

As Reported by the House Criminal Justice Committee

133rd General Assembly

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Sub. H. B. No. 136

Representative Hillyer

**Cosponsors: Representatives Seitz, Weinstein, Crawley, Plummer, Leland,
Crossman, Galonski, Rogers, West**

A BILL

To amend sections 2929.02, 2929.022, 2929.024,
2929.03, 2929.04, 2929.06, 2941.148, 2953.21,
2953.23, 2971.03, and 2971.07 and to enact
section 2929.025 of the Revised Code to prohibit
imposing the death penalty for aggravated murder
when the offender had a serious mental illness
at the time of 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, 2941.148, 2953.21, 2953.23, 2971.03,
and 2971.07 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
determined pursuant to sections 2929.022, 2929.03, and 2929.04
of the Revised Code, except that no person who raises the matter
of age pursuant to section 2929.023 of the Revised Code and who
is not found to have been eighteen years of age or older at the

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

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

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

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

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

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

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

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

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

(1) If the defendant does not elect to have the existence 79
of the aggravating circumstance determined at the sentencing 80
hearing, the defendant shall be tried on the charge of 81
aggravated murder, on the specification of the aggravating 82
circumstance of a prior conviction listed in division (A) (5) of 83
section 2929.04 of the Revised Code, and on any other 84
specifications of an aggravating circumstance listed in division 85
(A) of section 2929.04 of the Revised Code in a single trial as 86
in any other criminal case in which a person is charged with 87
aggravated murder and specifications. 88

(2) If the defendant does elect to have the existence of 89
the aggravating circumstance of a prior conviction listed in 90
division (A) (5) of section 2929.04 of the Revised Code 91
determined at the sentencing hearing, then, following a verdict 92
of guilty of the charge of aggravated murder, the panel of three 93
judges or the trial judge shall: 94

(a) Hold a sentencing hearing pursuant to division (B) of 95
this section, unless required to do otherwise under division (A) 96
(2) (b) of this section; 97

(b) If the offender raises the matter of age at trial 98
pursuant to section 2929.023 of the Revised Code and is not 99
found at trial to have been eighteen years of age or older at 100
the time of the commission of the offense or raises the matter 101
of the offender's serious mental illness at the time of the 102
alleged commission of the offense pursuant to section 2929.025 103
of the Revised Code and is found under that section to be 104
ineligible for a sentence of death due to serious mental 105
illness, conduct a hearing to determine if the specification of 106
the aggravating circumstance of a prior conviction listed in 107
division (A) (5) of section 2929.04 of the Revised Code is proven 108

beyond a reasonable doubt. After conducting the hearing, the 109
panel or judge shall proceed as follows: 110

(i) If that aggravating circumstance is proven beyond a 111
reasonable doubt or if the defendant at trial was convicted of 112
any other specification of an aggravating circumstance, the 113
panel or judge shall impose sentence according to division (E) 114
of section 2929.03 of the Revised Code. 115

(ii) If that aggravating circumstance is not proven beyond 116
a reasonable doubt and the defendant at trial was not convicted 117
of any other specification of an aggravating circumstance, 118
except as otherwise provided in this division, the panel or 119
judge shall impose sentence of life imprisonment with parole 120
eligibility after serving twenty years of imprisonment on the 121
offender. If that aggravating circumstance is not proven beyond 122
a reasonable doubt, the defendant at trial was not convicted of 123
any other specification of an aggravating circumstance, the 124
victim of the aggravated murder was less than thirteen years of 125
age, and the offender also is convicted of or pleads guilty to a 126
sexual motivation specification that was included in the 127
indictment, count in the indictment, or information charging the 128
offense, the panel or judge shall sentence the offender pursuant 129
to division (B) (3) of section 2971.03 of the Revised Code to an 130
indefinite term consisting of a minimum term of thirty years and 131
a maximum term of life imprisonment. 132

(B) At the sentencing hearing, the panel of judges, if the 133
defendant was tried by a panel of three judges, or the trial 134
judge, if the defendant was tried by jury, shall, when required 135
pursuant to division (A) (2) of this section, first determine if 136
the specification of the aggravating circumstance of a prior 137
conviction listed in division (A) (5) of section 2929.04 of the 138

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
pleads guilty to a sexual motivation specification that was
included in the indictment, count in the indictment, or
information charging the offense, the panel or judge shall
sentence the offender pursuant to division (B) (3) of section
2971.03 of the Revised Code to an indefinite term consisting of

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

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

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

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

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

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

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

<u>following apply with respect to the person, subject to division</u>	199
<u>(A) (2) of this section:</u>	200
<u>(a) The person has been diagnosed as described in division</u>	201
<u>(B) of this section with one or more of the following</u>	202
<u>conditions:</u>	203
<u>(i) Schizophrenia;</u>	204
<u>(ii) Schizoaffective disorder;</u>	205
<u>(iii) Bipolar disorder;</u>	206
<u>(iv) Delusional disorder.</u>	207
<u>(b) At the time of the alleged aggravated murder with</u>	208
<u>which the person is charged, the condition or conditions</u>	209
<u>described in division (A) (1) (a) of this section with which the</u>	210
<u>person has been diagnosed, while not meeting the standard to be</u>	211
<u>found not guilty by reason of insanity as defined in section</u>	212
<u>2901.01 of the Revised Code or the standard to be found</u>	213
<u>incompetent to stand trial as described in division (G) of</u>	214
<u>section 2945.37 of the Revised Code, nevertheless significantly</u>	215
<u>impaired the person's capacity to exercise rational judgment in</u>	216
<u>relation to the person's conduct with respect to either of the</u>	217
<u>following:</u>	218
<u>(i) Conforming the person's conduct to the requirements of</u>	219
<u>law;</u>	220
<u>(ii) Appreciating the nature, consequences, or</u>	221
<u>wrongfulness of the person's conduct.</u>	222
<u>(2) A disorder manifested primarily by repeated criminal</u>	223
<u>conduct or attributable solely to the acute effects of voluntary</u>	224
<u>use of alcohol or any other drug of abuse does not, standing</u>	225
<u>alone, constitute a "serious mental illness" for purposes of</u>	226

division (A) (1) of this section. 227

(3) "Examiner" means a person who makes an evaluation 228
ordered under division (F) (1) of this section. 229

(4) "Prosecutor" means a prosecuting attorney who has 230
authority to prosecute a charge of aggravated murder that is 231
before the court. 232

(B) The diagnosis of a person with a condition or 233
conditions described in division (A) (1) (a) of this section may 234
be made at any time prior to, on, or after the day of the 235
alleged aggravated murder with which the person is charged or 236
the day on which the person pursuant to division (C) of this 237
section raises the matter of the person's serious mental illness 238
at the time of the alleged commission of that aggravated murder. 239
Diagnosis of the condition or conditions after the date of the 240
alleged aggravated murder with which the person is charged does 241
not preclude the person from presenting evidence that the person 242
had a serious mental illness at the time of the alleged 243
commission of that offense. 244

(C) A person charged with aggravated murder and one or 245
more specifications of an aggravating circumstance listed in 246
division (A) of section 2929.04 of the Revised Code may, before 247
trial, raise the matter of the person's serious mental illness 248
at the time of the alleged commission of the offense. If a 249
person raises the matter of the person's serious mental illness 250
at the time of the alleged commission of the offense, the court 251
shall order an evaluation of the person in accordance with 252
division (F) of this section and shall hold a pretrial hearing 253
on the matter. The person who raises the matter may present 254
evidence that the person had a serious mental illness at the 255
time of the alleged commission of the offense, and the person 256

has the burden of raising that matter and of going forward with 257
the evidence relating to the diagnosis described in division (A) 258
(1) (a) of this section and the impairment described in division 259
(A) (1) (b) of this section. 260

(D) If a person described in division (C) of this section 261
raises the matter of the person's serious mental illness at the 262
time of the alleged commission of the aggravated murder and 263
submits evidence that the person has been diagnosed with one or 264
more of the conditions set forth in division (A) (1) (a) of this 265
section and that the condition or conditions diagnosed 266
significantly impaired the person's capacity at the time of the 267
alleged offense in a manner described in division (A) (1) (b) of 268
this section, the prosecution shall have an opportunity to 269
present evidence to contest the diagnosis. The defendant has the 270
burden of proving, by a preponderance of the evidence, that the 271
person has been diagnosed with one or more of the conditions set 272
forth in division (A) (1) (a) of this section and that the 273
condition or conditions diagnosed significantly impaired the 274
person's capacity at the time of the alleged offense in a manner 275
described in division (A) (1) (b) of this section. 276

(E) (1) Unless the court at the pretrial hearing finds that 277
the defendant has proved, by a preponderance of the evidence, 278
that the person has been diagnosed with one or more of the 279
conditions set forth in division (A) (1) (a) of this section and 280
that the condition or conditions diagnosed significantly 281
impaired the person's capacity at the time of the alleged 282
offense in a manner described in division (A) (1) (b) of this 283
section, the court shall issue a finding that the person is not 284
ineligible for a sentence of death due to serious mental 285
illness. 286

(2) If the court at the pretrial hearing finds that the 287
defendant has proved, by a preponderance of the evidence, that 288
the person has been diagnosed with one or more of the conditions 289
set forth in division (A)(1)(a) of this section and that the 290
condition or conditions diagnosed significantly impaired the 291
person's capacity at the time of the alleged offense in a manner 292
described in division (A)(1)(b) of this section, the court shall 293
issue a finding that the person is ineligible for a sentence of 294
death due to serious mental illness. 295

(F)(1) If a person described in division (C) of this 296
section raises the matter of the person's serious mental illness 297
at the time of the alleged commission of the aggravated murder 298
as described in that division, the court shall order an 299
evaluation of the person. Section 2929.024 of the Revised Code 300
applies with respect to an evaluation ordered under this 301
division. 302

(2) No statement that a person makes in an evaluation 303
ordered under division (F)(1) of this section or in a pretrial 304
hearing under divisions (C) to (E) of this section relating to 305
the person's serious mental illness at the time of the alleged 306
commission of the aggravated murder with which the person is 307
charged shall be used against the person on the issue of guilt 308
in any criminal action or proceeding, but, in a criminal action 309
or proceeding, the prosecutor or defense counsel may call as a 310
witness any examiner who evaluated the person or prepared a 311
report pursuant to a referral under this section. Neither the 312
appointment nor the testimony of an examiner in an evaluation 313
ordered under division (F)(1) of this section precludes the 314
prosecutor or defense counsel from calling other witnesses or 315
presenting other evidence on the issue of the person's serious 316
mental illness at the time of the alleged commission of the 317

aggravated murder or on competency or insanity issues. 318

(G) A person's pleading of not guilty by reason of 319
insanity or incompetence to stand trial, or a finding after such 320
a plea that the person is not insane or that the person is 321
competent to stand trial, does not preclude the person from 322
raising the matter of the person's serious mental illness at the 323
time of the alleged commission of the offense pursuant to 324
division (C) of this section and, if a person so raises that 325
matter, does not limit or affect any of the procedures described 326
in this section or the authority of a court to make any finding 327
described in this section. 328

