

**As Introduced**

**135th General Assembly**

**Regular Session**

**2023-2024**

**H. B. No. 594**

**Representatives Jarrells, Williams**

**Cosponsors: Representatives Grim, Isaacsohn, Brewer, Somani, Piccolantonio, Upchurch, Sims, Skindell, Thomas, C., Brent, Rogers, Mohamed, Dell'Aquila, Blackshear, Humphrey, Sweeney, Dobos, Willis, Klopfenstein, Gross, White, Schmidt, Russo**

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**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 6  
establish a strong probability of a different 7  
result at trial. 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  
those aspects of the sentencing structure that are enacted into 18  
law; 19

(2) Monitor the operation of the aspects of the sentencing 20  
structure that are enacted into law and report to the general 21  
assembly no later than January 1, 1997, and biennially 22  
thereafter, on all of the following matters: 23

(a) The impact of the sentencing structure in effect on 24  
and after July 1, 1996, on political subdivisions and other 25  
relevant aspects of local government in this state, including 26  
all of the following information: 27

(i) The number and type of offenders who were being 28  
imprisoned in a state correctional institution under the law in 29  
effect prior to July 1, 1996, but who are being punished under a 30  
community control sanction, as defined in section 2929.01 of the 31  
Revised Code, under the law in effect on and after July 1, 1996; 32

(ii) The fiscal and other impact of the law in effect on 33  
and after July 1, 1996, on political subdivisions and other 34  
relevant aspects of local government in this state, including 35  
law enforcement agencies, the court system, prosecutors, as 36  
defined in section 2935.01 of the Revised Code, the public 37  
defender and assigned counsel system, jails and workhouses, 38  
probation departments, the drug and alcohol abuse intervention 39  
and treatment system, and the mental health intervention and 40  
treatment system. 41

(b) The impact of the sentencing structure in effect on 42  
and after July 1, 1996, on the population of state correctional 43  
institutions, including information regarding the number and 44  
types of offenders who are being imprisoned under the law in 45

effect on and after July 1, 1996, and the amount of space in 46  
state correctional institutions that is necessary to house those 47  
offenders; 48

(c) The impact of the sentencing structure and the 49  
sentence appeal provisions in effect on and after July 1, 1996, 50  
on the appellate courts of this state, including information 51  
regarding the number of sentence-based appeals, the cost of 52  
reviewing appeals of that nature, whether a special court should 53  
be created to review sentences, and whether changes should be 54  
made to ensure that sentence-based appeals are conducted 55  
expeditiously. 56

(3) Review all bills that are introduced in the general 57  
assembly that provide for new criminal offenses or that change 58  
the penalty for any criminal offense, determine if those bills 59  
are consistent with the sentencing policy adopted under division 60  
(B) of section 181.23 of the Revised Code, determine the impact 61  
of those bills upon the correctional resources of the state, and 62  
recommend to the general assembly any necessary amendments to 63  
those bills. When the commission recommends any amendment for a 64  
bill before the general assembly, it shall do so in a manner 65  
that is consistent with the requirements of section 181.24 of 66  
the Revised Code. 67

(4) Study criminal sentencing structures in this state, 68  
other states, and the federal government, recommend necessary 69  
changes to the sentencing structure of the state, and determine 70  
the costs and effects of any proposed changes in the sentencing 71  
structure of the state; 72

(5) Collect and maintain data that pertains to the cost to 73  
counties of the felony sentence appeal provisions set forth in 74  
section 2953.08 of the Revised Code, of the postconviction 75

relief proceeding provisions set forth in division ~~(A) (2)~~ (B) (2) 76  
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 106  
Revised Code. 107

(d) A court has determined that the offender is a person 108  
with an intellectual disability under standards set forth in 109  
decisions of the supreme court of this state or the United 110  
States supreme court. 111

(e) The sentence of death is voided by a court pursuant to 112  
division ~~(H)~~(I) of section 2953.21 of the Revised Code. 113

(2) At a resentencing hearing conducted under division (A) 114  
(1) of this section, the court shall impose upon the offender a 115  
sentence of life imprisonment or an indefinite term consisting 116  
of a minimum term of thirty years and a maximum term of life 117  
imprisonment that is determined as specified in this division. 118  
If the sentence of death was voided by a court pursuant to 119  
division ~~(H)~~(I) of section 2953.21 of the Revised Code, the 120  
offender has waived any right to be sentenced to any sentence 121  
other than life imprisonment without parole as described in 122  
division (A) (3) (b) of that section and the court shall impose a 123  
sentence of life imprisonment without parole. If the immediately 124  
preceding sentence does not apply and if division (D) of section 125  
2929.03 of the Revised Code, at the time the offender committed 126  
the aggravated murder for which the sentence of death was 127  
imposed, required the imposition when a sentence of death was 128  
not imposed of a sentence of life imprisonment without parole or 129  
a sentence of an indefinite term consisting of a minimum term of 130  
thirty years and a maximum term of life imprisonment to be 131  
imposed pursuant to division (A) or (B) (3) of section 2971.03 of 132  
the Revised Code and served pursuant to that section, except as 133  
provided in division (F) of this section, the court shall impose 134

the sentence so required. In all other cases, except as provided 135  
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 that materially his affect the~~ 221  
fairness of the defendant's substantial rights, trial or that 222  
demonstrate a miscarriage of justice: 223

