

**As Introduced**

**128th General Assembly  
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**H. B. No. 99**

**Representatives Weddington, Yates**

**Cosponsors: Representatives Luckie, Heard, Chandler, Domenick, Yuko,  
Evans, Williams, S.**

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**A B I L L**

To amend sections 109.573, 2901.07, 2953.21, 2953.23, 1  
2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2  
2953.76, 2953.77, 2953.78, 2953.79, 2953.81, 3  
2953.83, and 2953.84, to enact sections 105.912, 4  
109.561, 2933.81, 2933.82, and 2933.83, and to 5  
repeal section 2953.82 of the Revised Code 6  
relative to the expansion of DNA testing for 7  
certain convicted felons, the elimination of the 8  
DNA testing mechanism for felons who pleaded 9  
guilty or no contest to the offense, the 10  
collection of DNA specimens from all persons 11  
eighteen years of age or older who are arrested 12  
for a felony offense, the preservation and 13  
accessibility of biological evidence in a criminal 14  
or delinquency investigation or proceeding, the 15  
improvement of eyewitness identification 16  
procedures, and the electronic or audio recording 17  
of custodial interrogations. 18

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

**Section 1.** That sections 109.573, 2901.07, 2953.21, 2953.23, 19

2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2953.77, 20  
2953.78, 2953.79, 2953.81, 2953.83, and 2953.84 be amended and 21  
sections 105.912, 109.561, 2933.81, 2933.82, and 2933.83 of the 22  
Revised Code be enacted to read as follows: 23

Sec. 105.912. The Ohio judicial conference shall develop the 24  
forms regarding custodial interrogations that are described in 25  
division (F) of section 2933.81 of the Revised Code, distribute 26  
copies of the forms as specified in that division, and monitor 27  
compliance with the recording requirement in division (B) of that 28  
section as specified in division (F) of that section. 29

Sec. 109.561. There is hereby established within the bureau 30  
of criminal identification and investigation a preservation of 31  
biological evidence task force. The task force shall consist of 32  
officers and employees of the bureau. The task force shall perform 33  
the duties and functions specified in division (D) of section 34  
2933.82 of the Revised Code. 35

**Sec. 109.573.** (A) As used in this section: 36

(1) "DNA" means human deoxyribonucleic acid. 37

(2) "DNA analysis" means a laboratory analysis of a DNA 38  
specimen to identify DNA characteristics and to create a DNA 39  
record. 40

(3) "DNA database" means a collection of DNA records from 41  
forensic casework or from crime scenes, specimens from anonymous 42  
and unidentified sources, and records collected pursuant to 43  
sections 2152.74 and 2901.07 of the Revised Code and a population 44  
statistics database for determining the frequency of occurrence of 45  
characteristics in DNA records. 46

(4) "DNA record" means the objective result of a DNA analysis 47

of a DNA specimen, including representations of DNA fragment 48  
lengths, digital images of autoradiographs, discrete allele 49  
assignment numbers, and other DNA specimen characteristics that 50  
aid in establishing the identity of an individual. 51

(5) "DNA specimen" includes human blood cells or 52  
physiological tissues or body fluids. 53

(6) "Unidentified person database" means a collection of DNA 54  
records, and, on and after May 21, 1998, of fingerprint and 55  
photograph records, of unidentified human corpses, human remains, 56  
or living individuals. 57

(7) "Relatives of missing persons database" means a 58  
collection of DNA records of persons related by consanguinity to a 59  
missing person. 60

(8) "Law enforcement agency" means a police department, the 61  
office of a sheriff, the state highway patrol, a county 62  
prosecuting attorney, or a federal, state, or local governmental 63  
body that enforces criminal laws and that has employees who have a 64  
statutory power of arrest. 65

(9) "Administration of criminal justice" means the 66  
performance of detection, apprehension, detention, pretrial 67  
release, post-trial release, prosecution, adjudication, 68  
correctional supervision, or rehabilitation of accused persons or 69  
criminal offenders. "Administration of criminal justice" also 70  
includes criminal identification activities and the collection, 71  
storage, and dissemination of criminal history record information. 72

(B)(1) The superintendent of the bureau of criminal 73  
identification and investigation may do all of the following: 74

(a) Establish and maintain a state DNA laboratory to perform 75  
DNA analyses of DNA specimens; 76

(b) Establish and maintain a DNA database; 77

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

(d) Establish and maintain a relatives of missing persons database for comparison with the unidentified person database to aid in the establishment of the identity of unknown human corpses, human remains, and living individuals.

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

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

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

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

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

(a) If a person has disappeared and has been continuously absent from the person's place of last domicile for a thirty-day or longer period of time without being heard from during the period, persons related by consanguinity to the missing person may submit to the bureau a DNA specimen, the bureau may include the DNA record of the specimen in the relatives of missing persons database, and, if the bureau does not include the DNA record of

the specimen in the relatives of missing persons database, the 109  
bureau shall retain the DNA record for future reference and 110  
inclusion as appropriate in that database. 111

(b) The bureau shall not charge a fee for the submission of a 112  
DNA specimen pursuant to division (B)(3)(a) of this section. 113

(c) If the DNA specimen submitted pursuant to division 114  
(B)(3)(a) of this section is collected by withdrawing blood from 115  
the person or a similarly invasive procedure, a physician, 116  
registered nurse, licensed practical nurse, duly licensed clinical 117  
laboratory technician, or other qualified medical practitioner 118  
shall conduct the collection procedure for the DNA specimen 119  
submitted pursuant to division (B)(3)(a) of this section and shall 120  
collect the DNA specimen in a medically approved manner. If the 121  
DNA specimen is collected by swabbing for buccal cells or a 122  
similarly noninvasive procedure, division (B)(3)(c) of this 123  
section does not require that the DNA specimen be collected by a 124  
qualified medical practitioner of that nature. No later than 125  
fifteen days after the date of the collection of the DNA specimen, 126  
the person conducting the DNA specimen collection procedure shall 127  
cause the DNA specimen to be forwarded to the bureau of criminal 128  
identification and investigation in accordance with procedures 129  
established by the superintendent of the bureau under division (H) 130  
of this section. The bureau may provide the specimen vials, 131  
mailing tubes, labels, postage, and instruction needed for the 132  
collection and forwarding of the DNA specimen to the bureau. 133

(d) The superintendent, in the superintendent's discretion, 134  
may compare DNA records in the relatives of missing persons 135  
database with the DNA records in the unidentified person database. 136

(4) If the bureau of criminal identification and 137  
investigation establishes and maintains an unidentified person 138  
database and if the superintendent of the bureau identifies a 139  
matching DNA record for the DNA record of a person or deceased 140

person whose DNA record is contained in the unidentified person 141  
database, the superintendent shall inform the coroner who 142  
submitted or the law enforcement agency that submitted the DNA 143  
specimen to the bureau of the match and, if possible, of the 144  
identity of the unidentified person. 145

(5) The bureau of criminal identification and investigation 146  
may enter into a contract with a qualified public or private 147  
laboratory to perform DNA analyses, DNA specimen maintenance, 148  
preservation, and storage, DNA record keeping, and other duties 149  
required of the bureau under this section. A public or private 150  
laboratory under contract with the bureau shall follow quality 151  
assurance and privacy requirements established by the 152  
superintendent of the bureau. 153

