

**As Reported by the Senate Judiciary--Criminal Justice Committee**

**126th General Assembly**

**Regular Session**

**2005-2006**

**Sub. S. B. No. 262**

**Senators Goodman, Stivers, Clancy, Jacobson, Gardner, Padgett, Schuler,  
Fedor, Fingerhut, Miller, Dann, Kearney, Zurz**

—

**A B I L L**

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

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

**Section 1.** That sections 2901.07, 2953.21, 2953.71, 2953.72, 16  
2953.73, 2953.74, and 2953.82 of the Revised Code be amended to 17  
read as follows: 18

**Sec. 2901.07.** (A) As used in this section: 19

(1) "DNA analysis" and "DNA specimen" have the same meanings 20  
as in section 109.573 of the Revised Code. 21

(2) "Jail" and "community-based correctional facility" have 22  
the same meanings as in section 2929.01 of the Revised Code. 23

(3) "Post-release control" has the same meaning as in section 24  
2967.01 of the Revised Code. 25

(B)(1) A Regardless of when the conviction occurred or the 26  
guilty plea was entered, a person who has been convicted of, is 27  
convicted of, has pleaded guilty to, or pleads guilty to a felony 28  
offense and who is sentenced to a prison term or to a community 29  
residential sanction in a jail or community-based correctional 30  
facility for that offense pursuant to section 2929.16 of the 31  
Revised Code, and a person who has been convicted of, is convicted 32  
of, has pleaded guilty to, or pleads guilty to a misdemeanor 33  
offense listed in division (D) of this section and who is 34  
sentenced to a term of imprisonment for that offense shall submit 35  
to a DNA specimen collection procedure administered by the 36  
director of rehabilitation and correction or the chief 37  
administrative officer of the jail or other detention facility in 38  
which the person is serving the term of imprisonment. If the 39  
person serves the prison term in a state correctional institution, 40  
the director of rehabilitation and correction shall cause the DNA 41  
specimen to be collected from the person during the intake process 42  
at the reception facility designated by the director. If the 43  
person serves the community residential sanction or term of 44  
imprisonment in a jail, a community-based correctional facility, 45  
or another county, multicounty, municipal, municipal-county, or 46  
multicounty-municipal detention facility, the chief administrative 47  
officer of the jail, community-based correctional facility, or 48  
detention facility shall cause the DNA specimen to be collected 49  
from the person during the intake process at the jail, 50  
community-based correctional facility, or detention facility. The 51

DNA specimen shall be collected in accordance with division (C) of 52  
this section. 53

(2) ~~If~~ Regardless of when the conviction occurred or the 54  
guilty plea was entered, if a person has been convicted of, is 55  
convicted of, has pleaded guilty to, or pleads guilty to a felony 56  
offense or a misdemeanor offense listed in division (D) of this 57  
section, is serving a prison term, community residential sanction, 58  
or term of imprisonment for that offense, and does not provide a 59  
DNA specimen pursuant to division (B)(1) of this section, prior to 60  
the person's release from the prison term, community residential 61  
sanction, or imprisonment, the person shall submit to, and the 62  
director of rehabilitation and correction or the chief 63  
administrative officer of the jail, community-based correctional 64  
facility, or detention facility in which the person is serving the 65  
prison term, community residential sanction, or term of 66  
imprisonment shall administer, a DNA specimen collection procedure 67  
at the state correctional institution, jail, community-based 68  
correctional facility, or detention facility in which the person 69  
is serving the prison term, community residential sanction, or 70  
term of imprisonment. The DNA specimen shall be collected in 71  
accordance with division (C) of this section. 72

(3)(a) ~~If~~ Regardless of when the conviction occurred or the 73  
guilty plea was entered, if a person has been convicted of, is 74  
convicted of, has pleaded guilty to, or pleads guilty to a felony 75  
offense or a misdemeanor offense listed in division (D) of this 76  
section and the person is on probation, released on parole, under 77  
transitional control, on community control, on post-release 78  
control, or under any other type of supervised release under the 79  
supervision of a probation department or the adult parole 80  
authority for that offense, the person shall submit to a DNA 81  
specimen collection procedure administered by the chief 82  
administrative officer of the probation department or the adult 83

parole authority. The DNA specimen shall be collected in 84  
accordance with division (C) of this section. If the person 85  
refuses to submit to a DNA specimen collection procedure as 86  
provided in this division, the person may be subject to the 87  
provisions of section 2967.15 of the Revised Code. 88

