

I_135_1193

135th General Assembly
Regular Session
2023-2024

. B. No.

A BILL

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

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

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

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

(1) Assist the general assembly in the implementation of 17



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those aspects of the sentencing structure that are enacted into law; 18
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(2) Monitor the operation of the aspects of the sentencing structure that are enacted into law and report to the general assembly no later than January 1, 1997, and biennially thereafter, on all of the following matters: 20
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(a) The impact of the sentencing structure in effect on and after July 1, 1996, on political subdivisions and other relevant aspects of local government in this state, including all of the following information: 24
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(i) The number and type of offenders who were being imprisoned in a state correctional institution under the law in effect prior to July 1, 1996, but who are being punished under a community control sanction, as defined in section 2929.01 of the Revised Code, under the law in effect on and after July 1, 1996; 28
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(ii) The fiscal and other impact of the law in effect on and after July 1, 1996, on political subdivisions and other relevant aspects of local government in this state, including law enforcement agencies, the court system, prosecutors, as defined in section 2935.01 of the Revised Code, the public defender and assigned counsel system, jails and workhouses, probation departments, the drug and alcohol abuse intervention and treatment system, and the mental health intervention and treatment system. 33
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(b) The impact of the sentencing structure in effect on and after July 1, 1996, on the population of state correctional institutions, including information regarding the number and types of offenders who are being imprisoned under the law in effect on and after July 1, 1996, and the amount of space in 42
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state correctional institutions that is necessary to house those offenders;

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

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

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

(5) Collect and maintain data that pertains to the cost to counties of the felony sentence appeal provisions set forth in section 2953.08 of the Revised Code, of the postconviction relief proceeding provisions set forth in division ~~(A) (2)~~ (B) (2)

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

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

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

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

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

(c) The sentence of death is set aside, nullified, or 105

vacated pursuant to division (C) of section 2929.05 of the Revised Code.

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

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

(2) At a resentencing hearing conducted under division (A) (1) of this section, the court shall impose upon the offender a sentence of life imprisonment 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 the sentence of death was voided by a court pursuant to division ~~(H)~~(I) of section 2953.21 of the Revised Code, the offender has waived any right to be sentenced to any sentence other than life imprisonment without parole as described in division (A) (3) (b) of that section and the court shall impose a sentence of life imprisonment without parole. If the immediately preceding sentence does not apply and 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 imprisonment without parole or a sentence of an indefinite term consisting of a minimum term of thirty years and a maximum term of life imprisonment to be imposed pursuant to division (A) or (B) (3) of section 2971.03 of the Revised Code and served pursuant to that section, except as provided in division (F) of this section, the court shall impose the sentence so required. In all other cases, except as provided

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

(B) Whenever any court of this state or any federal court 145
sets aside, nullifies, or vacates a sentence of death imposed 146
upon an offender because of error that occurred in the 147
sentencing phase of the trial and if division (A) of this 148
section does not apply, the trial court that sentenced the 149
offender shall conduct a new hearing to resentence the offender. 150
If the offender was tried by a jury, the trial court shall 151
impanel a new jury for the hearing. If the offender was tried by 152
a panel of three judges, that panel or, if necessary, a new 153
panel of three judges shall conduct the hearing. At the hearing, 154
the court or panel shall follow the procedure set forth in 155
division (D) of section 2929.03 of the Revised Code in 156
determining whether to impose upon the offender a sentence of 157
death, a sentence of life imprisonment, or an indefinite term 158
consisting of a minimum term of thirty years and a maximum term 159
of life imprisonment. If, pursuant to that procedure, the court 160
or panel determines that it will impose a sentence other than a 161
sentence of death, except as provided in division (F) of this 162
section, the court or panel shall impose upon the offender one 163
of the sentences of life imprisonment that could have been 164
imposed at the time the offender committed the offense for which 165
the sentence of death was imposed, determined as specified in 166

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

(C) If a sentence of life imprisonment without parole 188
imposed upon an offender pursuant to section 2929.021 or 2929.03 189
of the Revised Code is set aside, nullified, or vacated for the 190
sole reason that the statutory procedure for imposing the 191
sentence of life imprisonment without parole that is set forth 192
in sections 2929.03 and 2929.04 of the Revised Code is 193
unconstitutional, the trial court that sentenced the offender 194
shall conduct a hearing to resentence the offender to life 195
imprisonment with parole eligibility after serving twenty-five 196
full years of imprisonment or to life imprisonment with parole 197

eligibility after serving thirty full years of imprisonment. 198

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

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

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

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

(A) Irregularity in the proceedings of the court, jury, 223
prosecuting attorney, or the witnesses for the state, or for any 224
order of the court, or abuse of discretion by which the 225
defendant was prevented from having a fair trial; 226