Sec. 2929.03. (A) If the indictment or count in the 329
indictment charging aggravated murder does not contain one or 330
more specifications of aggravating circumstances listed in 331
division (A) of section 2929.04 of the Revised Code, then, 332
following a verdict of guilty of the charge of aggravated 333
murder, the trial court shall impose sentence on the offender as 334
follows: 335

(1) Except as provided in division (A) (2) of this section, 336
the trial court shall impose one of the following sentences on 337
the offender: 338

(a) Life imprisonment without parole; 339

(b) Subject to division (A) (1) (e) of this section, life 340
imprisonment with parole eligibility after serving twenty years 341
of imprisonment; 342

(c) Subject to division (A) (1) (e) of this section, life 343
imprisonment with parole eligibility after serving twenty-five 344
full years of imprisonment; 345

(d) Subject to division (A) (1) (e) of this section, life 346

imprisonment with parole eligibility after serving thirty full 347
years of imprisonment; 348

(e) If the victim of the aggravated murder was less than 349
thirteen years of age, the offender also is convicted of or 350
pleads guilty to a sexual motivation specification that was 351
included in the indictment, count in the indictment, or 352
information charging the offense, and the trial court does not 353
impose a sentence of life imprisonment without parole on the 354
offender pursuant to division (A)(1)(a) of this section, the 355
trial court shall sentence the offender pursuant to division (B) 356
(3) of section 2971.03 of the Revised Code to an indefinite term 357
consisting of a minimum term of thirty years and a maximum term 358
of life imprisonment that shall be served pursuant to that 359
section. 360

(2) If the offender also is convicted of or pleads guilty 361
to a sexual motivation specification and a sexually violent 362
predator specification that are included in the indictment, 363
count in the indictment, or information that charged the 364
aggravated murder, the trial court shall impose upon the 365
offender a sentence of life imprisonment without parole that 366
shall be served pursuant to section 2971.03 of the Revised Code. 367

(B) If the indictment or count in the indictment charging 368
aggravated murder contains one or more specifications of 369
aggravating circumstances listed in division (A) of section 370
2929.04 of the Revised Code, the verdict shall separately state 371
~~whether~~ all of the following: 372

(1) Whether the accused is found guilty or not guilty of 373
the principal charge ~~and, if;~~ 374

(2) If guilty of the principal charge, whether the 375

offender was eighteen years of age or older at the time of the 376
commission of the offense, if the matter of age was raised by 377
the offender pursuant to section 2929.023 of the Revised Code, 378
~~and whether;~~ 379

(3) If guilty of the principal charge, whether the 380
offender was found under section 2929.025 of the Revised Code to 381
be ineligible for a sentence of death due to serious mental 382
illness if the matter of serious mental illness at the time of 383
the commission of the offense was raised by the offender 384
pursuant to that section; 385

(4) If guilty of the principal charge, whether the 386
offender is guilty or not guilty of each specification. ~~The~~ 387

The jury shall be instructed on its duties in this regard. 388
The instruction to the jury shall include an instruction that a 389
specification shall be proved beyond a reasonable doubt in order 390
to support a guilty verdict on the specification, but the 391
instruction shall not mention the penalty that may be the 392
consequence of a guilty or not guilty verdict on any charge or 393
specification. 394

(C) (1) If the indictment or count in the indictment 395
charging aggravated murder contains one or more specifications 396
of aggravating circumstances listed in division (A) of section 397
2929.04 of the Revised Code, then, following a verdict of guilty 398
of the charge but not guilty of each of the specifications, and 399
regardless of whether the offender raised the matter of age 400
pursuant to section 2929.023 of the Revised Code or the matter 401
of serious mental illness at the time of the commission of the 402
offense pursuant to section 2929.025 of the Revised Code, the 403
trial court shall impose sentence on the offender as follows: 404

(a) Except as provided in division (C) (1) (b) of this 405
section, the trial court shall impose one of the following 406
sentences on the offender: 407

(i) Life imprisonment without parole; 408

(ii) Subject to division (C) (1) (a) (v) of this section, 409
life imprisonment with parole eligibility after serving twenty 410
years of imprisonment; 411

(iii) Subject to division (C) (1) (a) (v) of this section, 412
life imprisonment with parole eligibility after serving twenty- 413
five full years of imprisonment; 414

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

(v) If the victim of the aggravated murder was less than 418
thirteen years of age, the offender also is convicted of or 419
pleads guilty to a sexual motivation specification that was 420
included in the indictment, count in the indictment, or 421
information charging the offense, and the trial court does not 422
impose a sentence of life imprisonment without parole on the 423
offender pursuant to division (C) (1) (a) (i) of this section, the 424
trial court shall sentence the offender pursuant to division (B) 425
(3) of section 2971.03 of the Revised Code to an indefinite term 426
consisting of a minimum term of thirty years and a maximum term 427
of life imprisonment. 428

(b) If the offender also is convicted of or pleads guilty 429
to a sexual motivation specification and a sexually violent 430
predator specification that are included in the indictment, 431
count in the indictment, or information that charged the 432
aggravated murder, the trial court shall impose upon the 433

offender a sentence of life imprisonment without parole that 434
shall be served pursuant to section 2971.03 of the Revised Code. 435

(2) (a) If the indictment or count in the indictment 436
contains one or more specifications of aggravating circumstances 437
listed in division (A) of section 2929.04 of the Revised Code 438
and if the offender is found guilty of both the charge and one 439
or more of the specifications, the penalty to be imposed on the 440
offender shall be one of the following: 441

(i) Except as provided in division (C) (2) (a) (ii) or (iii), and 442
subject to divisions (D) (1) and (E) of this section, the 443
penalty to be imposed on the offender shall be death, life 444
imprisonment without parole, life imprisonment with parole 445
eligibility after serving twenty-five full years of 446
imprisonment, or life imprisonment with parole eligibility after 447
serving thirty full years of imprisonment. 448

(ii) Except as provided in division (C) (2) (a) (iii) of this 449
section, if the victim of the aggravated murder was less than 450
thirteen years of age, the offender also is convicted of or 451
pleads guilty to a sexual motivation specification that was 452
included in the indictment, count in the indictment, or 453
information charging the offense, and the trial court does not 454
impose a sentence of death or life imprisonment without parole 455
on the offender pursuant to division (C) (2) (a) (i) of this 456
section, the penalty to be imposed on the offender shall be an 457
indefinite term consisting of a minimum term of thirty years and 458
a maximum term of life imprisonment that shall be imposed 459
pursuant to division (B) (3) of section 2971.03 of the Revised 460
Code and served pursuant to that section. 461

(iii) If the offender also is convicted of or pleads 462
guilty to a sexual motivation specification and a sexually 463

violent predator specification that are included in the 464
indictment, count in the indictment, or information that charged 465
the aggravated murder, the penalty to be imposed on the offender 466
shall be death or life imprisonment without parole that shall be 467
served pursuant to section 2971.03 of the Revised Code. 468

(b) A penalty imposed pursuant to division (C) (2) (a) (i), 469
(ii), or (iii) of this section shall be determined pursuant to 470
divisions (D) and (E) of this section and shall be determined by 471
one of the following: 472

(i) By the panel of three judges that tried the offender 473
upon the offender's waiver of the right to trial by jury; 474

(ii) By the trial jury and the trial judge, if the 475
offender was tried by jury. 476

(D) (1) Death may not be imposed as a penalty for 477
aggravated murder if the offender raised the matter of age at 478
trial pursuant to section 2929.023 of the Revised Code and was 479
not found at trial to have been eighteen years of age or older 480
at the time of the commission of the offense or raised the 481
matter of the offender's serious mental illness at the time of 482
the commission of the offense pursuant to section 2929.025 of 483
the Revised Code and was found under that section to be 484
ineligible for a sentence of death due to serious mental 485
illness. When death may be imposed as a penalty for aggravated 486
murder, the court shall proceed under this division. When death 487
may be imposed as a penalty, the court, upon the request of the 488
defendant, shall require a pre-sentence investigation to be made 489
and, upon the request of the defendant, shall require a mental 490
examination to be made, and shall require reports of the 491
investigation and of any mental examination submitted to the 492
court, pursuant to section 2947.06 of the Revised Code. No 493

statement made or information provided by a defendant in a 494
mental examination or proceeding conducted pursuant to this 495
division shall be disclosed to any person, except as provided in 496
this division, or be used in evidence against the defendant on 497
the issue of guilt in any retrial. A pre-sentence investigation 498
or mental examination shall not be made except upon request of 499
the defendant. Copies of any reports prepared under this 500
division shall be furnished to the court, to the trial jury if 501
the offender was tried by a jury, to the prosecutor, and to the 502
offender or the offender's counsel for use under this division. 503
The court, and the trial jury if the offender was tried by a 504
jury, shall consider any report prepared pursuant to this 505
division and furnished to it and any evidence raised at trial 506
that is relevant to the aggravating circumstances the offender 507
was found guilty of committing or to any factors in mitigation 508
of the imposition of the sentence of death, shall hear testimony 509
and other evidence that is relevant to the nature and 510
circumstances of the aggravating circumstances the offender was 511
found guilty of committing, the mitigating factors set forth in 512
division (B) of section 2929.04 of the Revised Code, and any 513
other factors in mitigation of the imposition of the sentence of 514
death, and shall hear the statement, if any, of the offender, 515
and the arguments, if any, of counsel for the defense and 516
prosecution, that are relevant to the penalty that should be 517
imposed on the offender. The defendant shall be given great 518
latitude in the presentation of evidence of the mitigating 519
factors set forth in division (B) of section 2929.04 of the 520
Revised Code and of any other factors in mitigation of the 521
imposition of the sentence of death. If the offender chooses to 522
make a statement, the offender is subject to cross-examination 523
only if the offender consents to make the statement under oath 524
or affirmation. 525

The defendant shall have the burden of going forward with 526
the evidence of any factors in mitigation of the imposition of 527
the sentence of death. The prosecution shall have the burden of 528
proving, by proof beyond a reasonable doubt, that the 529
aggravating circumstances the defendant was found guilty of 530
committing are sufficient to outweigh the factors in mitigation 531
of the imposition of the sentence of death. 532