(b) If ~~the~~ a person to whom division (B)(3)(a) of this 89  
section applies is sent to jail or is returned to a jail, 90  
community-based correctional facility, or state correctional 91  
institution for a violation of the terms and conditions of the 92  
probation, parole, transitional control, other release, or 93  
post-release control, if the person was or will be serving a term 94  
of imprisonment, prison term, or community residential sanction 95  
for committing a felony offense or for committing a misdemeanor 96  
offense listed in division (D) of this section, and if the person 97  
did not provide a DNA specimen pursuant to division (B)(1), (2) or 98  
(3)(a) of this section, the person shall submit to, and the 99  
director of rehabilitation and correction or the chief 100  
administrative officer of the jail or community-based correctional 101  
facility shall administer, a DNA specimen collection procedure at 102  
the jail, community-based correctional facility, or state 103  
correctional institution in which the person is serving the term 104  
of imprisonment, prison term, or community residential sanction. 105  
The DNA specimen shall be collected from the person in accordance 106  
with division (C) of this section. 107

(4) ~~If~~ Regardless of when the conviction occurred or the 108  
guilty plea was entered, if a person has been convicted of, is 109  
convicted of, has pleaded guilty to, or pleads guilty to a felony 110  
offense or a misdemeanor offense listed in division (D) of this 111  
section, the person is not sentenced to a prison term, a community 112  
residential sanction in a jail or community-based correctional 113  
facility, a term of imprisonment, or any type of supervised 114  
release under the supervision of a probation department or the 115

adult parole authority, and the person does not provide a DNA 116  
specimen pursuant to division (B)(1), (2), (3)(a), or (3)(b) of 117  
this section, the sentencing court shall order the person to 118  
report to the county probation department immediately after 119  
sentencing to submit to a DNA specimen collection procedure 120  
administered by the chief administrative officer of the county 121  
probation office. If the person is incarcerated at the time of 122  
sentencing, the person shall submit to a DNA specimen collection 123  
procedure administered by the director of rehabilitation and 124  
correction or the chief administrative officer of the jail or 125  
other detention facility in which the person is incarcerated. The 126  
DNA specimen shall be collected in accordance with division (C) of 127  
this section. 128

(C) If the DNA specimen is collected by withdrawing blood 129  
from the person or a similarly invasive procedure, a physician, 130  
registered nurse, licensed practical nurse, duly licensed clinical 131  
laboratory technician, or other qualified medical practitioner 132  
shall collect in a medically approved manner the DNA specimen 133  
required to be collected pursuant to division (B) of this section. 134  
If the DNA specimen is collected by swabbing for buccal cells or a 135  
similarly noninvasive procedure, this section does not require 136  
that the DNA specimen be collected by a qualified medical 137  
practitioner of that nature. No later than fifteen days after the 138  
date of the collection of the DNA specimen, the director of 139  
rehabilitation and correction or the chief administrative officer 140  
of the jail, community-based correctional facility, or other 141  
county, multicounty, municipal, municipal-county, or 142  
multicounty-municipal detention facility, in which the person is 143  
serving the prison term, community residential sanction, or term 144  
of imprisonment shall cause the DNA specimen to be forwarded to 145  
the bureau of criminal identification and investigation in 146  
accordance with procedures established by the superintendent of 147  
the bureau under division (H) of section 109.573 of the Revised 148

Code. The bureau shall provide the specimen vials, mailing tubes, 149  
labels, postage, and instructions needed for the collection and 150  
forwarding of the DNA specimen to the bureau. 151

(D) The director of rehabilitation and correction, the chief 152  
administrative officer of the jail, community-based correctional 153  
facility, or other county, multicounty, municipal, 154  
municipal-county, or multicounty-municipal detention facility, or 155  
the chief administrative officer of a county probation department 156  
or the adult parole authority shall cause a DNA specimen to be 157  
collected in accordance with divisions (B) and (C) of this section 158  
from a person in its custody or under its supervision who has been 159  
convicted of, is convicted of, has pleaded guilty to, or pleads 160  
guilty to any felony offense or ~~to~~ any of the following 161  
misdemeanor offenses: 162

(1) A misdemeanor violation, an attempt to commit a 163  
misdemeanor violation, or complicity in committing a misdemeanor 164  
violation of section 2907.04 of the Revised Code; 165

(2) A misdemeanor violation of any law that arose out of the 166  
same facts and circumstances and same act as did a charge against 167  
the person of a violation of section 2903.01, 2903.02, 2905.01, 168  
2907.02, 2907.03, 2907.04, 2907.05, or 2911.11 of the Revised Code 169  
that previously was dismissed or amended or as did a charge 170  
against the person of a violation of section 2907.12 of the 171  
Revised Code as it existed prior to September 3, 1996, that 172  
previously was dismissed or amended; 173

(3) A misdemeanor violation of section 2919.23 of the Revised 174  
Code that would have been a violation of section 2905.04 of the 175  
Revised Code as it existed prior to July 1, 1996, had it been 176  
committed prior to that date; 177

(4) A sexually oriented offense or a child-victim oriented 178  
offense, both as defined in section 2950.01 of the Revised Code, 179

that is a misdemeanor, if, in relation to that offense, the 180  
offender has been adjudicated a sexual predator, child-victim 181  
predator, habitual sex offender, or habitual child-victim 182  
offender, all as defined in section 2950.01 of the Revised Code. 183

