

As Reported by the House Criminal Justice Committee

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Sub. S. B. No. 262

**Senators Goodman, Stivers, Clancy, Jacobson, Gardner, Padgett, Schuler,
Fedor, Fingerhut, Miller, R., Dann, Kearney, Zurz, Armbruster, Carey,
Coughlin, Hagan, Harris, Hottinger, Miller, D., Niehaus, Spada
Representatives Latta, Evans, D., Gilb, Willamowski, Seitz, DeGeeter, Mason,
Healy**

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A B I L L

To amend sections 2901.07, 2953.21, 2953.23, 2953.71, 1
2953.72, 2953.73, 2953.74, 2953.78, 2953.80, and 2
2953.82 and to enact section 2953.84 of the 3
Revised Code to eliminate the former two-year 4
window for applications under a program for 5
post-conviction DNA testing and instead allow an 6
eligible inmate to request post-conviction DNA 7
testing at any time if specified criteria are met, 8
to provide for a court's consideration of all 9
available admissible evidence in determining 10
whether the program's applicable "outcome 11
determinative" criterion is satisfied, and to make 12
other changes related to post-conviction DNA 13
testing; to specify that the DNA specimen 14
collection procedures for felons and specified 15
misdemeanors apply regardless of when the 16
offender's conviction occurred or guilty plea was 17
entered; and to declare an emergency. 18

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

Section 1. That sections 2901.07, 2953.21, 2953.23, 2953.71, 19
2953.72, 2953.73, 2953.74, 2953.78, 2953.80, and 2953.82 be 20
amended and section 2953.84 of the Revised Code be enacted to read 21
as follows: 22

Sec. 2901.07. (A) As used in this section: 23

(1) "DNA analysis" and "DNA specimen" have the same meanings 24
as in section 109.573 of the Revised Code. 25

(2) "Jail" and "community-based correctional facility" have 26
the same meanings as in section 2929.01 of the Revised Code. 27

(3) "Post-release control" has the same meaning as in section 28
2967.01 of the Revised Code. 29

(B)(1) A Regardless of when the conviction occurred or the 30
guilty plea was entered, a person who has been convicted of, is 31
convicted of, has pleaded guilty to, or pleads guilty to a felony 32
offense and who is sentenced to a prison term or to a community 33
residential sanction in a jail or community-based correctional 34
facility for that offense pursuant to section 2929.16 of the 35
Revised Code, and a person who has been convicted of, is convicted 36
of, has pleaded guilty to, or pleads guilty to a misdemeanor 37
offense listed in division (D) of this section and who is 38
sentenced to a term of imprisonment for that offense shall submit 39
to a DNA specimen collection procedure administered by the 40
director of rehabilitation and correction or the chief 41
administrative officer of the jail or other detention facility in 42
which the person is serving the term of imprisonment. If the 43
person serves the prison term in a state correctional institution, 44
the director of rehabilitation and correction shall cause the DNA 45
specimen to be collected from the person during the intake process 46
at the reception facility designated by the director. If the 47
person serves the community residential sanction or term of 48

imprisonment in a jail, a community-based correctional facility, 49
or another county, multicounty, municipal, municipal-county, or 50
multicounty-municipal detention facility, the chief administrative 51
officer of the jail, community-based correctional facility, or 52
detention facility shall cause the DNA specimen to be collected 53
from the person during the intake process at the jail, 54
community-based correctional facility, or detention facility. The 55
DNA specimen shall be collected in accordance with division (C) of 56
this section. 57

(2) ~~If~~ Regardless of when the conviction occurred or the 58
guilty plea was entered, if a person has been convicted of, 59
convicted of, has pleaded guilty to, or pleads guilty to a felony 60
offense or a misdemeanor offense listed in division (D) of this 61
section, is serving a prison term, community residential sanction, 62
or term of imprisonment for that offense, and does not provide a 63
DNA specimen pursuant to division (B)(1) of this section, prior to 64
the person's release from the prison term, community residential 65
sanction, or imprisonment, the person shall submit to, and the 66
director of rehabilitation and correction or the chief 67
administrative officer of the jail, community-based correctional 68
facility, or detention facility in which the person is serving the 69
prison term, community residential sanction, or term of 70
imprisonment shall administer, a DNA specimen collection procedure 71
at the state correctional institution, jail, community-based 72
correctional facility, or detention facility in which the person 73
is serving the prison term, community residential sanction, or 74
term of imprisonment. The DNA specimen shall be collected in 75
accordance with division (C) of this section. 76

(3)(a) ~~If~~ Regardless of when the conviction occurred or the 77
guilty plea was entered, if a person has been convicted of, 78
convicted of, has pleaded guilty to, or pleads guilty to a felony 79
offense or a misdemeanor offense listed in division (D) of this 80

section and the person is on probation, released on parole, under 81
transitional control, on community control, on post-release 82
control, or under any other type of supervised release under the 83
supervision of a probation department or the adult parole 84
authority for that offense, the person shall submit to a DNA 85
specimen collection procedure administered by the chief 86
administrative officer of the probation department or the adult 87
parole authority. The DNA specimen shall be collected in 88
accordance with division (C) of this section. If the person 89
refuses to submit to a DNA specimen collection procedure as 90
provided in this division, the person may be subject to the 91
provisions of section 2967.15 of the Revised Code. 92

