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S. B. No. 162

Senators Seitz, Williams

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

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 death was imposed. Nothing in this division regarding the resentencing of an offender shall affect the operation of section 2971.03 of the Revised Code.

(B) Whenever any court of this state or any federal court sets aside, nullifies, or vacates a sentence of death imposed upon an offender because of error that occurred in the sentencing phase of the trial and if division (A) of this section does not apply, the trial court that sentenced the offender shall conduct a new hearing to resentence the offender. If the offender was tried by a jury, the trial court shall impanel a new jury for the hearing. If the offender was tried by a panel of three judges, that panel or, if necessary, a new panel of three judges shall conduct the hearing. At the hearing, the court or panel shall follow the procedure set forth in division (D) of section 2929.03 of the Revised Code in determining whether to impose upon the offender a sentence of death, a sentence of life imprisonment, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment. If, pursuant to that procedure, the court or panel determines that it will impose a sentence other than a sentence of death, the court or panel shall impose upon the offender one of the sentences of life imprisonment that could have been imposed at the time the offender committed the offense for which the sentence of death was imposed, determined as specified in this division, or an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment that is determined as specified in this division. If division (D) of section 2929.03 of the Revised Code, at the time the offender committed the aggravated murder for which the sentence of death was imposed, required the imposition when a

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