

As Reported by the House Criminal Justice Committee

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Sub. S. B. No. 11

**Senators Goodman, Blessing, Hottinger, Harris, Jacobson, Randy Gardner,
Coughlin, Carey, Prentiss, Spada, Herington, Schuring, Stivers, Dann, Brady,
Carnes, Miller, Nein, Roberts, Schuler, Austria
Representatives Latta, Seitz, Brown, Willamowski, Gilb, Collier**

A B I L L

To amend sections 109.573, 2953.21, and 2953.23 and 1
to enact sections 2953.71 to 2953.83 of the 2
Revised Code to establish a mechanism and 3
procedures for the DNA testing of certain inmates 4
serving a prison term for a felony or under a 5
sentence of death. 6

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

Section 1. That sections 109.573, 2953.21, and 2953.23 be 7
amended and sections 2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 8
2953.76, 2953.77, 2953.78, 2953.79, 2953.80, 2953.81, 2953.82, and 9
2953.83 of the Revised Code be enacted to read as follows: 10

Sec. 109.573. (A) As used in this section: 11

(1) "DNA" means human deoxyribonucleic acid. 12

(2) "DNA analysis" means a laboratory analysis of a DNA 13
specimen to identify DNA characteristics and to create a DNA 14
record. 15

(3) "DNA database" means a collection of DNA records from 16

forensic casework or from crime scenes, specimens from anonymous 17
and unidentified sources, and records collected pursuant to 18
sections 2152.74 and 2901.07 of the Revised Code and a population 19
statistics database for determining the frequency of occurrence of 20
characteristics in DNA records. 21

(4) "DNA record" means the objective result of a DNA analysis 22
of a DNA specimen, including representations of DNA fragment 23
lengths, digital images of autoradiographs, discrete allele 24
assignment numbers, and other DNA specimen characteristics that 25
aid in establishing the identity of an individual. 26

(5) "DNA specimen" includes human blood cells or 27
physiological tissues or body fluids. 28

(6) "Unidentified person database" means a collection of DNA 29
records, and, on and after May 21, 1998, of fingerprint and 30
photograph records, of unidentified human corpses, human remains, 31
or living individuals. 32

(7) "Relatives of missing persons database" means a 33
collection of DNA records of persons related by consanguinity of 34
the first degree to a missing person. 35

(8) "Law enforcement agency" means a police department, the 36
office of a sheriff, the state highway patrol, a county 37
prosecuting attorney, or a federal, state, or local governmental 38
body that enforces criminal laws and that has employees who have a 39
statutory power of arrest. 40

(B)(1) The superintendent of the bureau of criminal 41
identification and investigation may do all of the following: 42

(a) Establish and maintain a state DNA laboratory to perform 43
DNA ~~analysis~~ analyses of DNA specimens; 44

(b) Establish and maintain a DNA database; 45

(c) Establish and maintain an unidentified person database to 46

aid in the establishment of the identity of unknown human corpses, 47
human remains, or living individuals; 48

(d) Establish and maintain a relatives of missing persons 49
database for comparison with the unidentified person database to 50
aid in the establishment of the identity of unknown human corpses, 51
human remains, and living individuals. 52

(2) If the bureau of criminal identification and 53
investigation establishes and maintains a DNA laboratory and a DNA 54
database, the bureau may use or disclose information regarding DNA 55
records for the following purposes: 56

(a) The bureau may disclose information to a law enforcement 57
agency for purposes of identification. 58

(b) The bureau shall disclose pursuant to a court order 59
issued under section 3111.09 of the Revised Code any information 60
necessary to determine the existence of a parent and child 61
relationship in an action brought under sections 3111.01 to 62
3111.18 of the Revised Code. 63

(c) The bureau may use or disclose information from the 64
population statistics database, for identification research and 65
protocol development, or for quality control purposes. 66

(3) If the bureau of criminal identification and 67
investigation establishes and maintains a relatives of missing 68
persons database, all of the following apply: 69

(a) If a person has disappeared and has been continuously 70
absent from the person's place of last domicile for a thirty-day 71
or longer period of time without being heard from during the 72
period, persons related by consanguinity of the first degree to 73
the missing person may submit to the bureau a DNA specimen, the 74
bureau may include the DNA record of the specimen in the relatives 75
of missing persons database, and, if the bureau does not include 76
the DNA record of the specimen in the relatives of missing persons 77

database, the bureau shall retain the DNA record for future 78
reference and inclusion as appropriate in that database. 79

(b) The bureau shall not charge a fee for the submission of a 80
DNA specimen pursuant to division (B)(3)(a) of this section. 81

(c) If the DNA specimen submitted pursuant to division 82
(B)(3)(a) of this section is collected by withdrawing blood from 83
the person or a similarly invasive procedure, a physician, 84
registered nurse, licensed practical nurse, duly licensed clinical 85
laboratory technician, or other qualified medical practitioner 86
shall conduct the collection procedure for the DNA specimen 87
submitted pursuant to division (B)(3)(a) of this section and shall 88
collect the DNA specimen in a medically approved manner. If the 89
DNA specimen is collected by swabbing for buccal cells or a 90
similarly noninvasive procedure, division (B)(3)(c) of this 91
section does not require that the DNA specimen be collected by a 92
qualified medical practitioner of that nature. No later than 93
fifteen days after the date of the collection of the DNA specimen, 94
the person conducting the DNA specimen collection procedure shall 95
cause the DNA specimen to be forwarded to the bureau of criminal 96
identification and investigation in accordance with procedures 97
established by the superintendent of the bureau under division (H) 98
of this section. The bureau may provide the specimen vials, 99
mailing tubes, labels, postage, and instruction needed for the 100
collection and forwarding of the DNA specimen to the bureau. 101

(d) The superintendent, in the superintendent's discretion, 102
may compare DNA records in the relatives of missing persons 103
database with the DNA records in the unidentified person database. 104

(4) If the bureau of criminal identification and 105
investigation establishes and maintains an unidentified person 106
database and if the superintendent of the bureau identifies a 107
matching DNA record for the DNA record of a person or deceased 108
person whose DNA record is contained in the unidentified person 109

database, the superintendent shall inform the coroner who 110
submitted or the law enforcement agency that submitted the DNA 111
specimen to the bureau of the match and, if possible, of the 112
identity of the unidentified person. 113

