

As Reported by the Senate Criminal Justice Committee

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Am. S. B. No. 162

Senators Seitz, Williams

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

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 and that the 271
condition existed at the time of the alleged commission of the 272
offense, it shall be rebuttably presumed that the condition 273
significantly impaired the person's capacity at the time of the 274
alleged offense in a manner described in division (A)(1)(b)(i), 275
(ii), or (iii) of this section. 276

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

condition, if present, significantly impaired the person's 286
capacity at the time of the alleged commission of the offense in 287
a manner described in division (A)(1)(b)(i), (ii), or (iii) of 288
this section, or to both contest the diagnosis and rebut the 289
presumption. The prosecution has the burden of proving, by a 290
preponderance of the evidence, that the diagnosis of the 291
condition described in division (A)(1)(a) of this section that 292
was made of the person was erroneous or that the condition, if 293
present, did not significantly impair the person's capacity at 294
the time of the alleged offense in a manner described in 295
division (A)(1)(b)(i), (ii), or (iii) of this section. 296

(E) If a person described in division (B) of this section 297
raises the matter of the person's serious mental illness at the 298
time of the alleged commission of the aggravated murder and 299
submits prima facie evidence as described in that division that 300
the person has been diagnosed with a condition described in 301
division (A)(1)(a) of this section and that the condition 302
existed at the time of the alleged commission of the offense, 303
one of the following applies: 304

(1) Unless the court at the pretrial hearing finds that 305
the prosecution has proved, by a preponderance of the evidence, 306
that the diagnosis of the condition described in division (A)(1) 307
(a) of this section that was made of the person was erroneous or 308
that the condition, if present, did not significantly impair the 309
person's capacity at the time of the alleged offense in a manner 310
described in division (A)(1)(b)(i), (ii), or (iii) of this 311
section, the court shall issue a finding that the person is 312
ineligible for a sentence of death due to serious mental 313
illness. 314

(2) If the court at the pretrial hearing finds that the 315

prosecution has proved, by a preponderance of the evidence, that 316
the diagnosis of the condition described in division (A) (1) (a) 317
of this section that was made of the person was erroneous or 318
that the condition, if present, did not significantly impair the 319
person's capacity at the time of the alleged offense in a manner 320
described in division (A) (1) (b) (i), (ii), or (iii) of this 321
section, one of the following applies: 322

(a) If the aggravated murder charge is not to be tried by 323
a jury, the court shall issue a finding that the person is not 324
ineligible for a sentence of death due to serious mental 325
illness. 326

(b) If the aggravated murder charge is to be tried by a 327
jury, the person may request that the matter of serious mental 328
illness be submitted to the jury at trial. If the person does 329
not request that the matter be submitted to the jury, the court 330
shall issue a finding that the person is not ineligible for a 331
sentence of death due to serious mental illness. If the person 332
requests that the matter be submitted to the jury, the matter 333
shall be submitted to the jury at trial, the procedures and 334
rules regarding introduction of evidence and burden of proof at 335
the pretrial hearing that are set forth in divisions (C) and (D) 336
of this section apply, and the person in accordance with those 337
procedures and rules may introduce all relevant evidence, 338
including, but not limited to evidence that is different from or 339
in addition to the evidence introduced at the pretrial hearing. 340
If the matter is submitted to the jury at trial, one of the 341
following applies: 342

(i) Unless the jury finds that the prosecution has proved, 343
by a preponderance of the evidence, that the diagnosis of the 344
condition described in division (A) (1) (a) of this section that 345

was made of the person was erroneous or that the condition, if 346
present, did not significantly impair the person's capacity at 347
the time of the alleged offense in a manner described in 348
division (A) (1) (b) (i), (ii), or (iii) of this section, the court 349
shall issue a finding that the person is ineligible for a 350
sentence of death due to serious mental illness. 351

(ii) If the jury finds that the prosecution has proved, by 352
a preponderance of the evidence, that the diagnosis of the 353
condition described in division (A) (1) (a) of this section that 354
was made of the person was erroneous or that the condition, if 355
present, did not significantly impair the person's capacity at 356
the time of the alleged offense in a manner described in 357
division (A) (1) (b) (i), (ii), or (iii) of this section, the court 358
shall issue a finding that the person is not ineligible for a 359
sentence of death due to serious mental illness. 360

(F) (1) If a person described in division (C) of this 361
section raises the matter of the person's serious mental illness 362
at the time of the alleged commission of the aggravated murder 363
as described in that division, the court shall order an 364
evaluation of the person. Section 2929.024 of the Revised Code 365
applies with respect to an evaluation ordered under this 366
division. 367

(2) No statement that a person makes in an evaluation 368
ordered under division (F) (1) of this section or in a pretrial 369
hearing or a proceeding before a jury under divisions (C) to (E) 370
of this section relating to the person's serious mental illness 371
at the time of the alleged commission of the aggravated murder 372
with which the person is charged shall be used against the 373
person on the issue of guilt in any criminal action or 374
proceeding, but, in a criminal action or proceeding, the 375

prosecutor or defense counsel may call as a witness any examiner 376
who evaluated the person or prepared a report pursuant to a 377
referral under this section. Neither the appointment nor the 378
testimony of an examiner in an evaluation ordered under division 379
(F) (1) of this section precludes the prosecutor or defense 380
counsel from calling other witnesses or presenting other 381
evidence on the issue of the person's serious mental illness at 382
the time of the alleged commission of the aggravated murder or 383
on competency or insanity issues. 384

(G) A person's pleading of not guilty by reason of 385
insanity or incompetence to stand trial, or a finding after such 386
a plea that the person is not insane or that the person is 387
competent to stand trial, does not preclude the person from 388
raising the matter of the person's serious mental illness at the 389
time of the alleged commission of the offense pursuant to 390
division (C) of this section and, if a person so raises that 391
matter, does not limit or affect any of the procedures described 392
in this section or the authority of a court to make any finding 393
described in this section. 394

Sec. 2929.03. (A) If the indictment or count in the 395
indictment charging aggravated murder does not contain one or 396
more specifications of aggravating circumstances listed in 397
division (A) of section 2929.04 of the Revised Code, then, 398
following a verdict of guilty of the charge of aggravated 399
murder, the trial court shall impose sentence on the offender as 400
follows: 401

(1) Except as provided in division (A) (2) of this section, 402
the trial court shall impose one of the following sentences on 403
the offender: 404

