal involves a sentence of death, the date on which the trial 1195  
transcript is filed in the supreme court. If no appeal is taken, 1196  
except as otherwise provided in section 2953.23 of the Revised 1197  
Code, the petition shall be filed no later than three hundred 1198  
sixty-five days after the expiration of the time for filing the 1199  
appeal. 1200

(b) Except as otherwise provided in section 2953.23 of the 1201  
Revised Code, a petition under division (A) (1) (a) (iv) of this 1202  
section shall be filed not later than three hundred sixty-five 1203  
days after the effective date of this amendment. 1204

(3) In a petition filed under division (A) (1) (a) (i), (ii), 1205  
or (iii) of this section, a person who has been sentenced to 1206  
death may ask the court to render void or voidable the judgment 1207  
with respect to the conviction of aggravated murder or the 1208  
specification of an aggravating circumstance or the sentence of 1209  
death. A person sentenced to death who files a petition under 1210  
division (A) (1) (a) (iv) of this section may ask the court to 1211  
render void the sentence of death and to order the resentencing 1212  
of the person under division (A) of section 2929.06 of the 1213  
Revised Code. 1214

(4) A petitioner shall state in the original or amended 1215  
petition filed under division (A) of this section all grounds 1216  
for relief claimed by the petitioner. Except as provided in 1217  
section 2953.23 of the Revised Code, any ground for relief that 1218  
is not so stated in the petition is waived. 1219

(5) If the petitioner in a petition filed under division 1220  
(A) (1) (a) (i), (ii), or (iii) of this section was convicted of or 1221  
pleaded guilty to a felony, the petition may include a claim 1222  
that the petitioner was denied the equal protection of the laws 1223  
in violation of the Ohio Constitution or the United States 1224  
Constitution because the sentence imposed upon the petitioner 1225  
for the felony was part of a consistent pattern of disparity in 1226  
sentencing by the judge who imposed the sentence, with regard to 1227  
the petitioner's race, gender, ethnic background, or religion. 1228  
If the supreme court adopts a rule requiring a court of common 1229  
pleas to maintain information with regard to an offender's race, 1230  
gender, ethnic background, or religion, the supporting evidence 1231  
for the petition shall include, but shall not be limited to, a 1232  
copy of that type of information relative to the petitioner's 1233  
sentence and copies of that type of information relative to 1234  
sentences that the same judge imposed upon other persons. 1235

(6) Notwithstanding any law or court rule to the contrary, 1236  
there is no limit on the number of pages in, or on the length 1237  
of, a petition filed under division (A) (1) (a) (i), (ii), (iii), 1238  
or (iv) of this section by a person who has been sentenced to 1239  
death. If any court rule specifies a limit on the number of 1240  
pages in, or on the length of, a petition filed under division 1241  
(A) (1) (a) (i), (ii), (iii), or (iv) of this section or on a 1242  
prosecuting attorney's response to such a petition by answer or 1243  
motion and a person who has been sentenced to death files a 1244  
petition that exceeds the limit specified for the petition, the 1245  
prosecuting attorney may respond by an answer or motion that 1246  
exceeds the limit specified for the response. 1247

(B) The clerk of the court in which the petition for 1248  
postconviction relief and, if applicable, a request for 1249  
postconviction discovery described in division (A) (1) ~~(d)~~ (e) of 1250  
this section is filed shall docket the petition and the request 1251  
and bring them promptly to the attention of the court. The clerk 1252  
of the court in which the petition for postconviction relief 1253  
and, if applicable, a request for postconviction discovery 1254  
described in division (A) (1) ~~(d)~~ (e) of this section is filed 1255  
immediately shall forward a copy of the petition and a copy of 1256  
the request if filed by the petitioner to the prosecuting 1257  
attorney of the county served by the court. If the request for 1258  
postconviction discovery is filed by the prosecuting attorney, 1259  
the clerk of the court immediately shall forward a copy of the 1260  
request to the petitioner or the petitioner's counsel. 1261

(C) If a person who has been sentenced to death and who 1262  
files a petition for postconviction relief under division (A) (1) 1263  
(a) (i), (ii), (iii), or (iv) of this section requests a 1264  
deposition or the prosecuting attorney in the case requests a 1265  
deposition, and if the court grants the request under division 1266

(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 1298  
date the issues are raised, either party may move for summary 1299  
judgment. The right to summary judgment shall appear on the face 1300  
of the record. 1301