(A) Irregularity in the proceedings of the court, jury, 224  
prosecuting attorney, or the witnesses for the state, or for any 225



order of the court, or abuse of discretion by which the	226
defendant was prevented from having a fair trial;	227
(B) Misconduct of the jury, prosecuting attorney, or the	228
witnesses for the state;	229
(C) Accident or surprise which ordinary prudence could not	230
have guarded against;	231
(D) That the verdict is not sustained by sufficient	232
evidence or is contrary to law; but if the evidence shows the	233
defendant is not guilty of the degree of crime for which <del>he</del> <u>the</u>	234
<u>defendant</u> was convicted, but guilty of a lesser degree thereof,	235
or of a lesser crime included therein, the court may modify the	236
verdict or finding accordingly, without granting or ordering a	237
new trial, and pass sentence on such verdict or finding as	238
modified, provided that this power extends to any court to which	239
the cause may be taken on appeal;	240
(E) Error of law occurring at the trial;	241
(F) When new evidence is discovered material to the	242
defendant, which <del>he</del> <u>the defendant</u> could not with reasonable	243
diligence have discovered and produced at the trial. When a	244
motion for a new trial is made upon the ground of newly	245
discovered evidence, the defendant must produce at the hearing	246
of said motion, in support thereof, the affidavits of the	247
witnesses by whom such evidence is expected to be given, and if	248
time is required by the defendant to procure such affidavits,	249
the court may postpone the hearing of the motion for such length	250
of time as under all the circumstances of the case is	251
reasonable. The prosecuting attorney may produce affidavits or	252
other evidence to impeach the affidavits of such witnesses.	253
<u>(G) When new evidence is discovered that, were it to be</u>	254

considered at a new trial, would establish a strong probability 255  
of a different result at trial. 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) and (C) of section 2945.79 of the Revised Code must be sustained by affidavit showing their truth, and may be controverted by affidavits. 285  
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(B) The causes enumerated in division (G) of section 2945.79 of the Revised Code must be sustained by affidavit showing their truth, and may be controverted by affidavit and other documentary evidence in support of the claim for relief. 289  
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**Sec. 2945.811.** (A) As used in this section, "patently frivolous" means offering evidence that, even if true, would not satisfy the standard in division (G) of section 2945.79 of the Revised Code. 293  
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(B) A motion for new trial on account of newly discovered evidence under division (G) of section 2945.79 of the Revised Code shall include all of the following: 297  
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(1) Specific, nonconclusory facts identifying the newly discovered evidence; 300  
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(2) An explanation of how the newly discovered evidence entitles the defendant to relief; 302  
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(3) An explanation of why the newly discovered evidence was not proffered at trial or at any pretrial proceedings in the case; 304  
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(4) Any supporting evidence or documentation. 307

(C) Before granting a hearing on a motion for a new trial, the court shall review, in addition to the motion and supporting evidence or documentation described in division (B) of this section, the supporting affidavits and the documentary evidence, all the files and records pertaining to the proceedings against 308  
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the defendant, including, but not limited to, the indictment, 313  
the court's journal entries, the journalized records of the 314  
clerk of the court, and the court reporter's transcript. 315

(D) If, after reviewing the materials described in 316  
division (C) of this section, the court finds that the motion 317  
for a new trial is patently frivolous, the court shall dismiss 318  
the motion. 319

(E) If the court does not dismiss the motion for a new 320  
trial pursuant to division (D) of this section, the parties may 321  
obtain discovery in accordance with the Ohio Rules of Civil 322  
Procedure. 323

(F) After reviewing the materials described in division 324  
(C) of this section and after discovery is completed pursuant to 325  
division (D) of this section, the court shall promptly hold a 326  
hearing on the motion for a new trial. 327

(G) If the court finds that the new evidence, were it to 328  
be considered at a new trial, would establish a strong 329  
probability of a different result at trial, the court shall 330  
grant a new trial. If the court does not find that the new 331  
evidence would establish a strong probability of a different 332  
result at trial, the court shall not grant a new trial. 333

(H) The court may appoint counsel to represent a person 334  
who files a motion for a new trial upon a finding that the 335  
person is indigent, unless after reviewing the materials 336  
described in division (C) of this section, the court finds that 337  
the motion is patently frivolous. 338

