

As Reported by the House Criminal Justice Committee

132nd General Assembly

Regular Session

2017-2018

Sub. H. B. No. 81

Representatives Seitz, Antonio

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

A BILL

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Schizophrenia; 209

(ii) Schizoaffective disorder; 210

(iii) Bipolar disorder; 211

(iv) Major depressive disorder; 212

(v) Delusional disorder. 213

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

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

law; 226

(ii) Appreciating the nature, consequences, or 227
wrongfulness of the person's conduct. 228

(2) A disorder manifested primarily by repeated criminal 229
conduct or attributable solely to the acute effects of voluntary 230
use of alcohol or any other drug of abuse does not, standing 231
alone, constitute a "serious mental illness" for purposes of 232
division (A) (1) of this section. 233

(3) "Examiner" means a person who makes an evaluation 234
ordered under division (F) (1) of this section. 235

(4) "Prosecutor" means a prosecuting attorney who has 236
authority to prosecute a charge of aggravated murder that is 237
before the court. 238

(B) The diagnosis of a person with a condition or 239
conditions described in division (A) (1) (a) of this section may 240
be made at any time prior to, on, or after the day of the 241
alleged aggravated murder with which the person is charged or 242
the day on which the person pursuant to division (C) of this 243
section raises the matter of the person's serious mental illness 244
at the time of the alleged commission of that aggravated murder. 245
Diagnosis of the condition or conditions after the date of the 246
alleged aggravated murder with which the person is charged does 247
not preclude the person from presenting evidence that the person 248
had a serious mental illness at the time of the alleged 249
commission of that offense. 250

(C) A person charged with aggravated murder and one or 251
more specifications of an aggravating circumstance listed in 252
division (A) of section 2929.04 of the Revised Code may, before 253
trial, raise the matter of the person's serious mental illness 254

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

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

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

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

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

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

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

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

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

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

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

(a) Life imprisonment without parole; 345

(b) Subject to division (A) (1) (e) of this section, life 346
imprisonment with parole eligibility after serving twenty years 347
of imprisonment; 348

(c) Subject to division (A) (1) (e) of this section, life 349
imprisonment with parole eligibility after serving twenty-five 350
full years of imprisonment; 351

(d) Subject to division (A) (1) (e) of this section, life 352
imprisonment with parole eligibility after serving thirty full 353
years of imprisonment; 354

(e) If the victim of the aggravated murder was less than 355
thirteen years of age, the offender also is convicted of or 356
pleads guilty to a sexual motivation specification that was 357
included in the indictment, count in the indictment, or 358
information charging the offense, and the trial court does not 359
impose a sentence of life imprisonment without parole on the 360
offender pursuant to division (A) (1) (a) of this section, the 361
trial court shall sentence the offender pursuant to division (B) 362
(3) of section 2971.03 of the Revised Code to an indefinite term 363
consisting of a minimum term of thirty years and a maximum term 364
of life imprisonment that shall be served pursuant to that 365
section. 366

(2) If the offender also is convicted of or pleads guilty 367
to a sexual motivation specification and a sexually violent 368
predator specification that are included in the indictment, 369
count in the indictment, or information that charged the 370
aggravated murder, the trial court shall impose upon the 371
offender a sentence of life imprisonment without parole that 372
shall be served pursuant to section 2971.03 of the Revised Code. 373

(B) If the indictment or count in the indictment charging 374

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

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

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

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

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

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

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

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

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

(i) Life imprisonment without parole; 414

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Life imprisonment without parole; 609

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

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

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

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

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

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

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

(a) Life imprisonment without parole; 651

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

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

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

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

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

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

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

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

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

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

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

general election, or if the person campaigns as a write-in 733
candidate in a primary or general election. 734

(2) The offense was committed for hire. 735

(3) The offense was committed for the purpose of escaping 736
detection, apprehension, trial, or punishment for another 737
offense committed by the offender. 738

(4) The offense was committed while the offender was under 739
detention or while the offender was at large after having broken 740
detention. As used in division (A)(4) of this section, 741
"detention" has the same meaning as in section 2921.01 of the 742
Revised Code, except that detention does not include 743
hospitalization, institutionalization, or confinement in a 744
mental health facility or intellectual disabilities facility 745
unless at the time of the commission of the offense either of 746
the following circumstances apply: 747

(a) The offender was in the facility as a result of being 748
charged with a violation of a section of the Revised Code. 749

(b) The offender was under detention as a result of being 750
convicted of or pleading guilty to a violation of a section of 751
the Revised Code. 752

(5) Prior to the offense at bar, the offender was 753
convicted of an offense an essential element of which was the 754
purposeful killing of or attempt to kill another, or the offense 755
at bar was part of a course of conduct involving the purposeful 756
killing of or attempt to kill two or more persons by the 757
offender. 758

(6) The victim of the offense was a law enforcement 759
officer, as defined in section 2911.01 of the Revised Code, whom 760
the offender had reasonable cause to know or knew to be a law 761

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

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

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

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

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

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

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

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

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

(4) The youth of the offender; 818

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

criminal convictions and delinquency adjudications; 820

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

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

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

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

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

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

the. 849

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

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

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

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

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

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

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

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

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

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

that nature otherwise would be available. 940

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

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

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

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

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

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

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

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

~~(b)~~ (c) As used in division (A) (1) (a) of this section, ~~7~~ 993
"actual:" 994

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) That the discovery not be had; 1098

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) Both of the following apply: 1369

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

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

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

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

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

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

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

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

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

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