

As Introduced

135th General Assembly

Regular Session

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H. B. No. 594

Representatives Jarrells, Williams

Cosponsors: Representatives Grim, Isaacsohn, Brewer, Somani, Piccolantonio, Upchurch, Sims, Skindell, Thomas, C., Brent, Rogers, Mohamed, Dell'Aquila, Blackshear, Humphrey, Sweeney, Dobos, Willis, Klopfenstein, Gross, White, Schmidt, Russo

A BILL

To amend sections 181.25, 2929.06, 2945.79, 1
2945.80, 2945.81, 2953.21, and 2953.23 and to 2
enact section 2945.811 of the Revised Code to 3
allow a person to file a motion for a new trial 4
or a petition for postconviction relief if the 5
person produces new evidence that would 6
establish a strong probability of a different 7
result at trial. 8

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

Section 1. That sections 181.25, 2929.06, 2945.79, 9
2945.80, 2945.81, 2953.21, and 2953.23 be amended and section 10
2945.811 of the Revised Code be enacted to read as follows: 11

Sec. 181.25. (A) If the comprehensive criminal sentencing 12
structure that it recommends to the general assembly pursuant to 13
section 181.24 of the Revised Code or any aspects of that 14
sentencing structure are enacted into law, the state criminal 15
sentencing commission shall do all of the following: 16

(1) Assist the general assembly in the implementation of 17
those aspects of the sentencing structure that are enacted into 18
law; 19

(2) Monitor the operation of the aspects of the sentencing 20
structure that are enacted into law and report to the general 21
assembly no later than January 1, 1997, and biennially 22
thereafter, on all of the following matters: 23

(a) The impact of the sentencing structure in effect on 24
and after July 1, 1996, on political subdivisions and other 25
relevant aspects of local government in this state, including 26
all of the following information: 27

(i) The number and type of offenders who were being 28
imprisoned in a state correctional institution under the law in 29
effect prior to July 1, 1996, but who are being punished under a 30
community control sanction, as defined in section 2929.01 of the 31
Revised Code, under the law in effect on and after July 1, 1996; 32

(ii) The fiscal and other impact of the law in effect on 33
and after July 1, 1996, on political subdivisions and other 34
relevant aspects of local government in this state, including 35
law enforcement agencies, the court system, prosecutors, as 36
defined in section 2935.01 of the Revised Code, the public 37
defender and assigned counsel system, jails and workhouses, 38
probation departments, the drug and alcohol abuse intervention 39
and treatment system, and the mental health intervention and 40
treatment system. 41

(b) The impact of the sentencing structure in effect on 42
and after July 1, 1996, on the population of state correctional 43
institutions, including information regarding the number and 44
types of offenders who are being imprisoned under the law in 45

effect on and after July 1, 1996, and the amount of space in 46
state correctional institutions that is necessary to house those 47
offenders; 48

(c) The impact of the sentencing structure and the 49
sentence appeal provisions in effect on and after July 1, 1996, 50
on the appellate courts of this state, including information 51
regarding the number of sentence-based appeals, the cost of 52
reviewing appeals of that nature, whether a special court should 53
be created to review sentences, and whether changes should be 54
made to ensure that sentence-based appeals are conducted 55
expeditiously. 56

(3) Review all bills that are introduced in the general 57
assembly that provide for new criminal offenses or that change 58
the penalty for any criminal offense, determine if those bills 59
are consistent with the sentencing policy adopted under division 60
(B) of section 181.23 of the Revised Code, determine the impact 61
of those bills upon the correctional resources of the state, and 62
recommend to the general assembly any necessary amendments to 63
those bills. When the commission recommends any amendment for a 64
bill before the general assembly, it shall do so in a manner 65
that is consistent with the requirements of section 181.24 of 66
the Revised Code. 67

(4) Study criminal sentencing structures in this state, 68
other states, and the federal government, recommend necessary 69
changes to the sentencing structure of the state, and determine 70
the costs and effects of any proposed changes in the sentencing 71
structure of the state; 72

(5) Collect and maintain data that pertains to the cost to 73
counties of the felony sentence appeal provisions set forth in 74
section 2953.08 of the Revised Code, of the postconviction 75

relief proceeding provisions set forth in division ~~(A)(2)~~ (B)(2) 76
of section 2953.21 of the Revised Code, and of appeals from 77
judgments entered in such postconviction relief proceedings. The 78
data so collected and maintained shall include, but shall not be 79
limited to, the increase in expenses that counties experience as 80
a result of those provisions and those appeals and the number of 81
felony sentence appeals made, postconviction relief proceedings 82
filed, and appeals of postconviction relief proceeding judgments 83
made in each county under those provisions. 84

(B) In addition to its duties set forth in section 181.24 85
of the Revised Code and division (A) of this section, the state 86
criminal sentencing commission shall review all forfeiture 87
statutes in Titles XXIX and XLV of the Revised Code and, not 88
later than July 1, 2002, recommend to the general assembly any 89
necessary changes to those statutes. 90

Sec. 2929.06. (A) (1) If a sentence of death imposed upon 91
an offender is set aside, nullified, vacated, or voided for any 92
of the following reasons, the trial court that sentenced the 93
offender shall conduct a hearing to resentence the offender in 94
accordance with division (A) (2) of this section: 95

(a) The court of appeals, in a case in which a sentence of 96
death was imposed for an offense committed before January 1, 97
1995, or the supreme court, in a case in which the supreme court 98
reviews the sentence upon appeal, could not affirm the sentence 99
of death under the standards imposed by section 2929.05 of the 100
Revised Code. 101