(F) Unless the petition and the files and records of the 1302  
case show the petitioner is not entitled to relief, the court 1303  
shall proceed to a prompt hearing on the issues even if a direct 1304  
appeal of the case is pending. If the court notifies the parties 1305  
that it has found grounds for granting relief, either party may 1306  
request an appellate court in which a direct appeal of the 1307  
judgment is pending to remand the pending case to the court. 1308

With respect to a petition filed under division (A) (1) (a) 1309  
(iv) of this section, the procedures and rules regarding 1310  
introduction of evidence and burden of proof at the pretrial 1311  
hearing that are set forth in divisions (C), (D), and (F) of 1312  
section 2929.025 of the Revised Code apply in considering the 1313  
petition. With respect to such a petition, the grounds for 1314  
granting relief are that the person has been diagnosed with one 1315  
or more of the conditions set forth in division (A) (1) (a) of 1316  
section 2929.025 of the Revised Code and that, at the time of 1317  
the aggravated murder that was the basis of the sentence of 1318  
death, the condition or conditions significantly impaired the 1319  
person's capacity in a manner described in division (A) (1) (b) 1320  
(i), (ii), or (iii) of that section. 1321

(G) A petitioner who files a petition under division (A) 1322  
(1) (a) (i), (ii), (iii), or (iv) of this section may amend the 1323  
petition as follows: 1324

(1) If the petition was filed by a person who has been 1325  
sentenced to death, at any time that is not later than one 1326  
hundred eighty days after the petition is filed, the petitioner 1327

may amend the petition with or without leave or prejudice to the 1328  
proceedings. 1329

(2) If division (G)(1) of this section does not apply, at 1330  
any time before the answer or motion is filed, the petitioner 1331  
may amend the petition with or without leave or prejudice to the 1332  
proceedings. 1333

(3) The petitioner may amend the petition with leave of 1334  
court at any time after the expiration of the applicable period 1335  
specified in division (G)(1) or (2) of this section. 1336

(H) If the court does not find grounds for granting 1337  
relief, it shall make and file findings of fact and conclusions 1338  
of law and shall enter judgment denying relief on the petition. 1339  
If the petition was filed by a person who has been sentenced to 1340  
death, the findings of fact and conclusions of law shall state 1341  
specifically the reasons for the denial of relief on the 1342  
petition and of each claim it contains. If no direct appeal of 1343  
the case is pending and the court finds grounds for relief or if 1344  
a pending direct appeal of the case has been remanded to the 1345  
court pursuant to a request made pursuant to division (F) of 1346  
this section and the court finds grounds for granting relief, it 1347  
shall make and file findings of fact and conclusions of law and 1348  
shall enter a judgment that vacates and sets aside the judgment 1349  
in question, and, in the case of a petitioner who is a prisoner 1350  
in custody, except as otherwise described in this division, 1351  
shall discharge or resentence the petitioner or grant a new 1352  
trial as the court determines appropriate. If the court finds 1353  
grounds for relief in the case of a petitioner who filed a 1354  
petition under division (A)(1)(a)(iv) of this section, the court 1355  
shall render void the sentence of death and order the 1356  
resentencing of the offender under division (A) of section 1357

2929.06 of the Revised Code. If the petitioner has been 1358  
sentenced to death, the findings of fact and conclusions of law 1359  
shall state specifically the reasons for the finding of grounds 1360  
for granting the relief, with respect to each claim contained in 1361  
the petition. The court also may make supplementary orders to 1362  
the relief granted, concerning such matters as rearraignment, 1363  
retrial, custody, and bail. If the trial court's order granting 1364  
the petition is reversed on appeal and if the direct appeal of 1365  
the case has been remanded from an appellate court pursuant to a 1366  
request under division (F) of this section, the appellate court 1367  
reversing the order granting the petition shall notify the 1368  
appellate court in which the direct appeal of the case was 1369  
pending at the time of the remand of the reversal and remand of 1370  
the trial court's order. Upon the reversal and remand of the 1371  
trial court's order granting the petition, regardless of whether 1372  
notice is sent or received, the direct appeal of the case that 1373  
was remanded is reinstated. 1374

(I) Upon the filing of a petition pursuant to division (A) 1375  
(1)(a)(i), (ii), (iii), or (iv) of this section by a person 1376  
sentenced to death, only the supreme court may stay execution of 1377  
the sentence of death. 1378