(b) If ~~the~~ a person to whom division (B)(3)(a) of this 93
section applies is sent to jail or is returned to a jail, 94
community-based correctional facility, or state correctional 95
institution for a violation of the terms and conditions of the 96
probation, parole, transitional control, other release, or 97
post-release control, if the person was or will be serving a term 98
of imprisonment, prison term, or community residential sanction 99
for committing a felony offense or for committing a misdemeanor 100
offense listed in division (D) of this section, and if the person 101
did not provide a DNA specimen pursuant to division (B)(1), (2) or 102
(3)(a) of this section, the person shall submit to, and the 103
director of rehabilitation and correction or the chief 104
administrative officer of the jail or community-based correctional 105
facility shall administer, a DNA specimen collection procedure at 106
the jail, community-based correctional facility, or state 107
correctional institution in which the person is serving the term 108
of imprisonment, prison term, or community residential sanction. 109
The DNA specimen shall be collected from the person in accordance 110
with division (C) of this section. 111

(4) ~~If~~ Regardless of when the conviction occurred or the 112

guilty plea was entered, if a person has been convicted of, is 113
convicted of, has pleaded guilty to, or pleads guilty to a felony 114
offense or a misdemeanor offense listed in division (D) of this 115
section, the person is not sentenced to a prison term, a community 116
residential sanction in a jail or community-based correctional 117
facility, a term of imprisonment, or any type of supervised 118
release under the supervision of a probation department or the 119
adult parole authority, and the person does not provide a DNA 120
specimen pursuant to division (B)(1), (2), (3)(a), or (3)(b) of 121
this section, the sentencing court shall order the person to 122
report to the county probation department immediately after 123
sentencing to submit to a DNA specimen collection procedure 124
administered by the chief administrative officer of the county 125
probation office. If the person is incarcerated at the time of 126
sentencing, the person shall submit to a DNA specimen collection 127
procedure administered by the director of rehabilitation and 128
correction or the chief administrative officer of the jail or 129
other detention facility in which the person is incarcerated. The 130
DNA specimen shall be collected in accordance with division (C) of 131
this section. 132

(C) If the DNA specimen is collected by withdrawing blood 133
from the person or a similarly invasive procedure, a physician, 134
registered nurse, licensed practical nurse, duly licensed clinical 135
laboratory technician, or other qualified medical practitioner 136
shall collect in a medically approved manner the DNA specimen 137
required to be collected pursuant to division (B) of this section. 138
If the DNA specimen is collected by swabbing for buccal cells or a 139
similarly noninvasive procedure, this section does not require 140
that the DNA specimen be collected by a qualified medical 141
practitioner of that nature. No later than fifteen days after the 142
date of the collection of the DNA specimen, the director of 143
rehabilitation and correction or the chief administrative officer 144
of the jail, community-based correctional facility, or other 145

county, multicounty, municipal, municipal-county, or 146
multicounty-municipal detention facility, in which the person is 147
serving the prison term, community residential sanction, or term 148
of imprisonment shall cause the DNA specimen to be forwarded to 149
the bureau of criminal identification and investigation in 150
accordance with procedures established by the superintendent of 151
the bureau under division (H) of section 109.573 of the Revised 152
Code. The bureau shall provide the specimen vials, mailing tubes, 153
labels, postage, and instructions needed for the collection and 154
forwarding of the DNA specimen to the bureau. 155

(D) The director of rehabilitation and correction, the chief 156
administrative officer of the jail, community-based correctional 157
facility, or other county, multicounty, municipal, 158
municipal-county, or multicounty-municipal detention facility, or 159
the chief administrative officer of a county probation department 160
or the adult parole authority shall cause a DNA specimen to be 161
collected in accordance with divisions (B) and (C) of this section 162
from a person in its custody or under its supervision who has been 163
convicted of, is convicted of, has pleaded guilty to, or pleads 164
guilty to any felony offense or ~~to~~ any of the following 165
misdemeanor offenses: 166

(1) A misdemeanor violation, an attempt to commit a 167
misdemeanor violation, or complicity in committing a misdemeanor 168
violation of section 2907.04 of the Revised Code; 169

(2) A misdemeanor violation of any law that arose out of the 170
same facts and circumstances and same act as did a charge against 171
the person of a violation of section 2903.01, 2903.02, 2905.01, 172
2907.02, 2907.03, 2907.04, 2907.05, or 2911.11 of the Revised Code 173
that previously was dismissed or amended or as did a charge 174
against the person of a violation of section 2907.12 of the 175
Revised Code as it existed prior to September 3, 1996, that 176
previously was dismissed or amended; 177

(3) A misdemeanor violation of section 2919.23 of the Revised Code that would have been a violation of section 2905.04 of the Revised Code as it existed prior to July 1, 1996, had it been committed prior to that date;

(4) A sexually oriented offense or a child-victim oriented offense, both as defined in section 2950.01 of the Revised Code, that is a misdemeanor, if, in relation to that offense, the offender has been adjudicated a sexual predator, child-victim predator, habitual sex offender, or habitual child-victim offender, all as defined in section 2950.01 of the Revised Code.

