

As Introduced

**127th General Assembly
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S. B. No. 358

Senator Goodman

Cosponsors: Senators Seitz, Harris, Morano, Mason, Padgett, Miller, R.

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A B I L L

To amend sections 109.573, 2953.21, 2953.23, 2953.71, 1
2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2
2953.77, 2953.78, 2953.79, 2953.81, 2953.83, and 3
2953.84, to enact sections 105.912, 109.561, 4
2933.81, 2933.82, and 2933.83, and to repeal 5
section 2953.82 of the Revised Code relative to 6
the expansion of DNA testing for certain convicted 7
felons, the elimination of the DNA testing 8
mechanism for felons who pleaded guilty or no 9
contest to the offense, the preservation and 10
accessibility of biological evidence in a criminal 11
or delinquency investigation or proceeding, the 12
improvement of eyewitness identification 13
procedures, and the electronic or audio recording 14
of custodial interrogations. 15

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

Section 1. That sections 109.573, 2953.21, 2953.23, 2953.71, 16
2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2953.77, 2953.78, 17
2953.79, 2953.81, 2953.83, and 2953.84 be amended and sections 18
105.912, 109.561, 2933.81, 2933.82, and 2933.83 of the Revised 19
Code be enacted to read as follows: 20

Sec. 105.912. The Ohio judicial conference shall develop the forms regarding custodial interrogations that are described in division (F) of section 2933.81 of the Revised Code, distribute the forms as specified in that division, and monitor compliance with the recording requirement in division (B) of that section as specified in division (F) of that section.

Sec. 109.561. There is hereby established within the bureau of criminal identification and investigation a preservation of biological evidence task force. The task force shall consist of officers and employees of the bureau. The task force shall perform the duties and functions specified in division (D) of section 2933.82 of the Revised Code.

Sec. 109.573. (A) As used in this section:

(1) "DNA" means human deoxyribonucleic acid.

(2) "DNA analysis" means a laboratory analysis of a DNA specimen to identify DNA characteristics and to create a DNA record.

(3) "DNA database" means a collection of DNA records from forensic casework or from crime scenes, specimens from anonymous and unidentified sources, and records collected pursuant to sections 2152.74 and 2901.07 of the Revised Code and a population statistics database for determining the frequency of occurrence of characteristics in DNA records.

(4) "DNA record" means the objective result of a DNA analysis of a DNA specimen, including representations of DNA fragment lengths, digital images of autoradiographs, discrete allele assignment numbers, and other DNA specimen characteristics that aid in establishing the identity of an individual.

(5) "DNA specimen" includes human blood cells or

physiological tissues or body fluids. 50

(6) "Unidentified person database" means a collection of DNA 51
records, and, on and after May 21, 1998, of fingerprint and 52
photograph records, of unidentified human corpses, human remains, 53
or living individuals. 54

(7) "Relatives of missing persons database" means a 55
collection of DNA records of persons related by consanguinity to a 56
missing person. 57

(8) "Law enforcement agency" means a police department, the 58
office of a sheriff, the state highway patrol, a county 59
prosecuting attorney, or a federal, state, or local governmental 60
body that enforces criminal laws and that has employees who have a 61
statutory power of arrest. 62

(9) "Administration of criminal justice" means the 63
performance of detection, apprehension, detention, pretrial 64
release, post-trial release, prosecution, adjudication, 65
correctional supervision, or rehabilitation of accused persons or 66
criminal offenders. "Administration of criminal justice" also 67
includes criminal identification activities and the collection, 68
storage, and dissemination of criminal history record information. 69

(B)(1) The superintendent of the bureau of criminal 70
identification and investigation may do all of the following: 71

(a) Establish and maintain a state DNA laboratory to perform 72
DNA analyses of DNA specimens; 73

(b) Establish and maintain a DNA database; 74

(c) Establish and maintain an unidentified person database to 75
aid in the establishment of the identity of unknown human corpses, 76
human remains, or living individuals; 77

(d) Establish and maintain a relatives of missing persons 78
database for comparison with the unidentified person database to 79

aid in the establishment of the identity of unknown human corpses, 80
human remains, and living individuals. 81

(2) If the bureau of criminal identification and 82
investigation establishes and maintains a DNA laboratory and a DNA 83
database, the bureau may use or disclose information regarding DNA 84
records for the following purposes: 85

(a) The bureau may disclose information to a law enforcement 86
agency for the administration of criminal justice. 87

(b) The bureau shall disclose pursuant to a court order 88
issued under section 3111.09 of the Revised Code any information 89
necessary to determine the existence of a parent and child 90
relationship in an action brought under sections 3111.01 to 91
3111.18 of the Revised Code. 92

(c) The bureau may use or disclose information from the 93
population statistics database, for identification research and 94
protocol development, or for quality control purposes. 95

(3) If the bureau of criminal identification and 96
investigation establishes and maintains a relatives of missing 97
persons database, all of the following apply: 98

(a) If a person has disappeared and has been continuously 99
absent from the person's place of last domicile for a thirty-day 100
or longer period of time without being heard from during the 101
period, persons related by consanguinity to the missing person may 102
submit to the bureau a DNA specimen, the bureau may include the 103
DNA record of the specimen in the relatives of missing persons 104
database, and, if the bureau does not include the DNA record of 105
the specimen in the relatives of missing persons database, the 106
bureau shall retain the DNA record for future reference and 107
inclusion as appropriate in that database. 108

(b) The bureau shall not charge a fee for the submission of a 109
DNA specimen pursuant to division (B)(3)(a) of this section. 110

(c) If the DNA specimen submitted pursuant to division 111
(B)(3)(a) of this section is collected by withdrawing blood from 112
the person or a similarly invasive procedure, a physician, 113
registered nurse, licensed practical nurse, duly licensed clinical 114
laboratory technician, or other qualified medical practitioner 115
shall conduct the collection procedure for the DNA specimen 116
submitted pursuant to division (B)(3)(a) of this section and shall 117
collect the DNA specimen in a medically approved manner. If the 118
DNA specimen is collected by swabbing for buccal cells or a 119
similarly noninvasive procedure, division (B)(3)(c) of this 120
section does not require that the DNA specimen be collected by a 121
qualified medical practitioner of that nature. No later than 122
fifteen days after the date of the collection of the DNA specimen, 123
the person conducting the DNA specimen collection procedure shall 124
cause the DNA specimen to be forwarded to the bureau of criminal 125
identification and investigation in accordance with procedures 126
established by the superintendent of the bureau under division (H) 127
of this section. The bureau may provide the specimen vials, 128
mailing tubes, labels, postage, and instruction needed for the 129
collection and forwarding of the DNA specimen to the bureau. 130

(d) The superintendent, in the superintendent's discretion, 131
may compare DNA records in the relatives of missing persons 132
database with the DNA records in the unidentified person database. 133

(4) If the bureau of criminal identification and 134
investigation establishes and maintains an unidentified person 135
database and if the superintendent of the bureau identifies a 136
matching DNA record for the DNA record of a person or deceased 137
person whose DNA record is contained in the unidentified person 138
database, the superintendent shall inform the coroner who 139
submitted or the law enforcement agency that submitted the DNA 140
specimen to the bureau of the match and, if possible, of the 141
identity of the unidentified person. 142

(5) The bureau of criminal identification and investigation 143
may enter into a contract with a qualified public or private 144
laboratory to perform DNA analyses, DNA specimen maintenance, 145
preservation, and storage, DNA record keeping, and other duties 146
required of the bureau under this section. A public or private 147
laboratory under contract with the bureau shall follow quality 148
assurance and privacy requirements established by the 149
superintendent of the bureau. 150

(C) The superintendent of the bureau of criminal 151
identification and investigation shall establish procedures for 152
entering into the DNA database the DNA records submitted pursuant 153
to sections 2152.74 and 2901.07 of the Revised Code and for 154
determining an order of priority for entry of the DNA records 155
based on the types of offenses committed by the persons whose 156
records are submitted and the available resources of the bureau. 157

(D) When a DNA record is derived from a DNA specimen provided 158
pursuant to section 2152.74 or 2901.07 of the Revised Code, the 159
bureau of criminal identification and investigation shall attach 160
to the DNA record personal identification information that 161
identifies the person from whom the DNA specimen was taken. The 162
personal identification information may include the subject 163
person's fingerprints and any other information the bureau 164
determines necessary. The DNA record and personal identification 165
information attached to it shall be used only for the purpose of 166
personal identification or for a purpose specified in this 167
section. 168

(E) DNA records, DNA specimens, fingerprints, and photographs 169
that the bureau of criminal identification and investigation 170
receives pursuant to this section and sections 313.08, 2152.74, 171
and 2901.07 of the Revised Code and personal identification 172
information attached to a DNA record are not public records under 173
section 149.43 of the Revised Code. 174

(F) The bureau of criminal identification and investigation 175
may charge a reasonable fee for providing information pursuant to 176
this section to any law enforcement agency located in another 177
state. 178

(G)(1) No person who because of the person's employment or 179
official position has access to a DNA specimen, a DNA record, or 180
other information contained in the DNA database that identifies an 181
individual shall knowingly disclose that specimen, record, or 182
information to any person or agency not entitled to receive it or 183
otherwise shall misuse that specimen, record, or information. 184

(2) No person without authorization or privilege to obtain 185
information contained in the DNA database that identifies an 186
individual person shall purposely obtain that information. 187

(H) The superintendent of the bureau of criminal 188
identification and investigation shall establish procedures for 189
all of the following: 190

(1) The forwarding to the bureau of DNA specimens collected 191
pursuant to division (H) of this section and sections 313.08, 192
2152.74, and 2901.07 of the Revised Code and of fingerprints and 193
photographs collected pursuant to section 313.08 of the Revised 194
Code; 195

(2) The collection, maintenance, preservation, and analysis 196
of DNA specimens; 197

(3) The creation, maintenance, and operation of the DNA 198
database; 199

(4) The use and dissemination of information from the DNA 200
database; 201

(5) The creation, maintenance, and operation of the 202
unidentified person database; 203

(6) The use and dissemination of information from the 204

unidentified person database;	205
(7) The creation, maintenance, and operation of the relatives of missing persons database;	206 207
(8) The use and dissemination of information from the relatives of missing persons database;	208 209
(9) The verification of entities requesting DNA records and other DNA information from the bureau and the authority of the entity to receive the information;	210 211 212
(10) The operation of the bureau and responsibilities of employees of the bureau with respect to the activities described in this section.	213 214 215
(I) In conducting DNA analyses of DNA specimens, the state DNA laboratory and any laboratory with which the bureau has entered into a contract pursuant to division (B)(5) of this section shall give DNA analyses of DNA specimens that relate to ongoing criminal investigations or prosecutions priority over DNA analyses of DNA specimens that relate to applications made pursuant to section 2953.73 or 2953.82 of the Revised Code.	216 217 218 219 220 221 222
<u>Sec. 2933.81.</u> (A) As used in this section:	223
<u>(1) "Custodial interrogation" means any interrogation involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses and in which a reasonable person in the subject's position would consider self to be in custody, beginning when a person should have been advised of the person's right to counsel and right to remain silent and of the fact that anything the person says could be used against the person, as specified by the United States supreme court in <i>Miranda v. Arizona</i> (1966), 384 U.S. 436, and subsequent decisions, and ending when the questioning has completely finished.</u>	224 225 226 227 228 229 230 231 232 233
<u>(2) "Detention facility" has the same meaning as in section</u>	234

