

**As Introduced**

**131st General Assembly**

**Regular Session**

**2015-2016**

**S. B. No. 162**

**Senators Seitz, Williams**

**Cosponsors: Senators Lehner, Balderson, Sawyer, Brown, Hite, Thomas, Yuko,  
LaRose, Eklund, Schiavoni, Beagle, Tavares**

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**A BILL**

To amend sections 2929.02, 2929.022, 2929.024, 1  
2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 2  
and to enact section 2929.025 of the Revised 3  
Code to provide that a person convicted of 4  
aggravated murder who shows that the person had 5  
a serious mental illness at the time of 6  
committing the offense cannot be sentenced to 7  
death for the offense and to provide a mechanism 8  
for resentencing to a life sentence a person 9  
previously sentenced to death who proves that 10  
the person had a serious mental illness at the 11  
time of committing the offense. 12

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

**Section 1.** That sections 2929.02, 2929.022, 2929.024, 13  
2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 be amended and 14  
section 2929.025 of the Revised Code be enacted to read as 15  
follows: 16

**Sec. 2929.02.** (A) Whoever is convicted of or pleads guilty 17  
to aggravated murder in violation of section 2903.01 of the 18

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

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

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

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

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

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

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

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

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

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

Revised Code, the defendant may elect to have the panel of three 78  
judges, if the defendant waives trial by jury, or the trial 79  
judge, if the defendant is tried by jury, determine the 80  
existence of that aggravating circumstance at the sentencing 81  
hearing held pursuant to divisions (C) and (D) of section 82  
2929.03 of the Revised Code. 83

(1) If the defendant does not elect to have the existence 84  
of the aggravating circumstance determined at the sentencing 85  
hearing, the defendant shall be tried on the charge of 86  
aggravated murder, on the specification of the aggravating 87  
circumstance of a prior conviction listed in division (A) (5) of 88  
section 2929.04 of the Revised Code, and on any other 89  
specifications of an aggravating circumstance listed in division 90  
(A) of section 2929.04 of the Revised Code in a single trial as 91  
in any other criminal case in which a person is charged with 92  
aggravated murder and specifications. 93

(2) If the defendant does elect to have the existence of 94  
the aggravating circumstance of a prior conviction listed in 95  
division (A) (5) of section 2929.04 of the Revised Code 96  
determined at the sentencing hearing, then, following a verdict 97  
of guilty of the charge of aggravated murder, the panel of three 98  
judges or the trial judge shall: 99

(a) Hold a sentencing hearing pursuant to division (B) of 100  
this section, unless required to do otherwise under division (A) 101  
(2) (b) of this section; 102

(b) If the offender raises the matter of age at trial 103  
pursuant to section 2929.023 of the Revised Code and is not 104  
found at trial to have been eighteen years of age or older at 105  
the time of the commission of the offense or raises the matter 106  
of the offender's serious mental illness at the time of the 107

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) Schizophrenia; 209

(ii) Schizoaffective disorder; 210

(iii) Bipolar disorder; 211

(iv) Major depressive disorder; 212

(v) Delusional disorder. 213

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

(i) Exercise rational judgment in relation to the person's 224  
conduct; 225

<u>(ii) Conform the person's conduct to the requirements of</u>	226
<u>law;</u>	227
<u>(iii) Appreciate the nature, consequences, or wrongfulness</u>	228
<u>of the person's conduct.</u>	229
<u>(2) A disorder manifested primarily by repeated criminal</u>	230
<u>conduct or attributable solely to the acute effects of voluntary</u>	231
<u>use of alcohol or any other drug of abuse does not, standing</u>	232
<u>alone, constitute a "serious mental illness" for purposes of</u>	233
<u>division (A) (1) of this section.</u>	234
<u>(3) "Examiner" means a person who makes an evaluation</u>	235
<u>ordered under division (F) (1) of this section.</u>	236
<u>(4) "Prosecutor" means a prosecuting attorney who has</u>	237
<u>authority to prosecute a charge of aggravated murder that is</u>	238
<u>before the court.</u>	239
<u>(B) The diagnosis of a person with a condition or</u>	240
<u>conditions described in division (A) (1) (a) of this section may</u>	241
<u>be made at any time prior to, on, or after the day of the</u>	242
<u>alleged aggravated murder with which the person is charged or</u>	243
<u>the day on which the person pursuant to division (C) of this</u>	244
<u>section raises the matter of the person's serious mental illness</u>	245
<u>at the time of the alleged commission of that aggravated murder.</u>	246
<u>Diagnosis of the condition or conditions after the date of the</u>	247
<u>alleged aggravated murder with which the person is charged does</u>	248
<u>not preclude the person from presenting evidence that the person</u>	249
<u>had a serious mental illness at the time of the alleged</u>	250
<u>commission of that offense or, in the circumstances described in</u>	251
<u>division (C) of this section, from having the benefit of the</u>	252
<u>rebuttable presumption described in that division.</u>	253
<u>(C) A person charged with aggravated murder and one or</u>	254

more specifications of an aggravating circumstance listed in 255  
division (A) of section 2929.04 of the Revised Code may, before 256  
trial, raise the matter of the person's serious mental illness 257  
at the time of the alleged commission of the offense. If a 258  
person raises the matter of the person's serious mental illness 259  
at the time of the alleged commission of the offense, the court 260  
shall order an evaluation of the person in accordance with 261  
division (F) of this section and shall hold a pretrial hearing 262  
on the matter. The person who raises the matter may present 263  
evidence that the person had a serious mental illness at the 264  
time of the alleged commission of the offense, and the person 265  
has the burden of raising that matter and of going forward with 266  
the evidence relating to the diagnosis described in division (A) 267  
(1)(a) of this section and the impairment described in division 268  
(A)(1)(b) of this section. If the person submits prima facie 269  
evidence that the person has been diagnosed with a condition 270  
described in division (A)(1)(a) of this section, it shall be 271  
rebuttably presumed that the condition significantly impaired 272  
the person's capacity at the time of the alleged offense in a 273  
manner described in division (A)(1)(b)(i), (ii), or (iii) of 274  
this section. 275

(D) If a person described in division (C) of this section 276  
raises the matter of the person's serious mental illness at the 277  
time of the alleged commission of the aggravated murder and 278  
submits prima facie evidence as described in that division that 279  
the person has been diagnosed with a condition described in 280  
division (A)(1)(a) of this section, the prosecution shall have 281  
an opportunity to present evidence to contest the diagnosis, to 282  
rebut the presumption that the condition, if present, 283  
significantly impaired the person's capacity at the time of the 284  
alleged commission of the offense in a manner described in 285

division (A) (1) (b) (i), (ii), or (iii) of this section, or to 286  
both contest the diagnosis and rebut the presumption. The 287  
prosecution has the burden of proving, by a preponderance of the 288  
evidence, that the diagnosis of the condition described in 289  
division (A) (1) (a) of this section that was made of the person 290  
was erroneous or that the condition, if present, did not 291  
significantly impair the person's capacity at the time of the 292  
alleged offense in a manner described in division (A) (1) (b) (i), 293  
(ii), or (iii) of this section. 294