(B) Misconduct of the jury, prosecuting attorney, or the witnesses for the state;	227 228
(C) Accident or surprise which ordinary prudence could not have guarded against;	229 230
(D) That the verdict is not sustained by sufficient evidence or is contrary to law; but if the evidence shows the defendant is not guilty of the degree of crime for which he <u>the defendant</u> was convicted, but guilty of a lesser degree thereof, or of a lesser crime included therein, the court may modify the verdict or finding accordingly, without granting or ordering a new trial, and pass sentence on such verdict or finding as modified, provided that this power extends to any court to which the cause may be taken on appeal;	231 232 233 234 235 236 237 238 239
(E) Error of law occurring at the trial;	240
(F) When new evidence is discovered material to the defendant, which he <u>the defendant</u> could not with reasonable diligence have discovered and produced at the trial. When a motion for a new trial is made upon the ground of newly discovered evidence, the defendant must produce at the hearing of said motion, in support thereof, the affidavits of the witnesses by whom such evidence is expected to be given, and if time is required by the defendant to procure such affidavits, the court may postpone the hearing of the motion for such length of time as under all the circumstances of the case is reasonable. The prosecuting attorney may produce affidavits or other evidence to impeach the affidavits of such witnesses.	241 242 243 244 245 246 247 248 249 250 251 252
<u>(G) When new evidence is discovered that is relevant and admissible evidence not proffered at trial or in any pretrial proceedings in the case, and that were it to be considered at a</u>	253 254 255

new trial, would result in a reasonable likelihood of acquittal. 256

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

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

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

Sec. 2945.81. (A) The causes enumerated in divisions (B) 285

and (C) of section 2945.79 of the Revised Code must be sustained 286
by affidavit showing their truth, and may be controverted by 287
affidavits. 288

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

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

(B) Within ten days after the docketing of the motion for 297
a new trial under division (C) of section 2945.80 of the Revised 298
Code, or within any further time that the court may fix for good 299
cause shown, the prosecuting attorney shall respond by answer or 300
motion. Within twenty days from the date the issues are raised, 301
either party may move for summary judgment. The right to summary 302
judgment shall appear on the face of the record. 303

(C) (1) The court shall consider a motion for a new trial 304
that is filed under division (C) of section 2945.80 of the 305
Revised Code. 306

(2) Before granting a hearing on a motion for a new trial, 307
the court shall determine whether there are substantive grounds 308
for relief. In making such a determination, the court shall 309
consider, in addition to the motion, the supporting affidavits 310
and the documentary evidence, all the files and records 311
pertaining to the proceedings against the defendant, including, 312
but not limited to, the indictment, the court's journal entries, 313
the journalized records of the clerk of the court, and the court 314

reporter's transcript. The court reporter's transcript, if 315
ordered and certified by the court, shall be taxed as court 316
costs. 317

(3) If the court finds that there are no substantive 318
grounds for relief or that the motion is patently frivolous, the 319
court shall dismiss the motion and make and file findings of 320
fact and conclusions of law with respect to such dismissal. If 321
the motion was filed by a person who has been sentenced to 322
death, the findings of fact and conclusions of law shall state 323
specifically the reasons for the dismissal of the motion and of 324
each claim it contains. 325

(4) Unless the motion for a new trial is dismissed under 326
division (C) (3) of this section, the court shall hold a hearing 327
on the issues thirty days after the prosecuting attorney is 328
required to respond by answer or motion as described in division 329
(B) of this section, even if a direct appeal of the case is 330
pending. If the court notifies the parties that it has found 331
substantive grounds for granting relief, either party may 332
request an appellate court in which a direct appeal of the 333
judgment is pending to remand the pending case to the court. 334

(D) A defendant who files a motion for a new trial under 335
division (C) of section 2945.80 of the Revised Code may amend 336
the motion as follows: 337

(1) If the motion was filed by a person who has been 338
sentenced to death, at any time that is not later than one 339
hundred eighty days after the motion is filed, with or without 340
leave or prejudice to the proceedings; 341

(2) If division (D) (1) of this section does not apply, at 342
any time before the answer or motion is filed, with or without 343

leave or prejudice to the proceedings; 344

(3) With leave of court at any time after the expiration 345
of the applicable period specified in division (D)(1) or (2) of 346
this section. 347

(E) If the court does not find grounds for granting relief 348
under division (C)(4) of this section, it shall make and file 349
findings of fact and conclusions of law and shall enter judgment 350
denying relief on the motion for a new trial. If the motion was 351
filed by a person who has been sentenced to death, the findings 352
of fact and conclusions of law shall state specifically the 353
reasons for the denial of relief on the motion and of each claim 354
it contains. If no direct appeal of the case is pending and the 355
court finds grounds for relief under division (C)(4) of this 356
section or if a pending direct appeal of the case has been 357
remanded to the court pursuant to a request made pursuant to 358
division (C)(4) of this section and the court finds grounds for 359
granting relief under division (C)(4) of this section, it shall 360
make and file findings of fact and conclusions of law and shall 361
enter a judgment that vacates and sets aside the judgment in 362
question, and shall grant a new trial. 363

