

As Introduced

133rd General Assembly

Regular Session

2019-2020

H. B. No. 136

Representative Hillyer

Cosponsors: Representatives Seitz, Weinstein, Crawley

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 prohibit imposing the death penalty for 4
aggravated murder when the offender had a 5
serious mental illness at the time of the 6
offense. 7

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

Section 1. That sections 2929.02, 2929.022, 2929.024, 8
2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 be amended and 9
section 2929.025 of the Revised Code be enacted to read as 10
follows: 11

Sec. 2929.02. (A) Whoever is convicted of or pleads guilty 12
to aggravated murder in violation of section 2903.01 of the 13
Revised Code shall suffer death or be imprisoned for life, as 14
determined pursuant to sections 2929.022, 2929.03, and 2929.04 15
of the Revised Code, except that no person who raises the matter 16
of age pursuant to section 2929.023 of the Revised Code and who 17
is not found to have been eighteen years of age or older at the 18

time of the commission of the offense and no person who raises 19
the matter of the person's serious mental illness at the time of 20
the alleged commission of the offense pursuant to section 21
2929.025 of the Revised Code and is found under that section to 22
be ineligible for a sentence of death due to serious mental 23
illness shall suffer death. In addition, the offender may be 24
fined an amount fixed by the court, but not more than twenty- 25
five thousand dollars. 26

(B) (1) Except as otherwise provided in division (B) (2) or 27
(3) of this section, whoever is convicted of or pleads guilty to 28
murder in violation of section 2903.02 of the Revised Code shall 29
be imprisoned for an indefinite term of fifteen years to life. 30

(2) Except as otherwise provided in division (B) (3) of 31
this section, if a person is convicted of or pleads guilty to 32
murder in violation of section 2903.02 of the Revised Code, the 33
victim of the offense was less than thirteen years of age, and 34
the offender also is convicted of or pleads guilty to a sexual 35
motivation specification that was included in the indictment, 36
count in the indictment, or information charging the offense, 37
the court shall impose an indefinite prison term of thirty years 38
to life pursuant to division (B) (3) of section 2971.03 of the 39
Revised Code. 40

(3) If a person is convicted of or pleads guilty to murder 41
in violation of section 2903.02 of the Revised Code and also is 42
convicted of or pleads guilty to a sexual motivation 43
specification and a sexually violent predator specification that 44
were included in the indictment, count in the indictment, or 45
information that charged the murder, the court shall impose upon 46
the offender a term of life imprisonment without parole that 47
shall be served pursuant to section 2971.03 of the Revised Code. 48

(4) In addition, the offender may be fined an amount fixed 49
by the court, but not more than fifteen thousand dollars. 50

(C) The court shall not impose a fine or fines for 51
aggravated murder or murder which, in the aggregate and to the 52
extent not suspended by the court, exceeds the amount which the 53
offender is or will be able to pay by the method and within the 54
time allowed without undue hardship to the offender or to the 55
dependents of the offender, or will prevent the offender from 56
making reparation for the victim's wrongful death. 57

(D) (1) In addition to any other sanctions imposed for a 58
violation of section 2903.01 or 2903.02 of the Revised Code, if 59
the offender used a motor vehicle as the means to commit the 60
violation, the court shall impose upon the offender a class two 61
suspension of the offender's driver's license, commercial 62
driver's license, temporary instruction permit, probationary 63
license, or nonresident operating privilege as specified in 64
division (A) (2) of section 4510.02 of the Revised Code. 65

(2) As used in division (D) of this section, "motor 66
vehicle" has the same meaning as in section 4501.01 of the 67
Revised Code. 68

Sec. 2929.022. (A) If an indictment or count in an 69
indictment charging a defendant with aggravated murder contains 70
a specification of the aggravating circumstance of a prior 71
conviction listed in division (A) (5) of section 2929.04 of the 72
Revised Code, the defendant may elect to have the panel of three 73
judges, if the defendant waives trial by jury, or the trial 74
judge, if the defendant is tried by jury, determine the 75
existence of that aggravating circumstance at the sentencing 76
hearing held pursuant to divisions (C) and (D) of section 77
2929.03 of the Revised Code. 78

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

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

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

(b) If the offender raises the matter of age at trial pursuant to section 2929.023 of the Revised Code and is not found at trial to have been eighteen years of age or older at the time of the commission of the offense or raises the matter of the offender's serious mental illness at the time of the alleged commission of the offense pursuant to section 2929.025 of the Revised Code and is found under that section to be ineligible for a sentence of death due to serious mental illness, conduct a hearing to 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. After conducting the hearing, the panel or judge shall proceed as follows:

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

(ii) If that aggravating circumstance is not proven beyond a reasonable doubt and the defendant at trial was not convicted of any other specification of an aggravating circumstance, except as otherwise provided in this division, the panel or judge shall impose sentence of life imprisonment with parole eligibility after serving twenty years of imprisonment on the offender. If that aggravating circumstance is not proven beyond a reasonable doubt, the defendant at trial was not convicted of any other specification of an aggravating circumstance, the victim of the aggravated murder was less than thirteen years of age, and 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, the panel or judge 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.

(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 139
of judges or the trial judge determines that the specification 140
of the aggravating circumstance of a prior conviction listed in 141
division (A) (5) of section 2929.04 of the Revised Code is proven 142
beyond a reasonable doubt or if they do not determine that the 143
specification is proven beyond a reasonable doubt but the 144
defendant at trial was convicted of a specification of any other 145
aggravating circumstance listed in division (A) of section 146
2929.04 of the Revised Code, the panel of judges or the trial 147
judge and trial jury shall impose sentence on the offender 148
pursuant to division (D) of section 2929.03 and section 2929.04 149
of the Revised Code. If the panel of judges or the trial judge 150
does not determine that the specification of the aggravating 151
circumstance of a prior conviction listed in division (A) (5) of 152
section 2929.04 of the Revised Code is proven beyond a 153
reasonable doubt and the defendant at trial was not convicted of 154
any other specification of an aggravating circumstance listed in 155
division (A) of section 2929.04 of the Revised Code, the panel 156
of judges or the trial judge shall terminate the sentencing 157
hearing and impose sentence on the offender as follows: 158

(1) Subject to division (B) (2) of this section, the panel 159
or judge shall impose a sentence of life imprisonment with 160
parole eligibility after serving twenty years of imprisonment on 161
the offender. 162

(2) If the victim of the aggravated murder was less than 163
thirteen years of age and the offender also is convicted of or 164
pleads guilty to a sexual motivation specification that was 165
included in the indictment, count in the indictment, or 166
information charging the offense, the panel or judge shall 167
sentence the offender pursuant to division (B) (3) of section 168
2971.03 of the Revised Code to an indefinite term consisting of 169

a minimum term of thirty years and a maximum term of life 170
imprisonment. 171

Sec. 2929.024. ~~If (A) In a case described in division (B)~~ 172
~~of this section, if the court determines that the defendant is~~ 173
~~indigent and that investigation services, experts, or other~~ 174
services are reasonably necessary for the proper representation 175
of a defendant charged with aggravated murder at trial or at the 176
sentencing hearing, the court shall authorize the defendant's 177
counsel to obtain the necessary services for the defendant, and 178
shall order that payment of the fees and expenses for the 179
necessary services be made in the same manner that payment for 180
appointed counsel is made pursuant to Chapter 120. of the 181
Revised Code. If the court determines that the necessary 182
services had to be obtained prior to court authorization for 183
payment of the fees and expenses for the necessary services, the 184
court may, after the services have been obtained, authorize the 185
defendant's counsel to obtain the necessary services and order 186
that payment of the fees and expenses for the necessary services 187
be made as provided in this section. 188

(B) Division (A) of this section applies in a case in 189
which either of the following apply: 190

(1) The court determines that the defendant is indigent. 191

(2) The defendant is described in division (C) of section 192
2929.025 of the Revised Code and raises the matter of the 193
defendant's serious mental illness at the time of the alleged 194
commission of the aggravated murder as described in that 195
division. 196