(E) If a person described in division (B) of this section 295  
raises the matter of the person's serious mental illness at the 296  
time of the alleged commission of the aggravated murder and 297  
submits prima facie evidence as described in that division that 298  
the person has been diagnosed with a condition described in 299  
division (A) (1) (a) of this section, one of the following 300  
applies: 301

(1) Unless the court at the pretrial hearing finds that 302  
the prosecution has proved, by a preponderance of the evidence, 303  
that the diagnosis of the condition described in division (A) (1) 304  
(a) of this section that was made of the person was erroneous or 305  
that the condition, if present, did not significantly impair the 306  
person's capacity at the time of the alleged offense in a manner 307  
described in division (A) (1) (b) (i), (ii), or (iii) of this 308  
section, the court shall issue a finding that the person is 309  
ineligible for a sentence of death due to serious mental 310  
illness. 311

(2) If the court at the pretrial hearing finds that the 312  
prosecution has proved, by a preponderance of the evidence, that 313  
the diagnosis of the condition described in division (A) (1) (a) 314  
of this section that was made of the person was erroneous or 315

that the condition, if present, did not significantly impair the 316  
person's capacity at the time of the alleged offense in a manner 317  
described in division (A)(1)(b)(i), (ii), or (iii) of this 318  
section, one of the following applies: 319

(a) If the aggravated murder charge is not to be tried by 320  
a jury, the court shall issue a finding that the person is not 321  
ineligible for a sentence of death due to serious mental 322  
illness. 323

(b) If the aggravated murder charge is to be tried by a 324  
jury, the person may request that the matter of serious mental 325  
illness be submitted to the jury at trial. If the person does 326  
not request that the matter be submitted to the jury, the court 327  
shall issue a finding that the person is not ineligible for a 328  
sentence of death due to serious mental illness. If the person 329  
requests that the matter be submitted to the jury, the matter 330  
shall be submitted to the jury at trial, the procedures and 331  
rules regarding introduction of evidence and burden of proof at 332  
the pretrial hearing that are set forth in divisions (C) and (D) 333  
of this section apply, and the person in accordance with those 334  
procedures and rules may introduce all relevant evidence, 335  
including, but not limited to evidence that is different from or 336  
in addition to the evidence introduced at the pretrial hearing. 337  
If the matter is submitted to the jury at trial, one of the 338  
following applies: 339

(i) Unless the jury finds that the prosecution has proved, 340  
by a preponderance of the evidence, that the diagnosis of the 341  
condition described in division (A)(1)(a) of this section that 342  
was made of the person was erroneous or that the condition, if 343  
present, did not significantly impair the person's capacity at 344  
the time of the alleged offense in a manner described in 345

division (A) (1) (b) (i), (ii), or (iii) of this section, the court 346  
shall issue a finding that the person is ineligible for a 347  
sentence of death due to serious mental illness. 348

(ii) If the jury finds that the prosecution has proved, by 349  
a preponderance of the evidence, that the diagnosis of the 350  
condition described in division (A) (1) (a) of this section that 351  
was made of the person was erroneous or that the condition, if 352  
present, did not significantly impair the person's capacity at 353  
the time of the alleged offense in a manner described in 354  
division (A) (1) (b) (i), (ii), or (iii) of this section, the court 355  
shall issue a finding that the person is not ineligible for a 356  
sentence of death due to serious mental illness. 357

(F) (1) If a person described in division (C) of this 358  
section raises the matter of the person's serious mental illness 359  
at the time of the alleged commission of the aggravated murder 360  
as described in that division, the court shall order an 361  
evaluation of the person. Section 2929.024 of the Revised Code 362  
applies with respect to an evaluation ordered under this 363  
division. 364

(2) No statement that a person makes in an evaluation 365  
ordered under division (F) (1) of this section or in a pretrial 366  
hearing or a proceeding before a jury under divisions (C) to (E) 367  
of this section relating to the person's serious mental illness 368  
at the time of the alleged commission of the aggravated murder 369  
with which the person is charged shall be used against the 370  
person on the issue of guilt in any criminal action or 371  
proceeding, but, in a criminal action or proceeding, the 372  
prosecutor or defense counsel may call as a witness any examiner 373  
who evaluated the person or prepared a report pursuant to a 374  
referral under this section. Neither the appointment nor the 375

testimony of an examiner in an evaluation ordered under division 376  
(F) (1) of this section precludes the prosecutor or defense 377  
counsel from calling other witnesses or presenting other 378  
evidence on the issue of the person's serious mental illness at 379  
the time of the alleged commission of the aggravated murder or 380  
on competency or insanity issues. 381

(G) A person's pleading of not guilty by reason of 382  
insanity or incompetence to stand trial, or a finding after such 383  
a plea that the person is not insane or that the person is 384  
competent to stand trial, does not preclude the person from 385  
raising the matter of the person's serious mental illness at the 386  
time of the alleged commission of the offense pursuant to 387  
division (C) of this section and, if a person so raises that 388  
matter, does not limit or affect any of the procedures described 389  
in this section or the authority of a court to make any finding 390  
described in this section. 391

**Sec. 2929.03.** (A) If the indictment or count in the 392  
indictment charging aggravated murder does not contain one or 393  
more specifications of aggravating circumstances listed in 394  
division (A) of section 2929.04 of the Revised Code, then, 395  
following a verdict of guilty of the charge of aggravated 396  
murder, the trial court shall impose sentence on the offender as 397  
follows: 398

(1) Except as provided in division (A) (2) of this section, 399  
the trial court shall impose one of the following sentences on 400  
the offender: 401

(a) Life imprisonment without parole; 402

(b) Subject to division (A) (1) (e) of this section, life 403  
imprisonment with parole eligibility after serving twenty years 404

of imprisonment; 405

(c) Subject to division (A) (1) (e) of this section, life 406  
imprisonment with parole eligibility after serving twenty-five 407  
full years of imprisonment; 408

(d) Subject to division (A) (1) (e) of this section, life 409  
imprisonment with parole eligibility after serving thirty full 410  
years of imprisonment; 411

(e) If the victim of the aggravated murder was less than 412  
thirteen years of age, the offender also is convicted of or 413  
pleads guilty to a sexual motivation specification that was 414  
included in the indictment, count in the indictment, or 415  
information charging the offense, and the trial court does not 416  
impose a sentence of life imprisonment without parole on the 417  
offender pursuant to division (A) (1) (a) of this section, the 418  
trial court shall sentence the offender pursuant to division (B) 419  
(3) of section 2971.03 of the Revised Code to an indefinite term 420  
consisting of a minimum term of thirty years and a maximum term 421  
of life imprisonment that shall be served pursuant to that 422  
section. 423

(2) If the offender also is convicted of or pleads guilty 424  
to a sexual motivation specification and a sexually violent 425  
predator specification that are included in the indictment, 426  
count in the indictment, or information that charged the 427  
aggravated murder, the trial court shall impose upon the 428  
offender a sentence of life imprisonment without parole that 429  
shall be served pursuant to section 2971.03 of the Revised Code. 430

(B) If the indictment or count in the indictment charging 431  
aggravated murder contains one or more specifications of 432  
aggravating circumstances listed in division (A) of section 433

2929.04 of the Revised Code, the verdict shall separately state 434  
~~whether all of the following:~~ 435

(1) Whether the accused is found guilty or not guilty of 436  
the principal charge ~~and, if ;~~ 437