(5) The bureau of criminal identification and investigation 114
may enter into a contract with a qualified public or private 115
laboratory to perform DNA analyses, DNA specimen maintenance, 116
preservation, and storage, DNA record keeping, and other duties 117
required of the bureau under this section. A public or private 118
laboratory under contract with the bureau shall follow quality 119
assurance and privacy requirements established by the 120
superintendent of the bureau. 121

(C) The superintendent of the bureau of criminal 122
identification and investigation shall establish procedures for 123
entering into the DNA database the DNA records submitted pursuant 124
to sections 2152.74 and 2901.07 of the Revised Code and for 125
determining an order of priority for entry of the DNA records 126
based on the types of offenses committed by the persons whose 127
records are submitted and the available resources of the bureau. 128

(D) When a DNA record is derived from a DNA specimen provided 129
pursuant to section 2152.74 or 2901.07 of the Revised Code, the 130
bureau of criminal identification and investigation shall attach 131
to the DNA record personal identification information that 132
identifies the person from whom the DNA specimen was taken. The 133
personal identification information may include the subject 134
person's fingerprints and any other information the bureau 135
determines necessary. The DNA record and personal identification 136
information attached to it shall be used only for the purpose of 137
personal identification or for a purpose specified in this 138
section. 139

(E) DNA records, DNA specimens, fingerprints, and photographs 140
that the bureau of criminal identification and investigation 141

receives pursuant to this section and sections 313.08, 2152.74, 142
and 2901.07 of the Revised Code and personal identification 143
information attached to a DNA record are not public records under 144
section 149.43 of the Revised Code. 145

(F) The bureau of criminal identification and investigation 146
may charge a reasonable fee for providing information pursuant to 147
this section to any law enforcement agency located in another 148
state. 149

(G)(1) No person who because of the person's employment or 150
official position has access to a DNA specimen, a DNA record, or 151
other information contained in the DNA database that identifies an 152
individual shall knowingly disclose that specimen, record, or 153
information to any person or agency not entitled to receive it or 154
otherwise shall misuse that specimen, record, or information. 155

(2) No person without authorization or privilege to obtain 156
information contained in the DNA database that identifies an 157
individual person shall purposely obtain that information. 158

(H) The superintendent of the bureau of criminal 159
identification and investigation shall establish procedures for 160
all of the following: 161

(1) The forwarding to the bureau of DNA specimens collected 162
pursuant to division (H) of this section and sections 313.08, 163
2152.74, and 2901.07 of the Revised Code and of fingerprints and 164
photographs collected pursuant to section 313.08 of the Revised 165
Code; 166

(2) The collection, maintenance, preservation, and analysis 167
of DNA specimens; 168

(3) The creation, maintenance, and operation of the DNA 169
database; 170

(4) The use and dissemination of information from the DNA 171

database;	172
(5) The creation, maintenance, and operation of the unidentified person database;	173 174
(6) The use and dissemination of information from the unidentified person database;	175 176
(7) The creation, maintenance, and operation of the relatives of missing persons database;	177 178
(8) The use and dissemination of information from the relatives of missing persons database;	179 180
(9) The verification of entities requesting DNA records and other DNA information from the bureau and the authority of the entity to receive the information;	181 182 183
(10) The operation of the bureau and responsibilities of employees of the bureau with respect to the activities described in this section.	184 185 186
<u>(I) In conducting DNA analyses of DNA specimens, the state DNA laboratory and any laboratory with which the bureau has entered into a contract pursuant to division (B)(5) of this section shall give DNA analyses of DNA specimens that relate to ongoing criminal investigations or prosecutions priority over DNA analyses of DNA specimens that relate to applications made pursuant to section 2953.73 or 2953.82 of the Revised Code.</u>	187 188 189 190 191 192 193
Sec. 2953.21. (A)(1)(a) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, <u>and any person who has been convicted of a criminal offense that is a felony, who is an inmate, and for whom DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or</u>	194 195 196 197 198 199 200 201

under section 2953.82 of the Revised Code provided results that 202
establish, by clear and convincing evidence, actual innocence of 203
that felony offense or, if the person was sentenced to death, 204
establish, by clear and convincing evidence, actual innocence of 205
the aggravating circumstance or circumstances the person was found 206
guilty of committing and that is or are the basis of that sentence 207
of death, may file a petition in the court that imposed sentence, 208
stating the grounds for relief relied upon, and asking the court 209
to vacate or set aside the judgment or sentence or to grant other 210
appropriate relief. The petitioner may file a supporting affidavit 211
and other documentary evidence in support of the claim for relief. 212

(b) As used in division (A)(1)(a) of this section, "actual 213
innocence" means that, had the results of the DNA testing 214
conducted under sections 2953.71 to 2953.81 of the Revised Code or 215
under section 2953.82 of the Revised Code been presented at trial, 216
no reasonable factfinder would have found the petitioner guilty of 217
the offense of which the petitioner was convicted, or, if the 218
person was sentenced to death, no reasonable factfinder would have 219
found the petitioner guilty of the aggravating circumstance or 220
circumstances the petitioner was found guilty of committing and 221
that is or are the basis of that sentence of death. 222

(2) A Except as otherwise provided in section 2953.23 of the 223
Revised Code, a petition under division (A)(1) of this section 224
shall be filed no later than one hundred eighty days after the 225
date on which the trial transcript is filed in the court of 226
appeals in the direct appeal of the judgment of conviction or 227
adjudication or, if the direct appeal involves a sentence of 228
death, the date on which the trial transcript is filed in the 229
supreme court. If no appeal is taken, except as otherwise provided 230
in section 2953.23 of the Revised Code, the petition shall be 231
filed no later than one hundred eighty days after the expiration 232
of the time for filing the appeal. 233

