

As Introduced

134th General Assembly

Regular Session

2021-2022

H. B. No. 738

Representatives Leland, Hicks-Hudson

Cosponsors: Representatives Kelly, Ingram, Addison, Smith, K., Lightbody, Humphrey, Upchurch, Davis, Miranda, Weinstein, Liston, Blackshear, Brown, Miller, J., Sobecki, Lepore-Hagan, Boggs, Sheehy, Brent, Robinson, West

A BILL

To amend sections 181.25, 2929.06, 2953.21, and 1
2953.23 and to enact sections 181.26 and 2953.85 2
of the Revised Code to make changes to the law 3
regarding postconviction relief proceedings and 4
to establish the Ohio Innocence Commission. 5

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

Section 1. That sections 181.25, 2929.06, 2953.21, and 6
2953.23 be amended and sections 181.26 and 2953.85 of the 7
Revised Code be enacted to read as follows: 8

Sec. 181.25. (A) If the comprehensive criminal sentencing 9
structure that it recommends to the general assembly pursuant to 10
section 181.24 of the Revised Code or any aspects of that 11
sentencing structure are enacted into law, the state criminal 12
sentencing commission shall do all of the following: 13

(1) Assist the general assembly in the implementation of 14
those aspects of the sentencing structure that are enacted into 15
law; 16

(2) Monitor the operation of the aspects of the sentencing structure that are enacted into law and report to the general assembly no later than January 1, 1997, and biennially thereafter, on all of the following matters:

(a) The impact of the sentencing structure in effect on and after July 1, 1996, on political subdivisions and other relevant aspects of local government in this state, including all of the following information:

(i) The number and type of offenders who were being imprisoned in a state correctional institution under the law in effect prior to July 1, 1996, but who are being punished under a community control sanction, as defined in section 2929.01 of the Revised Code, under the law in effect on and after July 1, 1996;

(ii) The fiscal and other impact of the law in effect on and after July 1, 1996, on political subdivisions and other relevant aspects of local government in this state, including law enforcement agencies, the court system, prosecutors, as defined in section 2935.01 of the Revised Code, the public defender and assigned counsel system, jails and workhouses, probation departments, the drug and alcohol abuse intervention and treatment system, and the mental health intervention and treatment system.

(b) The impact of the sentencing structure in effect on and after July 1, 1996, on the population of state correctional institutions, including information regarding the number and types of offenders who are being imprisoned under the law in effect on and after July 1, 1996, and the amount of space in state correctional institutions that is necessary to house those offenders;

(c) The impact of the sentencing structure and the 46
sentence appeal provisions in effect on and after July 1, 1996, 47
on the appellate courts of this state, including information 48
regarding the number of sentence-based appeals, the cost of 49
reviewing appeals of that nature, whether a special court should 50
be created to review sentences, and whether changes should be 51
made to ensure that sentence-based appeals are conducted 52
expeditiously. 53

(3) Review all bills that are introduced in the general 54
assembly that provide for new criminal offenses or that change 55
the penalty for any criminal offense, determine if those bills 56
are consistent with the sentencing policy adopted under division 57
(B) of section 181.23 of the Revised Code, determine the impact 58
of those bills upon the correctional resources of the state, and 59
recommend to the general assembly any necessary amendments to 60
those bills. When the commission recommends any amendment for a 61
bill before the general assembly, it shall do so in a manner 62
that is consistent with the requirements of section 181.24 of 63
the Revised Code. 64

(4) Study criminal sentencing structures in this state, 65
other states, and the federal government, recommend necessary 66
changes to the sentencing structure of the state, and determine 67
the costs and effects of any proposed changes in the sentencing 68
structure of the state. 69

~~(5) Collect and maintain data that pertains to the cost to 70
counties of the felony sentence appeal provisions set forth in 71
section 2953.08 of the Revised Code, of the postconviction- 72
relief proceeding provisions set forth in division (A) (2) of 73
section 2953.21 of the Revised Code, and of appeals from 74
judgments entered in such postconviction relief proceedings. The 75~~

~~data so collected and maintained shall include, but shall not be~~ 76
~~limited to, the increase in expenses that counties experience as~~ 77
~~a result of those provisions and those appeals and the number of~~ 78
~~felony sentence appeals made, postconviction relief proceedings~~ 79
~~filed, and appeals of postconviction relief proceeding judgments~~ 80
~~made in each county under those provisions.~~ 81

(B) In addition to its duties set forth in section 181.24 82
of the Revised Code and division (A) of this section, the state 83
criminal sentencing commission shall review all forfeiture 84
statutes in Titles XXIX and XLV of the Revised Code and, not 85
later than July 1, 2002, recommend to the general assembly any 86
necessary changes to those statutes. 87

Sec. 181.26. (A) Each appellate court shall collect and 88
maintain data that pertains to the felony sentence appeal 89
provisions set forth in section 2953.08 of the Revised Code, the 90
postconviction relief proceeding provisions set forth in 91
division (B)(2) of section 2953.21 of the Revised Code, and the 92
appeals from judgments entered in such postconviction relief 93
proceedings. The data so collected and maintained shall include, 94
but shall not be limited to, the number of convictions resulting 95
from a plea, the number of convictions resulting from a trial, 96
the number of persons convicted of any given offense, the number 97
of grounds relied upon in postconviction relief proceedings, the 98
number of appeals filed, the percentage of appeals filed, the 99
number of appeals that affirm a conviction, the number of 100
appeals that reverse a conviction, the number of appeals that 101
are remanded, and of the cases that are remanded, the number of 102
cases that are dismissed, stayed, or terminated, including the 103
reasons for each dismissal, stay, or termination. 104

(B) Beginning in 2024, not later than the fifteenth day of 105

January of each year, each appellate court shall file an annual 106
report with the state criminal sentencing commission that 107
includes the data collected in the prior year. 108