(b) The sole reason that the statutory procedure for 102
imposing the sentence of death that is set forth in sections 103
2929.03 and 2929.04 of the Revised Code is unconstitutional. 104

(c) The sentence of death is set aside, nullified, or 105
vacated pursuant to division (C) of section 2929.05 of the 106
Revised Code. 107

(d) A court has determined that the offender is a person 108
with an intellectual disability under standards set forth in 109
decisions of the supreme court of this state or the United 110
States supreme court. 111

(e) The sentence of death is voided by a court pursuant to 112
division ~~(H)~~ (I) of section 2953.21 of the Revised Code. 113

(2) At a resentencing hearing conducted under division (A) 114
(1) of this section, the court shall impose upon the offender a 115
sentence of life imprisonment or an indefinite term consisting 116
of a minimum term of thirty years and a maximum term of life 117
imprisonment that is determined as specified in this division. 118
If the sentence of death was voided by a court pursuant to 119
division ~~(H)~~ (I) of section 2953.21 of the Revised Code, the 120
offender has waived any right to be sentenced to any sentence 121
other than life imprisonment without parole as described in 122
division (A) (3) (b) of that section and the court shall impose a 123
sentence of life imprisonment without parole. If the immediately 124
preceding sentence does not apply and if division (D) of section 125
2929.03 of the Revised Code, at the time the offender committed 126
the aggravated murder for which the sentence of death was 127
imposed, required the imposition when a sentence of death was 128
not imposed of a sentence of life imprisonment without parole or 129
a sentence of an indefinite term consisting of a minimum term of 130
thirty years and a maximum term of life imprisonment to be 131
imposed pursuant to division (A) or (B) (3) of section 2971.03 of 132
the Revised Code and served pursuant to that section, except as 133
provided in division (F) of this section, the court shall impose 134

the sentence so required. In all other cases, except as provided 135
in division (F) of this section, the sentences of life 136
imprisonment that are available at the hearing, and from which 137
the court shall impose sentence, shall be the same sentences of 138
life imprisonment that were available under division (D) of 139
section 2929.03 or under section 2909.24 of the Revised Code at 140
the time the offender committed the offense for which the 141
sentence of death was imposed. Nothing in this division 142
regarding the resentencing of an offender shall affect the 143
operation of section 2971.03 of the Revised Code. 144

(B) Whenever any court of this state or any federal court 145
sets aside, nullifies, or vacates a sentence of death imposed 146
upon an offender because of error that occurred in the 147
sentencing phase of the trial and if division (A) of this 148
section does not apply, the trial court that sentenced the 149
offender shall conduct a new hearing to resentence the offender. 150
If the offender was tried by a jury, the trial court shall 151
impanel a new jury for the hearing. If the offender was tried by 152
a panel of three judges, that panel or, if necessary, a new 153
panel of three judges shall conduct the hearing. At the hearing, 154
the court or panel shall follow the procedure set forth in 155
division (D) of section 2929.03 of the Revised Code in 156
determining whether to impose upon the offender a sentence of 157
death, a sentence of life imprisonment, or an indefinite term 158
consisting of a minimum term of thirty years and a maximum term 159
of life imprisonment. If, pursuant to that procedure, the court 160
or panel determines that it will impose a sentence other than a 161
sentence of death, except as provided in division (F) of this 162
section, the court or panel shall impose upon the offender one 163
of the sentences of life imprisonment that could have been 164
imposed at the time the offender committed the offense for which 165

the sentence of death was imposed, determined as specified in 166
this division, or an indefinite term consisting of a minimum 167
term of thirty years and a maximum term of life imprisonment 168
that is determined as specified in this division. If division 169
(D) of section 2929.03 of the Revised Code, at the time the 170
offender committed the aggravated murder for which the sentence 171
of death was imposed, required the imposition when a sentence of 172
death was not imposed of a sentence of life imprisonment without 173
parole or a sentence of an indefinite term consisting of a 174
minimum term of thirty years and a maximum term of life 175
imprisonment to be imposed pursuant to division (A) or (B) (3) of 176
section 2971.03 of the Revised Code and served pursuant to that 177
section, except as provided in division (F) of this section, the 178
court or panel shall impose the sentence so required. In all 179
other cases, except as provided in division (F) of this section, 180
the sentences of life imprisonment that are available at the 181
hearing, and from which the court or panel shall impose 182
sentence, shall be the same sentences of life imprisonment that 183
were available under division (D) of section 2929.03 or under 184
section 2909.24 of the Revised Code at the time the offender 185
committed the offense for which the sentence of death was 186
imposed. 187

(C) If a sentence of life imprisonment without parole 188
imposed upon an offender pursuant to section 2929.021 or 2929.03 189
of the Revised Code is set aside, nullified, or vacated for the 190
sole reason that the statutory procedure for imposing the 191
sentence of life imprisonment without parole that is set forth 192
in sections 2929.03 and 2929.04 of the Revised Code is 193
unconstitutional, the trial court that sentenced the offender 194
shall conduct a hearing to resentence the offender to life 195
imprisonment with parole eligibility after serving twenty-five 196

full years of imprisonment or to life imprisonment with parole 197
eligibility after serving thirty full years of imprisonment. 198