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

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

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

(B) The clerk of the court in which the petition is filed shall docket the petition and bring it promptly to the attention of the court. ~~The petitioner need not serve a copy of the petition on the prosecuting attorney.~~ The clerk of the court in which the petition is filed immediately shall forward a copy of the petition

to the prosecuting attorney of that county. 266

(C) The court shall consider a petition that is timely filed 267
under division (A)(2) of this section even if a direct appeal of 268
the judgment is pending. Before granting a hearing on a petition 269
filed under division (A) of this section, the court shall 270
determine whether there are substantive grounds for relief. In 271
making such a determination, the court shall consider, in addition 272
to the petition, the supporting affidavits, and the documentary 273
evidence, all the files and records pertaining to the proceedings 274
against the petitioner, including, but not limited to, the 275
indictment, the court's journal entries, the journalized records 276
of the clerk of the court, and the court reporter's transcript. 277
The court reporter's transcript, if ordered and certified by the 278
court, shall be taxed as court costs. If the court dismisses the 279
petition, it shall make and file findings of fact and conclusions 280
of law with respect to such dismissal. 281

(D) Within ten days after the docketing of the petition, or 282
within any further time that the court may fix for good cause 283
shown, the prosecuting attorney shall respond by answer or motion. 284
Within twenty days from the date the issues are ~~made-up~~ raised, 285
either party may move for summary judgment. The right to summary 286
judgment shall appear on the face of the record. 287

(E) Unless the petition and the files and records of the case 288
show the petitioner is not entitled to relief, the court shall 289
proceed to a prompt hearing on the issues even if a direct appeal 290
of the case is pending. If the court notifies the parties that it 291
has found grounds for granting relief, either party may request an 292
appellate court in which a direct appeal of the judgment is 293
pending to remand the pending case to the court. 294

(F) At any time before the answer or motion is filed, the 295
petitioner may amend the petition with or without leave or 296
prejudice to the proceedings. The petitioner may amend the 297

petition with leave of court at any time thereafter. 298

(G) If the court does not find grounds for granting relief, 299
it shall make and file findings of fact and conclusions of law and 300
shall enter judgment denying relief on the petition. If no direct 301
appeal of the case is pending and the court finds grounds for 302
relief or if a pending direct appeal of the case has been remanded 303
to the court pursuant to a request made pursuant to division (E) 304
of this section and the court finds grounds for granting relief, 305
it shall make and file findings of fact and conclusions of law and 306
shall enter a judgment that vacates and sets aside the judgment in 307
question, and, in the case of a petitioner who is a prisoner in 308
custody, shall discharge or resentence the petitioner or grant a 309
new trial as the court determines appropriate. The court also may 310
make supplementary orders to the relief granted, concerning such 311
matters as rearraignment, retrial, custody, and bail. If the trial 312
court's order granting the petition is reversed on appeal and if 313
the direct appeal of the case has been remanded from an appellate 314
court pursuant to a request under division (E) of this section, 315
the appellate court reversing the order granting the petition 316
shall notify the appellate court in which the direct appeal of the 317
case was pending at the time of the remand of the reversal and 318
remand of the trial court's order. Upon the reversal and remand of 319
the trial court's order granting the petition, regardless of 320
whether notice is sent or received, the direct appeal of the case 321
that was remanded is reinstated. 322

(H) Upon the filing of a petition pursuant to division (A) of 323
this section by a ~~prisoner in a state correctional institution who~~ 324
~~has received the~~ person sentenced to death penalty, only the 325
supreme court may stay execution of the ~~judgment challenged by the~~ 326
~~petition~~ sentence of death. 327

(I)(1) If a person ~~who has received the death penalty~~ 328
sentenced to death intends to file a petition under this section, 329

the court shall appoint counsel to represent the person upon a 330
finding that the person is indigent and that the person either 331
accepts the appointment of counsel or is unable to make a 332
competent decision whether to accept or reject the appointment of 333
counsel. The court may decline to appoint counsel for the person 334
only upon a finding, after a hearing if necessary, that the person 335
rejects the appointment of counsel and understands the legal 336
consequences of that decision or upon a finding that the person is 337
not indigent. 338

(2) The court shall not appoint as counsel under division 339
(I)(1) of this section an attorney who represented the petitioner 340
at trial in the case to which the petition relates unless the 341
person and the attorney expressly request the appointment. The 342
court shall appoint as counsel under division (I)(1) of this 343
section only an attorney who is certified under Rule 20 of the 344
Rules of Superintendence for the Courts of Ohio to represent 345
indigent defendants charged with or convicted of an offense for 346
which the death penalty can be or has been imposed. The 347
ineffectiveness or incompetence of counsel during proceedings 348
under this section does not constitute grounds for relief in a 349
proceeding under this section, in an appeal of any action under 350
this section, or in an application to reopen a direct appeal. 351

(3) Division (I) of this section does not preclude attorneys 352
who represent the state of Ohio from invoking the provisions of 28 353
U.S.C. 154 with respect to capital cases that were pending in 354
federal habeas corpus proceedings prior to the effective date of 355
this amendment insofar as the petitioners in those cases were 356
represented in proceedings under this section by one or more 357
counsel appointed by the court under this section or section 358
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 359
appointed counsel meet the requirements of division (I)(2) of this 360
section. 361

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

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

(1) Both of the following apply:

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

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

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

~~(2)~~(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges

a sentence of death that, but for constitutional error at the 392
sentencing hearing, no reasonable factfinder would have found the 393
petitioner eligible for the death sentence. 394

(2) The petitioner was convicted of a felony, the petitioner 395
is an inmate for whom DNA testing was performed under sections 396
2953.71 to 2953.81 of the Revised Code or under section 2953.82 of 397
the Revised Code, and the results of the DNA testing establish, by 398
clear and convincing evidence, actual innocence of that felony 399
offense or, if the person was sentenced to death, establish, by 400
clear and convincing evidence, actual innocence of the aggravating 401
circumstance or circumstances the person was found guilty of 402
committing and that is or are the basis of that sentence of death. 403

As used in this division, "actual innocence" has the same 404
meaning as in division (A)(1)(b) of section 2953.21 of the Revised 405
Code. 406

(B) An order awarding or denying relief sought in a petition 407
filed pursuant to section 2953.21 of the Revised Code is a final 408
judgment and may be appealed pursuant to Chapter 2953. of the 409
Revised Code. 410

Sec. 2953.71. As used in sections 2953.71 to 2953.83 of the 411
Revised Code: 412

(A) "Application" or "application for DNA testing" means a 413
request through postconviction relief for the state to do DNA 414
testing on biological material from whichever of the following is 415
applicable: 416

(1) The case in which the inmate was convicted of the offense 417
for which the inmate is an eligible inmate and is requesting the 418
DNA testing under sections 2953.71 to 2953.81 of the Revised Code; 419

(2) The case in which the inmate pleaded guilty or no contest 420
to the offense for which the inmate is requesting the DNA testing 421

under section 2953.82 of the Revised Code.