(C) The superintendent of the bureau of criminal 154  
identification and investigation shall establish procedures for 155  
entering into the DNA database the DNA records submitted pursuant 156  
to sections 2152.74 and 2901.07 of the Revised Code and for 157  
determining an order of priority for entry of the DNA records 158  
based on the types of offenses committed by the persons whose 159  
records are submitted and the available resources of the bureau. 160

(D) When a DNA record is derived from a DNA specimen provided 161  
pursuant to section 2152.74 or 2901.07 of the Revised Code, the 162  
bureau of criminal identification and investigation shall attach 163  
to the DNA record personal identification information that 164  
identifies the person from whom the DNA specimen was taken. The 165  
personal identification information may include the subject 166  
person's fingerprints and any other information the bureau 167  
determines necessary. The DNA record and personal identification 168  
information attached to it shall be used only for the purpose of 169  
personal identification or for a purpose specified in this 170  
section. 171

(E) DNA records, DNA specimens, fingerprints, and photographs 172

that the bureau of criminal identification and investigation 173  
receives pursuant to this section and sections 313.08, 2152.74, 174  
and 2901.07 of the Revised Code and personal identification 175  
information attached to a DNA record are not public records under 176  
section 149.43 of the Revised Code. 177

(F) The bureau of criminal identification and investigation 178  
may charge a reasonable fee for providing information pursuant to 179  
this section to any law enforcement agency located in another 180  
state. 181

(G)(1) No person who because of the person's employment or 182  
official position has access to a DNA specimen, a DNA record, or 183  
other information contained in the DNA database that identifies an 184  
individual shall knowingly disclose that specimen, record, or 185  
information to any person or agency not entitled to receive it or 186  
otherwise shall misuse that specimen, record, or information. 187

(2) No person without authorization or privilege to obtain 188  
information contained in the DNA database that identifies an 189  
individual person shall purposely obtain that information. 190

(H) The superintendent of the bureau of criminal 191  
identification and investigation shall establish procedures for 192  
all of the following: 193

(1) The forwarding to the bureau of DNA specimens collected 194  
pursuant to division (H) of this section and sections 313.08, 195  
2152.74, and 2901.07 of the Revised Code and of fingerprints and 196  
photographs collected pursuant to section 313.08 of the Revised 197  
Code; 198

(2) The collection, maintenance, preservation, and analysis 199  
of DNA specimens; 200

(3) The creation, maintenance, and operation of the DNA 201  
database; 202

(4) The use and dissemination of information from the DNA database;	203 204
(5) The creation, maintenance, and operation of the unidentified person database;	205 206
(6) The use and dissemination of information from the unidentified person database;	207 208
(7) The creation, maintenance, and operation of the relatives of missing persons database;	209 210
(8) The use and dissemination of information from the relatives of missing persons database;	211 212
(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;	213 214 215
(10) The operation of the bureau and responsibilities of employees of the bureau with respect to the activities described in this section.	216 217 218
(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 <del>2953.82</del> of the Revised Code.	219 220 221 222 223 224 225
<b>Sec. 2901.07.</b> (A) As used in this section:	226
(1) "DNA analysis" and "DNA specimen" have the same meanings as in section 109.573 of the Revised Code.	227 228
(2) "Jail" and "community-based correctional facility" have the same meanings as in section 2929.01 of the Revised Code.	229 230
(3) "Post-release control" has the same meaning as in section	231



2967.01 of the Revised Code. 232

(4) "Head of the arresting law enforcement agency" means 233  
whichever of the following is applicable regarding the arrest in 234  
question: 235

(a) If the arrest was made by a sheriff or a deputy sheriff, 236  
the sheriff who made the arrest or who employs the deputy sheriff 237  
who made the arrest; 238

(b) If the arrest was made by a law enforcement officer of a 239  
law enforcement agency of a municipal corporation, the chief of 240  
police, marshal, or other chief law enforcement officer of the 241  
agency that employs the officer who made the arrest; 242

(c) If the arrest was made by a constable or a law 243  
enforcement officer of a township police department or police 244  
district police force, the constable who made the arrest or the 245  
chief law enforcement officer of the department or agency that 246  
employs the officer who made the arrest; 247

(d) If the arrest was made by the superintendent or a trooper 248  
of the state highway patrol, the superintendent of the state 249  
highway patrol; 250

(e) If the arrest was made by a law enforcement officer not 251  
identified in division (A)(4)(a), (b), (c), or (d) of this 252  
section, the chief law enforcement officer of the law enforcement 253  
agency that employs the officer who made the arrest. 254

(B)(1) A person who is eighteen years of age or older and who 255  
is arrested on or after the effective date of this amendment for a 256  
felony offense shall submit to a DNA specimen collection procedure 257  
administered by the head of the arresting law enforcement agency. 258  
The head of the arresting law enforcement agency shall cause the 259  
DNA specimen to be collected from the person during the intake 260  
process at the jail, community-based correctional facility, 261  
detention facility, or law enforcement agency office or station to 262

which the arrested person is taken after the arrest. The head of 263  
the arresting law enforcement agency shall cause the DNA specimen 264  
to be collected in accordance with division (C) of this section. 265

(2) Regardless of when the conviction occurred or the guilty 266  
plea was entered, a person who has been convicted of, is convicted 267  
of, has pleaded guilty to, or pleads guilty to a felony offense 268  
~~and~~, who is sentenced to a prison term or to a community 269  
residential sanction in a jail or community-based correctional 270  
facility for that offense pursuant to section 2929.16 of the 271  
Revised Code, and who does not provide a DNA specimen pursuant to 272  
division (B)(1) of this section, and a person who has been 273  
convicted of, is convicted of, has pleaded guilty to, or pleads 274  
guilty to a misdemeanor offense listed in division (D) of this 275  
section ~~and~~, who is sentenced to a term of imprisonment for that 276  
offense, and who does not provide a DNA specimen pursuant to 277  
division (B)(1) of this section, shall submit to a DNA specimen 278  
collection procedure administered by the director of 279  
rehabilitation and correction or the chief administrative officer 280  
of the jail or other detention facility in which the person is 281  
serving the term of imprisonment. If the person serves the prison 282  
term in a state correctional institution, the director of 283  
rehabilitation and correction shall cause the DNA specimen to be 284  
collected from the person during the intake process at the 285  
reception facility designated by the director. If the person 286  
serves the community residential sanction or term of imprisonment 287  
in a jail, a community-based correctional facility, or another 288  
county, multicounty, municipal, municipal-county, or 289  
multicounty-municipal detention facility, the chief administrative 290  
officer of the jail, community-based correctional facility, or 291  
detention facility shall cause the DNA specimen to be collected 292  
from the person during the intake process at the jail, 293  
community-based correctional facility, or detention facility. The 294  
DNA specimen shall be collected in accordance with division (C) of 295

this section. 296

~~(2)~~(3) Regardless of when the conviction occurred or the 297  
guilty plea was entered, if a person has been convicted of, is 298  
convicted of, has pleaded guilty to, or pleads guilty to a felony 299  
offense or a misdemeanor offense listed in division (D) of this 300  
section, is serving a prison term, community residential sanction, 301  
or term of imprisonment for that offense, and does not provide a 302  
DNA specimen pursuant to division (B)(1) or (2) of this section, 303  
prior to the person's release from the prison term, community 304  
residential sanction, or imprisonment, the person shall submit to, 305  
and the director of rehabilitation and correction or the chief 306  
administrative officer of the jail, community-based correctional 307  
facility, or detention facility in which the person is serving the 308  
prison term, community residential sanction, or term of 309  
imprisonment shall administer, a DNA specimen collection procedure 310  
at the state correctional institution, jail, community-based 311  
correctional facility, or detention facility in which the person 312  
is serving the prison term, community residential sanction, or 313  
term of imprisonment. The DNA specimen shall be collected in 314  
accordance with division (C) of this section. 315