(2) Upon consideration of the relevant evidence raised at 533
trial, the testimony, other evidence, statement of the offender, 534
arguments of counsel, and, if applicable, the reports submitted 535
pursuant to division (D)(1) of this section, the trial jury, if 536
the offender was tried by a jury, shall determine whether the 537
aggravating circumstances the offender was found guilty of 538
committing are sufficient to outweigh the mitigating factors 539
present in the case. If the trial jury unanimously finds, by 540
proof beyond a reasonable doubt, that the aggravating 541
circumstances the offender was found guilty of committing 542
outweigh the mitigating factors, the trial jury shall recommend 543
to the court that the sentence of death be imposed on the 544
offender. Absent such a finding, the jury shall recommend that 545
the offender be sentenced to one of the following: 546

(a) Except as provided in division (D)(2)(b) or (c) of 547
this section, to life imprisonment without parole, life 548
imprisonment with parole eligibility after serving twenty-five 549
full years of imprisonment, or life imprisonment with parole 550
eligibility after serving thirty full years of imprisonment; 551

(b) Except as provided in division (D)(2)(c) of this 552
section, if the victim of the aggravated murder was less than 553
thirteen years of age, the offender also is convicted of or 554
pleads guilty to a sexual motivation specification that was 555

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

(c) If the offender also is convicted of or pleads guilty 564
to a sexual motivation specification and a sexually violent 565
predator specification that are included in the indictment, 566
count in the indictment, or information that charged the 567
aggravated murder, to life imprisonment without parole. 568

If the trial jury recommends that the offender be 569
sentenced to life imprisonment without parole, life imprisonment 570
with parole eligibility after serving twenty-five full years of 571
imprisonment, life imprisonment with parole eligibility after 572
serving thirty full years of imprisonment, or an indefinite term 573
consisting of a minimum term of thirty years and a maximum term 574
of life imprisonment to be imposed pursuant to division (B) (3) 575
of section 2971.03 of the Revised Code, the court shall impose 576
the sentence recommended by the jury upon the offender. If the 577
sentence is an indefinite term consisting of a minimum term of 578
thirty years and a maximum term of life imprisonment imposed as 579
described in division (D) (2) (b) of this section or a sentence of 580
life imprisonment without parole imposed under division (D) (2) 581
(c) of this section, the sentence shall be served pursuant to 582
section 2971.03 of the Revised Code. If the trial jury 583
recommends that the sentence of death be imposed upon the 584
offender, the court shall proceed to impose sentence pursuant to 585
division (D) (3) of this section. 586

(3) Upon consideration of the relevant evidence raised at 587
trial, the testimony, other evidence, statement of the offender, 588
arguments of counsel, and, if applicable, the reports submitted 589
to the court pursuant to division (D) (1) of this section, if, 590
after receiving pursuant to division (D) (2) of this section the 591
trial jury's recommendation that the sentence of death be 592
imposed, the court finds, by proof beyond a reasonable doubt, or 593
if the panel of three judges unanimously finds, by proof beyond 594
a reasonable doubt, that the aggravating circumstances the 595
offender was found guilty of committing outweigh the mitigating 596
factors, it shall impose sentence of death on the offender. 597
Absent such a finding by the court or panel, the court or the 598
panel shall impose one of the following sentences on the 599
offender: 600

(a) Except as provided in division (D) (3) (b) of this 601
section, one of the following: 602

(i) Life imprisonment without parole; 603

(ii) Subject to division (D) (3) (a) (iv) of this section, 604
life imprisonment with parole eligibility after serving twenty- 605
five full years of imprisonment; 606

(iii) Subject to division (D) (3) (a) (iv) of this section, 607
life imprisonment with parole eligibility after serving thirty 608
full years of imprisonment; 609

(iv) If the victim of the aggravated murder was less than 610
thirteen years of age, the offender also is convicted of or 611
pleads guilty to a sexual motivation specification that was 612
included in the indictment, count in the indictment, or 613
information charging the offense, and the trial court does not 614
impose a sentence of life imprisonment without parole on the 615

offender pursuant to division (D) (3) (a) (i) of this section, the 616
court or panel shall sentence the offender pursuant to division 617
(B) (3) of section 2971.03 of the Revised Code to an indefinite 618
term consisting of a minimum term of thirty years and a maximum 619
term of life imprisonment. 620

(b) If the offender also is convicted of or pleads guilty 621
to a sexual motivation specification and a sexually violent 622
predator specification that are included in the indictment, 623
count in the indictment, or information that charged the 624
aggravated murder, life imprisonment without parole that shall 625
be served pursuant to section 2971.03 of the Revised Code. 626

(E) (1) If the offender raised the matter of age at trial 627
pursuant to section 2929.023 of the Revised Code, was convicted 628
of aggravated murder and one or more specifications of an 629
aggravating circumstance listed in division (A) of section 630
2929.04 of the Revised Code, and was not found at trial to have 631
been eighteen years of age or older at the time of the 632
commission of the offense, the court or the panel of three 633
judges shall not impose a sentence of death on the offender. 634
Instead, the court or panel shall impose one of the following 635
sentences on the offender: 636

~~(1)~~ (a) Except as provided in division (E) ~~(2)~~ (1) (b) of 637
this section, one of the following: 638

~~(a)~~ (i) Life imprisonment without parole; 639

~~(b)~~ (ii) Subject to division (E) ~~(2)~~ (d) ~~(1) (a) (iv)~~ of this 640
section, life imprisonment with parole eligibility after serving 641
twenty-five full years of imprisonment; 642

~~(c)~~ (iii) Subject to division (E) ~~(2)~~ (d) ~~(1) (a) (iv)~~ of this 643
section, life imprisonment with parole eligibility after serving 644

thirty full years of imprisonment;

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

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

(2) If the offender raised the matter of the offender's serious mental illness at the time of the commission of the offense pursuant to section 2929.025 of the Revised Code, was found under that section to be ineligible for a sentence of death due to serious mental illness, and was convicted of aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code, the court or panel of three judges shall not impose a sentence of death on the offender. Instead, the court or panel shall sentence the offender to life imprisonment without parole.

(F) The court or the panel of three judges, when it

imposes sentence of death, shall state in a separate opinion its 675
specific findings as to the existence of any of the mitigating 676
factors set forth in division (B) of section 2929.04 of the 677
Revised Code, the existence of any other mitigating factors, the 678
aggravating circumstances the offender was found guilty of 679
committing, and the reasons why the aggravating circumstances 680
the offender was found guilty of committing were sufficient to 681
outweigh the mitigating factors. The court or panel, when it 682
imposes life imprisonment or an indefinite term consisting of a 683
minimum term of thirty years and a maximum term of life 684
imprisonment under division (D) of this section, shall state in 685
a separate opinion its specific findings of which of the 686
mitigating factors set forth in division (B) of section 2929.04 687
of the Revised Code it found to exist, what other mitigating 688
factors it found to exist, what aggravating circumstances the 689
offender was found guilty of committing, and why it could not 690
find that these aggravating circumstances were sufficient to 691
outweigh the mitigating factors. For cases in which a sentence 692
of death is imposed for an offense committed before January 1, 693
1995, the court or panel shall file the opinion required to be 694
prepared by this division with the clerk of the appropriate 695
court of appeals and with the clerk of the supreme court within 696
fifteen days after the court or panel imposes sentence. For 697
cases in which a sentence of death is imposed for an offense 698
committed on or after January 1, 1995, the court or panel shall 699
file the opinion required to be prepared by this division with 700
the clerk of the supreme court within fifteen days after the 701
court or panel imposes sentence. The judgment in a case in which 702
a sentencing hearing is held pursuant to this section is not 703
final until the opinion is filed. 704

(G) (1) Whenever the court or a panel of three judges 705

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

(2) Whenever the court or a panel of three judges imposes 711
a sentence of death for an offense committed on or after January 712
1, 1995, the clerk of the court in which the judgment is 713
rendered shall make and retain a copy of the entire record in 714
the case, and shall deliver the original of the entire record in 715
the case to the supreme court. 716

Sec. 2929.04. (A) Imposition of the death penalty for 717
aggravated murder is precluded unless one or more of the 718
following is specified in the indictment or count in the 719
indictment pursuant to section 2941.14 of the Revised Code and 720
proved beyond a reasonable doubt: 721

(1) The offense was the assassination of the president of 722
the United States or a person in line of succession to the 723
presidency, the governor or lieutenant governor of this state, 724
the president-elect or vice president-elect of the United 725
States, the governor-elect or lieutenant governor-elect of this 726
state, or a candidate for any of the offices described in this 727
division. For purposes of this division, a person is a candidate 728
if the person has been nominated for election according to law, 729
if the person has filed a petition or petitions according to law 730
to have the person's name placed on the ballot in a primary or 731
general election, or if the person campaigns as a write-in 732
candidate in a primary or general election. 733

(2) The offense was committed for hire. 734

(3) The offense was committed for the purpose of escaping 735
detection, apprehension, trial, or punishment for another 736
offense committed by the offender. 737

(4) The offense was committed while the offender was under 738
detention or while the offender was at large after having broken 739
detention. As used in division (A)(4) of this section, 740
"detention" has the same meaning as in section 2921.01 of the 741
Revised Code, except that detention does not include 742
hospitalization, institutionalization, or confinement in a 743
mental health facility or intellectual disabilities facility 744
unless at the time of the commission of the offense either of 745
the following circumstances apply: 746

(a) The offender was in the facility as a result of being 747
charged with a violation of a section of the Revised Code. 748

(b) The offender was under detention as a result of being 749
convicted of or pleading guilty to a violation of a section of 750
the Revised Code. 751

(5) Prior to the offense at bar, the offender was 752
convicted of an offense an essential element of which was the 753
purposeful killing of or attempt to kill another, or the offense 754
at bar was part of a course of conduct involving the purposeful 755
killing of or attempt to kill two or more persons by the 756
offender. 757

(6) The victim of the offense was a law enforcement 758
officer, as defined in section 2911.01 of the Revised Code, whom 759
the offender had reasonable cause to know or knew to be a law 760
enforcement officer as so defined, and either the victim, at the 761
time of the commission of the offense, was engaged in the 762
victim's duties, or it was the offender's specific purpose to 763

kill a law enforcement officer as so defined. 764

(7) The offense was committed while the offender was 765
committing, attempting to commit, or fleeing immediately after 766
committing or attempting to commit kidnapping, rape, aggravated 767
arson, aggravated robbery, or aggravated burglary, and either 768
the offender was the principal offender in the commission of the 769
aggravated murder or, if not the principal offender, committed 770
the aggravated murder with prior calculation and design. 771

(8) The victim of the aggravated murder was a witness to 772
an offense who was purposely killed to prevent the victim's 773
testimony in any criminal proceeding and the aggravated murder 774
was not committed during the commission, attempted commission, 775
or flight immediately after the commission or attempted 776
commission of the offense to which the victim was a witness, or 777
the victim of the aggravated murder was a witness to an offense 778
and was purposely killed in retaliation for the victim's 779
testimony in any criminal proceeding. 780