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(B) "Biological material" means any product of a human body containing DNA.

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(C) "Chain of custody" means a record or other evidence that tracks a subject sample of biological material from the time the biological material was first obtained until the time it currently exists in its place of storage and, in relation to a DNA sample, a record or other evidence that tracks the DNA sample from the time it was first obtained until it currently exists in its place of storage. For purposes of this division, examples of when biological material or a DNA sample is first obtained include, but are not limited to, obtaining the material or sample at the scene of a crime, from a victim, from an inmate, or in any other manner or time as is appropriate in the facts and circumstances present.

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

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

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

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(G) "Exclusion" or "exclusion result" means a result of DNA testing that scientifically precludes or forecloses the subject inmate as a contributor of biological material recovered from the crime scene or victim in question, in relation to the offense for which the inmate is an eligible inmate and for which the sentence of death or prison term was imposed upon the inmate or, regarding a request for DNA testing made under section 2953.82 of the Revised Code, in relation to the offense for which the inmate made the request and for which the sentence of death or prison term was

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imposed upon the inmate.

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(H) "Extracting personnel" means medically approved personnel who are employed to physically obtain an inmate DNA specimen for purposes of DNA testing under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code.

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(I) "Inclusion" or "inclusion result" means a result of DNA testing that scientifically cannot exclude, or that holds accountable, the subject inmate as a contributor of biological material recovered from the crime scene or victim in question, in relation to the offense for which the inmate is an eligible inmate and for which the sentence of death or prison term was imposed upon the inmate or, regarding a request for DNA testing made under section 2953.82 of the Revised Code, in relation to the offense for which the inmate made the request and for which the sentence of death or prison term was imposed upon the inmate.

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(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.

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(K) "Inmate" means an inmate in a prison who was sentenced by a court, or by a jury and a court, of this state.

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(L) "Outcome determinative" means that had the results of DNA testing been presented at the trial of the subject inmate requesting DNA testing and been found relevant and admissible with respect to the felony offense for which the inmate is an eligible inmate and is requesting the DNA testing or for which the inmate is requesting the DNA testing under section 2953.82 of the Revised Code, 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 or circumstances the inmate was found guilty of committing and that is or are the basis of that sentence

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of death. 484

(M) "Parent sample" means the biological material first 485
obtained from a crime scene or a victim of an offense for which an 486
inmate is an eligible inmate or for which the inmate is requesting 487
the DNA testing under section 2953.82 of the Revised Code, and 488
from which a sample will be presently taken to do a DNA comparison 489
to the DNA of the subject inmate under sections 2953.71 to 2953.81 490
or section 2953.82 of the Revised Code. 491

(N) "Prison" has the same meaning as in section 2929.01 of 492
the Revised Code. 493

(O) "Prosecuting attorney" means the prosecuting attorney 494
who, or whose office, prosecuted the case in which the subject 495
inmate was convicted of the offense for which the inmate is an 496
eligible inmate and is requesting the DNA testing or for which the 497
inmate is requesting the DNA testing under section 2953.82 of the 498
Revised Code. 499

(P) "Prosecuting authority" means the prosecuting attorney or 500
the attorney general. 501

(Q) "Reasonable diligence" means a degree of diligence that 502
is comparable to the diligence a reasonable person would employ in 503
searching for information regarding an important matter in the 504
person's own life. 505

(R) "Testing authority" means a laboratory at which DNA 506
testing will be conducted under sections 2953.71 to 2953.81 or 507
section 2953.82 of the Revised Code. 508

Sec. 2953.72. (A) Any eligible inmate who wishes to request 509
DNA testing under sections 2953.71 to 2953.81 of the Revised Code 510
shall submit an application for the testing to the court of common 511
pleas specified in section 2953.73 of the Revised Code, on a form 512
prescribed by the attorney general for this purpose. The eligible 513

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:

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(1) That sections 2953.71 to 2953.81 of the Revised Code
contemplate applications 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 any proceeding as described in
section 2953.81 of the Revised Code, and that all requests for any
DNA testing made at trial will continue to be handled by the
prosecuting attorney in the case;

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

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(3) That the eligible inmate must submit the application and
acknowledgment 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 the DNA testing;

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(4) That the state has established a set of criteria set
forth in section 2953.74 of the Revised Code by which eligible
inmate applications for DNA testing will be screened and that a
judge of a court of common pleas upon receipt of a properly filed

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application and accompanying acknowledgment will apply those 545
criteria to determine whether to accept or reject the application; 546

(5) That the results of DNA testing conducted under sections 547
2953.71 to 2953.81 of the Revised Code will be provided as 548
described in section 2953.81 of the Revised Code to all parties in 549
the postconviction proceedings and will be reported to various 550
courts; 551

(6) That, if DNA testing is conducted with respect to an 552
inmate under sections 2953.71 to 2953.81 of the Revised Code, the 553
state will not offer the inmate a retest if an inclusion result is 554
achieved relative to the testing and that, if the state were to 555
offer a retest after an inclusion result, the policy would create 556
an atmosphere in which endless testing could occur and in which 557
postconviction proceedings could be stalled for many years; 558

(7) That, if the court rejects an eligible inmate's 559
application for DNA testing because the inmate does not satisfy 560
the acceptance criteria described in division (A)(4) of this 561
section, the court will not accept or consider subsequent 562
applications; 563