(D) Nothing in this section limits or restricts the rights 199
of the state to appeal any order setting aside, nullifying, or 200
vacating a conviction or sentence of death, when an appeal of 201
that nature otherwise would be available. 202

(E) This section, as amended by H.B. 184 of the 125th 203
general assembly, shall apply to all offenders who have been 204
sentenced to death for an aggravated murder that was committed 205
on or after October 19, 1981, or for terrorism that was 206
committed on or after May 15, 2002. This section, as amended by 207
H.B. 184 of the 125th general assembly, shall apply equally to 208
all such offenders sentenced to death prior to, on, or after 209
March 23, 2005, including offenders who, on March 23, 2005, are 210
challenging their sentence of death and offenders whose sentence 211
of death has been set aside, nullified, or vacated by any court 212
of this state or any federal court but who, as of March 23, 213
2005, have not yet been resentenced. 214

(F) A court shall not impose a sentence of life 215
imprisonment without parole on a person under division (A) or 216
(B) of this section for an offense that was committed when the 217
person was under eighteen years of age. 218

Sec. 2945.79. A new trial, after a verdict of conviction, 219
may be granted on the application of the defendant for any of 220
the following causes ~~affecting that materially his~~ affect the 221
fairness of the defendant's substantial rights, trial or that 222
demonstrate a miscarriage of justice: 223

(A) Irregularity in the proceedings of the court, jury, 224
prosecuting attorney, or the witnesses for the state, or for any 225

order of the court, or abuse of discretion by which the 226
defendant was prevented from having a fair trial; 227

(B) Misconduct of the jury, prosecuting attorney, or the 228
witnesses for the state; 229

(C) Accident or surprise which ordinary prudence could not 230
have guarded against; 231

(D) That the verdict is not sustained by sufficient 232
evidence or is contrary to law; but if the evidence shows the 233
defendant is not guilty of the degree of crime for which ~~he~~ the 234
defendant was convicted, but guilty of a lesser degree thereof, 235
or of a lesser crime included therein, the court may modify the 236
verdict or finding accordingly, without granting or ordering a 237
new trial, and pass sentence on such verdict or finding as 238
modified, provided that this power extends to any court to which 239
the cause may be taken on appeal; 240

(E) Error of law occurring at the trial; 241

(F) When new evidence is discovered material to the 242
defendant, which ~~he~~ the defendant could not with reasonable 243
diligence have discovered and produced at the trial. When a 244
motion for a new trial is made upon the ground of newly 245
discovered evidence, the defendant must produce at the hearing 246
of said motion, in support thereof, the affidavits of the 247
witnesses by whom such evidence is expected to be given, and if 248
time is required by the defendant to procure such affidavits, 249
the court may postpone the hearing of the motion for such length 250
of time as under all the circumstances of the case is 251
reasonable. The prosecuting attorney may produce affidavits or 252
other evidence to impeach the affidavits of such witnesses. 253

(G) When new evidence is discovered that, were it to be 254

considered at a new trial, would establish a strong probability 255
of a different result at trial. 256

Sec. 2945.80. Application ~~(A) Except as provided in~~ 257
divisions (B) and (C) of this section, applications for a new 258
trial shall be made by motion upon written grounds, and ~~except~~ 259
~~for the cause of newly discovered evidence material for the~~ 260
~~person applying, which he could not with reasonable diligence~~ 261
~~have discovered and produced at the trial,~~ shall be filed within 262
three days after the verdict was rendered, or the decision of 263
the court where a trial by jury has been waived, unless it is 264
made to appear by clear and convincing proof that the defendant 265
was unavoidably prevented from filing ~~his~~ a motion for new trial 266
in which case it shall be filed within three days from the order 267
of the court finding that ~~he~~ the defendant was unavoidably 268
prevented from filing such motion within the time provided 269
herein. 270

(B) Motions for new trial on account of newly discovered 271
evidence under division (F) of section 2945.79 of the Revised 272
Code shall be filed within one hundred twenty days following the 273
day upon which the verdict was rendered, or the decision of the 274
court where trial by jury has been waived. If it is made to 275
appear by clear and convincing proof that the defendant was 276
unavoidably prevented from the discovery of the evidence upon 277
which ~~he~~ the defendant must rely, such motion shall be filed 278
within three days from an order of the court finding that ~~he~~ the 279
defendant was unavoidably prevented from discovering the 280
evidence within the one hundred twenty day period. 281

(C) Motions for new trial on account of newly discovered 282
evidence under division (G) of section 2945.79 of the Revised 283
Code shall be filed at any time after the verdict was rendered. 284

Sec. 2945.81. (A) The causes enumerated in divisions (B) 285
and (C) of section 2945.79 of the Revised Code must be sustained 286
by affidavit showing their truth, and may be controverted by 287
affidavits. 288

(B) The causes enumerated in division (G) of section 289
2945.79 of the Revised Code must be sustained by affidavit 290
showing their truth, and may be controverted by affidavit and 291
other documentary evidence in support of the claim for relief. 292

Sec. 2945.811. (A) As used in this section, "patently 293
frivolous" means offering evidence that, even if true, would not 294
satisfy the standard in division (G) of section 2945.79 of the 295
Revised Code. 296

(B) A motion for new trial on account of newly discovered 297
evidence under division (G) of section 2945.79 of the Revised 298
Code shall include all of the following: 299

(1) Specific, nonconclusory facts identifying the newly 300
discovered evidence; 301

(2) An explanation of how the newly discovered evidence 302
entitles the defendant to relief; 303