~~(3)~~(4)(a) Regardless of when the conviction occurred or the 316  
guilty plea was entered, if a person has been convicted of, is 317  
convicted of, has pleaded guilty to, or pleads guilty to a felony 318  
offense or a misdemeanor offense listed in division (D) of this 319  
section and the person is on probation, released on parole, under 320  
transitional control, on community control, on post-release 321  
control, or under any other type of supervised release under the 322  
supervision of a probation department or the adult parole 323  
authority for that offense, the person shall submit to a DNA 324  
specimen collection procedure administered by the chief 325  
administrative officer of the probation department or the adult 326  
parole authority. The DNA specimen shall be collected in 327

accordance with division (C) of this section. If the person 328  
refuses to submit to a DNA specimen collection procedure as 329  
provided in this division, the person may be subject to the 330  
provisions of section 2967.15 of the Revised Code. 331

(b) If a person to whom division (B)~~(3)~~(4)(a) of this section 332  
applies is sent to jail or is returned to a jail, community-based 333  
correctional facility, or state correctional institution for a 334  
violation of the terms and conditions of the probation, parole, 335  
transitional control, other release, or post-release control, if 336  
the person was or will be serving a term of imprisonment, prison 337  
term, or community residential sanction for committing a felony 338  
offense or for committing a misdemeanor offense listed in division 339  
(D) of this section, and if the person did not provide a DNA 340  
specimen pursuant to division (B)(1), (2), (3), or ~~(3)~~(4)(a) of 341  
this section, the person shall submit to, and the director of 342  
rehabilitation and correction or the chief administrative officer 343  
of the jail or community-based correctional facility shall 344  
administer, a DNA specimen collection procedure at the jail, 345  
community-based correctional facility, or state correctional 346  
institution in which the person is serving the term of 347  
imprisonment, prison term, or community residential sanction. The 348  
DNA specimen shall be collected from the person in accordance with 349  
division (C) of this section. 350

~~(4)~~(5) Regardless of when the conviction occurred or the 351  
guilty plea was entered, if a person has been convicted of, is 352  
convicted of, has pleaded guilty to, or pleads guilty to a felony 353  
offense or a misdemeanor offense listed in division (D) of this 354  
section, the person is not sentenced to a prison term, a community 355  
residential sanction in a jail or community-based correctional 356  
facility, a term of imprisonment, or any type of supervised 357  
release under the supervision of a probation department or the 358  
adult parole authority, and the person does not provide a DNA 359

specimen pursuant to division (B)(1), (2), (3), (4)(a), or 360  
~~(3)~~(4)(b) of this section, the sentencing court shall order the 361  
person to report to the county probation department immediately 362  
after sentencing to submit to a DNA specimen collection procedure 363  
administered by the chief administrative officer of the county 364  
probation office. If the person is incarcerated at the time of 365  
sentencing, the person shall submit to a DNA specimen collection 366  
procedure administered by the director of rehabilitation and 367  
correction or the chief administrative officer of the jail or 368  
other detention facility in which the person is incarcerated. The 369  
DNA specimen shall be collected in accordance with division (C) of 370  
this section. 371

(C) If the DNA specimen is collected by withdrawing blood 372  
from the person or a similarly invasive procedure, a physician, 373  
registered nurse, licensed practical nurse, duly licensed clinical 374  
laboratory technician, or other qualified medical practitioner 375  
shall collect in a medically approved manner the DNA specimen 376  
required to be collected pursuant to division (B) of this section. 377  
If the DNA specimen is collected by swabbing for buccal cells or a 378  
similarly noninvasive procedure, this section does not require 379  
that the DNA specimen be collected by a qualified medical 380  
practitioner of that nature. No later than fifteen days after the 381  
date of the collection of the DNA specimen, the head of the 382  
arresting law enforcement agency regarding a DNA specimen taken 383  
pursuant to division (B)(1) of this section, the director of 384  
rehabilitation and correction or the chief administrative officer 385  
of the jail, community-based correctional facility, or other 386  
county, multicounty, municipal, municipal-county, or 387  
multicounty-municipal detention facility<sup>7</sup> in which the person is 388  
serving the prison term, community residential sanction, or term 389  
of imprisonment regarding a DNA specimen taken pursuant to 390  
division (B)(2), (3), or (4)(b) of this section, the chief 391  
administrative officer of the probation department or the adult 392

parole authority regarding a DNA specimen taken pursuant to 393  
division (B)(4)(a) of this section, or the chief administrative 394  
officer of the county probation office, the director of 395  
rehabilitation and correction, or the chief administrative officer 396  
of the jail or other detention facility in which the person is 397  
incarcerated regarding a DNA specimen taken pursuant to division 398  
(B)(5) of this section, whichever is applicable, shall cause the 399  
DNA specimen to be forwarded to the bureau of criminal 400  
identification and investigation in accordance with procedures 401  
established by the superintendent of the bureau under division (H) 402  
of section 109.573 of the Revised Code. The bureau shall provide 403  
the specimen vials, mailing tubes, labels, postage, and 404  
instructions needed for the collection and forwarding of the DNA 405  
specimen to the bureau. 406

(D) ~~The director of rehabilitation and correction, the chief~~ 407  
~~administrative officer of the jail, community based correctional~~ 408  
~~facility, or other county, multicounty, municipal,~~ 409  
~~municipal county, or multicounty municipal detention facility, or~~ 410  
~~the chief administrative officer of a county probation department~~ 411  
~~or the adult parole authority shall cause a DNA specimen to be~~ 412  
~~collected in accordance with divisions (B) and (C) of this section~~ 413  
~~from a person in its custody or under its supervision~~ DNA specimen 414  
collection duty set forth in division (B)(1) of this section 415  
applies to any person who is eighteen years of age or older and 416  
who is arrested on or after the effective date of this amendment 417  
for any felony offense. The DNA specimen collection duties set 418  
forth in divisions (B)(2), (3), (4)(a), (4)(b), and (5) of this 419  
section apply to any person who has been convicted of, is 420  
convicted of, has pleaded guilty to, or pleads guilty to any 421  
felony offense or any of the following misdemeanor offenses: 422

(1) A misdemeanor violation, an attempt to commit a 423  
misdemeanor violation, or complicity in committing a misdemeanor 424

violation of section 2907.04 of the Revised Code; 425

(2) A misdemeanor violation of any law that arose out of the 426  
same facts and circumstances and same act as did a charge against 427  
the person of a violation of section 2903.01, 2903.02, 2905.01, 428  
2907.02, 2907.03, 2907.04, 2907.05, or 2911.11 of the Revised Code 429  
that previously was dismissed or amended or as did a charge 430  
against the person of a violation of section 2907.12 of the 431  
Revised Code as it existed prior to September 3, 1996, that 432  
previously was dismissed or amended; 433