(8) That the acknowledgment memorializes the provisions of 564
sections 2953.71 to 2953.81 of the Revised Code with respect to 565
the application of postconviction DNA testing to inmates, that 566
those provisions do not give any inmate any additional 567
constitutional right that the inmate did not have prior to the 568
effective date of those provisions, that the court has no duty or 569
obligation to provide postconviction DNA testing to inmates, that 570
the court of common pleas has the sole discretion subject to an 571
appeal as described in this division to determine whether an 572
inmate is an eligible inmate and whether an eligible inmate's 573
application for DNA testing satisfies the acceptance criteria 574
described in division (A)(4) of this section and whether the 575

application should be accepted or rejected, that if the court of 576
common pleas rejects an eligible inmate's application, the inmate 577
may seek leave of the supreme court to appeal the rejection to 578
that court if the inmate was sentenced to death for the offense 579
for which the inmate is requesting the DNA testing and, if the 580
inmate was not sentenced to death for that offense, may appeal the 581
rejection to the court of appeals, and that no determination 582
otherwise made by the court of common pleas in the exercise of its 583
discretion regarding the eligibility of an inmate or regarding 584
postconviction DNA testing under those provisions is reviewable by 585
or appealable to any court; 586

(9) That the manner in which sections 2953.71 to 2953.81 of 587
the Revised Code with respect to the offering of postconviction 588
DNA testing to inmates are carried out does not confer any 589
constitutional right upon any inmate, that the state has 590
established guidelines and procedures relative to those provisions 591
to ensure that they are carried out with both justice and 592
efficiency in mind, and that an inmate who participates in any 593
phase of the mechanism contained in those provisions, including, 594
but not limited to, applying for DNA testing and being rejected, 595
having an application for DNA testing accepted and not receiving 596
the test, or having DNA testing conducted and receiving 597
unfavorable results, does not gain as a result of the 598
participation any constitutional right to challenge, or, except as 599
provided in division (A)(8) of this section, any right to any 600
review or appeal of, the manner in which those provisions are 601
carried out; 602

(10) That the most basic aspect of sections 2953.71 to 603
2953.81 of the Revised Code is that, in order for DNA testing to 604
occur, there must be an inmate sample against which other evidence 605
may be compared, that, if an eligible inmate's application is 606
accepted but the inmate subsequently refuses to submit to the 607

collection of the sample of biological material from the inmate or
hinders the state from obtaining a sample of biological material
from the inmate, the goal of those provisions will be frustrated,
and that an inmate's refusal or hindrance shall cause the court to
rescind its prior acceptance of the application for DNA testing
for the inmate and deny the application;

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(11) That, if the inmate is an inmate who pleaded guilty or
no contest to a felony offense and who is using the application
and acknowledgment to request DNA testing under section 2953.82 of
the Revised Code, all references in the acknowledgment to an
"eligible inmate" are considered to be references to, and apply
to, the inmate and all references in the acknowledgment to
"sections 2953.71 to 2953.81 of the Revised Code" are considered
to be references to "section 2953.82 of the Revised Code".

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(B) The attorney general shall prescribe a form to be used to
make an application for DNA testing under division (A) of this
section and section 2953.73 of the Revised Code and a form to be
used to provide the acknowledgment described in division (A) of
this section. The forms shall include all information described in
division (A) of this section, spaces for an inmate to insert all
information necessary to complete the forms, including, but not
limited to, specifying the offense or offenses for which the
inmate is an eligible inmate and is requesting the DNA testing or
for which the inmate is requesting the DNA testing under section
2953.82 of the Revised Code, and any other information or material
the attorney general determines is necessary or relevant. The
forms also shall be used to make an application requesting DNA
testing under section 2953.82 of the Revised Code, and the
attorney general shall ensure that they are sufficient for that
type of use, and that they include all information and spaces
necessary for that type of use. The attorney general shall
distribute copies of the prescribed forms to the department of

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

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

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

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

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

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

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Sec. 2953.73. (A) 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 sentenced the
inmate for the offense for which the inmate is an eligible inmate
and is requesting DNA testing. The eligible inmate shall submit
the application to that court of common pleas not later than one

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year after the effective date of this section. No court of common 670
pleas shall accept an application under this section after the 671
expiration of the period of time specified in this division. 672

(B) If an eligible inmate submits an application for DNA 673
testing under division (A) of this section, upon the submission of 674
the application, all of the following apply: 675

(1) The eligible inmate shall serve a copy of the application 676
on the prosecuting attorney and the attorney general. 677

(2) The application shall be assigned to the judge of that 678
court of common pleas who was the trial judge in the case in which 679
the eligible inmate was convicted of the offense for which the 680
inmate is requesting DNA testing, or, if that judge no longer is a 681
judge of that court, it shall be assigned according to court 682
rules. The judge to whom the application is assigned shall decide 683
the application. The application shall become part of the file in 684
the case. 685

(C) If an eligible inmate submits an application for DNA 686
testing under division (A) of this section, regardless of whether 687
the inmate has commenced any federal habeas corpus proceeding 688
relative to the case in which the inmate was convicted of the 689
offense for which the inmate is an eligible inmate and is 690
requesting DNA testing, any response to the application by the 691
prosecuting attorney or the attorney general shall be filed not 692
later than forty-five days after the date on which the eligible 693
inmate submits the application. The prosecuting attorney or the 694
attorney general, or both, may, but are not required to, file a 695
response to the application. If the prosecuting attorney or the 696
attorney general files a response under this division, the 697
prosecuting attorney or attorney general, whoever filed the 698
response, shall serve a copy of the response on the eligible 699
inmate. 700

(D) 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 review of the application. 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, the supporting affidavits, and the documentary evidence and, in addition to those materials, shall consider all the files and records pertaining to the proceedings against the applicant, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript and all responses to the application filed under division (C) of this section by a prosecuting attorney or the attorney general, unless the application and the files and records show the applicant is not entitled to DNA testing, in which case the application may be denied. The court is not required to conduct an evidentiary hearing in conducting its review of, and in making its determination as to whether to accept or reject, the application. Upon making its determination, the court shall enter a judgment and order that either accepts or rejects the application and that includes within the judgment and order the reasons for the acceptance or rejection as applied to the criteria and procedures set forth in sections 2953.71 to 2953.81 of the Revised Code. The court shall send a copy of the judgment and order to the eligible inmate who filed it, the prosecuting attorney, and the attorney general.