(a) Life imprisonment without parole; 405

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

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

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

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

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

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

aggravated murder contains one or more specifications of 435
aggravating circumstances listed in division (A) of section 436
2929.04 of the Revised Code, the verdict shall separately state 437
~~whether~~ all of the following: 438

(1) Whether the accused is found guilty or not guilty of 439
the principal charge ~~and, if~~; 440

(2) If guilty of the principal charge, whether the 441
offender was eighteen years of age or older at the time of the 442
commission of the offense, ~~if the matter of age was raised by~~ 443
the offender pursuant to section 2929.023 of the Revised Code, ~~and whether~~; 444
445

(3) If guilty of the principal charge, whether the 446
offender was found under section 2929.025 of the Revised Code to 447
be ineligible for a sentence of death due to serious mental 448
illness if the matter of serious mental illness at the time of 449
the commission of the offense was raised by the offender 450
pursuant to that section; 451

(4) If guilty of the principal charge, whether the 452
offender is guilty or not guilty of each specification. ~~The~~ 453

The jury shall be instructed on its duties in this regard. 454
The instruction to the jury shall include an instruction that a 455
specification shall be proved beyond a reasonable doubt in order 456
to support a guilty verdict on the specification, but the 457
instruction shall not mention the penalty that may be the 458
consequence of a guilty or not guilty verdict on any charge or 459
specification. 460

(C) (1) If the indictment or count in the indictment 461
charging aggravated murder contains one or more specifications 462
of aggravating circumstances listed in division (A) of section 463

2929.04 of the Revised Code, then, following a verdict of guilty 464
of the charge but not guilty of each of the specifications, and 465
regardless of whether the offender raised the matter of age 466
pursuant to section 2929.023 of the Revised Code or the matter 467
of serious mental illness at the time of the commission of the 468
offense pursuant to section 2929.025 of the Revised Code, the 469
trial court shall impose sentence on the offender as follows: 470

(a) Except as provided in division (C)(1)(b) of this 471
section, the trial court shall impose one of the following 472
sentences on the offender: 473

(i) Life imprisonment without parole; 474

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

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

(iv) Subject to division (C)(1)(a)(v) of this section, 481
life imprisonment with parole eligibility after serving thirty 482
full years of imprisonment; 483

(v) If the victim of the aggravated murder was less than 484
thirteen years of age, the offender also is convicted of or 485
pleads guilty to a sexual motivation specification that was 486
included in the indictment, count in the indictment, or 487
information charging the offense, and the trial court does not 488
impose a sentence of life imprisonment without parole on the 489
offender pursuant to division (C)(1)(a)(i) of this section, the 490
trial court shall sentence the offender pursuant to division (B) 491
(3) of section 2971.03 of the Revised Code to an indefinite term 492

consisting of a minimum term of thirty years and a maximum term 493
of life imprisonment. 494

(b) If the offender also is convicted of or pleads guilty 495
to a sexual motivation specification and a sexually violent 496
predator specification that are included in the indictment, 497
count in the indictment, or information that charged the 498
aggravated murder, the trial court shall impose upon the 499
offender a sentence of life imprisonment without parole that 500
shall be served pursuant to section 2971.03 of the Revised Code. 501

(2) (a) If the indictment or count in the indictment 502
contains one or more specifications of aggravating circumstances 503
listed in division (A) of section 2929.04 of the Revised Code 504
and if the offender is found guilty of both the charge and one 505
or more of the specifications, the penalty to be imposed on the 506
offender shall be one of the following: 507

(i) Except as provided in division (C) (2) (a) (ii) or (iii), and 508
subject to division (D) (1) and (E), of this section, the 509
penalty to be imposed on the offender shall be death, life 510
imprisonment without parole, life imprisonment with parole 511
eligibility after serving twenty-five full years of 512
imprisonment, or life imprisonment with parole eligibility after 513
serving thirty full years of imprisonment. 514

(ii) Except as provided in division (C) (2) (a) (iii) of this 515
section, if the victim of the aggravated murder was less than 516
thirteen years of age, the offender also is convicted of or 517
pleads guilty to a sexual motivation specification that was 518
included in the indictment, count in the indictment, or 519
information charging the offense, and the trial court does not 520
impose a sentence of death or life imprisonment without parole 521
on the offender pursuant to division (C) (2) (a) (i) of this 522

section, the penalty to be imposed on the offender shall be an 523
indefinite term consisting of a minimum term of thirty years and 524
a maximum term of life imprisonment that shall be imposed 525
pursuant to division (B) (3) of section 2971.03 of the Revised 526
Code and served pursuant to that section. 527

(iii) If the offender also is convicted of or pleads 528
guilty to a sexual motivation specification and a sexually 529
violent predator specification that are included in the 530
indictment, count in the indictment, or information that charged 531
the aggravated murder, the penalty to be imposed on the offender 532
shall be death or life imprisonment without parole that shall be 533
served pursuant to section 2971.03 of the Revised Code. 534

(b) A penalty imposed pursuant to division (C) (2) (a) (i), 535
(ii), or (iii) of this section shall be determined pursuant to 536
divisions (D) and (E) of this section and shall be determined by 537
one of the following: 538

(i) By the panel of three judges that tried the offender 539
upon the offender's waiver of the right to trial by jury; 540

(ii) By the trial jury and the trial judge, if the 541
offender was tried by jury. 542

(D) (1) Death may not be imposed as a penalty for 543
aggravated murder if the offender raised the matter of age at 544
trial pursuant to section 2929.023 of the Revised Code and was 545
not found at trial to have been eighteen years of age or older 546
at the time of the commission of the offense or raised the 547
matter of the offender's serious mental illness at the time of 548
the commission of the offense pursuant to section 2929.025 of 549
the Revised Code and was found under that section to be 550
ineligible for a sentence of death due to serious mental 551