(F) The court shall appoint counsel to represent a person 364
who files a motion for a new trial under division (C) of section 365
2945.80 of the Revised Code upon a finding that the person is 366
indigent, unless the court finds that the motion is patently 367
frivolous. 368

Sec. 2953.21. ~~(A)(1)(a)~~ (A) As used in this section, 369
"patently frivolous" means offering evidence which, even if 370
true, would not satisfy the standard in division (B)(1)(a)(v) of 371
this section. 372

(B)(1)(a) A person in any of the following categories may 373
file a petition in the court that imposed sentence, stating the 374
grounds for relief relied upon, and asking the court to vacate 375
or set aside the judgment or sentence or to grant other 376
appropriate relief: 377

(i) Any person who has been convicted of a criminal 378
offense or adjudicated a delinquent child and who claims that 379
there was such a denial or infringement of the person's rights 380
as to render the judgment void or voidable under the Ohio 381
Constitution or the Constitution of the United States; 382

(ii) Any person who has been convicted of a criminal 383
offense and sentenced to death and who claims that there was a 384
denial or infringement of the person's rights under either of 385
those Constitutions that creates a reasonable probability of an 386
altered verdict; 387

(iii) Any person who has been convicted of a criminal 388
offense that is a felony and who is an offender for whom DNA 389
testing that was performed under sections 2953.71 to 2953.81 of 390
the Revised Code or under former section 2953.82 of the Revised 391
Code and analyzed in the context of and upon consideration of 392
all available admissible evidence related to the person's case 393
as described in division (D) of section 2953.74 of the Revised 394
Code provided results that establish, by clear and convincing 395
evidence, actual innocence of that felony offense or, if the 396
person was sentenced to death, establish, by clear and 397
convincing evidence, actual innocence of the aggravating 398
circumstance or circumstances the person was found guilty of 399
committing and that is or are the basis of that sentence of 400
death; 401

(iv) Any person who has been convicted of aggravated 402

murder and sentenced to death for the offense and who claims 403
that the person had a serious mental illness at the time of the 404
commission of the offense and that as a result the court should 405
render void the sentence of death, with the filing of the 406
petition constituting the waiver described in division ~~(A)(3)(b)~~ 407
(B)(3)(b) of this section; 408

(v) Any person who produces relevant and admissible 409
evidence not proffered at trial or in any pretrial proceedings 410
in the case that, were it to be considered at a new trial, would 411
result in a reasonable likelihood of acquittal. 412

(b) A petitioner under division ~~(A)(1)(a)~~ (B)(1)(a) of 413
this section may file a supporting affidavit and other 414
documentary evidence in support of the claim for relief. 415

(c) As used in division ~~(A)(1)(a)~~ (B)(1)(a) of this 416
section: 417

(i) "Actual innocence" means that, had the results of the 418
DNA testing conducted under sections 2953.71 to 2953.81 of the 419
Revised Code or under former section 2953.82 of the Revised Code 420
been presented at trial, and had those results been analyzed in 421
the context of and upon consideration of all available 422
admissible evidence related to the person's case as described in 423
division (D) of section 2953.74 of the Revised Code, no 424
reasonable factfinder would have found the petitioner guilty of 425
the offense of which the petitioner was convicted, or, if the 426
person was sentenced to death, no reasonable factfinder would 427
have found the petitioner guilty of the aggravating circumstance 428
or circumstances the petitioner was found guilty of committing 429
and that is or are the basis of that sentence of death. 430

(ii) "Serious mental illness" has the same meaning as in 431

section 2929.025 of the Revised Code. 432

(d) As used in divisions ~~(A)(1)(a)~~ (B)(1)(a) and (c) of 433
this section, "former section 2953.82 of the Revised Code" means 434
section 2953.82 of the Revised Code as it existed prior to July 435
6, 2010. 436

(e) At any time in conjunction with the filing of a 437
petition for postconviction relief under division ~~(A)~~ (B) of 438
this section by a person who has been sentenced to death, or 439
with the litigation of a petition so filed, the court, for good 440
cause shown, may authorize the petitioner in seeking the 441
postconviction relief and the prosecuting attorney of the county 442
served by the court in defending the proceeding, to take 443
depositions and to issue subpoenas and subpoenas duces tecum in 444
accordance with divisions ~~(A)(1)(e)~~ (B)(1)(e), ~~(A)(1)(f)~~ (B)(1)
(f), and ~~(C)~~ (D) of this section, and to any other form of 446
discovery as in a civil action that the court in its discretion 447
permits. The court may limit the extent of discovery under this 448
division. In addition to discovery that is relevant to the claim 449
and was available under Criminal Rule 16 through conclusion of 450
the original criminal trial, the court, for good cause shown, 451
may authorize the petitioner or prosecuting attorney to take 452
depositions and issue subpoenas and subpoenas duces tecum in 453
either of the following circumstances: 454