(9) The offender, in the commission of the offense, 781
purposefully caused the death of another who was under thirteen 782
years of age at the time of the commission of the offense, and 783
either the offender was the principal offender in the commission 784
of the offense or, if not the principal offender, committed the 785
offense with prior calculation and design. 786

(10) The offense was committed while the offender was 787
committing, attempting to commit, or fleeing immediately after 788
committing or attempting to commit terrorism. 789

(B) If one or more of the aggravating circumstances listed 790
in division (A) of this section is specified in the indictment 791
or count in the indictment and proved beyond a reasonable doubt, 792

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

(1) Whether the victim of the offense induced or 807
facilitated it; 808

(2) Whether it is unlikely that the offense would have 809
been committed, but for the fact that the offender was under 810
duress, coercion, or strong provocation; 811

(3) Whether, at the time of committing the offense, the 812
offender, because of a mental disease or defect, lacked 813
substantial capacity to appreciate the criminality of the 814
offender's conduct or to conform the offender's conduct to the 815
requirements of the law; 816

(4) The youth of the offender; 817

(5) The offender's lack of a significant history of prior 818
criminal convictions and delinquency adjudications; 819

(6) If the offender was a participant in the offense but 820
not the principal offender, the degree of the offender's 821

participation in the offense and the degree of the offender's 822
participation in the acts that led to the death of the victim; 823

(7) Any other factors that are relevant to the issue of 824
whether the offender should be sentenced to death. 825

(C) The defendant shall be given great latitude in the 826
presentation of evidence of the factors listed in division (B) 827
of this section and of any other factors in mitigation of the 828
imposition of the sentence of death. 829

The existence of any of the mitigating factors listed in 830
division (B) of this section does not preclude the imposition of 831
a sentence of death on the offender but shall be weighed 832
pursuant to divisions (D) (2) and (3) of section 2929.03 of the 833
Revised Code by the trial court, trial jury, or the panel of 834
three judges against the aggravating circumstances the offender 835
was found guilty of committing. 836

Sec. 2929.06. (A) (1) If a sentence of death imposed upon 837
an offender is set aside, nullified, ~~or vacated because the, or~~ 838
voided for any of the following reasons, the trial court that 839
sentenced the offender shall conduct a hearing to resentence the 840
offender in accordance with division (A) (2) of this section: 841

(a) The court of appeals, in a case in which a sentence of 842
death was imposed for an offense committed before January 1, 843
1995, or the supreme court, in ~~cases a case~~ in which the supreme 844
court reviews the sentence upon appeal, could not affirm the 845
sentence of death under the standards imposed by section 2929.05 846
of the Revised Code, ~~is set aside, nullified, or vacated for~~ 847
~~the.~~ 848

(b) The sole reason that the statutory procedure for 849
imposing the sentence of death that is set forth in sections 850

2929.03 and 2929.04 of the Revised Code is unconstitutional~~7.~~ 851

(c) The sentence of death is set aside, nullified, or 852
vacated pursuant to division (C) of section 2929.05 of the 853
Revised Code,~~or is set aside, nullified, or vacated because a.~~ 854

(d) A court has determined that the offender is a person 855
with an intellectual disability under standards set forth in 856
decisions of the supreme court of this state or the United 857
States supreme court,~~the trial court that sentenced the~~ 858
~~offender shall conduct a hearing to resentence the offender.~~ 859

(e) The sentence of death is voided by a court pursuant to 860
division (H) of section 2953.21 of the Revised Code. 861

(2) At the a resentencing hearing conducted under division 862
(A)(1) of this section, the court shall impose upon the offender 863
a sentence of life imprisonment or an indefinite term consisting 864
of a minimum term of thirty years and a maximum term of life 865
imprisonment that is determined as specified in this division. 866
If division (D) of section 2929.03 of the Revised Code, at the 867
time the offender committed the aggravated murder for which the 868
sentence of death was imposed, required the imposition when a 869
sentence of death was not imposed of a sentence of life 870
imprisonment without parole or a sentence of an indefinite term 871
consisting of a minimum term of thirty years and a maximum term 872
of life imprisonment to be imposed pursuant to division (A) or 873
(B) (3) of section 2971.03 of the Revised Code and served 874
pursuant to that section, the court shall impose the sentence so 875
required. In all other cases, the sentences of life imprisonment 876
that are available at the hearing, and from which the court 877
shall impose sentence, shall be the same sentences of life 878
imprisonment that were available under division (D) of section 879
2929.03 or under section 2909.24 of the Revised Code at the time 880

the offender committed the offense for which the sentence of 881
death was imposed. Nothing in this division regarding the 882
resentencing of an offender shall affect the operation of 883
section 2971.03 of the Revised Code. 884

(B) Whenever any court of this state or any federal court 885
sets aside, nullifies, or vacates a sentence of death imposed 886
upon an offender because of error that occurred in the 887
sentencing phase of the trial and if division (A) of this 888
section does not apply, the trial court that sentenced the 889
offender shall conduct a new hearing to resentence the offender. 890
If the offender was tried by a jury, the trial court shall 891
impanel a new jury for the hearing. If the offender was tried by 892
a panel of three judges, that panel or, if necessary, a new 893
panel of three judges shall conduct the hearing. At the hearing, 894
the court or panel shall follow the procedure set forth in 895
division (D) of section 2929.03 of the Revised Code in 896
determining whether to impose upon the offender a sentence of 897
death, a sentence of life imprisonment, or an indefinite term 898
consisting of a minimum term of thirty years and a maximum term 899
of life imprisonment. If, pursuant to that procedure, the court 900
or panel determines that it will impose a sentence other than a 901
sentence of death, the court or panel shall impose upon the 902
offender one of the sentences of life imprisonment that could 903
have been imposed at the time the offender committed the offense 904
for which the sentence of death was imposed, determined as 905
specified in this division, or an indefinite term consisting of 906
a minimum term of thirty years and a maximum term of life 907
imprisonment that is determined as specified in this division. 908
If division (D) of section 2929.03 of the Revised Code, at the 909
time the offender committed the aggravated murder for which the 910
sentence of death was imposed, required the imposition when a 911

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

(C) If a sentence of life imprisonment without parole 925
imposed upon an offender pursuant to section 2929.021 or 2929.03 926
of the Revised Code is set aside, nullified, or vacated for the 927
sole reason that the statutory procedure for imposing the 928
sentence of life imprisonment without parole that is set forth 929
in sections 2929.03 and 2929.04 of the Revised Code is 930
unconstitutional, the trial court that sentenced the offender 931
shall conduct a hearing to resentence the offender to life 932
imprisonment with parole eligibility after serving twenty-five 933
full years of imprisonment or to life imprisonment with parole 934
eligibility after serving thirty full years of imprisonment. 935

(D) Nothing in this section limits or restricts the rights 936
of the state to appeal any order setting aside, nullifying, or 937
vacating a conviction or sentence of death, when an appeal of 938
that nature otherwise would be available. 939

(E) This section, as amended by H.B. 184 of the 125th 940
general assembly, shall apply to all offenders who have been 941

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

Sec. 2941.148. (A) (1) The application of Chapter 2971. of 952
the Revised Code to an offender is precluded unless one of the 953
following applies: 954

(a) The offender is charged with a violent sex offense, 955
and the indictment, count in the indictment, or information 956
charging the violent sex offense also includes a specification 957
that the offender is a sexually violent predator, or the 958
offender is charged with a designated homicide, assault, or 959
kidnapping offense, and the indictment, count in the indictment, 960
or information charging the designated homicide, assault, or 961
kidnapping offense also includes both a specification of the 962
type described in section 2941.147 of the Revised Code and a 963
specification that the offender is a sexually violent predator. 964

(b) The offender is convicted of or pleads guilty to a 965
violation of division (A) (1) (b) of section 2907.02 of the 966
Revised Code committed on or after January 2, 2007, and division 967
(B) of section 2907.02 of the Revised Code does not prohibit the 968
court from sentencing the offender pursuant to section 2971.03 969
of the Revised Code. 970

(c) The offender is convicted of or pleads guilty to 971

attempted rape committed on or after January 2, 2007, and to a 972
specification of the type described in section 2941.1418, 973
2941.1419, or 2941.1420 of the Revised Code. 974

(d) The offender is convicted of or pleads guilty to a 975
violation of section 2905.01 of the Revised Code and to a 976
specification of the type described in section 2941.147 of the 977
Revised Code, and section 2905.01 of the Revised Code requires a 978
court to sentence the offender pursuant to section 2971.03 of 979
the Revised Code. 980

(e) The offender is convicted of or pleads guilty to 981
aggravated murder and to a specification of the type described 982
in section 2941.147 of the Revised Code, and division (A) (2) (b) 983
(ii) of section 2929.022, division (A) (1) (e), (C) (1) (a) (v), (C) 984
(2) (a) (ii), (D) (2) (b), (D) (3) (a) (iv), or (E) (1) ~~(d)~~ (a) (iv) of 985
section 2929.03, or division (A) or (B) of section 2929.06 of 986
the Revised Code requires a court to sentence the offender 987
pursuant to division (B) (3) of section 2971.03 of the Revised 988
Code. 989

(f) The offender is convicted of or pleads guilty to 990
murder and to a specification of the type described in section 991
2941.147 of the Revised Code, and division (B) (2) of section 992
2929.02 of the Revised Code requires a court to sentence the 993
offender pursuant to section 2971.03 of the Revised Code. 994

(2) A specification required under division (A) (1) (a) of 995
this section that an offender is a sexually violent predator 996
shall be stated at the end of the body of the indictment, count, 997
or information and shall be stated in substantially the 998
following form: 999

"Specification (or, specification to the first count). The 1000

grand jury (or insert the person's or prosecuting attorney's 1001
name when appropriate) further find and specify that the 1002
offender is a sexually violent predator." 1003

(B) In determining for purposes of this section whether a 1004
person is a sexually violent predator, all of the factors set 1005
forth in divisions (H) (1) to (6) of section 2971.01 of the 1006
Revised Code that apply regarding the person may be considered 1007
as evidence tending to indicate that it is likely that the 1008
person will engage in the future in one or more sexually violent 1009
offenses. 1010

(C) As used in this section, "designated homicide, 1011
assault, or kidnapping offense," "violent sex offense," and 1012
"sexually violent predator" have the same meanings as in section 1013
2971.01 of the Revised Code. 1014

Sec. 2953.21. (A) (1) (a) A person in any of the following 1015
categories may file a petition in the court that imposed 1016
sentence, stating the grounds for relief relied upon, and asking 1017
the court to vacate or set aside the judgment or sentence or to 1018
grant other appropriate relief: 1019

(i) Any person who has been convicted of a criminal 1020
offense or adjudicated a delinquent child and who claims that 1021
there was such a denial or infringement of the person's rights 1022
as to render the judgment void or voidable under the Ohio 1023
Constitution or the Constitution of the United States, ~~and any;~~ 1024

