

As Introduced

131st General Assembly

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S. B. No. 139

Senators Seitz, Williams

Cosponsors: Senators Tavares, Brown, LaRose, Eklund

A BILL

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

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

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

Sec. 2929.03. (A) If the indictment or count in the
indictment charging aggravated murder does not contain one or
more specifications of aggravating circumstances listed in

division (A) of section 2929.04 of the Revised Code, then, 20
following a verdict of guilty of the charge of aggravated 21
murder, the trial court shall impose sentence on the offender as 22
follows: 23

(1) Except as provided in division (A)(2) of this section, 24
the trial court shall impose one of the following sentences on 25
the offender: 26

(a) Life imprisonment without parole; 27

(b) Subject to division (A)(1)(e) of this section, life 28
imprisonment with parole eligibility after serving twenty years 29
of imprisonment; 30

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

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

(e) If the victim of the aggravated murder was less than 37
thirteen years of age, the offender also is convicted of or 38
pleads guilty to a sexual motivation specification that was 39
included in the indictment, count in the indictment, or 40
information charging the offense, and the trial court does not 41
impose a sentence of life imprisonment without parole on the 42
offender pursuant to division (A)(1)(a) of this section, the 43
trial court shall sentence the offender pursuant to division (B) 44
(3) of section 2971.03 of the Revised Code to an indefinite term 45
consisting of a minimum term of thirty years and a maximum term 46
of life imprisonment that shall be served pursuant to that 47
section. 48

(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 aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, the verdict shall separately state whether the accused is found guilty or not guilty of the principal charge and, if guilty of the principal charge, whether the offender was eighteen years of age or older at the time of the commission of the offense, if the matter of age was raised by the offender pursuant to section 2929.023 of the Revised Code, and whether the offender is guilty or not guilty of each specification. The jury shall be instructed on its duties in this regard. The instruction to the jury shall include an instruction that a specification shall be proved beyond a reasonable doubt in order to support a guilty verdict on the specification, but the instruction shall not mention the penalty that may be the consequence of a guilty or not guilty verdict on any charge or specification.

(C) (1) If the indictment or count in the indictment charging aggravated murder contains one or more specifications of aggravating circumstances listed in division (A) of section 2929.04 of the Revised Code, then, following a verdict of guilty of the charge but not guilty of each of the specifications, and regardless of whether the offender raised the matter of age pursuant to section 2929.023 of the Revised Code, the trial

court shall impose sentence on the offender as follows: 80

(a) Except as provided in division (C) (1) (b) of this 81
section, the trial court shall impose one of the following 82
sentences on the offender: 83

(i) Life imprisonment without parole; 84

(ii) Subject to division (C) (1) (a) (v) of this section, 85
life imprisonment with parole eligibility after serving twenty 86
years of imprisonment; 87

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

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

(v) If the victim of the aggravated murder was less than 94
thirteen years of age, the offender also is convicted of or 95
pleads guilty to a sexual motivation specification that was 96
included in the indictment, count in the indictment, or 97
information charging the offense, and the trial court does not 98
impose a sentence of life imprisonment without parole on the 99
offender pursuant to division (C) (1) (a) (i) of this section, the 100
trial court shall sentence the offender pursuant to division (B) 101
(3) of section 2971.03 of the Revised Code to an indefinite term 102
consisting of a minimum term of thirty years and a maximum term 103
of life imprisonment. 104

(b) If the offender also is convicted of or pleads guilty 105
to a sexual motivation specification and a sexually violent 106
predator specification that are included in the indictment, 107
count in the indictment, or information that charged the 108

aggravated murder, the trial court shall impose upon the 109
offender a sentence of life imprisonment without parole that 110
shall be served pursuant to section 2971.03 of the Revised Code. 111

(2) (a) If the indictment or count in the indictment 112
contains one or more specifications of aggravating circumstances 113
listed in division (A) of section 2929.04 of the Revised Code 114
and if the offender is found guilty of both the charge and one 115
or more of the specifications, the penalty to be imposed on the 116
offender shall be one of the following: 117