(3) A misdemeanor violation of section 2919.23 of the Revised 434  
Code that would have been a violation of section 2905.04 of the 435  
Revised Code as it existed prior to July 1, 1996, had it been 436  
committed prior to that date; 437

(4) A sexually oriented offense or a child-victim oriented 438  
offense, both as defined in section 2950.01 of the Revised Code, 439  
that is a misdemeanor, if, in relation to that offense, the 440  
offender is a tier III sex offender/child-victim offender, as 441  
defined in section 2950.01 of the Revised Code. 442

(E) The director of rehabilitation and correction may 443  
prescribe rules in accordance with Chapter 119. of the Revised 444  
Code to collect a DNA specimen, as provided in this section, from 445  
an offender whose supervision is transferred from another state to 446  
this state in accordance with the interstate compact for adult 447  
offender supervision described in section 5149.21 of the Revised 448  
Code. 449

**Sec. 2933.81. (A) As used in this section:** 450

(1) "Custodial interrogation" means any interrogation 451  
involving a law enforcement officer's questioning that is 452  
reasonably likely to elicit incriminating responses and in which a 453  
reasonable person in the subject's position would consider self to 454

be in custody, beginning when a person should have been advised of 455  
the person's right to counsel and right to remain silent and of 456  
the fact that anything the person says could be used against the 457  
person, as specified by the United States supreme court in *Miranda* 458  
*v. Arizona* (1966), 384 U.S. 436, and subsequent decisions, and 459  
ending when the questioning has completely finished. 460

(2) "Detention facility" has the same meaning as in section 461  
2921.01 of the Revised Code. 462

(3) "Electronic recording" or "electronically recorded" means 463  
an audio and visual recording that is an authentic, accurate, 464  
unaltered record of a custodial interrogation. 465

(4) "Local correctional facility" has the same meaning as in 466  
section 2903.13 of the Revised Code. 467

(5) "Place of detention" means a jail, police or sheriff's 468  
station, holding cell, state correctional institution, local 469  
correctional facility, detention facility, department of youth 470  
services facility, or other place where persons are questioned in 471  
connection with criminal charges or delinquent child allegations 472  
or proceedings. 473

(6) "State correctional institution" has the same meaning as 474  
in section 2967.01 of the Revised Code. 475

(7) "Statement" means an oral, written, sign language, or 476  
nonverbal communication. 477

(B)(1) Except as otherwise provided in division (B)(2) of 478  
this section, all statements made by a person during a custodial 479  
interrogation shall be electronically recorded. 480

(2) If any part of a custodial interrogation of a person 481  
takes place outside of a place of detention and it is not possible 482  
to electronically record the statements made by the person during 483  
that part of the interrogation, all statements made by the person 484



during that part of the interrogation shall be recorded in an 485  
audio recording that is an authentic, accurate, unaltered record 486  
of that part of the interrogation. 487

(3) During a custodial interrogation in a place of detention, 488  
the camera used in making the electronic recording shall be 489  
simultaneously focused upon both the interrogator and the person 490  
being interrogated. 491

(C) In any criminal or delinquent child action or proceeding 492  
brought against a person, if any party to the action or proceeding 493  
seeks the admission as evidence of any statement made by the 494  
person during a custodial interrogation that is not electronically 495  
recorded or recorded as authorized by division (B)(2) of this 496  
section or the admission of any statement made thereafter by the 497  
person during the same custodial interrogation or a subsequent 498  
custodial interrogation, including but not limited to any 499  
statement made thereafter that is electronically recorded or 500  
recorded as authorized by division (B)(2) of this section, and if 501  
the statement otherwise is admissible in the action or proceeding 502  
under the Rules of Evidence, the court in its discretion may admit 503  
the statement as evidence or may exclude the statement from 504  
admission as evidence. If the court indicates that it intends to 505  
admit the statement as evidence, any party to the action or 506  
proceeding may object and file or make a motion to exclude the 507  
statement. If a party objects and makes or files a motion to 508  
exclude the statement, the court shall rule on the motion in 509  
accordance with the Rules of Evidence. 510

(D) Regardless of whether the statement was electronically 511  
recorded or recorded as authorized by division (B)(2) of this 512  
section, any statement of a person made in a custodial 513  
interrogation may be admitted into evidence in a criminal or 514  
delinquent child proceeding brought against the person if all of 515  
the following apply: 516

<u>(1) The statement is admissible under the Rules of Evidence.</u>	517
<u>(2) The statement is proven by clear and convincing evidence to have been made by the person voluntarily.</u>	518 519
<u>(3) The statement is reliable.</u>	520
<u>(4) The court finds that the custodial interrogation occurred before a grand jury or court.</u>	521 522
<u>(E) In any criminal or delinquent child proceeding that is tried before a jury, complete transcripts of all custodial interrogations shall be made available to the jurors upon motion by the prosecution or defense. Actual audio or video playback of an interrogation shall be presented to the jurors only upon a judicial determination of need.</u>	523 524 525 526 527 528
<u>(F) The Ohio judicial conference, pursuant to section 105.912 of the Revised Code, shall develop forms to survey custodial interrogations electronically recorded or recorded as authorized by division (B)(2) of this section and outcomes and identify any patterns of noncompliance with the provisions of this section. The conference shall provide copies of the forms to all courts of common pleas, municipal courts, county courts, prosecuting attorneys, city directors of law, village solicitors, and other chief legal officers of a municipal corporation. The conference shall monitor compliance with the recording requirement set forth in division (B) of this section through the submission of the forms developed under this division. The trial judge and the prosecutor shall complete and submit these forms for all of the following cases:</u>	529 530 531 532 533 534 535 536 537 538 539 540 541 542
<u>(1) Each case in which any custodial interrogation was recorded and was introduced as evidence in a criminal case or delinquent child case;</u>	543 544 545
<u>(2) Each case in which any custodial interrogation was conducted and not recorded but nonetheless was introduced as</u>	546 547

evidence in a criminal case or delinquent child case; 548

(3) Each case in which any custodial interrogation was 549  
recorded and a plea of guilty to any felony charge was entered and 550  
accepted by the court or in which an admission of a delinquent 551  
child charge that would be a felony if committed by an adult was 552  
entered and accepted by the juvenile court; 553

(4) Each case in which any custodial interrogation was 554  
conducted and not recorded and a plea of guilty to any felony 555  
charge was entered and accepted by the court or in which an 556  
admission of a delinquent child charge that would be a felony if 557  
committed by an adult was entered and accepted by the juvenile 558  
court. 559

(G)(1) Law enforcement personnel shall clearly identify and 560  
catalogue every electronic recording of a custodial interrogation 561  
and every recording of a part of a custodial interrogation 562  
recorded as authorized by division (B)(2) of this section. 563

(2) If a criminal or delinquent child proceeding is brought 564  
against a person who was the subject of a custodial interrogation 565  
that was electronically recorded or who was the subject of a part 566  
of a custodial interrogation that was recorded as authorized by 567  
division (B)(2) of this section, law enforcement personnel shall 568  
preserve the recording until the later of when all appeals, 569  
post-conviction relief proceedings, and habeas corpus proceedings 570  
are final and concluded or the expiration of the period of time 571  
within which such appeals and proceedings must be brought. 572