(E) The director of rehabilitation and correction may prescribe rules in accordance with Chapter 119. of the Revised Code to collect a DNA specimen, as provided in this section, from an offender whose supervision is transferred from another state to this state in accordance with the interstate compact for adult offender supervision described in section 5149.21 of the Revised Code.

Sec. 2953.21. (A)(1)(a) Any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States, 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 and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code provided results that 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 209
the aggravating circumstance or circumstances the person was found 210
guilty of committing and that is or are the basis of that sentence 211
of death, may file a petition in the court that imposed sentence, 212
stating the grounds for relief relied upon, and asking the court 213
to vacate or set aside the judgment or sentence or to grant other 214
appropriate relief. The petitioner may file a supporting affidavit 215
and other documentary evidence in support of the claim for relief. 216

(b) As used in division (A)(1)(a) of this section, "actual 217
innocence" means that, had the results of the DNA testing 218
conducted under sections 2953.71 to 2953.81 of the Revised Code or 219
under section 2953.82 of the Revised Code been presented at trial, 220
and had those results been analyzed in the context of and upon 221
consideration of all available admissible evidence related to the 222
inmate's case as described in division (D) of section 2953.74 of 223
the Revised Code, no reasonable factfinder would have found the 224
petitioner guilty of the offense of which the petitioner was 225
convicted, or, if the person was sentenced to death, no reasonable 226
factfinder would have found the petitioner guilty of the 227
aggravating circumstance or circumstances the petitioner was found 228
guilty of committing and that is or are the basis of that sentence 229
of death. 230

(2) Except as otherwise provided in section 2953.23 of the 231
Revised Code, a petition under division (A)(1) of this section 232
shall be filed no later than one hundred eighty days after the 233
date on which the trial transcript is filed in the court of 234
appeals in the direct appeal of the judgment of conviction or 235
adjudication or, if the direct appeal involves a sentence of 236
death, the date on which the trial transcript is filed in the 237
supreme court. If no appeal is taken, except as otherwise provided 238
in section 2953.23 of the Revised Code, the petition shall be 239
filed no later than one hundred eighty days after the expiration 240

of the time for filing the appeal.

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

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

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

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(B) The clerk of the court in which the petition is filed shall docket the petition and bring it promptly to the attention of the court. The clerk of the court in which the petition is filed immediately shall forward a copy of the petition to the

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prosecuting attorney of that county. 272

(C) The court shall consider a petition that is timely filed 273
under division (A)(2) of this section even if a direct appeal of 274
the judgment is pending. Before granting a hearing on a petition 275
filed under division (A) of this section, the court shall 276
determine whether there are substantive grounds for relief. In 277
making such a determination, the court shall consider, in addition 278
to the petition, the supporting affidavits, and the documentary 279
evidence, all the files and records pertaining to the proceedings 280
against the petitioner, including, but not limited to, the 281
indictment, the court's journal entries, the journalized records 282
of the clerk of the court, and the court reporter's transcript. 283
The court reporter's transcript, if ordered and certified by the 284
court, shall be taxed as court costs. If the court dismisses the 285
petition, it shall make and file findings of fact and conclusions 286
of law with respect to such dismissal. 287

(D) Within ten days after the docketing of the petition, or 288
within any further time that the court may fix for good cause 289
shown, the prosecuting attorney shall respond by answer or motion. 290
Within twenty days from the date the issues are raised, either 291
party may move for summary judgment. The right to summary judgment 292
shall appear on the face of the record. 293

(E) Unless the petition and the files and records of the case 294
show the petitioner is not entitled to relief, the court shall 295
proceed to a prompt hearing on the issues even if a direct appeal 296
of the case is pending. If the court notifies the parties that it 297
has found grounds for granting relief, either party may request an 298
appellate court in which a direct appeal of the judgment is 299
pending to remand the pending case to the court. 300

(F) At any time before the answer or motion is filed, the 301
petitioner may amend the petition with or without leave or 302

prejudice to the proceedings. The petitioner may amend the
petition with leave of court at any time thereafter.

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

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(H) Upon the filing of a petition pursuant to division (A) of
this section by a person sentenced to death, only the supreme
court may stay execution of the sentence of death.