Sec. 2929.06. (A) (1) If a sentence of death imposed upon 109
an offender is set aside, nullified, vacated, or voided for any 110
of the following reasons, the trial court that sentenced the 111
offender shall conduct a hearing to resentence the offender in 112
accordance with division (A) (2) of this section: 113

(a) The court of appeals, in a case in which a sentence of 114
death was imposed for an offense committed before January 1, 115
1995, or the supreme court, in a case in which the supreme court 116
reviews the sentence upon appeal, could not affirm the sentence 117
of death under the standards imposed by section 2929.05 of the 118
Revised Code. 119

(b) The sole reason that the statutory procedure for 120
imposing the sentence of death that is set forth in sections 121
2929.03 and 2929.04 of the Revised Code is unconstitutional. 122

(c) The sentence of death is set aside, nullified, or 123
vacated pursuant to division (C) of section 2929.05 of the 124
Revised Code. 125

(d) A court has determined that the offender is a person 126
with an intellectual disability under standards set forth in 127
decisions of the supreme court of this state or the United 128
States supreme court. 129

(e) The sentence of death is voided by a court pursuant to 130
division ~~(H)~~(I) of section 2953.21 of the Revised Code. 131

(2) At a resentencing hearing conducted under division (A) 132
(1) of this section, the court shall impose upon the offender a 133
sentence of life imprisonment or an indefinite term consisting 134

of a minimum term of thirty years and a maximum term of life 135
imprisonment that is determined as specified in this division. 136
If the sentence of death was voided by a court pursuant to 137
division ~~(H)~~(I) of section 2953.21 of the Revised Code, the 138
offender has waived any right to be sentenced to any sentence 139
other than life imprisonment without parole as described in 140
division ~~(A) (3) (b)~~(B) (3) (b) of that section and the court shall 141
impose a sentence of life imprisonment without parole. If the 142
immediately preceding sentence does not apply and if division 143
(D) of section 2929.03 of the Revised Code, at the time the 144
offender committed the aggravated murder for which the sentence 145
of death was imposed, required the imposition when a sentence of 146
death was not imposed of a sentence of life imprisonment without 147
parole or a sentence of an indefinite term consisting of a 148
minimum term of thirty years and a maximum term of life 149
imprisonment to be imposed pursuant to division (A) or (B) (3) of 150
section 2971.03 of the Revised Code and served pursuant to that 151
section, except as provided in division (F) of this section, the 152
court shall impose the sentence so required. In all other cases, 153
except as provided in division (F) of this section, the 154
sentences of life imprisonment that are available at the 155
hearing, and from which the court shall impose sentence, shall 156
be the same sentences of life imprisonment that were available 157
under division (D) of section 2929.03 or under section 2909.24 158
of the Revised Code at the time the offender committed the 159
offense for which the sentence of death was imposed. Nothing in 160
this division regarding the resentencing of an offender shall 161
affect the operation of section 2971.03 of the Revised Code. 162

(B) Whenever any court of this state or any federal court 163
sets aside, nullifies, or vacates a sentence of death imposed 164
upon an offender because of error that occurred in the 165

sentencing phase of the trial and if division (A) of this 166
section does not apply, the trial court that sentenced the 167
offender shall conduct a new hearing to resentence the offender. 168
If the offender was tried by a jury, the trial court shall 169
impanel a new jury for the hearing. If the offender was tried by 170
a panel of three judges, that panel or, if necessary, a new 171
panel of three judges shall conduct the hearing. At the hearing, 172
the court or panel shall follow the procedure set forth in 173
division (D) of section 2929.03 of the Revised Code in 174
determining whether to impose upon the offender a sentence of 175
death, a sentence of life imprisonment, or an indefinite term 176
consisting of a minimum term of thirty years and a maximum term 177
of life imprisonment. If, pursuant to that procedure, the court 178
or panel determines that it will impose a sentence other than a 179
sentence of death, except as provided in division (F) of this 180
section, the court or panel shall impose upon the offender one 181
of the sentences of life imprisonment that could have been 182
imposed at the time the offender committed the offense for which 183
the sentence of death was imposed, determined as specified in 184
this division, or an indefinite term consisting of a minimum 185
term of thirty years and a maximum term of life imprisonment 186
that is determined as specified in this division. If division 187
(D) of section 2929.03 of the Revised Code, at the time the 188
offender committed the aggravated murder for which the sentence 189
of death was imposed, required the imposition when a sentence of 190
death was not imposed of a sentence of life imprisonment without 191
parole or a sentence of an indefinite term consisting of a 192
minimum term of thirty years and a maximum term of life 193
imprisonment to be imposed pursuant to division (A) or (B) (3) of 194
section 2971.03 of the Revised Code and served pursuant to that 195
section, except as provided in division (F) of this section, the 196
court or panel shall impose the sentence so required. In all 197

other cases, except as provided in division (F) of this section, 198
the sentences of life imprisonment that are available at the 199
hearing, and from which the court or panel shall impose 200
sentence, shall be the same sentences of life imprisonment that 201
were available under division (D) of section 2929.03 or under 202
section 2909.24 of the Revised Code at the time the offender 203
committed the offense for which the sentence of death was 204
imposed. 205

(C) If a sentence of life imprisonment without parole 206
imposed upon an offender pursuant to section 2929.021 or 2929.03 207
of the Revised Code is set aside, nullified, or vacated for the 208
sole reason that the statutory procedure for imposing the 209
sentence of life imprisonment without parole that is set forth 210
in sections 2929.03 and 2929.04 of the Revised Code is 211
unconstitutional, the trial court that sentenced the offender 212
shall conduct a hearing to resentence the offender to life 213
imprisonment with parole eligibility after serving twenty-five 214
full years of imprisonment or to life imprisonment with parole 215
eligibility after serving thirty full years of imprisonment. 216