(3) Upon motion by the defendant in a criminal proceeding or 573  
the alleged delinquent child in a delinquent child proceeding, the 574  
court may order that a copy of an electronic recording of a 575  
custodial interrogation of the person or of a recording of a part 576  
of a custodial interrogation of the person recorded as authorized 577  
by division (B)(2) of this section be preserved for any period 578

beyond the expiration of all appeals, post-conviction relief 579  
proceedings, and habeas corpus proceedings. 580

(4) If no criminal or delinquent child proceeding is brought 581  
against a person who was the subject of a custodial interrogation 582  
that was electronically recorded or who was the subject of a part 583  
of a custodial interrogation that was recorded as authorized by 584  
division (B)(2) of this section, law enforcement personnel shall 585  
preserve the related recording until all applicable state and 586  
federal statutes of limitations bar prosecution of the person for 587  
any offense or violation based on or related to any conduct 588  
discussed in the custodial interrogation. 589

**Sec. 2933.82.** (A) As used in this section: 590

(1)(a) "Biological evidence" means any of the following: 591

(i) The contents of a sexual assault examination kit; 592

(ii) Any item that contains blood, semen, hair, saliva, skin 593  
tissue, fingernail scrapings, bone, bodily fluids, or any other 594  
identifiable biological material that was collected as part of a 595  
criminal investigation or delinquent child investigation and that 596  
reasonably may be used to incriminate or exculpate any person for 597  
an offense or delinquent act. 598

(b) The definition of "biological evidence" set forth in 599  
division (A)(1)(a) of this section applies whether the material in 600  
question is catalogued separately, such as on a slide or swab or 601  
in a test tube, or is present on other evidence, including, but 602  
not limited to, clothing, ligatures, bedding or other household 603  
material, drinking cups or containers, or cigarettes. 604

(2) "Biological material" has the same meaning as in section 605  
2953.71 of the Revised Code. 606

(3) "DNA" has the same meaning as in section 109.573 of the 607  
Revised Code. 608

(4) "Profile" means a unique identifier of an individual, 609  
derived from DNA. 610

(5) "Prosecutor" has the same meaning as in section 2935.01 611  
of the Revised Code. 612

(6) "Governmental evidence-retention entity" means all of the 613  
following: 614

(a) Any law enforcement agency, prosecutor's office, court, 615  
public hospital, crime laboratory, or other governmental or public 616  
entity or individual within this state that is charged with the 617  
collection, storage, or retrieval of biological evidence; 618

(b) Any official or employee of any entity or individual 619  
described in division (A)(6)(a) of this section. 620

(B)(1) Each governmental evidence-retention entity that 621  
secures any biological evidence in relation to an investigation or 622  
prosecution of a criminal offense or delinquent act shall secure 623  
the biological evidence for whichever of the following periods of 624  
time is applicable: 625

(a) For the period of time that the offense or act remains 626  
unsolved; 627

(b) If any person is convicted of or pleads guilty to the 628  
offense, or is adjudicated a delinquent child for committing the 629  
delinquent act, for the period of time that the person remains 630  
incarcerated, in a department of youth services institution or 631  
other juvenile facility, under a community control sanction for 632  
that offense, under any order of disposition for that act, on 633  
probation or parole for that offense, under judicial release or 634  
supervised release for that act, under post-release control for 635  
that offense, involved in civil litigation in connection with that 636  
offense or act, or subject to registration and other duties 637  
imposed for that offense or act under sections 2950.04, 2950.041, 638  
2950.05, and 2950.06 of the Revised Code. 639

(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.

(3) If a person is convicted of or pleads guilty to an offense or is adjudicated a delinquent child for the delinquent act and if one or more additional co-defendants of that person are convicted of or plead guilty to the same offense or are adjudicated delinquent children for the same delinquent act, both of the following apply:

(a) If a governmental evidence-retention entity possesses biological evidence related to the offense or act, the governmental evidence-retention entity shall not destroy the biological evidence if any of those additional co-defendants remain in custody, 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.

(b) The governmental evidence-retention entity referred to in division (B)(3)(a) of this section shall preserve the biological evidence related to the offense for the period of time during which any of those additional co-defendants remain in custody, incarcerated, in an institution or facility, under a community control sanction, under an order of disposition, on probation or parole, under judicial release or supervised release, under

post-release control, involved in civil litigation, or subject to 672  
registration and other duties under sections 2950.04, 2950.041, 673  
2950.05, and 2950.06 of the Revised Code, as described in division 674  
(B)(3)(a) of this section. 675

(4) A governmental evidence-retention entity that possesses 676  
biological evidence shall retain the biological evidence in the 677  
amount and manner sufficient to develop a DNA profile from the 678  
biological material contained in or included on the evidence. 679

(5) Upon written request by the defendant in any criminal 680  
case or the alleged delinquent child in any delinquent child case, 681  
a governmental evidence-retention entity that possesses biological 682  
evidence shall prepare an inventory of the biological evidence 683  
that has been preserved in connection with the defendant's 684  
criminal case or the alleged delinquent child's delinquent child 685  
case. 686

(6) A governmental evidence-retention entity that possesses 687  
biological evidence that includes biological material may destroy 688  
the evidence before the expiration of the applicable period of 689  
time specified in division (B)(1) of this section if all of the 690  
following apply: 691

(a) No other provision of federal or state law requires the 692  
state to preserve the evidence. 693

(b) The governmental evidence-retention entity, by certified 694  
mail, return receipt requested, provides notice of intent to 695  
destroy the evidence to all of the following: 696

(i) All persons who remain in custody, incarcerated, in a 697  
department of youth services institution or other juvenile 698  
facility, under a community control sanction, under any order of 699  
disposition, on probation or parole, under judicial release or 700  
supervised release, under post-release control, involved in civil 701  
litigation, or subject to registration and other duties imposed 702

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;

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

(iii) The state public defender;

(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;

(v) The attorney general.

(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:

(i) Files a motion for testing of evidence under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code;

(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.

(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, 733  
under post-release control, involved in civil litigation, or 734  
subject to registration and other duties imposed for that offense 735  
or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of 736  
the Revised Code as a result of a criminal conviction, delinquency 737  
adjudication, or commitment related to the evidence in question. 738

(8) A governmental evidence-retention entity shall not be 739  
required to preserve physical evidence pursuant to this section 740  
that is of such a size, bulk, or physical character as to render 741  
retention impracticable. When retention of physical evidence that 742  
otherwise would be required to be retained pursuant to this 743  
section is impracticable as described in this division, the 744  
governmental evidence-retention entity that otherwise would be 745  
required to retain the physical evidence shall remove and preserve 746  
portions of the material evidence likely to contain biological 747  
evidence related to the offense, in a quantity sufficient to 748  
permit future DNA testing before returning or disposing of that 749  
physical evidence. 750

(C)(1) No person shall destroy biological evidence in 751  
violation of any provision of this section. 752

(2) Whoever violates division (C)(1) of this section is 753  
guilty of a misdemeanor of the first degree. 754

(D)(1) The preservation of biological evidence task force 755  
established within the bureau of criminal identification and 756  
investigation under section 109.561 of the Revised Code shall 757  
establish a system regarding the proper preservation of biological 758  
evidence in this state. In establishing the system, the task force 759  
shall do all of the following: 760

(a) Devise standards regarding the proper collection, 761  
retention, and cataloging of biological evidence for ongoing 762  
investigations and prosecutions; 763