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(I)(1) If a person sentenced to death intends to file a
petition under this section, the court shall appoint counsel to
represent the person upon a finding that the person is indigent

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

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

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

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

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

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

(1) Both of the following apply:

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

(b) The petitioner shows by clear and convincing evidence
that, but for constitutional error at trial, no reasonable
factfinder would have found the petitioner guilty of the offense
of which the petitioner was convicted or, if the claim challenges
a sentence of death that, but for constitutional error at the
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 397
2953.71 to 2953.81 of the Revised Code or under section 2953.82 of 398
the Revised Code and analyzed in the context of and upon 399
consideration of all available admissible evidence related to the 400
inmate's case as described in division (D) of section 2953.74 of 401
the Revised Code, and the results of the DNA testing establish, by 402
clear and convincing evidence, actual innocence of that felony 403
offense or, if the person was sentenced to death, establish, by 404
clear and convincing evidence, actual innocence of the aggravating 405
circumstance or circumstances the person was found guilty of 406
committing and that is or are the basis of that sentence of death. 407

As used in this division, "actual innocence" has the same 408
meaning as in division (A)(1)(b) of section 2953.21 of the Revised 409
Code. 410

(B) An order awarding or denying relief sought in a petition 411
filed pursuant to section 2953.21 of the Revised Code is a final 412
judgment and may be appealed pursuant to Chapter 2953. of the 413
Revised Code. 414

Sec. 2953.71. As used in sections 2953.71 to 2953.83 of the 415
Revised Code: 416

(A) "Application" or "application for DNA testing" means a 417
request through postconviction relief for the state to do DNA 418
testing on biological material from whichever of the following is 419
applicable: 420

(1) The case in which the inmate was convicted of the offense 421
for which the inmate is an eligible inmate and is requesting the 422
DNA testing under sections 2953.71 to 2953.81 of the Revised Code; 423

(2) The case in which the inmate pleaded guilty or no contest 424
to the offense for which the inmate is requesting the DNA testing 425
under section 2953.82 of the Revised Code. 426

(B) "Biological material" means any product of a human body 427
containing DNA. 428

(C) "Chain of custody" means a record or other evidence that 429
tracks a subject sample of biological material from the time the 430
biological material was first obtained until the time it currently 431
exists in its place of storage and, in relation to a DNA sample, a 432
record or other evidence that tracks the DNA sample from the time 433
it was first obtained until it currently exists in its place of 434
storage. For purposes of this division, examples of when 435
biological material or a DNA sample is first obtained include, but 436
are not limited to, obtaining the material or sample at the scene 437
of a crime, from a victim, from an inmate, or in any other manner 438
or time as is appropriate in the facts and circumstances present. 439

(D) "Custodial agency" means the group or entity that has the 440
responsibility to maintain biological material in question. 441

(E) "Custodian" means the person who is the primary 442
representative of a custodial agency. 443

(F) "Eligible inmate" means an inmate who is eligible under 444
division (C) of section 2953.72 of the Revised Code to request DNA 445
testing to be conducted under sections 2953.71 to 2953.81 of the 446
Revised Code. 447

(G) "Exclusion" or "exclusion result" means a result of DNA 448
testing that scientifically precludes or forecloses the subject 449
inmate as a contributor of biological material recovered from the 450
crime scene or victim in question, in relation to the offense for 451
which the inmate is an eligible inmate and for which the sentence 452
of death or prison term was imposed upon the inmate or, regarding 453
a request for DNA testing made under section 2953.82 of the 454
Revised Code, in relation to the offense for which the inmate made 455
the request and for which the sentence of death or prison term was 456
imposed upon the inmate. 457

(H) "Extracting personnel" means medically approved personnel 458
who are employed to physically obtain an inmate DNA specimen for 459
purposes of DNA testing under sections 2953.71 to 2953.81 or 460
section 2953.82 of the Revised Code. 461

(I) "Inclusion" or "inclusion result" means a result of DNA 462
testing that scientifically cannot exclude, or that holds 463
accountable, the subject inmate as a contributor of biological 464
material recovered from the crime scene or victim in question, in 465
relation to the offense for which the inmate is an eligible inmate 466
and for which the sentence of death or prison term was imposed 467
upon the inmate or, regarding a request for DNA testing made under 468
section 2953.82 of the Revised Code, in relation to the offense 469
for which the inmate made the request and for which the sentence 470
of death or prison term was imposed upon the inmate. 471

(J) "Inconclusive" or "inconclusive result" means a result of 472
DNA testing that is rendered when a scientifically appropriate and 473
definitive DNA analysis or result, or both, cannot be determined. 474

(K) "Inmate" means an inmate in a prison who was sentenced by 475
a court, or by a jury and a court, of this state. 476

(L) "Outcome determinative" means that had the results of DNA 477
testing of the subject inmate been presented at the trial of the 478
subject inmate requesting DNA testing and been found relevant and 479
admissible with respect to the felony offense for which the inmate 480
is an eligible inmate and is requesting the DNA testing or for 481
which the inmate is requesting the DNA testing under section 482
2953.82 of the Revised Code, and had those results been analyzed 483
in the context of and upon consideration of all available 484
admissible evidence related to the inmate's case as described in 485
division (D) of section 2953.74 of the Revised Code, there is a 486
strong probability that no reasonable factfinder would have found 487
the inmate guilty of that offense or, if the inmate was sentenced 488

to death relative to that offense, would have found the inmate 489
guilty of the aggravating circumstance or circumstances the inmate 490
was found guilty of committing and that is or are the basis of 491
that sentence of death. 492

