

As Introduced

**125th General Assembly
Regular Session
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S. B. No. 11

**Senators Goodman, Blessing, Hottinger, Harris, Jacobson, Randy Gardner,
Coughlin, Carey, Prentiss, Spada, Herington**

A B I L L

To amend sections 2953.21 and 2953.23 and to enact 1
sections 2953.71 to 2953.81 of the Revised Code to 2
establish a mechanism for the DNA testing of 3
certain inmates serving a prison term for a felony 4
or under a sentence of death. 5

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

Section 1. That sections 2953.21 and 2953.23 be amended and 6
sections 2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 7
2953.77, 2953.78, 2953.79, 2953.80, and 2953.81 of the Revised 8
Code be enacted to read as follows: 9

Sec. 2953.21. (A)(1) Any person who has been convicted of a 10
criminal offense or adjudicated a delinquent child and who claims 11
that there was such a denial or infringement of the person's 12
rights as to render the judgment void or voidable under the Ohio 13
Constitution or the Constitution of the United States, and any 14
person who has been convicted of a criminal offense that is a 15
felony, who is an eligible inmate, and for whom DNA testing that 16
was performed under sections 2953.71 to 2953.81 of the Revised 17
Code provided results that clearly establish that the person is 18
actually innocent of that felony offense or, if the person was 19

sentenced to death, clearly establish that the person is actually 20
innocent of the aggravating circumstance the person was found 21
guilty of committing and that is the basis of that sentence of 22
death, may file a petition in the court that imposed sentence, 23
stating the grounds for relief relied upon, and asking the court 24
to vacate or set aside the judgment or sentence or to grant other 25
appropriate relief. The petitioner may file a supporting affidavit 26
and other documentary evidence in support of the claim for relief. 27

As used in this division, "eligible inmate" has the same 28
meaning as in section 2953.71 of the Revised Code. 29

(2) A Except as otherwise provided in section 2953.23 of the 30
Revised Code, a petition under division (A)(1) of this section 31
shall be filed no later than one hundred eighty days after the 32
date on which the trial transcript is filed in the court of 33
appeals in the direct appeal of the judgment of conviction or 34
adjudication or, if the direct appeal involves a sentence of 35
death, the date on which the trial transcript is filed in the 36
supreme court. If no appeal is taken, except as otherwise provided 37
in section 2953.23 of the Revised Code, the petition shall be 38
filed no later than one hundred eighty days after the expiration 39
of the time for filing the appeal. 40

(3) In a petition filed under division (A) of this section, a 41
person ~~upon whom a sentence of~~ who has been sentenced to death ~~has~~ 42
~~been imposed~~ may ask the court to render void or voidable the 43
judgment with respect to the conviction of aggravated murder or 44
the specification of an aggravating circumstance or the sentence 45
of death. 46

(4) A petitioner shall state in the original or amended 47
petition filed under division (A) of this section all grounds for 48
relief claimed by the petitioner. Except as provided in section 49
2953.23 of the Revised Code, any ground for relief that is not so 50
stated in the petition is waived. 51

(5) If the petitioner in a petition filed under division (A) 52
of this section was convicted of or pleaded guilty to a felony, 53
the petition may include a claim that the petitioner was denied 54
the equal protection of the laws in violation of the Ohio 55
Constitution or the United States Constitution because the 56
sentence imposed upon the petitioner for the felony was part of a 57
consistent pattern of disparity in sentencing by the judge who 58
imposed the sentence, with regard to the petitioner's race, 59
gender, ethnic background, or religion. If the supreme court 60
adopts a rule requiring a court of common pleas to maintain 61
information with regard to an offender's race, gender, ethnic 62
background, or religion, the supporting evidence for the petition 63
shall include, but shall not be limited to, a copy of that type of 64
information relative to the petitioner's sentence and copies of 65
that type of information relative to sentences that the same judge 66
imposed upon other persons. 67

(B) The clerk of the court in which the petition is filed 68
shall docket the petition and bring it promptly to the attention 69
of the court. The petitioner need not serve a copy of the petition 70
on the prosecuting attorney. The clerk of the court in which the 71
petition is filed immediately shall forward a copy of the petition 72
to the prosecuting attorney of that county. 73

(C) The court shall consider a petition that is timely filed 74
under division (A)(2) of this section even if a direct appeal of 75
the judgment is pending. Before granting a hearing on a petition 76
filed under division (A) of this section, the court shall 77
determine whether there are substantive grounds for relief. In 78
making such a determination, the court shall consider, in addition 79
to the petition, the supporting affidavits, and the documentary 80
evidence, all the files and records pertaining to the proceedings 81
against the petitioner, including, but not limited to, the 82
indictment, the court's journal entries, the journalized records 83

of the clerk of the court, and the court reporter's transcript. 84
The court reporter's transcript, if ordered and certified by the 85
court, shall be taxed as court costs. If the court dismisses the 86
petition, it shall make and file findings of fact and conclusions 87
of law with respect to such dismissal. 88

(D) Within ten days after the docketing of the petition, or 89
within any further time that the court may fix for good cause 90
shown, the prosecuting attorney shall respond by answer or motion. 91
Within twenty days from the date the issues are ~~made up~~ raised, 92
either party may move for summary judgment. The right to summary 93
judgment shall appear on the face of the record. 94

(E) Unless the petition and the files and records of the case 95
show the petitioner is not entitled to relief, the court shall 96
proceed to a prompt hearing on the issues even if a direct appeal 97
of the case is pending. If the court notifies the parties that it 98
has found grounds for granting relief, either party may request an 99
appellate court in which a direct appeal of the judgment is 100
pending to remand the pending case to the court. 101

(F) At any time before the answer or motion is filed, the 102
petitioner may amend the petition with or without leave or 103
prejudice to the proceedings. The petitioner may amend the 104
petition with leave of court at any time thereafter. 105