(b) Recommend practices, protocols, models, and resources for the cataloguing and accessibility of preserved biological evidence already in the possession of governmental evidence-retention entities. 764  
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(2) In consultation with the preservation of biological evidence task force described in division (D)(1) of this section, the division of criminal justice services of the department of public safety shall administer and conduct training programs for law enforcement officers and other relevant employees who are charged with preserving and cataloguing biological evidence regarding the methods and procedures referenced in this section. 768  
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**Sec. 2933.83.** (A) As used in this section: 775

(1) "Administrator" means the person conducting a photo lineup or live lineup. 776  
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(2) "Blind administrator" means the administrator does not know the identity of the suspect. "Blind administrator" includes an administrator who conducts a photo lineup through the use of a folder system or a substantially similar system. 778  
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(3) "Blinded administrator" means the administrator may know who the suspect is, but does not know which lineup member is being viewed by the eyewitness. 782  
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(4) "Eyewitness" means a person who observes another person at or near the scene of an offense. 785  
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(5) "Filler" means either a person or a photograph of a person who is not suspected of an offense and is included in an identification procedure. 787  
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(6) "Folder system" means a system for conducting a photo lineup that satisfies all of the following: 790  
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(a) The investigating officer uses one "suspect photograph" that resembles the description of the suspected perpetrator of the 792  
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offense provided by the witness, five "filler photographs" of 794  
persons not suspected of the offense that match the description of 795  
the suspected perpetrator but do not cause the suspect photograph 796  
to unduly stand out, four "blank photographs" that contain no 797  
images of any person, and ten empty folders. 798

(b) The investigating officer places one "filler photograph" 799  
into one of the empty folders and numbers it as folder 1. 800

(c) The administrator places the "suspect photograph" and the 801  
other four "filler photographs" into five other empty folders, 802  
shuffles the five folders so that the administrator is unaware of 803  
which folder contains the "suspect photograph," and numbers the 804  
five shuffled folders as folders 2 through 6. 805

(d) The administrator places the four "blank photographs" in 806  
the four remaining empty folders and numbers these folders as 807  
folders 7 through 10, and these folders serve as "dummy folders." 808

(e) The administrator provides instructions to the witness as 809  
to the lineup procedure and informs the witness that a photograph 810  
of the alleged perpetrator of the offense may or may not be 811  
included in the photographs the witness is about to see and that 812  
the administrator does not know which, if any, of the folders 813  
contains the photograph of the alleged perpetrator. 814

(f) The administrator hands each of the ten folders to the 815  
witness individually without looking at the photograph in the 816  
folder. Each time the witness has viewed a folder, the witness 817  
indicates whether the photograph is of the person the witness saw, 818  
indicates the degree of the witness' confidence in this 819  
identification, and returns the folder and the photograph it 820  
contains to the administrator. The witness may request to view 821  
each of the folders a second time, and, if the witness so 822  
requests, the administrator follows the procedures specified in 823  
this division for the second viewing, handing them to the witness 824

in the same order as during the first viewing. The witness is not 825  
permitted to have more than two viewings of the folders. The 826  
administrator preserves the order of the folders and the 827  
photographs they contain in a facedown position in order to 828  
document the steps specified in division (A)(6)(g) of this 829  
section. 830

(g) The administrator documents and records the results of 831  
the procedure described in divisions (A)(6)(a) to (f) of this 832  
section. The documentation and record includes the date, time, and 833  
location of the lineup procedure; the name of the administrator; 834  
the names of all of the individuals present during the lineup; the 835  
number of photographs shown to the witness; copies of each 836  
photograph shown to the witness; the order in which the folders 837  
were presented to the witness; the source of each photograph that 838  
was used in the procedure; a statement of the witness' confidence 839  
in the witness' own words as to the certainty of the witness' 840  
identification of the photographs as being of the person the 841  
witness saw that is taken immediately upon the reaction of the 842  
witness to viewing the photograph; and any additional information 843  
the administrator considers pertinent to the lineup procedure. 844

(7) "Live lineup" means an identification procedure in which 845  
a group of persons, including the suspected perpetrator of an 846  
offense and other persons not suspected of the offense, is 847  
displayed to an eyewitness for the purpose of determining whether 848  
the eyewitness identifies the suspect as the perpetrator of the 849  
offense. 850

(8) "Photo lineup" means an identification procedure in which 851  
an array of photographs, including a photograph of the suspected 852  
perpetrator of an offense and additional photographs of other 853  
persons not suspected of the offense, is displayed to an 854  
eyewitness for the purpose of determining whether the eyewitness 855  
identifies the suspect as the perpetrator of the offense. 856

- (9) "Perpetrator" means the person who committed the offense. 857
- (10) "Suspect" means the person believed by law enforcement to be the possible perpetrator of the offense. 858  
859
- (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: 860  
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- (1) Unless impracticable, a blind or blinded administrator shall conduct the live lineup or photo lineup. 866  
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- (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. 868  
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- (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. 871  
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- (4) Unless impracticable, a video record of the live lineup or photo lineup shall be made that includes all of the following information: 875  
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- (a) All identification and nonidentification results obtained during the lineup, signed by the eyewitnesses, including the eyewitnesses' confidence statements; 878  
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- (b) The names of all persons present at the lineup; 881
- (c) The date and time of the lineup; 882
- (d) Any eyewitness identification of one or more fillers in the lineup; 883  
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- (e) The names of the lineup members and other relevant identifying information, and the sources of all photographs or 885  
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persons used in the lineup. 887

(5) If a video record of the live lineup or photo lineup is 888  
impracticable, the administrator conducting the lineup shall 889  
document the reason for that impracticability, and, unless 890  
impracticable, an audio record of the live lineup or photo lineup 891  
shall be made. The audio record shall include all of the 892  
information specified in divisions (B)(4)(a) to (e) of this 893  
section, and it shall be supplemented by all of the photographs 894  
used in a photo lineup or photographs of all of the individuals 895  
used in a live lineup, whichever is applicable. 896

(6) If both a video and audio record of the live lineup or 897  
photo lineup are impracticable, the administrator conducting the 898  
lineup shall document in writing the reason for that 899  
impracticability, and a written record of the lineup shall be made 900  
that includes all of the information specified in divisions 901  
(B)(4)(a) to (e) of this section and that is supplemented by all 902  
of the photographs used in a photo lineup or photographs of all of 903  
the individuals used in a live lineup, whichever is applicable. 904

(C) For any photo lineup or live lineup that is administered 905  
on or after the effective date of this section, all of the 906  
following apply: 907

(1) Evidence of a failure to comply with any of the 908  
provisions of this section or with any procedure for conducting 909  
lineups that has been adopted by a law enforcement agency or 910  
criminal justice agency pursuant to division (B) of this section 911  
and that conforms to any provision of divisions (B)(1) to (6) of 912  
this section shall be considered by trial courts in adjudicating 913  
motions to suppress eyewitness identification resulting from or 914  
related to the lineup. 915

(2) Evidence of a failure to comply with any of the 916  
provisions of this section or with any procedure for conducting 917

lineups that has been adopted by a law enforcement agency or 918  
criminal justice agency pursuant to division (B) of this section 919  
and that conforms to any provision of divisions (B)(1) to (6) of 920  
this section shall be admissible in support of any claim of 921  
eyewitness misidentification resulting from or related to the 922  
lineup as long as that evidence otherwise is admissible. 923