(i) Except as provided in division (C) (2) (a) (ii) or (iii) 118
of this section, the penalty to be imposed on the offender shall 119
be death, life imprisonment without parole, life imprisonment 120
with parole eligibility after serving twenty-five full years of 121
imprisonment, or life imprisonment with parole eligibility after 122
serving thirty full years of imprisonment. 123

(ii) Except as provided in division (C) (2) (a) (iii) of this 124
section, if the victim of the aggravated murder was less than 125
thirteen years of age, the offender also is convicted of or 126
pleads guilty to a sexual motivation specification that was 127
included in the indictment, count in the indictment, or 128
information charging the offense, and the trial court does not 129
impose a sentence of death or life imprisonment without parole 130
on the offender pursuant to division (C) (2) (a) (i) of this 131
section, the penalty to be imposed on the offender shall be an 132
indefinite term consisting of a minimum term of thirty years and 133
a maximum term of life imprisonment that shall be imposed 134
pursuant to division (B) (3) of section 2971.03 of the Revised 135
Code and served pursuant to that section. 136

(iii) If the offender also is convicted of or pleads 137
guilty to a sexual motivation specification and a sexually 138

violent predator specification that are included in the 139
indictment, count in the indictment, or information that charged 140
the aggravated murder, the penalty to be imposed on the offender 141
shall be death or life imprisonment without parole that shall be 142
served pursuant to section 2971.03 of the Revised Code. 143

(b) A penalty imposed pursuant to division (C) (2) (a) (i), 144
(ii), or (iii) of this section shall be determined pursuant to 145
divisions (D) and (E) of this section and shall be determined by 146
one of the following: 147

(i) By the panel of three judges that tried the offender 148
upon the offender's waiver of the right to trial by jury; 149

(ii) By the trial jury and the trial judge, if the 150
offender was tried by jury. 151

(D) (1) Death may not be imposed as a penalty for 152
aggravated murder if the offender raised the matter of age at 153
trial pursuant to section 2929.023 of the Revised Code and was 154
not found at trial to have been eighteen years of age or older 155
at the time of the commission of the offense. When death may be 156
imposed as a penalty for aggravated murder, the court shall 157
proceed under this division. When death may be imposed as a 158
penalty, the court, upon the request of the defendant, shall 159
require a pre-sentence investigation to be made and, upon the 160
request of the defendant, shall require a mental examination to 161
be made, and shall require reports of the investigation and of 162
any mental examination submitted to the court, pursuant to 163
section 2947.06 of the Revised Code. No statement made or 164
information provided by a defendant in a mental examination or 165
proceeding conducted pursuant to this division shall be 166
disclosed to any person, except as provided in this division, or 167
be used in evidence against the defendant on the issue of guilt 168

in any retrial. A pre-sentence investigation or mental 169
examination shall not be made except upon request of the 170
defendant. Copies of any reports prepared under this division 171
shall be furnished to the court, to the trial jury if the 172
offender was tried by a jury, to the prosecutor, and to the 173
offender or the offender's counsel for use under this division. 174
The court, and the trial jury if the offender was tried by a 175
jury, shall consider any report prepared pursuant to this 176
division and furnished to it and any evidence raised at trial 177
that is relevant to the aggravating circumstances the offender 178
was found guilty of committing or to any factors in mitigation 179
of the imposition of the sentence of death, shall hear testimony 180
and other evidence that is relevant to the nature and 181
circumstances of the aggravating circumstances the offender was 182
found guilty of committing, the mitigating factors set forth in 183
division (B) of section 2929.04 of the Revised Code, and any 184
other factors in mitigation of the imposition of the sentence of 185
death, and shall hear the statement, if any, of the offender, 186
and the arguments, if any, of counsel for the defense and 187
prosecution, that are relevant to the penalty that should be 188
imposed on the offender. The defendant shall be given great 189
latitude in the presentation of evidence of the mitigating 190
factors set forth in division (B) of section 2929.04 of the 191
Revised Code and of any other factors in mitigation of the 192
imposition of the sentence of death. If the offender chooses to 193
make a statement, the offender is subject to cross-examination 194
only if the offender consents to make the statement under oath 195
or affirmation. 196