illness. When death may be imposed as a penalty for aggravated 552
murder, the court shall proceed under this division. When death 553
may be imposed as a penalty, the court, upon the request of the 554
defendant, shall require a pre-sentence investigation to be made 555
and, upon the request of the defendant, shall require a mental 556
examination to be made, and shall require reports of the 557
investigation and of any mental examination submitted to the 558
court, pursuant to section 2947.06 of the Revised Code. No 559
statement made or information provided by a defendant in a 560
mental examination or proceeding conducted pursuant to this 561
division shall be disclosed to any person, except as provided in 562
this division, or be used in evidence against the defendant on 563
the issue of guilt in any retrial. A pre-sentence investigation 564
or mental examination shall not be made except upon request of 565
the defendant. Copies of any reports prepared under this 566
division shall be furnished to the court, to the trial jury if 567
the offender was tried by a jury, to the prosecutor, and to the 568
offender or the offender's counsel for use under this division. 569
The court, and the trial jury if the offender was tried by a 570
jury, shall consider any report prepared pursuant to this 571
division and furnished to it and any evidence raised at trial 572
that is relevant to the aggravating circumstances the offender 573
was found guilty of committing or to any factors in mitigation 574
of the imposition of the sentence of death, shall hear testimony 575
and other evidence that is relevant to the nature and 576
circumstances of the aggravating circumstances the offender was 577
found guilty of committing, the mitigating factors set forth in 578
division (B) of section 2929.04 of the Revised Code, and any 579
other factors in mitigation of the imposition of the sentence of 580
death, and shall hear the statement, if any, of the offender, 581
and the arguments, if any, of counsel for the defense and 582
prosecution, that are relevant to the penalty that should be 583

imposed on the offender. The defendant shall be given great 584
latitude in the presentation of evidence of the mitigating 585
factors set forth in division (B) of section 2929.04 of the 586
Revised Code and of any other factors in mitigation of the 587
imposition of the sentence of death. If the offender chooses to 588
make a statement, the offender is subject to cross-examination 589
only if the offender consents to make the statement under oath 590
or affirmation. 591

The defendant shall have the burden of going forward with 592
the evidence of any factors in mitigation of the imposition of 593
the sentence of death. The prosecution shall have the burden of 594
proving, by proof beyond a reasonable doubt, that the 595
aggravating circumstances the defendant was found guilty of 596
committing are sufficient to outweigh the factors in mitigation 597
of the imposition of the sentence of death. 598

(2) Upon consideration of the relevant evidence raised at 599
trial, the testimony, other evidence, statement of the offender, 600
arguments of counsel, and, if applicable, the reports submitted 601
pursuant to division (D)(1) of this section, the trial jury, if 602
the offender was tried by a jury, shall determine whether the 603
aggravating circumstances the offender was found guilty of 604
committing are sufficient to outweigh the mitigating factors 605
present in the case. If the trial jury unanimously finds, by 606
proof beyond a reasonable doubt, that the aggravating 607
circumstances the offender was found guilty of committing 608
outweigh the mitigating factors, the trial jury shall recommend 609
to the court that the sentence of death be imposed on the 610
offender. Absent such a finding, the jury shall recommend that 611
the offender be sentenced to one of the following: 612

(a) Except as provided in division (D)(2)(b) or (c) of 613

this section, to life imprisonment without parole, life 614
imprisonment with parole eligibility after serving twenty-five 615
full years of imprisonment, or life imprisonment with parole 616
eligibility after serving thirty full years of imprisonment; 617

(b) Except as provided in division (D)(2)(c) of this 618
section, if the victim of the aggravated murder was less than 619
thirteen years of age, the offender also is convicted of or 620
pleads guilty to a sexual motivation specification that was 621
included in the indictment, count in the indictment, or 622
information charging the offense, and the jury does not 623
recommend a sentence of life imprisonment without parole 624
pursuant to division (D)(2)(a) of this section, to an indefinite 625
term consisting of a minimum term of thirty years and a maximum 626
term of life imprisonment to be imposed pursuant to division (B) 627
(3) of section 2971.03 of the Revised Code and served pursuant 628
to that section. 629

(c) If the offender also is convicted of or pleads guilty 630
to a sexual motivation specification and a sexually violent 631
predator specification that are included in the indictment, 632
count in the indictment, or information that charged the 633
aggravated murder, to life imprisonment without parole. 634

If the trial jury recommends that the offender be 635
sentenced to life imprisonment without parole, life imprisonment 636
with parole eligibility after serving twenty-five full years of 637
imprisonment, life imprisonment with parole eligibility after 638
serving thirty full years of imprisonment, or an indefinite term 639
consisting of a minimum term of thirty years and a maximum term 640
of life imprisonment to be imposed pursuant to division (B)(3) 641
of section 2971.03 of the Revised Code, the court shall impose 642
the sentence recommended by the jury upon the offender. If the 643

sentence is an indefinite term consisting of a minimum term of 644
thirty years and a maximum term of life imprisonment imposed as 645
described in division (D) (2) (b) of this section or a sentence of 646
life imprisonment without parole imposed under division (D) (2) 647
(c) of this section, the sentence shall be served pursuant to 648
section 2971.03 of the Revised Code. If the trial jury 649
recommends that the sentence of death be imposed upon the 650
offender, the court shall proceed to impose sentence pursuant to 651
division (D) (3) of this section. 652

(3) Upon consideration of the relevant evidence raised at 653
trial, the testimony, other evidence, statement of the offender, 654
arguments of counsel, and, if applicable, the reports submitted 655
to the court pursuant to division (D) (1) of this section, if, 656
after receiving pursuant to division (D) (2) of this section the 657
trial jury's recommendation that the sentence of death be 658
imposed, the court finds, by proof beyond a reasonable doubt, or 659
if the panel of three judges unanimously finds, by proof beyond 660
a reasonable doubt, that the aggravating circumstances the 661
offender was found guilty of committing outweigh the mitigating 662
factors, it shall impose sentence of death on the offender. 663
Absent such a finding by the court or panel, the court or the 664
panel shall impose one of the following sentences on the 665
offender: 666

(a) Except as provided in division (D) (3) (b) of this 667
section, one of the following: 668

(i) Life imprisonment without parole; 669

(ii) Subject to division (D) (3) (a) (iv) of this section, 670
life imprisonment with parole eligibility after serving twenty- 671
five full years of imprisonment; 672

(iii) Subject to division (D) (3) (a) (iv) of this section, 673
life imprisonment with parole eligibility after serving thirty 674
full years of imprisonment; 675

(iv) If the victim of the aggravated murder was less than 676
thirteen years of age, the offender also is convicted of or 677
pleads guilty to a sexual motivation specification that was 678
included in the indictment, count in the indictment, or 679
information charging the offense, and the trial court does not 680
impose a sentence of life imprisonment without parole on the 681
offender pursuant to division (D) (3) (a) (i) of this section, the 682
court or panel shall sentence the offender pursuant to division 683
(B) (3) of section 2971.03 of the Revised Code to an indefinite 684
term consisting of a minimum term of thirty years and a maximum 685
term of life imprisonment. 686