**Sec. 2953.21.** ~~(A)(1)(a)~~ (A) As used in this section, 339  
"patently frivolous" means offering evidence which, even if 340  
true, would not satisfy the standard in division (B)(1)(a)(v) of 341

this section. 342

(B) (1) (a) A person in any of the following categories may 343  
file a petition in the court that imposed sentence, stating the 344  
grounds for relief relied upon, and asking the court to vacate 345  
or set aside the judgment or sentence or to grant other 346  
appropriate relief: 347

(i) Any person who has been convicted of a criminal 348  
offense or adjudicated a delinquent child and who claims that 349  
there was such a denial or infringement of the person's rights 350  
as to render the judgment void or voidable under the Ohio 351  
Constitution or the Constitution of the United States; 352

(ii) Any person who has been convicted of a criminal 353  
offense and sentenced to death and who claims that there was a 354  
denial or infringement of the person's rights under either of 355  
those Constitutions that creates a reasonable probability of an 356  
altered verdict; 357

(iii) Any person who has been convicted of a criminal 358  
offense that is a felony and who is an offender for whom DNA 359  
testing that was performed under sections 2953.71 to 2953.81 of 360  
the Revised Code or under former section 2953.82 of the Revised 361  
Code and analyzed in the context of and upon consideration of 362  
all available admissible evidence related to the person's case 363  
as described in division (D) of section 2953.74 of the Revised 364  
Code provided results that establish, by clear and convincing 365  
evidence, actual innocence of that felony offense or, if the 366  
person was sentenced to death, establish, by clear and 367  
convincing evidence, actual innocence of the aggravating 368  
circumstance or circumstances the person was found guilty of 369  
committing and that is or are the basis of that sentence of 370  
death; 371

(iv) Any person who has been convicted of aggravated 372  
murder and sentenced to death for the offense and who claims 373  
that the person had a serious mental illness at the time of the 374  
commission of the offense and that as a result the court should 375  
render void the sentence of death, with the filing of the 376  
petition constituting the waiver described in division ~~(A)(3)(b)~~ 377  
(B)(3)(b) of this section; 378

(v) Any person who produces newly discovered evidence 379  
that, were it to be considered at a new trial, would establish a 380  
strong probability of a different result at trial. 381

(b) A petitioner under division ~~(A)(1)(a)~~ (B)(1)(a) of 382  
this section may file a supporting affidavit and other 383  
documentary evidence in support of the claim for relief. 384

(c) As used in division ~~(A)(1)(a)~~ (B)(1)(a) of this 385  
section: 386

(i) "Actual innocence" means that, had the results of the 387  
DNA testing conducted under sections 2953.71 to 2953.81 of the 388  
Revised Code or under former section 2953.82 of the Revised Code 389  
been presented at trial, and had those results been analyzed in 390  
the context of and upon consideration of all available 391  
admissible evidence related to the person's case as described in 392  
division (D) of section 2953.74 of the Revised Code, no 393  
reasonable factfinder would have found the petitioner guilty of 394  
the offense of which the petitioner was convicted, or, if the 395  
person was sentenced to death, no reasonable factfinder would 396  
have found the petitioner guilty of the aggravating circumstance 397  
or circumstances the petitioner was found guilty of committing 398  
and that is or are the basis of that sentence of death. 399

(ii) "Serious mental illness" has the same meaning as in 400

section 2929.025 of the Revised Code. 401

(d) As used in divisions ~~(A)(1)(a)~~ (B)(1)(a) and (c) of 402  
this section, "former section 2953.82 of the Revised Code" means 403  
section 2953.82 of the Revised Code as it existed prior to July 404  
6, 2010. 405

(e) At any time in conjunction with the filing of a 406  
petition for postconviction relief under division ~~(A)~~ (B) of 407  
this section ~~by a person who has been sentenced to death,~~ or 408  
with the litigation of a petition so filed, the court, for good 409  
cause shown, may authorize the petitioner in seeking the 410  
postconviction relief and the prosecuting attorney of the county 411  
served by the court in defending the proceeding, to take 412  
depositions and to issue subpoenas and subpoenas duces tecum in 413  
accordance with divisions ~~(A)(1)(e)~~ (B)(1)(e), ~~(A)(1)(f)~~ (B)(1) 414  
(f), and ~~(C)~~ (D) of this section, and to any other form of 415  
discovery as in a civil action that the court in its discretion 416  
permits. The court may limit the extent of discovery under this 417  
division. In addition to discovery that is relevant to the claim 418  
and was available under Criminal Rule 16 through conclusion of 419  
the original criminal trial, the court, for good cause shown, 420  
may authorize the petitioner or prosecuting attorney to take 421  
depositions and issue subpoenas and subpoenas duces tecum in 422  
either of the following circumstances: 423

(i) For any witness who testified at trial or who was 424  
disclosed by the state prior to trial, except as otherwise 425  
provided in this division, the petitioner or prosecuting 426  
attorney shows clear and convincing evidence that the witness is 427  
material and that a deposition of the witness or the issuing of 428  
a subpoena or subpoena duces tecum is of assistance in order to 429  
substantiate or refute the petitioner's claim that there is a 430

reasonable probability of an altered verdict. This division does 431  
not apply if the witness was unavailable for trial or would not 432  
voluntarily be interviewed by the defendant or prosecuting 433  
attorney. 434