(G) If the court does not find grounds for granting relief, 106
it shall make and file findings of fact and conclusions of law and 107
shall enter judgment denying relief on the petition. If no direct 108
appeal of the case is pending and the court finds grounds for 109
relief or if a pending direct appeal of the case has been remanded 110
to the court pursuant to a request made pursuant to division (E) 111
of this section and the court finds grounds for granting relief, 112
it shall make and file findings of fact and conclusions of law and 113
shall enter a judgment that vacates and sets aside the judgment in 114
question, and, in the case of a petitioner who is a prisoner in 115

custody, shall discharge or resentence the petitioner or grant a 116
new trial as the court determines appropriate. The court also may 117
make supplementary orders to the relief granted, concerning such 118
matters as rearraignment, retrial, custody, and bail. If the trial 119
court's order granting the petition is reversed on appeal and if 120
the direct appeal of the case has been remanded from an appellate 121
court pursuant to a request under division (E) of this section, 122
the appellate court reversing the order granting the petition 123
shall notify the appellate court in which the direct appeal of the 124
case was pending at the time of the remand of the reversal and 125
remand of the trial court's order. Upon the reversal and remand of 126
the trial court's order granting the petition, regardless of 127
whether notice is sent or received, the direct appeal of the case 128
that was remanded is reinstated. 129

(H)(1) Upon the filing of a petition pursuant to division (A) 130
of this section by a ~~prisoner in a state correctional institution~~ 131
~~who has received the death penalty~~ person sentenced to death that 132
is based upon a claimed denial or infringement of the person's 133
rights that renders the judgment void or voidable under the Ohio 134
Constitution or the Constitution of the United States, the court 135
that set the date for the execution of the sentence of death may 136
stay execution of the judgment challenged by the petition. 137

(2) Upon the filing of a petition pursuant to division (A) of 138
this section by a person sentenced to death that is based upon 139
results of DNA testing performed under sections 2953.71 to 2953.81 140
of the Revised Code as described in that division, execution of 141
the sentence of death may be suspended only upon an order of the 142
supreme court. 143

(I)(1) If a person ~~who has received the death penalty~~ 144
sentenced to death intends to file a petition under this section, 145
the court shall appoint counsel to represent the person upon a 146
finding that the person is indigent and that the person either 147

accepts the appointment of counsel or is unable to make a 148
competent decision whether to accept or reject the appointment of 149
counsel. The court may decline to appoint counsel for the person 150
only upon a finding, after a hearing if necessary, that the person 151
rejects the appointment of counsel and understands the legal 152
consequences of that decision or upon a finding that the person is 153
not indigent. 154

(2) The court shall not appoint as counsel under division 155
(I)(1) of this section an attorney who represented the petitioner 156
at trial in the case to which the petition relates unless the 157
person and the attorney expressly request the appointment. The 158
court shall appoint as counsel under division (I)(1) of this 159
section only an attorney who is certified under Rule 20 of the 160
Rules of Superintendence for the Courts of Ohio to represent 161
indigent defendants charged with or convicted of an offense for 162
which the death penalty can be or has been imposed. The 163
ineffectiveness or incompetence of counsel during proceedings 164
under this section does not constitute grounds for relief in a 165
proceeding under this section, in an appeal of any action under 166
this section, or in an application to reopen a direct appeal. 167

(3) Division (I) of this section does not preclude attorneys 168
who represent the state of Ohio from invoking the provisions of 28 169
U.S.C. 154 with respect to capital cases that were pending in 170
federal habeas corpus proceedings prior to the effective date of 171
this amendment insofar as the petitioners in those cases were 172
represented in proceedings under this section by one or more 173
counsel appointed by the court under this section or section 174
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 175
appointed counsel meet the requirements of division (I)(2) of this 176
section. 177

(J) Subject to the appeal of a sentence for a felony that is 178
authorized by section 2953.08 of the Revised Code, the remedy set 179

forth in this section is the exclusive remedy by which a person 180
may bring a collateral challenge to the validity of a conviction 181
or sentence in a criminal case or to the validity of an 182
adjudication of a child as a delinquent child for the commission 183
of an act that would be a criminal offense if committed by an 184
adult or the validity of a related order of disposition. 185

Sec. 2953.23. (A) Whether a hearing is or is not held on a 186
petition filed pursuant to section 2953.21 of the Revised Code, a 187
court may not entertain a petition filed after the expiration of 188
the period prescribed in division (A) of that section or a second 189
petition or successive petitions for similar relief on behalf of a 190
petitioner unless ~~both~~ division (A)(1) or (2) of this section 191
applies: 192

(1) Both of the following apply: 193

~~(1) Either of the following applies:~~ 194

(a) ~~The~~ Either the petitioner shows that the petitioner was 195
unavoidably prevented from discovery of the facts upon which the 196
petitioner must rely to present the claim for relief. 197

~~(b) Subsequent, or, subsequent~~ to the period prescribed in 198
division (A)(2) of section 2953.21 of the Revised Code or to the 199
filing of an earlier petition, the United States Supreme Court 200
recognized a new federal or state right that applies retroactively 201
to persons in the petitioner's situation, and the petition asserts 202
a claim based on that right. 203

~~(2)(b)~~ The petitioner shows by clear and convincing evidence 204
that, but for constitutional error at trial, no reasonable 205
factfinder would have found the petitioner guilty of the offense 206
of which the petitioner was convicted or, if the claim challenges 207
a sentence of death that, but for constitutional error at the 208
sentencing hearing, no reasonable factfinder would have found the 209

petitioner eligible for the death sentence. 210

(2) The petitioner was convicted of a felony, the petitioner 211
is an eligible inmate, as defined in section 2953.71 of the 212
Revised Code, for whom DNA testing was performed under sections 213
2953.71 to 2953.81 of the Revised Code, and the results of the DNA 214
testing clearly establish that the person is actually innocent of 215
that felony offense or, if the person was sentenced to death, 216
clearly establish that the person is actually innocent of the 217
aggravating circumstance the person was found guilty of committing 218
and that is the basis of that sentence of death. 219

(B) An order awarding or denying relief sought in a petition 220
filed pursuant to section 2953.21 of the Revised Code is a final 221
judgment and may be appealed pursuant to Chapter 2953. of the 222
Revised Code. 223

Sec. 2953.71. As used in sections 2953.71 to 2953.81 of the 224
Revised Code: 225

(A) "Application" or "application for DNA testing" means the 226
form by which an eligible inmate requests the state to do DNA 227
testing on biological material from the case in which the inmate 228
was convicted of the offense for which the inmate is an eligible 229
inmate and is requesting the DNA testing under sections 2953.71 to 230
2953.81 of the Revised Code. 231

(B) "Biological material" means blood, white blood cells, 232
skin, tissue, sperm, saliva, vaginal swabs, mouth swabs, mouth 233
scrapings, bones, hair, and any other biological substance of a 234
similar nature. 235