<u>2921.01 of the Revised Code.</u>	235
<u>(3) "Electronic recording" or "electronically recorded" means</u>	236
<u>an audio and visual recording that is an authentic, accurate,</u>	237
<u>unaltered record of a custodial interrogation.</u>	238
<u>(4) "Local correctional facility" has the same meaning as in</u>	239
<u>section 2903.13 of the Revised Code.</u>	240
<u>(5) "Place of detention" means a jail, police or sheriff's</u>	241
<u>station, holding cell, state correctional institution, local</u>	242
<u>correctional facility, detention facility, department of youth</u>	243
<u>services facility, or other place where persons are questioned in</u>	244
<u>connection with criminal charges or delinquent child allegations</u>	245
<u>or proceedings.</u>	246
<u>(6) "State correctional institution" has the same meaning as</u>	247
<u>in section 2967.01 of the Revised Code.</u>	248
<u>(7) "Statement" means an oral, written, sign language, or</u>	249
<u>nonverbal communication.</u>	250
<u>(B)(1) Except as otherwise provided in division (B)(2) of</u>	251
<u>this section, all statements made by a person during a custodial</u>	252
<u>interrogation shall be electronically recorded.</u>	253
<u>(2) If any part of a custodial interrogation of a person</u>	254
<u>necessarily takes place outside of a place of detention and it is</u>	255
<u>not possible to electronically record the statements made by the</u>	256
<u>person during that part of the interrogation, all statements made</u>	257
<u>by the person during that part of the interrogation shall be</u>	258
<u>recorded in an audio recording that is an authentic, accurate,</u>	259
<u>unaltered record of that part of the interrogation.</u>	260
<u>(3) During a custodial interrogation in a place of detention,</u>	261
<u>the camera used in making the electronic recording shall be</u>	262
<u>simultaneously focused upon both the interrogator and the person</u>	263
<u>being interrogated.</u>	264

(C) In any criminal or delinquent child action or proceeding brought against a person, if any party to the action or proceeding seeks the admission as evidence of any statement made by the person during a custodial interrogation that is not electronically recorded or recorded as authorized by division (B)(2) of this section or the admission of any statement made thereafter by the person during the same custodial interrogation or a subsequent custodial interrogation, including but not limited to any statement made thereafter that is electronically recorded or recorded as authorized by division (B)(2) of this section, and if the statement otherwise is admissible in the action or proceeding under the Rules of Evidence, the court in its discretion may admit the statement as evidence or may exclude the statement from admission as evidence. If the court indicates that it intends to admit the statement as evidence, any party to the action or proceeding may object and file or make a motion to exclude the statement. If a party objects and makes or files a motion to exclude the statement, the court shall rule on the motion in accordance with the Rules of Evidence.

(D) Regardless of whether the statement was electronically recorded or recorded as authorized by division (B)(2) of this section, any statement of a person made in a custodial interrogation may be admitted into evidence in a criminal or delinquent child proceeding brought against the person if all of the following apply:

(1) The statement is admissible under the Rules of Evidence.

(2) The statement is proven by clear and convincing evidence to have been made by the person voluntarily.

(3) The statement is reliable.

(4) The court finds that the custodial interrogation occurred before a grand jury or court.

(E) In any criminal or delinquent child proceeding that is 296
tried before a jury, complete transcripts of all custodial 297
interrogations shall be made available to the jurors upon motion 298
by the prosecution or defense. Actual audio or video playback of 299
interrogation shall be presented to the jurors only upon a 300
judicial determination of need. 301

(F) The Ohio judicial conference, pursuant to section 105.912 302
of the Revised Code, shall develop forms to survey custodial 303
interrogations electronically recorded or recorded as authorized 304
by division (B)(2) of this section and outcomes and identify any 305
patterns of noncompliance with the provisions of this section. The 306
conference shall provide copies of the forms to all courts of 307
common pleas, municipal courts, county courts, prosecuting 308
attorneys, city directors of law, village solicitors, and other 309
chief legal officers of a municipal corporation. The conference 310
shall monitor compliance with the recording requirement set forth 311
in division (B) of this section through the submission of the 312
forms developed under this division. The trial judge and the 313
prosecutor shall complete and submit these forms for all of the 314
following cases: 315

(1) Each case in which any custodial interrogation was 316
recorded and was introduced as evidence in a criminal case or 317
delinquent child case; 318

(2) Each case in which any custodial interrogation was 319
conducted and not recorded but nonetheless was introduced as 320
evidence in a criminal case or delinquent child case; 321

(3) Each case in which any custodial interrogation was 322
recorded and a plea of guilty to any felony charge was entered and 323
accepted by the court or in which an admission of a delinquent 324
child charge that would be a felony if committed by an adult was 325
entered and accepted by the juvenile court; 326

(4) Each case in which any custodial interrogation was 327
conducted and not recorded and a plea of guilty to any felony 328
charge was entered and accepted by the court or in which an 329
admission of a delinquent child charge that would be a felony if 330
committed by an adult was entered and accepted by the juvenile 331
court. 332

(G)(1) Law enforcement personnel shall clearly identify and 333
catalogue every electronic recording of a custodial interrogation 334
and every recording of a part of a custodial interrogation 335
recorded as authorized by division (B)(2) of this section. 336

(2) If a criminal or delinquent child proceeding is brought 337
against a person who was the subject of a custodial interrogation 338
that was electronically recorded or who was the subject of a part 339
of a custodial interrogation that was recorded as authorized by 340
division (B)(2) of this section, law enforcement personnel shall 341
preserve the recording until the later of when all appeals, 342
post-conviction relief proceedings, and habeas corpus proceedings 343
are final and concluded or the expiration of the period of time 344
within which such appeals and proceedings must be brought. 345

(3) Upon motion by the defendant in a criminal proceeding or 346
the alleged delinquent child in a delinquent child proceeding, the 347
court may order that a copy of an electronic recording of a 348
custodial interrogation of the person or of a recording of a part 349
of a custodial interrogation of the person recorded as authorized 350
by division (B)(2) of this section be preserved for any period 351
beyond the expiration of all appeals, post-conviction relief 352
proceedings, and habeas corpus proceedings. 353

(4) If no criminal or delinquent child proceeding is brought 354
against a person who was the subject of a custodial interrogation 355
that was electronically recorded or who was the subject of a part 356
of a custodial interrogation that was recorded as authorized by 357
division (B)(2) of this section, law enforcement personnel shall 358

preserve the related recording until all applicable state and 359
federal statutes of limitations bar prosecution of the person for 360
any offense or violation based on or related to any conduct 361
discussed in the custodial interrogation. 362

Sec. 2933.82. (A) As used in this section: 363

(1)(a) "Biological evidence" means any of the following: 364

(i) The contents of a sexual assault examination kit; 365

(ii) Any item that contains blood, semen, hair, saliva, skin 366
tissue, fingernail scrapings, bone, bodily fluids, or any other 367
identifiable biological material that was collected as part of a 368
criminal investigation or delinquent child investigation or that 369
reasonably may be used to incriminate or exculpate any person for 370
an offense or delinquent act. 371

(b) The definition of "biological evidence" set forth in 372
division (A)(1)(a) of this section applies whether the material in 373
question is catalogued separately, such as on a slide or swab or 374
in a test tube, or is present on other evidence, including, but 375
not limited to, clothing, ligatures, bedding or other household 376
material, drinking cups or containers, or cigarettes; 377

(2) "Biological material" has the same meaning as in section 378
2953.71 of the Revised Code. 379

(3) "DNA" has the same meaning as in section 109.573 of the 380
Revised Code. 381

(4) "Profile" means a unique identifier of an individual, 382
derived from DNA. 383

(5) "Prosecutor" has the same meaning as in section 2935.01 384
of the Revised Code. 385

(6) "Governmental evidence-retention entity" means all of the 386
following: 387

(a) Any law enforcement agency, prosecutor's office, court, public hospital, crime laboratory, or other governmental or public entity or individual within this state that is charged with the collection, storage, or retrieval of biological evidence; 388
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(b) Any official or employee of any entity or individual described in division (A)(6)(a) of this section. 392
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(B)(1) Each governmental evidence-retention entity that secures any biological evidence in relation to an investigation or prosecution of a criminal offense or delinquent act shall secure the biological evidence for whichever of the following periods of time is applicable: 394
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(a) For the period of time that the offense or act remains unsolved; 399
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(b) If any person is convicted of or pleads guilty to the offense, or is adjudicated a delinquent child for committing the delinquent act, for the period of time that the person remains incarcerated, in a department of youth services institution or other juvenile facility, under a community control sanction for that offense, under any order of disposition for that act, on probation or parole for that offense, under judicial release or supervised release for that act, under post-release control for that offense, involved in civil litigation in connection with that offense or act, or subject to registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code. 401
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(2) This section applies to evidence that was in the possession of any governmental evidence-retention entity during the investigation and prosecution of a criminal case or delinquent child case and that, at the time the person is convicted of or pleads guilty to the offense or is adjudicated a delinquent child for the delinquent act, was likely to contain biological material. 413
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(3) If a person is convicted of or pleads guilty to an 419
offense or is adjudicated a delinquent child for the delinquent 420
act and if one or more additional co-defendants of that person are 421
convicted of or plead guilty to the same offense or are 422
adjudicated delinquent children for the same delinquent act, both 423
of the following apply: 424

(a) If a governmental evidence-retention entity possesses 425
biological evidence related to the offense or act, the 426
governmental evidence-retention entity shall not destroy the 427
biological evidence if any of those additional co-defendants 428
remain in custody, incarcerated, in a department of youth services 429
institution or other juvenile facility, under a community control 430
sanction for that offense, under any order of disposition for that 431
act, on probation or parole for that offense, under judicial 432
release or supervised release for that act, under post-release 433
control for that offense, involved in civil litigation in 434
connection with that offense or act, or subject to registration 435
and other duties imposed for that offense or act under sections 436
2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code. 437