(E) The director of rehabilitation and correction may 184  
prescribe rules in accordance with Chapter 119. of the Revised 185  
Code to collect a DNA specimen, as provided in this section, from 186  
an offender whose supervision is transferred from another state to 187  
this state in accordance with the interstate compact for adult 188  
offender supervision described in section 5149.21 of the Revised 189  
Code. 190

**Sec. 2953.21.** (A)(1)(a) Any person who has been convicted of 191  
a criminal offense or adjudicated a delinquent child and who 192  
claims that there was such a denial or infringement of the 193  
person's rights as to render the judgment void or voidable under 194  
the Ohio Constitution or the Constitution of the United States, 195  
and any person who has been convicted of a criminal offense that 196  
is a felony, who is an inmate, and for whom DNA testing that was 197  
performed under sections 2953.71 to 2953.81 of the Revised Code or 198  
under section 2953.82 of the Revised Code and analyzed in the 199  
context of and upon consideration of all available admissible 200  
evidence related to the inmate's case as described in division (D) 201  
of section 2953.74 of the Revised Code provided results that 202  
establish, by clear and convincing evidence, actual innocence of 203  
that felony offense or, if the person was sentenced to death, 204  
establish, by clear and convincing evidence, actual innocence of 205  
the aggravating circumstance or circumstances the person was found 206  
guilty of committing and that is or are the basis of that sentence 207  
of death, may file a petition in the court that imposed sentence, 208  
stating the grounds for relief relied upon, and asking the court 209  
to vacate or set aside the judgment or sentence or to grant other 210

appropriate relief. The petitioner may file a supporting affidavit 211  
and other documentary evidence in support of the claim for relief. 212

(b) As used in division (A)(1)(a) of this section, "actual 213  
innocence" means that, had the results of the DNA testing 214  
conducted under sections 2953.71 to 2953.81 of the Revised Code or 215  
under section 2953.82 of the Revised Code been presented at trial, 216  
and had those results been analyzed in the context of and upon 217  
consideration of all available admissible evidence related to the 218  
inmate's case as described in division (D) of section 2953.74 of 219  
the Revised Code, no reasonable factfinder would have found the 220  
petitioner guilty of the offense of which the petitioner was 221  
convicted, or, if the person was sentenced to death, no reasonable 222  
factfinder would have found the petitioner guilty of the 223  
aggravating circumstance or circumstances the petitioner was found 224  
guilty of committing and that is or are the basis of that sentence 225  
of death. 226

(2) Except as otherwise provided in section 2953.23 of the 227  
Revised Code, a petition under division (A)(1) of this section 228  
shall be filed no later than one hundred eighty days after the 229  
date on which the trial transcript is filed in the court of 230  
appeals in the direct appeal of the judgment of conviction or 231  
adjudication or, if the direct appeal involves a sentence of 232  
death, the date on which the trial transcript is filed in the 233  
supreme court. If no appeal is taken, except as otherwise provided 234  
in section 2953.23 of the Revised Code, the petition shall be 235  
filed no later than one hundred eighty days after the expiration 236  
of the time for filing the appeal. 237

(3) In a petition filed under division (A) of this section, a 238  
person who has been sentenced to death may ask the court to render 239  
void or voidable the judgment with respect to the conviction of 240  
aggravated murder or the specification of an aggravating 241  
circumstance or the sentence of death. 242

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

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

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

(C) The court shall consider a petition that is timely filed under division (A)(2) of this section even if a direct appeal of the judgment is pending. Before granting a hearing on a petition filed under division (A) of this section, the court shall determine whether there are substantive grounds for relief. In making such a determination, the court shall consider, in addition

to the petition, the supporting affidavits, and the documentary 275  
evidence, all the files and records pertaining to the proceedings 276  
against the petitioner, including, but not limited to, the 277  
indictment, the court's journal entries, the journalized records 278  
of the clerk of the court, and the court reporter's transcript. 279  
The court reporter's transcript, if ordered and certified by the 280  
court, shall be taxed as court costs. If the court dismisses the 281  
petition, it shall make and file findings of fact and conclusions 282  
of law with respect to such dismissal. 283

(D) Within ten days after the docketing of the petition, or 284  
within any further time that the court may fix for good cause 285  
shown, the prosecuting attorney shall respond by answer or motion. 286  
Within twenty days from the date the issues are raised, either 287  
party may move for summary judgment. The right to summary judgment 288  
shall appear on the face of the record. 289

(E) Unless the petition and the files and records of the case 290  
show the petitioner is not entitled to relief, the court shall 291  
proceed to a prompt hearing on the issues even if a direct appeal 292  
of the case is pending. If the court notifies the parties that it 293  
has found grounds for granting relief, either party may request an 294  
appellate court in which a direct appeal of the judgment is 295  
pending to remand the pending case to the court. 296