(2) If guilty of the principal charge, whether the 438  
offender was eighteen years of age or older at the time of the 439  
commission of the offense, if the matter of age was raised by 440  
the offender pursuant to section 2929.023 of the Revised Code, ~~7~~ 441  
~~and whether ;~~ 442

(3) If guilty of the principal charge, whether the 443  
offender was found under section 2929.025 of the Revised Code to 444  
be ineligible for a sentence of death due to serious mental 445  
illness if the matter of serious mental illness at the time of 446  
the commission of the offense was raised by the offender 447  
pursuant to that section; 448

(4) If guilty of the principal charge, whether the 449  
offender is guilty or not guilty of each specification. ~~The~~ 450

The jury shall be instructed on its duties in this regard. 451  
The instruction to the jury shall include an instruction that a 452  
specification shall be proved beyond a reasonable doubt in order 453  
to support a guilty verdict on the specification, but the 454  
instruction shall not mention the penalty that may be the 455  
consequence of a guilty or not guilty verdict on any charge or 456  
specification. 457

(C) (1) If the indictment or count in the indictment 458  
charging aggravated murder contains one or more specifications 459  
of aggravating circumstances listed in division (A) of section 460  
2929.04 of the Revised Code, then, following a verdict of guilty 461  
of the charge but not guilty of each of the specifications, and 462

regardless of whether the offender raised the matter of age 463  
pursuant to section 2929.023 of the Revised Code or the matter 464  
of serious mental illness at the time of the commission of the 465  
offense pursuant to section 2929.025 of the Revised Code, the 466  
trial court shall impose sentence on the offender as follows: 467

(a) Except as provided in division (C) (1) (b) of this 468  
section, the trial court shall impose one of the following 469  
sentences on the offender: 470

(i) Life imprisonment without parole; 471

(ii) Subject to division (C) (1) (a) (v) of this section, 472  
life imprisonment with parole eligibility after serving twenty 473  
years of imprisonment; 474

(iii) Subject to division (C) (1) (a) (v) of this section, 475  
life imprisonment with parole eligibility after serving twenty- 476  
five full years of imprisonment; 477

(iv) Subject to division (C) (1) (a) (v) of this section, 478  
life imprisonment with parole eligibility after serving thirty 479  
full years of imprisonment; 480

(v) If the victim of the aggravated murder was less than 481  
thirteen years of age, the offender also is convicted of or 482  
pleads guilty to a sexual motivation specification that was 483  
included in the indictment, count in the indictment, or 484  
information charging the offense, and the trial court does not 485  
impose a sentence of life imprisonment without parole on the 486  
offender pursuant to division (C) (1) (a) (i) of this section, the 487  
trial court shall sentence the offender pursuant to division (B) 488  
(3) of section 2971.03 of the Revised Code to an indefinite term 489  
consisting of a minimum term of thirty years and a maximum term 490  
of life imprisonment. 491

(b) If the offender also is convicted of or pleads guilty 492  
to a sexual motivation specification and a sexually violent 493  
predator specification that are included in the indictment, 494  
count in the indictment, or information that charged the 495  
aggravated murder, the trial court shall impose upon the 496  
offender a sentence of life imprisonment without parole that 497  
shall be served pursuant to section 2971.03 of the Revised Code. 498

(2) (a) If the indictment or count in the indictment 499  
contains one or more specifications of aggravating circumstances 500  
listed in division (A) of section 2929.04 of the Revised Code 501  
and if the offender is found guilty of both the charge and one 502  
or more of the specifications, the penalty to be imposed on the 503  
offender shall be one of the following: 504

(i) Except as provided in division (C) (2) (a) (ii) or (iii), and subject to division (D) (1) and (E), of this section, the 505  
penalty to be imposed on the offender shall be death, life 506  
imprisonment without parole, life imprisonment with parole 507  
eligibility after serving twenty-five full years of 508  
imprisonment, or life imprisonment with parole eligibility after 509  
serving thirty full years of imprisonment. 510  
511

(ii) Except as provided in division (C) (2) (a) (iii) of this 512  
section, if the victim of the aggravated murder was less than 513  
thirteen years of age, the offender also is convicted of or 514  
pleads guilty to a sexual motivation specification that was 515  
included in the indictment, count in the indictment, or 516  
information charging the offense, and the trial court does not 517  
impose a sentence of death or life imprisonment without parole 518  
on the offender pursuant to division (C) (2) (a) (i) of this 519  
section, the penalty to be imposed on the offender shall be an 520  
indefinite term consisting of a minimum term of thirty years and 521

a maximum term of life imprisonment that shall be imposed 522  
pursuant to division (B) (3) of section 2971.03 of the Revised 523  
Code and served pursuant to that section. 524

(iii) If the offender also is convicted of or pleads 525  
guilty to a sexual motivation specification and a sexually 526  
violent predator specification that are included in the 527  
indictment, count in the indictment, or information that charged 528  
the aggravated murder, the penalty to be imposed on the offender 529  
shall be death or life imprisonment without parole that shall be 530  
served pursuant to section 2971.03 of the Revised Code. 531

(b) A penalty imposed pursuant to division (C) (2) (a) (i), 532  
(ii), or (iii) of this section shall be determined pursuant to 533  
divisions (D) and (E) of this section and shall be determined by 534  
one of the following: 535

(i) By the panel of three judges that tried the offender 536  
upon the offender's waiver of the right to trial by jury; 537

(ii) By the trial jury and the trial judge, if the 538  
offender was tried by jury. 539

(D) (1) Death may not be imposed as a penalty for 540  
aggravated murder if the offender raised the matter of age at 541  
trial pursuant to section 2929.023 of the Revised Code and was 542  
not found at trial to have been eighteen years of age or older 543  
at the time of the commission of the offense or raised the 544  
matter of the offender's serious mental illness at the time of 545  
the commission of the offense pursuant to section 2929.025 of 546  
the Revised Code and was found under that section to be 547  
ineligible for a sentence of death due to serious mental 548  
illness. When death may be imposed as a penalty for aggravated 549  
murder, the court shall proceed under this division. When death 550

may be imposed as a penalty, the court, upon the request of the 551  
defendant, shall require a pre-sentence investigation to be made 552  
and, upon the request of the defendant, shall require a mental 553  
examination to be made, and shall require reports of the 554  
investigation and of any mental examination submitted to the 555  
court, pursuant to section 2947.06 of the Revised Code. No 556  
statement made or information provided by a defendant in a 557  
mental examination or proceeding conducted pursuant to this 558  
division shall be disclosed to any person, except as provided in 559  
this division, or be used in evidence against the defendant on 560  
the issue of guilt in any retrial. A pre-sentence investigation 561  
or mental examination shall not be made except upon request of 562  
the defendant. Copies of any reports prepared under this 563  
division shall be furnished to the court, to the trial jury if 564  
the offender was tried by a jury, to the prosecutor, and to the 565  
offender or the offender's counsel for use under this division. 566  
The court, and the trial jury if the offender was tried by a 567  
jury, shall consider any report prepared pursuant to this 568  
division and furnished to it and any evidence raised at trial 569  
that is relevant to the aggravating circumstances the offender 570  
was found guilty of committing or to any factors in mitigation 571  
of the imposition of the sentence of death, shall hear testimony 572  
and other evidence that is relevant to the nature and 573  
circumstances of the aggravating circumstances the offender was 574  
found guilty of committing, the mitigating factors set forth in 575  
division (B) of section 2929.04 of the Revised Code, and any 576  
other factors in mitigation of the imposition of the sentence of 577  
death, and shall hear the statement, if any, of the offender, 578  
and the arguments, if any, of counsel for the defense and 579  
prosecution, that are relevant to the penalty that should be 580  
imposed on the offender. The defendant shall be given great 581  
latitude in the presentation of evidence of the mitigating 582

factors set forth in division (B) of section 2929.04 of the Revised Code and of any other factors in mitigation of the imposition of the sentence of death. If the offender chooses to make a statement, the offender is subject to cross-examination only if the offender consents to make the statement under oath or affirmation.