(i) For any witness who testified at trial or who was 455
disclosed by the state prior to trial, except as otherwise 456
provided in this division, the petitioner or prosecuting 457
attorney shows clear and convincing evidence that the witness is 458
material and that a deposition of the witness or the issuing of 459
a subpoena or subpoena duces tecum is of assistance in order to 460
substantiate or refute the petitioner's claim that there is a 461

reasonable probability of an altered verdict. This division does 462
not apply if the witness was unavailable for trial or would not 463
voluntarily be interviewed by the defendant or prosecuting 464
attorney. 465

(ii) For any witness with respect to whom division ~~(A)(1)~~ 466
~~(e)(i)~~(B)(1)(e)(i) of this section does not apply, the 467
petitioner or prosecuting attorney shows good cause that the 468
witness is material and that a deposition of the witness or the 469
issuing of a subpoena or subpoena duces tecum is of assistance 470
in order to substantiate or refute the petitioner's claim that 471
there is a reasonable probability of an altered verdict. 472

(f) If a person who has been sentenced to death and who 473
files a petition for postconviction relief under division ~~(A)~~ 474
(B) of this section requests postconviction discovery as 475
described in division ~~(A)(1)(e)~~(B)(1)(e) of this section or if 476
the prosecuting attorney of the county served by the court 477
requests postconviction discovery as described in that division, 478
within ten days after the docketing of the request, or within 479
any other time that the court sets for good cause shown, the 480
prosecuting attorney shall respond by answer or motion to the 481
petitioner's request or the petitioner shall respond by answer 482
or motion to the prosecuting attorney's request, whichever is 483
applicable. 484

(g) If a person who has been sentenced to death and who 485
files a petition for postconviction relief under division ~~(A)~~ 486
(B) of this section requests postconviction discovery as 487
described in division ~~(A)(1)(e)~~(B)(1)(e) of this section or if 488
the prosecuting attorney of the county served by the court 489
requests postconviction discovery as described in that division, 490
upon motion by the petitioner, the prosecuting attorney, or the 491

person from whom discovery is sought, and for good cause shown, 492
the court in which the action is pending may make any order that 493
justice requires to protect a party or person from oppression or 494
undue burden or expense, including but not limited to the orders 495
described in divisions ~~(A) (1) (h) (i)~~ (B) (1) (h) (i) to (viii) of 496
this section. The court also may make any such order if, in its 497
discretion, it determines that the discovery sought would be 498
irrelevant to the claims made in the petition; and if the court 499
makes any such order on that basis, it shall explain in the 500
order the reasons why the discovery would be irrelevant. 501

(h) If a petitioner, prosecuting attorney, or person from 502
whom discovery is sought makes a motion for an order under 503
division ~~(A) (1) (g)~~ (B) (1) (g) of this section and the order is 504
denied in whole or in part, the court, on terms and conditions 505
as are just, may order that any party or person provide or 506
permit discovery as described in division ~~(A) (1) (e)~~ (B) (1) (e) of 507
this section. The provisions of Civil Rule 37(A) (4) apply to the 508
award of expenses incurred in relation to the motion, except 509
that in no case shall a court require a petitioner who is 510
indigent to pay expenses under those provisions. 511

Before any person moves for an order under division ~~(A) (1)~~ 512
~~(g)~~ (B) (1) (g) of this section, that person shall make a 513
reasonable effort to resolve the matter through discussion with 514
the petitioner or prosecuting attorney seeking discovery. A 515
motion for an order under division ~~(A) (1) (g)~~ (B) (1) (g) of this 516
section shall be accompanied by a statement reciting the effort 517
made to resolve the matter in accordance with this paragraph. 518

The orders that may be made under division ~~(A) (1) (g)~~ (B) 519
(1) (g) of this section include, but are not limited to, any of 520
the following: 521

(i) That the discovery not be had;	522
(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;	523 524
(iii) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;	525 526 527
(iv) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;	528 529
(v) That discovery be conducted with no one present except persons designated by the court;	530 531
(vi) That a deposition after being sealed be opened only by order of the court;	532 533
(vii) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;	534 535 536
(viii) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.	537 538 539
(i) Any postconviction discovery authorized under division (A) (1) (e) <u>(B) (1) (e)</u> of this section shall be completed not later than eighteen months after the start of the discovery proceedings unless, for good cause shown, the court extends that period for completing the discovery.	540 541 542 543 544
(j) Nothing in division (A) (1) (e) <u>(B) (1) (e)</u> of this section authorizes, or shall be construed as authorizing, the relitigation, or discovery in support of relitigation, of any matter barred by the doctrine of res judicata.	545 546 547 548

