

**As Reported by the Senate Judiciary--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**

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**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 database for comparison with the unidentified person database to aid in the establishment of the identity of unknown human corpses, human remains, and living individuals.

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

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

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

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

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

(a) If a person has disappeared and has been continuously absent from the person's place of last domicile for a thirty-day or longer period of time without being heard from during the period, persons related by consanguinity of the first degree to the missing person may submit to the bureau a DNA specimen, the bureau may include the DNA record of the specimen in the relatives of missing persons database, and, if the bureau does not include the DNA record of the specimen in the relatives of missing persons database, the bureau shall retain the DNA record for future reference and inclusion as appropriate in that database.

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

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

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

(4) If the bureau of criminal identification and investigation establishes and maintains an unidentified person database and if the superintendent of the bureau identifies a matching DNA record for the DNA record of a person or deceased person whose DNA record is contained in the unidentified person database, the superintendent shall inform the coroner who submitted or the law enforcement agency that submitted the DNA

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 173

unidentified person database;	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
<b>Sec. 2953.21.</b> (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 under section 2953.82 of the Revised Code provided results that establish, by clear and convincing evidence, actual innocence of</u>	194 195 196 197 198 199 200 201 202 203

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 234

person ~~upon whom a sentence of~~ who has been sentenced to death ~~has~~ 235  
~~been imposed~~ may ask the court to render void or voidable the 236  
judgment with respect to the conviction of aggravated murder or 237  
the specification of an aggravating circumstance or the sentence 238  
of death. 239

(4) A petitioner shall state in the original or amended 240  
petition filed under division (A) of this section all grounds for 241  
relief claimed by the petitioner. Except as provided in section 242  
2953.23 of the Revised Code, any ground for relief that is not so 243  
stated in the petition is waived. 244

(5) If the petitioner in a petition filed under division (A) 245  
of this section was convicted of or pleaded guilty to a felony, 246  
the petition may include a claim that the petitioner was denied 247  
the equal protection of the laws in violation of the Ohio 248  
Constitution or the United States Constitution because the 249  
sentence imposed upon the petitioner for the felony was part of a 250  
consistent pattern of disparity in sentencing by the judge who 251  
imposed the sentence, with regard to the petitioner's race, 252  
gender, ethnic background, or religion. If the supreme court 253  
adopts a rule requiring a court of common pleas to maintain 254  
information with regard to an offender's race, gender, ethnic 255  
background, or religion, the supporting evidence for the petition 256  
shall include, but shall not be limited to, a copy of that type of 257  
information relative to the petitioner's sentence and copies of 258  
that type of information relative to sentences that the same judge 259  
imposed upon other persons. 260

(B) The clerk of the court in which the petition is filed 261  
shall docket the petition and bring it promptly to the attention 262  
of the court. ~~The petitioner need not serve a copy of the petition~~ 263  
~~on the prosecuting attorney.~~ The clerk of the court in which the 264  
petition is filed immediately shall forward a copy of the petition 265  
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 362

authorized by section 2953.08 of the Revised Code, the remedy set 363  
forth in this section is the exclusive remedy by which a person 364  
may bring a collateral challenge to the validity of a conviction 365  
or sentence in a criminal case or to the validity of an 366  
adjudication of a child as a delinquent child for the commission 367  
of an act that would be a criminal offense if committed by an 368  
adult or the validity of a related order of disposition. 369

**Sec. 2953.23.** (A) Whether a hearing is or is not held on a 370  
petition filed pursuant to section 2953.21 of the Revised Code, a 371  
court may not entertain a petition filed after the expiration of 372  
the period prescribed in division (A) of that section or a second 373  
petition or successive petitions for similar relief on behalf of a 374  
petitioner unless ~~both~~ division (A)(1) or (2) of this section 375  
applies: 376

(1) Both of the following apply: 377

~~(1) Either of the following applies:~~ 378

(a) ~~The~~ Either the petitioner shows that the petitioner was 379  
unavoidably prevented from discovery of the facts upon which the 380  
petitioner must rely to present the claim for relief- 381

~~(b) Subsequent, or, subsequent~~ to the period prescribed in 382  
division (A)(2) of section 2953.21 of the Revised Code or to the 383  
filing of an earlier petition, the United States Supreme Court 384  
recognized a new federal or state right that applies retroactively 385  
to persons in the petitioner's situation, and the petition asserts 386  
a claim based on that right. 387

~~(2)~~(b) The petitioner shows by clear and convincing evidence 388  
that, but for constitutional error at trial, no reasonable 389  
factfinder would have found the petitioner guilty of the offense 390  
of which the petitioner was convicted or, if the claim challenges 391  
a sentence of death that, but for constitutional error at the 392

sentencing hearing, no reasonable factfinder would have found the  
petitioner eligible for the death sentence.

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

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

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

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

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

(1) 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 under sections 2953.71 to 2953.81 of the Revised Code;

(2) The case in which the inmate pleaded guilty or no contest  
to the offense for which the inmate is requesting the DNA testing  
under section 2953.82 of the Revised Code.

