

As Introduced

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S. B. No. 262

Senators Goodman, Stivers, Clancy, Jacobson, Gardner, Padgett, Schuler,
Fedor, Fingerhut, Miller

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A BILL

To amend sections 2953.72, 2953.73, and 2953.82 of
the Revised Code to eliminate the former two-year
window for applications for post-conviction DNA
testing and instead allow an eligible inmate to
request post-conviction DNA testing at any time if
specified criteria are met.

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

Section 1. That sections 2953.72, 2953.73, and 2953.82 of the
Revised Code be amended to read as follows:

Sec. 2953.72. (A) Any eligible inmate who wishes to request
DNA testing under sections 2953.71 to 2953.81 of the Revised Code
shall submit an application for the testing to the court of common
pleas specified in section 2953.73 of the Revised Code, on a form
prescribed by the attorney general for this purpose. The eligible
inmate shall submit the application ~~within the period of time, and~~
in accordance with the procedures~~,~~ set forth in section 2953.73 of
the Revised Code. The eligible inmate shall specify on the
application the offense or offenses for which the inmate is an
eligible inmate and is requesting the DNA testing. Along with the
application, the eligible inmate shall submit an acknowledgment

that is on a form prescribed by the attorney general for this 20
purpose and that is signed by the inmate. The acknowledgment shall 21
set forth all of the following: 22

(1) That sections 2953.71 to 2953.81 of the Revised Code 23
contemplate applications for DNA testing of eligible inmates at a 24
stage of a prosecution or case after the inmate has been sentenced 25
to a prison term or a sentence of death, that any exclusion or 26
inclusion result of DNA testing rendered pursuant to those 27
sections may be used by a party in any proceeding as described in 28
section 2953.81 of the Revised Code, and that all requests for any 29
DNA testing made at trial will continue to be handled by the 30
prosecuting attorney in the case; 31

(2) That the process of conducting postconviction DNA testing 32
for an eligible inmate under sections 2953.71 to 2953.81 of the 33
Revised Code begins when the inmate submits an application under 34
section 2953.73 of the Revised Code and the acknowledgment 35
described in this section; 36

(3) That the eligible inmate must submit the application and 37
acknowledgment to the court of common pleas that heard the case in 38
which the inmate was convicted of the offense for which the inmate 39
is an eligible offender and is requesting the DNA testing; 40

(4) That the state has established a set of criteria set 41
forth in section 2953.74 of the Revised Code by which eligible 42
inmate applications for DNA testing will be screened and that a 43
judge of a court of common pleas upon receipt of a properly filed 44
application and accompanying acknowledgment will apply those 45
criteria to determine whether to accept or reject the application; 46

(5) That the results of DNA testing conducted under sections 47
2953.71 to 2953.81 of the Revised Code will be provided as 48
described in section 2953.81 of the Revised Code to all parties in 49
the postconviction proceedings and will be reported to various 50

courts; 51

(6) That, if DNA testing is conducted with respect to an 52
inmate under sections 2953.71 to 2953.81 of the Revised Code, the 53
state will not offer the inmate a retest if an inclusion result is 54
achieved relative to the testing and that, if the state were to 55
offer a retest after an inclusion result, the policy would create 56
an atmosphere in which endless testing could occur and in which 57
postconviction proceedings could be stalled for many years; 58

(7) That, if the court rejects an eligible inmate's 59
application for DNA testing because the inmate does not satisfy 60
the acceptance criteria described in division (A)(4) of this 61
section, the court will not accept or consider subsequent 62
applications; 63

(8) That the acknowledgment memorializes the provisions of 64
sections 2953.71 to 2953.81 of the Revised Code with respect to 65
the application of postconviction DNA testing to inmates, that 66
those provisions do not give any inmate any additional 67
constitutional right that the inmate did not already have ~~prior to~~ 68
~~the effective date of those provisions~~, that the court has no duty 69
or obligation to provide postconviction DNA testing to inmates, 70
that the court of common pleas has the sole discretion subject to 71
an appeal as described in this division to determine whether an 72
inmate is an eligible inmate and whether an eligible inmate's 73
application for DNA testing satisfies the acceptance criteria 74
described in division (A)(4) of this section and whether the 75
application should be accepted or rejected, that if the court of 76
common pleas rejects an eligible inmate's application, the inmate 77
may seek leave of the supreme court to appeal the rejection to 78
that court if the inmate was sentenced to death for the offense 79
for which the inmate is requesting the DNA testing and, if the 80
inmate was not sentenced to death for that offense, may appeal the 81
rejection to the court of appeals, and that no determination 82

otherwise made by the court of common pleas in the exercise of its discretion regarding the eligibility of an inmate or regarding postconviction DNA testing under those provisions is reviewable by or appealable to any court;

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

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

(11) That, if the inmate is an inmate who pleaded guilty or

no contest to a felony offense and who is using the application 115
and acknowledgment to request DNA testing under section 2953.82 of 116
the Revised Code, all references in the acknowledgment to an 117
"eligible inmate" are considered to be references to, and apply 118
to, the inmate and all references in the acknowledgment to 119
"sections 2953.71 to 2953.81 of the Revised Code" are considered 120
to be references to "section 2953.82 of the Revised Code". 121