(D) Nothing in this section limits or restricts the rights 217
of the state to appeal any order setting aside, nullifying, or 218
vacating a conviction or sentence of death, when an appeal of 219
that nature otherwise would be available. 220

(E) This section, as amended by H.B. 184 of the 125th 221
general assembly, shall apply to all offenders who have been 222
sentenced to death for an aggravated murder that was committed 223
on or after October 19, 1981, or for terrorism that was 224
committed on or after May 15, 2002. This section, as amended by 225
H.B. 184 of the 125th general assembly, shall apply equally to 226
all such offenders sentenced to death prior to, on, or after 227

March 23, 2005, including offenders who, on March 23, 2005, are 228
challenging their sentence of death and offenders whose sentence 229
of death has been set aside, nullified, or vacated by any court 230
of this state or any federal court but who, as of March 23, 231
2005, have not yet been resentenced. 232

(F) A court shall not impose a sentence of life 233
imprisonment without parole on a person under division (A) or 234
(B) of this section for an offense that was committed when the 235
person was under eighteen years of age. 236

Sec. 2953.21. ~~(A)(1)(a)~~ (A) As used in this section: 237

(1) "Actual innocence" means that, had the results of the 238
DNA testing conducted under sections 2953.71 to 2953.81 of the 239
Revised Code or under former section 2953.82 of the Revised Code 240
been presented at trial, and had those results been analyzed in 241
the context of and upon consideration of all available 242
admissible evidence related to the person's case as described in 243
division (D) of section 2953.74 of the Revised Code, no 244
reasonable factfinder would have found the petitioner guilty of 245
the offense of which the petitioner was convicted, or, if the 246
person was sentenced to death, no reasonable factfinder would 247
have found the petitioner guilty of the aggravating circumstance 248
or circumstances the petitioner was found guilty of committing 249
and that is or are the basis of that sentence of death. 250

(2) "Former section 2953.82 of the Revised Code" means 251
section 2953.82 of the Revised Code as it existed prior to July 252
6, 2010. 253

(3) "Serious mental illness" has the same meaning as in 254
section 2929.025 of the Revised Code. 255

(B)(1)(a) A person in any of the following categories may 256

file a petition in the court that imposed sentence, stating the 257
grounds for relief relied upon, and asking the court to vacate 258
or set aside the judgment or sentence or to grant other 259
appropriate relief: 260

(i) Any person who has been convicted of a criminal 261
offense or adjudicated a delinquent child and who claims that 262
there was such a denial or infringement of the person's rights 263
as to render the judgment void or voidable under the Ohio 264
Constitution or the Constitution of the United States; 265

(ii) Any person who has been convicted of a criminal 266
offense and sentenced to death and who claims that there was a 267
denial or infringement of the person's rights under either of 268
those Constitutions that creates a reasonable probability of an 269
altered verdict; 270

(iii) Any person who has been convicted of a criminal 271
offense that is a felony and who is an offender for whom DNA 272
testing that was performed under sections 2953.71 to 2953.81 of 273
the Revised Code or under former section 2953.82 of the Revised 274
Code and analyzed in the context of and upon consideration of 275
all available admissible evidence related to the person's case 276
as described in division (D) of section 2953.74 of the Revised 277
Code provided results that establish, by clear and convincing 278
evidence, actual innocence of that felony offense or, if the 279
person was sentenced to death, establish, by clear and 280
convincing evidence, actual innocence of the aggravating 281
circumstance or circumstances the person was found guilty of 282
committing and that is or are the basis of that sentence of 283
death; 284

(iv) Any person who has been convicted of aggravated 285
murder and sentenced to death for the offense and who claims 286

that the person had a serious mental illness at the time of the 287
commission of the offense and that as a result the court should 288
render void the sentence of death, with the filing of the 289
petition constituting the waiver described in division ~~(A) (3) (b)~~ 290
(B) (3) (b) of this section. 291

(b) A petitioner under division ~~(A) (1) (a)~~ (B) (1) (a) of 292
this section may file a supporting affidavit and other 293
documentary evidence in support of the claim for relief. 294

~~(c) As used in division (A) (1) (a) of this section:~~ 295

~~(i) "Actual innocence" means that, had the results of the 296
DNA testing conducted under sections 2953.71 to 2953.81 of the 297
Revised Code or under former section 2953.82 of the Revised Code 298
been presented at trial, and had those results been analyzed in 299
the context of and upon consideration of all available 300
admissible evidence related to the person's case as described in 301
division (D) of section 2953.74 of the Revised Code, no 302
reasonable factfinder would have found the petitioner guilty of 303
the offense of which the petitioner was convicted, or, if the 304
person was sentenced to death, no reasonable factfinder would 305
have found the petitioner guilty of the aggravating circumstance 306
or circumstances the petitioner was found guilty of committing 307
and that is or are the basis of that sentence of death. 308~~

~~(ii) "Serious mental illness" has the same meaning as in 309
section 2929.025 of the Revised Code. 310~~

~~(d) As used in divisions (A) (1) (a) and (c) of this 311
section, "former section 2953.82 of the Revised Code" means 312
section 2953.82 of the Revised Code as it existed prior to July 313
6, 2010. 314~~