Sec. 2929.025. (A) As used in this section: 197

(1) A person has a "serious mental illness" if both of the 198

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|---|-----|
| <u>following apply with respect to the person, subject to division</u> | 199 |
| <u>(A) (2) of this section:</u> | 200 |
| <u>(a) The person has been diagnosed as described in division</u> | 201 |
| <u>(B) of this section with one or more of the following</u> | 202 |
| <u>conditions:</u> | 203 |
| <u>(i) Schizophrenia;</u> | 204 |
| <u>(ii) Schizoaffective disorder;</u> | 205 |
| <u>(iii) Bipolar disorder;</u> | 206 |
| <u>(iv) Major depressive disorder;</u> | 207 |
| <u>(v) Delusional disorder.</u> | 208 |
| <u>(b) At the time of the alleged aggravated murder with</u> | 209 |
| <u>which the person is charged, the condition or conditions</u> | 210 |
| <u>described in division (A) (1) (a) of this section with which the</u> | 211 |
| <u>person has been diagnosed, while not meeting the standard to be</u> | 212 |
| <u>found not guilty by reason of insanity as defined in section</u> | 213 |
| <u>2901.01 of the Revised Code or the standard to be found</u> | 214 |
| <u>incompetent to stand trial as described in division (G) of</u> | 215 |
| <u>section 2945.37 of the Revised Code, nevertheless significantly</u> | 216 |
| <u>impaired the person's capacity to exercise rational judgment in</u> | 217 |
| <u>relation to the person's conduct with respect to either of the</u> | 218 |
| <u>following:</u> | 219 |
| <u>(i) Conforming the person's conduct to the requirements of</u> | 220 |
| <u>law;</u> | 221 |
| <u>(ii) Appreciating the nature, consequences, or</u> | 222 |
| <u>wrongfulness of the person's conduct.</u> | 223 |
| <u>(2) A disorder manifested primarily by repeated criminal</u> | 224 |
| <u>conduct or attributable solely to the acute effects of voluntary</u> | 225 |

use of alcohol or any other drug of abuse does not, standing 226
alone, constitute a "serious mental illness" for purposes of 227
division (A) (1) of this section. 228

(3) "Examiner" means a person who makes an evaluation 229
ordered under division (F) (1) of this section. 230

(4) "Prosecutor" means a prosecuting attorney who has 231
authority to prosecute a charge of aggravated murder that is 232
before the court. 233

(B) The diagnosis of a person with a condition or 234
conditions described in division (A) (1) (a) of this section may 235
be made at any time prior to, on, or after the day of the 236
alleged aggravated murder with which the person is charged or 237
the day on which the person pursuant to division (C) of this 238
section raises the matter of the person's serious mental illness 239
at the time of the alleged commission of that aggravated murder. 240
Diagnosis of the condition or conditions after the date of the 241
alleged aggravated murder with which the person is charged does 242
not preclude the person from presenting evidence that the person 243
had a serious mental illness at the time of the alleged 244
commission of that offense. 245

(C) A person charged with aggravated murder and one or 246
more specifications of an aggravating circumstance listed in 247
division (A) of section 2929.04 of the Revised Code may, before 248
trial, raise the matter of the person's serious mental illness 249
at the time of the alleged commission of the offense. If a 250
person raises the matter of the person's serious mental illness 251
at the time of the alleged commission of the offense, the court 252
shall order an evaluation of the person in accordance with 253
division (F) of this section and shall hold a pretrial hearing 254
on the matter. The person who raises the matter may present 255

evidence that the person had a serious mental illness at the 256
time of the alleged commission of the offense, and the person 257
has the burden of raising that matter and of going forward with 258
the evidence relating to the diagnosis described in division (A) 259
(1) (a) of this section and the impairment described in division 260
(A) (1) (b) of this section. 261

(D) If a person described in division (C) of this section 262
raises the matter of the person's serious mental illness at the 263
time of the alleged commission of the aggravated murder and 264
submits evidence that the person has been diagnosed with one or 265
more of the conditions set forth in division (A) (1) (a) of this 266
section and that the condition or conditions diagnosed 267
significantly impaired the person's capacity at the time of the 268
alleged offense in a manner described in division (A) (1) (b) of 269
this section, the prosecution shall have an opportunity to 270
present evidence to contest the diagnosis. The defendant has the 271
burden of proving, by a preponderance of the evidence, that the 272
person has been diagnosed with one or more of the conditions set 273
forth in division (A) (1) (a) of this section and that the 274
condition or conditions diagnosed significantly impaired the 275
person's capacity at the time of the alleged offense in a manner 276
described in division (A) (1) (b) of this section. 277

(E) (1) Unless the court at the pretrial hearing finds that 278
the defendant has proved, by a preponderance of the evidence, 279
that the person has been diagnosed with one or more of the 280
conditions set forth in division (A) (1) (a) of this section and 281
that the condition or conditions diagnosed significantly 282
impaired the person's capacity at the time of the alleged 283
offense in a manner described in division (A) (1) (b) of this 284
section, the court shall issue a finding that the person is not 285
ineligible for a sentence of death due to serious mental 286

illness. 287

(2) If the court at the pretrial hearing finds that the 288
defendant has proved, by a preponderance of the evidence, that 289
the person has been diagnosed with one or more of the conditions 290
set forth in division (A) (1) (a) of this section and that the 291
condition or conditions diagnosed significantly impaired the 292
person's capacity at the time of the alleged offense in a manner 293
described in division (A) (1) (b) of this section, the court shall 294
issue a finding that the person is ineligible for a sentence of 295
death due to serious mental illness. 296

(F) (1) If a person described in division (C) of this 297
section raises the matter of the person's serious mental illness 298
at the time of the alleged commission of the aggravated murder 299
as described in that division, the court shall order an 300
evaluation of the person. Section 2929.024 of the Revised Code 301
applies with respect to an evaluation ordered under this 302
division. 303

(2) No statement that a person makes in an evaluation 304
ordered under division (F) (1) of this section or in a pretrial 305
hearing under divisions (C) to (E) of this section relating to 306
the person's serious mental illness at the time of the alleged 307
commission of the aggravated murder with which the person is 308
charged shall be used against the person on the issue of guilt 309
in any criminal action or proceeding, but, in a criminal action 310
or proceeding, the prosecutor or defense counsel may call as a 311
witness any examiner who evaluated the person or prepared a 312
report pursuant to a referral under this section. Neither the 313
appointment nor the testimony of an examiner in an evaluation 314
ordered under division (F) (1) of this section precludes the 315
prosecutor or defense counsel from calling other witnesses or 316

presenting other evidence on the issue of the person's serious 317
mental illness at the time of the alleged commission of the 318
aggravated murder or on competency or insanity issues. 319

(G) A person's pleading of not guilty by reason of 320
insanity or incompetence to stand trial, or a finding after such 321
a plea that the person is not insane or that the person is 322
competent to stand trial, does not preclude the person from 323
raising the matter of the person's serious mental illness at the 324
time of the alleged commission of the offense pursuant to 325
division (C) of this section and, if a person so raises that 326
matter, does not limit or affect any of the procedures described 327
in this section or the authority of a court to make any finding 328
described in this section. 329

Sec. 2929.03. (A) If the indictment or count in the 330
indictment charging aggravated murder does not contain one or 331
more specifications of aggravating circumstances listed in 332
division (A) of section 2929.04 of the Revised Code, then, 333
following a verdict of guilty of the charge of aggravated 334
murder, the trial court shall impose sentence on the offender as 335
follows: 336

(1) Except as provided in division (A) (2) of this section, 337
the trial court shall impose one of the following sentences on 338
the offender: 339

(a) Life imprisonment without parole; 340

(b) Subject to division (A) (1) (e) of this section, life 341
imprisonment with parole eligibility after serving twenty years 342
of imprisonment; 343

(c) Subject to division (A) (1) (e) of this section, life 344
imprisonment with parole eligibility after serving twenty-five 345

full years of imprisonment; 346

(d) Subject to division (A) (1) (e) of this section, life 347
imprisonment with parole eligibility after serving thirty full 348
years of imprisonment; 349

(e) If the victim of the aggravated murder was less than 350
thirteen years of age, the offender also is convicted of or 351
pleads guilty to a sexual motivation specification that was 352
included in the indictment, count in the indictment, or 353
information charging the offense, and the trial court does not 354
impose a sentence of life imprisonment without parole on the 355
offender pursuant to division (A) (1) (a) of this section, the 356
trial court shall sentence the offender pursuant to division (B) 357
(3) of section 2971.03 of the Revised Code to an indefinite term 358
consisting of a minimum term of thirty years and a maximum term 359
of life imprisonment that shall be served pursuant to that 360
section. 361

(2) If the offender also is convicted of or pleads guilty 362
to a sexual motivation specification and a sexually violent 363
predator specification that are included in the indictment, 364
count in the indictment, or information that charged the 365
aggravated murder, the trial court shall impose upon the 366
offender a sentence of life imprisonment without parole that 367
shall be served pursuant to section 2971.03 of the Revised Code. 368

(B) If the indictment or count in the indictment charging 369
aggravated murder contains one or more specifications of 370
aggravating circumstances listed in division (A) of section 371
2929.04 of the Revised Code, the verdict shall separately state 372
~~whether~~ all of the following: 373

(1) Whether the accused is found guilty or not guilty of 374

the principal charge ~~and, if;~~ 375

(2) If guilty of the principal charge, whether the 376
offender was eighteen years of age or older at the time of the 377
commission of the offense, ~~if the matter of age was raised by~~ 378
the offender pursuant to section 2929.023 of the Revised Code, ~~—~~ 379
~~and whether;~~ 380

(3) If guilty of the principal charge, whether the 381
offender was found under section 2929.025 of the Revised Code to 382
be ineligible for a sentence of death due to serious mental 383
illness if the matter of serious mental illness at the time of 384
the commission of the offense was raised by the offender 385
pursuant to that section; 386