The defendant shall have the burden of going forward with 197
the evidence of any factors in mitigation of the imposition of 198
the sentence of death. The prosecution shall have the burden of 199

proving, by proof beyond a reasonable doubt, that the 200
aggravating circumstances the defendant was found guilty of 201
committing are sufficient to outweigh the factors in mitigation 202
of the imposition of the sentence of death. 203

(2) Upon consideration of the relevant evidence raised at 204
trial, the testimony, other evidence, statement of the offender, 205
arguments of counsel, and, if applicable, the reports submitted 206
pursuant to division (D)(1) of this section, the trial jury, if 207
the offender was tried by a jury, shall determine whether the 208
aggravating circumstances the offender was found guilty of 209
committing are sufficient to outweigh the mitigating factors 210
present in the case. If the trial jury unanimously finds, by 211
proof beyond a reasonable doubt, that the aggravating 212
circumstances the offender was found guilty of committing 213
outweigh the mitigating factors, the trial jury shall recommend 214
to the court that the sentence of death be imposed on the 215
offender. Absent such a finding, the jury shall recommend that 216
the offender be sentenced to one of the following: 217

(a) Except as provided in division (D)(2)(b) or (c) of 218
this section, to life imprisonment without parole, life 219
imprisonment with parole eligibility after serving twenty-five 220
full years of imprisonment, or life imprisonment with parole 221
eligibility after serving thirty full years of imprisonment; 222

(b) Except as provided in division (D)(2)(c) of this 223
section, if the victim of the aggravated murder was less than 224
thirteen years of age, the offender also is convicted of or 225
pleads guilty to a sexual motivation specification that was 226
included in the indictment, count in the indictment, or 227
information charging the offense, and the jury does not 228
recommend a sentence of life imprisonment without parole 229

pursuant to division (D) (2) (a) of this section, to an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B) (3) of section 2971.03 of the Revised Code and served pursuant to that section.

(c) 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, to life imprisonment without parole.

If the trial jury recommends that the offender be sentenced to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five full years of imprisonment, life imprisonment with parole eligibility after serving thirty full years of imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (B) (3) of section 2971.03 of the Revised Code, the court shall impose the sentence recommended by the jury upon the offender. If the sentence is an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment imposed as described in division (D) (2) (b) of this section or a sentence of life imprisonment without parole imposed under division (D) (2) (c) of this section, the sentence shall be served pursuant to section 2971.03 of the Revised Code. If the trial jury recommends that the sentence of death be imposed upon the offender, the court shall proceed to impose sentence pursuant to division (D) (3) of this section.

(3) Upon consideration of the relevant evidence raised at trial, the testimony, other evidence, statement of the offender,

arguments of counsel, and, if applicable, the reports submitted 260
to the court pursuant to division (D)(1) of this section, if, 261
after receiving pursuant to division (D)(2) of this section the 262
trial jury's recommendation that the sentence of death be 263
imposed, the court finds, by proof beyond a reasonable doubt, or 264
if the panel of three judges unanimously finds, by proof beyond 265
a reasonable doubt, that the aggravating circumstances the 266
offender was found guilty of committing outweigh the mitigating 267
factors, it shall impose sentence of death on the offender. 268
Absent such a finding by the court or panel, the court or the 269
panel shall impose one of the following sentences on the 270
offender: 271

(a) Except as provided in division (D)(3)(b) of this 272
section, one of the following: 273

(i) Life imprisonment without parole; 274

(ii) Subject to division (D)(3)(a)(iv) of this section, 275
life imprisonment with parole eligibility after serving twenty- 276
five full years of imprisonment; 277