(3) An explanation of why the newly discovered evidence 304
was not proffered at trial or at any pretrial proceedings in the 305
case; 306

(4) Any supporting evidence or documentation. 307

(C) Before granting a hearing on a motion for a new trial, 308
the court shall review, in addition to the motion and supporting 309
evidence or documentation described in division (B) of this 310
section, the supporting affidavits and the documentary evidence, 311
all the files and records pertaining to the proceedings against 312

the defendant, including, but not limited to, the indictment, 313
the court's journal entries, the journalized records of the 314
clerk of the court, and the court reporter's transcript. 315

(D) If, after reviewing the materials described in 316
division (C) of this section, the court finds that the motion 317
for a new trial is patently frivolous, the court shall dismiss 318
the motion. 319

(E) If the court does not dismiss the motion for a new 320
trial pursuant to division (D) of this section, the parties may 321
obtain discovery in accordance with the Ohio Rules of Civil 322
Procedure. 323

(F) After reviewing the materials described in division 324
(C) of this section and after discovery is completed pursuant to 325
division (D) of this section, the court shall promptly hold a 326
hearing on the motion for a new trial. 327

(G) If the court finds that the new evidence, were it to 328
be considered at a new trial, would establish a strong 329
probability of a different result at trial, the court shall 330
grant a new trial. If the court does not find that the new 331
evidence would establish a strong probability of a different 332
result at trial, the court shall not grant a new trial. 333

(H) The court may appoint counsel to represent a person 334
who files a motion for a new trial upon a finding that the 335
person is indigent, unless after reviewing the materials 336
described in division (C) of this section, the court finds that 337
the motion is patently frivolous. 338

Sec. 2953.21. ~~(A)(1)(a)~~ (A) As used in this section, 339
"patently frivolous" means offering evidence which, even if 340
true, would not satisfy the standard in division (B)(1)(a)(v) of 341

this section. 342

(B) (1) (a) A person in any of the following categories may 343
file a petition in the court that imposed sentence, stating the 344
grounds for relief relied upon, and asking the court to vacate 345
or set aside the judgment or sentence or to grant other 346
appropriate relief: 347

(i) Any person who has been convicted of a criminal 348
offense or adjudicated a delinquent child and who claims that 349
there was such a denial or infringement of the person's rights 350
as to render the judgment void or voidable under the Ohio 351
Constitution or the Constitution of the United States; 352

(ii) Any person who has been convicted of a criminal 353
offense and sentenced to death and who claims that there was a 354
denial or infringement of the person's rights under either of 355
those Constitutions that creates a reasonable probability of an 356
altered verdict; 357

(iii) Any person who has been convicted of a criminal 358
offense that is a felony and who is an offender for whom DNA 359
testing that was performed under sections 2953.71 to 2953.81 of 360
the Revised Code or under former section 2953.82 of the Revised 361
Code and analyzed in the context of and upon consideration of 362
all available admissible evidence related to the person's case 363
as described in division (D) of section 2953.74 of the Revised 364
Code provided results that establish, by clear and convincing 365
evidence, actual innocence of that felony offense or, if the 366
person was sentenced to death, establish, by clear and 367
convincing evidence, actual innocence of the aggravating 368
circumstance or circumstances the person was found guilty of 369
committing and that is or are the basis of that sentence of 370
death; 371

(iv) Any person who has been convicted of aggravated 372
murder and sentenced to death for the offense and who claims 373
that the person had a serious mental illness at the time of the 374
commission of the offense and that as a result the court should 375
render void the sentence of death, with the filing of the 376
petition constituting the waiver described in division ~~(A) (3) (b)~~ 377
(B) (3) (b) of this section; 378

(v) Any person who produces newly discovered evidence 379
that, were it to be considered at a new trial, would establish a 380
strong probability of a different result at trial. 381

(b) A petitioner under division ~~(A) (1) (a)~~ (B) (1) (a) of 382
this section may file a supporting affidavit and other 383
documentary evidence in support of the claim for relief. 384

(c) As used in division ~~(A) (1) (a)~~ (B) (1) (a) of this 385
section: 386

(i) "Actual innocence" means that, had the results of the 387
DNA testing conducted under sections 2953.71 to 2953.81 of the 388
Revised Code or under former section 2953.82 of the Revised Code 389
been presented at trial, and had those results been analyzed in 390
the context of and upon consideration of all available 391
admissible evidence related to the person's case as described in 392
division (D) of section 2953.74 of the Revised Code, no 393
reasonable factfinder would have found the petitioner guilty of 394
the offense of which the petitioner was convicted, or, if the 395
person was sentenced to death, no reasonable factfinder would 396
have found the petitioner guilty of the aggravating circumstance 397
or circumstances the petitioner was found guilty of committing 398
and that is or are the basis of that sentence of death. 399

(ii) "Serious mental illness" has the same meaning as in 400

section 2929.025 of the Revised Code.