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

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

(a) Except as provided in division (D)(2)(b) or (c) of this section, to life imprisonment without parole, life imprisonment with parole eligibility after serving twenty-five

full years of imprisonment, or life imprisonment with parole 613  
eligibility after serving thirty full years of imprisonment; 614

(b) Except as provided in division (D)(2)(c) of this 615  
section, if the victim of the aggravated murder was less than 616  
thirteen years of age, the offender also is convicted of or 617  
pleads guilty to a sexual motivation specification that was 618  
included in the indictment, count in the indictment, or 619  
information charging the offense, and the jury does not 620  
recommend a sentence of life imprisonment without parole 621  
pursuant to division (D)(2)(a) of this section, to an indefinite 622  
term consisting of a minimum term of thirty years and a maximum 623  
term of life imprisonment to be imposed pursuant to division (B) 624  
(3) of section 2971.03 of the Revised Code and served pursuant 625  
to that section. 626

(c) If the offender also is convicted of or pleads guilty 627  
to a sexual motivation specification and a sexually violent 628  
predator specification that are included in the indictment, 629  
count in the indictment, or information that charged the 630  
aggravated murder, to life imprisonment without parole. 631

If the trial jury recommends that the offender be 632  
sentenced to life imprisonment without parole, life imprisonment 633  
with parole eligibility after serving twenty-five full years of 634  
imprisonment, life imprisonment with parole eligibility after 635  
serving thirty full years of imprisonment, or an indefinite term 636  
consisting of a minimum term of thirty years and a maximum term 637  
of life imprisonment to be imposed pursuant to division (B)(3) 638  
of section 2971.03 of the Revised Code, the court shall impose 639  
the sentence recommended by the jury upon the offender. If the 640  
sentence is an indefinite term consisting of a minimum term of 641  
thirty years and a maximum term of life imprisonment imposed as 642

described in division (D) (2) (b) of this section or a sentence of 643  
life imprisonment without parole imposed under division (D) (2) 644  
(c) of this section, the sentence shall be served pursuant to 645  
section 2971.03 of the Revised Code. If the trial jury 646  
recommends that the sentence of death be imposed upon the 647  
offender, the court shall proceed to impose sentence pursuant to 648  
division (D) (3) of this section. 649

(3) Upon consideration of the relevant evidence raised at 650  
trial, the testimony, other evidence, statement of the offender, 651  
arguments of counsel, and, if applicable, the reports submitted 652  
to the court pursuant to division (D) (1) of this section, if, 653  
after receiving pursuant to division (D) (2) of this section the 654  
trial jury's recommendation that the sentence of death be 655  
imposed, the court finds, by proof beyond a reasonable doubt, or 656  
if the panel of three judges unanimously finds, by proof beyond 657  
a reasonable doubt, that the aggravating circumstances the 658  
offender was found guilty of committing outweigh the mitigating 659  
factors, it shall impose sentence of death on the offender. 660  
Absent such a finding by the court or panel, the court or the 661  
panel shall impose one of the following sentences on the 662  
offender: 663

(a) Except as provided in division (D) (3) (b) of this 664  
section, one of the following: 665

(i) Life imprisonment without parole; 666

(ii) Subject to division (D) (3) (a) (iv) of this section, 667  
life imprisonment with parole eligibility after serving twenty- 668  
five full years of imprisonment; 669

(iii) Subject to division (D) (3) (a) (iv) of this section, 670  
life imprisonment with parole eligibility after serving thirty 671

full years of imprisonment; 672

(iv) If the victim of the aggravated murder was less than 673  
thirteen years of age, the offender also is convicted of or 674  
pleads guilty to a sexual motivation specification that was 675  
included in the indictment, count in the indictment, or 676  
information charging the offense, and the trial court does not 677  
impose a sentence of life imprisonment without parole on the 678  
offender pursuant to division (D) (3) (a) (i) of this section, the 679  
court or panel shall sentence the offender pursuant to division 680  
(B) (3) of section 2971.03 of the Revised Code to an indefinite 681  
term consisting of a minimum term of thirty years and a maximum 682  
term of life imprisonment. 683

(b) If the offender also is convicted of or pleads guilty 684  
to a sexual motivation specification and a sexually violent 685  
predator specification that are included in the indictment, 686  
count in the indictment, or information that charged the 687  
aggravated murder, life imprisonment without parole that shall 688  
be served pursuant to section 2971.03 of the Revised Code. 689

(E) If the offender ~~raised the matter of age at trial~~ 690  
~~pursuant to section 2929.023 of the Revised Code,~~ was convicted 691  
of aggravated murder and one or more specifications of an 692  
aggravating circumstance listed in division (A) of section 693  
2929.04 of the Revised Code, and if the offender either raised 694  
the matter of age at trial pursuant to section 2929.023 of the 695  
Revised Code and was not found at trial to have been eighteen 696  
years of age or older at the time of the commission of the 697  
offense or raised the matter of the offender's serious mental 698  
illness at the time of the commission of the offense pursuant to 699  
section 2929.025 of the Revised Code and was found under that 700  
section to be ineligible for a sentence of death due to serious 701

mental illness, the court or the panel of three judges shall not 702  
impose a sentence of death on the offender. Instead, the court 703  
or panel shall impose one of the following sentences on the 704  
offender: 705

(1) Except as provided in division (E) (2) of this section, 706  
one of the following: 707

(a) Life imprisonment without parole; 708

(b) Subject to division (E) ~~(2)~~ (1) (d) of this section, life 709  
imprisonment with parole eligibility after serving twenty-five 710  
full years of imprisonment; 711

(c) Subject to division (E) ~~(2)~~ (1) (d) of this section, life 712  
imprisonment with parole eligibility after serving thirty full 713  
years of imprisonment; 714

(d) If the victim of the aggravated murder was less than 715  
thirteen years of age, the offender also is convicted of or 716  
pleads guilty to a sexual motivation specification that was 717  
included in the indictment, count in the indictment, or 718  
information charging the offense, and the trial court does not 719  
impose a sentence of life imprisonment without parole on the 720  
offender pursuant to division (E) ~~(2)~~ (1) (a) of this section, the 721  
court or panel shall sentence the offender pursuant to division 722  
(B) (3) of section 2971.03 of the Revised Code to an indefinite 723  
term consisting of a minimum term of thirty years and a maximum 724  
term of life imprisonment. 725