(ii) Any person who has been convicted of a criminal 1025
offense and sentenced to death and who claims that there was a 1026
denial or infringement of the person's rights under either of 1027
those Constitutions that creates a reasonable probability of an 1028
altered verdict, ~~and any;~~ 1029

(iii) Any person who has been convicted of a criminal 1030
offense that is a felony and who is an offender for whom DNA 1031
testing that was performed under sections 2953.71 to 2953.81 of 1032
the Revised Code or under former section 2953.82 of the Revised 1033
Code and analyzed in the context of and upon consideration of 1034
all available admissible evidence related to the person's case 1035
as described in division (D) of section 2953.74 of the Revised 1036
Code provided results that establish, by clear and convincing 1037
evidence, actual innocence of that felony offense or, if the 1038
person was sentenced to death, establish, by clear and 1039
convincing evidence, actual innocence of the aggravating 1040
circumstance or circumstances the person was found guilty of 1041
committing and that is or are the basis of that sentence of 1042
death, ~~may file a petition in the court that imposed sentence,~~ 1043
~~stating the grounds for relief relied upon, and asking the court~~ 1044
~~to vacate or set aside the judgment or sentence or to grant~~ 1045
~~other appropriate relief;~~ 1046

(iv) Any person who has been convicted of aggravated 1047
murder and sentenced to death for the offense and who claims 1048
that the person had a serious mental illness at the time of the 1049
commission of the offense and that as a result the court should 1050
render void the sentence of death. 1051

~~The~~ (b) A petitioner under division (A) (1) (a) of this 1052
section may file a supporting affidavit and other documentary 1053
evidence in support of the claim for relief. 1054

~~(b)~~ (c) As used in division (A) (1) (a) of this section, ~~7~~ 1055
"actual:" 1056

(i) "Actual innocence" means that, had the results of the 1057
DNA testing conducted under sections 2953.71 to 2953.81 of the 1058
Revised Code or under former section 2953.82 of the Revised Code 1059

been presented at trial, and had those results been analyzed in 1060
the context of and upon consideration of all available 1061
admissible evidence related to the person's case as described in 1062
division (D) of section 2953.74 of the Revised Code, no 1063
reasonable factfinder would have found the petitioner guilty of 1064
the offense of which the petitioner was convicted, or, if the 1065
person was sentenced to death, no reasonable factfinder would 1066
have found the petitioner guilty of the aggravating circumstance 1067
or circumstances the petitioner was found guilty of committing 1068
and that is or are the basis of that sentence of death. 1069

(ii) "Serious mental illness" has the same meaning as in 1070
section 2929.025 of the Revised Code. 1071

~~(e)~~(d) As used in divisions (A) (1) (a) and ~~(b)~~(c) of this 1072
section, "former section 2953.82 of the Revised Code" means 1073
section 2953.82 of the Revised Code as it existed prior to July 1074
6, 2010. 1075

~~(d)~~(e) At any time in conjunction with the filing of a 1076
petition for postconviction relief under division (A) of this 1077
section by a person who has been sentenced to death, or with the 1078
litigation of a petition so filed, the court, for good cause 1079
shown, may authorize the petitioner in seeking the 1080
postconviction relief and the prosecuting attorney of the county 1081
served by the court in defending the proceeding, to take 1082
depositions and to issue subpoenas and subpoenas duces tecum in 1083
accordance with divisions (A) (1) ~~(d)~~(e), (A) (1) ~~(e)~~(f), and (C) of 1084
this section, and to any other form of discovery as in a civil 1085
action that the court in its discretion permits. The court may 1086
limit the extent of discovery under this division. In addition 1087
to discovery that is relevant to the claim and was available 1088
under Criminal Rule 16 through conclusion of the original 1089

criminal trial, the court, for good cause shown, may authorize 1090
the petitioner or prosecuting attorney to take depositions and 1091
issue subpoenas and subpoenas duces tecum in either of the 1092
following circumstances: 1093

(i) For any witness who testified at trial or who was 1094
disclosed by the state prior to trial, except as otherwise 1095
provided in this division, the petitioner or prosecuting 1096
attorney shows clear and convincing evidence that the witness is 1097
material and that a deposition of the witness or the issuing of 1098
a subpoena or subpoena duces tecum is of assistance in order to 1099
substantiate or refute the petitioner's claim that there is a 1100
reasonable probability of an altered verdict. This division does 1101
not apply if the witness was unavailable for trial or would not 1102
voluntarily be interviewed by the defendant or prosecuting 1103
attorney. 1104

(ii) For any witness with respect to whom division (A)(1) 1105
~~(d)~~ (e) (i) of this section does not apply, the petitioner or 1106
prosecuting attorney shows good cause that the witness is 1107
material and that a deposition of the witness or the issuing of 1108
a subpoena or subpoena duces tecum is of assistance in order to 1109
substantiate or refute the petitioner's claim that there is a 1110
reasonable probability of an altered verdict. 1111

~~(e)~~ (f) If a person who has been sentenced to death and who 1112
files a petition for postconviction relief under division (A) of 1113
this section requests postconviction discovery as described in 1114
division (A)(1) ~~(d)~~ (e) of this section or if the prosecuting 1115
attorney of the county served by the court requests 1116
postconviction discovery as described in that division, within 1117
ten days after the docketing of the request, or within any other 1118
time that the court sets for good cause shown, the prosecuting 1119

attorney shall respond by answer or motion to the petitioner's 1120
request or the petitioner shall respond by answer or motion to 1121
the prosecuting attorney's request, whichever is applicable. 1122

~~(f)~~(g) If a person who has been sentenced to death and who 1123
files a petition for postconviction relief under division (A) of 1124
this section requests postconviction discovery as described in 1125
division (A) (1) ~~(d)~~(e) of this section or if the prosecuting 1126
attorney of the county served by the court requests 1127
postconviction discovery as described in that division, upon 1128
motion by the petitioner, the prosecuting attorney, or the 1129
person from whom discovery is sought, and for good cause shown, 1130
the court in which the action is pending may make any order that 1131
justice requires to protect a party or person from oppression or 1132
undue burden or expense, including but not limited to the orders 1133
described in divisions (A) (1) ~~(g)~~(h) (i) to (viii) of this 1134
section. The court also may make any such order if, in its 1135
discretion, it determines that the discovery sought would be 1136
irrelevant to the claims made in the petition; and if the court 1137
makes any such order on that basis, it shall explain in the 1138
order the reasons why the discovery would be irrelevant. 1139

~~(g)~~(h) If a petitioner, prosecuting attorney, or person 1140
from whom discovery is sought makes a motion for an order under 1141
division (A) (1) ~~(f)~~(g) of this section and the order is denied in 1142
whole or in part, the court, on terms and conditions as are 1143
just, may order that any party or person provide or permit 1144
discovery as described in division (A) (1) ~~(d)~~(e) of this section. 1145
The provisions of Civil Rule 37(A) (4) apply to the award of 1146
expenses incurred in relation to the motion, except that in no 1147
case shall a court require a petitioner who is indigent to pay 1148
expenses under those provisions. 1149

Before any person moves for an order under division (A) (1) 1150
~~(f)~~ (g) of this section, that person shall make a reasonable 1151
effort to resolve the matter through discussion with the 1152
petitioner or prosecuting attorney seeking discovery. A motion 1153
for an order under division (A) (1) ~~(f)~~ (g) of this section shall 1154
be accompanied by a statement reciting the effort made to 1155
resolve the matter in accordance with this paragraph. 1156

The orders that may be made under division (A) (1) ~~(f)~~ (g) of 1157
this section include, but are not limited to, any of the 1158
following: 1159

(i) That the discovery not be had; 1160

(ii) That the discovery may be had only on specified terms 1161
and conditions, including a designation of the time or place; 1162

(iii) That the discovery may be had only by a method of 1163
discovery other than that selected by the party seeking 1164
discovery; 1165

(iv) That certain matters not be inquired into or that the 1166
scope of the discovery be limited to certain matters; 1167

(v) That discovery be conducted with no one present except 1168
persons designated by the court; 1169

(vi) That a deposition after being sealed be opened only 1170
by order of the court; 1171

(vii) That a trade secret or other confidential research, 1172
development, or commercial information not be disclosed or be 1173
disclosed only in a designated way; 1174

(viii) That the parties simultaneously file specified 1175
documents or information enclosed in sealed envelopes to be 1176
opened as directed by the court. 1177

~~(h)~~(i) Any postconviction discovery authorized under 1178
division (A) (1) ~~(d)~~(e) of this section shall be completed not 1179
later than eighteen months after the start of the discovery 1180
proceedings unless, for good cause shown, the court extends that 1181
period for completing the discovery. 1182

~~(i)~~(j) Nothing in division (A) (1) ~~(d)~~(e) of this section 1183
authorizes, or shall be construed as authorizing, the 1184
relitigation, or discovery in support of relitigation, of any 1185
matter barred by the doctrine of res judicata. 1186

~~(j)~~(k) Division (A) (1) of this section does not apply to 1187
any person who has been convicted of a criminal offense and 1188
sentenced to death and who has unsuccessfully raised the same 1189
claims in a petition for postconviction relief. 1190

(2) (a) Except as otherwise provided in section 2953.23 of 1191
the Revised Code, a petition under division (A) (1) (a) (i), (ii), 1192
or (iii) of this section shall be filed no later than three 1193
hundred sixty-five days after the date on which the trial 1194
transcript is filed in the court of appeals in the direct appeal 1195
of the judgment of conviction or adjudication or, if the direct 1196
appeal involves a sentence of death, the date on which the trial 1197
transcript is filed in the supreme court. If no appeal is taken, 1198
except as otherwise provided in section 2953.23 of the Revised 1199
Code, the petition shall be filed no later than three hundred 1200
sixty-five days after the expiration of the time for filing the 1201
appeal. 1202

(b) Except as otherwise provided in section 2953.23 of the 1203
Revised Code, a petition under division (A) (1) (a) (iv) of this 1204
section shall be filed not later than three hundred sixty-five 1205
days after the effective date of this amendment. 1206

(3) In a petition filed under division (A) (1) (a) (i), (ii), 1207
or (iii) of this section, a person who has been sentenced to 1208
death may ask the court to render void or voidable the judgment 1209
with respect to the conviction of aggravated murder or the 1210
specification of an aggravating circumstance or the sentence of 1211
death. A person sentenced to death who files a petition under 1212
division (A) (1) (a) (iv) of this section may ask the court to 1213
render void the sentence of death and to order the resentencing 1214
of the person under division (A) of section 2929.06 of the 1215
Revised Code. 1216

(4) A petitioner shall state in the original or amended 1217
petition filed under division (A) of this section all grounds 1218
for relief claimed by the petitioner. Except as provided in 1219
section 2953.23 of the Revised Code, any ground for relief that 1220
is not so stated in the petition is waived. 1221