(ii) For any witness with respect to whom division ~~(A)(1)~~ 435  
~~(e)(i)~~ (B)(1)(e)(i) of this section does not apply, the 436  
petitioner or prosecuting attorney shows good cause that the 437  
witness is material and that a deposition of the witness or the 438  
issuing of a subpoena or subpoena duces tecum is of assistance 439  
in order to substantiate or refute the petitioner's claim that 440  
there is a reasonable probability of an altered verdict. 441

(f) If a person ~~who has been sentenced to death and who~~ 442  
files a petition for postconviction relief under division ~~(A)~~ 443  
(B) of this section requests postconviction discovery as 444  
described in division ~~(A)(1)(e)~~ (B)(1)(e) of this section or if 445  
the prosecuting attorney of the county served by the court 446  
requests postconviction discovery as described in that division, 447  
within ten days after the docketing of the request, or within 448  
any other time that the court sets for good cause shown, the 449  
prosecuting attorney shall respond by answer or motion to the 450  
petitioner's request or the petitioner shall respond by answer 451  
or motion to the prosecuting attorney's request, whichever is 452  
applicable. 453

(g) If a person ~~who has been sentenced to death and who~~ 454  
files a petition for postconviction relief under division ~~(A)~~ 455  
(B) of this section requests postconviction discovery as 456  
described in division ~~(A)(1)(e)~~ (B)(1)(e) of this section or if 457  
the prosecuting attorney of the county served by the court 458  
requests postconviction discovery as described in that division, 459  
upon motion by the petitioner, the prosecuting attorney, or the 460



person from whom discovery is sought, and for good cause shown, 461  
the court in which the action is pending may make any order that 462  
justice requires to protect a party or person from oppression or 463  
undue burden or expense, including but not limited to the orders 464  
described in divisions ~~(A) (1) (h) (i)~~ (B) (1) (h) (i) to (viii) of 465  
this section. The court also may make any such order if, in its 466  
discretion, it determines that the discovery sought would be 467  
irrelevant to the claims made in the petition; and if the court 468  
makes any such order on that basis, it shall explain in the 469  
order the reasons why the discovery would be irrelevant. 470

(h) If a petitioner, prosecuting attorney, or person from 471  
whom discovery is sought makes a motion for an order under 472  
division ~~(A) (1) (g)~~ (B) (1) (g) of this section and the order is 473  
denied in whole or in part, the court, on terms and conditions 474  
as are just, may order that any party or person provide or 475  
permit discovery as described in division ~~(A) (1) (e)~~ (B) (1) (e) of 476  
this section. The provisions of Civil Rule 37(A) (4) apply to the 477  
award of expenses incurred in relation to the motion, except 478  
that in no case shall a court require a petitioner who is 479  
indigent to pay expenses under those provisions. 480

Before any person moves for an order under division ~~(A) (1)~~ 481  
~~(g)~~ (B) (1) (g) of this section, that person shall make a 482  
reasonable effort to resolve the matter through discussion with 483  
the petitioner or prosecuting attorney seeking discovery. A 484  
motion for an order under division ~~(A) (1) (g)~~ (B) (1) (g) of this 485  
section shall be accompanied by a statement reciting the effort 486  
made to resolve the matter in accordance with this paragraph. 487

The orders that may be made under division ~~(A) (1) (g)~~ (B) 488  
(1) (g) of this section include, but are not limited to, any of 489  
the following: 490

(i) That the discovery not be had;	491
(ii) That the discovery may be had only on specified terms and conditions, including a designation of the time or place;	492 493
(iii) That the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;	494 495 496
(iv) That certain matters not be inquired into or that the scope of the discovery be limited to certain matters;	497 498
(v) That discovery be conducted with no one present except persons designated by the court;	499 500
(vi) That a deposition after being sealed be opened only by order of the court;	501 502
(vii) That a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way;	503 504 505
(viii) That the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.	506 507 508
(i) Any postconviction discovery authorized under division <del>(A) (1) (e)</del> <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.	509 510 511 512 513
(j) Nothing in division <del>(A) (1) (e)</del> <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.	514 515 516 517

(k) Division ~~(A) (1)~~ (B) (1) of this section does not apply 518  
to any person who has been convicted of a criminal offense and 519  
sentenced to death and who has unsuccessfully raised the same 520  
claims in a petition for postconviction relief. 521