(b) The governmental evidence-retention entity referred to in 438
division (B)(3)(a) of this section shall preserve the biological 439
evidence related to the offense for the period of time during 440
which any of those additional co-defendants remain in custody, 441
incarcerated, in an institution or facility, under a community 442
control sanction, under an order of disposition, on probation or 443
parole, under judicial release or supervised release, under 444
post-release control, involved in civil litigation, or subject to 445
registration and other duties under sections 2950.04, 2950.041, 446
2950.05, and 2950.06 of the Revised Code, as described in division 447
(B)(3)(a) of this section. 448

(4) A governmental evidence-retention entity that possesses 449
biological evidence shall retain the biological evidence in the 450

amount and manner sufficient to develop a DNA profile from the 451
biological material contained in or included on the evidence. 452

(5) Upon written request by the defendant in any criminal 453
case or the alleged delinquent child in any delinquent child case, 454
a governmental evidence-retention entity that possesses biological 455
evidence shall prepare an inventory of the biological evidence 456
that has been preserved in connection with the defendant's 457
criminal case or the alleged delinquent child's delinquent child 458
case. 459

(6) A governmental evidence-retention entity that possesses 460
biological evidence that includes biological material may destroy 461
the evidence before the expiration of the applicable period of 462
time specified in division (B)(1) of this section if all of the 463
following apply: 464

(a) No other provision of federal or state law requires the 465
state to preserve the evidence. 466

(b) The governmental evidence-retention entity, by certified 467
mail, return receipt requested, provides notice of intent to 468
destroy the evidence to all of the following: 469

(i) All persons who remain in custody, incarcerated, in a 470
department of youth services institution or other juvenile 471
facility, under a community control sanction, under any order of 472
disposition, on probation or parole, under judicial release or 473
supervised release, under post-release control, involved in civil 474
litigation, or subject to registration and other duties imposed 475
for that offense or act under sections 2950.04, 2950.041, 2950.05, 476
and 2950.06 of the Revised Code as a result of a criminal 477
conviction, delinquency adjudication, or commitment related to the 478
evidence in question; 479

(ii) The attorney of record for each person who is in custody 480
in any circumstance described in division (B)(6)(b)(i) of this 481

<u>section;</u>	482
<u>(iii) The state public defender;</u>	483
<u>(iv) The prosecutor of record in the case that resulted in the custody of the person in custody in any circumstance described in division (B)(6)(b)(i) of this section;</u>	484 485 486
<u>(v) The attorney general.</u>	487
<u>(c) No person who is notified under division (B)(6)(b) of this section does either of the following within one year after the date on which the person receives the notice:</u>	488 489 490
<u>(i) Files a motion for testing of evidence under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code;</u>	491 492
<u>(ii) Submits a written request for retention of evidence to the governmental evidence-retention entity that provided notice of its intent to destroy evidence under division (B)(6)(b) of this section.</u>	493 494 495 496
<u>(7) If, after providing notice under division (B)(6)(b) of this section of its intent to destroy evidence, a governmental evidence-retention entity receives a written request for retention of the evidence from any person to whom the notice is provided, the governmental evidence-retention entity shall retain the evidence while the person referred to in division (B)(6)(b)(i) of this section remains in custody, incarcerated, in a department of youth services institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question.</u>	497 498 499 500 501 502 503 504 505 506 507 508 509 510 511

(8) A governmental evidence-retention entity shall not be required to preserve physical evidence pursuant to this section that is of such a size, bulk, or physical character as to render retention impracticable. When retention of physical evidence that otherwise would be required to be retained pursuant to this section is impracticable as described in this division, the governmental evidence-retention entity that otherwise would be required to retain the physical evidence shall remove and preserve portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of that physical evidence. 512
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(C)(1) No person shall destroy biological evidence in violation of any provision of this section. 524
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(2) Whoever violates division (C)(1) of this section is guilty of a misdemeanor of the first degree. 526
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(D)(1) The preservation of biological evidence task force established within the bureau of criminal identification and investigation under section 109.561 of the Revised Code shall establish a system regarding the proper preservation of biological evidence in this state. In establishing the system, the task force shall do all of the following: 528
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(a) Devise standards regarding the proper collection, retention, and cataloging of biological evidence for ongoing investigations and prosecutions; 534
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(b) Recommend practices, protocols, models, and resources for the cataloging and accessibility of preserved biological evidence already in the possession of governmental evidence-retention entities. 537
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(2) In consultation with the preservation of biological evidence task force described in division (D)(1) of this section, 541
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the division of criminal justice services of the department of 543
public safety shall administer and conduct training programs for 544
law enforcement officers and other relevant employees who are 545
charged with preserving and cataloging biological evidence 546
regarding the methods and procedures referenced in this section. 547

Sec. 2933.83. (A) As used in this section: 548

(1) "Administrator" means the person conducting a photo 549
lineup or live lineup. 550

(2) "Blind" means the administrator does not know the 551
identity of the suspect. 552

(3) "Blinded" means the administrator may know who the 553
suspect is, but does not know which lineup member is being viewed 554
by the eyewitness. 555

(4) "Eyewitness" means a person who observes another person 556
at or near the scene of an offense. 557

(5) "Filler" means either a person or a photograph of a 558
person who is not suspected of an offense and is included in an 559
identification procedure. 560

(6) "Live lineup" means an identification procedure in which 561
a group of persons, including the suspected perpetrator of an 562
offense and other persons not suspected of the offense, is 563
displayed to an eyewitness for the purpose of determining whether 564
the eyewitness identifies the suspect as the perpetrator of the 565
offense. 566

(7) "Photo lineup" means an identification procedure in which 567
an array of photographs, including a photograph of the suspected 568
perpetrator of an offense and additional photographs of other 569
persons not suspected of the offense, is displayed to an 570
eyewitness for the purpose of determining whether the eyewitness 571
identifies the suspect as the perpetrator of the offense. 572

<u>(8) "Perpetrator" means the person who committed the offense.</u>	573
<u>(9) "Suspect" means the person believed by law enforcement to be the possible perpetrator of the offense.</u>	574 575
<u>(B) Prior to conducting any live lineup or photo lineup on or after the effective date of this section, any law enforcement agency or criminal justice entity in this state that conducts live lineups or photo lineups shall adopt specific procedures for conducting the lineups. The procedures, at a minimum, shall impose the following requirements:</u>	576 577 578 579 580 581
<u>(1) Unless impracticable, a blind or blinded administrator shall conduct the live lineup or photo lineup.</u>	582 583
<u>(2) When it is impracticable for a blind administrator to conduct the live lineup or photo lineup, the administrator shall state in writing the reason for that impracticability.</u>	584 585 586
<u>(3) When it is impracticable for either a blind or blinded administrator to conduct the live lineup or photo lineup, the administrator shall state in writing the reason for that impracticability.</u>	587 588 589 590
<u>(4) Unless impracticable, a video record of the live lineup or photo lineup shall be made that includes all of the following information:</u>	591 592 593
<u>(a) All identification and nonidentification results obtained during the lineup, signed by the eyewitnesses, including the eyewitnesses' confidence statements;</u>	594 595 596
<u>(b) The names of all persons present at the lineup;</u>	597
<u>(c) The date and time of the lineup;</u>	598
<u>(d) Any eyewitness identification of one or more fillers in the lineup;</u>	599 600
<u>(e) The names of the lineup members and other relevant identifying information, and the sources of all photographs or</u>	601 602

persons used in the lineup; 603

(5) If a video record of the live lineup or photo lineup is 604
impracticable, the administrator conducting the lineup shall 605
document reason for that impracticability, and, unless 606
impracticable, an audio record of the live lineup or photo lineup 607
shall be made. The audio record shall include all of the 608
information specified in divisions (B)(4)(a) to (e) of this 609
section, and it shall be supplemented by all of the photographs 610
used in a photo lineup or photographs of all of the individuals 611
used in a live lineup, whichever is applicable; 612

(6) If both a video and audio record of the live lineup or 613
photo lineup are impracticable, the administrator conducting the 614
lineup shall document in writing the reason for that 615
impracticability, and a written record of the lineup shall be made 616
that includes all of the information specified in divisions 617
(B)(4)(a) to (e) of this section and that is supplemented by all 618
of the photographs used in a photo lineup or photographs of all of 619
the individuals used in a live lineup, whichever is applicable. 620

(C) For any photo lineup or live lineup that is administered 621
on or after the effective date of this section, all of the 622
following apply: 623

(1) Evidence of a failure to comply with any of the 624
provisions of this section or with any procedure for conducting 625
lineups that has been adopted by a law enforcement agency or 626
criminal justice agency pursuant to division (B) of this section 627
and that conforms to any provision of divisions (B)(1) to (6) of 628
this section shall be considered by trial courts in adjudicating 629
motions to suppress eyewitness identification resulting from or 630
related to the lineup. 631

(2) Evidence of a failure to comply with any of the 632
provisions of this section or with any procedure for conducting 633

lineups that has been adopted by a law enforcement agency or 634
criminal justice agency pursuant to division (B) of this section 635
and that conforms to any provision of divisions (B)(1) to (6) of 636
this section shall be admissible in support of any claim of 637
eyewitness misidentification resulting from or related to the 638
lineup as long as that evidence otherwise is admissible. 639

(3) When evidence of a failure to comply with any of the 640
provisions of this section, or with any procedure for conducting 641
lineups that has been adopted by a law enforcement agency or 642
criminal justice agency pursuant to division (B) of this section 643
and that conforms to any provision of divisions (B)(1) to (6) of 644
this section, is presented at trial, the jury shall be instructed 645
that it may consider credible evidence of noncompliance in 646
determining the reliability of any eyewitness identification 647
resulting from or related to the lineup. 648

(D)(1) As used in division (D) of this section, "showup" 649
means an identification procedure in which an eyewitness is 650
presented with a single suspect for the purpose of determining 651
whether the eyewitness identifies that individual as the 652
perpetrator of the offense. 653

(2) The supreme court may adopt rules prescribing specific 654
procedures to be followed for the administration by law 655
enforcement agencies and criminal justice entities in this state 656
of photo lineups, live lineups, and showups. Any rules adopted by 657
the supreme court as described in this division shall be 658
consistent with the requirements of divisions (B) and (C) of this 659
section but may prescribe procedures for other aspects of the 660
administration of such lineups and showups as determined 661
appropriate by the court. If the supreme court adopts rules of the 662
type described in this division, on and after the date on which 663
the rules take effect, law enforcement agencies and criminal 664
justice entities in this state shall comply with the rules in 665

conducting live lineups, photo lineups, and showups. 666

(3) The supreme court may adopt rules prescribing a 667
cautionary jury charge about eyewitness identification procedures 668
and the accuracy of eyewitness identification. If the supreme 669
court adopts rules of the type described in this division, on and 670
after the date on which the rules take effect, the jury charge 671
shall be used in the courts of this state in the manner specified 672
by the supreme court in the rules. 673

Sec. 2953.21. (A)(1)(a) Any person who has been convicted of 674
a criminal offense or adjudicated a delinquent child and who 675
claims that there was such a denial or infringement of the 676
person's rights as to render the judgment void or voidable under 677
the Ohio Constitution or the Constitution of the United States, 678
and any person who has been convicted of a criminal offense that 679
is a felony, and who is an ~~inmate~~, and offender for whom DNA 680
testing that was performed under sections 2953.71 to 2953.81 of 681
the Revised Code or under former section 2953.82 of the Revised 682
Code and analyzed in the context of and upon consideration of all 683
available admissible evidence related to the ~~inmate's~~ person's 684
case as described in division (D) of section 2953.74 of the 685
Revised Code provided results that establish, by clear and 686
convincing evidence, actual innocence of that felony offense or, 687
if the person was sentenced to death, establish, by clear and 688
convincing evidence, actual innocence of the aggravating 689
circumstance or circumstances the person was found guilty of 690
committing and that is or are the basis of that sentence of death, 691
may file a petition in the court that imposed sentence, stating 692
the grounds for relief relied upon, and asking the court to vacate 693
or set aside the judgment or sentence or to grant other 694
appropriate relief. The petitioner may file a supporting affidavit 695
and other documentary evidence in support of the claim for relief. 696
697

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

(c) As used in divisions (A)(1)(a) and (b) of this section, "former section 2953.82 of the Revised Code" means section 2953.82 of the Revised Code as it existed prior to the effective date of this amendment.