(b) If the offender also is convicted of or pleads guilty 687
to a sexual motivation specification and a sexually violent 688
predator specification that are included in the indictment, 689
count in the indictment, or information that charged the 690
aggravated murder, life imprisonment without parole that shall 691
be served pursuant to section 2971.03 of the Revised Code. 692

(E) If the offender ~~raised the matter of age at trial~~ 693
~~pursuant to section 2929.023 of the Revised Code,~~ was convicted 694
of aggravated murder and one or more specifications of an 695
aggravating circumstance listed in division (A) of section 696
2929.04 of the Revised Code, and if the offender either raised 697
the matter of age at trial pursuant to section 2929.023 of the 698
Revised Code and was not found at trial to have been eighteen 699
years of age or older at the time of the commission of the 700
offense or raised the matter of the offender's serious mental 701
illness at the time of the commission of the offense pursuant to 702

section 2929.025 of the Revised Code and was found under that 703
section to be ineligible for a sentence of death due to serious 704
mental illness, the court or the panel of three judges shall not 705
impose a sentence of death on the offender. Instead, the court 706
or panel shall impose one of the following sentences on the 707
offender: 708

(1) Except as provided in division (E) (2) of this section, 709
one of the following: 710

(a) Life imprisonment without parole; 711

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

(c) Subject to division (E) ~~(2)~~ (1) (d) of this section, life 715
imprisonment with parole eligibility after serving thirty full 716
years of imprisonment; 717

(d) If the victim of the aggravated murder was less than 718
thirteen years of age, the offender also is convicted of or 719
pleads guilty to a sexual motivation specification that was 720
included in the indictment, count in the indictment, or 721
information charging the offense, and the trial court does not 722
impose a sentence of life imprisonment without parole on the 723
offender pursuant to division (E) ~~(2)~~ (1) (a) of this section, the 724
court or panel shall sentence the offender pursuant to division 725
(B) (3) of section 2971.03 of the Revised Code to an indefinite 726
term consisting of a minimum term of thirty years and a maximum 727
term of life imprisonment. 728

(2) If the offender also is convicted of or pleads guilty 729
to a sexual motivation specification and a sexually violent 730
predator specification that are included in the indictment, 731

count in the indictment, or information that charged the 732
aggravated murder, life imprisonment without parole that shall 733
be served pursuant to section 2971.03 of the Revised Code. 734

(F) The court or the panel of three judges, when it 735
imposes sentence of death, shall state in a separate opinion its 736
specific findings as to the existence of any of the mitigating 737
factors set forth in division (B) of section 2929.04 of the 738
Revised Code, the existence of any other mitigating factors, the 739
aggravating circumstances the offender was found guilty of 740
committing, and the reasons why the aggravating circumstances 741
the offender was found guilty of committing were sufficient to 742
outweigh the mitigating factors. The court or panel, when it 743
imposes life imprisonment or an indefinite term consisting of a 744
minimum term of thirty years and a maximum term of life 745
imprisonment under division (D) of this section, shall state in 746
a separate opinion its specific findings of which of the 747
mitigating factors set forth in division (B) of section 2929.04 748
of the Revised Code it found to exist, what other mitigating 749
factors it found to exist, what aggravating circumstances the 750
offender was found guilty of committing, and why it could not 751
find that these aggravating circumstances were sufficient to 752
outweigh the mitigating factors. For cases in which a sentence 753
of death is imposed for an offense committed before January 1, 754
1995, the court or panel shall file the opinion required to be 755
prepared by this division with the clerk of the appropriate 756
court of appeals and with the clerk of the supreme court within 757
fifteen days after the court or panel imposes sentence. For 758
cases in which a sentence of death is imposed for an offense 759
committed on or after January 1, 1995, the court or panel shall 760
file the opinion required to be prepared by this division with 761
the clerk of the supreme court within fifteen days after the 762

court or panel imposes sentence. The judgment in a case in which 763
a sentencing hearing is held pursuant to this section is not 764
final until the opinion is filed. 765

(G) (1) Whenever the court or a panel of three judges 766
imposes a sentence of death for an offense committed before 767
January 1, 1995, the clerk of the court in which the judgment is 768
rendered shall deliver the entire record in the case to the 769
appellate court. 770

(2) Whenever the court or a panel of three judges imposes 771
a sentence of death for an offense committed on or after January 772
1, 1995, the clerk of the court in which the judgment is 773
rendered shall deliver the entire record in the case to the 774
supreme court. 775

Sec. 2929.04. (A) Imposition of the death penalty for 776
aggravated murder is precluded unless one or more of the 777
following is specified in the indictment or count in the 778
indictment pursuant to section 2941.14 of the Revised Code and 779
proved beyond a reasonable doubt: 780

(1) The offense was the assassination of the president of 781
the United States or a person in line of succession to the 782
presidency, the governor or lieutenant governor of this state, 783
the president-elect or vice president-elect of the United 784
States, the governor-elect or lieutenant governor-elect of this 785
state, or a candidate for any of the offices described in this 786
division. For purposes of this division, a person is a candidate 787
if the person has been nominated for election according to law, 788
if the person has filed a petition or petitions according to law 789
to have the person's name placed on the ballot in a primary or 790
general election, or if the person campaigns as a write-in 791
candidate in a primary or general election. 792

(2) The offense was committed for hire.	793
(3) The offense was committed for the purpose of escaping	794
detection, apprehension, trial, or punishment for another	795
offense committed by the offender.	796
(4) The offense was committed while the offender was under	797
detention or while the offender was at large after having broken	798
detention. As used in division (A) (4) of this section,	799
"detention" has the same meaning as in section 2921.01 of the	800
Revised Code, except that detention does not include	801
hospitalization, institutionalization, or confinement in a	802
mental health facility or mental retardation and developmentally	803
disabled facility unless at the time of the commission of the	804
offense either of the following circumstances apply:	805
(a) The offender was in the facility as a result of being	806
charged with a violation of a section of the Revised Code.	807
(b) The offender was under detention as a result of being	808
convicted of or pleading guilty to a violation of a section of	809
the Revised Code.	810
(5) Prior to the offense at bar, the offender was	811
convicted of an offense an essential element of which was the	812
purposeful killing of or attempt to kill another, or the offense	813
at bar was part of a course of conduct involving the purposeful	814
killing of or attempt to kill two or more persons by the	815
offender.	816
(6) The victim of the offense was a law enforcement	817
officer, as defined in section 2911.01 of the Revised Code, whom	818
the offender had reasonable cause to know or knew to be a law	819
enforcement officer as so defined, and either the victim, at the	820
time of the commission of the offense, was engaged in the	821

victim's duties, or it was the offender's specific purpose to 822
kill a law enforcement officer as so defined. 823