(2) (a) Except as otherwise provided in section 2953.23 of 522  
the Revised Code, a petition under division ~~(A) (1) (a) (i)~~ (B) (1) 523  
(a) (i), (ii), or (iii) of this section shall be filed no later 524  
than three hundred sixty-five days after the date on which the 525  
trial transcript is filed in the court of appeals in the direct 526  
appeal of the judgment of conviction or adjudication or, if the 527  
direct appeal involves a sentence of death, the date on which 528  
the trial transcript is filed in the supreme court. If no appeal 529  
is taken, except as otherwise provided in section 2953.23 of the 530  
Revised Code, the petition shall be filed no later than three 531  
hundred sixty-five days after the expiration of the time for 532  
filing the appeal. 533

(b) Except as otherwise provided in section 2953.23 of the 534  
Revised Code, a petition under division ~~(A) (1) (a) (iv)~~ (B) (1) (a) 535  
(iv) of this section shall be filed not later than three hundred 536  
sixty-five days after ~~the effective date of this amendment~~ April 537  
12, 2021. 538

(c) A petition under division (B) (1) (a) (v) of this section 539  
shall be filed at any time after the expiration of the time for 540  
filing the appeal. 541

(3) (a) In a petition filed under division ~~(A) (1) (a) (i)~~ (B) 542  
(1) (a) (i), (ii), ~~or (iii)~~, or (v) of this section, a person who 543  
has been sentenced to death may ask the court to render void or 544  
voidable the judgment with respect to the conviction of 545  
aggravated murder or the specification of an aggravating 546  
circumstance or the sentence of death. 547

(b) A person sentenced to death who files a petition under 548  
division ~~(A) (1) (a) (iv)~~ (B) (1) (a) (iv) of this section may ask the 549  
court to render void the sentence of death and to order the 550  
resentencing of the person under division (A) of section 2929.06 551  
of the Revised Code. If a person sentenced to death files such a 552  
petition and asks the court to render void the sentence of death 553  
and to order the resentencing of the person under division (A) 554  
of section 2929.06 of the Revised Code, the act of filing the 555  
petition constitutes a waiver of any right to be sentenced under 556  
the law that existed at the time the offense was committed and 557  
constitutes consent to be sentenced to life imprisonment without 558  
parole under division (A) of section 2929.06 of the Revised 559  
Code. 560

(4) A petitioner shall state in the original or amended 561  
petition filed under division ~~(A)~~ (B) of this section all 562  
grounds for relief claimed by the petitioner. Except as provided 563  
in section 2953.23 of the Revised Code, any ground for relief 564  
that is not so stated in the petition is waived. 565

(5) If the petitioner in a petition filed under division 566  
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), or (iii) of this section was 567  
convicted of or pleaded guilty to a felony, the petition may 568  
include a claim that the petitioner was denied the equal 569  
protection of the laws in violation of the Ohio Constitution or 570  
the United States Constitution because the sentence imposed upon 571  
the petitioner for the felony was part of a consistent pattern 572  
of disparity in sentencing by the judge who imposed the 573  
sentence, with regard to the petitioner's race, gender, ethnic 574  
background, or religion. If the supreme court adopts a rule 575  
requiring a court of common pleas to maintain information with 576  
regard to an offender's race, gender, ethnic background, or 577  
religion, the supporting evidence for the petition shall 578

include, but shall not be limited to, a copy of that type of 579  
information relative to the petitioner's sentence and copies of 580  
that type of information relative to sentences that the same 581  
judge imposed upon other persons. 582

(6) Notwithstanding any law or court rule to the contrary, 583  
there is no limit on the number of pages in, or on the length 584  
of, a petition filed under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), 585  
(ii), (iii), ~~or (iv)~~, or (v) of this section by a person who has 586  
been sentenced to death. If any court rule specifies a limit on 587  
the number of pages in, or on the length of, a petition filed 588  
under division ~~(A)(1)(a)(i)~~ (B)(1)(a)(i), (ii), (iii), ~~or (iv)~~, or 589  
(v) of this section or on a prosecuting attorney's response 590  
to such a petition by answer or motion and a person who has been 591  
sentenced to death files a petition that exceeds the limit 592  
specified for the petition, the prosecuting attorney may respond 593  
by an answer or motion that exceeds the limit specified for the 594  
response. 595

~~(B)(C)~~ The clerk of the court in which the petition for 596  
postconviction relief and, if applicable, a request for 597  
postconviction discovery described in division ~~(A)(1)(e)~~ (B)(1) 598  
(e) of this section is filed shall docket the petition and the 599  
request and bring them promptly to the attention of the court. 600  
The clerk of the court in which the petition for postconviction 601  
relief and, if applicable, a request for postconviction 602  
discovery described in division ~~(A)(1)(e)~~ (B)(1)(e) of this 603  
section is filed immediately shall forward a copy of the 604  
petition and a copy of the request if filed by the petitioner to 605  
the prosecuting attorney of the county served by the court. If 606  
the request for postconviction discovery is filed by the 607  
prosecuting attorney, the clerk of the court immediately shall 608  
forward a copy of the request to the petitioner or the 609

petitioner's counsel. 610

~~(C)~~ (D) If a person who has been sentenced to death and 611  
who files a petition for postconviction relief under division 612  
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), ~~or (iv)~~, or (v) of this 613  
section requests a deposition or the prosecuting attorney in the 614  
case requests a deposition, and if the court grants the request 615  
under division ~~(A) (1) (e)~~ (B) (1) (e) of this section, the court 616  
shall notify the petitioner or the petitioner's counsel and the 617  
prosecuting attorney. The deposition shall be conducted pursuant 618  
to divisions (B), (D), and (E) of Criminal Rule 15. 619  
Notwithstanding division (C) of Criminal Rule 15, the petitioner 620  
is not entitled to attend the deposition. The prosecuting 621  
attorney shall be permitted to attend and participate in any 622  
deposition. 623