~~(e) (c) At any time in conjunction with the filing of a 315~~

petition for postconviction relief under division ~~(A)~~~~(B)~~ of 316
this section ~~by a person who has been sentenced to death,~~ or 317
with the litigation of a petition so filed, the court, for good 318
cause shown, may authorize the petitioner in seeking the 319
postconviction relief and the prosecuting attorney of the county 320
served by the court in defending the proceeding, to take 321
depositions and to issue subpoenas and subpoenas duces tecum in 322
accordance with divisions ~~(A)(1)(e)~~~~(B)(1)(c)~~, ~~(A)(1)(f)~~~~(B)(1)~~ 323
(d), and ~~(C)~~~~(D)~~ of this section, and to any other form of 324
discovery as in a civil action that the court in its discretion 325
permits. The court may limit the extent of discovery under this 326
division. Prior to requesting copies of discovery that was made 327
under Criminal Rule 16 at the time of trial, the petitioner 328
shall make a good faith effort to obtain such discovery from 329
counsel. In addition to discovery that is relevant to the claim 330
and was available under Criminal Rule 16 through conclusion of 331
the original criminal trial, the court, for good cause shown, 332
may authorize the petitioner or prosecuting attorney to take 333
depositions and issue subpoenas and subpoenas duces tecum in 334
either of the following circumstances: 335

(i) For any witness who testified at trial or who was 336
disclosed by the state prior to trial, except as otherwise 337
provided in this division, the petitioner or prosecuting 338
attorney shows clear and convincing evidence that the witness is 339
material and that a deposition of the witness or the issuing of 340
a subpoena or subpoena duces tecum is of assistance in order to 341
substantiate or refute the petitioner's claim that there is a 342
reasonable probability of an altered verdict. This division does 343
not apply if the witness was unavailable for trial or would not 344
voluntarily be interviewed by the defendant or prosecuting 345
attorney. 346

(ii) For any witness with respect to whom division ~~(A) (1)~~ 347
~~(e) (i)~~ (B) (1) (c) (i) of this section does not apply, the 348
petitioner or prosecuting attorney shows good cause that the 349
witness is material and that a deposition of the witness or the 350
issuing of a subpoena or subpoena duces tecum is of assistance 351
in order to substantiate or refute the petitioner's claim that 352
there is a reasonable probability of an altered verdict. 353

~~(f) (d)~~ If a person ~~who has been sentenced to death and~~ 354
who files a petition for postconviction relief under division 355
~~(A) (B)~~ of this section requests postconviction discovery as 356
described in division ~~(A) (1) (e)~~ (B) (1) (c) of this section or if 357
the prosecuting attorney of the county served by the court 358
requests postconviction discovery as described in that division, 359
within ten days after the docketing of the request, or within 360
any other time that the court sets for good cause shown, the 361
prosecuting attorney shall respond by answer or motion to the 362
petitioner's request or the petitioner shall respond by answer 363
or motion to the prosecuting attorney's request, whichever is 364
applicable. 365

~~(g) (e)~~ If a person ~~who has been sentenced to death and~~ 366
who files a petition for postconviction relief under division 367
~~(A) (B)~~ of this section requests postconviction discovery as 368
described in division ~~(A) (1) (e)~~ (B) (1) (c) of this section or if 369
the prosecuting attorney of the county served by the court 370
requests postconviction discovery as described in that division, 371
upon motion by the petitioner, the prosecuting attorney, or the 372
person from whom discovery is sought, and for good cause shown, 373
the court in which the action is pending may make any order that 374
justice requires to protect a party or person from oppression or 375
undue burden or expense, including but not limited to the orders 376
described in divisions ~~(A) (1) (h) (i)~~ (B) (1) (f) (i) to (viii) of 377

this section. The court also may make any such order if, in its 378
discretion, it determines that the discovery sought would be 379
irrelevant to the claims made in the petition; and if the court 380
makes any such order on that basis, it shall explain in the 381
order the reasons why the discovery would be irrelevant. 382

~~(h)~~(f) If a petitioner, prosecuting attorney, or person 383
from whom discovery is sought makes a motion for an order under 384
division ~~(A) (1) (g)~~(B) (1) (e) of this section and the order is 385
denied in whole or in part, the court, on terms and conditions 386
as are just, may order that any party or person provide or 387
permit discovery as described in division ~~(A) (1) (e)~~(B) (1) (c) of 388
this section. The provisions of Civil Rule 37(A) (4) apply to the 389
award of expenses incurred in relation to the motion, except 390
that in no case shall a court require a petitioner who is 391
indigent to pay expenses under those provisions. 392

Before any person moves for an order under division ~~(A) (1)~~ 393
~~(g)~~(B) (1) (e) of this section, that person shall make a 394
reasonable effort to resolve the matter through discussion with 395
the petitioner or prosecuting attorney seeking discovery. A 396
motion for an order under division ~~(A) (1) (g)~~(B) (1) (e) of this 397
section shall be accompanied by a statement reciting the effort 398
made to resolve the matter in accordance with this paragraph. 399

The orders that may be made under division ~~(A) (1) (g)~~(B) 400
(1) (e) of this section include, but are not limited to, any of 401
the following: 402

- (i) That the discovery not be had; 403
- (ii) That the discovery may be had only on specified terms 404
and conditions, including a designation of the time or place; 405
- (iii) That the discovery may be had only by a method of 406

discovery other than that selected by the party seeking 407
discovery; 408

(iv) That certain matters not be inquired into or that the 409
scope of the discovery be limited to certain matters; 410

(v) That discovery be conducted with no one present except 411
persons designated by the court; 412

(vi) That a deposition after being sealed be opened only 413
by order of the court; 414

(vii) That a trade secret or other confidential research, 415
development, or commercial information not be disclosed or be 416
disclosed only in a designated way; 417

(viii) That the parties simultaneously file specified 418
documents or information enclosed in sealed envelopes to be 419
opened as directed by the court. 420

~~(i)~~ (g) Any postconviction discovery authorized under 421
division ~~(A) (1) (e)~~ (B) (1) (c) of this section shall be completed 422
not later than eighteen months after the start of the discovery 423
proceedings unless, for good cause shown, the court extends that 424
period for completing the discovery. 425