(B) "Biological material" means any product of a human body 423  
containing DNA. 424

(C) "Chain of custody" means a record or other evidence that 425  
tracks a subject sample of biological material from the time the 426  
biological material was first obtained until the time it currently 427  
exists in its place of storage and, in relation to a DNA sample, a 428  
record or other evidence that tracks the DNA sample from the time 429  
it was first obtained until it currently exists in its place of 430  
storage. For purposes of this division, examples of when 431  
biological material or a DNA sample is first obtained include, but 432  
are not limited to, obtaining the material or sample at the scene 433  
of a crime, from a victim, from an inmate, or in any other manner 434  
or time as is appropriate in the facts and circumstances present. 435

(D) "Custodial agency" means the group or entity that has the 436  
responsibility to maintain biological material in question. 437

(E) "Custodian" means the person who is the primary 438  
representative of a custodial agency. 439

(F) "Eligible inmate" means an inmate who is eligible under 440  
division (C) of section 2953.72 of the Revised Code to request DNA 441  
testing to be conducted under sections 2953.71 to 2953.81 of the 442  
Revised Code. 443

(G) "Exclusion" or "exclusion result" means a result of DNA 444  
testing that scientifically precludes or forecloses the subject 445  
inmate as a contributor of biological material recovered from the 446  
crime scene or victim in question, in relation to the offense for 447  
which the inmate is an eligible inmate and for which the sentence 448  
of death or prison term was imposed upon the inmate or, regarding 449  
a request for DNA testing made under section 2953.82 of the 450  
Revised Code, in relation to the offense for which the inmate made 451  
the request and for which the sentence of death or prison term was 452  
imposed upon the inmate. 453

(H) "Extracting personnel" means medically approved personnel 454  
who are employed to physically obtain an inmate DNA specimen for 455  
purposes of DNA testing under sections 2953.71 to 2953.81 or 456  
section 2953.82 of the Revised Code. 457

(I) "Inclusion" or "inclusion result" means a result of DNA 458  
testing that scientifically cannot exclude, or that holds 459  
accountable, the subject inmate as a contributor of biological 460  
material recovered from the crime scene or victim in question, in 461  
relation to the offense for which the inmate is an eligible inmate 462  
and for which the sentence of death or prison term was imposed 463  
upon the inmate or, regarding a request for DNA testing made under 464  
section 2953.82 of the Revised Code, in relation to the offense 465  
for which the inmate made the request and for which the sentence 466  
of death or prison term was imposed upon the inmate. 467

(J) "Inconclusive" or "inconclusive result" means a result of 468  
DNA testing that is rendered when a scientifically appropriate and 469  
definitive DNA analysis or result, or both, cannot be determined. 470

(K) "Inmate" means an inmate in a prison who was sentenced by 471  
a court, or by a jury and a court, of this state. 472

(L) "Outcome determinative" means that had the results of DNA 473  
testing been presented at the trial of the subject inmate 474  
requesting DNA testing and been found relevant and admissible with 475  
respect to the felony offense for which the inmate is an eligible 476  
inmate and is requesting the DNA testing or for which the inmate 477  
is requesting the DNA testing under section 2953.82 of the Revised 478  
Code, no reasonable factfinder would have found the inmate guilty 479  
of that offense or, if the inmate was sentenced to death relative 480  
to that offense, would have found the inmate guilty of the 481  
aggravating circumstance or circumstances the inmate was found 482  
guilty of committing and that is or are the basis of that sentence 483  
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 514

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  
application and accompanying acknowledgment will apply those

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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 608

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  
rehabilitation and correction, the department shall ensure that

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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 year after the effective date of this section. No court of common

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pleas shall accept an application under this section after the expiration of the period of time specified in this division.

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

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

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

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

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(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, 825  
the identity of the person who committed the offense was an issue. 826

(4) The court determines that one or more of the defense 827  
theories asserted by the inmate at the trial stage in the case 828  
described in division (C)(3) of this section or in a retrial of 829  
that case in a court of this state was of such a nature that, if 830  
DNA testing is conducted and an exclusion result is obtained, the 831  
exclusion result will be outcome determinative. 832

(5) The court determines that, if DNA testing is conducted 833  
and an exclusion result is obtained, the results of the testing 834  
will be outcome determinative regarding that inmate. 835

(6) The court determines pursuant to section 2953.76 of the 836  
Revised Code from the chain of custody of the parent sample of the 837  
biological material to be tested and of any test sample extracted 838  
from the parent sample, and from the totality of circumstances 839  
involved, that the parent sample and the extracted test sample are 840  
the same sample as collected and that there is no reason to 841  
believe that they have been out of state custody or have been 842  
tampered with or contaminated since they were collected. 843

**Sec. 2953.75.** (A) If an eligible inmate submits an 844  
application for DNA testing under section 2953.73 of the Revised 845  
Code, the court shall require the prosecuting attorney to use 846  
reasonable diligence to determine whether biological material was 847  
collected from the crime scene or victim of the offense for which 848  
the inmate is an eligible inmate and is requesting the DNA testing 849  
against which a sample from the inmate can be compared and whether 850  
the parent sample of that biological material still exists at that 851  
point in time. In using reasonable diligence to make those 852  
determinations, the prosecuting attorney shall rely upon all 853  
relevant sources, including, but not limited to, all of the 854  
following: 855

(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 quality assurance in conformity with the standards identified in division (A)(1) of this section. 1072  
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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. 1075  
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(B) As used in division (A) of this section: 1079

(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. 1080  
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(2) "Internal audit" means an internal review of a testing authority that is conducted by the testing authority itself. 1083  
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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: 1085  
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(A) The court or a designee of the court shall require the state to maintain the results of the testing and to maintain and preserve both the parent sample of the biological material used and the inmate sample of the biological material used. The testing authority may be designated as the person to maintain the results of the testing or to maintain and preserve some or all of the samples, or both. The results of the testing remain state's evidence. The samples shall be preserved during the entire period of time for which the inmate is imprisoned relative to the prison term or sentence of death in question and, if that prison term expires or the inmate is executed under that sentence of death, for a reasonable period of time of not less than twenty-four months after the term expires or the inmate is executed. The court 1089  
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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