(2) If the offender also is convicted of or pleads guilty 726  
to a sexual motivation specification and a sexually violent 727  
predator specification that are included in the indictment, 728  
count in the indictment, or information that charged the 729  
aggravated murder, life imprisonment without parole that shall 730

be served pursuant to section 2971.03 of the Revised Code. 731

(F) The court or the panel of three judges, when it 732  
imposes sentence of death, shall state in a separate opinion its 733  
specific findings as to the existence of any of the mitigating 734  
factors set forth in division (B) of section 2929.04 of the 735  
Revised Code, the existence of any other mitigating factors, the 736  
aggravating circumstances the offender was found guilty of 737  
committing, and the reasons why the aggravating circumstances 738  
the offender was found guilty of committing were sufficient to 739  
outweigh the mitigating factors. The court or panel, when it 740  
imposes life imprisonment or an indefinite term consisting of a 741  
minimum term of thirty years and a maximum term of life 742  
imprisonment under division (D) of this section, shall state in 743  
a separate opinion its specific findings of which of the 744  
mitigating factors set forth in division (B) of section 2929.04 745  
of the Revised Code it found to exist, what other mitigating 746  
factors it found to exist, what aggravating circumstances the 747  
offender was found guilty of committing, and why it could not 748  
find that these aggravating circumstances were sufficient to 749  
outweigh the mitigating factors. For cases in which a sentence 750  
of death is imposed for an offense committed before January 1, 751  
1995, the court or panel shall file the opinion required to be 752  
prepared by this division with the clerk of the appropriate 753  
court of appeals and with the clerk of the supreme court within 754  
fifteen days after the court or panel imposes sentence. For 755  
cases in which a sentence of death is imposed for an offense 756  
committed on or after January 1, 1995, the court or panel shall 757  
file the opinion required to be prepared by this division with 758  
the clerk of the supreme court within fifteen days after the 759  
court or panel imposes sentence. The judgment in a case in which 760  
a sentencing hearing is held pursuant to this section is not 761

final until the opinion is filed. 762

(G) (1) Whenever the court or a panel of three judges 763  
imposes a sentence of death for an offense committed before 764  
January 1, 1995, the clerk of the court in which the judgment is 765  
rendered shall deliver the entire record in the case to the 766  
appellate court. 767

(2) Whenever the court or a panel of three judges imposes 768  
a sentence of death for an offense committed on or after January 769  
1, 1995, the clerk of the court in which the judgment is 770  
rendered shall deliver the entire record in the case to the 771  
supreme court. 772

**Sec. 2929.04.** (A) Imposition of the death penalty for 773  
aggravated murder is precluded unless one or more of the 774  
following is specified in the indictment or count in the 775  
indictment pursuant to section 2941.14 of the Revised Code and 776  
proved beyond a reasonable doubt: 777

(1) The offense was the assassination of the president of 778  
the United States or a person in line of succession to the 779  
presidency, the governor or lieutenant governor of this state, 780  
the president-elect or vice president-elect of the United 781  
States, the governor-elect or lieutenant governor-elect of this 782  
state, or a candidate for any of the offices described in this 783  
division. For purposes of this division, a person is a candidate 784  
if the person has been nominated for election according to law, 785  
if the person has filed a petition or petitions according to law 786  
to have the person's name placed on the ballot in a primary or 787  
general election, or if the person campaigns as a write-in 788  
candidate in a primary or general election. 789

(2) The offense was committed for hire. 790

(3) The offense was committed for the purpose of escaping 791  
detection, apprehension, trial, or punishment for another 792  
offense committed by the offender. 793

(4) The offense was committed while the offender was under 794  
detention or while the offender was at large after having broken 795  
detention. As used in division (A)(4) of this section, 796  
"detention" has the same meaning as in section 2921.01 of the 797  
Revised Code, except that detention does not include 798  
hospitalization, institutionalization, or confinement in a 799  
mental health facility or mental retardation and developmentally 800  
disabled facility unless at the time of the commission of the 801  
offense either of the following circumstances apply: 802

(a) The offender was in the facility as a result of being 803  
charged with a violation of a section of the Revised Code. 804

(b) The offender was under detention as a result of being 805  
convicted of or pleading guilty to a violation of a section of 806  
the Revised Code. 807

(5) Prior to the offense at bar, the offender was 808  
convicted of an offense an essential element of which was the 809  
purposeful killing of or attempt to kill another, or the offense 810  
at bar was part of a course of conduct involving the purposeful 811  
killing of or attempt to kill two or more persons by the 812  
offender. 813

(6) The victim of the offense was a law enforcement 814  
officer, as defined in section 2911.01 of the Revised Code, whom 815  
the offender had reasonable cause to know or knew to be a law 816  
enforcement officer as so defined, and either the victim, at the 817  
time of the commission of the offense, was engaged in the 818  
victim's duties, or it was the offender's specific purpose to 819

kill a law enforcement officer as so defined. 820

(7) The offense was committed while the offender was 821  
committing, attempting to commit, or fleeing immediately after 822  
committing or attempting to commit kidnapping, rape, aggravated 823  
arson, aggravated robbery, or aggravated burglary, and either 824  
the offender was the principal offender in the commission of the 825  
aggravated murder or, if not the principal offender, committed 826  
the aggravated murder with prior calculation and design. 827

(8) The victim of the aggravated murder was a witness to 828  
an offense who was purposely killed to prevent the victim's 829  
testimony in any criminal proceeding and the aggravated murder 830  
was not committed during the commission, attempted commission, 831  
or flight immediately after the commission or attempted 832  
commission of the offense to which the victim was a witness, or 833  
the victim of the aggravated murder was a witness to an offense 834  
and was purposely killed in retaliation for the victim's 835  
testimony in any criminal proceeding. 836

(9) The offender, in the commission of the offense, 837  
purposefully caused the death of another who was under thirteen 838  
years of age at the time of the commission of the offense, and 839  
either the offender was the principal offender in the commission 840  
of the offense or, if not the principal offender, committed the 841  
offense with prior calculation and design. 842

(10) The offense was committed while the offender was 843  
committing, attempting to commit, or fleeing immediately after 844  
committing or attempting to commit terrorism. 845

(B) If one or more of the aggravating circumstances listed 846  
in division (A) of this section is specified in the indictment 847  
or count in the indictment and proved beyond a reasonable doubt, 848

~~and~~ if the offender did not raise the matter of age pursuant to 849  
section 2929.023 of the Revised Code or ~~if~~ the offender, after 850  
raising ~~the~~ that matter of age, was found at trial to have been 851  
eighteen years of age or older at the time of the commission of 852  
the offense, and if the offender did not raise the matter of the 853  
offender's serious mental illness at the time of the commission 854  
of the offense pursuant to section 2929.025 of the Revised Code 855  
or the offender after raising that matter was found by the court 856  
to not be ineligible for a sentence of death, the court, trial 857  
jury, or panel of three judges shall consider, and weigh against 858  
the aggravating circumstances proved beyond a reasonable doubt, 859  
the nature and circumstances of the offense, the history, 860  
character, and background of the offender, and all of the 861  
following factors: 862

(1) Whether the victim of the offense induced or 863  
facilitated it; 864

(2) Whether it is unlikely that the offense would have 865  
been committed, but for the fact that the offender was under 866  
duress, coercion, or strong provocation; 867