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

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

(i) For any witness who testified at trial or who was disclosed by the state prior to trial, except as otherwise provided in this division, the petitioner or prosecuting attorney shows clear and convincing evidence that the witness is material and that a deposition of the witness or the issuing of a subpoena or subpoena duces tecum is of assistance in order to substantiate or refute the petitioner's claim that there is a

reasonable probability of an altered verdict. This division does 431
not apply if the witness was unavailable for trial or would not 432
voluntarily be interviewed by the defendant or prosecuting 433
attorney. 434

(ii) For any witness with respect to whom division ~~(A) (1)~~ 435
~~(e) (i)~~ (B) (1) (e) (i) of this section does not apply, the 436
petitioner or prosecuting attorney shows good cause that the 437
witness is material and that a deposition of the witness or the 438
issuing of a subpoena or subpoena duces tecum is of assistance 439
in order to substantiate or refute the petitioner's claim that 440
there is a reasonable probability of an altered verdict. 441

(f) If a person ~~who has been sentenced to death and who~~ 442
files a petition for postconviction relief under division ~~(A)~~ 443
(B) of this section requests postconviction discovery as 444
described in division ~~(A) (1) (e)~~ (B) (1) (e) of this section or if 445
the prosecuting attorney of the county served by the court 446
requests postconviction discovery as described in that division, 447
within ten days after the docketing of the request, or within 448
any other time that the court sets for good cause shown, the 449
prosecuting attorney shall respond by answer or motion to the 450
petitioner's request or the petitioner shall respond by answer 451
or motion to the prosecuting attorney's request, whichever is 452
applicable. 453

(g) If a person ~~who has been sentenced to death and who~~ 454
files a petition for postconviction relief under division ~~(A)~~ 455
(B) of this section requests postconviction discovery as 456
described in division ~~(A) (1) (e)~~ (B) (1) (e) of this section or if 457
the prosecuting attorney of the county served by the court 458
requests postconviction discovery as described in that division, 459
upon motion by the petitioner, the prosecuting attorney, or the 460

person from whom discovery is sought, and for good cause shown, 461
the court in which the action is pending may make any order that 462
justice requires to protect a party or person from oppression or 463
undue burden or expense, including but not limited to the orders 464
described in divisions ~~(A) (1) (h) (i)~~ (B) (1) (h) (i) to (viii) of 465
this section. The court also may make any such order if, in its 466
discretion, it determines that the discovery sought would be 467
irrelevant to the claims made in the petition; and if the court 468
makes any such order on that basis, it shall explain in the 469
order the reasons why the discovery would be irrelevant. 470

(h) If a petitioner, prosecuting attorney, or person from 471
whom discovery is sought makes a motion for an order under 472
division ~~(A) (1) (g)~~ (B) (1) (g) of this section and the order is 473
denied in whole or in part, the court, on terms and conditions 474
as are just, may order that any party or person provide or 475
permit discovery as described in division ~~(A) (1) (e)~~ (B) (1) (e) of 476
this section. The provisions of Civil Rule 37(A) (4) apply to the 477
award of expenses incurred in relation to the motion, except 478
that in no case shall a court require a petitioner who is 479
indigent to pay expenses under those provisions. 480

Before any person moves for an order under division ~~(A) (1)~~ 481
~~(g)~~ (B) (1) (g) of this section, that person shall make a 482
reasonable effort to resolve the matter through discussion with 483
the petitioner or prosecuting attorney seeking discovery. A 484
motion for an order under division ~~(A) (1) (g)~~ (B) (1) (g) of this 485
section shall be accompanied by a statement reciting the effort 486
made to resolve the matter in accordance with this paragraph. 487

The orders that may be made under division ~~(A) (1) (g)~~ (B) 488
(1) (g) of this section include, but are not limited to, any of 489
the following: 490

(i) That the discovery not be had; 491

(ii) That the discovery may be had only on specified terms 492
and conditions, including a designation of the time or place; 493

(iii) That the discovery may be had only by a method of 494
discovery other than that selected by the party seeking 495
discovery; 496

(iv) That certain matters not be inquired into or that the 497
scope of the discovery be limited to certain matters; 498

(v) That discovery be conducted with no one present except 499
persons designated by the court; 500

(vi) That a deposition after being sealed be opened only 501
by order of the court; 502

(vii) That a trade secret or other confidential research, 503
development, or commercial information not be disclosed or be 504
disclosed only in a designated way; 505

(viii) That the parties simultaneously file specified 506
documents or information enclosed in sealed envelopes to be 507
opened as directed by the court. 508

(i) Any postconviction discovery authorized under division 509
~~(A) (1) (e)~~ (B) (1) (e) of this section shall be completed not later 510
than eighteen months after the start of the discovery 511
proceedings unless, for good cause shown, the court extends that 512
period for completing the discovery. 513

(j) Nothing in division ~~(A) (1) (e)~~ (B) (1) (e) of this 514
section authorizes, or shall be construed as authorizing, the 515
relitigation, or discovery in support of relitigation, of any 516
matter barred by the doctrine of res judicata. 517

(k) Division ~~(A) (1)~~ (B) (1) of this section does not apply 518
to any person who has been convicted of a criminal offense and 519
sentenced to death and who has unsuccessfully raised the same 520
claims in a petition for postconviction relief. 521

(2) (a) Except as otherwise provided in section 2953.23 of 522
the Revised Code, a petition under division ~~(A) (1) (a) (i)~~ (B) (1) 523
(a) (i), (ii), or (iii) of this section shall be filed no later 524
than three hundred sixty-five days after the date on which the 525
trial transcript is filed in the court of appeals in the direct 526
appeal of the judgment of conviction or adjudication or, if the 527
direct appeal involves a sentence of death, the date on which 528
the trial transcript is filed in the supreme court. If no appeal 529
is taken, except as otherwise provided in section 2953.23 of the 530
Revised Code, the petition shall be filed no later than three 531
hundred sixty-five days after the expiration of the time for 532
filing the appeal. 533