(F) At any time before the answer or motion is filed, the 297  
petitioner may amend the petition with or without leave or 298  
prejudice to the proceedings. The petitioner may amend the 299  
petition with leave of court at any time thereafter. 300

(G) If the court does not find grounds for granting relief, 301  
it shall make and file findings of fact and conclusions of law and 302  
shall enter judgment denying relief on the petition. If no direct 303  
appeal of the case is pending and the court finds grounds for 304  
relief or if a pending direct appeal of the case has been remanded 305

to the court pursuant to a request made pursuant to division (E) 306  
of this section and the court finds grounds for granting relief, 307  
it shall make and file findings of fact and conclusions of law and 308  
shall enter a judgment that vacates and sets aside the judgment in 309  
question, and, in the case of a petitioner who is a prisoner in 310  
custody, shall discharge or resentence the petitioner or grant a 311  
new trial as the court determines appropriate. The court also may 312  
make supplementary orders to the relief granted, concerning such 313  
matters as rearraignment, retrial, custody, and bail. If the trial 314  
court's order granting the petition is reversed on appeal and if 315  
the direct appeal of the case has been remanded from an appellate 316  
court pursuant to a request under division (E) of this section, 317  
the appellate court reversing the order granting the petition 318  
shall notify the appellate court in which the direct appeal of the 319  
case was pending at the time of the remand of the reversal and 320  
remand of the trial court's order. Upon the reversal and remand of 321  
the trial court's order granting the petition, regardless of 322  
whether notice is sent or received, the direct appeal of the case 323  
that was remanded is reinstated. 324

(H) Upon the filing of a petition pursuant to division (A) of 325  
this section by a person sentenced to death, only the supreme 326  
court may stay execution of the sentence of death. 327

(I)(1) If a person sentenced to death intends to file a 328  
petition under this section, the court shall appoint counsel to 329  
represent the person upon a finding that the person is indigent 330  
and that the person either accepts the appointment of counsel or 331  
is unable to make a competent decision whether to accept or reject 332  
the appointment of counsel. The court may decline to appoint 333  
counsel for the person only upon a finding, after a hearing if 334  
necessary, that the person rejects the appointment of counsel and 335  
understands the legal consequences of that decision or upon a 336  
finding that the person is not indigent. 337

(2) The court shall not appoint as counsel under division 338  
(I)(1) of this section an attorney who represented the petitioner 339  
at trial in the case to which the petition relates unless the 340  
person and the attorney expressly request the appointment. The 341  
court shall appoint as counsel under division (I)(1) of this 342  
section only an attorney who is certified under Rule 20 of the 343  
Rules of Superintendence for the Courts of Ohio to represent 344  
indigent defendants charged with or convicted of an offense for 345  
which the death penalty can be or has been imposed. The 346  
ineffectiveness or incompetence of counsel during proceedings 347  
under this section does not constitute grounds for relief in a 348  
proceeding under this section, in an appeal of any action under 349  
this section, or in an application to reopen a direct appeal. 350

(3) Division (I) of this section does not preclude attorneys 351  
who represent the state of Ohio from invoking the provisions of 28 352  
U.S.C. 154 with respect to capital cases that were pending in 353  
federal habeas corpus proceedings prior to ~~the effective date of~~ 354  
~~this amendment July 1, 1996,~~ insofar as the petitioners in those 355  
cases were represented in proceedings under this section by one or 356  
more counsel appointed by the court under this section or section 357  
120.06, 120.16, 120.26, or 120.33 of the Revised Code and those 358  
appointed counsel meet the requirements of division (I)(2) of this 359  
section. 360

(J) Subject to the appeal of a sentence for a felony that is 361  
authorized by section 2953.08 of the Revised Code, the remedy set 362  
forth in this section is the exclusive remedy by which a person 363  
may bring a collateral challenge to the validity of a conviction 364  
or sentence in a criminal case or to the validity of an 365  
adjudication of a child as a delinquent child for the commission 366  
of an act that would be a criminal offense if committed by an 367  
adult or the validity of a related order of disposition. 368

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 containing DNA.

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

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

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

(F) "Eligible inmate" means an inmate who is eligible under

division (C) of section 2953.72 of the Revised Code to request DNA 399  
testing to be conducted under sections 2953.71 to 2953.81 of the 400  
Revised Code. 401

(G) "Exclusion" or "exclusion result" means a result of DNA 402  
testing that scientifically precludes or forecloses the subject 403  
inmate as a contributor of biological material recovered from the 404  
crime scene or victim in question, in relation to the offense for 405  
which the inmate is an eligible inmate and for which the sentence 406  
of death or prison term was imposed upon the inmate or, regarding 407  
a request for DNA testing made under section 2953.82 of the 408  
Revised Code, in relation to the offense for which the inmate made 409  
the request and for which the sentence of death or prison term was 410  
imposed upon the inmate. 411

