

As Reported by the Senate Judiciary--Criminal Justice Committee

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Sub. S. B. No. 262

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

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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.

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(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.

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(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.

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

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(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.

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(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, 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;

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(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;

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(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

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

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

hearing in conducting its review of, and in making its
determination as to whether to accept or reject, the application.
Upon making its determination, the court shall enter a judgment
and order that either accepts or rejects the application and that
includes within the judgment and order the reasons for the
acceptance or rejection as applied to the criteria and procedures
set forth in sections 2953.71 to 2953.81 of the Revised Code. The
court shall send a copy of the judgment and order to the eligible
inmate who filed it, the prosecuting attorney, and the attorney
general.

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

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(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.

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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.

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

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(1) The inmate did not have a DNA test taken at the trial stage in the case in which the inmate was convicted of the offense for which the inmate is an eligible inmate and is requesting the DNA testing regarding the same biological evidence that the inmate seeks to have tested, the inmate shows that DNA exclusion when analyzed in the context of and upon consideration of all available admissible evidence related to the subject inmate's case as

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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.