(b) Except as otherwise provided in section 2953.23 of the 534
Revised Code, a petition under division ~~(A) (1) (a) (iv)~~ (B) (1) (a) 535
(iv) of this section shall be filed not later than three hundred 536
sixty-five days after ~~the effective date of this amendment~~ April 537
12, 2021. 538

(c) A petition under division (B) (1) (a) (v) of this section 539
shall be filed at any time after the expiration of the time for 540
filing the appeal. 541

(3) (a) In a petition filed under division ~~(A) (1) (a) (i)~~ (B) 542
(1) (a) (i), (ii), ~~or~~ (iii), or (v) of this section, a person who 543
has been sentenced to death may ask the court to render void or 544
voidable the judgment with respect to the conviction of 545
aggravated murder or the specification of an aggravating 546
circumstance or the sentence of death. 547

(b) A person sentenced to death who files a petition under 548
division ~~(A) (1) (a) (iv)~~ (B) (1) (a) (iv) of this section may ask the 549
court to render void the sentence of death and to order the 550
resentencing of the person under division (A) of section 2929.06 551
of the Revised Code. If a person sentenced to death files such a 552
petition and asks the court to render void the sentence of death 553
and to order the resentencing of the person under division (A) 554
of section 2929.06 of the Revised Code, the act of filing the 555
petition constitutes a waiver of any right to be sentenced under 556
the law that existed at the time the offense was committed and 557
constitutes consent to be sentenced to life imprisonment without 558
parole under division (A) of section 2929.06 of the Revised 559
Code. 560

(4) A petitioner shall state in the original or amended 561
petition filed under division ~~(A)~~ (B) of this section all 562
grounds for relief claimed by the petitioner. Except as provided 563
in section 2953.23 of the Revised Code, any ground for relief 564
that is not so stated in the petition is waived. 565

(5) If the petitioner in a petition filed under division 566
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), or (iii) of this section was 567
convicted of or pleaded guilty to a felony, the petition may 568
include a claim that the petitioner was denied the equal 569
protection of the laws in violation of the Ohio Constitution or 570
the United States Constitution because the sentence imposed upon 571
the petitioner for the felony was part of a consistent pattern 572
of disparity in sentencing by the judge who imposed the 573
sentence, with regard to the petitioner's race, gender, ethnic 574
background, or religion. If the supreme court adopts a rule 575
requiring a court of common pleas to maintain information with 576
regard to an offender's race, gender, ethnic background, or 577
religion, the supporting evidence for the petition shall 578

include, but shall not be limited to, a copy of that type of
information relative to the petitioner's sentence and copies of
that type of information relative to sentences that the same
judge imposed upon other persons.

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

~~(B) (C)~~ The clerk of the court in which the petition for
postconviction relief and, if applicable, a request for
postconviction discovery described in division ~~(A) (1) (e)~~ (B) (1)
(e) of this section is filed shall docket the petition and the
request and bring them promptly to the attention of the court.
The clerk of the court in which the petition for postconviction
relief and, if applicable, a request for postconviction
discovery described in division ~~(A) (1) (e)~~ (B) (1) (e) of this
section is filed immediately shall forward a copy of the
petition and a copy of the request if filed by the petitioner to
the prosecuting attorney of the county served by the court. If
the request for postconviction discovery is filed by the
prosecuting attorney, the clerk of the court immediately shall
forward a copy of the request to the petitioner or the

petitioner's counsel.

~~(C)~~ (D) If a person who has been sentenced to death and who files a petition for postconviction relief under division ~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), ~~or (iv)~~, or (v) of this section requests a deposition or the prosecuting attorney in the case requests a deposition, and if the court grants the request under division ~~(A) (1) (e)~~ (B) (1) (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)~~ (E) The court shall consider a petition that is timely filed within the period specified in division ~~(A) (2)~~ (B) (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)~~ (B) (1) (a) (i), (ii), (iii), ~~or (iv)~~, or (v) 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 641
conclusions of law shall state specifically the reasons for the 642
dismissal of the petition and of each claim it contains. 643

~~(E)~~ (F) Within ten days after the docketing of the 644
petition, or within any further time that the court may fix for 645
good cause shown, the prosecuting attorney shall respond by 646
answer or motion. Division ~~(A) (6)~~ (B) (6) of this section applies 647
with respect to the prosecuting attorney's response. Within 648
twenty days from the date the issues are raised, either party 649
may move for summary judgment. The right to summary judgment 650
shall appear on the face of the record. 651

~~(F)~~ Unless (G) For a petition filed under division (B) (1) 652
(a) (i), (ii), (iii), or (iv) of this section, unless the 653
petition and the files and records of the case show the 654
petitioner is not entitled to relief, the court shall proceed to 655
a prompt hearing on the issues even if a direct appeal of the 656
case is pending. For a petition filed under division (B) (1) (a) 657
(v) of this section, unless the petition and the files and 658
records of the case show that the petition is patently 659
frivolous, the court shall hold a hearing on the issues thirty 660
days after the prosecuting attorney is required to respond by 661
answer or motion as described in division (E) of this section 662
even if a direct appeal of the case is pending. If the court 663
notifies the parties that it has found grounds for granting 664
relief, either party may request an appellate court in which a 665
direct appeal of the judgment is pending to remand the pending 666
case to the court. 667