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

(iv) If the victim of the aggravated murder was less than 281
thirteen years of age, the offender also is convicted of or 282
pleads guilty to a sexual motivation specification that was 283
included in the indictment, count in the indictment, or 284
information charging the offense, and the trial court does not 285
impose a sentence of life imprisonment without parole on the 286
offender pursuant to division (D)(3)(a)(i) of this section, the 287
court or panel shall sentence the offender pursuant to division 288

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

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

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

(a) Life imprisonment without parole;

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

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

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

thirteen years of age, the offender also is convicted of or 318
pleads guilty to a sexual motivation specification that was 319
included in the indictment, count in the indictment, or 320
information charging the offense, and the trial court does not 321
impose a sentence of life imprisonment without parole on the 322
offender pursuant to division (E) (2) (a) of this section, the 323
court or panel shall sentence the offender pursuant to division 324
(B) (3) of section 2971.03 of the Revised Code to an indefinite 325
term consisting of a minimum term of thirty years and a maximum 326
term of life imprisonment. 327

(2) If the offender also is convicted of or pleads guilty 328
to a sexual motivation specification and a sexually violent 329
predator specification that are included in the indictment, 330
count in the indictment, or information that charged the 331
aggravated murder, life imprisonment without parole that shall 332
be served pursuant to section 2971.03 of the Revised Code. 333

(F) The court or the panel of three judges, when it 334
imposes sentence of death, shall state in a separate opinion its 335
specific findings as to the existence of any of the mitigating 336
factors set forth in division (B) of section 2929.04 of the 337
Revised Code, the existence of any other mitigating factors, the 338
aggravating circumstances the offender was found guilty of 339
committing, and the reasons why the aggravating circumstances 340
the offender was found guilty of committing were sufficient to 341
outweigh the mitigating factors. The court or panel, when it 342
imposes life imprisonment or an indefinite term consisting of a 343
minimum term of thirty years and a maximum term of life 344
imprisonment under division (D) of this section, shall state in 345
a separate opinion its specific findings of which of the 346
mitigating factors set forth in division (B) of section 2929.04 347
of the Revised Code it found to exist, what other mitigating 348

factors it found to exist, what aggravating circumstances the offender was found guilty of committing, and why it could not find that these aggravating circumstances were sufficient to outweigh the mitigating factors. For cases in which a sentence of death is imposed for an offense committed before January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the appropriate court of appeals and with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. For cases in which a sentence of death is imposed for an offense committed on or after January 1, 1995, the court or panel shall file the opinion required to be prepared by this division with the clerk of the supreme court within fifteen days after the court or panel imposes sentence. The judgment in a case in which a sentencing hearing is held pursuant to this section is not final until the opinion is filed.

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

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

Sec. 2953.21. (A) (1) (a) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who

claims that there was ~~such~~ a denial or infringement of the 379
person's rights ~~as to render the judgment void or voidable~~ under 380
the Ohio Constitution or the Constitution of the United States 381
that creates a reasonable probability of an altered verdict, and 382
any person who has been convicted of a criminal offense that is 383
a felony and who is an offender for whom DNA testing that was 384
performed under sections 2953.71 to 2953.81 of the Revised Code 385
or under former section 2953.82 of the Revised Code and analyzed 386
in the context of and upon consideration of all available 387
admissible evidence related to the person's case as described in 388
division (D) of section 2953.74 of the Revised Code provided 389
results that establish, by clear and convincing evidence, actual 390
innocence of that felony offense or, if the person was sentenced 391
to death, establish, by clear and convincing evidence, actual 392
innocence of the aggravating circumstance or circumstances the 393
person was found guilty of committing and that is or are the 394
basis of that sentence of death, may file a petition in the 395
court that imposed sentence, stating the grounds for relief 396
relied upon, and asking the court to vacate or set aside the 397
judgment or sentence or to grant other appropriate relief. The 398
petitioner may file a supporting affidavit and other documentary 399
evidence in support of the claim for relief. 400