(k) Division ~~(A) (1)~~ (B) (1) of this section does not apply 549
to any person who has been convicted of a criminal offense and 550
sentenced to death and who has unsuccessfully raised the same 551
claims in a petition for postconviction relief. 552

(2) (a) Except as otherwise provided in section 2953.23 of 553
the Revised Code, a petition under division ~~(A) (1) (a) (i)~~ (B) (1) 554
(a) (i), (ii), or (iii) of this section shall be filed no later 555
than three hundred sixty-five days after the date on which the 556
trial transcript is filed in the court of appeals in the direct 557
appeal of the judgment of conviction or adjudication or, if the 558
direct appeal involves a sentence of death, the date on which 559
the trial transcript is filed in the supreme court. If no appeal 560
is taken, except as otherwise provided in section 2953.23 of the 561
Revised Code, the petition shall be filed no later than three 562
hundred sixty-five days after the expiration of the time for 563
filing the appeal. 564

(b) Except as otherwise provided in section 2953.23 of the 565
Revised Code, a petition under division ~~(A) (1) (a) (iv)~~ (B) (1) (a) 566
(iv) of this section shall be filed not later than three hundred 567
sixty-five days after ~~the effective date of this amendment~~ April 568
12, 2021. 569

(c) A petition under division (B) (1) (a) (v) of this section 570
shall be filed at any time after the expiration of the time for 571
filing the appeal. 572

(3) (a) In a petition filed under division ~~(A) (1) (a) (i)~~ (B) 573
(1) (a) (i), (ii), ~~or (iii)~~, or (v) of this section, a person who 574
has been sentenced to death may ask the court to render void or 575
voidable the judgment with respect to the conviction of 576
aggravated murder or the specification of an aggravating 577
circumstance or the sentence of death. 578

(b) A person sentenced to death who files a petition under 579
division ~~(A) (1) (a) (iv)~~ (B) (1) (a) (iv) of this section may ask the 580
court to render void the sentence of death and to order the 581
resentencing of the person under division (A) of section 2929.06 582
of the Revised Code. If a person sentenced to death files such a 583
petition and asks the court to render void the sentence of death 584
and to order the resentencing of the person under division (A) 585
of section 2929.06 of the Revised Code, the act of filing the 586
petition constitutes a waiver of any right to be sentenced under 587
the law that existed at the time the offense was committed and 588
constitutes consent to be sentenced to life imprisonment without 589
parole under division (A) of section 2929.06 of the Revised 590
Code. 591

(4) A petitioner shall state in the original or amended 592
petition filed under division ~~(A)~~ (B) of this section all 593
grounds for relief claimed by the petitioner. Except as provided 594
in section 2953.23 of the Revised Code, any ground for relief 595
that is not so stated in the petition is waived. 596

(5) If the petitioner in a petition filed under division 597
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), or (iii) of this section was 598
convicted of or pleaded guilty to a felony, the petition may 599
include a claim that the petitioner was denied the equal 600
protection of the laws in violation of the Ohio Constitution or 601
the United States Constitution because the sentence imposed upon 602
the petitioner for the felony was part of a consistent pattern 603
of disparity in sentencing by the judge who imposed the 604
sentence, with regard to the petitioner's race, gender, ethnic 605
background, or religion. If the supreme court adopts a rule 606
requiring a court of common pleas to maintain information with 607
regard to an offender's race, gender, ethnic background, or 608
religion, the supporting evidence for the petition shall 609

include, but shall not be limited to, a copy of that type of 610
information relative to the petitioner's sentence and copies of 611
that type of information relative to sentences that the same 612
judge imposed upon other persons. 613

(6) Notwithstanding any law or court rule to the contrary, 614
there is no limit on the number of pages in, or on the length 615
of, a petition filed under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), 616
(ii), (iii), ~~or (iv)~~, or (v) of this section by a person who has 617
been sentenced to death. If any court rule specifies a limit on 618
the number of pages in, or on the length of, a petition filed 619
under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), (iii), ~~or (iv)~~, or 620
(v) of this section or on a prosecuting attorney's response 621
to such a petition by answer or motion and a person who has been 622
sentenced to death files a petition that exceeds the limit 623
specified for the petition, the prosecuting attorney may respond 624
by an answer or motion that exceeds the limit specified for the 625
response. 626