(4) If guilty of the principal charge, whether the 387
offender is guilty or not guilty of each specification. ~~The~~ 388

The jury shall be instructed on its duties in this regard. 389
The instruction to the jury shall include an instruction that a 390
specification shall be proved beyond a reasonable doubt in order 391
to support a guilty verdict on the specification, but the 392
instruction shall not mention the penalty that may be the 393
consequence of a guilty or not guilty verdict on any charge or 394
specification. 395

(C) (1) If the indictment or count in the indictment 396
charging aggravated murder contains one or more specifications 397
of aggravating circumstances listed in division (A) of section 398
2929.04 of the Revised Code, then, following a verdict of guilty 399
of the charge but not guilty of each of the specifications, and 400
regardless of whether the offender raised the matter of age 401
pursuant to section 2929.023 of the Revised Code or the matter 402
of serious mental illness at the time of the commission of the 403

offense pursuant to section 2929.025 of the Revised Code, the 404
trial court shall impose sentence on the offender as follows: 405

(a) Except as provided in division (C) (1) (b) of this 406
section, the trial court shall impose one of the following 407
sentences on the offender: 408

(i) Life imprisonment without parole; 409

(ii) Subject to division (C) (1) (a) (v) of this section, 410
life imprisonment with parole eligibility after serving twenty 411
years of imprisonment; 412

(iii) Subject to division (C) (1) (a) (v) of this section, 413
life imprisonment with parole eligibility after serving twenty- 414
five full years of imprisonment; 415

(iv) Subject to division (C) (1) (a) (v) of this section, 416
life imprisonment with parole eligibility after serving thirty 417
full years of imprisonment; 418

(v) If the victim of the aggravated murder was less than 419
thirteen years of age, the offender also is convicted of or 420
pleads guilty to a sexual motivation specification that was 421
included in the indictment, count in the indictment, or 422
information charging the offense, and the trial court does not 423
impose a sentence of life imprisonment without parole on the 424
offender pursuant to division (C) (1) (a) (i) of this section, the 425
trial court shall sentence the offender pursuant to division (B) 426
(3) of section 2971.03 of the Revised Code to an indefinite term 427
consisting of a minimum term of thirty years and a maximum term 428
of life imprisonment. 429

(b) If the offender also is convicted of or pleads guilty 430
to a sexual motivation specification and a sexually violent 431
predator specification that are included in the indictment, 432

count in the indictment, or information that charged the 433
aggravated murder, the trial court shall impose upon the 434
offender a sentence of life imprisonment without parole that 435
shall be served pursuant to section 2971.03 of the Revised Code. 436

(2) (a) If the indictment or count in the indictment 437
contains one or more specifications of aggravating circumstances 438
listed in division (A) of section 2929.04 of the Revised Code 439
and if the offender is found guilty of both the charge and one 440
or more of the specifications, the penalty to be imposed on the 441
offender shall be one of the following: 442

(i) Except as provided in division (C) (2) (a) (ii) or (iii), and subject to divisions (D) (1) and (E) of this section, the 443
penalty to be imposed on the offender shall be death, life 444
imprisonment without parole, life imprisonment with parole 445
eligibility after serving twenty-five full years of 446
imprisonment, or life imprisonment with parole eligibility after 447
serving thirty full years of imprisonment. 448
449

(ii) Except as provided in division (C) (2) (a) (iii) of this 450
section, if the victim of the aggravated murder was less than 451
thirteen years of age, the offender also is convicted of or 452
pleads guilty to a sexual motivation specification that was 453
included in the indictment, count in the indictment, or 454
information charging the offense, and the trial court does not 455
impose a sentence of death or life imprisonment without parole 456
on the offender pursuant to division (C) (2) (a) (i) of this 457
section, the penalty to be imposed on the offender shall be an 458
indefinite term consisting of a minimum term of thirty years and 459
a maximum term of life imprisonment that shall be imposed 460
pursuant to division (B) (3) of section 2971.03 of the Revised 461
Code and served pursuant to that section. 462

(iii) If the offender also is convicted of or pleads 463
guilty to a sexual motivation specification and a sexually 464
violent predator specification that are included in the 465
indictment, count in the indictment, or information that charged 466
the aggravated murder, the penalty to be imposed on the offender 467
shall be death or life imprisonment without parole that shall be 468
served pursuant to section 2971.03 of the Revised Code. 469

(b) A penalty imposed pursuant to division (C) (2) (a) (i), 470
(ii), or (iii) of this section shall be determined pursuant to 471
divisions (D) and (E) of this section and shall be determined by 472
one of the following: 473

(i) By the panel of three judges that tried the offender 474
upon the offender's waiver of the right to trial by jury; 475

(ii) By the trial jury and the trial judge, if the 476
offender was tried by jury. 477

(D) (1) Death may not be imposed as a penalty for 478
aggravated murder if the offender raised the matter of age at 479
trial pursuant to section 2929.023 of the Revised Code and was 480
not found at trial to have been eighteen years of age or older 481
at the time of the commission of the offense or raised the 482
matter of the offender's serious mental illness at the time of 483
the commission of the offense pursuant to section 2929.025 of 484
the Revised Code and was found under that section to be 485
ineligible for a sentence of death due to serious mental 486
illness. When death may be imposed as a penalty for aggravated 487
murder, the court shall proceed under this division. When death 488
may be imposed as a penalty, the court, upon the request of the 489
defendant, shall require a pre-sentence investigation to be made 490
and, upon the request of the defendant, shall require a mental 491
examination to be made, and shall require reports of the 492

investigation and of any mental examination submitted to the 493
court, pursuant to section 2947.06 of the Revised Code. No 494
statement made or information provided by a defendant in a 495
mental examination or proceeding conducted pursuant to this 496
division shall be disclosed to any person, except as provided in 497
this division, or be used in evidence against the defendant on 498
the issue of guilt in any retrial. A pre-sentence investigation 499
or mental examination shall not be made except upon request of 500
the defendant. Copies of any reports prepared under this 501
division shall be furnished to the court, to the trial jury if 502
the offender was tried by a jury, to the prosecutor, and to the 503
offender or the offender's counsel for use under this division. 504
The court, and the trial jury if the offender was tried by a 505
jury, shall consider any report prepared pursuant to this 506
division and furnished to it and any evidence raised at trial 507
that is relevant to the aggravating circumstances the offender 508
was found guilty of committing or to any factors in mitigation 509
of the imposition of the sentence of death, shall hear testimony 510
and other evidence that is relevant to the nature and 511
circumstances of the aggravating circumstances the offender was 512
found guilty of committing, the mitigating factors set forth in 513
division (B) of section 2929.04 of the Revised Code, and any 514
other factors in mitigation of the imposition of the sentence of 515
death, and shall hear the statement, if any, of the offender, 516
and the arguments, if any, of counsel for the defense and 517
prosecution, that are relevant to the penalty that should be 518
imposed on the offender. The defendant shall be given great 519
latitude in the presentation of evidence of the mitigating 520
factors set forth in division (B) of section 2929.04 of the 521
Revised Code and of any other factors in mitigation of the 522
imposition of the sentence of death. If the offender chooses to 523
make a statement, the offender is subject to cross-examination 524

only if the offender consents to make the statement under oath 525
or affirmation. 526

The defendant shall have the burden of going forward with 527
the evidence of any factors in mitigation of the imposition of 528
the sentence of death. The prosecution shall have the burden of 529
proving, by proof beyond a reasonable doubt, that the 530
aggravating circumstances the defendant was found guilty of 531
committing are sufficient to outweigh the factors in mitigation 532
of the imposition of the sentence of death. 533

(2) Upon consideration of the relevant evidence raised at 534
trial, the testimony, other evidence, statement of the offender, 535
arguments of counsel, and, if applicable, the reports submitted 536
pursuant to division (D)(1) of this section, the trial jury, if 537
the offender was tried by a jury, shall determine whether the 538
aggravating circumstances the offender was found guilty of 539
committing are sufficient to outweigh the mitigating factors 540
present in the case. If the trial jury unanimously finds, by 541
proof beyond a reasonable doubt, that the aggravating 542
circumstances the offender was found guilty of committing 543
outweigh the mitigating factors, the trial jury shall recommend 544
to the court that the sentence of death be imposed on the 545
offender. Absent such a finding, the jury shall recommend that 546
the offender be sentenced to one of the following: 547

(a) Except as provided in division (D)(2)(b) or (c) of 548
this section, to life imprisonment without parole, life 549
imprisonment with parole eligibility after serving twenty-five 550
full years of imprisonment, or life imprisonment with parole 551
eligibility after serving thirty full years of imprisonment; 552