(b) As used in division (A) (1) (a) of this section, "actual 401
innocence" means that, had the results of the DNA testing 402
conducted under sections 2953.71 to 2953.81 of the Revised Code 403
or under former section 2953.82 of the Revised Code been 404
presented at trial, and had those results been analyzed in the 405
context of and upon consideration of all available admissible 406
evidence related to the person's case as described in division 407
(D) of section 2953.74 of the Revised Code, no reasonable 408
factfinder would have found the petitioner guilty of the offense 409

of which the petitioner was convicted, or, if the person was 410
sentenced to death, no reasonable factfinder would have found 411
the petitioner guilty of the aggravating circumstance or 412
circumstances the petitioner was found guilty of committing and 413
that is or are the basis of that sentence of death. 414

(c) As used in divisions (A) (1) (a) and (b) of this 415
section, "former section 2953.82 of the Revised Code" means 416
section 2953.82 of the Revised Code as it existed prior to July 417
6, 2010. 418

(d) At any time prior to or in conjunction with the filing 419
of a petition for postconviction relief under division (A) of 420
this section, or with the litigation of a petition so filed, the 421
petitioner is entitled to discovery in seeking the 422
postconviction relief. In addition to discovery provided by 423
Criminal Rule 16, if the petition alleges a constitutional 424
denial or infringement of rights that creates a reasonable 425
probability of an altered verdict, the petitioner is entitled to 426
depositions and the right to issue subpoenas in either of the 427
following circumstances: 428

(i) For any witness who testified at trial or who was 429
disclosed by the state prior to trial, except as otherwise 430
provided in this division, the petitioner shows clear and 431
convincing evidence that the witness is material and that a 432
deposition of the witness or the issuing of a subpoena is of 433
assistance in order to substantiate the petitioner's claim that 434
there is a reasonable probability of an altered verdict. This 435
division does not apply if the witness was unavailable for trial 436
or would not voluntarily be interviewed by the defendant. 437

(ii) For any witness with respect to whom division (A) (1) 438
(d) (i) of this section does not apply, the petitioner shows good 439

cause that the witness is material and that a deposition of the 440
witness or the issuing of a subpoena is of assistance in order 441
to substantiate the petitioner's claim that there is a 442
reasonable probability of an altered verdict. 443

(e) If a person who files a petition for postconviction 444
relief under division (A) of this section requests 445
postconviction discovery, within ten days after the docketing of 446
the request, or within any other time that the court sets for 447
good cause shown, the prosecuting attorney shall respond by 448
answer or motion. 449

(2) Except as otherwise provided in section 2953.23 of the 450
Revised Code, a petition under division (A) (1) of this section 451
shall be filed no later than three hundred sixty-five days after 452
the date on which the trial transcript is filed in the court of 453
appeals in the direct appeal of the judgment of conviction or 454
adjudication or, if the direct appeal involves a sentence of 455
death, the date on which the trial transcript is filed in the 456
supreme court. If no appeal is taken, except as otherwise 457
provided in section 2953.23 of the Revised Code, the petition 458
shall be filed no later than three hundred sixty-five days after 459
the expiration of the time for filing the appeal. 460

(3) In a petition filed under division (A) of this 461
section, a person who has been sentenced to death may ask the 462
court to render void or voidable the judgment with respect to 463
the conviction of aggravated murder or the specification of an 464
aggravating circumstance or the sentence of death. 465