(H) "Extracting personnel" means medically approved personnel 412  
who are employed to physically obtain an inmate DNA specimen for 413  
purposes of DNA testing under sections 2953.71 to 2953.81 or 414  
section 2953.82 of the Revised Code. 415

(I) "Inclusion" or "inclusion result" means a result of DNA 416  
testing that scientifically cannot exclude, or that holds 417  
accountable, the subject inmate as a contributor of biological 418  
material recovered from the crime scene or victim in question, in 419  
relation to the offense for which the inmate is an eligible inmate 420  
and for which the sentence of death or prison term was imposed 421  
upon the inmate or, regarding a request for DNA testing made under 422  
section 2953.82 of the Revised Code, in relation to the offense 423  
for which the inmate made the request and for which the sentence 424  
of death or prison term was imposed upon the inmate. 425

(J) "Inconclusive" or "inconclusive result" means a result of 426  
DNA testing that is rendered when a scientifically appropriate and 427  
definitive DNA analysis or result, or both, cannot be determined. 428

(K) "Inmate" means an inmate in a prison who was sentenced by 429

a court, or by a jury and a court, of this state.

430

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

431  
432  
433  
434  
435  
436  
437  
438  
439  
440  
441  
442  
443  
444  
445

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

446  
447  
448  
449  
450  
451  
452

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

453  
454

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

455  
456  
457  
458  
459  
460

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

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

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

**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<sup>7</sup> 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:

(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; 492

(2) That the process of conducting postconviction DNA testing 493  
for an eligible inmate under sections 2953.71 to 2953.81 of the 494  
Revised Code begins when the inmate submits an application under 495  
section 2953.73 of the Revised Code and the acknowledgment 496  
described in this section; 497

(3) That the eligible inmate must submit the application and 498  
acknowledgment to the court of common pleas that heard the case in 499  
which the inmate was convicted of the offense for which the inmate 500  
is an eligible offender and is requesting the DNA testing; 501

(4) That the state has established a set of criteria set 502  
forth in section 2953.74 of the Revised Code by which eligible 503  
inmate applications for DNA testing will be screened and that a 504  
judge of a court of common pleas upon receipt of a properly filed 505  
application and accompanying acknowledgment will apply those 506  
criteria to determine whether to accept or reject the application; 507

(5) That the results of DNA testing conducted under sections 508  
2953.71 to 2953.81 of the Revised Code will be provided as 509  
described in section 2953.81 of the Revised Code to all parties in 510  
the postconviction proceedings and will be reported to various 511  
courts; 512

(6) That, if DNA testing is conducted with respect to an 513  
inmate under sections 2953.71 to 2953.81 of the Revised Code, the 514  
state will not offer the inmate a retest if an inclusion result is 515  
achieved relative to the testing and that, if the state were to 516  
offer a retest after an inclusion result, the policy would create 517  
an atmosphere in which endless testing could occur and in which 518  
postconviction proceedings could be stalled for many years; 519

(7) That, if the court rejects an eligible inmate's 520  
application for DNA testing because the inmate does not satisfy 521  
the acceptance criteria described in division (A)(4) of this 522

section, the court will not accept or consider subsequent  
applications;

523  
524

(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  
described in division (A)(4) of this section and whether the  
application should be accepted or rejected, that if the court of  
common pleas rejects an eligible inmate's application, the inmate  
may seek leave of the supreme court to appeal the rejection to  
that court if the inmate was sentenced to death for the offense  
for which the inmate is requesting the DNA testing and, if the  
inmate was not sentenced to death for that offense, may appeal the  
rejection to the court of appeals, and that no determination  
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;

525  
526  
527  
528  
529  
530  
531  
532  
533  
534  
535  
536  
537  
538  
539  
540  
541  
542  
543  
544  
545  
546  
547

(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

548  
549  
550  
551  
552  
553  
554

phase of the mechanism contained in those provisions, including, 555  
but not limited to, applying for DNA testing and being rejected, 556  
having an application for DNA testing accepted and not receiving 557  
the test, or having DNA testing conducted and receiving 558  
unfavorable results, does not gain as a result of the 559  
participation any constitutional right to challenge, or, except as 560  
provided in division (A)(8) of this section, any right to any 561  
review or appeal of, the manner in which those provisions are 562  
carried out; 563

(10) That the most basic aspect of sections 2953.71 to 564  
2953.81 of the Revised Code is that, in order for DNA testing to 565  
occur, there must be an inmate sample against which other evidence 566  
may be compared, that, if an eligible inmate's application is 567  
accepted but the inmate subsequently refuses to submit to the 568  
collection of the sample of biological material from the inmate or 569  
hinders the state from obtaining a sample of biological material 570  
from the inmate, the goal of those provisions will be frustrated, 571  
and that an inmate's refusal or hindrance shall cause the court to 572  
rescind its prior acceptance of the application for DNA testing 573  
for the inmate and deny the application; 574