(E) A judgment and order of a court entered under division (D) of this section is appealable only as provided in this division. If an eligible inmate submits an application for DNA testing under section 2953.73 of the Revised Code and the court of

common pleas rejects the application under division (D) of this 733
section, one of the following applies: 734

(a) If the inmate was sentenced to death for the offense for 735
which the inmate claims to be an eligible inmate and is requesting 736
DNA testing, the inmate may seek leave of the supreme court to 737
appeal the rejection to the supreme court. Courts of appeals do 738
not have jurisdiction to review any rejection if the inmate was 739
sentenced to death for the offense for which the inmate claims to 740
be an eligible inmate and is requesting DNA testing. 741

(b) If the inmate was not sentenced to death for the offense 742
for which the inmate claims to be an eligible inmate and is 743
requesting DNA testing, the rejection is a final appealable order, 744
and the inmate may appeal it to the court of appeals of the 745
district in which is located that court of common pleas. 746

(F) Notwithstanding any provision of law regarding fees and 747
costs, no filing fee shall be required of, and no court costs 748
shall be assessed against, an eligible offender who is indigent 749
and who submits an application under this section. 750

(G) If a court rejects an eligible inmate's application for 751
DNA testing under division (D) of this section, unless the 752
rejection is overturned on appeal, no court shall require the 753
state to administer a DNA test under sections 2953.71 to 2953.81 754
of the Revised Code on the eligible inmate. 755

Sec. 2953.74. (A) If an eligible inmate submits an 756
application for DNA testing under section 2953.73 of the Revised 757
Code and a prior definitive DNA test has been conducted regarding 758
the same biological evidence that the inmate seeks to have tested, 759
the court shall reject the inmate's application. If an eligible 760
inmate files an application for DNA testing and a prior 761
inconclusive DNA test has been conducted regarding the same 762

biological evidence that the inmate seeks to have tested, the
court shall review the application and has the discretion, on a
case-by-case basis, to either accept or reject the application.
The court may direct a testing authority to provide the court with
information that the court may use in determining whether prior
DNA test results were definitive or inconclusive and whether to
accept or reject an application in relation to which there were
prior inconclusive DNA test results.

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

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(1) The inmate did not have a DNA test taken at the trial
stage in the case in which the inmate was convicted of the offense
for which the inmate is an eligible inmate and is requesting the
DNA testing regarding the same biological evidence that the inmate
seeks to have tested, the inmate shows that DNA exclusion would
have been outcome determinative at that trial stage in that case,
and, at the time of the trial stage in that case, DNA testing was
not generally accepted, the results of DNA testing were not
generally admissible in evidence, or DNA testing was not yet
available.

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

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(C) If an eligible inmate submits an application for DNA
testing under section 2953.73 of the Revised Code, the court may

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accept the application only if all of the following apply:

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

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

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

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

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

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(3) The court determines that, at the trial stage in the case in which the inmate was convicted of the offense for which the

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inmate is an eligible inmate and is requesting the DNA testing,
the identity of the person who committed the offense was an issue.

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

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

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(6) The court determines pursuant to section 2953.76 of the
Revised Code from the chain of custody of the parent sample of the
biological material to be tested and of any test sample extracted
from the parent sample, and from the totality of circumstances
involved, that the parent sample and the extracted test sample are
the same sample as collected and that there is no reason to
believe that they have been out of state custody or have been
tampered with or contaminated since they were collected.

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

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(1) All prosecuting authorities in the case in which the inmate was convicted of the offense for which the inmate is an eligible inmate and is requesting the DNA testing and in the appeals of, and postconviction proceedings related to, that case; 856
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(2) All law enforcement authorities involved in the investigation of the offense for which the inmate is an eligible offender and is requesting the DNA testing; 860
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(3) All custodial agencies involved at any time with the biological material in question; 863
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(4) The custodian of all custodial agencies described in division (A)(3) of this section; 865
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(5) All crime laboratories involved at any time with the biological material in question; 867
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(6) All other reasonable sources. 869

(B) The prosecuting attorney shall prepare a report that contains the prosecuting attorney's determinations made under division (A) of this section and shall file a copy of the report with the court and provide a copy to the eligible inmate and the attorney general. 870
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Sec. 2953.76. If an eligible inmate submits an application for DNA testing under section 2953.73 of the Revised Code, the court shall require the prosecuting attorney to consult with the testing authority and to prepare findings regarding the quantity and quality of the parent sample of the biological material collected from the crime scene or victim of the offense for which the inmate is an eligible inmate and is requesting the DNA testing and that is to be tested, and of the chain of custody and reliability regarding that parent sample, as follows: 875
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(A) The testing authority shall determine whether there is a scientifically sufficient quantity of the parent sample to test 884
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and whether the parent sample is so minute or fragile that there 886
is a substantial risk that the parent sample could be destroyed in 887
testing. The testing authority may determine that there is not a 888
sufficient quantity to test in order to preserve the state's 889
ability to present in the future the original evidence presented 890
at trial, if another trial is required. Upon making its 891
determination under this division, the testing authority shall 892
prepare a written document that contains its determination and the 893
reasoning and rationale for that determination and shall provide a 894
copy to the court, the eligible inmate, the prosecuting attorney, 895
and the attorney general. The court may determine in its 896
discretion, on a case-by-case basis, that, even if the parent 897
sample of the biological material so collected is so minute or 898
fragile as to risk destruction of the parent sample by the 899
extraction, the application should not be rejected solely on the 900
basis of that risk. 901

(B) The testing authority shall determine whether the parent 902
sample has degraded or been contaminated to the extent that it has 903
become scientifically unsuitable for testing and whether the 904
parent sample otherwise has been preserved, and remains, in a 905
condition that is suitable for testing. Upon making its 906
determination under this division, the testing authority shall 907
prepare a written document that contains its determination and the 908
reasoning and rationale for that determination and shall provide a 909
copy to the court, the eligible inmate, the prosecuting attorney, 910
and the attorney general. 911

(C) The court shall determine, from the chain of custody of 912
the parent sample of the biological material to be tested and of 913
any test sample extracted from the parent sample and from the 914
totality of circumstances involved, whether the parent sample and 915
the extracted test sample are the same sample as collected and 916
whether there is any reason to believe that they have been out of 917

state custody or have been tampered with or contaminated since
they were collected. Upon making its determination under this
division, the court shall prepare and retain a written document
that contains its determination and the reasoning and rationale
for that determination.