(3) When evidence of a failure to comply with any of the 924  
provisions of this section, or with any procedure for conducting 925  
lineups that has been adopted by a law enforcement agency or 926  
criminal justice agency pursuant to division (B) of this section 927  
and that conforms to any provision of divisions (B)(1) to (6) of 928  
this section, is presented at trial, the jury shall be instructed 929  
that it may consider credible evidence of noncompliance in 930  
determining the reliability of any eyewitness identification 931  
resulting from or related to the lineup. 932

(D)(1) As used in division (D) of this section, "showup" 933  
means an identification procedure in which an eyewitness is 934  
presented with a single suspect for the purpose of determining 935  
whether the eyewitness identifies that individual as the 936  
perpetrator of the offense. 937

(2) The supreme court may adopt rules prescribing specific 938  
procedures to be followed for the administration by law 939  
enforcement agencies and criminal justice entities in this state 940  
of photo lineups, live lineups, and showups. Any rules adopted by 941  
the supreme court as described in this division shall be 942  
consistent with the requirements of divisions (B) and (C) of this 943  
section but may prescribe procedures for other aspects of the 944  
administration of such lineups and showups as determined 945  
appropriate by the court. If the supreme court adopts rules of the 946  
type described in this division, on and after the date on which 947  
the rules take effect, law enforcement agencies and criminal 948  
justice entities in this state shall comply with the rules in 949

conducting live lineups, photo lineups, and showups. 950

(3) The supreme court may adopt rules prescribing a 951  
cautionary jury charge about eyewitness identification procedures 952  
and the accuracy of eyewitness identification. If the supreme 953  
court adopts rules of the type described in this division, on and 954  
after the date on which the rules take effect, the jury charge 955  
shall be used in the courts of this state in the manner specified 956  
by the supreme court in the rules. 957

**Sec. 2953.21.** (A)(1)(a) Any person who has been convicted of 958  
a criminal offense or adjudicated a delinquent child and who 959  
claims that there was such a denial or infringement of the 960  
person's rights as to render the judgment void or voidable under 961  
the Ohio Constitution or the Constitution of the United States, 962  
and any person who has been convicted of a criminal offense that 963  
is a felony, and who is an ~~inmate~~, and offender for whom DNA 964  
testing that was performed under sections 2953.71 to 2953.81 of 965  
the Revised Code or under former section 2953.82 of the Revised 966  
Code and analyzed in the context of and upon consideration of all 967  
available admissible evidence related to the ~~inmate's~~ person's 968  
case as described in division (D) of section 2953.74 of the 969  
Revised Code provided results that establish, by clear and 970  
convincing evidence, actual innocence of that felony offense or, 971  
if the person was sentenced to death, establish, by clear and 972  
convincing evidence, actual innocence of the aggravating 973  
circumstance or circumstances the person was found guilty of 974  
committing and that is or are the basis of that sentence of death, 975  
may file a petition in the court that imposed sentence, stating 976  
the grounds for relief relied upon, and asking the court to vacate 977  
or set aside the judgment or sentence or to grant other 978  
appropriate relief. The petitioner may file a supporting affidavit 979  
and other documentary evidence in support of the claim for relief. 980  
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(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 1014  
circumstance or the sentence of death. 1015

(4) A petitioner shall state in the original or amended 1016  
petition filed under division (A) of this section all grounds for 1017  
relief claimed by the petitioner. Except as provided in section 1018  
2953.23 of the Revised Code, any ground for relief that is not so 1019  
stated in the petition is waived. 1020

(5) If the petitioner in a petition filed under division (A) 1021  
of this section was convicted of or pleaded guilty to a felony, 1022  
the petition may include a claim that the petitioner was denied 1023  
the equal protection of the laws in violation of the Ohio 1024  
Constitution or the United States Constitution because the 1025  
sentence imposed upon the petitioner for the felony was part of a 1026  
consistent pattern of disparity in sentencing by the judge who 1027  
imposed the sentence, with regard to the petitioner's race, 1028  
gender, ethnic background, or religion. If the supreme court 1029  
adopts a rule requiring a court of common pleas to maintain 1030  
information with regard to an offender's race, gender, ethnic 1031  
background, or religion, the supporting evidence for the petition 1032  
shall include, but shall not be limited to, a copy of that type of 1033  
information relative to the petitioner's sentence and copies of 1034  
that type of information relative to sentences that the same judge 1035  
imposed upon other persons. 1036

(B) The clerk of the court in which the petition is filed 1037  
shall docket the petition and bring it promptly to the attention 1038  
of the court. The clerk of the court in which the petition is 1039  
filed immediately shall forward a copy of the petition to the 1040  
prosecuting attorney of that county. 1041

(C) The court shall consider a petition that is timely filed 1042  
under division (A)(2) of this section even if a direct appeal of 1043  
the judgment is pending. Before granting a hearing on a petition 1044  
filed under division (A) of this section, the court shall 1045

determine whether there are substantive grounds for relief. In 1046  
making such a determination, the court shall consider, in addition 1047  
to the petition, the supporting affidavits, and the documentary 1048  
evidence, all the files and records pertaining to the proceedings 1049  
against the petitioner, including, but not limited to, the 1050  
indictment, the court's journal entries, the journalized records 1051  
of the clerk of the court, and the court reporter's transcript. 1052  
The court reporter's transcript, if ordered and certified by the 1053  
court, shall be taxed as court costs. If the court dismisses the 1054  
petition, it shall make and file findings of fact and conclusions 1055  
of law with respect to such dismissal. 1056

(D) Within ten days after the docketing of the petition, or 1057  
within any further time that the court may fix for good cause 1058  
shown, the prosecuting attorney shall respond by answer or motion. 1059  
Within twenty days from the date the issues are raised, either 1060  
party may move for summary judgment. The right to summary judgment 1061  
shall appear on the face of the record. 1062

(E) Unless the petition and the files and records of the case 1063  
show the petitioner is not entitled to relief, the court shall 1064  
proceed to a prompt hearing on the issues even if a direct appeal 1065  
of the case is pending. If the court notifies the parties that it 1066  
has found grounds for granting relief, either party may request an 1067  
appellate court in which a direct appeal of the judgment is 1068  
pending to remand the pending case to the court. 1069

(F) At any time before the answer or motion is filed, the 1070  
petitioner may amend the petition with or without leave or 1071  
prejudice to the proceedings. The petitioner may amend the 1072  
petition with leave of court at any time thereafter. 1073

(G) If the court does not find grounds for granting relief, 1074  
it shall make and file findings of fact and conclusions of law and 1075  
shall enter judgment denying relief on the petition. If no direct 1076  
appeal of the case is pending and the court finds grounds for 1077

relief or if a pending direct appeal of the case has been remanded 1078  
to the court pursuant to a request made pursuant to division (E) 1079  
of this section and the court finds grounds for granting relief, 1080  
it shall make and file findings of fact and conclusions of law and 1081  
shall enter a judgment that vacates and sets aside the judgment in 1082  
question, and, in the case of a petitioner who is a prisoner in 1083  
custody, shall discharge or resentence the petitioner or grant a 1084  
new trial as the court determines appropriate. The court also may 1085  
make supplementary orders to the relief granted, concerning such 1086  
matters as arraignment, retrial, custody, and bail. If the trial 1087  
court's order granting the petition is reversed on appeal and if 1088  
the direct appeal of the case has been remanded from an appellate 1089  
court pursuant to a request under division (E) of this section, 1090  
the appellate court reversing the order granting the petition 1091  
shall notify the appellate court in which the direct appeal of the 1092  
case was pending at the time of the remand of the reversal and 1093  
remand of the trial court's order. Upon the reversal and remand of 1094  
the trial court's order granting the petition, regardless of 1095  
whether notice is sent or received, the direct appeal of the case 1096  
that was remanded is reinstated. 1097