(7) The offense was committed while the offender was 824
committing, attempting to commit, or fleeing immediately after 825
committing or attempting to commit kidnapping, rape, aggravated 826
arson, aggravated robbery, or aggravated burglary, and either 827
the offender was the principal offender in the commission of the 828
aggravated murder or, if not the principal offender, committed 829
the aggravated murder with prior calculation and design. 830

(8) The victim of the aggravated murder was a witness to 831
an offense who was purposely killed to prevent the victim's 832
testimony in any criminal proceeding and the aggravated murder 833
was not committed during the commission, attempted commission, 834
or flight immediately after the commission or attempted 835
commission of the offense to which the victim was a witness, or 836
the victim of the aggravated murder was a witness to an offense 837
and was purposely killed in retaliation for the victim's 838
testimony in any criminal proceeding. 839

(9) The offender, in the commission of the offense, 840
purposefully caused the death of another who was under thirteen 841
years of age at the time of the commission of the offense, and 842
either the offender was the principal offender in the commission 843
of the offense or, if not the principal offender, committed the 844
offense with prior calculation and design. 845

(10) The offense was committed while the offender was 846
committing, attempting to commit, or fleeing immediately after 847
committing or attempting to commit terrorism. 848

(B) If one or more of the aggravating circumstances listed 849
in division (A) of this section is specified in the indictment 850

or count in the indictment and proved beyond a reasonable doubt, 851
~~and~~ if the offender did not raise the matter of age pursuant to 852
section 2929.023 of the Revised Code or ~~if~~ the offender, after 853
raising ~~the~~ that matter of age, was found at trial to have been 854
eighteen years of age or older at the time of the commission of 855
the offense, and if the offender did not raise the matter of the 856
offender's serious mental illness at the time of the commission 857
of the offense pursuant to section 2929.025 of the Revised Code 858
or the offender after raising that matter was found by the court 859
to not be ineligible for a sentence of death, the court, trial 860
jury, or panel of three judges shall consider, and weigh against 861
the aggravating circumstances proved beyond a reasonable doubt, 862
the nature and circumstances of the offense, the history, 863
character, and background of the offender, and all of the 864
following factors: 865

(1) Whether the victim of the offense induced or 866
facilitated it; 867

(2) Whether it is unlikely that the offense would have 868
been committed, but for the fact that the offender was under 869
duress, coercion, or strong provocation; 870

(3) Whether, at the time of committing the offense, the 871
offender, because of a mental disease or defect, lacked 872
substantial capacity to appreciate the criminality of the 873
offender's conduct or to conform the offender's conduct to the 874
requirements of the law; 875

(4) The youth of the offender; 876

(5) The offender's lack of a significant history of prior 877
criminal convictions and delinquency adjudications; 878

(6) If the offender was a participant in the offense but 879

not the principal offender, the degree of the offender's 880
participation in the offense and the degree of the offender's 881
participation in the acts that led to the death of the victim; 882

(7) Any other factors that are relevant to the issue of 883
whether the offender should be sentenced to death. 884

(C) The defendant shall be given great latitude in the 885
presentation of evidence of the factors listed in division (B) 886
of this section and of any other factors in mitigation of the 887
imposition of the sentence of death. 888

The existence of any of the mitigating factors listed in 889
division (B) of this section does not preclude the imposition of 890
a sentence of death on the offender but shall be weighed 891
pursuant to divisions (D) (2) and (3) of section 2929.03 of the 892
Revised Code by the trial court, trial jury, or the panel of 893
three judges against the aggravating circumstances the offender 894
was found guilty of committing. 895

Sec. 2929.06. (A) (1) If a sentence of death imposed upon 896
an offender is set aside, nullified, ~~or vacated because the, or~~ 897
voided for any of the following reasons, the trial court that 898
sentenced the offender shall conduct a hearing to resentence the 899
offender in accordance with division (A) (2) of this section: 900

(a) The court of appeals, in a case in which a sentence of 901
death was imposed for an offense committed before January 1, 902
1995, or the supreme court, in ~~eases a case~~ in which the supreme 903
court reviews the sentence upon appeal, could not affirm the 904
sentence of death under the standards imposed by section 2929.05 905
of the Revised Code, ~~is set aside, nullified, or vacated for~~ 906
~~the;~~ 907

(b) The sole reason that the statutory procedure for 908

imposing the sentence of death that is set forth in sections 909
2929.03 and 2929.04 of the Revised Code is unconstitutional. ~~;~~ 910

(c) The sentence of death is set aside, nullified, or 911
vacated pursuant to division (C) of section 2929.05 of the 912
Revised Code, ~~or is set aside, nullified, or vacated because a~~; 913

(d) A court has determined that the offender is mentally 914
retarded under standards set forth in decisions of the supreme 915
court of this state or the United States supreme court, ~~the~~ 916
~~trial court that sentenced the offender shall conduct a hearing~~ 917
~~to resentence the offender;~~ 918

(e) The sentence of death is voided by a court pursuant to 919
division (G) of section 2953.21 of the Revised Code. 920

(2) At the a resentencing hearing conducted under division 921
(A) (1) of this section, the court shall impose upon the offender 922
a sentence of life imprisonment or an indefinite term consisting 923
of a minimum term of thirty years and a maximum term of life 924
imprisonment that is determined as specified in this division. 925
If division (D) of section 2929.03 of the Revised Code, at the 926
time the offender committed the aggravated murder for which the 927
sentence of death was imposed, required the imposition when a 928
sentence of death was not imposed of a sentence of life 929
imprisonment without parole or a sentence of an indefinite term 930
consisting of a minimum term of thirty years and a maximum term 931
of life imprisonment to be imposed pursuant to division (A) or 932
(B) (3) of section 2971.03 of the Revised Code and served 933
pursuant to that section, the court shall impose the sentence so 934
required. In all other cases, the sentences of life imprisonment 935
that are available at the hearing, and from which the court 936
shall impose sentence, shall be the same sentences of life 937
imprisonment that were available under division (D) of section 938