(b) Except as provided in division (D)(2)(c) of this 553
section, if the victim of the aggravated murder was less than 554

thirteen years of age, the offender also is convicted of or 555
pleads guilty to a sexual motivation specification that was 556
included in the indictment, count in the indictment, or 557
information charging the offense, and the jury does not 558
recommend a sentence of life imprisonment without parole 559
pursuant to division (D)(2)(a) of this section, to an indefinite 560
term consisting of a minimum term of thirty years and a maximum 561
term of life imprisonment to be imposed pursuant to division (B) 562
(3) of section 2971.03 of the Revised Code and served pursuant 563
to that section. 564

(c) If the offender also is convicted of or pleads guilty 565
to a sexual motivation specification and a sexually violent 566
predator specification that are included in the indictment, 567
count in the indictment, or information that charged the 568
aggravated murder, to life imprisonment without parole. 569

If the trial jury recommends that the offender be 570
sentenced to life imprisonment without parole, life imprisonment 571
with parole eligibility after serving twenty-five full years of 572
imprisonment, life imprisonment with parole eligibility after 573
serving thirty full years of imprisonment, or an indefinite term 574
consisting of a minimum term of thirty years and a maximum term 575
of life imprisonment to be imposed pursuant to division (B)(3) 576
of section 2971.03 of the Revised Code, the court shall impose 577
the sentence recommended by the jury upon the offender. If the 578
sentence is an indefinite term consisting of a minimum term of 579
thirty years and a maximum term of life imprisonment imposed as 580
described in division (D)(2)(b) of this section or a sentence of 581
life imprisonment without parole imposed under division (D)(2) 582
(c) of this section, the sentence shall be served pursuant to 583
section 2971.03 of the Revised Code. If the trial jury 584
recommends that the sentence of death be imposed upon the 585

offender, the court shall proceed to impose sentence pursuant to 586
division (D) (3) of this section. 587

(3) Upon consideration of the relevant evidence raised at 588
trial, the testimony, other evidence, statement of the offender, 589
arguments of counsel, and, if applicable, the reports submitted 590
to the court pursuant to division (D) (1) of this section, if, 591
after receiving pursuant to division (D) (2) of this section the 592
trial jury's recommendation that the sentence of death be 593
imposed, the court finds, by proof beyond a reasonable doubt, or 594
if the panel of three judges unanimously finds, by proof beyond 595
a reasonable doubt, that the aggravating circumstances the 596
offender was found guilty of committing outweigh the mitigating 597
factors, it shall impose sentence of death on the offender. 598
Absent such a finding by the court or panel, the court or the 599
panel shall impose one of the following sentences on the 600
offender: 601

(a) Except as provided in division (D) (3) (b) of this 602
section, one of the following: 603

(i) Life imprisonment without parole; 604

(ii) Subject to division (D) (3) (a) (iv) of this section, 605
life imprisonment with parole eligibility after serving twenty- 606
five full years of imprisonment; 607

(iii) Subject to division (D) (3) (a) (iv) of this section, 608
life imprisonment with parole eligibility after serving thirty 609
full years of imprisonment; 610

(iv) If the victim of the aggravated murder was less than 611
thirteen years of age, the offender also is convicted of or 612
pleads guilty to a sexual motivation specification that was 613
included in the indictment, count in the indictment, or 614

information charging the offense, and the trial court does not 615
impose a sentence of life imprisonment without parole on the 616
offender pursuant to division (D) (3) (a) (i) of this section, the 617
court or panel shall sentence the offender pursuant to division 618
(B) (3) of section 2971.03 of the Revised Code to an indefinite 619
term consisting of a minimum term of thirty years and a maximum 620
term of life imprisonment. 621

(b) If the offender also is convicted of or pleads guilty 622
to a sexual motivation specification and a sexually violent 623
predator specification that are included in the indictment, 624
count in the indictment, or information that charged the 625
aggravated murder, life imprisonment without parole that shall 626
be served pursuant to section 2971.03 of the Revised Code. 627

(E) If the offender ~~raised the matter of age at trial~~ 628
~~pursuant to section 2929.023 of the Revised Code,~~ was convicted 629
of aggravated murder and one or more specifications of an 630
aggravating circumstance listed in division (A) of section 631
2929.04 of the Revised Code, and if the offender either raised 632
the matter of age at trial pursuant to section 2929.023 of the 633
Revised Code and was not found at trial to have been eighteen 634
years of age or older at the time of the commission of the 635
offense or raised the matter of the offender's serious mental 636
illness at the time of the commission of the offense pursuant to 637
section 2929.025 of the Revised Code and was found under that 638
section to be ineligible for a sentence of death due to serious 639
mental illness, the court or the panel of three judges shall not 640
impose a sentence of death on the offender. Instead, the court 641
or panel shall impose one of the following sentences on the 642
offender: 643

(1) Except as provided in division (E) (2) of this section, 644

one of the following: 645

(a) Life imprisonment without parole; 646

(b) Subject to division (E) ~~(2)~~ (1) (d) of this section, life 647
imprisonment with parole eligibility after serving twenty-five 648
full years of imprisonment; 649

(c) Subject to division (E) ~~(2)~~ (1) (d) of this section, life 650
imprisonment with parole eligibility after serving thirty full 651
years of imprisonment; 652

(d) If the victim of the aggravated murder was less than 653
thirteen years of age, the offender also is convicted of or 654
pleads guilty to a sexual motivation specification that was 655
included in the indictment, count in the indictment, or 656
information charging the offense, and the trial court does not 657
impose a sentence of life imprisonment without parole on the 658
offender pursuant to division (E) ~~(2)~~ (1) (a) of this section, the 659
court or panel shall sentence the offender pursuant to division 660
(B) (3) of section 2971.03 of the Revised Code to an indefinite 661
term consisting of a minimum term of thirty years and a maximum 662
term of life imprisonment. 663

(2) If the offender also is convicted of or pleads guilty 664
to a sexual motivation specification and a sexually violent 665
predator specification that are included in the indictment, 666
count in the indictment, or information that charged the 667
aggravated murder, life imprisonment without parole that shall 668
be served pursuant to section 2971.03 of the Revised Code. 669

(F) The court or the panel of three judges, when it 670
imposes sentence of death, shall state in a separate opinion its 671
specific findings as to the existence of any of the mitigating 672
factors set forth in division (B) of section 2929.04 of the 673

Revised Code, the existence of any other mitigating factors, the 674
aggravating circumstances the offender was found guilty of 675
committing, and the reasons why the aggravating circumstances 676
the offender was found guilty of committing were sufficient to 677
outweigh the mitigating factors. The court or panel, when it 678
imposes life imprisonment or an indefinite term consisting of a 679
minimum term of thirty years and a maximum term of life 680
imprisonment under division (D) of this section, shall state in 681
a separate opinion its specific findings of which of the 682
mitigating factors set forth in division (B) of section 2929.04 683
of the Revised Code it found to exist, what other mitigating 684
factors it found to exist, what aggravating circumstances the 685
offender was found guilty of committing, and why it could not 686
find that these aggravating circumstances were sufficient to 687
outweigh the mitigating factors. For cases in which a sentence 688
of death is imposed for an offense committed before January 1, 689
1995, the court or panel shall file the opinion required to be 690
prepared by this division with the clerk of the appropriate 691
court of appeals and with the clerk of the supreme court within 692
fifteen days after the court or panel imposes sentence. For 693
cases in which a sentence of death is imposed for an offense 694
committed on or after January 1, 1995, the court or panel shall 695
file the opinion required to be prepared by this division with 696
the clerk of the supreme court within fifteen days after the 697
court or panel imposes sentence. The judgment in a case in which 698
a sentencing hearing is held pursuant to this section is not 699
final until the opinion is filed. 700

(G) (1) Whenever the court or a panel of three judges 701
imposes a sentence of death for an offense committed before 702
January 1, 1995, the clerk of the court in which the judgment is 703
rendered shall make and retain a copy of the entire record in 704

the case, and shall deliver the original of the entire record in 705
the case to the appellate court. 706

(2) Whenever the court or a panel of three judges imposes 707
a sentence of death for an offense committed on or after January 708
1, 1995, the clerk of the court in which the judgment is 709
rendered shall make and retain a copy of the entire record in 710
the case, and shall deliver the original of the entire record in 711
the case to the supreme court. 712

Sec. 2929.04. (A) Imposition of the death penalty for 713
aggravated murder is precluded unless one or more of the 714
following is specified in the indictment or count in the 715
indictment pursuant to section 2941.14 of the Revised Code and 716
proved beyond a reasonable doubt: 717

(1) The offense was the assassination of the president of 718
the United States or a person in line of succession to the 719
presidency, the governor or lieutenant governor of this state, 720
the president-elect or vice president-elect of the United 721
States, the governor-elect or lieutenant governor-elect of this 722
state, or a candidate for any of the offices described in this 723
division. For purposes of this division, a person is a candidate 724
if the person has been nominated for election according to law, 725
if the person has filed a petition or petitions according to law 726
to have the person's name placed on the ballot in a primary or 727
general election, or if the person campaigns as a write-in 728
candidate in a primary or general election. 729