~~(D)~~ (E) The court shall consider a petition that is timely 624  
filed within the period specified in division ~~(A) (2)~~ (B) (2) of 625  
this section even if a direct appeal of the judgment is pending. 626  
Before granting a hearing on a petition filed under division ~~(A)~~ 627  
~~(1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), ~~or (iv)~~, or (v) of this 628  
section, the court shall determine whether there are substantive 629  
grounds for relief. In making such a determination, the court 630  
shall consider, in addition to the petition, the supporting 631  
affidavits, and the documentary evidence, all the files and 632  
records pertaining to the proceedings against the petitioner, 633  
including, but not limited to, the indictment, the court's 634  
journal entries, the journalized records of the clerk of the 635  
court, and the court reporter's transcript. The court reporter's 636  
transcript, if ordered and certified by the court, shall be 637  
taxed as court costs. If the court dismisses the petition, it 638  
shall make and file findings of fact and conclusions of law with 639  
respect to such dismissal. If the petition was filed by a person 640

who has been sentenced to death, the findings of fact and 641  
conclusions of law shall state specifically the reasons for the 642  
dismissal of the petition and of each claim it contains. 643

~~(E)~~ (F) Within ten days after the docketing of the 644  
petition, or within any further time that the court may fix for 645  
good cause shown, the prosecuting attorney shall respond by 646  
answer or motion. Division ~~(A) (6)~~ (B) (6) of this section applies 647  
with respect to the prosecuting attorney's response. Within 648  
twenty days from the date the issues are raised, either party 649  
may move for summary judgment. The right to summary judgment 650  
shall appear on the face of the record. 651

~~(F)~~ (G) For a petition filed under division (B) (1) 652  
(a) (i), (ii), (iii), or (iv) of this section, unless the 653  
petition and the files and records of the case show the 654  
petitioner is not entitled to relief, the court shall proceed to 655  
a prompt hearing on the issues even if a direct appeal of the 656  
case is pending. For a petition filed under division (B) (1) (a) 657  
(v) of this section, unless the petition and the files and 658  
records of the case show that the petition is patently 659  
frivolous, the court shall hold a hearing on the issues thirty 660  
days after the prosecuting attorney is required to respond by 661  
answer or motion as described in division (E) of this section 662  
even if a direct appeal of the case is pending. If the court 663  
notifies the parties that it has found grounds for granting 664  
relief, either party may request an appellate court in which a 665  
direct appeal of the judgment is pending to remand the pending 666  
case to the court. 667

With respect to a petition filed under division ~~(A) (1) (a)~~ 668  
~~(iv)~~ (B) (1) (a) (iv) of this section, the procedures and rules 669  
regarding introduction of evidence and burden of proof at the 670

pretrial hearing that are set forth in divisions (C), (D), and 671  
(F) of section 2929.025 of the Revised Code apply in considering 672  
the petition. With respect to such a petition, the grounds for 673  
granting relief are that the person has been diagnosed with one 674  
or more of the conditions set forth in division (A)(1)(a) of 675  
section 2929.025 of the Revised Code and that, at the time of 676  
the aggravated murder that was the basis of the sentence of 677  
death, the condition or conditions significantly impaired the 678  
person's capacity in a manner described in division (A)(1)(b) of 679  
that section. 680

~~(G)~~(H) A petitioner who files a petition under division 681  
~~(A)(1)(a)(i)~~(B)(1)(a)(i), (ii), (iii), ~~or (iv)~~, or (v) of this 682  
section may amend the petition as follows: 683

(1) If the petition was filed by a person who has been 684  
sentenced to death, at any time that is not later than one 685  
hundred eighty days after the petition is filed, the petitioner 686  
may amend the petition with or without leave or prejudice to the 687  
proceedings. 688

(2) If division ~~(G)(1)~~(H)(1) of this section does not 689  
apply, at any time before the answer or motion is filed, the 690  
petitioner may amend the petition with or without leave or 691  
prejudice to the proceedings. 692

(3) The petitioner may amend the petition with leave of 693  
court at any time after the expiration of the applicable period 694  
specified in division ~~(G)(1)~~(H)(1) or (2) of this section. 695