(5) If the petitioner in a petition filed under division 1222
(A) (1) (a) (i), (ii), or (iii) of this section was convicted of or 1223
pleaded guilty to a felony, the petition may include a claim 1224
that the petitioner was denied the equal protection of the laws 1225
in violation of the Ohio Constitution or the United States 1226
Constitution because the sentence imposed upon the petitioner 1227
for the felony was part of a consistent pattern of disparity in 1228
sentencing by the judge who imposed the sentence, with regard to 1229
the petitioner's race, gender, ethnic background, or religion. 1230
If the supreme court adopts a rule requiring a court of common 1231
pleas to maintain information with regard to an offender's race, 1232
gender, ethnic background, or religion, the supporting evidence 1233
for the petition shall include, but shall not be limited to, a 1234
copy of that type of information relative to the petitioner's 1235
sentence and copies of that type of information relative to 1236
sentences that the same judge imposed upon other persons. 1237

(6) Notwithstanding any law or court rule to the contrary, 1238
there is no limit on the number of pages in, or on the length 1239
of, a petition filed under division (A) (1)(a)(i), (ii), (iii), 1240
or (iv) of this section by a person who has been sentenced to 1241
death. If any court rule specifies a limit on the number of 1242
pages in, or on the length of, a petition filed under division 1243
(A) (1)(a)(i), (ii), (iii), or (iv) of this section or on a 1244
prosecuting attorney's response to such a petition by answer or 1245
motion and a person who has been sentenced to death files a 1246
petition that exceeds the limit specified for the petition, the 1247
prosecuting attorney may respond by an answer or motion that 1248
exceeds the limit specified for the response. 1249

(B) The clerk of the court in which the petition for 1250
postconviction relief and, if applicable, a request for 1251
postconviction discovery described in division (A) (1) ~~(d)~~ (e) of 1252
this section is filed shall docket the petition and the request 1253
and bring them promptly to the attention of the court. The clerk 1254
of the court in which the petition for postconviction relief 1255
and, if applicable, a request for postconviction discovery 1256
described in division (A) (1) ~~(d)~~ (e) of this section is filed 1257
immediately shall forward a copy of the petition and a copy of 1258
the request if filed by the petitioner to the prosecuting 1259
attorney of the county served by the court. If the request for 1260
postconviction discovery is filed by the prosecuting attorney, 1261
the clerk of the court immediately shall forward a copy of the 1262
request to the petitioner or the petitioner's counsel. 1263

(C) If a person who has been sentenced to death and who 1264
files a petition for postconviction relief under division (A) (1) 1265
(a)(i), (ii), (iii), or (iv) of this section requests a 1266
deposition or the prosecuting attorney in the case requests a 1267
deposition, and if the court grants the request under division 1268

(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 1330
proceedings. 1331

(2) If division (G)(1) of this section does not apply, at 1332
any time before the answer or motion is filed, the petitioner 1333
may amend the petition with or without leave or prejudice to the 1334
proceedings. 1335

(3) The petitioner may amend the petition with leave of 1336
court at any time after the expiration of the applicable period 1337
specified in division (G)(1) or (2) of this section. 1338

(H) If the court does not find grounds for granting 1339
relief, it shall make and file findings of fact and conclusions 1340
of law and shall enter judgment denying relief on the petition. 1341
If the petition was filed by a person who has been sentenced to 1342
death, the findings of fact and conclusions of law shall state 1343
specifically the reasons for the denial of relief on the 1344
petition and of each claim it contains. If no direct appeal of 1345
the case is pending and the court finds grounds for relief or if 1346
a pending direct appeal of the case has been remanded to the 1347
court pursuant to a request made pursuant to division (F) of 1348
this section and the court finds grounds for granting relief, it 1349
shall make and file findings of fact and conclusions of law and 1350
shall enter a judgment that vacates and sets aside the judgment 1351
in question, and, in the case of a petitioner who is a prisoner 1352
in custody, except as otherwise described in this division, 1353
shall discharge or resentence the petitioner or grant a new 1354
trial as the court determines appropriate. If the court finds 1355
grounds for relief in the case of a petitioner who filed a 1356
petition under division (A)(1)(a)(iv) of this section, the court 1357
shall render void the sentence of death and order the 1358
resentencing of the offender under division (A) of section 1359

2929.06 of the Revised Code. If the petitioner has been 1360
sentenced to death, the findings of fact and conclusions of law 1361
shall state specifically the reasons for the finding of grounds 1362
for granting the relief, with respect to each claim contained in 1363
the petition. The court also may make supplementary orders to 1364
the relief granted, concerning such matters as rearraignment, 1365
retrial, custody, and bail. If the trial court's order granting 1366
the petition is reversed on appeal and if the direct appeal of 1367
the case has been remanded from an appellate court pursuant to a 1368
request under division (F) of this section, the appellate court 1369
reversing the order granting the petition shall notify the 1370
appellate court in which the direct appeal of the case was 1371
pending at the time of the remand of the reversal and remand of 1372
the trial court's order. Upon the reversal and remand of the 1373
trial court's order granting the petition, regardless of whether 1374
notice is sent or received, the direct appeal of the case that 1375
was remanded is reinstated. 1376

(I) Upon the filing of a petition pursuant to division (A) 1377
(1)(a)(i), (ii), (iii), or (iv) of this section by a person 1378
sentenced to death, only the supreme court may stay execution of 1379
the sentence of death. 1380

(J) (1) If a person sentenced to death intends to file a 1381
petition under this section, the court shall appoint counsel to 1382
represent the person upon a finding that the person is indigent 1383
and that the person either accepts the appointment of counsel or 1384
is unable to make a competent decision whether to accept or 1385
reject the appointment of counsel. The court may decline to 1386
appoint counsel for the person only upon a finding, after a 1387
hearing if necessary, that the person rejects the appointment of 1388
counsel and understands the legal consequences of that decision 1389
or upon a finding that the person is not indigent. 1390

(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 1422
disposition. 1423

Sec. 2953.23. (A) Whether a hearing is or is not held on a 1424
petition filed pursuant to section 2953.21 of the Revised Code, 1425
a court may not entertain a petition filed after the expiration 1426
of the period prescribed in division (A) of that section or a 1427
second petition or successive petitions for similar relief on 1428
behalf of a petitioner unless division (A) (1) or (2) of this 1429
section applies: 1430

(1) Both of the following apply: 1431

(a) Either the petitioner shows that the petitioner was 1432
unavoidably prevented from discovery of the facts upon which the 1433
petitioner must rely to present the claim for relief, or, 1434
subsequent to the period prescribed in division (A) (2) of 1435
section 2953.21 of the Revised Code or to the filing of an 1436
earlier petition, the United States Supreme Court recognized a 1437
new federal or state right that applies retroactively to persons 1438
in the petitioner's situation, and the petition asserts a claim 1439
based on that right. 1440

(b) The petitioner shows by clear and convincing evidence 1441
that, but for constitutional error at trial, no reasonable 1442
factfinder would have found the petitioner guilty of the offense 1443
of which the petitioner was convicted or, if the claim 1444
challenges a sentence of death that, but for constitutional 1445
error at the sentencing hearing, no reasonable factfinder would 1446
have found the petitioner eligible for the death sentence. 1447

(2) The petitioner was convicted of a felony, the 1448
petitioner is an offender for whom DNA testing was performed 1449
under sections 2953.71 to 2953.81 of the Revised Code or under 1450

former section 2953.82 of the Revised Code and analyzed in the 1451
context of and upon consideration of all available admissible 1452
evidence related to the inmate's case as described in division 1453
(D) of section 2953.74 of the Revised Code, and the results of 1454
the DNA testing establish, by clear and convincing evidence, 1455
actual innocence of that felony offense or, if the person was 1456
sentenced to death, establish, by clear and convincing evidence, 1457
actual innocence of the aggravating circumstance or 1458
circumstances the person was found guilty of committing and that 1459
is or are the basis of that sentence of death. 1460

As used in this division, "actual innocence" has the same 1461
meaning as in division (A) (1) ~~(b)~~ (c) of section 2953.21 of the 1462
Revised Code, and "former section 2953.82 of the Revised Code" 1463
has the same meaning as in division (A) (1) ~~(e)~~ (d) of section 1464
2953.21 of the Revised Code. 1465

(B) An order awarding or denying relief sought in a 1466
petition filed pursuant to section 2953.21 of the Revised Code 1467
is a final judgment and may be appealed pursuant to Chapter 1468
2953. of the Revised Code. 1469

If a petition filed pursuant to section 2953.21 of the 1470
Revised Code by a person who has been sentenced to death is 1471
denied and the person appeals the judgment, notwithstanding any 1472
law or court rule to the contrary, there is no limit on the 1473
number of pages in, or on the length of, a notice of appeal or 1474
briefs related to an appeal filed by the person. If any court 1475
rule specifies a limit on the number of pages in, or on the 1476
length of, a notice of appeal or briefs described in this 1477
division or on a prosecuting attorney's response or briefs with 1478
respect to such an appeal and a person who has been sentenced to 1479
death files a notice of appeal or briefs that exceed the limit 1480

specified for the petition, the prosecuting attorney may file a 1481
response or briefs that exceed the limit specified for the 1482
answer or briefs. 1483

Sec. 2971.03. (A) Notwithstanding divisions (A) and (D) of 1484
section 2929.14, section 2929.02, 2929.03, 2929.06, 2929.13, or 1485
another section of the Revised Code, other than divisions (B) 1486
and (C) of section 2929.14 of the Revised Code, that authorizes 1487
or requires a specified prison term or a mandatory prison term 1488
for a person who is convicted of or pleads guilty to a felony or 1489
that specifies the manner and place of service of a prison term 1490
or term of imprisonment, the court shall impose a sentence upon 1491
a person who is convicted of or pleads guilty to a violent sex 1492
offense and who also is convicted of or pleads guilty to a 1493
sexually violent predator specification that was included in the 1494
indictment, count in the indictment, or information charging 1495
that offense, and upon a person who is convicted of or pleads 1496
guilty to a designated homicide, assault, or kidnapping offense 1497
and also is convicted of or pleads guilty to both a sexual 1498
motivation specification and a sexually violent predator 1499
specification that were included in the indictment, count in the 1500
indictment, or information charging that offense, as follows: 1501

(1) If the offense for which the sentence is being imposed 1502
is aggravated murder and if the court does not impose upon the 1503
offender a sentence of death, it shall impose upon the offender 1504
a term of life imprisonment without parole. If the court 1505
sentences the offender to death and the sentence of death is 1506
vacated, overturned, or otherwise set aside, the court shall 1507
impose upon the offender a term of life imprisonment without 1508
parole. 1509