(2) The offense was committed for hire. 730

(3) The offense was committed for the purpose of escaping 731
detection, apprehension, trial, or punishment for another 732
offense committed by the offender. 733

(4) The offense was committed while the offender was under 734
detention or while the offender was at large after having broken 735
detention. As used in division (A)(4) of this section, 736
"detention" has the same meaning as in section 2921.01 of the 737
Revised Code, except that detention does not include 738
hospitalization, institutionalization, or confinement in a 739
mental health facility or intellectual disabilities facility 740
unless at the time of the commission of the offense either of 741
the following circumstances apply: 742

(a) The offender was in the facility as a result of being 743
charged with a violation of a section of the Revised Code. 744

(b) The offender was under detention as a result of being 745
convicted of or pleading guilty to a violation of a section of 746
the Revised Code. 747

(5) Prior to the offense at bar, the offender was 748
convicted of an offense an essential element of which was the 749
purposeful killing of or attempt to kill another, or the offense 750
at bar was part of a course of conduct involving the purposeful 751
killing of or attempt to kill two or more persons by the 752
offender. 753

(6) The victim of the offense was a law enforcement 754
officer, as defined in section 2911.01 of the Revised Code, whom 755
the offender had reasonable cause to know or knew to be a law 756
enforcement officer as so defined, and either the victim, at the 757
time of the commission of the offense, was engaged in the 758
victim's duties, or it was the offender's specific purpose to 759
kill a law enforcement officer as so defined. 760

(7) The offense was committed while the offender was 761
committing, attempting to commit, or fleeing immediately after 762

committing or attempting to commit kidnapping, rape, aggravated 763
arson, aggravated robbery, or aggravated burglary, and either 764
the offender was the principal offender in the commission of the 765
aggravated murder or, if not the principal offender, committed 766
the aggravated murder with prior calculation and design. 767

(8) The victim of the aggravated murder was a witness to 768
an offense who was purposely killed to prevent the victim's 769
testimony in any criminal proceeding and the aggravated murder 770
was not committed during the commission, attempted commission, 771
or flight immediately after the commission or attempted 772
commission of the offense to which the victim was a witness, or 773
the victim of the aggravated murder was a witness to an offense 774
and was purposely killed in retaliation for the victim's 775
testimony in any criminal proceeding. 776

(9) The offender, in the commission of the offense, 777
purposefully caused the death of another who was under thirteen 778
years of age at the time of the commission of the offense, and 779
either the offender was the principal offender in the commission 780
of the offense or, if not the principal offender, committed the 781
offense with prior calculation and design. 782

(10) The offense was committed while the offender was 783
committing, attempting to commit, or fleeing immediately after 784
committing or attempting to commit terrorism. 785

(B) If one or more of the aggravating circumstances listed 786
in division (A) of this section is specified in the indictment 787
or count in the indictment and proved beyond a reasonable doubt, 788
~~and~~ if the offender did not raise the matter of age pursuant to 789
section 2929.023 of the Revised Code or ~~if~~ the offender, after 790
raising ~~the~~ that ~~matter of age,~~ was found at trial to have been 791
eighteen years of age or older at the time of the commission of 792

the offense, and if the offender did not raise the matter of the 793
offender's serious mental illness at the time of the commission 794
of the offense pursuant to section 2929.025 of the Revised Code 795
or the offender after raising that matter was found by the court 796
to not be ineligible for a sentence of death, the court, trial 797
jury, or panel of three judges shall consider, and weigh against 798
the aggravating circumstances proved beyond a reasonable doubt, 799
the nature and circumstances of the offense, the history, 800
character, and background of the offender, and all of the 801
following factors: 802

(1) Whether the victim of the offense induced or 803
facilitated it; 804

(2) Whether it is unlikely that the offense would have 805
been committed, but for the fact that the offender was under 806
duress, coercion, or strong provocation; 807

(3) Whether, at the time of committing the offense, the 808
offender, because of a mental disease or defect, lacked 809
substantial capacity to appreciate the criminality of the 810
offender's conduct or to conform the offender's conduct to the 811
requirements of the law; 812

(4) The youth of the offender; 813

(5) The offender's lack of a significant history of prior 814
criminal convictions and delinquency adjudications; 815

(6) If the offender was a participant in the offense but 816
not the principal offender, the degree of the offender's 817
participation in the offense and the degree of the offender's 818
participation in the acts that led to the death of the victim; 819

(7) Any other factors that are relevant to the issue of 820
whether the offender should be sentenced to death. 821

(C) The defendant shall be given great latitude in the 822
presentation of evidence of the factors listed in division (B) 823
of this section and of any other factors in mitigation of the 824
imposition of the sentence of death. 825

The existence of any of the mitigating factors listed in 826
division (B) of this section does not preclude the imposition of 827
a sentence of death on the offender but shall be weighed 828
pursuant to divisions (D) (2) and (3) of section 2929.03 of the 829
Revised Code by the trial court, trial jury, or the panel of 830
three judges against the aggravating circumstances the offender 831
was found guilty of committing. 832

Sec. 2929.06. (A) (1) If a sentence of death imposed upon 833
an offender is set aside, nullified, ~~or vacated because the, or~~ 834
voided for any of the following reasons, the trial court that 835
sentenced the offender shall conduct a hearing to resentence the 836
offender in accordance with division (A) (2) of this section: 837

(a) The court of appeals, in a case in which a sentence of 838
death was imposed for an offense committed before January 1, 839
1995, or the supreme court, in ~~cases~~ a case in which the supreme 840
court reviews the sentence upon appeal, could not affirm the 841
sentence of death under the standards imposed by section 2929.05 842
of the Revised Code, ~~is set aside, nullified, or vacated for~~ 843
~~the.~~ 844

(b) The sole reason that the statutory procedure for 845
imposing the sentence of death that is set forth in sections 846
2929.03 and 2929.04 of the Revised Code is unconstitutional 7. 847

(c) The sentence of death is set aside, nullified, or 848
vacated pursuant to division (C) of section 2929.05 of the 849
Revised Code, ~~or is set aside, nullified, or vacated because a.~~ 850

(d) A court has determined that the offender is a person 851
with an intellectual disability under standards set forth in 852
decisions of the supreme court of this state or the United 853
States supreme court, ~~the trial court that sentenced the~~ 854
~~offender shall conduct a hearing to resentence the offender.~~ 855

(e) The sentence of death is voided by a court pursuant to 856
division (H) of section 2953.21 of the Revised Code. 857

(2) At the a resentencing hearing conducted under division 858
(A)(1) of this section, the court shall impose upon the offender 859
a sentence of life imprisonment or an indefinite term consisting 860
of a minimum term of thirty years and a maximum term of life 861
imprisonment that is determined as specified in this division. 862
If division (D) of section 2929.03 of the Revised Code, at the 863
time the offender committed the aggravated murder for which the 864
sentence of death was imposed, required the imposition when a 865
sentence of death was not imposed of a sentence of life 866
imprisonment without parole or a sentence of an indefinite term 867
consisting of a minimum term of thirty years and a maximum term 868
of life imprisonment to be imposed pursuant to division (A) or 869
(B) (3) of section 2971.03 of the Revised Code and served 870
pursuant to that section, the court shall impose the sentence so 871
required. In all other cases, the sentences of life imprisonment 872
that are available at the hearing, and from which the court 873
shall impose sentence, shall be the same sentences of life 874
imprisonment that were available under division (D) of section 875
2929.03 or under section 2909.24 of the Revised Code at the time 876
the offender committed the offense for which the sentence of 877
death was imposed. Nothing in this division regarding the 878
resentencing of an offender shall affect the operation of 879
section 2971.03 of the Revised Code. 880

(B) Whenever any court of this state or any federal court 881
sets aside, nullifies, or vacates a sentence of death imposed 882
upon an offender because of error that occurred in the 883
sentencing phase of the trial and if division (A) of this 884
section does not apply, the trial court that sentenced the 885
offender shall conduct a new hearing to resentence the offender. 886
If the offender was tried by a jury, the trial court shall 887
impanel a new jury for the hearing. If the offender was tried by 888
a panel of three judges, that panel or, if necessary, a new 889
panel of three judges shall conduct the hearing. At the hearing, 890
the court or panel shall follow the procedure set forth in 891
division (D) of section 2929.03 of the Revised Code in 892
determining whether to impose upon the offender a sentence of 893
death, a sentence of life imprisonment, or an indefinite term 894
consisting of a minimum term of thirty years and a maximum term 895
of life imprisonment. If, pursuant to that procedure, the court 896
or panel determines that it will impose a sentence other than a 897
sentence of death, the court or panel shall impose upon the 898
offender one of the sentences of life imprisonment that could 899
have been imposed at the time the offender committed the offense 900
for which the sentence of death was imposed, determined as 901
specified in this division, or an indefinite term consisting of 902
a minimum term of thirty years and a maximum term of life 903
imprisonment that is determined as specified in this division. 904
If division (D) of section 2929.03 of the Revised Code, at the 905
time the offender committed the aggravated murder for which the 906
sentence of death was imposed, required the imposition when a 907
sentence of death was not imposed of a sentence of life 908
imprisonment without parole or a sentence of an indefinite term 909
consisting of a minimum term of thirty years and a maximum term 910
of life imprisonment to be imposed pursuant to division (A) or 911
(B) (3) of section 2971.03 of the Revised Code and served 912

pursuant to that section, the court or panel shall impose the 913
sentence so required. In all other cases, the sentences of life 914
imprisonment that are available at the hearing, and from which 915
the court or panel shall impose sentence, shall be the same 916
sentences of life imprisonment that were available under 917
division (D) of section 2929.03 or under section 2909.24 of the 918
Revised Code at the time the offender committed the offense for 919
which the sentence of death was imposed. 920