~~(H)~~(I) If the court does not find grounds for granting 696  
relief, it shall make and file findings of fact and conclusions 697  
of law and shall enter judgment denying relief on the petition. 698  
If the petition was filed by a person who has been sentenced to 699



death, the findings of fact and conclusions of law shall state 700  
specifically the reasons for the denial of relief on the 701  
petition and of each claim it contains. If no direct appeal of 702  
the case is pending and the court finds grounds for relief or if 703  
a pending direct appeal of the case has been remanded to the 704  
court pursuant to a request made pursuant to division ~~(F)~~(G) of 705  
this section and the court finds grounds for granting relief, it 706  
shall make and file findings of fact and conclusions of law and 707  
shall enter a judgment that vacates and sets aside the judgment 708  
in question, and, in the case of a petitioner who is a prisoner 709  
in custody, except as otherwise described in this division, 710  
shall discharge or resentence the petitioner or grant a new 711  
trial as the court determines appropriate. If the court finds 712  
grounds for relief in the case of a petitioner who filed a 713  
petition under division ~~(A)(1)(a)(iv)~~(B)(1)(a)(iv) of this 714  
section, the court shall render void the sentence of death and 715  
order the resentencing of the offender under division (A) of 716  
section 2929.06 of the Revised Code. If the petitioner has been 717  
sentenced to death, the findings of fact and conclusions of law 718  
shall state specifically the reasons for the finding of grounds 719  
for granting the relief, with respect to each claim contained in 720  
the petition. The court also may make supplementary orders to 721  
the relief granted, concerning such matters as arraignment, 722  
retrial, custody, and bail. If the trial court's order granting 723  
the petition is reversed on appeal and if the direct appeal of 724  
the case has been remanded from an appellate court pursuant to a 725  
request under division ~~(F)~~(G) of this section, the appellate 726  
court reversing the order granting the petition shall notify the 727  
appellate court in which the direct appeal of the case was 728  
pending at the time of the remand of the reversal and remand of 729  
the trial court's order. Upon the reversal and remand of the 730  
trial court's order granting the petition, regardless of whether 731

notice is sent or received, the direct appeal of the case that 732  
was remanded is reinstated. 733

~~(I)~~ (J) Upon the filing of a petition pursuant to division 734  
~~(A) (1) (a) (i)~~ (B) (1) (a) (i), (ii), (iii), or (v) of this 735  
section by a person sentenced to death, only the supreme court 736  
may stay execution of the sentence of death. 737

~~(J) (1)~~ If (K) (1) (a) Except as provided in division (J) (1) 738  
(b) of this section, if a person sentenced to death intends to 739  
file a petition under division (B) (1) (a) (i), (ii), (iii), or 740  
(iv) of this section, the court shall appoint counsel to 741  
represent the person upon a finding that the person is indigent 742  
and that the person either accepts the appointment of counsel or 743  
is unable to make a competent decision whether to accept or 744  
reject the appointment of counsel. The court may decline to 745  
appoint counsel for the person only upon a finding, after a 746  
hearing if necessary, that the person rejects the appointment of 747  
counsel and understands the legal consequences of that decision 748  
or upon a finding that the person is not indigent. If a person 749  
sentenced to death intends to file a petition under division (B) 750  
(1) (a) (v) of this section, the court shall appoint counsel to 751  
represent the person upon a finding that the person is indigent 752  
and that the person either accepts the appointment of counsel or 753  
is unable to make a competent decision whether to accept or 754  
reject the appointment of counsel, unless the court finds that 755  
the evidence is patently frivolous. The court may decline to 756  
appoint counsel for the person only upon a finding, after a 757  
hearing if necessary, that the person rejects the appointment of 758  
counsel and understands the legal consequences of that decision 759  
or upon a finding that the person is not indigent. 760

(b) The court may appoint counsel to represent a person 761

who files a petition under division (B) (1) (a) (v) of this section 762  
upon a finding that the person is indigent, unless the court 763  
finds that the evidence is patently frivolous. 764

(2) The court shall not appoint as counsel under division 765  
~~(J) (1)~~ (K) (1) of this section an attorney who represented the 766  
petitioner at trial in the case to which the petition relates 767  
unless the person and the attorney expressly request the 768  
appointment. The court shall appoint as counsel under division 769  
~~(J) (1)~~ (K) (1) of this section only an attorney who is certified 770  
under Rule 20 of the Rules of Superintendence for the Courts of 771  
Ohio to represent indigent defendants charged with or convicted 772  
of an offense for which the death penalty can be or has been 773  
imposed. The ineffectiveness or incompetence of counsel during 774  
proceedings under this section does not constitute grounds for 775  
relief in a proceeding under this section, in an appeal of any 776  
action under this section, or in an application to reopen a 777  
direct appeal. 778