~~(j)~~ (h) Nothing in division ~~(A) (1) (e)~~ (B) (1) (c) of this 426
section authorizes, or shall be construed as authorizing, the 427
relitigation, or discovery in support of relitigation, of any 428
matter barred by the doctrine of res judicata. 429

~~(k)~~ (i) Division ~~(A) (1)~~ (B) (1) of this section does not 430
apply to any person who has been convicted of a criminal offense 431
and sentenced to death and who has unsuccessfully raised the 432
same claims in a petition for postconviction relief. 433

(2) (a) ~~Except as otherwise provided in section 2953.23 of~~ 434

~~the Revised Code, a~~ A petition under division ~~(A) (1) (a) (i)~~ (B) (1)
(a) (i), (ii), or (iii) of this section shall be filed no later
than three hundred sixty-five days after the date on which the
trial transcript is filed in the court of appeals in the direct
appeal of the judgment of conviction or adjudication or, if the
direct appeal involves a sentence of death, the date on which
the trial transcript is filed in the supreme court. If no appeal
is taken, ~~except as otherwise provided in section 2953.23 of the~~
~~Revised Code,~~ the petition shall be filed no later than three
hundred sixty-five days after the expiration of the time for
filing the appeal.

(b) ~~Except as otherwise provided in section 2953.23 of the~~
~~Revised Code, a~~ A petition under division ~~(A) (1) (a) (iv)~~ (B) (1)
(a) (iv) of this section shall be filed not later than three
hundred sixty-five days after ~~the effective date of this~~
~~amendment~~ April 12, 2021.

(c) A court may consider a petition filed after the
expiration of the time period described in division (B) (2) (a) or
(b) of this section if one of the following applies:

(i) The petitioner has demonstrated cause for the untimely
filing and prejudice from the denial or infringement of the
petitioner's rights.

(ii) The failure to consider the petition would result in
manifest injustice.

(iii) The United States supreme court or Ohio 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.

(iv) The petitioner was convicted of a felony, the

petitioner is an offender for whom DNA testing was performed 464
under sections 2953.71 to 2953.81 of the Revised Code or under 465
former section 2953.82 of the Revised Code and analyzed in the 466
context of and upon consideration of all available admissible 467
evidence related to the person's case as described in division 468
(D) of section 2953.74 of the Revised Code, and the results of 469
the DNA testing establish, by clear and convincing evidence, 470
actual innocence of that felony offense or, if the person was 471
sentenced to death, establish, by clear and convincing evidence, 472
actual innocence of the aggravating circumstance or 473
circumstances the person was found guilty of committing and that 474
is or are the basis of that sentence of death. 475

(3) (a) In a petition filed under division ~~(A) (1) (a) (i)~~ (B) 476
(1) (a) (i), (ii), or (iii) of this section, a person who has been 477
sentenced to death may ask the court to render void or voidable 478
the judgment with respect to the conviction of aggravated murder 479
or the specification of an aggravating circumstance or the 480
sentence of death. 481

(b) A person sentenced to death who files a petition under 482
division ~~(A) (1) (a) (iv)~~ (B) (1) (a) (iv) of this section may ask the 483
court to render void the sentence of death and to order the 484
resentencing of the person under division (A) of section 2929.06 485
of the Revised Code. If a person sentenced to death files such a 486
petition and asks the court to render void the sentence of death 487
and to order the resentencing of the person under division (A) 488
of section 2929.06 of the Revised Code, the act of filing the 489
petition constitutes a waiver of any right to be sentenced under 490
the law that existed at the time the offense was committed and 491
constitutes consent to be sentenced to life imprisonment without 492
parole under division (A) of section 2929.06 of the Revised 493
Code. 494

(4) A petitioner shall state in the original or amended 495
petition filed under division ~~(A)~~(B) of this section all 496
grounds for relief claimed by the petitioner. ~~Except as provided~~ 497
~~in section 2953.23 of the Revised Code, any~~ Any ground for 498
relief that is not so stated in the petition is waived. 499

(5) If the petitioner in a petition filed under division 500
~~(A) (1) (a) (i)~~(B) (1) (a) (i), (ii), or (iii) of this section was 501
convicted of or pleaded guilty to a felony, the petition may 502
include a claim that the petitioner was denied the equal 503
protection of the laws in violation of the Ohio Constitution or 504
the United States Constitution because the sentence imposed upon 505
the petitioner for the felony was part of a consistent pattern 506
of disparity in sentencing by the judge who imposed the 507
sentence, with regard to the petitioner's race, gender, ethnic 508
background, or religion. If the supreme court adopts a rule 509
requiring a court of common pleas to maintain information with 510
regard to an offender's race, gender, ethnic background, or 511
religion, the supporting evidence for the petition shall 512
include, but shall not be limited to, a copy of that type of 513
information relative to the petitioner's sentence and copies of 514
that type of information relative to sentences that the same 515
judge imposed upon other persons. 516

(6) Notwithstanding any law or court rule to the contrary, 517
there is no limit on the number of pages in, or on the length 518
of, a petition filed under division ~~(A) (1) (a) (i)~~(B) (1) (a) (i), 519
(ii), (iii), or (iv) of this section by a person who has been 520
sentenced to death. If any court rule specifies a limit on the 521
number of pages in, or on the length of, a petition filed under 522
division ~~(A) (1) (a) (i)~~(B) (1) (a) (i), (ii), (iii), or (iv) of this 523
section or on a prosecuting attorney's response to such a 524
petition by answer or motion and a person who has been sentenced 525

to death files a petition that exceeds the limit specified for 526
the petition, the prosecuting attorney may respond by an answer 527
or motion that exceeds the limit specified for the response. 528