(4) A petitioner shall state in the original or amended 466
petition filed under division (A) of this section all grounds 467
for relief claimed by the petitioner. Except as provided in 468
section 2953.23 of the Revised Code, any ground for relief that 469

is not so stated in the petition is waived. 470

(5) If the petitioner in a petition filed under division 471
(A) of this section was convicted of or pleaded guilty to a 472
felony, the petition may include a claim that the petitioner was 473
denied the equal protection of the laws in violation of the Ohio 474
Constitution or the United States Constitution because the 475
sentence imposed upon the petitioner for the felony was part of 476
a consistent pattern of disparity in sentencing by the judge who 477
imposed the sentence, with regard to the petitioner's race, 478
gender, ethnic background, or religion. If the supreme court 479
adopts a rule requiring a court of common pleas to maintain 480
information with regard to an offender's race, gender, ethnic 481
background, or religion, the supporting evidence for the 482
petition shall include, but shall not be limited to, a copy of 483
that type of information relative to the petitioner's sentence 484
and copies of that type of information relative to sentences 485
that the same judge imposed upon other persons. 486

(6) Notwithstanding any law or court rule to the contrary, 487
there is no limit on the number of pages in, or on the length 488
of, a petition filed under division (A) of this section by a 489
person who has been sentenced to death. 490

(B) The clerk of the court in which a request for 491
postconviction discovery and the petition for postconviction 492
relief is filed shall docket the request and the petition and 493
bring ~~it~~them promptly to the attention of the court. The clerk 494
of the court in which a request for postconviction discovery and 495
the petition for postconviction relief is filed immediately 496
shall forward a copy of the request and a copy of the petition 497
to the prosecuting attorney of ~~that~~the county served by the 498
court. 499

(C) If a person who files a petition for postconviction relief under division (A) of this section requests a deposition and the court grants the request under division (A) (1) (d) 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) through (E) of Criminal Rule 15. The prosecuting attorney shall be permitted to attend and participate in any deposition. 500
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(D) The court shall consider a petition that is timely filed under 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) 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. 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. 508
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~~(D)~~ (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. Within twenty days from the date the issues are raised, either party may move for summary judgment. The 526
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right to summary judgment shall appear on the face of the 531
record. 532

~~(E)~~ (F) Unless the petition and the files and records of 533
the case show the petitioner is not entitled to relief, the 534
court shall proceed to a prompt hearing on the issues even if a 535
direct appeal of the case is pending. If the court notifies the 536
parties that it has found grounds for granting relief, either 537
party may request an appellate court in which a direct appeal of 538
the judgment is pending to remand the pending case to the court. 539

~~(F)~~ (G) At any time before the answer or motion is filed, 540
the petitioner may amend the petition with or without leave or 541
prejudice to the proceedings. The petitioner may amend the 542
petition with leave of court at any time thereafter. 543

~~(G)~~ (H) If the court does not find grounds for granting 544
relief, it shall make and file findings of fact and conclusions 545
of law and shall enter judgment denying relief on the petition. 546
The findings of fact and conclusions of law shall state 547
specifically the reasons for the denial of relief on the 548
petition and of each claim it contains. If no direct appeal of 549
the case is pending and the court finds grounds for relief or if 550
a pending direct appeal of the case has been remanded to the 551
court pursuant to a request made pursuant to division ~~(E)~~ (F) of 552
this section and the court finds grounds for granting relief, it 553
shall make and file findings of fact and conclusions of law and 554
shall enter a judgment that vacates and sets aside the judgment 555
in question, and, in the case of a petitioner who is a prisoner 556
in custody, shall discharge or resentence the petitioner or 557
grant a new trial as the court determines appropriate. The 558
findings of fact and conclusions of law shall state specifically 559
the reasons for the finding of grounds for granting the relief, 560

with respect to each claim contained in the petition. The court 561
also may make supplementary orders to the relief granted, 562
concerning such matters as rearraignment, retrial, custody, and 563
bail. If the trial court's order granting the petition is 564
reversed on appeal and if the direct appeal of the case has been 565
remanded from an appellate court pursuant to a request under 566
division ~~(E)~~(F) of this section, the appellate court reversing 567
the order granting the petition shall notify the appellate court 568
in which the direct appeal of the case was pending at the time 569
of the remand of the reversal and remand of the trial court's 570
order. Upon the reversal and remand of the trial court's order 571
granting the petition, regardless of whether notice is sent or 572
received, the direct appeal of the case that was remanded is 573
reinstated. 574