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

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

aggravated murder or the specification of an aggravating 730
circumstance or the sentence of death. 731

(4) A petitioner shall state in the original or amended 732
petition filed under division (A) of this section all grounds for 733
relief claimed by the petitioner. Except as provided in section 734
2953.23 of the Revised Code, any ground for relief that is not so 735
stated in the petition is waived. 736

(5) If the petitioner in a petition filed under division (A) 737
of this section was convicted of or pleaded guilty to a felony, 738
the petition may include a claim that the petitioner was denied 739
the equal protection of the laws in violation of the Ohio 740
Constitution or the United States Constitution because the 741
sentence imposed upon the petitioner for the felony was part of a 742
consistent pattern of disparity in sentencing by the judge who 743
imposed the sentence, with regard to the petitioner's race, 744
gender, ethnic background, or religion. If the supreme court 745
adopts a rule requiring a court of common pleas to maintain 746
information with regard to an offender's race, gender, ethnic 747
background, or religion, the supporting evidence for the petition 748
shall include, but shall not be limited to, a copy of that type of 749
information relative to the petitioner's sentence and copies of 750
that type of information relative to sentences that the same judge 751
imposed upon other persons. 752

(B) The clerk of the court in which the petition is filed 753
shall docket the petition and bring it promptly to the attention 754
of the court. The clerk of the court in which the petition is 755
filed immediately shall forward a copy of the petition to the 756
prosecuting attorney of that county. 757

(C) The court shall consider a petition that is timely filed 758
under division (A)(2) of this section even if a direct appeal of 759
the judgment is pending. Before granting a hearing on a petition 760
filed under division (A) of this section, the court shall 761

determine whether there are substantive grounds for relief. In 762
making such a determination, the court shall consider, in addition 763
to the petition, the supporting affidavits, and the documentary 764
evidence, all the files and records pertaining to the proceedings 765
against the petitioner, including, but not limited to, the 766
indictment, the court's journal entries, the journalized records 767
of the clerk of the court, and the court reporter's transcript. 768
The court reporter's transcript, if ordered and certified by the 769
court, shall be taxed as court costs. If the court dismisses the 770
petition, it shall make and file findings of fact and conclusions 771
of law with respect to such dismissal. 772

(D) Within ten days after the docketing of the petition, or 773
within any further time that the court may fix for good cause 774
shown, the prosecuting attorney shall respond by answer or motion. 775
Within twenty days from the date the issues are raised, either 776
party may move for summary judgment. The right to summary judgment 777
shall appear on the face of the record. 778

(E) Unless the petition and the files and records of the case 779
show the petitioner is not entitled to relief, the court shall 780
proceed to a prompt hearing on the issues even if a direct appeal 781
of the case is pending. If the court notifies the parties that it 782
has found grounds for granting relief, either party may request an 783
appellate court in which a direct appeal of the judgment is 784
pending to remand the pending case to the court. 785

(F) At any time before the answer or motion is filed, the 786
petitioner may amend the petition with or without leave or 787
prejudice to the proceedings. The petitioner may amend the 788
petition with leave of court at any time thereafter. 789

(G) If the court does not find grounds for granting relief, 790
it shall make and file findings of fact and conclusions of law and 791
shall enter judgment denying relief on the petition. If no direct 792
appeal of the case is pending and the court finds grounds for 793

relief or if a pending direct appeal of the case has been remanded 794
to the court pursuant to a request made pursuant to division (E) 795
of this section and the court finds grounds for granting relief, 796
it shall make and file findings of fact and conclusions of law and 797
shall enter a judgment that vacates and sets aside the judgment in 798
question, and, in the case of a petitioner who is a prisoner in 799
custody, shall discharge or resentence the petitioner or grant a 800
new trial as the court determines appropriate. The court also may 801
make supplementary orders to the relief granted, concerning such 802
matters as arraignment, retrial, custody, and bail. If the trial 803
court's order granting the petition is reversed on appeal and if 804
the direct appeal of the case has been remanded from an appellate 805
court pursuant to a request under division (E) of this section, 806
the appellate court reversing the order granting the petition 807
shall notify the appellate court in which the direct appeal of the 808
case was pending at the time of the remand of the reversal and 809
remand of the trial court's order. Upon the reversal and remand of 810
the trial court's order granting the petition, regardless of 811
whether notice is sent or received, the direct appeal of the case 812
that was remanded is reinstated. 813

(H) Upon the filing of a petition pursuant to division (A) of 814
this section by a person sentenced to death, only the supreme 815
court may stay execution of the sentence of death. 816

(I)(1) If a person sentenced to death intends to file a 817
petition under this section, the court shall appoint counsel to 818
represent the person upon a finding that the person is indigent 819
and that the person either accepts the appointment of counsel or 820
is unable to make a competent decision whether to accept or reject 821
the appointment of counsel. The court may decline to appoint 822
counsel for the person only upon a finding, after a hearing if 823
necessary, that the person rejects the appointment of counsel and 824
understands the legal consequences of that decision or upon a 825

finding that the person is not indigent. 826

(2) The court shall not appoint as counsel under division 827
(I)(1) of this section an attorney who represented the petitioner 828
at trial in the case to which the petition relates unless the 829
person and the attorney expressly request the appointment. The 830
court shall appoint as counsel under division (I)(1) of this 831
section only an attorney who is certified under Rule 20 of the 832
Rules of Superintendence for the Courts of Ohio to represent 833
indigent defendants charged with or convicted of an offense for 834
which the death penalty can be or has been imposed. The 835
ineffectiveness or incompetence of counsel during proceedings 836
under this section does not constitute grounds for relief in a 837
proceeding under this section, in an appeal of any action under 838
this section, or in an application to reopen a direct appeal. 839

(3) Division (I) of this section does not preclude attorneys 840
who represent the state of Ohio from invoking the provisions of 28 841
U.S.C. 154 with respect to capital cases that were pending in 842
federal habeas corpus proceedings prior to July 1, 1996, insofar 843
as the petitioners in those cases were represented in proceedings 844
under this section by one or more counsel appointed by the court 845
under this section or section 120.06, 120.16, 120.26, or 120.33 of 846
the Revised Code and those appointed counsel meet the requirements 847
of division (I)(2) of this section. 848

(J) Subject to the appeal of a sentence for a felony that is 849
authorized by section 2953.08 of the Revised Code, the remedy set 850
forth in this section is the exclusive remedy by which a person 851
may bring a collateral challenge to the validity of a conviction 852
or sentence in a criminal case or to the validity of an 853
adjudication of a child as a delinquent child for the commission 854
of an act that would be a criminal offense if committed by an 855
adult or the validity of a related order of disposition. 856

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

(1) Both of the following apply:

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

(b) The petitioner shows by clear and convincing evidence that, but for constitutional error at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted or, if the claim challenges a sentence of death that, but for constitutional error at the sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

(2) The petitioner was convicted of a felony, the petitioner is an ~~inmate~~ offender for whom DNA testing was performed under sections 2953.71 to 2953.81 of the Revised Code or under former section 2953.82 of the Revised Code and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of section 2953.74 of the Revised Code, and the results of the DNA testing establish, by clear and convincing evidence, actual

innocence of that felony offense or, if the person was sentenced 888
to death, establish, by clear and convincing evidence, actual 889
innocence of the aggravating circumstance or circumstances the 890
person was found guilty of committing and that is or are the basis 891
of that sentence of death. 892

As used in this division, "actual innocence" has the same 893
meaning as in division (A)(1)(b) of section 2953.21 of the Revised 894
Code, and "former section 2953.82 of the Revised Code" has the 895
same meaning as in division (A)(1)(c) of section 2953.21 of the 896
Revised Code. 897

(B) An order awarding or denying relief sought in a petition 898
filed pursuant to section 2953.21 of the Revised Code is a final 899
judgment and may be appealed pursuant to Chapter 2953. of the 900
Revised Code. 901

Sec. 2953.71. As used in sections 2953.71 to 2953.83 of the 902
Revised Code: 903

(A) "Application" or "application for DNA testing" means a 904
request through postconviction relief for the state to do DNA 905
testing on biological material from ~~whichever of the following is~~ 906
~~applicable:~~ 907

~~(1) The case in which the inmate offender was convicted of~~ 908
~~the offense for which the inmate is an eligible inmate offender~~ 909
~~and is requesting the DNA testing under sections 2953.71 to~~ 910
~~2953.81 of the Revised Code.~~ 911

~~(2) The case in which the inmate pleaded guilty or no contest~~ 912
~~to the offense for which the inmate is requesting the DNA testing~~ 913
~~under section 2953.82 of the Revised Code.~~ 914

(B) "Biological material" means any product of a human body 915
containing DNA. 916

(C) "Chain of custody" means a record or other evidence that 917

tracks a subject sample of biological material from the time the 918
biological material was first obtained until the time it currently 919
exists in its place of storage and, in relation to a DNA sample, a 920
record or other evidence that tracks the DNA sample from the time 921
it was first obtained until it currently exists in its place of 922
storage. For purposes of this division, examples of when 923
biological material or a DNA sample is first obtained include, but 924
are not limited to, obtaining the material or sample at the scene 925
of a crime, from a victim, from an ~~inmate~~ offender, or in any 926
other manner or time as is appropriate in the facts and 927
circumstances present. 928

(D) "Custodial agency" means the group or entity that has the 929
responsibility to maintain biological material in question. 930