~~(B)(C)~~ The clerk of the court in which the petition for 627
postconviction relief and, if applicable, a request for 628
postconviction discovery described in division ~~(A)(1)(e)~~ (B)(1) 629
(e) of this section is filed shall docket the petition and the 630
request and bring them promptly to the attention of the court. 631
The clerk of the court in which the petition for postconviction 632
relief and, if applicable, a request for postconviction 633
discovery described in division ~~(A)(1)(e)~~ (B)(1)(e) of this 634
section is filed immediately shall forward a copy of the 635
petition and a copy of the request if filed by the petitioner to 636
the prosecuting attorney of the county served by the court. If 637
the request for postconviction discovery is filed by the 638
prosecuting attorney, the clerk of the court immediately shall 639
forward a copy of the request to the petitioner or the 640

petitioner's counsel. 641

~~(C)~~ (D) If a person who has been sentenced to death and 642
who files a petition for postconviction relief under division 643
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), ~~or (iv)~~, or (v) of this 644
section requests a deposition or the prosecuting attorney in the 645
case requests a deposition, and if the court grants the request 646
under division ~~(A) (1) (e)~~ (B) (1) (e) of this section, the court 647
shall notify the petitioner or the petitioner's counsel and the 648
prosecuting attorney. The deposition shall be conducted pursuant 649
to divisions (B), (D), and (E) of Criminal Rule 15. 650
Notwithstanding division (C) of Criminal Rule 15, the petitioner 651
is not entitled to attend the deposition. The prosecuting 652
attorney shall be permitted to attend and participate in any 653
deposition. 654

~~(D)~~ (E) The court shall consider a petition that is timely 655
filed within the period specified in division ~~(A) (2)~~ (B) (2) of 656
this section even if a direct appeal of the judgment is pending. 657
Before granting a hearing on a petition filed under division ~~(A)~~ 658
~~(1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), ~~or (iv)~~, or (v) of this 659
section, the court shall determine whether there are substantive 660
grounds for relief. In making such a determination, the court 661
shall consider, in addition to the petition, the supporting 662
affidavits, and the documentary evidence, all the files and 663
records pertaining to the proceedings against the petitioner, 664
including, but not limited to, the indictment, the court's 665
journal entries, the journalized records of the clerk of the 666
court, and the court reporter's transcript. The court reporter's 667
transcript, if ordered and certified by the court, shall be 668
taxed as court costs. If the court dismisses the petition, it 669
shall make and file findings of fact and conclusions of law with 670
respect to such dismissal. If the petition was filed by a person 671

who has been sentenced to death, the findings of fact and 672
conclusions of law shall state specifically the reasons for the 673
dismissal of the petition and of each claim it contains. 674

~~(E)~~ (F) Within ten days after the docketing of the 675
petition, or within any further time that the court may fix for 676
good cause shown, the prosecuting attorney shall respond by 677
answer or motion. Division ~~(A) (6)~~ (B) (6) of this section applies 678
with respect to the prosecuting attorney's response. Within 679
twenty days from the date the issues are raised, either party 680
may move for summary judgment. The right to summary judgment 681
shall appear on the face of the record. 682

~~(F)~~ (G) For a petition filed under division (B) (1) 683
(a) (i), (ii), (iii), or (iv) of this section, unless the 684
petition and the files and records of the case show the 685
petitioner is not entitled to relief, the court shall proceed to 686
a prompt hearing on the issues even if a direct appeal of the 687
case is pending. For a petition filed under division (B) (1) (a) 688
(v) of this section, unless the petition and the files and 689
records of the case show that the petition is patently 690
frivolous, the court shall hold a hearing on the issues thirty 691
days after the prosecuting attorney is required to respond by 692
answer or motion as described in division (E) of this section 693
even if a direct appeal of the case is pending. If the court 694
notifies the parties that it has found grounds for granting 695
relief, either party may request an appellate court in which a 696
direct appeal of the judgment is pending to remand the pending 697
case to the court. 698

With respect to a petition filed under division ~~(A) (1) (a)~~ 699
~~(iv)~~ (B) (1) (a) (iv) of this section, the procedures and rules 700
regarding introduction of evidence and burden of proof at the 701

pretrial hearing that are set forth in divisions (C), (D), and 702
(F) of section 2929.025 of the Revised Code apply in considering 703
the petition. With respect to such a petition, the grounds for 704
granting relief are that the person has been diagnosed with one 705
or more of the conditions set forth in division (A)(1)(a) of 706
section 2929.025 of the Revised Code and that, at the time of 707
the aggravated murder that was the basis of the sentence of 708
death, the condition or conditions significantly impaired the 709
person's capacity in a manner described in division (A)(1)(b) of 710
that section. 711

~~(G)~~(H) A petitioner who files a petition under division 712
~~(A)(1)(a)(i)~~(B)(1)(a)(i), (ii), (iii), ~~or~~ (iv), or (v) of this 713
section may amend the petition as follows: 714

(1) If the petition was filed by a person who has been 715
sentenced to death, at any time that is not later than one 716
hundred eighty days after the petition is filed, the petitioner 717
may amend the petition with or without leave or prejudice to the 718
proceedings. 719

(2) If division ~~(G)(1)~~(H)(1) of this section does not 720
apply, at any time before the answer or motion is filed, the 721
petitioner may amend the petition with or without leave or 722
prejudice to the proceedings. 723