(3) Whether, at the time of committing the offense, the 868  
offender, because of a mental disease or defect, lacked 869  
substantial capacity to appreciate the criminality of the 870  
offender's conduct or to conform the offender's conduct to the 871  
requirements of the law; 872

(4) The youth of the offender; 873

(5) The offender's lack of a significant history of prior 874  
criminal convictions and delinquency adjudications; 875

(6) If the offender was a participant in the offense but 876  
not the principal offender, the degree of the offender's 877

participation in the offense and the degree of the offender's 878  
participation in the acts that led to the death of the victim; 879

(7) Any other factors that are relevant to the issue of 880  
whether the offender should be sentenced to death. 881

(C) The defendant shall be given great latitude in the 882  
presentation of evidence of the factors listed in division (B) 883  
of this section and of any other factors in mitigation of the 884  
imposition of the sentence of death. 885

The existence of any of the mitigating factors listed in 886  
division (B) of this section does not preclude the imposition of 887  
a sentence of death on the offender but shall be weighed 888  
pursuant to divisions (D) (2) and (3) of section 2929.03 of the 889  
Revised Code by the trial court, trial jury, or the panel of 890  
three judges against the aggravating circumstances the offender 891  
was found guilty of committing. 892

**Sec. 2929.06.** (A) (1) If a sentence of death imposed upon 893  
an offender is set aside, nullified, ~~or vacated because the~~, or 894  
voided for any of the following reasons, the trial court that 895  
sentenced the offender shall conduct a hearing to resentence the 896  
offender in accordance with division (A) (2) of this section: 897

(a) The court of appeals, in a case in which a sentence of 898  
death was imposed for an offense committed before January 1, 899  
1995, or the supreme court, in ~~cases~~ a case in which the supreme 900  
court reviews the sentence upon appeal, could not affirm the 901  
sentence of death under the standards imposed by section 2929.05 902  
of the Revised Code, ~~is set aside, nullified, or vacated for~~ 903  
~~the;~~ 904

(b) The sole reason that the statutory procedure for 905  
imposing the sentence of death that is set forth in sections 906

2929.03 and 2929.04 of the Revised Code is unconstitutional;i 907

(c) The sentence of death is set aside, nullified, or 908  
vacated pursuant to division (C) of section 2929.05 of the 909  
Revised Code,~~or is set aside, nullified, or vacated because a~~i 910

(d) A court has determined that the offender is mentally 911  
retarded under standards set forth in decisions of the supreme 912  
court of this state or the United States supreme court,~~the~~ 913  
~~trial court that sentenced the offender shall conduct a hearing~~ 914  
~~to resentence the offender;~~ 915

(e) The sentence of death is voided by a court pursuant to 916  
division (G) of section 2953.21 of the Revised Code. 917

(2) At the a resentencing hearing conducted under division 918  
(A)(1) of this section, the court shall impose upon the offender 919  
a sentence of life imprisonment or an indefinite term consisting 920  
of a minimum term of thirty years and a maximum term of life 921  
imprisonment that is determined as specified in this division. 922  
If division (D) of section 2929.03 of the Revised Code, at the 923  
time the offender committed the aggravated murder for which the 924  
sentence of death was imposed, required the imposition when a 925  
sentence of death was not imposed of a sentence of life 926  
imprisonment without parole or a sentence of an indefinite term 927  
consisting of a minimum term of thirty years and a maximum term 928  
of life imprisonment to be imposed pursuant to division (A) or 929  
(B) (3) of section 2971.03 of the Revised Code and served 930  
pursuant to that section, the court shall impose the sentence so 931  
required. In all other cases, the sentences of life imprisonment 932  
that are available at the hearing, and from which the court 933  
shall impose sentence, shall be the same sentences of life 934  
imprisonment that were available under division (D) of section 935  
2929.03 or under section 2909.24 of the Revised Code at the time 936

the offender committed the offense for which the sentence of 937  
death was imposed. Nothing in this division regarding the 938  
resentencing of an offender shall affect the operation of 939  
section 2971.03 of the Revised Code. 940

(B) Whenever any court of this state or any federal court 941  
sets aside, nullifies, or vacates a sentence of death imposed 942  
upon an offender because of error that occurred in the 943  
sentencing phase of the trial and if division (A) of this 944  
section does not apply, the trial court that sentenced the 945  
offender shall conduct a new hearing to resentence the offender. 946  
If the offender was tried by a jury, the trial court shall 947  
impanel a new jury for the hearing. If the offender was tried by 948  
a panel of three judges, that panel or, if necessary, a new 949  
panel of three judges shall conduct the hearing. At the hearing, 950  
the court or panel shall follow the procedure set forth in 951  
division (D) of section 2929.03 of the Revised Code in 952  
determining whether to impose upon the offender a sentence of 953  
death, a sentence of life imprisonment, or an indefinite term 954  
consisting of a minimum term of thirty years and a maximum term 955  
of life imprisonment. If, pursuant to that procedure, the court 956  
or panel determines that it will impose a sentence other than a 957  
sentence of death, the court or panel shall impose upon the 958  
offender one of the sentences of life imprisonment that could 959  
have been imposed at the time the offender committed the offense 960  
for which the sentence of death was imposed, determined as 961  
specified in this division, or an indefinite term consisting of 962  
a minimum term of thirty years and a maximum term of life 963  
imprisonment that is determined as specified in this division. 964  
If division (D) of section 2929.03 of the Revised Code, at the 965  
time the offender committed the aggravated murder for which the 966  
sentence of death was imposed, required the imposition when a 967

sentence of death was not imposed of a sentence of life 968  
imprisonment without parole or a sentence of an indefinite term 969  
consisting of a minimum term of thirty years and a maximum term 970  
of life imprisonment to be imposed pursuant to division (A) or 971  
(B) (3) of section 2971.03 of the Revised Code and served 972  
pursuant to that section, the court or panel shall impose the 973  
sentence so required. In all other cases, the sentences of life 974  
imprisonment that are available at the hearing, and from which 975  
the court or panel shall impose sentence, shall be the same 976  
sentences of life imprisonment that were available under 977  
division (D) of section 2929.03 or under section 2909.24 of the 978  
Revised Code at the time the offender committed the offense for 979  
which the sentence of death was imposed. 980

(C) If a sentence of life imprisonment without parole 981  
imposed upon an offender pursuant to section 2929.021 or 2929.03 982  
of the Revised Code is set aside, nullified, or vacated for the 983  
sole reason that the statutory procedure for imposing the 984  
sentence of life imprisonment without parole that is set forth 985  
in sections 2929.03 and 2929.04 of the Revised Code is 986  
unconstitutional, the trial court that sentenced the offender 987  
shall conduct a hearing to resentence the offender to life 988  
imprisonment with parole eligibility after serving twenty-five 989  
full years of imprisonment or to life imprisonment with parole 990  
eligibility after serving thirty full years of imprisonment. 991

(D) Nothing in this section limits or restricts the rights 992  
of the state to appeal any order setting aside, nullifying, or 993  
vacating a conviction or sentence of death, when an appeal of 994  
that nature otherwise would be available. 995