(C) "Chain of custody" means a record that tracks a subject 236
sample of biological material from the time the biological 237
material was first obtained until the time it currently exists in 238
its place of storage and, in relation to a DNA sample, a record 239

that tracks the DNA sample from the time it was first obtained 240
until it currently exists in its place of storage. For purposes of 241
this division, examples of when biological material or a DNA 242
sample is first obtained include, but are not limited to, 243
obtaining the material or sample at the scene of a crime, from a 244
victim, from an inmate, or in any other manner or time as is 245
appropriate in the facts and circumstances present. 246

(D) "Custodial agency" means the group or entity that has the 247
responsibility to maintain biological material in question. 248

(E) "Custodian" means the person who is the primary 249
representative of a custodial agency. 250

(F) "Eligible inmate" means an inmate who is eligible under 251
division (C) of section 2953.72 of the Revised Code to request DNA 252
testing to be conducted under sections 2953.71 to 2953.81 of the 253
Revised Code. 254

(G) "Exclusion" or "exclusion result" means a result of DNA 255
testing that scientifically precludes or forecloses the subject 256
inmate as a contributor of biological material recovered from the 257
crime scene or victim in question, in relation to the offense for 258
which the inmate is an eligible inmate and for which the sentence 259
of death or prison term was imposed upon the inmate. 260

(H) "Extracting personnel" means medically approved personnel 261
who are employed to physically obtain an inmate DNA specimen for 262
purposes of DNA testing under sections 2953.71 to 2953.81 of the 263
Revised Code. 264

(I) "Inclusion" or "inclusion result" means a result of DNA 265
testing that scientifically cannot exclude, or that holds 266
accountable, the subject inmate as a contributor of biological 267
material recovered from the crime scene or victim in question, in 268
relation to the offense for which the inmate is an eligible inmate 269
and for which the sentence of death or prison term was imposed 270

<u>upon the inmate.</u>	271
<u>(J) "Inconclusive" or "inconclusive result" means a result of DNA testing that is rendered when a scientifically appropriate and definitive DNA analysis or result, or both, cannot be determined.</u>	272 273 274
<u>(K) "Inmate" means an inmate in a prison who was sentenced by a court, or by a jury and a court, of this state.</u>	275 276
<u>(L) "Offer" means the opportunity provided under sections 2953.71 to 2953.81 of the Revised Code for an eligible inmate to request DNA testing from the state.</u>	277 278 279
<u>(M) "Outcome determinative" means that had the results of DNA testing been presented at the subject eligible inmate's trial and been found relevant and admissible with respect to the felony offense for which the subject inmate is an eligible inmate and is requesting the DNA testing, no reasonable factfinder would have found the inmate guilty of that offense or, if the inmate was sentenced to death relative to that offense, would have found the inmate guilty of the aggravating circumstance the inmate was found guilty of committing and that is the basis of that sentence of death.</u>	280 281 282 283 284 285 286 287 288 289
<u>(N) "Parent sample" means the biological material first obtained from a crime scene or a victim of an offense for which an inmate is an eligible inmate and from which a sample will be presently taken to do a DNA comparison to the DNA of the subject inmate under sections 2953.71 to 2953.81 of the Revised Code.</u>	290 291 292 293 294
<u>(O) "Prison" has the same meaning as in section 2929.01 of the Revised Code.</u>	295 296
<u>(P) "Prosecuting attorney" means the prosecuting attorney who, or whose office, prosecuted the case in which the subject inmate was convicted of the offense for which the inmate is an eligible inmate and is requesting the DNA testing.</u>	297 298 299 300

(O) "Prosecuting authority" means the prosecuting attorney or the attorney general. 301
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(R) "Reasonable diligence" means a degree of diligence that is comparable to the diligence a reasonable person would employ in searching for information regarding an important matter in the person's own life. 303
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(S) "Testing authority" means a laboratory at which DNA testing will be conducted under sections 2953.71 to 2953.81 of the Revised Code. 307
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Sec. 2953.72. (A) Any eligible inmate who wishes to request DNA testing under sections 2953.71 to 2953.81 of the Revised Code shall submit an application for the testing to the court of common pleas specified in section 2953.73 of the Revised Code, on a form prescribed by the attorney general for this purpose. The eligible inmate shall submit the application within the period of time, and in accordance with the procedures, set forth in section 2953.73 of the Revised Code. The eligible inmate shall specify on the application the offense or offenses for which the inmate is an eligible inmate and is requesting the DNA testing. Along with the application, the eligible inmate shall submit an acknowledgment that is on a form prescribed by the attorney general for this purpose and that is signed by the inmate. The acknowledgment shall set forth all of the following: 310
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(1) That sections 2953.71 to 2953.81 of the Revised Code contemplate only offers for DNA testing of eligible inmates at a stage of a prosecution or case after the inmate has been sentenced to a prison term or a sentence of death, that any exclusion or inclusion result of DNA testing rendered pursuant to those sections may be used by a party in a postconviction proceeding under sections 2953.21 to 2953.23 of the Revised Code as described in section 2953.81 of the Revised Code, and that all requests for 324
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any DNA testing made at trial will continue to be handled by the 332
prosecuting attorney in the case; 333

(2) That the process of conducting postconviction DNA testing 334
for an eligible inmate under sections 2953.71 to 2953.81 of the 335
Revised Code begins when the inmate submits an application under 336
section 2953.73 of the Revised Code and the acknowledgment 337
described in this section; 338

(3) That the eligible inmate must submit the application and 339
acknowledgment to the court of common pleas that heard the case in 340
which the inmate was convicted of the offense for which the inmate 341
is an eligible offender and is requesting the DNA testing; 342

(4) That the state has established a set of criteria set 343
forth in section 2953.74 of the Revised Code by which eligible 344
inmate applications for DNA testing will be screened and that a 345
judge of a court of common pleas upon receipt of a properly filed 346
application and accompanying acknowledgment will apply those 347
criteria to determine whether to accept or reject the application; 348

(5) That the results of DNA testing conducted under sections 349
2953.71 to 2953.81 of the Revised Code will be provided as 350
described in section 2953.81 of the Revised Code to all parties in 351
the postconviction proceedings and will be reported to various 352
courts; 353