(C) If a sentence of life imprisonment without parole 921
imposed upon an offender pursuant to section 2929.021 or 2929.03 922
of the Revised Code is set aside, nullified, or vacated for the 923
sole reason that the statutory procedure for imposing the 924
sentence of life imprisonment without parole that is set forth 925
in sections 2929.03 and 2929.04 of the Revised Code is 926
unconstitutional, the trial court that sentenced the offender 927
shall conduct a hearing to resentence the offender to life 928
imprisonment with parole eligibility after serving twenty-five 929
full years of imprisonment or to life imprisonment with parole 930
eligibility after serving thirty full years of imprisonment. 931

(D) Nothing in this section limits or restricts the rights 932
of the state to appeal any order setting aside, nullifying, or 933
vacating a conviction or sentence of death, when an appeal of 934
that nature otherwise would be available. 935

(E) This section, as amended by H.B. 184 of the 125th 936
general assembly, shall apply to all offenders who have been 937
sentenced to death for an aggravated murder that was committed 938
on or after October 19, 1981, or for terrorism that was 939
committed on or after May 15, 2002. This section, as amended by 940
H.B. 184 of the 125th general assembly, shall apply equally to 941
all such offenders sentenced to death prior to, on, or after 942

March 23, 2005, including offenders who, on March 23, 2005, are 943
challenging their sentence of death and offenders whose sentence 944
of death has been set aside, nullified, or vacated by any court 945
of this state or any federal court but who, as of March 23, 946
2005, have not yet been resentenced. 947

Sec. 2953.21. (A) (1) (a) A person in any of the following 948
categories may file a petition in the court that imposed 949
sentence, stating the grounds for relief relied upon, and asking 950
the court to vacate or set aside the judgment or sentence or to 951
grant other appropriate relief: 952

(i) Any person who has been convicted of a criminal 953
offense or adjudicated a delinquent child and who claims that 954
there was such a denial or infringement of the person's rights 955
as to render the judgment void or voidable under the Ohio 956
Constitution or the Constitution of the United States, ~~any;~~ 957

(ii) Any person who has been convicted of a criminal 958
offense and sentenced to death and who claims that there was a 959
denial or infringement of the person's rights under either of 960
those Constitutions that creates a reasonable probability of an 961
altered verdict, ~~and any;~~ 962

(iii) Any person who has been convicted of a criminal 963
offense that is a felony and who is an offender for whom DNA 964
testing that was performed under sections 2953.71 to 2953.81 of 965
the Revised Code or under former section 2953.82 of the Revised 966
Code and analyzed in the context of and upon consideration of 967
all available admissible evidence related to the person's case 968
as described in division (D) of section 2953.74 of the Revised 969
Code provided results that establish, by clear and convincing 970
evidence, actual innocence of that felony offense or, if the 971
person was sentenced to death, establish, by clear and 972

convincing evidence, actual innocence of the aggravating 973
circumstance or circumstances the person was found guilty of 974
committing and that is or are the basis of that sentence of 975
death, ~~may file a petition in the court that imposed sentence,~~ 976
~~stating the grounds for relief relied upon, and asking the court~~ 977
~~to vacate or set aside the judgment or sentence or to grant~~ 978
~~other appropriate relief;~~ 979

(iv) Any person who has been convicted of aggravated 980
murder and sentenced to death for the offense and who claims 981
that the person had a serious mental illness at the time of the 982
commission of the offense and that as a result the court should 983
render void the sentence of death. 984

~~The~~ (b) A petitioner under division (A) (1) (a) of this 985
section may file a supporting affidavit and other documentary 986
evidence in support of the claim for relief. 987

~~(b) (c)~~ As used in division (A) (1) (a) of this section, 988
"actual: 989

(i) "Actual innocence" means that, had the results of the 990
DNA testing conducted under sections 2953.71 to 2953.81 of the 991
Revised Code or under former section 2953.82 of the Revised Code 992
been presented at trial, and had those results been analyzed in 993
the context of and upon consideration of all available 994
admissible evidence related to the person's case as described in 995
division (D) of section 2953.74 of the Revised Code, no 996
reasonable factfinder would have found the petitioner guilty of 997
the offense of which the petitioner was convicted, or, if the 998
person was sentenced to death, no reasonable factfinder would 999
have found the petitioner guilty of the aggravating circumstance 1000
or circumstances the petitioner was found guilty of committing 1001
and that is or are the basis of that sentence of death. 1002

(ii) "Serious mental illness" has the same meaning as in 1003
section 2929.025 of the Revised Code. 1004

~~(c)~~(d) As used in divisions (A) (1) (a) and ~~(b)~~(c) of this 1005
section, "former section 2953.82 of the Revised Code" means 1006
section 2953.82 of the Revised Code as it existed prior to July 1007
6, 2010. 1008

~~(d)~~(e) At any time in conjunction with the filing of a 1009
petition for postconviction relief under division (A) of this 1010
section by a person who has been sentenced to death, or with the 1011
litigation of a petition so filed, the court, for good cause 1012
shown, may authorize the petitioner in seeking the 1013
postconviction relief and the prosecuting attorney of the county 1014
served by the court in defending the proceeding, to take 1015
depositions and to issue subpoenas and subpoenas duces tecum in 1016
accordance with divisions (A) (1) ~~(d)~~(e), (A) (1) ~~(e)~~(f), and (C) of 1017
this section, and to any other form of discovery as in a civil 1018
action that the court in its discretion permits. The court may 1019
limit the extent of discovery under this division. In addition 1020
to discovery that is relevant to the claim and was available 1021
under Criminal Rule 16 through conclusion of the original 1022
criminal trial, the court, for good cause shown, may authorize 1023
the petitioner or prosecuting attorney to take depositions and 1024
issue subpoenas and subpoenas duces tecum in either of the 1025
following circumstances: 1026

(i) For any witness who testified at trial or who was 1027
disclosed by the state prior to trial, except as otherwise 1028
provided in this division, the petitioner or prosecuting 1029
attorney shows clear and convincing evidence that the witness is 1030
material and that a deposition of the witness or the issuing of 1031
a subpoena or subpoena duces tecum is of assistance in order to 1032

substantiate or refute the petitioner's claim that there is a 1033
reasonable probability of an altered verdict. This division does 1034
not apply if the witness was unavailable for trial or would not 1035
voluntarily be interviewed by the defendant or prosecuting 1036
attorney. 1037

(ii) For any witness with respect to whom division (A) (1) 1038
~~(d)~~ (e) (i) of this section does not apply, the petitioner or 1039
prosecuting attorney shows good cause that the witness is 1040
material and that a deposition of the witness or the issuing of 1041
a subpoena or subpoena duces tecum is of assistance in order to 1042
substantiate or refute the petitioner's claim that there is a 1043
reasonable probability of an altered verdict. 1044

~~(e)~~ (f) If a person who has been sentenced to death and who 1045
files a petition for postconviction relief under division (A) of 1046
this section requests postconviction discovery as described in 1047
division (A) (1) ~~(d)~~ (e) of this section or if the prosecuting 1048
attorney of the county served by the court requests 1049
postconviction discovery as described in that division, within 1050
ten days after the docketing of the request, or within any other 1051
time that the court sets for good cause shown, the prosecuting 1052
attorney shall respond by answer or motion to the petitioner's 1053
request or the petitioner shall respond by answer or motion to 1054
the prosecuting attorney's request, whichever is applicable. 1055

~~(f)~~ (g) If a person who has been sentenced to death and who 1056
files a petition for postconviction relief under division (A) of 1057
this section requests postconviction discovery as described in 1058
division (A) (1) ~~(d)~~ (e) of this section or if the prosecuting 1059
attorney of the county served by the court requests 1060
postconviction discovery as described in that division, upon 1061
motion by the petitioner, the prosecuting attorney, or the 1062

person from whom discovery is sought, and for good cause shown, 1063
the court in which the action is pending may make any order that 1064
justice requires to protect a party or person from oppression or 1065
undue burden or expense, including but not limited to the orders 1066
described in divisions (A) (1) ~~(g)~~ (h) (i) to (viii) of this 1067
section. The court also may make any such order if, in its 1068
discretion, it determines that the discovery sought would be 1069
irrelevant to the claims made in the petition; and if the court 1070
makes any such order on that basis, it shall explain in the 1071
order the reasons why the discovery would be irrelevant. 1072