2929.03 or under section 2909.24 of the Revised Code at the time 939
the offender committed the offense for which the sentence of 940
death was imposed. Nothing in this division regarding the 941
resentencing of an offender shall affect the operation of 942
section 2971.03 of the Revised Code. 943

(B) Whenever any court of this state or any federal court 944
sets aside, nullifies, or vacates a sentence of death imposed 945
upon an offender because of error that occurred in the 946
sentencing phase of the trial and if division (A) of this 947
section does not apply, the trial court that sentenced the 948
offender shall conduct a new hearing to resentence the offender. 949
If the offender was tried by a jury, the trial court shall 950
impanel a new jury for the hearing. If the offender was tried by 951
a panel of three judges, that panel or, if necessary, a new 952
panel of three judges shall conduct the hearing. At the hearing, 953
the court or panel shall follow the procedure set forth in 954
division (D) of section 2929.03 of the Revised Code in 955
determining whether to impose upon the offender a sentence of 956
death, a sentence of life imprisonment, or an indefinite term 957
consisting of a minimum term of thirty years and a maximum term 958
of life imprisonment. If, pursuant to that procedure, the court 959
or panel determines that it will impose a sentence other than a 960
sentence of death, the court or panel shall impose upon the 961
offender one of the sentences of life imprisonment that could 962
have been imposed at the time the offender committed the offense 963
for which the sentence of death was imposed, determined as 964
specified in this division, or an indefinite term consisting of 965
a minimum term of thirty years and a maximum term of life 966
imprisonment that is determined as specified in this division. 967
If division (D) of section 2929.03 of the Revised Code, at the 968
time the offender committed the aggravated murder for which the 969

sentence of death was imposed, required the imposition when a 970
sentence of death was not imposed of a sentence of life 971
imprisonment without parole or a sentence of an indefinite term 972
consisting of a minimum term of thirty years and a maximum term 973
of life imprisonment to be imposed pursuant to division (A) or 974
(B) (3) of section 2971.03 of the Revised Code and served 975
pursuant to that section, the court or panel shall impose the 976
sentence so required. In all other cases, the sentences of life 977
imprisonment that are available at the hearing, and from which 978
the court or panel shall impose sentence, shall be the same 979
sentences of life imprisonment that were available under 980
division (D) of section 2929.03 or under section 2909.24 of the 981
Revised Code at the time the offender committed the offense for 982
which the sentence of death was imposed. 983

(C) If a sentence of life imprisonment without parole 984
imposed upon an offender pursuant to section 2929.021 or 2929.03 985
of the Revised Code is set aside, nullified, or vacated for the 986
sole reason that the statutory procedure for imposing the 987
sentence of life imprisonment without parole that is set forth 988
in sections 2929.03 and 2929.04 of the Revised Code is 989
unconstitutional, the trial court that sentenced the offender 990
shall conduct a hearing to resentence the offender to life 991
imprisonment with parole eligibility after serving twenty-five 992
full years of imprisonment or to life imprisonment with parole 993
eligibility after serving thirty full years of imprisonment. 994

(D) Nothing in this section limits or restricts the rights 995
of the state to appeal any order setting aside, nullifying, or 996
vacating a conviction or sentence of death, when an appeal of 997
that nature otherwise would be available. 998

(E) This section, as amended by H.B. 184 of the 125th 999

general assembly, shall apply to all offenders who have been 1000
sentenced to death for an aggravated murder that was committed 1001
on or after October 19, 1981, or for terrorism that was 1002
committed on or after May 15, 2002. This section, as amended by 1003
H.B. 184 of the 125th general assembly, shall apply equally to 1004
all such offenders sentenced to death prior to, on, or after 1005
March 23, 2005, including offenders who, on March 23, 2005, are 1006
challenging their sentence of death and offenders whose sentence 1007
of death has been set aside, nullified, or vacated by any court 1008
of this state or any federal court but who, as of March 23, 1009
2005, have not yet been resentenced. 1010

Sec. 2953.21. (A) (1) (a) A person in any of the following 1011
categories may file a petition in the court that imposed 1012
sentence, stating the grounds for relief relied upon, and asking 1013
the court to vacate or set aside the judgment or sentence or to 1014
grant other appropriate relief: 1015

(i) Any person who has been convicted of a criminal 1016
offense or adjudicated a delinquent child and who claims that 1017
there was such a denial or infringement of the person's rights 1018
as to render the judgment void or voidable under the Ohio 1019
Constitution or the Constitution of the United States, ~~and any;~~ 1020

(ii) Any person who has been convicted of a criminal 1021
offense that is a felony and who is an offender for whom DNA 1022
testing that was performed under sections 2953.71 to 2953.81 of 1023
the Revised Code or under former section 2953.82 of the Revised 1024
Code and analyzed in the context of and upon consideration of 1025
all available admissible evidence related to the person's case 1026
as described in division (D) of section 2953.74 of the Revised 1027
Code provided results that establish, by clear and convincing 1028
evidence, actual innocence of that felony offense or, if the 1029

person was sentenced to death, establish, by clear and 1030
convincing evidence, actual innocence of the aggravating 1031
circumstance or circumstances the person was found guilty of 1032
committing and that is or are the basis of that sentence of 1033
death, ~~may file a petition in the court that imposed sentence,~~ 1034
~~stating the grounds for relief relied upon, and asking the court~~ 1035
~~to vacate or set aside the judgment or sentence or to grant~~ 1036
~~other appropriate relief;~~ 1037

(iii) Any person who has been convicted of aggravated 1038
murder and sentenced to death for the offense and who claims 1039
that the person had a serious mental illness at the time of the 1040
commission of the offense and that as a result the court should 1041
render void the sentence of death. 1042

~~The~~ (b) A petitioner under division (A) (1) (a) of this 1043
section may file a supporting affidavit and other documentary 1044
evidence in support of the claim for relief. 1045

~~(b)~~ (c) As used in division (A) (1) (a) of this section, 1046
~~"actual":~~ 1047

(i) "Actual innocence" means that, had the results of the 1048
DNA testing conducted under sections 2953.71 to 2953.81 of the 1049
Revised Code or under former section 2953.82 of the Revised Code 1050
been presented at trial, and had those results been analyzed in 1051
the context of and upon consideration of all available 1052
admissible evidence related to the person's case as described in 1053
division (D) of section 2953.74 of the Revised Code, no 1054
reasonable factfinder would have found the petitioner guilty of 1055
the offense of which the petitioner was convicted, or, if the 1056
person was sentenced to death, no reasonable factfinder would 1057
have found the petitioner guilty of the aggravating circumstance 1058
or circumstances the petitioner was found guilty of committing 1059

and that is or are the basis of that sentence of death. 1060

(ii) "Serious mental illness" has the same meaning as in 1061
section 2929.025 of the Revised Code. 1062