With respect to a petition filed under division ~~(A) (1) (a)~~ 668
~~(iv)~~ (B) (1) (a) (iv) of this section, the procedures and rules 669
regarding introduction of evidence and burden of proof at the 670

pretrial hearing that are set forth in divisions (C), (D), and 671
(F) of section 2929.025 of the Revised Code apply in considering 672
the petition. With respect to such a petition, the grounds for 673
granting relief are that the person has been diagnosed with one 674
or more of the conditions set forth in division (A)(1)(a) of 675
section 2929.025 of the Revised Code and that, at the time of 676
the aggravated murder that was the basis of the sentence of 677
death, the condition or conditions significantly impaired the 678
person's capacity in a manner described in division (A)(1)(b) of 679
that section. 680

~~(G)~~ (H) A petitioner who files a petition under division 681
~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), (iii), ~~or~~ (iv), or (v) of this 682
section may amend the petition as follows: 683

(1) If the petition was filed by a person who has been 684
sentenced to death, at any time that is not later than one 685
hundred eighty days after the petition is filed, the petitioner 686
may amend the petition with or without leave or prejudice to the 687
proceedings. 688

(2) If division ~~(G)(1)~~ (H)(1) of this section does not 689
apply, at any time before the answer or motion is filed, the 690
petitioner may amend the petition with or without leave or 691
prejudice to the proceedings. 692

(3) The petitioner may amend the petition with leave of 693
court at any time after the expiration of the applicable period 694
specified in division ~~(G)(1)~~ (H)(1) or (2) of this section. 695

~~(H)~~ (I) If the court does not find grounds for granting 696
relief, it shall make and file findings of fact and conclusions 697
of law and shall enter judgment denying relief on the petition. 698
If the petition was filed by a person who has been sentenced to 699

death, the findings of fact and conclusions of law shall state 700
specifically the reasons for the denial of relief on the 701
petition and of each claim it contains. If no direct appeal of 702
the case is pending and the court finds grounds for relief or if 703
a pending direct appeal of the case has been remanded to the 704
court pursuant to a request made pursuant to division ~~(F)~~ (G) of 705
this section and the court finds grounds for granting relief, it 706
shall make and file findings of fact and conclusions of law and 707
shall enter a judgment that vacates and sets aside the judgment 708
in question, and, in the case of a petitioner who is a prisoner 709
in custody, except as otherwise described in this division, 710
shall discharge or resentence the petitioner or grant a new 711
trial as the court determines appropriate. If the court finds 712
grounds for relief in the case of a petitioner who filed a 713
petition under division ~~(A) (1) (a) (iv)~~ (B) (1) (a) (iv) of this 714
section, the court shall render void the sentence of death and 715
order the resentencing of the offender under division (A) of 716
section 2929.06 of the Revised Code. If the petitioner has been 717
sentenced to death, the findings of fact and conclusions of law 718
shall state specifically the reasons for the finding of grounds 719
for granting the relief, with respect to each claim contained in 720
the petition. The court also may make supplementary orders to 721
the relief granted, concerning such matters as rearraignment, 722
retrial, custody, and bail. If the trial court's order granting 723
the petition is reversed on appeal and if the direct appeal of 724
the case has been remanded from an appellate court pursuant to a 725
request under division ~~(F)~~ (G) of this section, the appellate 726
court reversing the order granting the petition shall notify the 727
appellate court in which the direct appeal of the case was 728
pending at the time of the remand of the reversal and remand of 729
the trial court's order. Upon the reversal and remand of the 730
trial court's order granting the petition, regardless of whether 731

notice is sent or received, the direct appeal of the case that 732
was remanded is reinstated. 733

~~(I)~~ (J) Upon the filing of a petition pursuant to division 734
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), or (v) of this 735
section by a person sentenced to death, only the supreme court 736
may stay execution of the sentence of death. 737

~~(J) (1) If~~ (K) (1) (a) Except as provided in division (J) (1) 738
(b) of this section, if a person sentenced to death intends to 739
file a petition under division (B) (1) (a) (i), (ii), (iii), or 740
(iv) of this section, the court shall appoint counsel to 741
represent the person upon a finding that the person is indigent 742
and that the person either accepts the appointment of counsel or 743
is unable to make a competent decision whether to accept or 744
reject the appointment of counsel. The court may decline to 745
appoint counsel for the person only upon a finding, after a 746
hearing if necessary, that the person rejects the appointment of 747
counsel and understands the legal consequences of that decision 748
or upon a finding that the person is not indigent. If a person 749
sentenced to death intends to file a petition under division (B) 750
(1) (a) (v) of this section, the court shall appoint counsel to 751
represent the person upon a finding that the person is indigent 752
and that the person either accepts the appointment of counsel or 753
is unable to make a competent decision whether to accept or 754
reject the appointment of counsel, unless the court finds that 755
the evidence is patently frivolous. The court may decline to 756
appoint counsel for the person only upon a finding, after a 757
hearing if necessary, that the person rejects the appointment of 758
counsel and understands the legal consequences of that decision 759
or upon a finding that the person is not indigent. 760

(b) The court may appoint counsel to represent a person 761

who files a petition under division (B)(1)(a)(v) of this section 762
upon a finding that the person is indigent, unless the court 763
finds that the evidence is patently frivolous. 764