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Sec. 2953.77. (A) If an eligible inmate submits an
application for DNA testing under section 2953.73 of the Revised
Code and if the application is accepted and DNA testing is to be
performed, the court shall require that the chain of custody
remain intact and that all of the applicable following precautions
are satisfied to ensure that the parent sample of the biological
material collected from the crime scene or the victim of the
offense for which the inmate is an eligible inmate and requested
the DNA testing, and the test sample of the parent sample that is
extracted and actually is to be tested, are not contaminated
during transport or the testing process:

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(1) The court shall require that the chain of custody be
maintained and documented relative to the parent sample and the
test sample actually to be tested between the time they are
removed from their place of storage or the time of their
extraction to the time at which the DNA testing will be performed.

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(2) The court, the testing authority, and the law enforcement
and prosecutorial personnel involved in the process, or any
combination of those entities and persons, shall coordinate the
transport of the parent sample and the test sample actually to be
tested between their place of storage and the place where the DNA
testing will be performed, and the court and testing authority
shall document the transport procedures so used.

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

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(4) The testing authority shall maintain and preserve the parent sample and the test sample actually to be tested after they are in the possession of the testing authority and shall document the maintenance and preservation procedures used. 949
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(5) After the DNA testing, the court, the testing authority, and the original custodial agency of the parent sample, or any combination of those entities, shall coordinate the return of the remaining parent sample back to its place of storage with the original custodial agency or to any other place determined in accordance with this division and section 2953.81 of the Revised Code. The court shall determine, in consultation with the testing authority, the custodial agency to maintain any newly created, extracted, or collected DNA material resulting from the testing. The court and testing authority shall document the return procedures for original materials and for any newly created, extracted, or collected DNA material resulting from the testing, and also the custodial agency to which those materials should be taken. 953
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(B) A court or testing authority shall provide the documentation required under division (A) of this section in writing and shall maintain that documentation. 967
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Sec. 2953.78. (A) If an eligible inmate submits an application for DNA testing under section 2953.73 of the Revised Code and if the application is accepted and DNA testing is to be performed, the court shall select the testing authority to be used 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. 970
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(B) If a court selects a testing authority pursuant to 979

division (A) of this section and the eligible inmate for whom the 980
test is to be performed objects to the use of the selected testing 981
authority, the court shall rescind its prior acceptance of the 982
application for DNA testing for the inmate and deny the 983
application. An objection as described in this division, and the 984
resulting rescission and denial, do not preclude a court from 985
accepting in the court's discretion, a subsequent application by 986
the same eligible inmate requesting DNA testing. 987

(C) The attorney general shall approve or designate testing 988
authorities that may be selected and used to conduct DNA testing, 989
shall prepare a list of the approved or designated testing 990
authorities, and shall provide copies of the list to all courts of 991
common pleas. The attorney general shall update the list as 992
appropriate to reflect changes in the approved or designated 993
testing authorities and shall provide copies of the updated list 994
to all courts of common pleas. The attorney general shall not 995
approve or designate a testing authority under this division 996
unless the testing authority satisfies the criteria set forth in 997
section 2953.80 of the Revised Code. 998

(D) The attorney general's approval or designation of testing 999
authorities under division (C) of this section, and the selection 1000
and use of any approved or designated testing authority, do not 1001
afford an inmate any right to subsequently challenge the approval, 1002
designation, selection, or use, and an inmate may not appeal to 1003
any court the approval, designation, selection, or use of a 1004
testing authority. 1005

Sec. 2953.79. (A) If an eligible inmate submits an 1006
application for DNA testing under section 2953.73 of the Revised 1007
Code and if the application is accepted and DNA testing is to be 1008
performed, a sample of biological material shall be obtained from 1009
the inmate in accordance with this section, to be compared with 1010

the parent sample of biological material collected from the crime scene or the victim of the offense for which the inmate is an eligible inmate and requested the DNA testing. The inmate's filing of the application constitutes the inmate's consent to the obtaining of the sample of biological material from the inmate. The testing authority shall obtain the sample of biological material from the inmate in accordance with medically accepted procedures. 1011
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(B) If DNA testing is to be performed for an inmate as described in division (A) of this section, the court shall require the state to coordinate with the department of rehabilitation and correction as to the time and place at which the sample of biological material will be obtained from the inmate. The sample of biological material shall be obtained from the inmate at the facility in which the inmate is housed, and the department shall make the inmate available at the specified time. The court shall require the state to provide notice to the inmate and to the inmate's counsel of the date on which, and the time and place at which, the sample will be so obtained. 1019
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The court also shall require the state to coordinate with the testing authority regarding the obtaining of the sample from the inmate. 1030
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(C)(1) If DNA testing is to be performed for an inmate as described in division (A) of this section, and the inmate refuses to submit to the collection of the sample of biological material from the inmate or hinders the state from obtaining a sample of biological material from the inmate, the court shall rescind its prior acceptance of the application for DNA testing for the inmate and deny the application. 1033
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(2) For purposes of division (C)(1) of this section: 1040

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

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

(D) The extracting personnel shall make the determination as to whether an eligible inmate for whom DNA testing is to be performed is refusing to submit to the collection of a sample of biological material from the inmate or is hindering the state from obtaining a sample of biological material from the inmate at the time and date of the scheduled collection of the sample. If the extracting personnel determine that an inmate is refusing to submit to the collection of a sample or is hindering the state from obtaining a sample, the extracting personnel shall document in writing the conditions that constitute the refusal or hindrance, maintain the documentation, and notify the court of the inmate's refusal or hindrance.

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:

(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.