(E) "Custodian" means the person who is the primary 931
representative of a custodial agency. 932

(F) "Eligible ~~inmate~~ offender" means an ~~inmate~~ offender who 933
is eligible under division (C) of section 2953.72 of the Revised 934
Code to request DNA testing to be conducted under sections 2953.71 935
to 2953.81 of the Revised Code. 936

(G) "Exclusion" or "exclusion result" means a result of DNA 937
testing that scientifically precludes or forecloses the subject 938
~~inmate~~ offender as a contributor of biological material recovered 939
from the crime scene or victim in question, in relation to the 940
offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ 941
offender and for which the sentence of death or prison term was 942
imposed upon the ~~inmate or, regarding a request for DNA testing~~ 943
~~made under section 2953.82 of the Revised Code, in relation to the~~ 944
~~offense for which the inmate made the request and for which the~~ 945
~~sentence of death or prison term was imposed upon the inmate~~ 946
offender. 947

(H) "Extracting personnel" means medically approved personnel 948

who are employed to physically obtain an inmate offender's DNA 949
specimen for purposes of DNA testing under sections 2953.71 to 950
2953.81 ~~or section 2953.82~~ of the Revised Code. 951

(I) "Inclusion" or "inclusion result" means a result of DNA 952
testing that scientifically cannot exclude, or that holds 953
accountable, the subject inmate offender as a contributor of 954
biological material recovered from the crime scene or victim in 955
question, in relation to the offense for which the inmate offender 956
is an eligible inmate offender and for which the sentence of death 957
or prison term was imposed upon the ~~inmate or, regarding a request~~ 958
~~for DNA testing made under section 2953.82 of the Revised Code, in~~ 959
~~relation to the offense for which the inmate made the request and~~ 960
~~for which the sentence of death or prison term was imposed upon~~ 961
~~the inmate offender.~~ 962

(J) "Inconclusive" or "inconclusive result" means a result of 963
DNA testing that is rendered when a scientifically appropriate and 964
definitive DNA analysis or result, or both, cannot be determined. 965

(K) "Inmate Offender" means ~~an inmate in a prison a criminal~~ 966
offender who was sentenced by a court, or by a jury and a court, 967
of this state. 968

(L) "Outcome determinative" means that had the results of DNA 969
testing of the subject inmate offender been presented at the trial 970
of the subject inmate offender requesting DNA testing and been 971
found relevant and admissible with respect to the felony offense 972
for which the inmate offender is an eligible inmate offender and 973
is requesting the DNA testing ~~or for which the inmate is~~ 974
~~requesting the DNA testing under section 2953.82 of the Revised~~ 975
~~Code, and had those results been analyzed in the context of and~~ 976
upon consideration of all available admissible evidence related to 977
the ~~inmate's~~ offender's case as described in division (D) of 978
section 2953.74 of the Revised Code, there is a strong probability 979
that no reasonable factfinder would have found the inmate offender 980

guilty of that offense or, if the ~~inmate~~ offender was sentenced to 981
death relative to that offense, would have found the ~~inmate~~ 982
offender guilty of the aggravating circumstance or circumstances 983
the ~~inmate~~ offender was found guilty of committing and that is or 984
are the basis of that sentence of death. 985

(M) "Parent sample" means the biological material first 986
obtained from a crime scene or a victim of an offense for which an 987
~~inmate~~ offender is an eligible ~~inmate~~ or for which the inmate is 988
~~requesting the DNA testing under section 2953.82 of the Revised~~ 989
~~Code~~ offender, and from which a sample will be presently taken to 990
do a DNA comparison to the DNA of the subject ~~inmate~~ offender 991
under sections 2953.71 to 2953.81 ~~or section 2953.82~~ of the 992
Revised Code. 993

(N) "Prison" ~~has~~ and "community control sanction" have the 994
same ~~meaning~~ meanings as in section 2929.01 of the Revised Code. 995

(O) "Prosecuting attorney" means the prosecuting attorney 996
who, or whose office, prosecuted the case in which the subject 997
~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ 998
offender is an eligible ~~inmate~~ offender and is requesting the DNA 999
testing ~~or for which the inmate is requesting the DNA testing~~ 1000
~~under section 2953.82 of the Revised Code.~~ 1001

(P) "Prosecuting authority" means the prosecuting attorney or 1002
the attorney general. 1003

(Q) "Reasonable diligence" means a degree of diligence that 1004
is comparable to the diligence a reasonable person would employ in 1005
searching for information regarding an important matter in the 1006
person's own life. 1007

(R) "Testing authority" means a laboratory at which DNA 1008
testing will be conducted under sections 2953.71 to 2953.81 ~~or~~ 1009
~~section 2953.82~~ of the Revised Code. 1010

(S) "Parole" and "post-release control" have the same 1011

meanings as in section 2967.01 of the Revised Code. 1012

(T) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code. 1013
1014
1015

Sec. 2953.72. (A) Any eligible inmate offender who wishes to 1016
request DNA testing under sections 2953.71 to 2953.81 of the 1017
Revised Code shall submit an application for the testing to the 1018
court of common pleas specified in section 2953.73 of the Revised 1019
Code, on a form prescribed by the attorney general for this 1020
purpose. The eligible inmate offender shall submit the application 1021
in accordance with the procedures set forth in section 2953.73 of 1022
the Revised Code. The eligible inmate offender shall specify on 1023
the application the offense or offenses for which the inmate 1024
offender is an eligible inmate offender and is requesting the DNA 1025
testing. Along with the application, the eligible inmate offender 1026
shall submit an acknowledgment that is on a form prescribed by the 1027
attorney general for this purpose and that is signed by the inmate 1028
offender. The acknowledgment shall set forth all of the following: 1029

(1) That sections 2953.71 to 2953.81 of the Revised Code 1030
contemplate applications for DNA testing of eligible inmates 1031
offenders at a stage of a prosecution or case after the inmate 1032
offenders has been sentenced ~~to a prison term or a sentence of~~ 1033
~~death~~, that any exclusion or inclusion result of DNA testing 1034
rendered pursuant to those sections may be used by a party in any 1035
proceeding as described in section 2953.81 of the Revised Code, 1036
and that all requests for any DNA testing made at trial will 1037
continue to be handled by the prosecuting attorney in the case; 1038

(2) That the process of conducting postconviction DNA testing 1039
for an eligible inmate offender under sections 2953.71 to 2953.81 1040
of the Revised Code begins when the inmate offender submits an 1041
application under section 2953.73 of the Revised Code and the 1042

acknowledgment described in this section; 1043

(3) That the eligible ~~inmate~~ offender must submit the 1044
application and acknowledgment to the court of common pleas that 1045
heard the case in which the ~~inmate~~ offender was convicted of the 1046
offense for which the ~~inmate~~ offender is an eligible offender and 1047
is requesting the DNA testing; 1048

(4) That the state has established a set of criteria set 1049
forth in section 2953.74 of the Revised Code by which eligible 1050
~~inmate~~ offender applications for DNA testing will be screened and 1051
that a judge of a court of common pleas upon receipt of a properly 1052
filed application and accompanying acknowledgment will apply those 1053
criteria to determine whether to accept or reject the application; 1054

(5) That the results of DNA testing conducted under sections 1055
2953.71 to 2953.81 of the Revised Code will be provided as 1056
described in section 2953.81 of the Revised Code to all parties in 1057
the postconviction proceedings and will be reported to various 1058
courts; 1059

(6) That, if DNA testing is conducted with respect to an 1060
~~inmate~~ offender under sections 2953.71 to 2953.81 of the Revised 1061
Code, the state will not offer the ~~inmate~~ offender a retest if an 1062
inclusion result is achieved relative to the testing and that, if 1063
the state were to offer a retest after an inclusion result, the 1064
policy would create an atmosphere in which endless testing could 1065
occur and in which postconviction proceedings could be stalled for 1066
many years; 1067

(7) That, if the court rejects an eligible ~~inmate's~~ 1068
offender's application for DNA testing because the ~~inmate~~ offender 1069
does not satisfy the acceptance criteria described in division 1070
(A)(4) of this section, the court will not accept or consider 1071
subsequent applications; 1072

(8) That the acknowledgment memorializes the provisions of 1073

sections 2953.71 to 2953.81 of the Revised Code with respect to 1074
the application of postconviction DNA testing to ~~inmates~~ 1075
offenders, that those provisions do not give any ~~inmate~~ offender 1076
any additional constitutional right that the ~~inmate~~ offender did 1077
not already have, that the court has no duty or obligation to 1078
provide postconviction DNA testing to ~~inmates~~ offenders, that the 1079
court of common pleas has the sole discretion subject to an appeal 1080
as described in this division to determine whether an ~~inmate~~ 1081
offender is an eligible ~~inmate~~ offender and whether an eligible 1082
~~inmate's~~ offender's application for DNA testing satisfies the 1083
acceptance criteria described in division (A)(4) of this section 1084
and whether the application should be accepted or rejected, that 1085
if the court of common pleas rejects an eligible ~~inmate's~~ 1086
offender's application, the ~~inmate~~ offender may seek leave of the 1087
supreme court to appeal the rejection to that court if the ~~inmate~~ 1088
offender was sentenced to death for the offense for which the 1089
~~inmate~~ offender is requesting the DNA testing and, if the ~~inmate~~ 1090
offender was not sentenced to death for that offense, may appeal 1091
the rejection to the court of appeals, and that no determination 1092
otherwise made by the court of common pleas in the exercise of its 1093
discretion regarding the eligibility of an ~~inmate~~ offender or 1094
regarding postconviction DNA testing under those provisions is 1095
reviewable by or appealable to any court; 1096

(9) That the manner in which sections 2953.71 to 2953.81 of 1097
the Revised Code with respect to the offering of postconviction 1098
DNA testing to ~~inmates~~ offenders are carried out does not confer 1099
any constitutional right upon any ~~inmate~~ offender, that the state 1100
has established guidelines and procedures relative to those 1101
provisions to ensure that they are carried out with both justice 1102
and efficiency in mind, and that an ~~inmate~~ offender who 1103
participates in any phase of the mechanism contained in those 1104
provisions, including, but not limited to, applying for DNA 1105
testing and being rejected, having an application for DNA testing 1106

accepted and not receiving the test, or having DNA testing 1107
conducted and receiving unfavorable results, does not gain as a 1108
result of the participation any constitutional right to challenge, 1109
or, except as provided in division (A)(8) of this section, any 1110
right to any review or appeal of, the manner in which those 1111
provisions are carried out; 1112