(2) The court shall not appoint as counsel under division 765
~~(J)(1)~~ (K)(1) of this section an attorney who represented the 766
petitioner at trial in the case to which the petition relates 767
unless the person and the attorney expressly request the 768
appointment. The court shall appoint as counsel under division 769
~~(J)(1)~~ (K)(1) of this section only an attorney who is certified 770
under Rule 20 of the Rules of Superintendence for the Courts of 771
Ohio to represent indigent defendants charged with or convicted 772
of an offense for which the death penalty can be or has been 773
imposed. The ineffectiveness or incompetence of counsel during 774
proceedings under this section does not constitute grounds for 775
relief in a proceeding under this section, in an appeal of any 776
action under this section, or in an application to reopen a 777
direct appeal. 778

(3) Division ~~(J)~~ (K) of this section does not preclude 779
attorneys who represent the state of Ohio from invoking the 780
provisions of 28 U.S.C. 154 with respect to capital cases that 781
were pending in federal habeas corpus proceedings prior to July 782
1, 1996, insofar as the petitioners in those cases were 783
represented in proceedings under this section by one or more 784
counsel appointed by the court under this section or section 785
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 786
appointed counsel meet the requirements of division ~~(J)(2)~~ (K) 787
(2) of this section. 788

~~(K)~~ (L) Subject to the appeal of a sentence for a felony 789
that is authorized by section 2953.08 of the Revised Code, the 790
remedy set forth in this section is the exclusive remedy by 791

which a person may bring a collateral challenge to the validity 792
of a conviction or sentence in a criminal case or to the 793
validity of an adjudication of a child as a delinquent child for 794
the commission of an act that would be a criminal offense if 795
committed by an adult or the validity of a related order of 796
disposition. 797

Sec. 2953.23. (A) Whether a hearing is or is not held on a 798
petition filed pursuant to section 2953.21 of the Revised Code, 799
a court may not entertain a petition filed after the expiration 800
of the period prescribed in division ~~(A)~~(B) of that section or 801
a second petition or successive petitions for similar relief on 802
behalf of a petitioner unless division (A)(1) or (2) of this 803
section applies: 804

(1) Both of the following apply: 805

(a) Either the petitioner shows that the petitioner was 806
unavoidably prevented from discovery of the facts upon which the 807
petitioner must rely to present the claim for relief, or, 808
subsequent to the period prescribed in division ~~(A)(2)~~(B)(2) of 809
section 2953.21 of the Revised Code or to the filing of an 810
earlier petition, the United States Supreme Court recognized a 811
new federal or state right that applies retroactively to persons 812
in the petitioner's situation, and the petition asserts a claim 813
based on that right. 814

(b) The petitioner shows by clear and convincing evidence 815
that, but for constitutional error at trial, no reasonable 816
factfinder would have found the petitioner guilty of the offense 817
of which the petitioner was convicted or, if the claim 818
challenges a sentence of death that, but for constitutional 819
error at the sentencing hearing, no reasonable factfinder would 820
have found the petitioner eligible for the death sentence. 821

(2) The petitioner was convicted of a felony, the 822
petitioner is an offender for whom DNA testing was performed 823
under sections 2953.71 to 2953.81 of the Revised Code or under 824
former section 2953.82 of the Revised Code and analyzed in the 825
context of and upon consideration of all available admissible 826
evidence related to the inmate's case as described in division 827
(D) of section 2953.74 of the Revised Code, and the results of 828
the DNA testing establish, by clear and convincing evidence, 829
actual innocence of that felony offense or, if the person was 830
sentenced to death, establish, by clear and convincing evidence, 831
actual innocence of the aggravating circumstance or 832
circumstances the person was found guilty of committing and that 833
is or are the basis of that sentence of death. 834

As used in this division, "actual innocence" has the same 835
meaning as in division ~~(A) (1) (e)~~ (B) (1) (c) of section 2953.21 of 836
the Revised Code, and "former section 2953.82 of the Revised 837
Code" has the same meaning as in division ~~(A) (1) (d)~~ (B) (1) (d) of 838
section 2953.21 of the Revised Code. 839

(B) An order awarding or denying relief sought in a 840
petition filed pursuant to section 2953.21 of the Revised Code 841
is a final judgment and may be appealed pursuant to Chapter 842
2953. of the Revised Code. 843

If a petition filed pursuant to section 2953.21 of the 844
Revised Code by a person who has been sentenced to death is 845
denied and the person appeals the judgment, notwithstanding any 846
law or court rule to the contrary, there is no limit on the 847
number of pages in, or on the length of, a notice of appeal or 848
briefs related to an appeal filed by the person. If any court 849
rule specifies a limit on the number of pages in, or on the 850
length of, a notice of appeal or briefs described in this 851

division or on a prosecuting attorney's response or briefs with 852
respect to such an appeal and a person who has been sentenced to 853
death files a notice of appeal or briefs that exceed the limit 854
specified for the petition, the prosecuting attorney may file a 855
response or briefs that exceed the limit specified for the 856
answer or briefs. 857

Section 2. That existing sections 181.25, 2929.06, 858
2945.79, 2945.80, 2945.81, 2953.21, and 2953.23 of the Revised 859
Code are hereby repealed. 860

Section 3. Section 2929.06 of the Revised Code is 861
presented in this act as a composite of the section as amended 862
by both H.B. 136 and S.B. 256 of the 133rd General Assembly. The 863
General Assembly, applying the principle stated in division (B) 864
of section 1.52 of the Revised Code that amendments are to be 865
harmonized if reasonably capable of simultaneous operation, 866
finds that the composite is the resulting version of the section 867
in effect prior to the effective date of the section as 868
presented in this act. 869