(J) (1) If a person sentenced to death intends to file a 1379  
petition under this section, the court shall appoint counsel to 1380  
represent the person upon a finding that the person is indigent 1381  
and that the person either accepts the appointment of counsel or 1382  
is unable to make a competent decision whether to accept or 1383  
reject the appointment of counsel. The court may decline to 1384  
appoint counsel for the person only upon a finding, after a 1385  
hearing if necessary, that the person rejects the appointment of 1386  
counsel and understands the legal consequences of that decision 1387  
or upon a finding that the person is not indigent. 1388

(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 1420  
disposition. 1421

**Sec. 2953.23.** (A) Whether a hearing is or is not held on a 1422  
petition filed pursuant to section 2953.21 of the Revised Code, 1423  
a court may not entertain a petition filed after the expiration 1424  
of the period prescribed in division (A) of that section or a 1425  
second petition or successive petitions for similar relief on 1426  
behalf of a petitioner unless division (A) (1) or (2) of this 1427  
section applies: 1428

(1) Both of the following apply: 1429

(a) Either the petitioner shows that the petitioner was 1430  
unavoidably prevented from discovery of the facts upon which the 1431  
petitioner must rely to present the claim for relief, or, 1432  
subsequent to the period prescribed in division (A) (2) of 1433  
section 2953.21 of the Revised Code or to the filing of an 1434  
earlier petition, the United States Supreme Court recognized a 1435  
new federal or state right that applies retroactively to persons 1436  
in the petitioner's situation, and the petition asserts a claim 1437  
based on that right. 1438

(b) The petitioner shows by clear and convincing evidence 1439  
that, but for constitutional error at trial, no reasonable 1440  
factfinder would have found the petitioner guilty of the offense 1441  
of which the petitioner was convicted or, if the claim 1442  
challenges a sentence of death that, but for constitutional 1443  
error at the sentencing hearing, no reasonable factfinder would 1444  
have found the petitioner eligible for the death sentence. 1445

(2) The petitioner was convicted of a felony, the 1446  
petitioner is an offender for whom DNA testing was performed 1447  
under sections 2953.71 to 2953.81 of the Revised Code or under 1448

former section 2953.82 of the Revised Code and analyzed in the 1449  
context of and upon consideration of all available admissible 1450  
evidence related to the inmate's case as described in division 1451  
(D) of section 2953.74 of the Revised Code, and the results of 1452  
the DNA testing establish, by clear and convincing evidence, 1453  
actual innocence of that felony offense or, if the person was 1454  
sentenced to death, establish, by clear and convincing evidence, 1455  
actual innocence of the aggravating circumstance or 1456  
circumstances the person was found guilty of committing and that 1457  
is or are the basis of that sentence of death. 1458

As used in this division, "actual innocence" has the same 1459  
meaning as in division (A) (1) ~~(b)~~ (c) of section 2953.21 of the 1460  
Revised Code, and "former section 2953.82 of the Revised Code" 1461  
has the same meaning as in division (A) (1) ~~(e)~~ (d) of section 1462  
2953.21 of the Revised Code. 1463

(B) An order awarding or denying relief sought in a 1464  
petition filed pursuant to section 2953.21 of the Revised Code 1465  
is a final judgment and may be appealed pursuant to Chapter 1466  
2953. of the Revised Code. 1467

If a petition filed pursuant to section 2953.21 of the 1468  
Revised Code by a person who has been sentenced to death is 1469  
denied and the person appeals the judgment, notwithstanding any 1470  
law or court rule to the contrary, there is no limit on the 1471  
number of pages in, or on the length of, a notice of appeal or 1472  
briefs related to an appeal filed by the person. If any court 1473  
rule specifies a limit on the number of pages in, or on the 1474  
length of, a notice of appeal or briefs described in this 1475  
division or on a prosecuting attorney's response or briefs with 1476  
respect to such an appeal and a person who has been sentenced to 1477  
death files a notice of appeal or briefs that exceed the limit 1478

specified for the petition, the prosecuting attorney may file a 1479  
response or briefs that exceed the limit specified for the 1480  
answer or briefs. 1481

**Section 2.** That existing sections 2929.02, 2929.022, 1482  
2929.024, 2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 of the 1483  
Revised Code are hereby repealed. 1484