(6) That, if DNA testing is conducted with respect to an 354
inmate under sections 2953.71 to 2953.81 of the Revised Code, the 355
state will not offer the inmate a retest if an inclusion result is 356
achieved relative to the testing and that, if the state were to 357
offer a retest after an inclusion result, the policy would create 358
an atmosphere in which endless testing could occur and in which 359
postconviction proceedings could be stalled for many years; 360

(7) That, if the court rejects an eligible inmate's 361
application for DNA testing because the inmate does not satisfy 362

the acceptance criteria described in division (A)(4) of this 363
section, the state will not accept or consider subsequent 364
applications; 365

(8) That the acknowledgment memorializes the provisions of 366
sections 2953.71 to 2953.81 of the Revised Code with respect to 367
the offering of postconviction DNA testing to inmates, that those 368
provisions do not give any inmate any additional constitutional 369
right that the inmate did not have prior to the effective date of 370
those provisions, that the state has no duty or obligation to 371
offer postconviction DNA testing to inmates, that the court of 372
common pleas has the sole discretion to determine whether an 373
inmate is an eligible inmate and whether an eligible inmate's 374
application for DNA testing satisfies the acceptance criteria 375
described in division (A)(4) of this section and whether the 376
application should be accepted or rejected, that the judgment of 377
the court of common pleas is final and is not appealable by any 378
person to any court, and that no determination otherwise made by 379
the state in the exercise of its discretion regarding the 380
eligibility of an inmate or regarding postconviction DNA testing 381
under those provisions is reviewable by or appealable to any 382
court; 383

(9) That the manner in which sections 2953.71 to 2953.81 of 384
the Revised Code with respect to the offering of postconviction 385
DNA testing to inmates are carried out does not confer any 386
constitutional right upon any inmate, that the state has 387
established guidelines and procedures relative to those provisions 388
to ensure that they are carried out with both justice and 389
efficiency in mind, and that an inmate who participates in any 390
phase of the mechanism contained in those provisions, including, 391
but not limited to, applying for DNA testing and being rejected, 392
having an application for DNA testing accepted and not receiving 393
the test, or having DNA testing conducted and receiving 394

unfavorable results, does not gain as a result of the 395
participation any constitutional right to challenge, or any right 396
to any review or appeal of, the manner in which those provisions 397
are carried out; 398

(10) That the most basic aspect of sections 2953.71 to 399
2953.81 of the Revised Code is that, in order for DNA testing to 400
occur, there must be an inmate sample against which other evidence 401
may be compared, that, if an eligible inmate's application is 402
accepted but the inmate subsequently refuses to submit to the 403
collection of the sample of biological material from the inmate or 404
hinders the state from obtaining a sample of biological material 405
from the inmate, the goal of those provisions will be frustrated, 406
and that an inmate's refusal or hindrance constitutes a rejection 407
by the inmate of the state's offer to conduct or facilitate DNA 408
testing for the inmate, results in the state's offer to conduct or 409
facilitate DNA testing for the inmate automatically being 410
withdrawn as a matter of law, and releases the state from any 411
agreement to conduct or facilitate DNA testing for the inmate. 412

(B) The attorney general shall prescribe a form to be used to 413
make an application for DNA testing under division (A) of this 414
section and section 2953.73 of the Revised Code and a form to be 415
used to provide the acknowledgment described in division (A) of 416
this section. The forms shall include all information described in 417
division (A) of this section, spaces for an inmate to insert all 418
information necessary to complete the forms, including, but not 419
limited to, specifying the offense or offenses for which the 420
inmate is an eligible inmate and is requesting the DNA testing, 421
and any other information or material the attorney general 422
determines is necessary or relevant, and instructions informing 423
the clerk of the court of common pleas of the clerk's duties 424
regarding the application after it is submitted to the court and 425
the manner of fulfilling those duties. The attorney general shall 426

distribute copies of the prescribed forms to the department of 427
rehabilitation and correction, the department shall ensure that 428
each prison in which inmates are housed has a supply of copies of 429
the forms, and the department shall ensure that copies of the 430
forms are provided free of charge to any inmate who requests them. 431

(C)(1) An inmate is eligible to request DNA testing to be 432
conducted under sections 2953.71 to 2953.81 of the Revised Code 433
only if all of the following apply: 434

(a) The offense for which the inmate claims to be an eligible 435
inmate is a felony that was committed prior to the effective date 436
of this section, and the inmate was convicted by a judge or jury 437
of that offense. 438

(b) The inmate was sentenced to a prison term or sentence of 439
death for the felony described in division (C)(1)(a) of this 440
section and, on the effective date of this section, is in prison 441
serving that prison term or under that sentence of death. 442

(c) On the effective date of this section, the inmate has at 443
least one year remaining on the prison term described in division 444
(C)(1)(b) of this section, or the inmate is in prison under a 445
sentence of death as described in that division. 446

(2) An inmate is not an eligible inmate under division (C)(1) 447
of this section regarding any offense to which the inmate pleaded 448
guilty or no contest. 449

(D) The fact that an inmate is an eligible inmate does not, 450
in and of itself, mean that a request for DNA testing that the 451
inmate makes will be granted or that DNA testing will be conducted 452
for the inmate. The decisions as to whether the request for DNA 453
testing will be granted or denied and as to whether DNA testing 454
will be conducted shall be made under sections 2953.72 to 2953.81 455
of the Revised Code. 456

Sec. 2953.73. (A)(1) An eligible inmate who wishes to request DNA testing to be conducted under sections 2953.71 to 2953.81 of the Revised Code shall submit an application for DNA testing on a form prescribed by the attorney general for this purpose and shall submit the form to the court of common pleas that heard the case in which the inmate was convicted of the offense for which the inmate is an eligible offender and is requesting DNA testing. The eligible inmate shall submit the application to that court of common pleas within whichever of the following periods applies:

(a) Except as provided in division (A)(1)(b) of this section, the eligible inmate shall submit the application not later than one year after the effective date of this section.

(b) If the eligible inmate has submitted a notice of an intention to request DNA testing pursuant to division (A)(3) of this section within the one-year period specified in that division, the eligible inmate shall submit the application not later than one year after the effective date of this section or not later than thirty days after the submission of the notice, whichever is later.

(2) No court of common pleas shall accept an application under this section after the expiration of the period of time specified in division (A)(1)(a) or (b) of this section that is applicable to the eligible inmate to whom the application pertains.