~~(e)~~(d) As used in divisions (A) (1) (a) and ~~(b)~~(c) of this 1063
section, "former section 2953.82 of the Revised Code" means 1064
section 2953.82 of the Revised Code as it existed prior to July 1065
6, 2010. 1066

(2) (a) Except as otherwise provided in section 2953.23 of 1067
the Revised Code, a petition under division (A) (1) (a) (i) or (ii) 1068
of this section shall be filed no later than three hundred 1069
sixty-five days after the date on which the trial transcript is 1070
filed in the court of appeals in the direct appeal of the 1071
judgment of conviction or adjudication or, if the direct appeal 1072
involves a sentence of death, the date on which the trial 1073
transcript is filed in the supreme court. If no appeal is taken, 1074
except as otherwise provided in section 2953.23 of the Revised 1075
Code, the petition shall be filed no later than three hundred 1076
sixty-five days after the expiration of the time for filing the 1077
appeal. 1078

(b) Except as otherwise provided in section 2953.23 of 1079
the Revised Code, a petition under division (A) (1) (a) (iii) of 1080
this section shall be filed not later than three hundred sixty- 1081
five days after the effective date of this amendment. 1082

(3) In a petition filed under division (A) (1) (a) (i) or 1083
(ii) of this section, a person who has been sentenced to death 1084
may ask the court to render void or voidable the judgment with 1085
respect to the conviction of aggravated murder or the 1086
specification of an aggravating circumstance or the sentence of 1087
death. A person who has been sentenced to death who files a 1088

petition under division (A) (1) (a) (iii) of this section may ask 1089
the court to render void the sentence of death and to order the 1090
resentencing of the person under division (A) of section 2929.06 1091
of the Revised Code. 1092

(4) A petitioner shall state in the original or amended 1093
petition filed under division (A) of this section all grounds 1094
for relief claimed by the petitioner. Except as provided in 1095
section 2953.23 of the Revised Code, any ground for relief that 1096
is not so stated in the petition is waived. 1097

(5) If the petitioner in a petition filed under division 1098
(A) (1) (a) (i) or (ii) of this section was convicted of or pleaded 1099
guilty to a felony, the petition may include a claim that the 1100
petitioner was denied the equal protection of the laws in 1101
violation of the Ohio Constitution or the United States 1102
Constitution because the sentence imposed upon the petitioner 1103
for the felony was part of a consistent pattern of disparity in 1104
sentencing by the judge who imposed the sentence, with regard to 1105
the petitioner's race, gender, ethnic background, or religion. 1106
If the supreme court adopts a rule requiring a court of common 1107
pleas to maintain information with regard to an offender's race, 1108
gender, ethnic background, or religion, the supporting evidence 1109
for the petition shall include, but shall not be limited to, a 1110
copy of that type of information relative to the petitioner's 1111
sentence and copies of that type of information relative to 1112
sentences that the same judge imposed upon other persons. 1113

(B) The clerk of the court in which the petition is filed 1114
shall docket the petition and bring it promptly to the attention 1115
of the court. The clerk of the court in which the petition is 1116
filed immediately shall forward a copy of the petition to the 1117
prosecuting attorney of that county. 1118

(C) The court shall consider a petition that is timely 1119
filed under division (A) (2) of this section even if a direct 1120
appeal of the judgment is pending. Before granting a hearing on 1121
a petition filed under division (A) of this section, the court 1122
shall determine whether there are substantive grounds for 1123
relief. In making such a determination, the court shall 1124
consider, in addition to the petition, the supporting 1125
affidavits, and the documentary evidence, all the files and 1126
records pertaining to the proceedings against the petitioner, 1127
including, but not limited to, the indictment, the court's 1128
journal entries, the journalized records of the clerk of the 1129
court, and the court reporter's transcript. The court reporter's 1130
transcript, if ordered and certified by the court, shall be 1131
taxed as court costs. If the court dismisses the petition, it 1132
shall make and file findings of fact and conclusions of law with 1133
respect to such dismissal. 1134

(D) Within ten days after the docketing of the petition, 1135
or within any further time that the court may fix for good cause 1136
shown, the prosecuting attorney shall respond by answer or 1137
motion. Within twenty days from the date the issues are raised, 1138
either party may move for summary judgment. The right to summary 1139
judgment shall appear on the face of the record. 1140

(E) Unless the petition and the files and records of the 1141
case show the petitioner is not entitled to relief, the court 1142
shall proceed to a prompt hearing on the issues even if a direct 1143
appeal of the case is pending. If the court notifies the parties 1144
that it has found grounds for granting relief, either party may 1145
request an appellate court in which a direct appeal of the 1146
judgment is pending to remand the pending case to the court. 1147

With respect to a petition filed under division (A) (1) (a) 1148

(iii) of this section, the procedures and rules regarding 1149
introduction of evidence and burden of proof at the pretrial 1150
hearing that are set forth in divisions (C), (D), and (F) of 1151
section 2929.025 of the Revised Code apply in considering the 1152
petition. With respect to such a petition, the grounds for 1153
granting relief are that the person has been diagnosed with one 1154
or more of the conditions set forth in division (A) (1) (a) of 1155
section 2929.025 of the Revised Code and that, at the time of 1156
the aggravated murder that was the basis of the sentence of 1157
death, the condition or conditions significantly impaired the 1158
person's capacity in a manner described in division (A) (1) (b) 1159
(i), (ii), or (iii) of that section. 1160

(F) At any time before the answer or motion is filed, the 1161
petitioner may amend the petition with or without leave or 1162
prejudice to the proceedings. The petitioner may amend the 1163
petition with leave of court at any time thereafter. 1164

(G) If the court does not find grounds for granting 1165
relief, it shall make and file findings of fact and conclusions 1166
of law and shall enter judgment denying relief on the petition. 1167
If no direct appeal of the case is pending and the court finds 1168
grounds for relief or if a pending direct appeal of the case has 1169
been remanded to the court pursuant to a request made pursuant 1170
to division (E) of this section and the court finds grounds for 1171
granting relief, it shall make and file findings of fact and 1172
conclusions of law and shall enter a judgment that vacates and 1173
sets aside the judgment in question, and, in the case of a 1174
petitioner who is a prisoner in custody, except as otherwise 1175
described in this division, shall discharge or resentence the 1176
petitioner or grant a new trial as the court determines 1177
appropriate. If the court finds grounds for relief in the case 1178
of a petitioner who filed a petition under division (A) (1) (a) 1179