(M) "Parent sample" means the biological material first 493
obtained from a crime scene or a victim of an offense for which an 494
inmate is an eligible inmate or for which the inmate is requesting 495
the DNA testing under section 2953.82 of the Revised Code, and 496
from which a sample will be presently taken to do a DNA comparison 497
to the DNA of the subject inmate under sections 2953.71 to 2953.81 498
or section 2953.82 of the Revised Code. 499

(N) "Prison" has the same meaning as in section 2929.01 of 500
the Revised Code. 501

(O) "Prosecuting attorney" means the prosecuting attorney 502
who, or whose office, prosecuted the case in which the subject 503
inmate was convicted of the offense for which the inmate is an 504
eligible inmate and is requesting the DNA testing or for which the 505
inmate is requesting the DNA testing under section 2953.82 of the 506
Revised Code. 507

(P) "Prosecuting authority" means the prosecuting attorney or 508
the attorney general. 509

(Q) "Reasonable diligence" means a degree of diligence that 510
is comparable to the diligence a reasonable person would employ in 511
searching for information regarding an important matter in the 512
person's own life. 513

(R) "Testing authority" means a laboratory at which DNA 514
testing will be conducted under sections 2953.71 to 2953.81 or 515
section 2953.82 of the Revised Code. 516

Sec. 2953.72. (A) Any eligible inmate who wishes to request 517
DNA testing under sections 2953.71 to 2953.81 of the Revised Code 518

shall submit an application for the testing to the court of common 519
pleas specified in section 2953.73 of the Revised Code, on a form 520
prescribed by the attorney general for this purpose. The eligible 521
inmate shall submit the application ~~within the period of time, and~~ 522
in accordance with the procedures, set forth in section 2953.73 of 523
the Revised Code. The eligible inmate shall specify on the 524
application the offense or offenses for which the inmate is an 525
eligible inmate and is requesting the DNA testing. Along with the 526
application, the eligible inmate shall submit an acknowledgment 527
that is on a form prescribed by the attorney general for this 528
purpose and that is signed by the inmate. The acknowledgment shall 529
set forth all of the following: 530

(1) That sections 2953.71 to 2953.81 of the Revised Code 531
contemplate applications for DNA testing of eligible inmates at a 532
stage of a prosecution or case after the inmate has been sentenced 533
to a prison term or a sentence of death, that any exclusion or 534
inclusion result of DNA testing rendered pursuant to those 535
sections may be used by a party in any proceeding as described in 536
section 2953.81 of the Revised Code, and that all requests for any 537
DNA testing made at trial will continue to be handled by the 538
prosecuting attorney in the case; 539

(2) That the process of conducting postconviction DNA testing 540
for an eligible inmate under sections 2953.71 to 2953.81 of the 541
Revised Code begins when the inmate submits an application under 542
section 2953.73 of the Revised Code and the acknowledgment 543
described in this section; 544

(3) That the eligible inmate must submit the application and 545
acknowledgment to the court of common pleas that heard the case in 546
which the inmate was convicted of the offense for which the inmate 547
is an eligible offender and is requesting the DNA testing; 548

(4) That the state has established a set of criteria set 549
forth in section 2953.74 of the Revised Code by which eligible 550

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 criteria to determine whether to accept or reject the application;

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

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

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

(8) That the acknowledgment memorializes the provisions of sections 2953.71 to 2953.81 of the Revised Code with respect to the application of postconviction DNA testing to inmates, that those provisions do not give any inmate any additional constitutional right that the inmate did not already have ~~prior to the effective date of those provisions~~, that the court has no duty or obligation to provide postconviction DNA testing to inmates, that the court of common pleas has the sole discretion subject to an appeal as described in this division to determine whether an inmate is an eligible inmate and whether an eligible inmate's

application for DNA testing satisfies the acceptance criteria 582
described in division (A)(4) of this section and whether the 583
application should be accepted or rejected, that if the court of 584
common pleas rejects an eligible inmate's application, the inmate 585
may seek leave of the supreme court to appeal the rejection to 586
that court if the inmate was sentenced to death for the offense 587
for which the inmate is requesting the DNA testing and, if the 588
inmate was not sentenced to death for that offense, may appeal the 589
rejection to the court of appeals, and that no determination 590
otherwise made by the court of common pleas in the exercise of its 591
discretion regarding the eligibility of an inmate or regarding 592
postconviction DNA testing under those provisions is reviewable by 593
or appealable to any court; 594

(9) That the manner in which sections 2953.71 to 2953.81 of 595
the Revised Code with respect to the offering of postconviction 596
DNA testing to inmates are carried out does not confer any 597
constitutional right upon any inmate, that the state has 598
established guidelines and procedures relative to those provisions 599
to ensure that they are carried out with both justice and 600
efficiency in mind, and that an inmate who participates in any 601
phase of the mechanism contained in those provisions, including, 602
but not limited to, applying for DNA testing and being rejected, 603
having an application for DNA testing accepted and not receiving 604
the test, or having DNA testing conducted and receiving 605
unfavorable results, does not gain as a result of the 606
participation any constitutional right to challenge, or, except as 607
provided in division (A)(8) of this section, any right to any 608
review or appeal of, the manner in which those provisions are 609
carried out; 610

(10) That the most basic aspect of sections 2953.71 to 611
2953.81 of the Revised Code is that, in order for DNA testing to 612
occur, there must be an inmate sample against which other evidence 613

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
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".