(3) An eligible inmate who wishes to request DNA testing to be conducted under sections 2953.71 to 2953.81 of the Revised Code may submit a notice of an intention to request DNA testing to the court of common pleas that heard the case in which the inmate was convicted of the offense for which the inmate is an eligible inmate and is requesting DNA testing. The notice may be in any form and contain any language that clearly indicates that the

inmate wishes to request, and will be submitting an application 488
for, DNA testing, and it is not required to be on the form 489
prescribed by the attorney general for applications for DNA 490
testing. The eligible inmate shall submit the notice of an 491
intention to request DNA testing not later than one year after the 492
effective date of this section. 493

Upon receipt of a notice of an intention to request DNA 494
testing as described in this division, the clerk of the court of 495
common pleas to which the notice is submitted promptly shall 496
provide the eligible inmate with a copy of the application and 497
acknowledgment forms prescribed by the attorney general under 498
division (B) of section 2953.72 of the Revised Code. An eligible 499
inmate who has submitted a notice of an intention to request DNA 500
testing pursuant to this division may submit an application for 501
DNA testing within the time specified in division (A)(1)(b) of 502
this section. 503

(4) If a judge of a court of common pleas who was the trial 504
judge in a case in which an inmate was convicted of an offense for 505
which the inmate is an eligible inmate, or a judge of a court of 506
common pleas who is the successor in office to a judge of a court 507
of common pleas who was the trial judge in a case in which an 508
inmate was convicted of an offense for which the inmate is an 509
eligible inmate, believes that the eligible inmate's case 510
satisfies the criteria set forth in section 2953.74 of the Revised 511
Code, the judge on the judge's own motion may request DNA testing 512
by filing within one year after the effective date of this section 513
an application as described in this section. The judge is not 514
required to file an acknowledgment with that application. Upon the 515
judge's filing of an application under this division, the 516
application shall be considered as if it had been filed by the 517
eligible inmate. 518

(B) If an eligible inmate submits an application for DNA 519

testing under division (A) of this section, upon the submission of 520
the application, all of the following apply: 521

(1) The clerk of the court of common pleas in which it is 522
submitted promptly shall notify the prosecuting attorney and the 523
attorney general, in writing, that the application has been 524
submitted. The notice shall include the name of the eligible 525
inmate who submitted the application, the date on which it was 526
submitted, and the offense or offenses for which the inmate is an 527
eligible inmate and is requesting the DNA testing, and shall 528
inform the prosecuting attorney and attorney general that the 529
prosecuting attorney or attorney general has a duty or right to 530
file a response to the application, as determined under division 531
(D) of this section, and of the date, set by the court, by which 532
that response must be filed. 533

(2) The application shall be assigned to the judge of that 534
court of common pleas who was the trial judge in the case in which 535
the inmate was convicted of the offense for which the inmate is an 536
eligible offender and is requesting DNA testing, or to the 537
successor in office of that judge, and the judge to whom it is 538
assigned shall decide the application. 539

(C) If an eligible inmate submits an application for DNA 540
testing under division (A) of this section and the clerk of the 541
court of common pleas in which it is submitted does not promptly 542
provide the notices to the prosecuting attorney and attorney 543
general as required under division (B)(1) of this section, both of 544
the following apply: 545

(1) Except as provided in division (C)(2) of this section, 546
the jurisdiction of the court of common pleas to decide the 547
application terminates, and the court shall not proceed in 548
deciding the application. 549

(2) In the discretion of the court, if the clerk thereafter 550

provides the notices to the prosecuting attorney and attorney 551
general required under division (B)(1) of this section, the court 552
may decide the application in the same manner as if the clerk had 553
promptly provided the required notices. 554

(D)(1) If an eligible inmate submits an application for DNA 555
testing under division (A) of this section and the inmate has not 556
yet commenced any federal habeas corpus proceeding relative to the 557
case in which the inmate was convicted of the offense for which 558
the inmate is an eligible inmate and is requesting DNA testing, 559
the prosecuting attorney shall file a response to the application 560
by the date specified in the notice provided under division (B)(1) 561
of this section. In the circumstances described in this division, 562
the attorney general may, but is not required to, file a response 563
to the application. If the attorney general files a response under 564
this division, the attorney general shall file it by the date 565
specified in the notice provided under division (B)(1) of this 566
section. 567

(2) If an eligible inmate submits an application for DNA 568
testing under division (A) of this section and the inmate has 569
commenced a federal habeas corpus proceeding relative to the case 570
in which the inmate was convicted of the offense for which the 571
inmate is an eligible inmate and is requesting DNA testing, the 572
attorney general shall file a response to the application by the 573
date specified in the notice provided under division (B)(1) of 574
this section. In the circumstances described in this division, the 575
prosecuting attorney may, but is not required to, file a response 576
to the application. If the prosecuting attorney files a response 577
under this division, the prosecuting attorney shall file it by the 578
date specified in the notice provided under division (B)(1) of 579
this section. 580

(3) A response to an application that a prosecuting attorney 581
or the attorney general files under division (D)(1) or (2) of this 582

section shall state whether the prosecuting attorney or attorney general agrees or disagrees that the application should be accepted and, if the prosecuting attorney or attorney general disagrees that the application should be accepted, a statement of the reasons for that disagreement. 583
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(E) If an eligible inmate submits an application for DNA testing under division (A) of this section, the court shall make the determination as to whether the application should be accepted or rejected. The court shall expedite its decision-making process as to whether the application should be accepted or rejected. The court shall make the determination in accordance with the criteria and procedures set forth in sections 2953.74 to 2953.81 of the Revised Code and, in making the determination, shall consider the application and all responses to the application filed under division (D) of this section by a prosecuting attorney or the attorney general. Upon making its determination, the court shall enter a judgment that either accepts or rejects the application. If the judgment rejects the application, the court shall include within the judgment the reasons for the rejection. Upon entering its judgment, the court immediately shall send a copy of the judgment to the eligible inmate who filed it, the prosecuting attorney, and the attorney general. 588
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(F) A judgment of a court entered under division (E) of this section is final and is not appealable by any person to any court. 605
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(G) Notwithstanding any provision of law regarding fees and costs, no filing fee shall be required of, and no court costs shall be assessed against, an eligible offender who is indigent and who submits an application under this section. 607
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Sec. 2953.74. (A) If an eligible inmate submits an application for DNA testing under section 2953.73 of the Revised Code, all of the following apply: 611
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(1) The court and the testing authority that will be used 614
shall screen the application in accordance with the criteria set 615
forth in divisions (B) to (D) of this section. 616