(2) If the offense for which the sentence is being imposed 1510

is murder; or if the offense is rape committed in violation of 1511
division (A) (1) (b) of section 2907.02 of the Revised Code when 1512
the offender purposely compelled the victim to submit by force 1513
or threat of force, when the victim was less than ten years of 1514
age, when the offender previously has been convicted of or 1515
pleaded guilty to either rape committed in violation of that 1516
division or a violation of an existing or former law of this 1517
state, another state, or the United States that is substantially 1518
similar to division (A) (1) (b) of section 2907.02 of the Revised 1519
Code, or when the offender during or immediately after the 1520
commission of the rape caused serious physical harm to the 1521
victim; or if the offense is an offense other than aggravated 1522
murder or murder for which a term of life imprisonment may be 1523
imposed, it shall impose upon the offender a term of life 1524
imprisonment without parole. 1525

(3) (a) Except as otherwise provided in division (A) (3) (b), 1526
(c), (d), or (e) or (A) (4) of this section, if the offense for 1527
which the sentence is being imposed is an offense other than 1528
aggravated murder, murder, or rape and other than an offense for 1529
which a term of life imprisonment may be imposed, it shall 1530
impose an indefinite prison term consisting of a minimum term 1531
fixed by the court as described in this division, but not less 1532
than two years, and a maximum term of life imprisonment. Except 1533
as otherwise specified in this division, the minimum term shall 1534
be fixed by the court from among the range of terms available as 1535
a definite term for the offense. If the offense is a felony of 1536
the first or second degree committed on or after ~~the effective~~ 1537
~~date of this amendment~~ March 22, 2019, the minimum term shall be 1538
fixed by the court from among the range of terms available as a 1539
minimum term for the offense under division (A) (1) (a) or (2) (a) 1540
of that section. 1541

(b) Except as otherwise provided in division (A)(4) of 1542
this section, if the offense for which the sentence is being 1543
imposed is kidnapping that is a felony of the first degree, it 1544
shall impose an indefinite prison term as follows: 1545

(i) If the kidnapping is committed on or after January 1, 1546
2008, and the victim of the offense is less than thirteen years 1547
of age, except as otherwise provided in this division, it shall 1548
impose an indefinite prison term consisting of a minimum term of 1549
fifteen years and a maximum term of life imprisonment. If the 1550
kidnapping is committed on or after January 1, 2008, the victim 1551
of the offense is less than thirteen years of age, and the 1552
offender released the victim in a safe place unharmed, it shall 1553
impose an indefinite prison term consisting of a minimum term of 1554
ten years and a maximum term of life imprisonment. 1555

(ii) If the kidnapping is committed prior to January 1, 1556
2008, or division (A)(3)(b)(i) of this section does not apply, 1557
it shall impose an indefinite term consisting of a minimum term 1558
fixed by the court that is not less than ten years and a maximum 1559
term of life imprisonment. 1560

(c) Except as otherwise provided in division (A)(4) of 1561
this section, if the offense for which the sentence is being 1562
imposed is kidnapping that is a felony of the second degree, it 1563
shall impose an indefinite prison term consisting of a minimum 1564
term fixed by the court that is not less than eight years, and a 1565
maximum term of life imprisonment. 1566

(d) Except as otherwise provided in division (A)(4) of 1567
this section, if the offense for which the sentence is being 1568
imposed is rape for which a term of life imprisonment is not 1569
imposed under division (A)(2) of this section or division (B) of 1570
section 2907.02 of the Revised Code, it shall impose an 1571

indefinite prison term as follows: 1572

(i) If the rape is committed on or after January 2, 2007, 1573
in violation of division (A) (1) (b) of section 2907.02 of the 1574
Revised Code, it shall impose an indefinite prison term 1575
consisting of a minimum term of twenty-five years and a maximum 1576
term of life imprisonment. 1577

(ii) If the rape is committed prior to January 2, 2007, or 1578
the rape is committed on or after January 2, 2007, other than in 1579
violation of division (A) (1) (b) of section 2907.02 of the 1580
Revised Code, it shall impose an indefinite prison term 1581
consisting of a minimum term fixed by the court that is not less 1582
than ten years, and a maximum term of life imprisonment. 1583

(e) Except as otherwise provided in division (A) (4) of 1584
this section, if the offense for which sentence is being imposed 1585
is attempted rape, it shall impose an indefinite prison term as 1586
follows: 1587

(i) Except as otherwise provided in division (A) (3) (e) 1588
(ii), (iii), or (iv) of this section, it shall impose an 1589
indefinite prison term pursuant to division (A) (3) (a) of this 1590
section. 1591

(ii) If the attempted rape for which sentence is being 1592
imposed was committed on or after January 2, 2007, and if the 1593
offender also is convicted of or pleads guilty to a 1594
specification of the type described in section 2941.1418 of the 1595
Revised Code, it shall impose an indefinite prison term 1596
consisting of a minimum term of five years and a maximum term of 1597
twenty-five years. 1598

(iii) If the attempted rape for which sentence is being 1599
imposed was committed on or after January 2, 2007, and if the 1600

offender also is convicted of or pleads guilty to a 1601
specification of the type described in section 2941.1419 of the 1602
Revised Code, it shall impose an indefinite prison term 1603
consisting of a minimum term of ten years and a maximum of life 1604
imprisonment. 1605

(iv) If the attempted rape for which sentence is being 1606
imposed was committed on or after January 2, 2007, and if the 1607
offender also is convicted of or pleads guilty to a 1608
specification of the type described in section 2941.1420 of the 1609
Revised Code, it shall impose an indefinite prison term 1610
consisting of a minimum term of fifteen years and a maximum of 1611
life imprisonment. 1612

(4) For any offense for which the sentence is being 1613
imposed, if the offender previously has been convicted of or 1614
pleaded guilty to a violent sex offense and also to a sexually 1615
violent predator specification that was included in the 1616
indictment, count in the indictment, or information charging 1617
that offense, or previously has been convicted of or pleaded 1618
guilty to a designated homicide, assault, or kidnapping offense 1619
and also to both a sexual motivation specification and a 1620
sexually violent predator specification that were included in 1621
the indictment, count in the indictment, or information charging 1622
that offense, it shall impose upon the offender a term of life 1623
imprisonment without parole. 1624

(B) (1) Notwithstanding section 2929.13, division (A) or 1625
(D) of section 2929.14, or another section of the Revised Code 1626
other than division (B) of section 2907.02 or divisions (B) and 1627
(C) of section 2929.14 of the Revised Code that authorizes or 1628
requires a specified prison term or a mandatory prison term for 1629
a person who is convicted of or pleads guilty to a felony or 1630

that specifies the manner and place of service of a prison term 1631
or term of imprisonment, if a person is convicted of or pleads 1632
guilty to a violation of division (A) (1) (b) of section 2907.02 1633
of the Revised Code committed on or after January 2, 2007, if 1634
division (A) of this section does not apply regarding the 1635
person, and if the court does not impose a sentence of life 1636
without parole when authorized pursuant to division (B) of 1637
section 2907.02 of the Revised Code, the court shall impose upon 1638
the person an indefinite prison term consisting of one of the 1639
following: 1640

(a) Except as otherwise required in division (B) (1) (b) or 1641
(c) of this section, a minimum term of ten years and a maximum 1642
term of life imprisonment. 1643

(b) If the victim was less than ten years of age, a 1644
minimum term of fifteen years and a maximum of life 1645
imprisonment. 1646

(c) If the offender purposely compels the victim to submit 1647
by force or threat of force, or if the offender previously has 1648
been convicted of or pleaded guilty to violating division (A) (1) 1649
(b) of section 2907.02 of the Revised Code or to violating an 1650
existing or former law of this state, another state, or the 1651
United States that is substantially similar to division (A) (1) 1652
(b) of that section, or if the offender during or immediately 1653
after the commission of the offense caused serious physical harm 1654
to the victim, a minimum term of twenty-five years and a maximum 1655
of life imprisonment. 1656

(2) Notwithstanding section 2929.13, division (A) or (D) 1657
of section 2929.14, or another section of the Revised Code other 1658
than divisions (B) and (C) of section 2929.14 of the Revised 1659
Code that authorizes or requires a specified prison term or a 1660

mandatory prison term for a person who is convicted of or pleads 1661
guilty to a felony or that specifies the manner and place of 1662
service of a prison term or term of imprisonment and except as 1663
otherwise provided in division (B) of section 2907.02 of the 1664
Revised Code, if a person is convicted of or pleads guilty to 1665
attempted rape committed on or after January 2, 2007, and if 1666
division (A) of this section does not apply regarding the 1667
person, the court shall impose upon the person an indefinite 1668
prison term consisting of one of the following: 1669

(a) If the person also is convicted of or pleads guilty to 1670
a specification of the type described in section 2941.1418 of 1671
the Revised Code, the court shall impose upon the person an 1672
indefinite prison term consisting of a minimum term of five 1673
years and a maximum term of twenty-five years. 1674

(b) If the person also is convicted of or pleads guilty to 1675
a specification of the type described in section 2941.1419 of 1676
the Revised Code, the court shall impose upon the person an 1677
indefinite prison term consisting of a minimum term of ten years 1678
and a maximum term of life imprisonment. 1679

(c) If the person also is convicted of or pleads guilty to 1680
a specification of the type described in section 2941.1420 of 1681
the Revised Code, the court shall impose upon the person an 1682
indefinite prison term consisting of a minimum term of fifteen 1683
years and a maximum term of life imprisonment. 1684

(3) Notwithstanding section 2929.13, division (A) or (D) 1685
of section 2929.14, or another section of the Revised Code other 1686
than divisions (B) and (C) of section 2929.14 of the Revised 1687
Code that authorizes or requires a specified prison term or a 1688
mandatory prison term for a person who is convicted of or pleads 1689
guilty to a felony or that specifies the manner and place of 1690

service of a prison term or term of imprisonment, if a person is
convicted of or pleads guilty to an offense described in
division (B) (3) (a), (b), (c), or (d) of this section committed
on or after January 1, 2008, if the person also is convicted of
or pleads guilty to a sexual motivation specification that was
included in the indictment, count in the indictment, or
information charging that offense, and if division (A) of this
section does not apply regarding the person, the court shall
impose upon the person an indefinite prison term consisting of
one of the following:

(a) An indefinite prison term consisting of a minimum of
ten years and a maximum term of life imprisonment if the offense
for which the sentence is being imposed is kidnapping, the
victim of the offense is less than thirteen years of age, and
the offender released the victim in a safe place unharmed;

(b) An indefinite prison term consisting of a minimum of
fifteen years and a maximum term of life imprisonment if the
offense for which the sentence is being imposed is kidnapping
when the victim of the offense is less than thirteen years of
age and division (B) (3) (a) of this section does not apply;