(10) That the most basic aspect of sections 2953.71 to 1113
2953.81 of the Revised Code is that, in order for DNA testing to 1114
occur, there must be an inmate offender sample against which other 1115
evidence may be compared, that, if an eligible ~~inmate's~~ offender's 1116
application is accepted but the inmate offender subsequently 1117
refuses to submit to the collection of the sample of biological 1118
material from the inmate offender or hinders the state from 1119
obtaining a sample of biological material from the inmate 1120
offender, the goal of those provisions will be frustrated, and 1121
that an ~~inmate's~~ offender's refusal or hindrance shall cause the 1122
court to rescind its prior acceptance of the application for DNA 1123
testing for the inmate offender and deny the application; 1124

~~(11) That, if the inmate is an inmate who pleaded guilty or 1125
no contest to a felony offense and who is using the application 1126
and acknowledgment to request DNA testing under section 2953.82 of 1127
the Revised Code, all references in the acknowledgment to an 1128
"eligible inmate" are considered to be references to, and apply 1129
to, the inmate and all references in the acknowledgment to 1130
"sections 2953.71 to 2953.81 of the Revised Code" are considered 1131
to be references to "section 2953.82 of the Revised Code."~~ 1132

(B) The attorney general shall prescribe a form to be used to 1133
make an application for DNA testing under division (A) of this 1134
section and section 2953.73 of the Revised Code and a form to be 1135
used to provide the acknowledgment described in division (A) of 1136
this section. The forms shall include all information described in 1137
division (A) of this section, spaces for an inmate offender to 1138

insert all information necessary to complete the forms, including, 1139
but not limited to, specifying the offense or offenses for which 1140
the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 1141
requesting the DNA testing ~~or for which the inmate is requesting~~ 1142
~~the DNA testing under section 2953.82 of the Revised Code, and any~~ 1143
other information or material the attorney general determines is 1144
necessary or relevant. ~~The forms also shall be used to make an~~ 1145
~~application requesting DNA testing under section 2953.82 of the~~ 1146
~~Revised Code, and the attorney general shall ensure that they are~~ 1147
~~sufficient for that type of use, and that they include all~~ 1148
~~information and spaces necessary for that type of use.~~ The 1149
attorney general shall distribute copies of the prescribed forms 1150
to the department of rehabilitation and correction, the department 1151
shall ensure that each prison in which ~~inmates~~ offenders are 1152
housed has a supply of copies of the forms, and the department 1153
shall ensure that copies of the forms are provided free of charge 1154
to any ~~inmate~~ offender who requests them. 1155

(C)(1) An ~~inmate~~ offender is eligible to request DNA testing 1156
to be conducted under sections 2953.71 to 2953.81 of the Revised 1157
Code only if all of the following apply: 1158

(a) The offense for which the ~~inmate~~ offender claims to be an 1159
eligible ~~inmate~~ offender is a felony, and the ~~inmate~~ offender was 1160
convicted by a judge or jury of that offense. 1161

(b) One of the following applies: 1162

(i) The ~~inmate~~ offender was sentenced to a prison term or 1163
sentence of death for the felony described in division (C)(1)(a) 1164
of this section, and the offender is in prison serving that prison 1165
term or under that sentence of death, has been paroled or is on 1166
probation regarding that felony, is under post-release control 1167
regarding that felony, or has been released from that prison term 1168
and is under a community control sanction regarding that felony. 1169

(ii) The offender was not sentenced to a prison term or sentence of death for the felony described in division (C)(1)(a) of this section, but was sentenced to a community control sanction for that felony and is under that community control sanction. 1170
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(iii) The felony described in division (C)(1)(a) of this section was a sexually oriented offense or child-victim oriented offense, and the offender has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code relative to that felony. 1174
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~~(c) On the date on which the application is filed, the inmate has at least one year remaining on the prison term described in division (C)(1)(b) of this section, or the inmate is in prison under a sentence of death as described in that division.~~ 1179
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(2) An ~~inmate~~ offender is not an eligible ~~inmate~~ offender under division (C)(1) of this section regarding any offense to which the ~~inmate~~ offender pleaded guilty or no contest. 1183
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(3) An offender is not an eligible offender under division (C)(1) of this section regarding any offense if the offender dies prior to submitting an application for DNA testing related to that offense under section 2953.73 of the Revised Code. 1186
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Sec. 2953.73. (A) An eligible ~~inmate~~ offender who wishes to request DNA testing to be conducted under sections 2953.71 to 2953.81 of the Revised Code shall submit an application for DNA testing on a form prescribed by the attorney general for this purpose and shall submit the form to the court of common pleas that sentenced the ~~inmate~~ offender for the offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is requesting DNA testing. 1190
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(B) If an eligible ~~inmate~~ offender submits an application for DNA testing under division (A) of this section, upon the 1198
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submission of the application, all of the following apply: 1200

(1) The eligible ~~inmate~~ offender shall serve a copy of the 1201
application on the prosecuting attorney and the attorney general. 1202

(2) The application shall be assigned to the judge of that 1203
court of common pleas who was the trial judge in the case in which 1204
the eligible ~~inmate~~ offender was convicted of the offense for 1205
which the ~~inmate~~ offender is requesting DNA testing, or, if that 1206
judge no longer is a judge of that court, it shall be assigned 1207
according to court rules. The judge to whom the application is 1208
assigned shall decide the application. The application shall 1209
become part of the file in the case. 1210

(C) If an eligible ~~inmate~~ offender submits an application for 1211
DNA testing under division (A) of this section, regardless of 1212
whether the ~~inmate~~ offender has commenced any federal habeas 1213
corpus proceeding relative to the case in which the ~~inmate~~ 1214
offender was convicted of the offense for which the ~~inmate~~ 1215
offender is an eligible ~~inmate~~ offender and is requesting DNA 1216
testing, any response to the application by the prosecuting 1217
attorney or the attorney general shall be filed not later than 1218
forty-five days after the date on which the eligible ~~inmate~~ 1219
offender submits the application. The prosecuting attorney or the 1220
attorney general, or both, may, but are not required to, file a 1221
response to the application. If the prosecuting attorney or the 1222
attorney general files a response under this division, the 1223
prosecuting attorney or attorney general, whoever filed the 1224
response, shall serve a copy of the response on the eligible 1225
~~inmate~~ offender. 1226

(D) If an eligible ~~inmate~~ offender submits an application for 1227
DNA testing under division (A) of this section, the court shall 1228
make the determination as to whether the application should be 1229
accepted or rejected. The court shall expedite its review of the 1230
application. The court shall make the determination in accordance 1231

with the criteria and procedures set forth in sections 2953.74 to 1232
2953.81 of the Revised Code and, in making the determination, 1233
shall consider the application, the supporting affidavits, and the 1234
documentary evidence and, in addition to those materials, shall 1235
consider all the files and records pertaining to the proceedings 1236
against the applicant, including, but not limited to, the 1237
indictment, the court's journal entries, the journalized records 1238
of the clerk of the court, and the court reporter's transcript and 1239
all responses to the application filed under division (C) of this 1240
section by a prosecuting attorney or the attorney general, unless 1241
the application and the files and records show the applicant is 1242
not entitled to DNA testing, in which case the application may be 1243
denied. The court is not required to conduct an evidentiary 1244
hearing in conducting its review of, and in making its 1245
determination as to whether to accept or reject, the application. 1246
Upon making its determination, the court shall enter a judgment 1247
and order that either accepts or rejects the application and that 1248
includes within the judgment and order the reasons for the 1249
acceptance or rejection as applied to the criteria and procedures 1250
set forth in sections 2953.71 to 2953.81 of the Revised Code. The 1251
court shall send a copy of the judgment and order to the eligible 1252
~~inmate~~ offender who filed it, the prosecuting attorney, and the 1253
attorney general. 1254

(E) A judgment and order of a court entered under division 1255
(D) of this section is appealable only as provided in this 1256
division. If an eligible ~~inmate~~ offender submits an application 1257
for DNA testing under section 2953.73 of the Revised Code and the 1258
court of common pleas rejects the application under division (D) 1259
of this section, one of the following applies: 1260

(1) If the ~~inmate~~ offender was sentenced to death for the 1261
offense for which the ~~inmate~~ offender claims to be an eligible 1262
~~inmate~~ offender and is requesting DNA testing, the ~~inmate~~ offender 1263

may seek leave of the supreme court to appeal the rejection to the 1264
supreme court. Courts of appeals do not have jurisdiction to 1265
review any rejection if the ~~inmate~~ offender was sentenced to death 1266
for the offense for which the ~~inmate~~ offender claims to be an 1267
eligible ~~inmate~~ offender and is requesting DNA testing. 1268

(2) If the ~~inmate~~ offender was not sentenced to death for the 1269
offense for which the ~~inmate~~ offender claims to be an eligible 1270
~~inmate~~ offender and is requesting DNA testing, the rejection is a 1271
final appealable order, and the ~~inmate~~ offender may appeal it to 1272
the court of appeals of the district in which is located that 1273
court of common pleas. 1274

(F) Notwithstanding any provision of law regarding fees and 1275
costs, no filing fee shall be required of, and no court costs 1276
shall be assessed against, an eligible offender who is indigent 1277
and who submits an application under this section. 1278

(G) If a court rejects an eligible ~~inmate's~~ offender's 1279
application for DNA testing under division (D) of this section, 1280
unless the rejection is overturned on appeal, no court shall 1281
require the state to administer a DNA test under sections 2953.71 1282
to 2953.81 of the Revised Code on the eligible ~~inmate~~ offender. 1283

Sec. 2953.74. (A) If an eligible ~~inmate~~ offender submits an 1284
application for DNA testing under section 2953.73 of the Revised 1285
Code and a prior definitive DNA test has been conducted regarding 1286
the same biological evidence that the ~~inmate~~ offender seeks to 1287
have tested, the court shall reject the ~~inmate's~~ offender's 1288
application. If an eligible ~~inmate~~ offender files an application 1289
for DNA testing and a prior inconclusive DNA test has been 1290
conducted regarding the same biological evidence that the ~~inmate~~ 1291
offender seeks to have tested, the court shall review the 1292
application and has the discretion, on a case-by-case basis, to 1293
either accept or reject the application. The court may direct a 1294

testing authority to provide the court with information that the 1295
court may use in determining whether prior DNA test results were 1296
definitive or inconclusive and whether to accept or reject an 1297
application in relation to which there were prior inconclusive DNA 1298
test results. 1299

(B) If an eligible inmate offender submits an application for 1300
DNA testing under section 2953.73 of the Revised Code, the court 1301
may accept the application only if one of the following applies: 1302

(1) The inmate offender did not have a DNA test taken at the 1303
trial stage in the case in which the inmate offender was convicted 1304
of the offense for which the inmate offender is an eligible inmate 1305
offender and is requesting the DNA testing regarding the same 1306
biological evidence that the inmate offender seeks to have tested, 1307
the inmate offender shows that DNA exclusion when analyzed in the 1308
context of and upon consideration of all available admissible 1309
evidence related to the subject inmate's offender's case as 1310
described in division (D) of this section would have been outcome 1311
determinative at that trial stage in that case, and, at the time 1312
of the trial stage in that case, DNA testing was not generally 1313
accepted, the results of DNA testing were not generally admissible 1314
in evidence, or DNA testing was not yet available. 1315