(2) The court shall use those criteria in determining whether 617
to accept or reject the application. 618

(3) The court shall make its determination as to whether to 619
accept or reject the application, and shall enter its judgment, as 620
described in section 2953.73 of the Revised Code. 621

(B) If an eligible inmate submits an application for DNA 622
testing under section 2953.73 of the Revised Code and a prior 623
definitive DNA test has been conducted regarding the same 624
biological evidence that the inmate seeks to have tested, the 625
court shall reject the inmate's application. If an eligible inmate 626
files an application for DNA testing and a prior inconclusive DNA 627
test has been conducted regarding the same biological evidence 628
that the inmate seeks to have tested, the court shall review the 629
application and has the discretion, on a case-by-case basis, to 630
either accept or reject the application. The court may consult 631
with a testing authority in determining whether prior DNA test 632
results were definitive or inconclusive and whether to accept or 633
reject an application in relation to which there were prior 634
inconclusive DNA test results. 635

(C) If an eligible inmate submits an application for DNA 636
testing under section 2953.73 of the Revised Code, the court may 637
accept the application only if one of the following applies: 638

(1) The inmate did not have a DNA test taken at the trial 639
stage in the case in which the inmate was convicted of the offense 640
for which the inmate is an eligible inmate and is requesting the 641
DNA testing regarding the same biological evidence that the inmate 642
seeks to have tested, the inmate shows that DNA exclusion would 643
have been outcome determinative at that trial stage in that case, 644

and, at the time of the trial stage in that case, DNA testing was 645
not generally accepted, the results of DNA testing were not 646
generally admissible in evidence, or DNA testing was not yet 647
available. 648

(2) The inmate had a DNA test taken at the trial stage in the 649
case in which the inmate was convicted of the offense for which 650
the inmate is an eligible inmate and is requesting the DNA testing 651
regarding the same biological evidence that the inmate seeks to 652
have tested, the test was not a prior definitive DNA test that is 653
subject to division (B) of this section, and the inmate shows that 654
DNA exclusion would have been outcome determinative at the trial 655
stage in that case. 656

(D) If an eligible inmate submits an application for DNA 657
testing under section 2953.73 of the Revised Code, the court may 658
accept the application only if all of the following apply: 659

(1) The court determines pursuant to section 2953.75 of the 660
Revised Code that biological material was collected from the crime 661
scene or the victim of the offense for which the inmate is an 662
eligible inmate and is requesting the DNA testing and that the 663
parent sample of that biological material against which a sample 664
from the inmate can be compared still exists at that point in 665
time. 666

(2) The testing authority determines all of the following 667
pursuant to section 2953.76 of the Revised Code regarding the 668
parent sample of the biological material described in division 669
(D)(1) of this section: 670

(a) The parent sample of the biological material so collected 671
contains scientifically sufficient material to extract a test 672
sample. 673

(b) The parent sample of the biological material so collected 674
is not so minute or fragile as to risk destruction of the parent 675

sample by the extraction described in division (D)(2)(a) of this 676
section; provided that the court may determine in its discretion, 677
on a case-by-case basis, that, even if the parent sample of the 678
biological material so collected is so minute or fragile as to 679
risk destruction of the parent sample by the extraction, the 680
application should not be rejected solely on the basis of that 681
risk. 682

(c) The parent sample of the biological material so collected 683
has not degraded or been contaminated to the extent that it has 684
become scientifically unsuitable for testing, and the parent 685
sample otherwise has been preserved, and remains, in a condition 686
that is scientifically suitable for testing. 687

(3) The court determines that, at the trial stage in the case 688
in which the inmate was convicted of the offense for which the 689
inmate is an eligible inmate and is requesting the DNA testing, 690
the identity of the person who committed the offense was an issue. 691

(4) The court determines that one or more of the defense 692
theories asserted by the inmate at the trial stage in the case 693
described in division (D)(3) of this section or in a retrial of 694
that case in a court of this state was of such a nature that, if 695
DNA testing is conducted and an exclusion result is obtained, the 696
exclusion result will be outcome determinative. 697

(5) The court determines that, if DNA testing is conducted 698
and an exclusion result is obtained, the results of the testing 699
will be outcome determinative regarding that inmate. 700

(6) The court determines pursuant to section 2953.76 of the 701
Revised Code from the written chain of custody of the parent 702
sample of the biological material to be tested and of any test 703
sample extracted from the parent sample, and from the totality of 704
circumstances involved, that the parent sample and the extracted 705
test sample are the same sample as collected and that there is no 706

reason to believe that they have been out of state custody or have 707
been tampered with or contaminated since they were collected. 708

Sec. 2953.75. If an eligible inmate submits an application 709
for DNA testing under section 2953.73 of the Revised Code, the 710
court shall use reasonable diligence to determine whether 711
biological material was collected from the crime scene or victim 712
of the offense for which the inmate is an eligible inmate and is 713
requesting the DNA testing against which a sample from the inmate 714
can be compared and whether the parent sample of that biological 715
material still exists at that point in time. In using reasonable 716
diligence to make those determinations, the court shall rely upon 717
all relevant sources, including, but not limited to, all of the 718
following: 719

(A) All prosecuting authorities in the case in which the 720
inmate was convicted of the offense for which the inmate is an 721
eligible inmate and is requesting the DNA testing and in the 722
appeals of, and postconviction proceedings related to, that case; 723

(B) All law enforcement authorities involved in the 724
investigation of the offense for which the inmate is an eligible 725
offender and is requesting the DNA testing; 726

(C) All custodial agencies involved at any time with the 727
biological material in question; 728

(D) The custodian of all custodial agencies described in 729
division (C) of this section; 730

(E) All crime laboratories involved at any time with the 731
biological material in question; 732

(F) All other reasonable sources. 733

Sec. 2953.76. If an eligible inmate submits an application 734
for DNA testing under section 2953.73 of the Revised Code, the 735

court and the testing authority shall make determinations 736
regarding the quantity and quality of the parent sample of the 737
biological material collected from the crime scene or victim of 738
the offense for which the inmate is an eligible inmate and is 739
requesting the DNA testing and that is to be tested, and of the 740
chain of custody and reliability regarding that parent sample, as 741
follows: 742