~~(g)~~ (h) If a petitioner, prosecuting attorney, or person 1073
from whom discovery is sought makes a motion for an order under 1074
division (A) (1) ~~(f)~~ (g) of this section and the order is denied in 1075
whole or in part, the court, on terms and conditions as are 1076
just, may order that any party or person provide or permit 1077
discovery as described in division (A) (1) ~~(d)~~ (e) of this section. 1078
The provisions of Civil Rule 37(A) (4) apply to the award of 1079
expenses incurred in relation to the motion, except that in no 1080
case shall a court require a petitioner who is indigent to pay 1081
expenses under those provisions. 1082

Before any person moves for an order under division (A) (1) 1083
~~(f)~~ (g) of this section, that person shall make a reasonable 1084
effort to resolve the matter through discussion with the 1085
petitioner or prosecuting attorney seeking discovery. A motion 1086
for an order under division (A) (1) ~~(f)~~ (g) of this section shall 1087
be accompanied by a statement reciting the effort made to 1088
resolve the matter in accordance with this paragraph. 1089

The orders that may be made under division (A) (1) ~~(f)~~ (g) of 1090
this section include, but are not limited to, any of the 1091
following: 1092

- (i) That the discovery not be had; 1093
- (ii) That the discovery may be had only on specified terms 1094
and conditions, including a designation of the time or place; 1095
- (iii) That the discovery may be had only by a method of 1096
discovery other than that selected by the party seeking 1097
discovery; 1098
- (iv) That certain matters not be inquired into or that the 1099
scope of the discovery be limited to certain matters; 1100
- (v) That discovery be conducted with no one present except 1101
persons designated by the court; 1102
- (vi) That a deposition after being sealed be opened only 1103
by order of the court; 1104
- (vii) That a trade secret or other confidential research, 1105
development, or commercial information not be disclosed or be 1106
disclosed only in a designated way; 1107
- (viii) That the parties simultaneously file specified 1108
documents or information enclosed in sealed envelopes to be 1109
opened as directed by the court. 1110
- ~~(h)~~ (i) Any postconviction discovery authorized under 1111
division (A) (1) ~~(d)~~ (e) of this section shall be completed not 1112
later than eighteen months after the start of the discovery 1113
proceedings unless, for good cause shown, the court extends that 1114
period for completing the discovery. 1115
- ~~(i)~~ (j) Nothing in division (A) (1) ~~(d)~~ (e) of this section 1116
authorizes, or shall be construed as authorizing, the 1117
relitigation, or discovery in support of relitigation, of any 1118
matter barred by the doctrine of res judicata. 1119

~~(j)~~(k) Division (A) (1) of this section does not apply to 1120
any person who has been convicted of a criminal offense and 1121
sentenced to death and who has unsuccessfully raised the same 1122
claims in a petition for postconviction relief. 1123

(2) (a) Except as otherwise provided in section 2953.23 of 1124
the Revised Code, a petition under division (A) (1) (a) (i), (ii), 1125
or (iii) of this section shall be filed no later than three 1126
hundred sixty-five days after the date on which the trial 1127
transcript is filed in the court of appeals in the direct appeal 1128
of the judgment of conviction or adjudication or, if the direct 1129
appeal involves a sentence of death, the date on which the trial 1130
transcript is filed in the supreme court. If no appeal is taken, 1131
except as otherwise provided in section 2953.23 of the Revised 1132
Code, the petition shall be filed no later than three hundred 1133
sixty-five days after the expiration of the time for filing the 1134
appeal. 1135

(b) Except as otherwise provided in section 2953.23 of the 1136
Revised Code, a petition under division (A) (1) (a) (iv) of this 1137
section shall be filed not later than three hundred sixty-five 1138
days after the effective date of this amendment. 1139

(3) In a petition filed under division (A) (1) (a) (i), (ii), 1140
or (iii) of this section, a person who has been sentenced to 1141
death may ask the court to render void or voidable the judgment 1142
with respect to the conviction of aggravated murder or the 1143
specification of an aggravating circumstance or the sentence of 1144
death. A person sentenced to death who files a petition under 1145
division (A) (1) (a) (iv) of this section may ask the court to 1146
render void the sentence of death and to order the resentencing 1147
of the person under division (A) of section 2929.06 of the 1148
Revised Code. 1149

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

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

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

prosecuting attorney may respond by an answer or motion that 1181
exceeds the limit specified for the response. 1182

(B) The clerk of the court in which the petition for 1183
postconviction relief and, if applicable, a request for 1184
postconviction discovery described in division (A) (1) ~~(d)~~ (e) of 1185
this section is filed shall docket the petition and the request 1186
and bring them promptly to the attention of the court. The clerk 1187
of the court in which the petition for postconviction relief 1188
and, if applicable, a request for postconviction discovery 1189
described in division (A) (1) ~~(d)~~ (e) of this section is filed 1190
immediately shall forward a copy of the petition and a copy of 1191
the request if filed by the petitioner to the prosecuting 1192
attorney of the county served by the court. If the request for 1193
postconviction discovery is filed by the prosecuting attorney, 1194
the clerk of the court immediately shall forward a copy of the 1195
request to the petitioner or the petitioner's counsel. 1196

(C) If a person who has been sentenced to death and who 1197
files a petition for postconviction relief under division (A) (1) 1198
(a) (i), (ii), (iii), or (iv) of this section requests a 1199
deposition or the prosecuting attorney in the case requests a 1200
deposition, and if the court grants the request under division 1201
(A) (1) ~~(d)~~ (e) of this section, the court shall notify the 1202
petitioner or the petitioner's counsel and the prosecuting 1203
attorney. The deposition shall be conducted pursuant to 1204
divisions (B), (D), and (E) of Criminal Rule 15. Notwithstanding 1205
division (C) of Criminal Rule 15, the petitioner is not entitled 1206
to attend the deposition. The prosecuting attorney shall be 1207
permitted to attend and participate in any deposition. 1208

(D) The court shall consider a petition that is timely 1209
filed ~~under~~ within the period specified in division (A) (2) of 1210

this section even if a direct appeal of the judgment is pending. 1211
Before granting a hearing on a petition filed under division (A) 1212
(1)(a)(i), (ii), (iii), or (iv) of this section, the court shall 1213
determine whether there are substantive grounds for relief. In 1214
making such a determination, the court shall consider, in 1215
addition to the petition, the supporting affidavits, and the 1216
documentary evidence, all the files and records pertaining to 1217
the proceedings against the petitioner, including, but not 1218
limited to, the indictment, the court's journal entries, the 1219
journalized records of the clerk of the court, and the court 1220
reporter's transcript. The court reporter's transcript, if 1221
ordered and certified by the court, shall be taxed as court 1222
costs. If the court dismisses the petition, it shall make and 1223
file findings of fact and conclusions of law with respect to 1224
such dismissal. If the petition was filed by a person who has 1225
been sentenced to death, the findings of fact and conclusions of 1226
law shall state specifically the reasons for the dismissal of 1227
the petition and of each claim it contains. 1228

(E) Within ten days after the docketing of the petition, 1229
or within any further time that the court may fix for good cause 1230
shown, the prosecuting attorney shall respond by answer or 1231
motion. Division (A)(6) of this section applies with respect to 1232
the prosecuting attorney's response. Within twenty days from the 1233
date the issues are raised, either party may move for summary 1234
judgment. The right to summary judgment shall appear on the face 1235
of the record. 1236

(F) Unless the petition and the files and records of the 1237
case show the petitioner is not entitled to relief, the court 1238
shall proceed to a prompt hearing on the issues even if a direct 1239
appeal of the case is pending. If the court notifies the parties 1240
that it has found grounds for granting relief, either party may 1241

request an appellate court in which a direct appeal of the 1242
judgment is pending to remand the pending case to the court. 1243

With respect to a petition filed under division (A) (1) (a) 1244
(iv) of this section, the procedures and rules regarding 1245
introduction of evidence and burden of proof at the pretrial 1246
hearing that are set forth in divisions (C), (D), and (F) of 1247
section 2929.025 of the Revised Code apply in considering the 1248
petition. With respect to such a petition, the grounds for 1249
granting relief are that the person has been diagnosed with one 1250
or more of the conditions set forth in division (A) (1) (a) of 1251
section 2929.025 of the Revised Code and that, at the time of 1252
the aggravated murder that was the basis of the sentence of 1253
death, the condition or conditions significantly impaired the 1254
person's capacity in a manner described in division (A) (1) (b) of 1255
that section. 1256

(G) A petitioner who files a petition under division (A) 1257
(1) (a) (i), (ii), (iii), or (iv) of this section may amend the 1258
petition as follows: 1259