(E) This section, as amended by H.B. 184 of the 125th 996  
general assembly, shall apply to all offenders who have been 997

sentenced to death for an aggravated murder that was committed 998  
on or after October 19, 1981, or for terrorism that was 999  
committed on or after May 15, 2002. This section, as amended by 1000  
H.B. 184 of the 125th general assembly, shall apply equally to 1001  
all such offenders sentenced to death prior to, on, or after 1002  
March 23, 2005, including offenders who, on March 23, 2005, are 1003  
challenging their sentence of death and offenders whose sentence 1004  
of death has been set aside, nullified, or vacated by any court 1005  
of this state or any federal court but who, as of March 23, 1006  
2005, have not yet been resentenced. 1007

**Sec. 2953.21.** (A) (1) (a) A person in any of the following 1008  
categories may file a petition in the court that imposed 1009  
sentence, stating the grounds for relief relied upon, and asking 1010  
the court to vacate or set aside the judgment or sentence or to 1011  
grant other appropriate relief: 1012

(i) Any person who has been convicted of a criminal 1013  
offense or adjudicated a delinquent child and who claims that 1014  
there was such a denial or infringement of the person's rights 1015  
as to render the judgment void or voidable under the Ohio 1016  
Constitution or the Constitution of the United States, ~~and any:~~ 1017

(ii) Any person who has been convicted of a criminal 1018  
offense that is a felony and who is an offender for whom DNA 1019  
testing that was performed under sections 2953.71 to 2953.81 of 1020  
the Revised Code or under former section 2953.82 of the Revised 1021  
Code and analyzed in the context of and upon consideration of 1022  
all available admissible evidence related to the person's case 1023  
as described in division (D) of section 2953.74 of the Revised 1024  
Code provided results that establish, by clear and convincing 1025  
evidence, actual innocence of that felony offense or, if the 1026  
person was sentenced to death, establish, by clear and 1027

convincing evidence, actual innocence of the aggravating 1028  
circumstance or circumstances the person was found guilty of 1029  
committing and that is or are the basis of that sentence of 1030  
death, ~~may file a petition in the court that imposed sentence,~~ 1031  
~~stating the grounds for relief relied upon, and asking the court~~ 1032  
~~to vacate or set aside the judgment or sentence or to grant~~ 1033  
~~other appropriate relief;~~ 1034

(iii) Any person who has been convicted of aggravated 1035  
murder and sentenced to death for the offense and who claims 1036  
that the person had a serious mental illness at the time of the 1037  
commission of the offense and that as a result the court should 1038  
render void the sentence of death. 1039

~~The~~ (b) A petitioner under division (A) (1) (a) of this 1040  
section may file a supporting affidavit and other documentary 1041  
evidence in support of the claim for relief. 1042

~~(b)~~ (c) As used in division (A) (1) (a) of this section, 1043  
~~"actual":~~ 1044

(i) "Actual innocence" means that, had the results of the 1045  
DNA testing conducted under sections 2953.71 to 2953.81 of the 1046  
Revised Code or under former section 2953.82 of the Revised Code 1047  
been presented at trial, and had those results been analyzed in 1048  
the context of and upon consideration of all available 1049  
admissible evidence related to the person's case as described in 1050  
division (D) of section 2953.74 of the Revised Code, no 1051  
reasonable factfinder would have found the petitioner guilty of 1052  
the offense of which the petitioner was convicted, or, if the 1053  
person was sentenced to death, no reasonable factfinder would 1054  
have found the petitioner guilty of the aggravating circumstance 1055  
or circumstances the petitioner was found guilty of committing 1056  
and that is or are the basis of that sentence of death. 1057

(ii) "Serious mental illness" has the same meaning as in section 2929.025 of the Revised Code. 1058  
1059

~~(e)~~(d) As used in divisions (A) (1) (a) and ~~(b)~~(c) of this section, "former section 2953.82 of the Revised Code" means 1060  
1061  
section 2953.82 of the Revised Code as it existed prior to July 1062  
6, 2010. 1063

(2) (a) Except as otherwise provided in section 2953.23 of 1064  
the Revised Code, a petition under division (A) (1) (a) (i) or (ii) 1065  
of this section shall be filed no later than three hundred 1066  
sixty-five days after the date on which the trial transcript is 1067  
filed in the court of appeals in the direct appeal of the 1068  
judgment of conviction or adjudication or, if the direct appeal 1069  
involves a sentence of death, the date on which the trial 1070  
transcript is filed in the supreme court. If no appeal is taken, 1071  
except as otherwise provided in section 2953.23 of the Revised 1072  
Code, the petition shall be filed no later than three hundred 1073  
sixty-five days after the expiration of the time for filing the 1074  
appeal. 1075

(b) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A) (1) (a) (iii) of this section shall be filed not later than three hundred sixty-five days after the effective date of this amendment. 1076  
1077  
1078  
1079

(3) In a petition filed under division (A) (1) (a) (i) or (ii) of this section, a person who has been sentenced to death 1080  
1081  
may ask the court to render void or voidable the judgment with 1082  
respect to the conviction of aggravated murder or the 1083  
specification of an aggravating circumstance or the sentence of 1084  
death. A person who has been sentenced to death who files a 1085  
petition under division (A) (1) (a) (iii) of this section may ask 1086  
the court to render void the sentence of death and to order the 1087

resentencing of the person under division (A) of section 2929.06 1088  
of the Revised Code. 1089

(4) A petitioner shall state in the original or amended 1090  
petition filed under division (A) of this section all grounds 1091  
for relief claimed by the petitioner. Except as provided in 1092  
section 2953.23 of the Revised Code, any ground for relief that 1093  
is not so stated in the petition is waived. 1094

(5) If the petitioner in a petition filed under division 1095  
(A) (1)(a)(i) or (ii) of this section was convicted of or pleaded 1096  
guilty to a felony, the petition may include a claim that the 1097  
petitioner was denied the equal protection of the laws in 1098  
violation of the Ohio Constitution or the United States 1099  
Constitution because the sentence imposed upon the petitioner 1100  
for the felony was part of a consistent pattern of disparity in 1101  
sentencing by the judge who imposed the sentence, with regard to 1102  
the petitioner's race, gender, ethnic background, or religion. 1103  
If the supreme court adopts a rule requiring a court of common 1104  
pleas to maintain information with regard to an offender's race, 1105  
gender, ethnic background, or religion, the supporting evidence 1106  
for the petition shall include, but shall not be limited to, a 1107  
copy of that type of information relative to the petitioner's 1108  
sentence and copies of that type of information relative to 1109  
sentences that the same judge imposed upon other persons. 1110

(B) The clerk of the court in which the petition is filed 1111  
shall docket the petition and bring it promptly to the attention 1112  
of the court. The clerk of the court in which the petition is 1113  
filed immediately shall forward a copy of the petition to the 1114  
prosecuting attorney of that county. 1115

(C) The court shall consider a petition that is timely 1116  
filed under division (A) (2) of this section even if a direct 1117

appeal of the judgment is pending. Before granting a hearing on 1118  
a petition filed under division (A) of this section, the court 1119  
shall determine whether there are substantive grounds for 1120  
relief. In making such a determination, the court shall 1121  
consider, in addition to the petition, the supporting 1122  
affidavits, and the documentary evidence, all the files and 1123  
records pertaining to the proceedings against the petitioner, 1124  
including, but not limited to, the indictment, the court's 1125  
journal entries, the journalized records of the clerk of the 1126  
court, and the court reporter's transcript. The court reporter's 1127  
transcript, if ordered and certified by the court, shall be 1128  
taxed as court costs. If the court dismisses the petition, it 1129  
shall make and file findings of fact and conclusions of law with 1130  
respect to such dismissal. 1131