(11) That, if the inmate is an inmate who pleaded guilty or 575  
no contest to a felony offense and who is using the application 576  
and acknowledgment to request DNA testing under section 2953.82 of 577  
the Revised Code, all references in the acknowledgment to an 578  
"eligible inmate" are considered to be references to, and apply 579  
to, the inmate and all references in the acknowledgment to 580  
"sections 2953.71 to 2953.81 of the Revised Code" are considered 581  
to be references to "section 2953.82 of the Revised Code". 582

(B) The attorney general shall prescribe a form to be used to 583  
make an application for DNA testing under division (A) of this 584  
section and section 2953.73 of the Revised Code and a form to be 585  
used to provide the acknowledgment described in division (A) of 586

this section. The forms shall include all information described in 587  
division (A) of this section, spaces for an inmate to insert all 588  
information necessary to complete the forms, including, but not 589  
limited to, specifying the offense or offenses for which the 590  
inmate is an eligible inmate and is requesting the DNA testing or 591  
for which the inmate is requesting the DNA testing under section 592  
2953.82 of the Revised Code, and any other information or material 593  
the attorney general determines is necessary or relevant. The 594  
forms also shall be used to make an application requesting DNA 595  
testing under section 2953.82 of the Revised Code, and the 596  
attorney general shall ensure that they are sufficient for that 597  
type of use, and that they include all information and spaces 598  
necessary for that type of use. The attorney general shall 599  
distribute copies of the prescribed forms to the department of 600  
rehabilitation and correction, the department shall ensure that 601  
each prison in which inmates are housed has a supply of copies of 602  
the forms, and the department shall ensure that copies of the 603  
forms are provided free of charge to any inmate who requests them. 604

(C)(1) An inmate is eligible to request DNA testing to be 605  
conducted under sections 2953.71 to 2953.81 of the Revised Code 606  
only if all of the following apply: 607

(a) The offense for which the inmate claims to be an eligible 608  
inmate is a felony ~~that was committed prior to the effective date~~ 609  
~~of this section~~, and the inmate was convicted by a judge or jury 610  
of that offense. 611

(b) The inmate was sentenced to a prison term or sentence of 612  
death for the felony described in division (C)(1)(a) of this 613  
section and, ~~on the effective date of this section~~, is in prison 614  
serving that prison term or under that sentence of death. 615

(c) On the date on which the application is filed, the inmate 616  
has at least one year remaining on the prison term described in 617

division (C)(1)(b) of this section, or the inmate is in prison 618  
under a sentence of death as described in that division. 619

(2) An inmate is not an eligible inmate under division (C)(1) 620  
of this section regarding any offense to which the inmate pleaded 621  
guilty or no contest. 622

**Sec. 2953.73.** (A) An eligible inmate who wishes to request 623  
DNA testing to be conducted under sections 2953.71 to 2953.81 of 624  
the Revised Code shall submit an application for DNA testing on a 625  
form prescribed by the attorney general for this purpose and shall 626  
submit the form to the court of common pleas that sentenced the 627  
inmate for the offense for which the inmate is an eligible inmate 628  
and is requesting DNA testing. ~~The eligible inmate shall submit 629~~  
~~the application to that court of common pleas not later than two 630~~  
~~years after October 29, 2003. No court of common pleas shall 631~~  
~~accept an application under this section after the expiration of 632~~  
~~the period of time specified in this division. 633~~

(B) If an eligible inmate submits an application for DNA 634  
testing under division (A) of this section, upon the submission of 635  
the application, all of the following apply: 636

(1) The eligible inmate shall serve a copy of the application 637  
on the prosecuting attorney and the attorney general. 638

(2) The application shall be assigned to the judge of that 639  
court of common pleas who was the trial judge in the case in which 640  
the eligible inmate was convicted of the offense for which the 641  
inmate is requesting DNA testing, or, if that judge no longer is a 642  
judge of that court, it shall be assigned according to court 643  
rules. The judge to whom the application is assigned shall decide 644  
the application. The application shall become part of the file in 645  
the case. 646

(C) If an eligible inmate submits an application for DNA 647

testing under division (A) of this section, regardless of whether 648  
the inmate has commenced any federal habeas corpus proceeding 649  
relative to the case in which the inmate was convicted of the 650  
offense for which the inmate is an eligible inmate and is 651  
requesting DNA testing, any response to the application by the 652  
prosecuting attorney or the attorney general shall be filed not 653  
later than forty-five days after the date on which the eligible 654  
inmate submits the application. The prosecuting attorney or the 655  
attorney general, or both, may, but are not required to, file a 656  
response to the application. If the prosecuting attorney or the 657  
attorney general files a response under this division, the 658  
prosecuting attorney or attorney general, whoever filed the 659  
response, shall serve a copy of the response on the eligible 660  
inmate. 661