~~(B)~~ (C) The clerk of the court in which the petition for 529
postconviction relief and, if applicable, a request for 530
postconviction discovery described in division ~~(A) (1) (e)~~ (B) (1)
(c) of this section is filed shall docket the petition and the 531
request and bring them promptly to the attention of the court. 532
The clerk of the court in which the petition for postconviction 534
relief and, if applicable, a request for postconviction 535
discovery described in division ~~(A) (1) (e)~~ (B) (1) (c) of this 536
section is filed immediately shall forward a copy of the 537
petition and a copy of the request if filed by the petitioner to 538
the prosecuting attorney of the county served by the court. If 539
the request for postconviction discovery is filed by the 540
prosecuting attorney, the clerk of the court immediately shall 541
forward a copy of the request to the petitioner or the 542
petitioner's counsel. 543

~~(C)~~ (D) If a person ~~who has been sentenced to death and~~ 544
who files a petition for postconviction relief under division 545
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), or (iv) of this section 546
requests a deposition or the prosecuting attorney in the case 547
requests a deposition, and if the court grants the request under 548
division ~~(A) (1) (e)~~ (B) (1) (c) of this section, the court shall 549
notify the petitioner or the petitioner's counsel and the 550
prosecuting attorney. The deposition shall be conducted pursuant 551
to divisions (B), (D), and (E) of Criminal Rule 15. 552
Notwithstanding division (C) of Criminal Rule 15, the petitioner 553
is not entitled to attend the deposition. The prosecuting 554
attorney shall be permitted to attend and participate in any 555
deposition. 556

~~(D)~~ (E) The court shall consider a petition that is timely 557
filed within the period specified in division ~~(A) (2)~~ (B) (2) of 558
this section even if a direct appeal of the judgment is pending. 559
Before granting a hearing on a petition filed under division ~~(A)~~ 560
~~(1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), or (iv) of this section, the 561
court shall determine whether there are substantive grounds for 562
relief. In making such a determination, the court shall 563
consider, in addition to the petition, the supporting 564
affidavits, and the documentary evidence, all the files and 565
records pertaining to the proceedings against the petitioner, 566
including, but not limited to, the indictment, the court's 567
journal entries, the journalized records of the clerk of the 568
court, and the court reporter's transcript. The court reporter's 569
transcript, if ordered and certified by the court, shall be 570
taxed as court costs. If the court dismisses the petition, it 571
shall make and file findings of fact and conclusions of law with 572
respect to such dismissal. ~~If the petition was filed by a person~~ 573
~~who has been sentenced to death, the~~ The findings of fact and 574
conclusions of law shall state specifically the reasons for the 575
dismissal of the petition and of each claim it contains. 576

~~(E)~~ (F) Within ten days after the docketing of the 577
petition, or within any further time that the court may fix for 578
good cause shown, the prosecuting attorney shall respond by 579
answer or motion. Division ~~(A) (6)~~ (B) (6) of this section applies 580
with respect to the prosecuting attorney's response. Within 581
twenty days from the date the issues are raised, either party 582
may move for summary judgment. The right to summary judgment 583
shall appear on the face of the record. 584

~~(F)~~ (G) Unless the petition and the files and records of 585
the case, viewed in the light most favorable to the petitioner, 586
show the petitioner is not entitled to relief, the court shall 587

proceed to a prompt hearing on the issues even if a direct 588
appeal of the case is pending. If the court notifies the parties 589
that it has found grounds for granting relief, either party may 590
request an appellate court in which a direct appeal of the 591
judgment is pending to remand the pending case to the court. 592

With respect to a petition filed under division ~~(A) (1) (a)~~ 593
~~(iv)~~ (B) (1) (a) (iv) of this section, the procedures and rules 594
regarding introduction of evidence and burden of proof at the 595
pretrial hearing that are set forth in divisions (C), (D), and 596
(F) of section 2929.025 of the Revised Code apply in considering 597
the petition. With respect to such a petition, the grounds for 598
granting relief are that the person has been diagnosed with one 599
or more of the conditions set forth in division (A) (1) (a) of 600
section 2929.025 of the Revised Code and that, at the time of 601
the aggravated murder that was the basis of the sentence of 602
death, the condition or conditions significantly impaired the 603
person's capacity in a manner described in division (A) (1) (b) of 604
that section. 605

~~(G)~~ (H) A petitioner who files a petition under division 606
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), or (iv) of this section 607
may amend the petition as follows: 608

(1) ~~If the petition was filed by a person who has been~~ 609
~~sentenced to death, at~~ At any time that is not later than one 610
hundred eighty days after the petition is filed, the petitioner 611
may amend the petition with or without leave or prejudice to the 612
proceedings. 613

(2) ~~If division (C) (1) of this section does not apply, at~~ 614
~~any time before the answer or motion is filed, the petitioner~~ 615
~~may amend the petition with or without leave or prejudice to the~~ 616
~~proceedings.~~ 617

~~(3)~~The petitioner may amend the petition with leave of 618
court at any time after the expiration of the applicable period 619
specified in division ~~(G) (1) or (2)~~ (H) (1) of this section. 620

~~(H)~~ (3) If the petitioner amends the petition pursuant to 621
division (H) (1) or (2) of this section, at any time after the 622
answer or motion is filed by the prosecuting attorney, the court 623
shall permit the prosecuting attorney to file an amended answer 624
or motion. The prosecuting attorney may amend the answer or 625
motion during the time period described in division (F) of this 626
section. 627