(A) The testing authority shall determine whether there is a 743
scientifically sufficient quantity of the parent sample to test 744
and whether the parent sample is so minute or fragile that there 745
is a substantial risk that the parent sample could be destroyed in 746
testing. The testing authority may determine that there is not a 747
sufficient quantity to test in order to preserve the state's 748
ability to present in the future the original evidence presented 749
at trial, if another trial is required. Upon making its 750
determination under this division, the testing authority shall 751
prepare and provide to the court, a written document that contains 752
its determination and the reasoning and rationale for that 753
determination. The court may determine in its discretion, on a 754
case-by-case basis, that, even if the parent sample of the 755
biological material so collected is so minute or fragile as to 756
risk destruction of the parent sample by the extraction, the 757
application should not be rejected solely on the basis of that 758
risk. 759

(B) The testing authority shall determine whether the parent 760
sample has degraded or been contaminated to the extent that it has 761
become scientifically unsuitable for testing and whether the 762
parent sample otherwise has been preserved, and remains, in a 763
condition that is suitable for testing. Upon making its 764
determination under this division, the testing authority shall 765
prepare and provide to the court, a written document that contains 766
its determination and the reasoning and rationale for that 767

determination. 768

(C) The court shall determine, from the written chain of 769
custody of the parent sample of the biological material to be 770
tested and of any test sample extracted from the parent sample and 771
from the totality of circumstances involved, whether the parent 772
sample and the extracted test sample are the same sample as 773
collected and whether there is any reason to believe that they 774
have been out of state custody or have been tampered with or 775
contaminated since they were collected. Upon making its 776
determination under this division, the court shall prepare and 777
retain a written document that contains its determination and the 778
reasoning and rationale for that determination. 779

Sec. 2953.77. (A) If an eligible inmate submits an 780
application for DNA testing under section 2953.73 of the Revised 781
Code and if the application is accepted and DNA testing is to be 782
performed, the specified person or entity shall satisfy all of the 783
applicable following precautions to ensure that the parent sample 784
of the biological material collected from the crime scene or the 785
victim of the offense for which the inmate is an eligible inmate 786
and requested the DNA testing, and the test sample of the parent 787
sample that is extracted and actually is to be tested, are not 788
contaminated during transport or the testing process: 789

(1) The court and the testing authority shall maintain and 790
document the chain of custody of the parent sample and the test 791
sample actually to be tested between the time they are removed 792
from their place of storage or the time of their extraction to the 793
time at which the DNA testing will be performed. 794

(2) The court, the testing authority, and the law enforcement 795
and prosecutorial personnel involved in the process, or any 796
combination of those entities and persons, shall coordinate the 797
transport of the parent sample and the test sample actually to be 798

tested between their place of storage and the place where the DNA 799
testing will be performed, and the court and testing authority 800
shall document the transport procedures so used. 801

(3) The testing authority shall determine and document the 802
custodian of the parent sample and the test sample actually to be 803
tested after they are in the possession of the testing authority. 804

(4) The testing authority shall maintain and preserve the 805
parent sample and the test sample actually to be tested after they 806
are in the possession of the testing authority and shall document 807
the maintenance and preservation procedures used. 808

(5) After the DNA testing, the court, the testing authority, 809
and the original custodial agency of the parent sample, or any 810
combination of those entities, shall coordinate the return of the 811
remaining parent sample back to its place of storage with the 812
original custodial agency or to any other place determined in 813
accordance with this division and section 2953.81 of the Revised 814
Code. The court and testing authority shall be responsible for 815
determining the custodial agency to maintain any newly created, 816
extracted, or collected DNA material resulting from the testing. 817
The court and testing authority shall document the return 818
procedures for original materials and for any newly created, 819
extracted, or collected DNA material resulting from the testing, 820
and also the custodial agency to which those materials should be 821
taken. 822

(B) A court or testing authority shall provide the 823
documentation required under division (A) of this section in 824
writing and shall maintain that documentation. 825

Sec. 2953.78. (A) If an eligible inmate submits an 826
application for DNA testing under section 2953.73 of the Revised 827
Code and if the application is accepted and DNA testing is to be 828
performed, the court shall select the testing authority to be used 829

for the testing. A court shall not select or use a testing authority for DNA testing unless the attorney general approves or designates the testing authority pursuant to division (C) of this section and unless the testing authority satisfies the criteria set forth in section 2953.80 of the Revised Code. 830
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(B) If a court selects a testing authority pursuant to division (A) of this section and the eligible inmate for whom the test is to be performed objects to the use of the selected testing authority, the objection constitutes a rejection by the inmate of the state's offer to conduct or facilitate DNA testing for the inmate, the state's offer to conduct or facilitate DNA testing for the inmate automatically is withdrawn as a matter of law, and the state is released from any obligation to conduct or facilitate DNA testing for the inmate. An objection as described in this division, and the resulting rejection, withdrawal, and release, do not preclude a court from accepting in the court's discretion, a subsequent application by the same eligible inmate requesting DNA testing. 835
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(C) The attorney general shall approve or designate testing authorities that may be selected and used for the conduct of DNA testing, shall prepare a list of the approved or designated testing authorities, and shall provide copies of the list to all courts of common pleas. The attorney general shall update the list as appropriate to reflect changes in the approved or designated testing authorities and shall provide copies of the updated list to all courts of common pleas. The attorney general shall not approve or designate a testing authority under this division unless the testing authority satisfies the criteria set forth in section 2953.80 of the Revised Code. 848
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(D) The attorney general's approval or designation of testing authorities under division (C) of this section, and the selection and use of any approved or designated testing authority, do not 859
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afford an inmate any right to subsequently challenge the approval, 862
designation, selection, or use, and an inmate may not appeal to 863
any court the approval, designation, selection, or use of a 864
testing authority. 865

Sec. 2953.79. (A) If an eligible inmate submits an 866
application for DNA testing under section 2953.73 of the Revised 867
Code and if the application is accepted and DNA testing is to be 868
performed, a sample of biological material shall be obtained from 869
the inmate in accordance with this section, to be compared with 870
the parent sample of biological material collected from the crime 871
scene or the victim of the offense for which the inmate is an 872
eligible inmate and requested the DNA testing. The inmate's filing 873
of the application constitutes the inmate's consent to the 874
obtaining of the sample of biological material from the inmate. 875
The testing authority shall obtain the sample of biological 876
material from the inmate in accordance with medically accepted 877
procedures. 878