(D) If an eligible inmate submits an application for DNA 662  
testing under division (A) of this section, the court shall make 663  
the determination as to whether the application should be accepted 664  
or rejected. The court shall expedite its review of the 665  
application. The court shall make the determination in accordance 666  
with the criteria and procedures set forth in sections 2953.74 to 667  
2953.81 of the Revised Code and, in making the determination, 668  
shall consider the application, the supporting affidavits, and the 669  
documentary evidence and, in addition to those materials, shall 670  
consider all the files and records pertaining to the proceedings 671  
against the applicant, including, but not limited to, the 672  
indictment, the court's journal entries, the journalized records 673  
of the clerk of the court, and the court reporter's transcript and 674  
all responses to the application filed under division (C) of this 675  
section by a prosecuting attorney or the attorney general, unless 676  
the application and the files and records show the applicant is 677  
not entitled to DNA testing, in which case the application may be 678  
denied. The court is not required to conduct an evidentiary 679

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.

(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.

711

(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.

712

713

714

715

716

**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 inconclusive DNA test has been conducted regarding the same 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.

717

718

719

720

721

722

723

724

725

726

727

728

729

730

731

(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:

732

733

734

(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 when analyzed in the context of and upon consideration of all available admissible evidence related to the subject inmate's case as

735

736

737

738

739

740

741

described in division (D) of this section would have been outcome 742  
determinative at that trial stage in that case, and, at the time 743  
of the trial stage in that case, DNA testing was not generally 744  
accepted, the results of DNA testing were not generally admissible 745  
in evidence, or DNA testing was not yet available. 746

(2) The inmate had a DNA test taken at the trial stage in the 747  
case in which the inmate was convicted of the offense for which 748  
the inmate is an eligible inmate and is requesting the DNA testing 749  
regarding the same biological evidence that the inmate seeks to 750  
have tested, the test was not a prior definitive DNA test that is 751  
subject to division (A) of this section, and the inmate shows that 752  
DNA exclusion when analyzed in the context of and upon 753  
consideration of all available admissible evidence related to the 754  
subject inmate's case as described in division (D) of this section 755  
would have been outcome determinative at the trial stage in that 756  
case. 757

(C) If an eligible inmate submits an application for DNA 758  
testing under section 2953.73 of the Revised Code, the court may 759  
accept the application only if all of the following apply: 760

(1) The court determines pursuant to section 2953.75 of the 761  
Revised Code that biological material was collected from the crime 762  
scene or the victim of the offense for which the inmate is an 763  
eligible inmate and is requesting the DNA testing and that the 764  
parent sample of that biological material against which a sample 765  
from the inmate can be compared still exists at that point in 766  
time. 767

(2) The testing authority determines all of the following 768  
pursuant to section 2953.76 of the Revised Code regarding the 769  
parent sample of the biological material described in division 770  
(C)(1) of this section: 771

(a) The parent sample of the biological material so collected 772

contains scientifically sufficient material to extract a test 773  
sample. 774

(b) The parent sample of the biological material so collected 775  
is not so minute or fragile as to risk destruction of the parent 776  
sample by the extraction described in division (D)(2)(a) of this 777  
section; provided that the court may determine in its discretion, 778  
on a case-by-case basis, that, even if the parent sample of the 779  
biological material so collected is so minute or fragile as to 780  
risk destruction of the parent sample by the extraction, the 781  
application should not be rejected solely on the basis of that 782  
risk. 783

(c) The parent sample of the biological material so collected 784  
has not degraded or been contaminated to the extent that it has 785  
become scientifically unsuitable for testing, and the parent 786  
sample otherwise has been preserved, and remains, in a condition 787  
that is scientifically suitable for testing. 788

(3) The court determines that, at the trial stage in the case 789  
in which the inmate was convicted of the offense for which the 790  
inmate is an eligible inmate and is requesting the DNA testing, 791  
the identity of the person who committed the offense was an issue. 792

(4) The court determines that one or more of the defense 793  
theories asserted by the inmate at the trial stage in the case 794  
described in division (C)(3) of this section or in a retrial of 795  
that case in a court of this state was of such a nature that, if 796  
DNA testing is conducted and an exclusion result is obtained, the 797  
exclusion result will be outcome determinative. 798

(5) The court determines that, if DNA testing is conducted 799  
and an exclusion result is obtained, the results of the testing 800  
will be outcome determinative regarding that inmate. 801

(6) The court determines pursuant to section 2953.76 of the 802  
Revised Code from the chain of custody of the parent sample of the 803

biological material to be tested and of any test sample extracted 804  
from the parent sample, and from the totality of circumstances 805  
involved, that the parent sample and the extracted test sample are 806  
the same sample as collected and that there is no reason to 807  
believe that they have been out of state custody or have been 808  
tampered with or contaminated since they were collected. 809

(D) If an eligible inmate submits an application for DNA 810  
testing under section 2953.73 of the Revised Code, the court, in 811  
determining whether the "outcome determinative" criterion 812  
described in divisions (B)(1) and (2) of this section has been 813  
satisfied, shall consider all available admissible evidence 814  
related to the subject inmate's case. 815