(D) Within ten days after the docketing of the petition, 1132  
or within any further time that the court may fix for good cause 1133  
shown, the prosecuting attorney shall respond by answer or 1134  
motion. Within twenty days from the date the issues are raised, 1135  
either party may move for summary judgment. The right to summary 1136  
judgment shall appear on the face of the record. 1137

(E) Unless the petition and the files and records of the 1138  
case show the petitioner is not entitled to relief, the court 1139  
shall proceed to a prompt hearing on the issues even if a direct 1140  
appeal of the case is pending. If the court notifies the parties 1141  
that it has found grounds for granting relief, either party may 1142  
request an appellate court in which a direct appeal of the 1143  
judgment is pending to remand the pending case to the court. 1144

With respect to a petition filed under division (A) (1) (a) 1145  
(iii) of this section, the procedures and rules regarding 1146  
introduction of evidence and burden of proof at the pretrial 1147

hearing that are set forth in divisions (C), (D), and (F) of 1148  
section 2929.025 of the Revised Code apply in considering the 1149  
petition. With respect to such a petition, the grounds for 1150  
granting relief are that the person has been diagnosed with one 1151  
or more of the conditions set forth in division (A)(1)(a) of 1152  
section 2929.025 of the Revised Code and that, at the time of 1153  
the aggravated murder that was the basis of the sentence of 1154  
death, the condition or conditions significantly impaired the 1155  
person's capacity in a manner described in division (A)(1)(b) 1156  
(i), (ii), or (iii) of that section. 1157

(F) At any time before the answer or motion is filed, the 1158  
petitioner may amend the petition with or without leave or 1159  
prejudice to the proceedings. The petitioner may amend the 1160  
petition with leave of court at any time thereafter. 1161

(G) If the court does not find grounds for granting 1162  
relief, it shall make and file findings of fact and conclusions 1163  
of law and shall enter judgment denying relief on the petition. 1164  
If no direct appeal of the case is pending and the court finds 1165  
grounds for relief or if a pending direct appeal of the case has 1166  
been remanded to the court pursuant to a request made pursuant 1167  
to division (E) of this section and the court finds grounds for 1168  
granting relief, it shall make and file findings of fact and 1169  
conclusions of law and shall enter a judgment that vacates and 1170  
sets aside the judgment in question, and, in the case of a 1171  
petitioner who is a prisoner in custody, except as otherwise 1172  
described in this division, shall discharge or resentence the 1173  
petitioner or grant a new trial as the court determines 1174  
appropriate. If the court finds grounds for relief in the case 1175  
of a petitioner who filed a petition under division (A)(1)(a) 1176  
(iii) of this section, the court shall render void the sentence 1177  
of death and order the resentencing of the offender under 1178

division (A) of section 2929.06 of the Revised Code. The court 1179  
also may make supplementary orders to the relief granted, 1180  
concerning such matters as rearraignment, retrial, custody, and 1181  
bail. If the trial court's order granting the petition is 1182  
reversed on appeal and if the direct appeal of the case has been 1183  
remanded from an appellate court pursuant to a request under 1184  
division (E) of this section, the appellate court reversing the 1185  
order granting the petition shall notify the appellate court in 1186  
which the direct appeal of the case was pending at the time of 1187  
the remand of the reversal and remand of the trial court's 1188  
order. Upon the reversal and remand of the trial court's order 1189  
granting the petition, regardless of whether notice is sent or 1190  
received, the direct appeal of the case that was remanded is 1191  
reinstated. 1192

(H) Upon the filing of a petition pursuant to division (A) 1193  
of this section by a person sentenced to death, only the supreme 1194  
court may stay execution of the sentence of death. 1195

(I) (1) If a person sentenced to death intends to file a 1196  
petition under this section, the court shall appoint counsel to 1197  
represent the person upon a finding that the person is indigent 1198  
and that the person either accepts the appointment of counsel or 1199  
is unable to make a competent decision whether to accept or 1200  
reject the appointment of counsel. The court may decline to 1201  
appoint counsel for the person only upon a finding, after a 1202  
hearing if necessary, that the person rejects the appointment of 1203  
counsel and understands the legal consequences of that decision 1204  
or upon a finding that the person is not indigent. 1205

(2) The court shall not appoint as counsel under division 1206  
(I) (1) of this section an attorney who represented the 1207  
petitioner at trial in the case to which the petition relates 1208

unless the person and the attorney expressly request the 1209  
appointment. The court shall appoint as counsel under division 1210  
(I) (1) of this section only an attorney who is certified under 1211  
Rule 20 of the Rules of Superintendence for the Courts of Ohio 1212  
to represent indigent defendants charged with or convicted of an 1213  
offense for which the death penalty can be or has been imposed. 1214  
The ineffectiveness or incompetence of counsel during 1215  
proceedings under this section does not constitute grounds for 1216  
relief in a proceeding under this section, in an appeal of any 1217  
action under this section, or in an application to reopen a 1218  
direct appeal. 1219

(3) Division (I) of this section does not preclude 1220  
attorneys who represent the state of Ohio from invoking the 1221  
provisions of 28 U.S.C. 154 with respect to capital cases that 1222  
were pending in federal habeas corpus proceedings prior to July 1223  
1, 1996, insofar as the petitioners in those cases were 1224  
represented in proceedings under this section by one or more 1225  
counsel appointed by the court under this section or section 1226  
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 1227  
appointed counsel meet the requirements of division (I) (2) of 1228  
this section. 1229

(J) Subject to the appeal of a sentence for a felony that 1230  
is authorized by section 2953.08 of the Revised Code, the remedy 1231  
set forth in this section is the exclusive remedy by which a 1232  
person may bring a collateral challenge to the validity of a 1233  
conviction or sentence in a criminal case or to the validity of 1234  
an adjudication of a child as a delinquent child for the 1235  
commission of an act that would be a criminal offense if 1236  
committed by an adult or the validity of a related order of 1237  
disposition. 1238

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

(1) Both of the following apply:

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

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

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

(D) of section 2953.74 of the Revised Code, and the results of 1269  
the DNA testing establish, by clear and convincing evidence, 1270  
actual innocence of that felony offense or, if the person was 1271  
sentenced to death, establish, by clear and convincing evidence, 1272  
actual innocence of the aggravating circumstance or 1273  
circumstances the person was found guilty of committing and that 1274  
is or are the basis of that sentence of death. 1275

As used in this division, "actual innocence" has the same 1276  
meaning as in division (A) (1) ~~(b)~~ (c) of section 2953.21 of the 1277  
Revised Code, and "former section 2953.82 of the Revised Code" 1278  
has the same meaning as in division (A) (1) ~~(e)~~ (d) of section 1279  
2953.21 of the Revised Code. 1280

(B) An order awarding or denying relief sought in a 1281  
petition filed pursuant to section 2953.21 of the Revised Code 1282  
is a final judgment and may be appealed pursuant to Chapter 1283  
2953. of the Revised Code. 1284

**Section 2.** That existing sections 2929.02, 2929.022, 1285  
2929.024, 2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 of the 1286  
Revised Code are hereby repealed. 1287