(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
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

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and is requesting DNA testing. ~~The eligible inmate shall submit~~ 676
~~the application to that court of common pleas not later than two~~ 677
~~years after October 29, 2003. No court of common pleas shall~~ 678
~~accept an application under this section after the expiration of~~ 679
~~the period of time specified in this division.~~ 680

(B) If an eligible inmate submits an application for DNA 681
testing under division (A) of this section, upon the submission of 682
the application, all of the following apply: 683

(1) The eligible inmate shall serve a copy of the application 684
on the prosecuting attorney and the attorney general. 685

(2) The application shall be assigned to the judge of that 686
court of common pleas who was the trial judge in the case in which 687
the eligible inmate was convicted of the offense for which the 688
inmate is requesting DNA testing, or, if that judge no longer is a 689
judge of that court, it shall be assigned according to court 690
rules. The judge to whom the application is assigned shall decide 691
the application. The application shall become part of the file in 692
the case. 693

(C) If an eligible inmate submits an application for DNA 694
testing under division (A) of this section, regardless of whether 695
the inmate has commenced any federal habeas corpus proceeding 696
relative to the case in which the inmate was convicted of the 697
offense for which the inmate is an eligible inmate and is 698
requesting DNA testing, any response to the application by the 699
prosecuting attorney or the attorney general shall be filed not 700
later than forty-five days after the date on which the eligible 701
inmate submits the application. The prosecuting attorney or the 702
attorney general, or both, may, but are not required to, file a 703
response to the application. If the prosecuting attorney or the 704
attorney general files a response under this division, the 705
prosecuting attorney or attorney general, whoever filed the 706

response, shall serve a copy of the response on the eligible
inmate. 707
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(D) If an eligible inmate submits an application for DNA 709
testing under division (A) of this section, the court shall make 710
the determination as to whether the application should be accepted 711
or rejected. The court shall expedite its review of the 712
application. The court shall make the determination in accordance 713
with the criteria and procedures set forth in sections 2953.74 to 714
2953.81 of the Revised Code and, in making the determination, 715
shall consider the application, the supporting affidavits, and the 716
documentary evidence and, in addition to those materials, shall 717
consider all the files and records pertaining to the proceedings 718
against the applicant, including, but not limited to, the 719
indictment, the court's journal entries, the journalized records 720
of the clerk of the court, and the court reporter's transcript and 721
all responses to the application filed under division (C) of this 722
section by a prosecuting attorney or the attorney general, unless 723
the application and the files and records show the applicant is 724
not entitled to DNA testing, in which case the application may be 725
denied. The court is not required to conduct an evidentiary 726
hearing in conducting its review of, and in making its 727
determination as to whether to accept or reject, the application. 728
Upon making its determination, the court shall enter a judgment 729
and order that either accepts or rejects the application and that 730
includes within the judgment and order the reasons for the 731
acceptance or rejection as applied to the criteria and procedures 732
set forth in sections 2953.71 to 2953.81 of the Revised Code. The 733
court shall send a copy of the judgment and order to the eligible 734
inmate who filed it, the prosecuting attorney, and the attorney 735
general. 736

(E) A judgment and order of a court entered under division 737
(D) of this section is appealable only as provided in this 738

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.

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

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

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

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

inmate files an application for DNA testing and a prior 769
inconclusive DNA test has been conducted regarding the same 770
biological evidence that the inmate seeks to have tested, the 771
court shall review the application and has the discretion, on a 772
case-by-case basis, to either accept or reject the application. 773
The court may direct a testing authority to provide the court with 774
information that the court may use in determining whether prior 775
DNA test results were definitive or inconclusive and whether to 776
accept or reject an application in relation to which there were 777
prior inconclusive DNA test results. 778

(B) If an eligible inmate submits an application for DNA 779
testing under section 2953.73 of the Revised Code, the court may 780
accept the application only if one of the following applies: 781

(1) The inmate did not have a DNA test taken at the trial 782
stage in the case in which the inmate was convicted of the offense 783
for which the inmate is an eligible inmate and is requesting the 784
DNA testing regarding the same biological evidence that the inmate 785
seeks to have tested, the inmate shows that DNA exclusion when 786
analyzed in the context of and upon consideration of all available 787
admissible evidence related to the subject inmate's case as 788
described in division (D) of this section would have been outcome 789
determinative at that trial stage in that case, and, at the time 790
of the trial stage in that case, DNA testing was not generally 791
accepted, the results of DNA testing were not generally admissible 792
in evidence, or DNA testing was not yet available. 793