(iii) of this section, the court shall render void the sentence 1180
of death and order the resentencing of the offender under 1181
division (A) of section 2929.06 of the Revised Code. The court 1182
also may make supplementary orders to the relief granted, 1183
concerning such matters as rearraignment, retrial, custody, and 1184
bail. If the trial court's order granting the petition is 1185
reversed on appeal and if the direct appeal of the case has been 1186
remanded from an appellate court pursuant to a request under 1187
division (E) of this section, the appellate court reversing the 1188
order granting the petition shall notify the appellate court in 1189
which the direct appeal of the case was pending at the time of 1190
the remand of the reversal and remand of the trial court's 1191
order. Upon the reversal and remand of the trial court's order 1192
granting the petition, regardless of whether notice is sent or 1193
received, the direct appeal of the case that was remanded is 1194
reinstated. 1195

(H) Upon the filing of a petition pursuant to division (A) 1196
of this section by a person sentenced to death, only the supreme 1197
court may stay execution of the sentence of death. 1198

(I) (1) If a person sentenced to death intends to file a 1199
petition under this section, the court shall appoint counsel to 1200
represent the person upon a finding that the person is indigent 1201
and that the person either accepts the appointment of counsel or 1202
is unable to make a competent decision whether to accept or 1203
reject the appointment of counsel. The court may decline to 1204
appoint counsel for the person only upon a finding, after a 1205
hearing if necessary, that the person rejects the appointment of 1206
counsel and understands the legal consequences of that decision 1207
or upon a finding that the person is not indigent. 1208

(2) The court shall not appoint as counsel under division 1209

(I) (1) of this section an attorney who represented the 1210
petitioner at trial in the case to which the petition relates 1211
unless the person and the attorney expressly request the 1212
appointment. The court shall appoint as counsel under division 1213
(I) (1) of this section only an attorney who is certified under 1214
Rule 20 of the Rules of Superintendence for the Courts of Ohio 1215
to represent indigent defendants charged with or convicted of an 1216
offense for which the death penalty can be or has been imposed. 1217
The ineffectiveness or incompetence of counsel during 1218
proceedings under this section does not constitute grounds for 1219
relief in a proceeding under this section, in an appeal of any 1220
action under this section, or in an application to reopen a 1221
direct appeal. 1222

(3) Division (I) of this section does not preclude 1223
attorneys who represent the state of Ohio from invoking the 1224
provisions of 28 U.S.C. 154 with respect to capital cases that 1225
were pending in federal habeas corpus proceedings prior to July 1226
1, 1996, insofar as the petitioners in those cases were 1227
represented in proceedings under this section by one or more 1228
counsel appointed by the court under this section or section 1229
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 1230
appointed counsel meet the requirements of division (I) (2) of 1231
this section. 1232

(J) Subject to the appeal of a sentence for a felony that 1233
is authorized by section 2953.08 of the Revised Code, the remedy 1234
set forth in this section is the exclusive remedy by which a 1235
person may bring a collateral challenge to the validity of a 1236
conviction or sentence in a criminal case or to the validity of 1237
an adjudication of a child as a delinquent child for the 1238
commission of an act that would be a criminal offense if 1239
committed by an adult or the validity of a related order of 1240

disposition. 1241

Sec. 2953.23. (A) Whether a hearing is or is not held on a 1242
petition filed pursuant to section 2953.21 of the Revised Code, 1243
a court may not entertain a petition filed after the expiration 1244
of the period prescribed in division (A) of that section or a 1245
second petition or successive petitions for similar relief on 1246
behalf of a petitioner unless division (A)(1) or (2) of this 1247
section applies: 1248

(1) Both of the following apply: 1249

(a) Either the petitioner shows that the petitioner was 1250
unavoidably prevented from discovery of the facts upon which the 1251
petitioner must rely to present the claim for relief, or, 1252
subsequent to the period prescribed in division (A)(2) of 1253
section 2953.21 of the Revised Code or to the filing of an 1254
earlier petition, the United States Supreme Court recognized a 1255
new federal or state right that applies retroactively to persons 1256
in the petitioner's situation, and the petition asserts a claim 1257
based on that right. 1258

(b) The petitioner shows by clear and convincing evidence 1259
that, but for constitutional error at trial, no reasonable 1260
factfinder would have found the petitioner guilty of the offense 1261
of which the petitioner was convicted or, if the claim 1262
challenges a sentence of death that, but for constitutional 1263
error at the sentencing hearing, no reasonable factfinder would 1264
have found the petitioner eligible for the death sentence. 1265

(2) The petitioner was convicted of a felony, the 1266
petitioner is an offender for whom DNA testing was performed 1267
under sections 2953.71 to 2953.81 of the Revised Code or under 1268
former section 2953.82 of the Revised Code and analyzed in the 1269

context of and upon consideration of all available admissible 1270
evidence related to the inmate's case as described in division 1271
(D) of section 2953.74 of the Revised Code, and the results of 1272
the DNA testing establish, by clear and convincing evidence, 1273
actual innocence of that felony offense or, if the person was 1274
sentenced to death, establish, by clear and convincing evidence, 1275
actual innocence of the aggravating circumstance or 1276
circumstances the person was found guilty of committing and that 1277
is or are the basis of that sentence of death. 1278

As used in this division, "actual innocence" has the same 1279
meaning as in division (A) (1) ~~(b)~~ (c) of section 2953.21 of the 1280
Revised Code, and "former section 2953.82 of the Revised Code" 1281
has the same meaning as in division (A) (1) ~~(e)~~ (d) of section 1282
2953.21 of the Revised Code. 1283

(B) An order awarding or denying relief sought in a 1284
petition filed pursuant to section 2953.21 of the Revised Code 1285
is a final judgment and may be appealed pursuant to Chapter 1286
2953. of the Revised Code. 1287

Section 2. That existing sections 2929.02, 2929.022, 1288
2929.024, 2929.03, 2929.04, 2929.06, 2953.21, and 2953.23 of the 1289
Revised Code are hereby repealed. 1290