(1) If the petition was filed by a person who has been 1260
sentenced to death, at any time that is not later than one 1261
hundred eighty days after the petition is filed, the petitioner 1262
may amend the petition with or without leave or prejudice to the 1263
proceedings. 1264

(2) If division (G) (1) of this section does not apply, at 1265
any time before the answer or motion is filed, the petitioner 1266
may amend the petition with or without leave or prejudice to the 1267
proceedings. 1268

(3) The petitioner may amend the petition with leave of 1269
court at any time after the expiration of the applicable period 1270

specified in division (G) (1) or (2) of this section. 1271

(H) If the court does not find grounds for granting 1272
relief, it shall make and file findings of fact and conclusions 1273
of law and shall enter judgment denying relief on the petition. 1274
If the petition was filed by a person who has been sentenced to 1275
death, the findings of fact and conclusions of law shall state 1276
specifically the reasons for the denial of relief on the 1277
petition and of each claim it contains. If no direct appeal of 1278
the case is pending and the court finds grounds for relief or if 1279
a pending direct appeal of the case has been remanded to the 1280
court pursuant to a request made pursuant to division (F) of 1281
this section and the court finds grounds for granting relief, it 1282
shall make and file findings of fact and conclusions of law and 1283
shall enter a judgment that vacates and sets aside the judgment 1284
in question, and, in the case of a petitioner who is a prisoner 1285
in custody, except as otherwise described in this division, 1286
shall discharge or resentence the petitioner or grant a new 1287
trial as the court determines appropriate. If the court finds 1288
grounds for relief in the case of a petitioner who filed a 1289
petition under division (A) (1) (a) (iv) of this section, the court 1290
shall render void the sentence of death and order the 1291
resentencing of the offender under division (A) of section 1292
2929.06 of the Revised Code. If the petitioner has been 1293
sentenced to death, the findings of fact and conclusions of law 1294
shall state specifically the reasons for the finding of grounds 1295
for granting the relief, with respect to each claim contained in 1296
the petition. The court also may make supplementary orders to 1297
the relief granted, concerning such matters as rearraignment, 1298
retrial, custody, and bail. If the trial court's order granting 1299
the petition is reversed on appeal and if the direct appeal of 1300
the case has been remanded from an appellate court pursuant to a 1301

request under division (F) of this section, the appellate court 1302
reversing the order granting the petition shall notify the 1303
appellate court in which the direct appeal of the case was 1304
pending at the time of the remand of the reversal and remand of 1305
the trial court's order. Upon the reversal and remand of the 1306
trial court's order granting the petition, regardless of whether 1307
notice is sent or received, the direct appeal of the case that 1308
was remanded is reinstated. 1309

(I) Upon the filing of a petition pursuant to division (A) 1310
(1)(a)(i), (ii), (iii), or (iv) of this section by a person 1311
sentenced to death, only the supreme court may stay execution of 1312
the sentence of death. 1313

(J) (1) If a person sentenced to death intends to file a 1314
petition under this section, the court shall appoint counsel to 1315
represent the person upon a finding that the person is indigent 1316
and that the person either accepts the appointment of counsel or 1317
is unable to make a competent decision whether to accept or 1318
reject the appointment of counsel. The court may decline to 1319
appoint counsel for the person only upon a finding, after a 1320
hearing if necessary, that the person rejects the appointment of 1321
counsel and understands the legal consequences of that decision 1322
or upon a finding that the person is not indigent. 1323

(2) The court shall not appoint as counsel under division 1324
(J) (1) of this section an attorney who represented the 1325
petitioner at trial in the case to which the petition relates 1326
unless the person and the attorney expressly request the 1327
appointment. The court shall appoint as counsel under division 1328
(J) (1) of this section only an attorney who is certified under 1329
Rule 20 of the Rules of Superintendence for the Courts of Ohio 1330
to represent indigent defendants charged with or convicted of an 1331

offense for which the death penalty can be or has been imposed. 1332
The ineffectiveness or incompetence of counsel during 1333
proceedings under this section does not constitute grounds for 1334
relief in a proceeding under this section, in an appeal of any 1335
action under this section, or in an application to reopen a 1336
direct appeal. 1337

(3) Division (J) of this section does not preclude 1338
attorneys who represent the state of Ohio from invoking the 1339
provisions of 28 U.S.C. 154 with respect to capital cases that 1340
were pending in federal habeas corpus proceedings prior to July 1341
1, 1996, insofar as the petitioners in those cases were 1342
represented in proceedings under this section by one or more 1343
counsel appointed by the court under this section or section 1344
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 1345
appointed counsel meet the requirements of division (J) (2) of 1346
this section. 1347

(K) Subject to the appeal of a sentence for a felony that 1348
is authorized by section 2953.08 of the Revised Code, the remedy 1349
set forth in this section is the exclusive remedy by which a 1350
person may bring a collateral challenge to the validity of a 1351
conviction or sentence in a criminal case or to the validity of 1352
an adjudication of a child as a delinquent child for the 1353
commission of an act that would be a criminal offense if 1354
committed by an adult or the validity of a related order of 1355
disposition. 1356

Sec. 2953.23. (A) Whether a hearing is or is not held on a 1357
petition filed pursuant to section 2953.21 of the Revised Code, 1358
a court may not entertain a petition filed after the expiration 1359
of the period prescribed in division (A) of that section or a 1360
second petition or successive petitions for similar relief on 1361

behalf of a petitioner unless division (A) (1) or (2) of this 1362
section applies: 1363

(1) Both of the following apply: 1364

(a) Either the petitioner shows that the petitioner was 1365
unavoidably prevented from discovery of the facts upon which the 1366
petitioner must rely to present the claim for relief, or, 1367
subsequent to the period prescribed in division (A) (2) of 1368
section 2953.21 of the Revised Code or to the filing of an 1369
earlier petition, the United States Supreme Court recognized a 1370
new federal or state right that applies retroactively to persons 1371
in the petitioner's situation, and the petition asserts a claim 1372
based on that right. 1373

(b) The petitioner shows by clear and convincing evidence 1374
that, but for constitutional error at trial, no reasonable 1375
factfinder would have found the petitioner guilty of the offense 1376
of which the petitioner was convicted or, if the claim 1377
challenges a sentence of death that, but for constitutional 1378
error at the sentencing hearing, no reasonable factfinder would 1379
have found the petitioner eligible for the death sentence. 1380

(2) The petitioner was convicted of a felony, the 1381
petitioner is an offender for whom DNA testing was performed 1382
under sections 2953.71 to 2953.81 of the Revised Code or under 1383
former section 2953.82 of the Revised Code and analyzed in the 1384
context of and upon consideration of all available admissible 1385
evidence related to the inmate's case as described in division 1386
(D) of section 2953.74 of the Revised Code, and the results of 1387
the DNA testing establish, by clear and convincing evidence, 1388
actual innocence of that felony offense or, if the person was 1389
sentenced to death, establish, by clear and convincing evidence, 1390
actual innocence of the aggravating circumstance or 1391

circumstances the person was found guilty of committing and that 1392
is or are the basis of that sentence of death. 1393

As used in this division, "actual innocence" has the same 1394
meaning as in division (A) (1) ~~(b)~~ (c) of section 2953.21 of the 1395
Revised Code, and "former section 2953.82 of the Revised Code" 1396
has the same meaning as in division (A) (1) ~~(e)~~ (d) of section 1397
2953.21 of the Revised Code. 1398

(B) An order awarding or denying relief sought in a 1399
petition filed pursuant to section 2953.21 of the Revised Code 1400
is a final judgment and may be appealed pursuant to Chapter 1401
2953. of the Revised Code. 1402

If a petition filed pursuant to section 2953.21 of the 1403
Revised Code by a person who has been sentenced to death is 1404
denied and the person appeals the judgment, notwithstanding any 1405
law or court rule to the contrary, there is no limit on the 1406
number of pages in, or on the length of, a notice of appeal or 1407
briefs related to an appeal filed by the person. If any court 1408
rule specifies a limit on the number of pages in, or on the 1409
length of, a notice of appeal or briefs described in this 1410
division or on a prosecuting attorney's response or briefs with 1411
respect to such an appeal and a person who has been sentenced to 1412
death files a notice of appeal or briefs that exceed the limit 1413
specified for the petition, the prosecuting attorney may file a 1414
response or briefs that exceed the limit specified for the 1415
answer or briefs. 1416

Section 2. That existing sections 2929.02, 2929.022, 1417
2929.024, 2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 of the 1418
Revised Code are hereby repealed. 1419

Section 3. Notwithstanding section 1.50 of the Revised 1420

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|---|------|
| Code, if any provision of a section as amended or enacted by | 1421 |
| this act is determined to be unconstitutional or otherwise | 1422 |
| invalid in a final judgment by a court of last resort, the | 1423 |
| remainder of the enactments and amendments made in Section 1 of | 1424 |
| this act are void. | 1425 |