(B) The attorney general shall prescribe a form to be used to 122
make an application for DNA testing under division (A) of this 123
section and section 2953.73 of the Revised Code and a form to be 124
used to provide the acknowledgment described in division (A) of 125
this section. The forms shall include all information described in 126
division (A) of this section, spaces for an inmate to insert all 127
information necessary to complete the forms, including, but not 128
limited to, specifying the offense or offenses for which the 129
inmate is an eligible inmate and is requesting the DNA testing or 130
for which the inmate is requesting the DNA testing under section 131
2953.82 of the Revised Code, and any other information or material 132
the attorney general determines is necessary or relevant. The 133
forms also shall be used to make an application requesting DNA 134
testing under section 2953.82 of the Revised Code, and the 135
attorney general shall ensure that they are sufficient for that 136
type of use, and that they include all information and spaces 137
necessary for that type of use. The attorney general shall 138
distribute copies of the prescribed forms to the department of 139
rehabilitation and correction, the department shall ensure that 140
each prison in which inmates are housed has a supply of copies of 141
the forms, and the department shall ensure that copies of the 142
forms are provided free of charge to any inmate who requests them. 143

(C)(1) An inmate is eligible to request DNA testing to be 144
conducted under sections 2953.71 to 2953.81 of the Revised Code 145
only if all of the following apply: 146

(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.

(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.

(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.

(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.

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 two years after October 29, 2003. No court of common pleas shall accept an application under this section after the expiration of the period of time specified in this division.~~

(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:

(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

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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
section, one of the following applies:

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

be an eligible inmate and is requesting DNA testing. 241

(2) If the inmate was not sentenced to death for the offense 242
for which the inmate claims to be an eligible inmate and is 243
requesting DNA testing, the rejection is a final appealable order, 244
and the inmate may appeal it to the court of appeals of the 245
district in which is located that court of common pleas. 246

(F) Notwithstanding any provision of law regarding fees and 247
costs, no filing fee shall be required of, and no court costs 248
shall be assessed against, an eligible offender who is indigent 249
and who submits an application under this section. 250

(G) If a court rejects an eligible inmate's application for 251
DNA testing under division (D) of this section, unless the 252
rejection is overturned on appeal, no court shall require the 253
state to administer a DNA test under sections 2953.71 to 2953.81 254
of the Revised Code on the eligible inmate. 255

Sec. 2953.82. (A) An inmate who pleaded guilty or no contest 256
to a felony offense ~~that was committed prior to October 29, 2003~~ 257
may request DNA testing under this section regarding that offense 258
if all of the following apply: 259

(1) The inmate was sentenced to a prison term or sentence of 260
death for that felony and, ~~on October 29, 2003,~~ is in prison 261
serving that prison term or under that sentence of death. 262

(2) On the date on which the inmate files the application 263
requesting the testing with the court as described in division (B) 264
of this section, the inmate has at least one year remaining on the 265
prison term described in division (A)(1) of this section, or the 266
inmate is in prison under a sentence of death as described in that 267
division. 268

(B) An inmate who pleaded guilty or no contest to a felony 269
offense ~~that was committed prior to October 29, 2003,~~ who 270

satisfies the criteria set forth in division (A) of this section, 271
and who wishes to request DNA testing under this section shall 272
submit, in accordance with this division, an application for the 273
testing to the court of common pleas ~~and. Upon submitting the~~ 274
~~application to the court, the inmate shall serve a copy on the~~ 275
prosecuting attorney. The inmate shall specify on the application 276
the offense or offenses for which the inmate is requesting the DNA 277
testing under this section. Along with the application, the inmate 278
shall submit an acknowledgment that is signed by the inmate. The 279
application and acknowledgment required under this division shall 280
be the same application and acknowledgment as are used by eligible 281
inmates who request DNA testing under sections 2953.71 to 2953.81 282
of the Revised Code. 283

~~The inmate shall file the application with the court of 284
common pleas not later than two years after October 29, 2003. Upon 285
filing the application, the inmate shall serve a copy on the 286
prosecuting attorney. 287~~

(C) Within forty-five days after the filing of an application 288
for DNA testing under division (B) of this section, the 289
prosecuting attorney shall file a statement with the court that 290
indicates whether the prosecuting attorney agrees or disagrees 291
that the inmate should be permitted to obtain DNA testing under 292
this section. If the prosecuting attorney agrees that the inmate 293
should be permitted to obtain DNA testing under this section, all 294
of the following apply: 295

(1) The application and the written statement shall be 296
considered for all purposes as if they were an application for DNA 297
testing filed under section 2953.73 of the Revised Code that the 298
court accepted, and the court, the prosecuting attorney, the 299
attorney general, the inmate, law enforcement personnel, and all 300
other involved persons shall proceed regarding DNA testing for the 301
inmate pursuant to sections 2953.77 to 2953.81 of the Revised 302

Code, in the same manner as if the inmate was an eligible inmate 303
for whom an application for DNA testing had been accepted. 304

(2) Upon completion of the DNA testing, section 2953.81 of 305
the Revised Code applies. 306

(D) If the prosecuting attorney disagrees that the inmate 307
should be permitted to obtain DNA testing under this section, the 308
prosecuting attorney's disagreement is final and is not appealable 309
by any person to any court, and no court shall have authority, 310
without agreement of the prosecuting attorney, to order DNA 311
testing regarding that inmate and the offense or offenses for 312
which the inmate requested DNA testing in the application. 313

(E) If the prosecuting attorney fails to file a statement of 314
agreement or disagreement within the time provided in division (C) 315
of this section, the court may order the prosecuting attorney to 316
file a statement of that nature within fifteen days of the date of 317
the order. 318

Section 2. That existing sections 2953.72, 2953.73, and 319
2953.82 of the Revised Code are hereby repealed. 320