~~(H)~~(I) Upon the filing of a petition pursuant to division 575
(A) of this section by a person sentenced to death, only the 576
supreme court may stay execution of the sentence of death. 577

~~(I)~~(J) (1) If a person sentenced to death intends to file a 578
petition under this section, the court shall appoint counsel to 579
represent the person upon a finding that the person is indigent 580
and that the person either accepts the appointment of counsel or 581
is unable to make a competent decision whether to accept or 582
reject the appointment of counsel. The court may decline to 583
appoint counsel for the person only upon a finding, after a 584
hearing if necessary, that the person rejects the appointment of 585
counsel and understands the legal consequences of that decision 586
or upon a finding that the person is not indigent. 587

(2) The court shall not appoint as counsel under division 588
~~(I)~~(J) (1) of this section an attorney who represented the 589
petitioner at trial in the case to which the petition relates 590

unless the person and the attorney expressly request the 591
appointment. The court shall appoint as counsel under division 592
~~(I)~~(J) (1) of this section only an attorney who is certified 593
under Rule 20 of the Rules of Superintendence for the Courts of 594
Ohio to represent indigent defendants charged with or convicted 595
of an offense for which the death penalty can be or has been 596
imposed. The ineffectiveness or incompetence of counsel during 597
proceedings under this section does not constitute grounds for 598
relief in a proceeding under this section, in an appeal of any 599
action under this section, or in an application to reopen a 600
direct appeal. 601

(3) Division ~~(I)~~(J) of this section does not preclude 602
attorneys who represent the state of Ohio from invoking the 603
provisions of 28 U.S.C. 154 with respect to capital cases that 604
were pending in federal habeas corpus proceedings prior to July 605
1, 1996, insofar as the petitioners in those cases were 606
represented in proceedings under this section by one or more 607
counsel appointed by the court under this section or section 608
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 609
appointed counsel meet the requirements of division ~~(I)~~(J) (2) of 610
this section. 611

~~(J)~~(K) Subject to the appeal of a sentence for a felony 612
that is authorized by section 2953.08 of the Revised Code, the 613
remedy set forth in this section is the exclusive remedy by 614
which a person may bring a collateral challenge to the validity 615
of a conviction or sentence in a criminal case or to the 616
validity of an adjudication of a child as a delinquent child for 617
the commission of an act that would be a criminal offense if 618
committed by an adult or the validity of a related order of 619
disposition. 620

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

(1) Both of the following apply:

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

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

(2) The petitioner was convicted of a felony, the petitioner is an offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division

(D) of section 2953.74 of the Revised Code, and the results of 651
the DNA testing establish, by clear and convincing evidence, 652
actual innocence of that felony offense or, if the person was 653
sentenced to death, establish, by clear and convincing evidence, 654
actual innocence of the aggravating circumstance or 655
circumstances the person was found guilty of committing and that 656
is or are the basis of that sentence of death. 657

As used in this division, "actual innocence" has the same 658
meaning as in division (A) (1) (b) of section 2953.21 of the 659
Revised Code, and "former section 2953.82 of the Revised Code" 660
has the same meaning as in division (A) (1) (c) of section 2953.21 661
of the Revised Code. 662

(B) An order awarding or denying relief sought in a 663
petition filed pursuant to section 2953.21 of the Revised Code 664
is a final judgment and may be appealed pursuant to Chapter 665
2953. of the Revised Code. If a petition filed pursuant to 666
section 2953.21 of the Revised Code by a person who has been 667
sentenced to death is denied and the person appeals the 668
judgment, notwithstanding any law or court rule to the contrary, 669
there is no limit on the number of pages in, or on the length 670
of, a notice of appeal or petition related to an appeal filed by 671
the person. 672

Section 2. That existing sections 2929.03, 2953.21, and 673
2953.23 of the Revised Code are hereby repealed. 674