(2) The inmate had a DNA test taken at the trial stage in the 794
case in which the inmate was convicted of the offense for which 795
the inmate is an eligible inmate and is requesting the DNA testing 796
regarding the same biological evidence that the inmate seeks to 797
have tested, the test was not a prior definitive DNA test that is 798
subject to division (A) of this section, and the inmate shows that 799
DNA exclusion when analyzed in the context of and upon 800

consideration of all available admissible evidence related to the 801
subject inmate's case as described in division (D) of this section 802
would have been outcome determinative at the trial stage in that 803
case. 804

(C) If an eligible inmate submits an application for DNA 805
testing under section 2953.73 of the Revised Code, the court may 806
accept the application only if all of the following apply: 807

(1) The court determines pursuant to section 2953.75 of the 808
Revised Code that biological material was collected from the crime 809
scene or the victim of the offense for which the inmate is an 810
eligible inmate and is requesting the DNA testing and that the 811
parent sample of that biological material against which a sample 812
from the inmate can be compared still exists at that point in 813
time. 814

(2) The testing authority determines all of the following 815
pursuant to section 2953.76 of the Revised Code regarding the 816
parent sample of the biological material described in division 817
(C)(1) of this section: 818

(a) The parent sample of the biological material so collected 819
contains scientifically sufficient material to extract a test 820
sample. 821

(b) The parent sample of the biological material so collected 822
is not so minute or fragile as to risk destruction of the parent 823
sample by the extraction described in division ~~(D)~~(C)(2)(a) of 824
this section; provided that the court may determine in its 825
discretion, on a case-by-case basis, that, even if the parent 826
sample of the biological material so collected is so minute or 827
fragile as to risk destruction of the parent sample by the 828
extraction, the application should not be rejected solely on the 829
basis of that risk. 830

(c) The parent sample of the biological material so collected 831

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.

(3) The court determines that, 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,
the identity of the person who committed the offense was an issue.

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

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

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

(D) If an eligible inmate submits an application for DNA
testing under section 2953.73 of the Revised Code, the court, in
determining whether the "outcome determinative" criterion
described in divisions (B)(1) and (2) of this section has been
satisfied, shall consider all available admissible evidence
related to the subject inmate's case.

(E) If an eligible inmate submits an application for DNA testing under section 2953.73 of the Revised Code and the court accepts the application, the eligible inmate may request the court to order, or the court on its own initiative may order, the bureau of criminal identification and investigation to compare the results of DNA testing of biological material from an unidentified person other than the inmate that was obtained from the crime scene or from a victim of the offense for which the inmate has been approved for DNA testing to the combined DNA index system maintained by the federal bureau of investigation.

If the bureau, upon comparing the test results to the combined DNA index system, determines the identity of the person who is the contributor of the biological material, the bureau shall provide that information to the court that accepted the application, the inmate, and the prosecuting attorney. The inmate or the state may use the information for any lawful purpose.

If the bureau, upon comparing the test results to the combined DNA index system, is unable to determine the identity of the person who is the contributor of the biological material, the bureau may compare the test results to other previously obtained and acceptable DNA test results of any person whose identity is known other than the eligible inmate. If the bureau, upon comparing the test results to the DNA test results of any person whose identity is known, determines that the person whose identity is known is the contributor of the biological material, the bureau shall provide that information to the court that accepted the application, the inmate, and the prosecuting attorney. The inmate or the state may use the information for any lawful purpose.

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 894
for the testing. A court shall not select or use a testing 895
authority for DNA testing unless the attorney general approves or 896
designates the testing authority pursuant to division (C) of this 897
section and unless the testing authority satisfies the criteria 898
set forth in section 2953.80 of the Revised Code. 899

(B) If a court selects a testing authority pursuant to 900
division (A) of this section and the eligible inmate for whom the 901
test is to be performed objects to the use of the selected testing 902
authority, the court shall rescind its prior acceptance of the 903
application for DNA testing for the inmate and deny the 904
application. An objection as described in this division, and the 905
resulting rescission and denial, do not preclude a court from 906
accepting in the court's discretion, a subsequent application by 907
the same eligible inmate requesting DNA testing. 908

(C) The attorney general shall approve or designate testing 909
authorities that may be selected and used to conduct DNA testing, 910
shall prepare a list of the approved or designated testing 911
authorities, and shall provide copies of the list to all courts of 912
common pleas. The attorney general shall update the list as 913
appropriate to reflect changes in the approved or designated 914
testing authorities and shall provide copies of the updated list 915
to all courts of common pleas. The attorney general shall not 916
approve or designate a testing authority under this division 917
unless the testing authority satisfies the criteria set forth in 918
section 2953.80 of the Revised Code. A testing authority that is 919
equipped to handle advanced DNA testing may be approved or 920
designated under this division, provided it satisfies the criteria 921
set forth in that section. 922

(D) The attorney general's approval or designation of testing 923
authorities under division (C) of this section, and the selection 924

and use of any approved or designated testing authority, do not
afford an inmate any right to subsequently challenge the approval,
designation, selection, or use, and an inmate may not appeal to
any court the approval, designation, selection, or use of a
testing authority.