(3) Division ~~(J)~~ (K) of this section does not preclude 779  
attorneys who represent the state of Ohio from invoking the 780  
provisions of 28 U.S.C. 154 with respect to capital cases that 781  
were pending in federal habeas corpus proceedings prior to July 782  
1, 1996, insofar as the petitioners in those cases were 783  
represented in proceedings under this section by one or more 784  
counsel appointed by the court under this section or section 785  
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 786  
appointed counsel meet the requirements of division ~~(J) (2)~~ (K) 787  
(2) of this section. 788

~~(K)~~ (L) Subject to the appeal of a sentence for a felony 789  
that is authorized by section 2953.08 of the Revised Code, the 790  
remedy set forth in this section is the exclusive remedy by 791

which a person may bring a collateral challenge to the validity 792  
of a conviction or sentence in a criminal case or to the 793  
validity of an adjudication of a child as a delinquent child for 794  
the commission of an act that would be a criminal offense if 795  
committed by an adult or the validity of a related order of 796  
disposition. 797

**Sec. 2953.23.** (A) Whether a hearing is or is not held on a 798  
petition filed pursuant to section 2953.21 of the Revised Code, 799  
a court may not entertain a petition filed after the expiration 800  
of the period prescribed in division ~~(A)~~(B) of that section or 801  
a second petition or successive petitions for similar relief on 802  
behalf of a petitioner unless division (A)(1) or (2) of this 803  
section applies: 804

(1) Both of the following apply: 805

(a) Either the petitioner shows that the petitioner was 806  
unavoidably prevented from discovery of the facts upon which the 807  
petitioner must rely to present the claim for relief, or, 808  
subsequent to the period prescribed in division ~~(A)(2)~~(B)(2) of 809  
section 2953.21 of the Revised Code or to the filing of an 810  
earlier petition, the United States Supreme Court recognized a 811  
new federal or state right that applies retroactively to persons 812  
in the petitioner's situation, and the petition asserts a claim 813  
based on that right. 814

(b) The petitioner shows by clear and convincing evidence 815  
that, but for constitutional error at trial, no reasonable 816  
factfinder would have found the petitioner guilty of the offense 817  
of which the petitioner was convicted or, if the claim 818  
challenges a sentence of death that, but for constitutional 819  
error at the sentencing hearing, no reasonable factfinder would 820  
have found the petitioner eligible for the death sentence. 821

(2) The petitioner was convicted of a felony, the 822  
petitioner is an offender for whom DNA testing was performed 823  
under sections 2953.71 to 2953.81 of the Revised Code or under 824  
former section 2953.82 of the Revised Code and analyzed in the 825  
context of and upon consideration of all available admissible 826  
evidence related to the inmate's case as described in division 827  
(D) of section 2953.74 of the Revised Code, and the results of 828  
the DNA testing establish, by clear and convincing evidence, 829  
actual innocence of that felony offense or, if the person was 830  
sentenced to death, establish, by clear and convincing evidence, 831  
actual innocence of the aggravating circumstance or 832  
circumstances the person was found guilty of committing and that 833  
is or are the basis of that sentence of death. 834

As used in this division, "actual innocence" has the same 835  
meaning as in division ~~(A) (1) (e)~~ (B) (1) (c) of section 2953.21 of 836  
the Revised Code, and "former section 2953.82 of the Revised 837  
Code" has the same meaning as in division ~~(A) (1) (d)~~ (B) (1) (d) of 838  
section 2953.21 of the Revised Code. 839

(B) An order awarding or denying relief sought in a 840  
petition filed pursuant to section 2953.21 of the Revised Code 841  
is a final judgment and may be appealed pursuant to Chapter 842  
2953. of the Revised Code. 843

If a petition filed pursuant to section 2953.21 of the 844  
Revised Code by a person who has been sentenced to death is 845  
denied and the person appeals the judgment, notwithstanding any 846  
law or court rule to the contrary, there is no limit on the 847  
number of pages in, or on the length of, a notice of appeal or 848  
briefs related to an appeal filed by the person. If any court 849  
rule specifies a limit on the number of pages in, or on the 850  
length of, a notice of appeal or briefs described in this 851

division or on a prosecuting attorney's response or briefs with 852  
respect to such an appeal and a person who has been sentenced to 853  
death files a notice of appeal or briefs that exceed the limit 854  
specified for the petition, the prosecuting attorney may file a 855  
response or briefs that exceed the limit specified for the 856  
answer or briefs. 857

**Section 2.** That existing sections 181.25, 2929.06, 858  
2945.79, 2945.80, 2945.81, 2953.21, and 2953.23 of the Revised 859  
Code are hereby repealed. 860

**Section 3.** Section 2929.06 of the Revised Code is 861  
presented in this act as a composite of the section as amended 862  
by both H.B. 136 and S.B. 256 of the 133rd General Assembly. The 863  
General Assembly, applying the principle stated in division (B) 864  
of section 1.52 of the Revised Code that amendments are to be 865  
harmonized if reasonably capable of simultaneous operation, 866  
finds that the composite is the resulting version of the section 867  
in effect prior to the effective date of the section as 868  
presented in this act. 869