(3) The petitioner may amend the petition with leave of 724
court at any time after the expiration of the applicable period 725
specified in division ~~(G)(1)~~(H)(1) or (2) of this section. 726

~~(H)~~(I) If the court does not find grounds for granting 727
relief, it shall make and file findings of fact and conclusions 728
of law and shall enter judgment denying relief on the petition. 729
If the petition was filed by a person who has been sentenced to 730

death, the findings of fact and conclusions of law shall state 731
specifically the reasons for the denial of relief on the 732
petition and of each claim it contains. If no direct appeal of 733
the case is pending and the court finds grounds for relief or if 734
a pending direct appeal of the case has been remanded to the 735
court pursuant to a request made pursuant to division ~~(F)~~(G) of 736
this section and the court finds grounds for granting relief, it 737
shall make and file findings of fact and conclusions of law and 738
shall enter a judgment that vacates and sets aside the judgment 739
in question, and, in the case of a petitioner who is a prisoner 740
in custody, except as otherwise described in this division, 741
shall discharge or resentence the petitioner or grant a new 742
trial as the court determines appropriate. If the court finds 743
grounds for relief in the case of a petitioner who filed a 744
petition under division ~~(A)(1)(a)(iv)~~(B)(1)(a)(iv) of this 745
section, the court shall render void the sentence of death and 746
order the resentencing of the offender under division (A) of 747
section 2929.06 of the Revised Code. If the petitioner has been 748
sentenced to death, the findings of fact and conclusions of law 749
shall state specifically the reasons for the finding of grounds 750
for granting the relief, with respect to each claim contained in 751
the petition. The court also may make supplementary orders to 752
the relief granted, concerning such matters as arraignment, 753
retrial, custody, and bail. If the trial court's order granting 754
the petition is reversed on appeal and if the direct appeal of 755
the case has been remanded from an appellate court pursuant to a 756
request under division ~~(F)~~(G) of this section, the appellate 757
court reversing the order granting the petition shall notify the 758
appellate court in which the direct appeal of the case was 759
pending at the time of the remand of the reversal and remand of 760
the trial court's order. Upon the reversal and remand of the 761
trial court's order granting the petition, regardless of whether 762

notice is sent or received, the direct appeal of the case that 763
was remanded is reinstated. 764

~~(I)~~ (J) Upon the filing of a petition pursuant to division 765
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), or (v) of this 766
section by a person sentenced to death, only the supreme court 767
may stay execution of the sentence of death. 768

~~(J) (1)~~ If (K) (1) (a) Except as provided in division (J) (1) 769
(b) of this section, if a person sentenced to death intends to 770
file a petition under division (B) (1) (a) (i), (ii), (iii), or 771
(iv) of this section, the court shall appoint counsel to 772
represent the person upon a finding that the person is indigent 773
and that the person either accepts the appointment of counsel or 774
is unable to make a competent decision whether to accept or 775
reject the appointment of counsel. The court may decline to 776
appoint counsel for the person only upon a finding, after a 777
hearing if necessary, that the person rejects the appointment of 778
counsel and understands the legal consequences of that decision 779
or upon a finding that the person is not indigent. If a person 780
sentenced to death intends to file a petition under division (B) 781
(1) (a) (v) of this section, the court shall appoint counsel to 782
represent the person upon a finding that the person is indigent 783
and that the person either accepts the appointment of counsel or 784
is unable to make a competent decision whether to accept or 785
reject the appointment of counsel, unless the court finds that 786
the evidence is patently frivolous. The court may decline to 787
appoint counsel for the person only upon a finding, after a 788
hearing if necessary, that the person rejects the appointment of 789
counsel and understands the legal consequences of that decision 790
or upon a finding that the person is not indigent. 791

(b) The court shall appoint counsel to represent a person 792

who files a petition under division (B)(1)(a)(v) of this section 793
upon a finding that the person is indigent, unless the court 794
finds that the evidence is patently frivolous. 795

(2) The court shall not appoint as counsel under division 796
~~(J)(1)~~(K)(1) of this section an attorney who represented the 797
petitioner at trial in the case to which the petition relates 798
unless the person and the attorney expressly request the 799
appointment. The court shall appoint as counsel under division 800
~~(J)(1)~~(K)(1) of this section only an attorney who is certified 801
under Rule 20 of the Rules of Superintendence for the Courts of 802
Ohio to represent indigent defendants charged with or convicted 803
of an offense for which the death penalty can be or has been 804
imposed. The ineffectiveness or incompetence of counsel during 805
proceedings under this section does not constitute grounds for 806
relief in a proceeding under this section, in an appeal of any 807
action under this section, or in an application to reopen a 808
direct appeal. 809