(2) The inmate offender had a DNA test taken at the trial 1316
stage in the case in which the inmate offender was convicted of 1317
the offense for which the inmate offender is an eligible inmate 1318
offender and is requesting the DNA testing regarding the same 1319
biological evidence that the inmate offender seeks to have tested, 1320
the test was not a prior definitive DNA test that is subject to 1321
division (A) of this section, and the inmate offender shows that 1322
DNA exclusion when analyzed in the context of and upon 1323
consideration of all available admissible evidence related to the 1324
subject inmate's offender's case as described in division (D) of 1325
this section would have been outcome determinative at the trial 1326

stage in that case. 1327

(C) If an eligible ~~inmate~~ offender submits an application for 1328
DNA testing under section 2953.73 of the Revised Code, the court 1329
may accept the application only if all of the following apply: 1330

(1) The court determines pursuant to section 2953.75 of the 1331
Revised Code that biological material was collected from the crime 1332
scene or the victim of the offense for which the ~~inmate~~ offender 1333
is an eligible ~~inmate~~ offender and is requesting the DNA testing 1334
and that the parent sample of that biological material against 1335
which a sample from the ~~inmate~~ offender can be compared still 1336
exists at that point in time. 1337

(2) The testing authority determines all of the following 1338
pursuant to section 2953.76 of the Revised Code regarding the 1339
parent sample of the biological material described in division 1340
(C)(1) of this section: 1341

(a) The parent sample of the biological material so collected 1342
contains scientifically sufficient material to extract a test 1343
sample. 1344

(b) The parent sample of the biological material so collected 1345
is not so minute or fragile as to risk destruction of the parent 1346
sample by the extraction described in division (C)(2)(a) of this 1347
section; provided that the court may determine in its discretion, 1348
on a case-by-case basis, that, even if the parent sample of the 1349
biological material so collected is so minute or fragile as to 1350
risk destruction of the parent sample by the extraction, the 1351
application should not be rejected solely on the basis of that 1352
risk. 1353

(c) The parent sample of the biological material so collected 1354
has not degraded or been contaminated to the extent that it has 1355
become scientifically unsuitable for testing, and the parent 1356
sample otherwise has been preserved, and remains, in a condition 1357

that is scientifically suitable for testing. 1358

(3) The court determines that, at the trial stage in the case 1359
in which the ~~inmate~~ offender was convicted of the offense for 1360
which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 1361
requesting the DNA testing, the identity of the person who 1362
committed the offense was an issue. 1363

(4) The court determines that one or more of the defense 1364
theories asserted by the ~~inmate~~ offender at the trial stage in the 1365
case described in division (C)(3) of this section or in a retrial 1366
of that case in a court of this state was of such a nature that, 1367
if DNA testing is conducted and an exclusion result is obtained, 1368
the exclusion result will be outcome determinative. 1369

(5) The court determines that, if DNA testing is conducted 1370
and an exclusion result is obtained, the results of the testing 1371
will be outcome determinative regarding that ~~inmate~~ offender. 1372

(6) The court determines pursuant to section 2953.76 of the 1373
Revised Code from the chain of custody of the parent sample of the 1374
biological material to be tested and of any test sample extracted 1375
from the parent sample, and from the totality of circumstances 1376
involved, that the parent sample and the extracted test sample are 1377
the same sample as collected and that there is no reason to 1378
believe that they have been out of state custody or have been 1379
tampered with or contaminated since they were collected. 1380

(D) If an eligible ~~inmate~~ offender submits an application for 1381
DNA testing under section 2953.73 of the Revised Code, the court, 1382
in determining whether the "outcome determinative" criterion 1383
described in divisions (B)(1) and (2) of this section has been 1384
satisfied, shall consider all available admissible evidence 1385
related to the subject ~~inmate's~~ offender's case. 1386

(E) If an eligible ~~inmate~~ offender submits an application for 1387
DNA testing under section 2953.73 of the Revised Code and the 1388

court accepts the application, the eligible ~~inmate~~ offender may 1389
request the court to order, or the court on its own initiative may 1390
order, the bureau of criminal identification and investigation to 1391
compare the results of DNA testing of biological material from an 1392
unidentified person other than the ~~inmate~~ offender that was 1393
obtained from the crime scene or from a victim of the offense for 1394
which the ~~inmate~~ offender has been approved for DNA testing to the 1395
combined DNA index system maintained by the federal bureau of 1396
investigation. 1397

If the bureau, upon comparing the test results to the 1398
combined DNA index system, determines the identity of the person 1399
who is the contributor of the biological material, the bureau 1400
shall provide that information to the court that accepted the 1401
application, the ~~inmate~~ offender, and the prosecuting attorney. 1402
The ~~inmate~~ offender or the state may use the information for any 1403
lawful purpose. 1404

If the bureau, upon comparing the test results to the 1405
combined DNA index system, is unable to determine the identity of 1406
the person who is the contributor of the biological material, the 1407
bureau may compare the test results to other previously obtained 1408
and acceptable DNA test results of any person whose identity is 1409
known other than the eligible ~~inmate~~ offender. If the bureau, upon 1410
comparing the test results to the DNA test results of any person 1411
whose identity is known, determines that the person whose identity 1412
is known is the contributor of the biological material, the bureau 1413
shall provide that information to the court that accepted the 1414
application, the ~~inmate~~ offender, and the prosecuting attorney. 1415
The ~~inmate~~ offender or the state may use the information for any 1416
lawful purpose. 1417

Sec. 2953.75. (A) If an eligible ~~inmate~~ offender submits an 1418
application for DNA testing under section 2953.73 of the Revised 1419

Code, the court shall require the prosecuting attorney to use 1420
reasonable diligence to determine whether biological material was 1421
collected from the crime scene or victim of the offense for which 1422
the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 1423
requesting the DNA testing against which a sample from the ~~inmate~~ 1424
offender can be compared and whether the parent sample of that 1425
biological material still exists at that point in time. In using 1426
reasonable diligence to make those determinations, the prosecuting 1427
attorney shall rely upon all relevant sources, including, but not 1428
limited to, all of the following: 1429

(1) All prosecuting authorities in the case in which the 1430
~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ 1431
offender is an eligible ~~inmate~~ offender and is requesting the DNA 1432
testing and in the appeals of, and postconviction proceedings 1433
related to, that case; 1434

(2) All law enforcement authorities involved in the 1435
investigation of the offense for which the ~~inmate~~ offender is an 1436
eligible offender and is requesting the DNA testing; 1437

(3) All custodial agencies involved at any time with the 1438
biological material in question; 1439

(4) The custodian of all custodial agencies described in 1440
division (A)(3) of this section; 1441

(5) All crime laboratories involved at any time with the 1442
biological material in question; 1443

(6) All other reasonable sources. 1444

(B) The prosecuting attorney shall prepare a report that 1445
contains the prosecuting attorney's determinations made under 1446
division (A) of this section and shall file a copy of the report 1447
with the court and provide a copy to the eligible ~~inmate~~ offender 1448
and the attorney general. 1449

Sec. 2953.76. If an eligible ~~inmate~~ offender submits an 1450
application for DNA testing under section 2953.73 of the Revised 1451
Code, the court shall require the prosecuting attorney to consult 1452
with the testing authority and to prepare findings regarding the 1453
quantity and quality of the parent sample of the biological 1454
material collected from the crime scene or victim of the offense 1455
for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and 1456
is requesting the DNA testing and that is to be tested, and of the 1457
chain of custody and reliability regarding that parent sample, as 1458
follows: 1459

(A) The testing authority shall determine whether there is a 1460
scientifically sufficient quantity of the parent sample to test 1461
and whether the parent sample is so minute or fragile that there 1462
is a substantial risk that the parent sample could be destroyed in 1463
testing. The testing authority may determine that there is not a 1464
sufficient quantity to test in order to preserve the state's 1465
ability to present in the future the original evidence presented 1466
at trial, if another trial is required. Upon making its 1467
determination under this division, the testing authority shall 1468
prepare a written document that contains its determination and the 1469
reasoning and rationale for that determination and shall provide a 1470
copy to the court, the eligible ~~inmate~~ offender, the prosecuting 1471
attorney, and the attorney general. The court may determine in its 1472
discretion, on a case-by-case basis, that, even if the parent 1473
sample of the biological material so collected is so minute or 1474
fragile as to risk destruction of the parent sample by the 1475
extraction, the application should not be rejected solely on the 1476
basis of that risk. 1477

(B) The testing authority shall determine whether the parent 1478
sample has degraded or been contaminated to the extent that it has 1479
become scientifically unsuitable for testing and whether the 1480
parent sample otherwise has been preserved, and remains, in a 1481

condition that is suitable for testing. Upon making its 1482
determination under this division, the testing authority shall 1483
prepare a written document that contains its determination and the 1484
reasoning and rationale for that determination and shall provide a 1485
copy to the court, the eligible ~~inmate~~ offender, the prosecuting 1486
attorney, and the attorney general. 1487

(C) The court shall determine, from the chain of custody of 1488
the parent sample of the biological material to be tested and of 1489
any test sample extracted from the parent sample and from the 1490
totality of circumstances involved, whether the parent sample and 1491
the extracted test sample are the same sample as collected and 1492
whether there is any reason to believe that they have been out of 1493
state custody or have been tampered with or contaminated since 1494
they were collected. Upon making its determination under this 1495
division, the court shall prepare and retain a written document 1496
that contains its determination and the reasoning and rationale 1497
for that determination. 1498

Sec. 2953.77. (A) If an eligible ~~inmate~~ offender submits an 1499
application for DNA testing under section 2953.73 of the Revised 1500
Code and if the application is accepted and DNA testing is to be 1501
performed, the court shall require that the chain of custody 1502
remain intact and that all of the applicable following precautions 1503
are satisfied to ensure that the parent sample of the biological 1504
material collected from the crime scene or the victim of the 1505
offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ 1506
offender and requested the DNA testing, and the test sample of the 1507
parent sample that is extracted and actually is to be tested, are 1508
not contaminated during transport or the testing process: 1509

(1) The court shall require that the chain of custody be 1510
maintained and documented relative to the parent sample and the 1511
test sample actually to be tested between the time they are 1512

removed from their place of storage or the time of their 1513
extraction to the time at which the DNA testing will be performed. 1514

(2) The court, the testing authority, and the law enforcement 1515
and prosecutorial personnel involved in the process, or any 1516
combination of those entities and persons, shall coordinate the 1517
transport of the parent sample and the test sample actually to be 1518
tested between their place of storage and the place where the DNA 1519
testing will be performed, and the court and testing authority 1520
shall document the transport procedures so used. 1521