(I) If the court does not find grounds for granting 628
relief, it shall make and file findings of fact and conclusions 629
of law and shall enter judgment denying relief on the petition. 630
~~If the petition was filed by a person who has been sentenced to~~ 631
~~death, the~~ The findings of fact and conclusions of law shall 632
state specifically the reasons for the denial of relief on the 633
petition and of each claim it contains. If no direct appeal of 634
the case is pending and the court finds grounds for relief or if 635
a pending direct appeal of the case has been remanded to the 636
court pursuant to a request made pursuant to division ~~(F)~~ (G) of 637
this section and the court finds grounds for granting relief, it 638
shall make and file findings of fact and conclusions of law and 639
shall enter a judgment that vacates and sets aside the judgment 640
in question, and, in the case of a petitioner who is a prisoner 641
in custody, except as otherwise described in this division, 642
shall discharge or resentence the petitioner or grant a new 643
trial as the court determines appropriate. If the court finds 644
grounds for relief in the case of a petitioner who filed a 645
petition under division ~~(A) (1) (a) (iv)~~ (B) (1) (a) (iv) of this 646
section, the court shall render void the sentence of death and 647
order the resentencing of the offender under division (A) of 648

section 2929.06 of the Revised Code. If the petitioner has been 649
sentenced to death, the findings of fact and conclusions of law 650
shall state specifically the reasons for the finding of grounds 651
for granting the relief, with respect to each claim contained in 652
the petition. The court also may make supplementary orders to 653
the relief granted, concerning such matters as rearraignment, 654
retrial, custody, and bail. If the trial court's order granting 655
the petition is reversed on appeal and if the direct appeal of 656
the case has been remanded from an appellate court pursuant to a 657
request under division ~~(F)~~ (G) of this section, the appellate 658
court reversing the order granting the petition shall notify the 659
appellate court in which the direct appeal of the case was 660
pending at the time of the remand of the reversal and remand of 661
the trial court's order. Upon the reversal and remand of the 662
trial court's order granting the petition, regardless of whether 663
notice is sent or received, the direct appeal of the case that 664
was remanded is reinstated. 665

~~(I)~~ (J) Upon the filing of a petition pursuant to division 666
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), or (iv) of this section 667
by a person sentenced to death, only the supreme court may stay 668
execution of the sentence of death. 669

~~(J) (1)~~ (K) (1) If a person sentenced to death intends to 670
file a petition under this section, the court shall appoint 671
counsel to represent the person upon a finding that the person 672
is indigent and that the person either accepts the appointment 673
of counsel or is unable to make a competent decision whether to 674
accept or reject the appointment of counsel. The court may 675
decline to appoint counsel for the person only upon a finding, 676
after a hearing if necessary, that the person rejects the 677
appointment of counsel and understands the legal consequences of 678
that decision or upon a finding that the person is not indigent. 679

(2) The court shall not appoint as counsel under division 680
~~(J) (1)~~ (K) (1) of this section an attorney who represented the 681
petitioner at trial in the case to which the petition relates 682
unless the person and the attorney expressly request the 683
appointment. The court shall appoint as counsel under division 684
~~(J) (1)~~ (K) (1) of this section only an attorney who is certified 685
under Rule 20 of the Rules of Superintendence for the Courts of 686
Ohio to represent indigent defendants charged with or convicted 687
of an offense for which the death penalty can be or has been 688
imposed. The ineffectiveness or incompetence of counsel during 689
proceedings under this section does not constitute ~~grounds a~~ 690
separate ground for relief in a proceeding under this section, 691
in an appeal of any action under this section, or in an 692
application to reopen a direct appeal, but may be considered for 693
purposes of actual innocence under this section. 694

(3) Division ~~(J)~~ (K) of this section does not preclude 695
attorneys who represent the state of Ohio from invoking the 696
provisions of 28 U.S.C. 154 with respect to capital cases that 697
were pending in federal habeas corpus proceedings prior to July 698
1, 1996, insofar as the petitioners in those cases were 699
represented in proceedings under this section by one or more 700
counsel appointed by the court under this section or section 701
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 702
appointed counsel meet the requirements of division ~~(J) (2)~~ (K) 703
(2) of this section. 704

~~(K)~~ (4) (a) If a person who has not been sentenced to death 705
intends to file a petition under this section, the court shall 706
appoint counsel to represent the person upon a finding that the 707
person is indigent and a motion by the person or the person's 708
counsel demonstrating that under the person's postconviction 709
claim there is a reasonable probability of an altered verdict. A 710

motion made pursuant to this division may include a request for 711
an ex parte order. 712

(b) Notwithstanding division (K) (4) (a) of this section, a 713
court, in its discretion, may appoint counsel for an indigent 714
person who has not been sentenced to death regardless of whether 715
the person or the person's counsel has filed a motion 716
demonstrating that under the person's postconviction claim there 717
is a reasonable probability of an altered verdict. 718

(L) Subject to the appeal of a sentence for a felony that 719
is authorized by section 2953.08 of the Revised Code, the remedy 720
set forth in this section is the exclusive remedy by which a 721
person may bring a collateral challenge to the validity of a 722
conviction or sentence in a criminal case or to the validity of 723
an adjudication of a child as a delinquent child for the 724
commission of an act that would be a criminal offense if 725
committed by an adult or the validity of a related order of 726
disposition. 727

Sec. 2953.23. (A) Whether a hearing is or is not held on a 728
petition filed pursuant to section 2953.21 of the Revised Code, 729
a court may not entertain ~~a petition filed after the expiration~~ 730
~~of the period prescribed in division (A) of that section or a~~ 731
second petition or successive petitions for similar relief on 732
behalf of a petitioner unless division (A) (1) or (2) of this 733
section applies: 734

(1) Both of the following apply: 735

(a) Either the petitioner shows that the petitioner was 736
unavoidably prevented from discovery of the facts upon which the 737
petitioner must rely to present the claim for relief, or, 738
subsequent to the period prescribed in division ~~(A) (2)~~ (B) (2) of 739

section 2953.21 of the Revised Code or to the filing of an 740
earlier petition, the United States Supreme Court recognized a 741
new federal or state right that applies retroactively to persons 742
in the petitioner's situation, and the petition asserts a claim 743
based on that right. 744