(B) If DNA testing is to be performed for an inmate as 879
described in division (A) of this section, the court shall contact 880
the department of rehabilitation and correction and coordinate 881
with the department the date on which, and the time and place at 882
which, the sample of biological material will be obtained from the 883
inmate. The department shall provide the facility at which the 884
sample will be obtained and shall make the inmate available at 885
that facility at the specified time. The court shall provide 886
notice to the inmate and to the inmate's counsel of the date on 887
which, and the time and place at which, the sample will be so 888
obtained. 889

The court also shall coordinate with the testing authority 890
regarding the obtaining of the sample from the inmate. 891

(C)(1) If DNA testing is to be performed for an inmate as 892

described in division (A) of this section, and the inmate refuses 893
to submit to the collection of the sample of biological material 894
from the inmate or hinders the state from obtaining a sample of 895
biological material from the inmate, the inmate's refusal or 896
hindrance constitutes a rejection by the inmate of the state's 897
offer to conduct or facilitate DNA testing for the inmate, the 898
state's offer to conduct or facilitate DNA testing for the inmate 899
automatically is withdrawn as a matter of law, and the state is 900
released from any obligation to conduct or facilitate DNA testing 901
for the inmate. 902

(2) For purposes of division (C)(1) of this section: 903

(a) An inmate's "refusal to submit to the collection of a 904
sample of biological material from the inmate" includes, but is 905
not limited to, the inmate's rejection of the physical manner in 906
which a sample of the inmate's biological material is to be taken. 907

(b) An inmate's "hindrance of the state in obtaining a sample 908
of biological material from the inmate" includes, but is not 909
limited to, the inmate being physically or verbally uncooperative 910
or antagonistic in the taking of a sample of the inmate's 911
biological material. 912

(D) The extracting personnel shall make the determination as 913
to whether an eligible inmate for whom DNA testing is to be 914
performed is refusing to submit to the collection of a sample of 915
biological material from the inmate or is hindering the state from 916
obtaining a sample of biological material from the inmate at the 917
time and date of the scheduled collection of the sample. If the 918
extracting personnel determine that an inmate is refusing to 919
submit to the collection of a sample or is hindering the state 920
from obtaining a sample, the extracting personnel shall document 921
in writing the conditions that constitute the refusal or hindrance 922
and shall maintain the documentation. 923

Sec. 2953.80. (A) The attorney general shall not approve or designate a testing authority for conducting DNA testing under section 2953.78 of the Revised Code, and a court shall not select or use a testing authority for DNA testing under that section, unless the testing authority satisfies all of the following criteria: 924
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(1) It is in compliance with nationally accepted quality assurance standards for forensic DNA testing, as published in the quality assurance standards for forensic DNA testing laboratories issued by the director of the federal bureau of investigation. 930
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(2) It undergoes an annual internal or external audit for quality assurance in conformity with the standards identified in division (A)(1) of this section. 934
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(3) At least once in the preceding two-year period, and at least once each two-year period thereafter, it undergoes an external audit for quality assurance in conformity with the standards identified in division (A)(1) of this section. 937
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(B) As used in division (A) of this section: 941

(1) "External audit" means a quality assurance review of a testing authority that is conducted by a forensic DNA testing agency outside of, and not affiliated with, the testing authority. 942
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(2) "Internal audit" means an internal review of a testing authority that is conducted by the testing authority itself. 945
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Sec. 2953.81. If an eligible inmate submits an application for DNA testing under section 2953.73 of the Revised Code and if DNA testing is performed based on that application, upon completion of the testing, all of the following apply: 947
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(A) The court or a designee of the court shall maintain the results of the testing and shall maintain and preserve both the 951
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parent sample of the biological material used and the inmate 953
sample of the biological material used. The testing authority may 954
be designated as the person to maintain the results of the testing 955
or to maintain and preserve some or all of the samples, or both. 956
The results of the testing remain state's evidence. The samples 957
shall be preserved during the entire period of time for which the 958
inmate is imprisoned relative to the prison term or sentence of 959
death in question and, if that prison term expires or the inmate 960
is executed under that sentence of death, for a reasonable period 961
of time of not less than twenty-four months after the term expires 962
or the inmate is executed. The court shall determine the period of 963
time that is reasonable for purposes of this division, provided 964
that the period shall not be less than twenty-four months after 965
the term expires or the inmate is executed. 966

(B) The results of the testing are a public record. 967

(C) The court or the testing authority shall provide a copy 968
of the results of the testing to the prosecuting attorney, the 969
attorney general, and the subject inmate. 970

(D) If the postconviction proceeding in question is pending 971
at that time in a court of this state, the court of common pleas 972
that decided the DNA application or the testing authority shall 973
provide a copy of the results of the testing to that court of this 974
state, and, if it is pending in a federal court, the court of 975
common pleas that decided the DNA application or the testing 976
authority shall provide a copy of the results of the testing to 977
that federal court. 978

(E) The testing authority shall provide a copy of the results 979
of the testing to the court of common pleas that decided the DNA 980
application. 981

(F) The inmate or the state may enter the results of the 982
testing into a postconviction proceeding under sections 2953.21 to 983

2953.23 of the Revised Code only if the results of the testing are 984
an exclusion result or an inclusion result and subject to the 985
limitations otherwise set forth in divisions (G) to (J) of this 986
section. 987

(G) The inmate may enter an exclusion result for the purpose 988
of establishing substantive grounds for a postconviction hearing 989
under division (C) of section 2953.21 of the Revised Code. 990

(H) The state may use an inclusion result for the purpose of 991
foreclosing and discrediting claims of "actual innocence" in any 992
current or subsequent proceeding in a court of this state or a 993
federal court. 994

(I) By making the application for DNA testing, and by 995
accepting and agreeing to the testing, the inmate agrees that 996
appropriate exclusion or inclusion results, as described in 997
divisions (F) to (H) of this section, may be used in 998
postconviction proceedings in support of a second petition or 999
successive petition pursuant to, and in satisfaction of, the 1000
requirements set forth in section 2953.23 of the Revised Code. 1001

(J) A result of testing that is an inconclusive result or a 1002
"no result" shall not be entered into or offered for use in any 1003
proceeding under sections 2953.21 to 2953.23 of the Revised Code 1004
or in any other postconviction proceeding. 1005

Section 2. That existing sections 2953.21 and 2953.23 of the 1006
Revised Code are hereby repealed. 1007