(c) An indefinite term consisting of a minimum of thirty
years and a maximum term of life imprisonment if the offense for
which the sentence is being imposed is aggravated murder, when
the victim of the offense is less than thirteen years of age, a
sentence of death or life imprisonment without parole is not
imposed for the offense, and division (A) (2) (b) (ii) of section
2929.022, division (A) (1) (e), (C) (1) (a) (v), (C) (2) (a) (ii), (D)
(2) (b), (D) (3) (a) (iv), or (E) (1) ~~(d)~~ (a) (iv) of section 2929.03,
or division (A) or (B) of section 2929.06 of the Revised Code
requires that the sentence for the offense be imposed pursuant

to this division; 1721

(d) An indefinite prison term consisting of a minimum of 1722
thirty years and a maximum term of life imprisonment if the 1723
offense for which the sentence is being imposed is murder when 1724
the victim of the offense is less than thirteen years of age. 1725

(C) (1) If the offender is sentenced to a prison term 1726
pursuant to division (A) (3), (B) (1) (a), (b), or (c), (B) (2) (a), 1727
(b), or (c), or (B) (3) (a), (b), (c), or (d) of this section, the 1728
parole board shall have control over the offender's service of 1729
the term during the entire term unless the parole board 1730
terminates its control in accordance with section 2971.04 of the 1731
Revised Code. 1732

(2) Except as provided in division (C) (3) of this section, 1733
an offender sentenced to a prison term or term of life 1734
imprisonment without parole pursuant to division (A) of this 1735
section shall serve the entire prison term or term of life 1736
imprisonment in a state correctional institution. The offender 1737
is not eligible for judicial release under section 2929.20 of 1738
the Revised Code. 1739

(3) For a prison term imposed pursuant to division (A) (3), 1740
(B) (1) (a), (b), or (c), (B) (2) (a), (b), or (c), or (B) (3) (a), 1741
(b), (c), or (d) of this section, the court, in accordance with 1742
section 2971.05 of the Revised Code, may terminate the prison 1743
term or modify the requirement that the offender serve the 1744
entire term in a state correctional institution if all of the 1745
following apply: 1746

(a) The offender has served at least the minimum term 1747
imposed as part of that prison term. 1748

(b) The parole board, pursuant to section 2971.04 of the 1749

Revised Code, has terminated its control over the offender's 1750
service of that prison term. 1751

(c) The court has held a hearing and found, by clear and 1752
convincing evidence, one of the following: 1753

(i) In the case of termination of the prison term, that 1754
the offender is unlikely to commit a sexually violent offense in 1755
the future; 1756

(ii) In the case of modification of the requirement, that 1757
the offender does not represent a substantial risk of physical 1758
harm to others. 1759

(4) An offender who has been sentenced to a term of life 1760
imprisonment without parole pursuant to division (A)(1), (2), or 1761
(4) of this section shall not be released from the term of life 1762
imprisonment or be permitted to serve a portion of it in a place 1763
other than a state correctional institution. 1764

(D) If a court sentences an offender to a prison term or 1765
term of life imprisonment without parole pursuant to division 1766
(A) of this section and the court also imposes on the offender 1767
one or more additional prison terms pursuant to division (B) of 1768
section 2929.14 of the Revised Code, all of the additional 1769
prison terms shall be served consecutively with, and prior to, 1770
the prison term or term of life imprisonment without parole 1771
imposed upon the offender pursuant to division (A) of this 1772
section. 1773

(E) If the offender is convicted of or pleads guilty to 1774
two or more offenses for which a prison term or term of life 1775
imprisonment without parole is required to be imposed pursuant 1776
to division (A) of this section, divisions (A) to (D) of this 1777
section shall be applied for each offense. All minimum terms 1778

imposed upon the offender pursuant to division (A) (3) or (B) of 1779
this section for those offenses shall be aggregated and served 1780
consecutively, as if they were a single minimum term imposed 1781
under that division. 1782

(F) (1) If an offender is convicted of or pleads guilty to 1783
a violent sex offense and also is convicted of or pleads guilty 1784
to a sexually violent predator specification that was included 1785
in the indictment, count in the indictment, or information 1786
charging that offense, or is convicted of or pleads guilty to a 1787
designated homicide, assault, or kidnapping offense and also is 1788
convicted of or pleads guilty to both a sexual motivation 1789
specification and a sexually violent predator specification that 1790
were included in the indictment, count in the indictment, or 1791
information charging that offense, the conviction of or plea of 1792
guilty to the offense and the sexually violent predator 1793
specification automatically classifies the offender as a tier 1794
III sex offender/child-victim offender for purposes of Chapter 1795
2950. of the Revised Code. 1796

(2) If an offender is convicted of or pleads guilty to 1797
committing on or after January 2, 2007, a violation of division 1798
(A) (1) (b) of section 2907.02 of the Revised Code and either the 1799
offender is sentenced under section 2971.03 of the Revised Code 1800
or a sentence of life without parole is imposed under division 1801
(B) of section 2907.02 of the Revised Code, the conviction of or 1802
plea of guilty to the offense automatically classifies the 1803
offender as a tier III sex offender/child-victim offender for 1804
purposes of Chapter 2950. of the Revised Code. 1805

(3) If a person is convicted of or pleads guilty to 1806
committing on or after January 2, 2007, attempted rape and also 1807
is convicted of or pleads guilty to a specification of the type 1808

described in section 2941.1418, 2941.1419, or 2941.1420 of the
Revised Code, the conviction of or plea of guilty to the offense
and the specification automatically classify the offender as a
tier III sex offender/child-victim offender for purposes of
Chapter 2950. of the Revised Code.

(4) If a person is convicted of or pleads guilty to one of
the offenses described in division (B) (3) (a), (b), (c), or (d)
of this section and a sexual motivation specification related to
the offense and the victim of the offense is less than thirteen
years of age, the conviction of or plea of guilty to the offense
automatically classifies the offender as a tier III sex
offender/child-victim offender for purposes of Chapter 2950. of
the Revised Code.

Sec. 2971.07. (A) This chapter does not apply to any
offender unless the offender is one of the following:

(1) The offender is convicted of or pleads guilty to a
violent sex offense and also is convicted of or pleads guilty to
a sexually violent predator specification that was included in
the indictment, count in the indictment, or information charging
that offense.

(2) The offender is convicted of or pleads guilty to a
designated homicide, assault, or kidnapping offense and also is
convicted of or pleads guilty to both a sexual motivation
specification and a sexually violent predator specification that
were included in the indictment, count in the indictment, or
information charging that offense.

(3) The offender is convicted of or pleads guilty to a
violation of division (A) (1) (b) of section 2907.02 of the
Revised Code committed on or after January 2, 2007, and the

court does not sentence the offender to a term of life without 1838
parole pursuant to division (B) of section 2907.02 of the 1839
Revised Code or division (B) of that section prohibits the court 1840
from sentencing the offender pursuant to section 2971.03 of the 1841
Revised Code. 1842

(4) The offender is convicted of or pleads guilty to 1843
attempted rape committed on or after January 2, 2007, and also 1844
is convicted of or pleads guilty to a specification of the type 1845
described in section 2941.1418, 2941.1419, or 2941.1420 of the 1846
Revised Code. 1847

(5) The offender is convicted of or pleads guilty to a 1848
violation of section 2905.01 of the Revised Code and also is 1849
convicted of or pleads guilty to a sexual motivation 1850
specification that was included in the indictment, count in the 1851
indictment, or information charging that offense, and that 1852
section requires a court to sentence the offender pursuant to 1853
section 2971.03 of the Revised Code. 1854

(6) The offender is convicted of or pleads guilty to 1855
aggravated murder and also is convicted of or pleads guilty to a 1856
sexual motivation specification that was included in the 1857
indictment, count in the indictment, or information charging 1858
that offense, and division (A) (2) (b) (ii) of section 2929.022, 1859
division (A) (1) (e), (C) (1) (a) (v), (C) (2) (a) (ii), (D) (2) (b), (D) 1860
(3) (a) (iv), or (E) (1) ~~(d)~~ (a) (iv) of section 2929.03, or division 1861
(A) or (B) of section 2929.06 of the Revised Code requires a 1862
court to sentence the offender pursuant to division (B) (3) of 1863
section 2971.03 of the Revised Code. 1864

(7) The offender is convicted of or pleads guilty to 1865
murder and also is convicted of or pleads guilty to a sexual 1866
motivation specification that was included in the indictment, 1867

count in the indictment, or information charging that offense, 1868
and division (B)(2) of section 2929.02 of the Revised Code 1869
requires a court to sentence the offender pursuant to section 1870
2971.03 of the Revised Code. 1871

(B) This chapter does not limit or affect a court in 1872
imposing upon an offender described in divisions (A)(1) to (9) 1873
of this section any financial sanction under section 2929.18 or 1874
any other section of the Revised Code, or, except as 1875
specifically provided in this chapter, any other sanction that 1876
is authorized or required for the offense or violation by any 1877
other provision of law. 1878

(C) If an offender is sentenced to a prison term under 1879
division (A)(3), (B)(1)(a), (b), or (c), (B)(2)(a), (b), or (c), 1880
or (B)(3)(a), (b), (c), or (d) of section 2971.03 of the Revised 1881
Code and if, pursuant to section 2971.05 of the Revised Code, 1882
the court modifies the requirement that the offender serve the 1883
entire prison term in a state correctional institution or places 1884
the offender on conditional release that involves the placement 1885
of the offender under the supervision of the adult parole 1886
authority, authorized field officers of the authority who are 1887
engaged within the scope of their supervisory duties or 1888
responsibilities may search, with or without a warrant, the 1889
person of the offender, the place of residence of the offender, 1890
and a motor vehicle, another item of tangible or intangible 1891
personal property, or any other real property in which the 1892
offender has the express or implied permission of a person with 1893
a right, title, or interest to use, occupy, or possess if the 1894
field officer has reasonable grounds to believe that the 1895
offender is not abiding by the law or otherwise is not complying 1896
with the terms and conditions of the offender's modification or 1897
release. The authority shall provide each offender with a 1898

written notice that informs the offender that authorized field 1899
officers of the authority who are engaged within the scope of 1900
their supervisory duties or responsibilities may conduct those 1901
types of searches during the period of the modification or 1902
release if they have reasonable grounds to believe that the 1903
offender is not abiding by the law or otherwise is not complying 1904
with the terms and conditions of the offender's modification or 1905
release. 1906

Section 2. That existing sections 2929.02, 2929.022, 1907
2929.024, 2929.03, 2929.04, 2929.06, 2941.148, 2953.21, 2953.23, 1908
2971.03, and 2971.07 of the Revised Code are hereby repealed. 1909

Section 3. Notwithstanding section 1.50 of the Revised 1910
Code, if any provision of a section as amended or enacted by 1911
this act is determined to be unconstitutional or otherwise 1912
invalid in a final judgment by a court of last resort, the 1913
remainder of the enactments and amendments made in Section 1 of 1914
this act are void. 1915