(b) The petitioner shows by clear and convincing evidence 745
that, but for constitutional error at trial, no reasonable 746
factfinder would have found the petitioner guilty of the offense 747
of which the petitioner was convicted or, if the claim 748
challenges a sentence of death that, but for constitutional 749
error at the sentencing hearing, no reasonable factfinder would 750
have found the petitioner eligible for the death sentence. 751

(2) The petitioner was convicted of a felony, the 752
petitioner is an offender for whom DNA testing was performed 753
under sections 2953.71 to 2953.81 of the Revised Code or under 754
former section 2953.82 of the Revised Code and analyzed in the 755
context of and upon consideration of all available admissible 756
evidence related to the inmate's case as described in division 757
(D) of section 2953.74 of the Revised Code, and the results of 758
the DNA testing establish, by clear and convincing evidence, 759
actual innocence of that felony offense or, if the person was 760
sentenced to death, establish, by clear and convincing evidence, 761
actual innocence of the aggravating circumstance or 762
circumstances the person was found guilty of committing and that 763
is or are the basis of that sentence of death. 764

As used in this division, "actual innocence" has the same 765
meaning as in division ~~(A) (1) (c)~~ (A) (1) of section 2953.21 of 766
the Revised Code, and "former section 2953.82 of the Revised 767
Code" has the same meaning as in division ~~(A) (1) (d)~~ (A) (2) of 768
section 2953.21 of the Revised Code. 769

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

If a petition filed pursuant to section 2953.21 of the Revised Code by a person who has been sentenced to death is denied and the person appeals the judgment, 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 notice of appeal or briefs related to an appeal filed by the person. If any court rule specifies a limit on the number of pages in, or on the length of, a notice of appeal or briefs described in this division or on a prosecuting attorney's response or briefs with respect to such an appeal and a person who has been sentenced to death files a notice of appeal or briefs that exceed the limit specified for the petition, the prosecuting attorney may file a response or briefs that exceed the limit specified for the answer or briefs.

Sec. 2953.85. (A) There is hereby created the Ohio innocence commission. The purpose of the commission is to create an independent entity within Ohio's justice system to investigate and determine claims of innocence.

(B) The Ohio innocence commission shall consist of eight members: one court of common pleas judge, one prosecuting attorney, one victim advocate, one criminal defense attorney, one member of the public who is not an attorney or an officer or employee of the judiciary, one sheriff, and two other persons whose vocation shall be at the discretion of the chief justice of the Ohio supreme court.

(C) The chief justice of the Ohio supreme court shall

appoint the members of the Ohio innocence commission, who shall 800
serve for three-year terms. In the event of a vacancy, the chief 801
justice shall appoint a replacement member. The chairperson 802
shall be the court of common pleas judge. A majority of the 803
members constitutes a quorum. 804

(D) Members shall serve without compensation but shall 805
receive reasonable and necessary expenses incurred in the 806
conduct of commission business. The commission shall meet a 807
minimum of once every six months and may also meet more often at 808
the call of the chairperson. 809

(E) (1) The Ohio innocence commission shall be an 810
independent, neutral, fact-finding entity empowered to 811
investigate claims of innocence arising out of felony 812
convictions from any court of common pleas. The commission staff 813
shall be a professional staff insulated from political pressure 814
aimed at overturning or validating criminal convictions. 815

(2) The commission's authority to review claims shall be 816
limited to claims where the claimant has, with the benefit of 817
counsel, waived the claimant's fifth amendment right and 818
attorney-client privilege reasonably related to the claim of 819
innocence. 820

(3) The commission shall be empowered to issue subpoenas 821
for documents, compel the attendance of witnesses, and utilize 822
the methods of discovery available under the Rules of Criminal 823
Procedure and the Rules of Civil Procedure. 824

(4) The commission shall have the power to inspect, 825
examine, and temporarily take possession of physical evidence 826
for forensic examination or testing. 827

(5) The commission's authority, policies, and practices 828

shall be consistent with the Ohio Constitution, Article I, 829
section 10a. 830

(6) Subject to limited exceptions to be determined by the 831
supreme court involving circumstances where exculpatory evidence 832
or inculpatory evidence is discovered during its investigation, 833
as well as in cases where there is sufficient evidence to 834
warrant a public hearing on the claim, the commission's work 835
product shall be confidential. 836

(7) In a case where the commission believes a viable claim 837
of innocence has been established, a specially authorized three- 838
judge panel, established by the supreme court and composed of 839
sitting appellate court judges from outside the appellate 840
district where the case arose shall consider the matter. 841
Judicial proceedings shall be public and shall provide an 842
opportunity for the defendant or the defendant through counsel, 843
the prosecutor, and the victim to be heard. If the judicial 844
panel finds the defendant to be innocent, the panel shall be 845
authorized to take appropriate remedial measures, as authorized 846
by rules adopted by the supreme court, and the conviction shall 847
be vacated. 848

(F) The supreme court shall adopt rules establishing 849
procedures and standards necessary to implement this section. 850

Section 2. That existing sections 181.25, 2929.06, 851
2953.21, and 2953.23 of the Revised Code are hereby repealed. 852

Section 3. Section 2929.06 of the Revised Code is 853
presented in this act as a composite of the section as amended 854
by both H.B. 136 and S.B. 256 of the 133rd General Assembly. The 855
General Assembly, applying the principle stated in division (B) 856
of section 1.52 of the Revised Code that amendments are to be 857

harmonized if reasonably capable of simultaneous operation,	858
finds that the composite is the resulting version of the section	859
in effect prior to the effective date of the section as	860
presented in this act.	861