(3) Division ~~(J)~~(K) of this section does not preclude 810
attorneys who represent the state of Ohio from invoking the 811
provisions of 28 U.S.C. 154 with respect to capital cases that 812
were pending in federal habeas corpus proceedings prior to July 813
1, 1996, insofar as the petitioners in those cases were 814
represented in proceedings under this section by one or more 815
counsel appointed by the court under this section or section 816
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 817
appointed counsel meet the requirements of division ~~(J)(2)~~(K) 818
(2) of this section. 819

~~(K)~~(L) Subject to the appeal of a sentence for a felony 820
that is authorized by section 2953.08 of the Revised Code, the 821
remedy set forth in this section is the exclusive remedy by 822

which a person may bring a collateral challenge to the validity 823
of a conviction or sentence in a criminal case or to the 824
validity of an adjudication of a child as a delinquent child for 825
the commission of an act that would be a criminal offense if 826
committed by an adult or the validity of a related order of 827
disposition. 828

Sec. 2953.23. (A) Whether a hearing is or is not held on a 829
petition filed pursuant to section 2953.21 of the Revised Code, 830
a court may not entertain a petition filed after the expiration 831
of the period prescribed in division (A) of that section or a 832
second petition or successive petitions for similar relief on 833
behalf of a petitioner unless division (A)(1) or (2) of this 834
section applies: 835

(1) Both of the following apply: 836

(a) Either the petitioner shows that the petitioner was 837
unavoidably prevented from discovery of the facts upon which the 838
petitioner must rely to present the claim for relief, or, 839
subsequent to the period prescribed in division ~~(A)(2)~~(B)(2) of 840
section 2953.21 of the Revised Code or to the filing of an 841
earlier petition, the United States Supreme Court recognized a 842
new federal or state right that applies retroactively to persons 843
in the petitioner's situation, and the petition asserts a claim 844
based on that right. 845

(b) The petitioner shows by clear and convincing evidence 846
that, but for constitutional error at trial, no reasonable 847
factfinder would have found the petitioner guilty of the offense 848
of which the petitioner was convicted or, if the claim 849
challenges a sentence of death that, but for constitutional 850
error at the sentencing hearing, no reasonable factfinder would 851
have found the petitioner eligible for the death sentence. 852

(2) The petitioner was convicted of a felony, the 853
petitioner is an offender for whom DNA testing was performed 854
under sections 2953.71 to 2953.81 of the Revised Code or under 855
former section 2953.82 of the Revised Code and analyzed in the 856
context of and upon consideration of all available admissible 857
evidence related to the inmate's case as described in division 858
(D) of section 2953.74 of the Revised Code, and the results of 859
the DNA testing establish, by clear and convincing evidence, 860
actual innocence of that felony offense or, if the person was 861
sentenced to death, establish, by clear and convincing evidence, 862
actual innocence of the aggravating circumstance or 863
circumstances the person was found guilty of committing and that 864
is or are the basis of that sentence of death. 865

As used in this division, "actual innocence" has the same 866
meaning as in division ~~(A) (1) (e)~~ (B) (1) (c) of section 2953.21 of 867
the Revised Code, and "former section 2953.82 of the Revised 868
Code" has the same meaning as in division ~~(A) (1) (d)~~ (B) (1) (d) of 869
section 2953.21 of the Revised Code. 870

(B) An order awarding or denying relief sought in a 871
petition filed pursuant to section 2953.21 of the Revised Code 872
is a final judgment and may be appealed pursuant to Chapter 873
2953. of the Revised Code. 874

If a petition filed pursuant to section 2953.21 of the 875
Revised Code by a person who has been sentenced to death is 876
denied and the person appeals the judgment, notwithstanding any 877
law or court rule to the contrary, there is no limit on the 878
number of pages in, or on the length of, a notice of appeal or 879
briefs related to an appeal filed by the person. If any court 880
rule specifies a limit on the number of pages in, or on the 881
length of, a notice of appeal or briefs described in this 882

division or on a prosecuting attorney's response or briefs with 883
respect to such an appeal and a person who has been sentenced to 884
death files a notice of appeal or briefs that exceed the limit 885
specified for the petition, the prosecuting attorney may file a 886
response or briefs that exceed the limit specified for the 887
answer or briefs. 888

Section 2. That existing sections 181.25, 2929.06, 889
2945.79, 2945.80, 2945.81, 2953.21, and 2953.23 of the Revised 890
Code are hereby repealed. 891

Section 3. Section 2929.06 of the Revised Code is 892
presented in this act as a composite of the section as amended 893
by both H.B. 136 and S.B. 256 of the 133rd General Assembly. The 894
General Assembly, applying the principle stated in division (B) 895
of section 1.52 of the Revised Code that amendments are to be 896
harmonized if reasonably capable of simultaneous operation, 897
finds that the composite is the resulting version of the section 898
in effect prior to the effective date of the section as 899
presented in this act. 900