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 or advanced 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.

(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.

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

(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.

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

Sec. 2953.82. (A) An inmate who pleaded guilty or no contest 954
to a felony offense ~~that was committed prior to October 29, 2003~~ 955
may request DNA testing under this section regarding that offense 956
if all of the following apply: 957

(1) The inmate was sentenced to a prison term or sentence of 958
death for that felony and, ~~on October 29, 2003,~~ is in prison 959
serving that prison term or under that sentence of death. 960

(2) On the date on which the inmate files the application 961
requesting the testing with the court as described in division (B) 962
of this section, the inmate has at least one year remaining on the 963
prison term described in division (A)(1) of this section, or the 964
inmate is in prison under a sentence of death as described in that 965
division. 966

(B) An inmate who pleaded guilty or no contest to a felony 967
offense ~~that was committed prior to October 29, 2003,~~ who 968
satisfies the criteria set forth in division (A) of this section, 969
and who wishes to request DNA testing under this section shall 970
submit, in accordance with this division, an application for the 971
testing to the court of common pleas ~~and. Upon submitting the~~ 972
application to the court, the inmate shall serve a copy on the 973
prosecuting attorney. The inmate shall specify on the application 974
the offense or offenses for which the inmate is requesting the DNA 975
testing under this section. Along with the application, the inmate 976
shall submit an acknowledgment that is signed by the inmate. The 977
application and acknowledgment required under this division shall 978
be the same application and acknowledgment as are used by eligible 979
inmates who request DNA testing under sections 2953.71 to 2953.81 980
of the Revised Code. 981

~~The inmate shall file the application with the court of 982
common pleas not later than two years after October 29, 2003. Upon 983
filing the application, the inmate shall serve a copy on the 984~~

~~prosecuting attorney.~~

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

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

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

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

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

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the order.

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Sec. 2953.84. The provisions of sections 2953.71 to 2953.82 of the Revised Code by which an inmate may obtain postconviction DNA testing are not the exclusive means by which an inmate may obtain postconviction DNA testing, and the provisions of those sections do not limit or affect any other means by which an inmate may obtain postconviction DNA testing.

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Section 2. That existing sections 2901.07, 2953.21, 2953.23, 2953.71, 2953.72, 2953.73, 2953.74, 2953.78, 2953.80, and 2953.82 of the Revised Code are hereby repealed.

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Section 3. (A) The General Assembly hereby declares that its purpose in amending section 2901.07 of the Revised Code in Sections 1 and 2 of this act is to reaffirm that it is the General Assembly's intent that, under that section as it existed prior to the effective date of this act, a person who is in any of the categories of offenders described in division (B)(1), (2), (3), or (4) of that section in relation to a conviction of or plea of guilty to a felony offense or a misdemeanor offense listed in division (D) of that section is subject to the DNA specimen collection provisions of divisions (B) and (C) of that section regardless of when the conviction of or plea of guilty to the felony offense or the misdemeanor offense occurs or is entered.

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(B) The General Assembly declares that it believes that the amendments to section 2901.07 of the Revised Code made in Sections 1 and 2 of this act are not substantive in nature and merely clarify that divisions (B)(1), (2), (3), and (4) and (C) of that section operate as described in division (A) of this Section, and that the amendments to section 2901.07 of the Revised Code made in Sections 1 and 2 of this act thus are remedial in nature. The General Assembly declares that it intends that the clarifying,

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remedial amendments to section 2901.07 of the Revised Code made in 1046
Sections 1 and 2 of this act apply to all convicted offenders 1047
described in division (A) of this Section, regardless of when they 1048
were convicted of or pleaded guilty to the felony or the specified 1049
misdemeanor or are convicted of or plead guilty to the felony or 1050
the specified misdemeanor. 1051

(C) In compliance with the Ohio Supreme Court decision in *Van* 1052
Fossen v. Babcock & Wilcox Co. (1988), 36 Ohio St.3d 100, and with 1053
section 1.48 of the Revised Code, the General Assembly expressly 1054
states its intent that the amendments to section 2901.07 of the 1055
Revised Code made in Sections 1 and 2 of this act shall apply 1056
retrospectively. 1057

Section 4. This act is hereby declared to be an emergency 1058
measure necessary for the immediate preservation of the public 1059
peace, health, and safety. The reason for such necessity is that 1060
the amendments made in Sections 1 and 2 of this act to section 1061
2901.07 of the Revised Code are crucially needed to protect the 1062
residents of this state from the consequences that might result if 1063
crimes go unsolved because the DNA specimen collection provisions 1064
of that section are not applied to all persons who have been 1065
convicted of or pleaded guilty to a felony offense or a 1066
misdemeanor offense listed in division (D) of that section and are 1067
in any of the categories of offenders described in division 1068
(B)(1), (2), (3), or (4) of that section. Therefore, this act 1069
shall go into immediate effect. 1070