(3) The testing authority shall determine and document the 1522
custodian of the parent sample and the test sample actually to be 1523
tested after they are in the possession of the testing authority. 1524

(4) The testing authority shall maintain and preserve the 1525
parent sample and the test sample actually to be tested after they 1526
are in the possession of the testing authority and shall document 1527
the maintenance and preservation procedures used. 1528

(5) After the DNA testing, the court, the testing authority, 1529
and the original custodial agency of the parent sample, or any 1530
combination of those entities, shall coordinate the return of the 1531
remaining parent sample back to its place of storage with the 1532
original custodial agency or to any other place determined in 1533
accordance with this division and section 2953.81 of the Revised 1534
Code. The court shall determine, in consultation with the testing 1535
authority, the custodial agency to maintain any newly created, 1536
extracted, or collected DNA material resulting from the testing. 1537
The court and testing authority shall document the return 1538
procedures for original materials and for any newly created, 1539
extracted, or collected DNA material resulting from the testing, 1540
and also the custodial agency to which those materials should be 1541
taken. 1542

(B) A court or testing authority shall provide the 1543

documentation required under division (A) of this section in 1544
writing and shall maintain that documentation. 1545

Sec. 2953.78. (A) If an eligible ~~inmate~~ offender submits an 1546
application for DNA testing under section 2953.73 of the Revised 1547
Code and if the application is accepted and DNA testing is to be 1548
performed, the court shall select the testing authority to be used 1549
for the testing. A court shall not select or use a testing 1550
authority for DNA testing unless the attorney general approves or 1551
designates the testing authority pursuant to division (C) of this 1552
section and unless the testing authority satisfies the criteria 1553
set forth in section 2953.80 of the Revised Code. 1554

(B) If a court selects a testing authority pursuant to 1555
division (A) of this section and the eligible ~~inmate~~ offender for 1556
whom the test is to be performed objects to the use of the 1557
selected testing authority, the court shall rescind its prior 1558
acceptance of the application for DNA testing for the ~~inmate~~ 1559
offender and deny the application. An objection as described in 1560
this division, and the resulting rescission and denial, do not 1561
preclude a court from accepting in the court's discretion, a 1562
subsequent application by the same eligible ~~inmate~~ offender 1563
requesting DNA testing. 1564

(C) The attorney general shall approve or designate testing 1565
authorities that may be selected and used to conduct DNA testing, 1566
shall prepare a list of the approved or designated testing 1567
authorities, and shall provide copies of the list to all courts of 1568
common pleas. The attorney general shall update the list as 1569
appropriate to reflect changes in the approved or designated 1570
testing authorities and shall provide copies of the updated list 1571
to all courts of common pleas. The attorney general shall not 1572
approve or designate a testing authority under this division 1573
unless the testing authority satisfies the criteria set forth in 1574

section 2953.80 of the Revised Code. A testing authority that is 1575
equipped to handle advanced DNA testing may be approved or 1576
designated under this division, provided it satisfies the criteria 1577
set forth in that section. 1578

(D) The attorney general's approval or designation of testing 1579
authorities under division (C) of this section, and the selection 1580
and use of any approved or designated testing authority, do not 1581
afford an inmate offender any right to subsequently challenge the 1582
approval, designation, selection, or use, and an inmate offender 1583
may not appeal to any court the approval, designation, selection, 1584
or use of a testing authority. 1585

Sec. 2953.79. (A) If an eligible inmate offender submits an 1586
application for DNA testing under section 2953.73 of the Revised 1587
Code and if the application is accepted and DNA testing is to be 1588
performed, a sample of biological material shall be obtained from 1589
the inmate offender in accordance with this section, to be 1590
compared with the parent sample of biological material collected 1591
from the crime scene or the victim of the offense for which the 1592
inmate offender is an eligible inmate offender and requested the 1593
DNA testing. The ~~inmate's offender's~~ filing of the application 1594
constitutes the ~~inmate's offender's~~ consent to the obtaining of 1595
the sample of biological material from the inmate offender. The 1596
testing authority shall obtain the sample of biological material 1597
from the inmate offender in accordance with medically accepted 1598
procedures. 1599

(B) If DNA testing is to be performed for an inmate offender 1600
as described in division (A) of this section, the court shall 1601
require the state to coordinate with the department of 1602
rehabilitation and correction or the other state agency or entity 1603
of local government with custody of the offender, whichever is 1604
applicable, as to the time and place at which the sample of 1605

biological material will be obtained from the inmate offender. The 1606
If the offender is in prison or is in custody in another facility 1607
at the time the DNA testing is to be performed, the sample of 1608
biological material shall be obtained from the inmate offender at 1609
the facility in which the inmate offender is housed, and the 1610
department of rehabilitation and correction or the other state 1611
agency or entity of local government with custody of the offender, 1612
whichever is applicable, shall make the inmate offender available 1613
at the specified time. The court shall require the state to 1614
provide notice to the inmate offender and to the inmate's 1615
offender's counsel of the date on which, and the time and place at 1616
which, the sample will be so obtained. 1617

The court also shall require the state to coordinate with the 1618
testing authority regarding the obtaining of the sample from the 1619
inmate offender. 1620

(C)(1) If DNA testing is to be performed for an inmate 1621
offender as described in division (A) of this section, and the 1622
inmate offender refuses to submit to the collection of the sample 1623
of biological material from the inmate offender or hinders the 1624
state from obtaining a sample of biological material from the 1625
inmate offender, the court shall rescind its prior acceptance of 1626
the application for DNA testing for the inmate offender and deny 1627
the application. 1628

(2) For purposes of division (C)(1) of this section: 1629

(a) An inmate's offender's "refusal to submit to the 1630
collection of a sample of biological material from the inmate 1631
offender" includes, but is not limited to, the inmate's offender's 1632
rejection of the physical manner in which a sample of the inmate's 1633
offender's biological material is to be taken. 1634

(b) An inmate's offender's "hindrance of the state in 1635
obtaining a sample of biological material from the inmate 1636

offender" includes, but is not limited to, the inmate offender 1637
being physically or verbally uncooperative or antagonistic in the 1638
taking of a sample of the ~~inmate's~~ offender's biological material. 1639

(D) The extracting personnel shall make the determination as 1640
to whether an eligible inmate offender for whom DNA testing is to 1641
be performed is refusing to submit to the collection of a sample 1642
of biological material from the ~~inmate~~ offender or is hindering 1643
the state from obtaining a sample of biological material from the 1644
inmate offender at the time and date of the scheduled collection 1645
of the sample. If the extracting personnel determine that an 1646
inmate offender is refusing to submit to the collection of a 1647
sample or is hindering the state from obtaining a sample, the 1648
extracting personnel shall document in writing the conditions that 1649
constitute the refusal or hindrance, maintain the documentation, 1650
and notify the court of the ~~inmate's~~ offender's refusal or 1651
hindrance. 1652

Sec. 2953.81. If an eligible offender submits an application 1653
for DNA testing under section 2953.73 of the Revised Code and if 1654
DNA testing is performed based on that application, upon 1655
completion of the testing, all of the following apply: 1656

(A) The court or a designee of the court shall require the 1657
state to maintain the results of the testing and to maintain and 1658
preserve both the parent sample of the biological material used 1659
and the ~~inmate~~ offender sample of the biological material used. 1660
The testing authority may be designated as the person to maintain 1661
the results of the testing or to maintain and preserve some or all 1662
of the samples, or both. The results of the testing remain state's 1663
evidence. The samples shall be preserved during the entire period 1664
of time for which the ~~inmate~~ offender is imprisoned or confined 1665
relative to the ~~prison term or sentence of death~~ in question and, 1666
~~if that prison term expires or the inmate is executed under that~~ 1667

sentence of death, is on parole or probation relative to that 1668
sentence, is under post-release control or a community control 1669
sanction relative to that sentence, or has a duty to comply with 1670
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 1671
Code relative to that sentence. Additionally, if the prison term 1672
or confinement under the sentence in question expires, if the 1673
sentence in question is a sentence of death and the offender is 1674
executed, or if the parole or probation period, the period of 1675
post-release control, the community control sanction, or the duty 1676
to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of 1677
the Revised Code under the sentence in question ends, the samples 1678
shall be preserved for a reasonable period of time of not less 1679
than twenty-four months after the term or confinement expires or, 1680
the inmate offender is executed, or the parole or probation 1681
period, the period of post-release control, the community control 1682
sanction, or the duty to comply with sections 2950.04, 2950.041, 1683
2950.05, and 2950.06 of the Revised Code ends, whichever is 1684
applicable. The court shall determine the period of time that is 1685
reasonable for purposes of this division, provided that the period 1686
shall not be less than twenty-four months after the term or 1687
confinement expires or, the inmate offender is executed, or the 1688
parole or probation period, the period of post-release control, 1689
the community control sanction, or the duty to comply with 1690
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 1691
Code ends, whichever is applicable. 1692

(B) The results of the testing are a public record. 1693

(C) The court or the testing authority shall provide a copy 1694
of the results of the testing to the prosecuting attorney, the 1695
attorney general, and the subject inmate offender. 1696

(D) If the postconviction proceeding in question is pending 1697
at that time in a court of this state, the court of common pleas 1698
that decided the DNA application or the testing authority shall 1699

provide a copy of the results of the testing to any court of this 1700
state, and, if it is pending in a federal court, the court of 1701
common pleas that decided the DNA application or the testing 1702
authority shall provide a copy of the results of the testing to 1703
that federal court. 1704

(E) The testing authority shall provide a copy of the results 1705
of the testing to the court of common pleas that decided the DNA 1706
application. 1707

(F) The ~~inmate~~ offender or the state may enter the results of 1708
the testing into any proceeding. 1709

Sec. 2953.83. In any court proceeding under sections 2953.71 1710
to ~~2953.82~~ 2953.81 of the Revised Code, the Rules of Criminal 1711
Procedure apply, except to the extent that sections 2953.71 to 1712
~~2953.82~~ 2953.81 of the Revised Code provide a different procedure 1713
or to the extent that the Rules would by their nature be clearly 1714
inapplicable. 1715

Sec. 2953.84. The provisions of sections 2953.71 to ~~2953.82~~ 1716
2953.81 of the Revised Code by which an ~~inmate~~ offender may obtain 1717
postconviction DNA testing are not the exclusive means by which an 1718
~~inmate~~ offender may obtain postconviction DNA testing, and the 1719
provisions of those sections do not limit or affect any other 1720
means by which an ~~inmate~~ offender may obtain postconviction DNA 1721
testing. 1722

Section 2. That existing sections 109.573, 2953.21, 2953.23, 1723
2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2953.77, 1724
2953.78, 2953.79, 2953.81, 2953.83, and 2953.84 and section 1725
2953.82 of the Revised Code are hereby repealed. 1726