**Sec. 2953.82.** (A) An inmate who pleaded guilty or no contest 816  
to a felony offense ~~that was committed prior to October 29, 2003~~ 817  
may request DNA testing under this section regarding that offense 818  
if all of the following apply: 819

(1) The inmate was sentenced to a prison term or sentence of 820  
death for that felony and, ~~on October 29, 2003,~~ is in prison 821  
serving that prison term or under that sentence of death. 822

(2) On the date on which the inmate files the application 823  
requesting the testing with the court as described in division (B) 824  
of this section, the inmate has at least one year remaining on the 825  
prison term described in division (A)(1) of this section, or the 826  
inmate is in prison under a sentence of death as described in that 827  
division. 828

(B) An inmate who pleaded guilty or no contest to a felony 829  
offense ~~that was committed prior to October 29, 2003,~~ who 830  
satisfies the criteria set forth in division (A) of this section, 831  
and who wishes to request DNA testing under this section shall 832  
submit, in accordance with this division, an application for the 833

testing to the court of common pleas ~~and~~. Upon submitting the 834  
application to the court, the inmate shall serve a copy on the 835  
prosecuting attorney. The inmate shall specify on the application 836  
the offense or offenses for which the inmate is requesting the DNA 837  
testing under this section. Along with the application, the inmate 838  
shall submit an acknowledgment that is signed by the inmate. The 839  
application and acknowledgment required under this division shall 840  
be the same application and acknowledgment as are used by eligible 841  
inmates who request DNA testing under sections 2953.71 to 2953.81 842  
of the Revised Code. 843

~~The inmate shall file the application with the court of~~ 844  
~~common pleas not later than two years after October 29, 2003. Upon~~ 845  
~~filing the application, the inmate shall serve a copy on the~~ 846  
~~prosecuting attorney.~~ 847

(C) Within forty-five days after the filing of an application 848  
for DNA testing under division (B) of this section, the 849  
prosecuting attorney shall file a statement with the court that 850  
indicates whether the prosecuting attorney agrees or disagrees 851  
that the inmate should be permitted to obtain DNA testing under 852  
this section. If the prosecuting attorney agrees that the inmate 853  
should be permitted to obtain DNA testing under this section, all 854  
of the following apply: 855

(1) The application and the written statement shall be 856  
considered for all purposes as if they were an application for DNA 857  
testing filed under section 2953.73 of the Revised Code that the 858  
court accepted, and the court, the prosecuting attorney, the 859  
attorney general, the inmate, law enforcement personnel, and all 860  
other involved persons shall proceed regarding DNA testing for the 861  
inmate pursuant to sections 2953.77 to 2953.81 of the Revised 862  
Code, in the same manner as if the inmate was an eligible inmate 863  
for whom an application for DNA testing had been accepted. 864

(2) Upon completion of the DNA testing, section 2953.81 of 865

the Revised Code applies. 866

(D) If the prosecuting attorney disagrees that the inmate 867  
should be permitted to obtain DNA testing under this section, the 868  
prosecuting attorney's disagreement is final and is not appealable 869  
by any person to any court, and no court shall have authority, 870  
without agreement of the prosecuting attorney, to order DNA 871  
testing regarding that inmate and the offense or offenses for 872  
which the inmate requested DNA testing in the application. 873

(E) If the prosecuting attorney fails to file a statement of 874  
agreement or disagreement within the time provided in division (C) 875  
of this section, the court may order the prosecuting attorney to 876  
file a statement of that nature within fifteen days of the date of 877  
the order. 878

**Section 2.** That existing sections 2901.07, 2953.21, 2953.71, 879  
2953.72, 2953.73, 2953.74, and 2953.82 of the Revised Code are 880  
hereby repealed. 881

**Section 3.** (A) The General Assembly hereby declares that its 882  
purpose in amending section 2901.07 of the Revised Code in 883  
Sections 1 and 2 of this act is to reaffirm that it is the General 884  
Assembly's intent that, under that section as it existed prior to 885  
the effective date of this act, a person who is in any of the 886  
categories of offenders described in division (B)(1), (2), (3), or 887  
(4) of that section in relation to a conviction of or plea of 888  
guilty to a felony offense or a misdemeanor offense listed in 889  
division (D) of that section is subject to the DNA specimen 890  
collection provisions of divisions (B) and (C) of that section 891  
regardless of whether the conviction of or plea of guilty to the 892  
felony offense or the misdemeanor offense occurred or was entered 893  
prior to the effective date of this act or occurs or is entered on 894  
or after the effective date of this act. 895

(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, remedial amendments to section 2901.07 of the Revised Code made in Sections 1 and 2 of this act apply to all convicted offenders described in division (A) of this Section, regardless of whether they were convicted of or pleaded guilty to the felony or the specified misdemeanor prior to the effective date of this act, or are convicted of or plead guilty to the felony or the specified misdemeanor on or after the effective date of this act.

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