(2) It undergoes an annual internal or external audit for 1072
quality assurance in conformity with the standards identified in 1073
division (A)(1) of this section. 1074

(3) At least once in the preceding two-year period, and at 1075
least once each two-year period thereafter, it undergoes an 1076
external audit for quality assurance in conformity with the 1077
standards identified in division (A)(1) of this section. 1078

(B) As used in division (A) of this section: 1079

(1) "External audit" means a quality assurance review of a 1080
testing authority that is conducted by a forensic DNA testing 1081
agency outside of, and not affiliated with, the testing authority. 1082

(2) "Internal audit" means an internal review of a testing 1083
authority that is conducted by the testing authority itself. 1084

Sec. 2953.81. If an eligible inmate submits an application 1085
for DNA testing under section 2953.73 of the Revised Code and if 1086
DNA testing is performed based on that application, upon 1087
completion of the testing, all of the following apply: 1088

(A) The court or a designee of the court shall require the 1089
state to maintain the results of the testing and to maintain and 1090
preserve both the parent sample of the biological material used 1091
and the inmate sample of the biological material used. The testing 1092
authority may be designated as the person to maintain the results 1093
of the testing or to maintain and preserve some or all of the 1094
samples, or both. The results of the testing remain state's 1095
evidence. The samples shall be preserved during the entire period 1096
of time for which the inmate is imprisoned relative to the prison 1097
term or sentence of death in question and, if that prison term 1098
expires or the inmate is executed under that sentence of death, 1099
for a reasonable period of time of not less than twenty-four 1100
months after the term expires or the inmate is executed. The court 1101

shall determine the period of time that is reasonable for purposes 1102
of this division, provided that the period shall not be less than 1103
twenty-four months after the term expires or the inmate is 1104
executed. 1105

(B) The results of the testing are a public record. 1106

(C) The court or the testing authority shall provide a copy 1107
of the results of the testing to the prosecuting attorney, the 1108
attorney general, and the subject inmate. 1109

(D) If the postconviction proceeding in question is pending 1110
at that time in a court of this state, the court of common pleas 1111
that decided the DNA application or the testing authority shall 1112
provide a copy of the results of the testing to any court of this 1113
state, and, if it is pending in a federal court, the court of 1114
common pleas that decided the DNA application or the testing 1115
authority shall provide a copy of the results of the testing to 1116
that federal court. 1117

(E) The testing authority shall provide a copy of the results 1118
of the testing to the court of common pleas that decided the DNA 1119
application. 1120

(F) The inmate or the state may enter the results of the 1121
testing into any proceeding. 1122

Sec. 2953.82. (A) An inmate who pleaded guilty or no contest 1123
to a felony offense that was committed prior to the effective date 1124
of this section may request DNA testing under this section 1125
regarding that offense if all of the following apply: 1126

(1) The inmate was sentenced to a prison term or sentence of 1127
death for that felony and, on the effective date of this section, 1128
is in prison serving that prison term or under that sentence of 1129
death. 1130

(2) On the date on which the inmate files the application 1131

requesting the testing with the court as described in division (B) 1132
of this section, the inmate has at least one year remaining on the 1133
prison term described in division (A)(1) of this section, or the 1134
inmate is in prison under a sentence of death as described in that 1135
division. 1136

(B) An inmate who pleaded guilty or no contest to a felony 1137
offense that was committed prior to the effective date of this 1138
section, who satisfies the criteria set forth in division (A) of 1139
this section, and who wishes to request DNA testing under this 1140
section shall submit, in accordance with this division, an 1141
application for the testing to the court of common pleas and the 1142
prosecuting attorney. The inmate shall specify on the application 1143
the offense or offenses for which the inmate is requesting the DNA 1144
testing under this section. Along with the application, the inmate 1145
shall submit an acknowledgment that is signed by the inmate. The 1146
application and acknowledgment required under this division shall 1147
be the same application and acknowledgment as are used by eligible 1148
inmates who request DNA testing under sections 2953.71 to 2953.81 1149
of the Revised Code. 1150

The inmate shall file the application with the court of 1151
common pleas not later than one year after the effective date of 1152
this section. Upon filing the application, the inmate shall serve 1153
a copy on the prosecuting attorney. 1154

(C) Within forty-five days after the filing of an application 1155
for DNA testing under division (B) of this section, the 1156
prosecuting attorney shall file a statement with the court that 1157
indicates whether the prosecuting attorney agrees or disagrees 1158
that the inmate should be permitted to obtain DNA testing under 1159
this section. If the prosecuting attorney agrees that the inmate 1160
should be permitted to obtain DNA testing under this section, all 1161
of the following apply: 1162

(1) The application and the written statement shall be 1163
considered for all purposes as if they were an application for DNA 1164
testing filed under section 2953.73 of the Revised Code that the 1165
court accepted, and the court, the prosecuting attorney, the 1166
attorney general, the inmate, law enforcement personnel, and all 1167
other involved persons shall proceed regarding DNA testing for the 1168
inmate pursuant to sections 2953.77 to 2953.81 of the Revised 1169
Code, in the same manner as if the inmate was an eligible inmate 1170
for whom an application for DNA testing had been accepted. 1171

(2) Upon completion of the DNA testing, section 2953.81 of 1172
the Revised Code applies. 1173

(D) If the prosecuting attorney disagrees that the inmate 1174
should be permitted to obtain DNA testing under this section, the 1175
prosecuting attorney's disagreement is final and is not appealable 1176
by any person to any court, and no court shall have authority, 1177
without agreement of the prosecuting attorney, to order DNA 1178
testing regarding that inmate and the offense or offenses for 1179
which the inmate requested DNA testing in the application. 1180

(E) If the prosecuting attorney fails to file a statement of 1181
agreement or disagreement within the time provided in division (C) 1182
of this section, the court may order the prosecuting attorney to 1183
file a statement of that nature within fifteen days of the date of 1184
the order. 1185

Sec. 2953.83. In any court proceeding under sections 2953.71 1186
to 2953.82 of the Revised Code, the Rules of Criminal Procedure 1187
apply, except to the extent that sections 2953.71 to 2953.82 of 1188
the Revised Code provide a different procedure or to the extent 1189
that the Rules would by their nature be clearly inapplicable. 1190

Section 2. That existing sections 109.573, 2953.21, and 1191
2953.23 of the Revised Code are hereby repealed. 1192