(H) Upon the filing of a petition pursuant to division (A) of 1098  
this section by a person sentenced to death, only the supreme 1099  
court may stay execution of the sentence of death. 1100

(I)(1) If a person sentenced to death intends to file a 1101  
petition under this section, the court shall appoint counsel to 1102  
represent the person upon a finding that the person is indigent 1103  
and that the person either accepts the appointment of counsel or 1104  
is unable to make a competent decision whether to accept or reject 1105  
the appointment of counsel. The court may decline to appoint 1106  
counsel for the person only upon a finding, after a hearing if 1107  
necessary, that the person rejects the appointment of counsel and 1108  
understands the legal consequences of that decision or upon a 1109

finding that the person is not indigent. 1110

(2) The court shall not appoint as counsel under division 1111  
(I)(1) of this section an attorney who represented the petitioner 1112  
at trial in the case to which the petition relates unless the 1113  
person and the attorney expressly request the appointment. The 1114  
court shall appoint as counsel under division (I)(1) of this 1115  
section only an attorney who is certified under Rule 20 of the 1116  
Rules of Superintendence for the Courts of Ohio to represent 1117  
indigent defendants charged with or convicted of an offense for 1118  
which the death penalty can be or has been imposed. The 1119  
ineffectiveness or incompetence of counsel during proceedings 1120  
under this section does not constitute grounds for relief in a 1121  
proceeding under this section, in an appeal of any action under 1122  
this section, or in an application to reopen a direct appeal. 1123

(3) Division (I) of this section does not preclude attorneys 1124  
who represent the state of Ohio from invoking the provisions of 28 1125  
U.S.C. 154 with respect to capital cases that were pending in 1126  
federal habeas corpus proceedings prior to July 1, 1996, insofar 1127  
as the petitioners in those cases were represented in proceedings 1128  
under this section by one or more counsel appointed by the court 1129  
under this section or section 120.06, 120.16, 120.26, or 120.33 of 1130  
the Revised Code and those appointed counsel meet the requirements 1131  
of division (I)(2) of this section. 1132

(J) Subject to the appeal of a sentence for a felony that is 1133  
authorized by section 2953.08 of the Revised Code, the remedy set 1134  
forth in this section is the exclusive remedy by which a person 1135  
may bring a collateral challenge to the validity of a conviction 1136  
or sentence in a criminal case or to the validity of an 1137  
adjudication of a child as a delinquent child for the commission 1138  
of an act that would be a criminal offense if committed by an 1139  
adult or the validity of a related order of disposition. 1140

**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 1172  
to death, establish, by clear and convincing evidence, actual 1173  
innocence of the aggravating circumstance or circumstances the 1174  
person was found guilty of committing and that is or are the basis 1175  
of that sentence of death. 1176

As used in this division, "actual innocence" has the same 1177  
meaning as in division (A)(1)(b) of section 2953.21 of the Revised 1178  
Code, and "former section 2953.82 of the Revised Code" has the 1179  
same meaning as in division (A)(1)(c) of section 2953.21 of the 1180  
Revised Code. 1181

(B) An order awarding or denying relief sought in a petition 1182  
filed pursuant to section 2953.21 of the Revised Code is a final 1183  
judgment and may be appealed pursuant to Chapter 2953. of the 1184  
Revised Code. 1185

**Sec. 2953.71.** As used in sections 2953.71 to 2953.83 of the 1186  
Revised Code: 1187

(A) "Application" or "application for DNA testing" means a 1188  
request through postconviction relief for the state to do DNA 1189  
testing on biological material from ~~whichever of the following is~~ 1190  
~~applicable:~~ 1191

~~(1) The case in which the inmate offender was convicted of~~ 1192  
~~the offense for which the inmate is an eligible inmate offender~~ 1193  
~~and is requesting the DNA testing under sections 2953.71 to~~ 1194  
~~2953.81 of the Revised Code.~~ 1195

~~(2) The case in which the inmate pleaded guilty or no contest~~ 1196  
~~to the offense for which the inmate is requesting the DNA testing~~ 1197  
~~under section 2953.82 of the Revised Code.~~ 1198

(B) "Biological material" means any product of a human body 1199  
containing DNA. 1200

(C) "Chain of custody" means a record or other evidence that 1201

tracks a subject sample of biological material from the time the 1202  
biological material was first obtained until the time it currently 1203  
exists in its place of storage and, in relation to a DNA sample, a 1204  
record or other evidence that tracks the DNA sample from the time 1205  
it was first obtained until it currently exists in its place of 1206  
storage. For purposes of this division, examples of when 1207  
biological material or a DNA sample is first obtained include, but 1208  
are not limited to, obtaining the material or sample at the scene 1209  
of a crime, from a victim, from an ~~inmate~~ offender, or in any 1210  
other manner or time as is appropriate in the facts and 1211  
circumstances present. 1212

(D) "Custodial agency" means the group or entity that has the 1213  
responsibility to maintain biological material in question. 1214

(E) "Custodian" means the person who is the primary 1215  
representative of a custodial agency. 1216

(F) "Eligible ~~inmate~~ offender" means an ~~inmate~~ offender who 1217  
is eligible under division (C) of section 2953.72 of the Revised 1218  
Code to request DNA testing to be conducted under sections 2953.71 1219  
to 2953.81 of the Revised Code. 1220

(G) "Exclusion" or "exclusion result" means a result of DNA 1221  
testing that scientifically precludes or forecloses the subject 1222  
~~inmate~~ offender as a contributor of biological material recovered 1223  
from the crime scene or victim in question, in relation to the 1224  
offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ 1225  
offender and for which the sentence of death or prison term was 1226  
imposed upon the ~~inmate or, regarding a request for DNA testing~~ 1227  
~~made under section 2953.82 of the Revised Code, in relation to the~~ 1228  
~~offense for which the inmate made the request and for which the~~ 1229  
~~sentence of death or prison term was imposed upon the inmate~~ 1230  
offender. 1231

(H) "Extracting personnel" means medically approved personnel 1232



who are employed to physically obtain an inmate offender's DNA 1233  
specimen for purposes of DNA testing under sections 2953.71 to 1234  
2953.81 ~~or section 2953.82~~ of the Revised Code. 1235

(I) "Inclusion" or "inclusion result" means a result of DNA 1236  
testing that scientifically cannot exclude, or that holds 1237  
accountable, the subject inmate offender as a contributor of 1238  
biological material recovered from the crime scene or victim in 1239  
question, in relation to the offense for which the inmate offender 1240  
is an eligible inmate offender and for which the sentence of death 1241  
or prison term was imposed upon the ~~inmate or, regarding a request~~ 1242  
~~for DNA testing made under section 2953.82 of the Revised Code, in~~ 1243  
~~relation to the offense for which the inmate made the request and~~ 1244  
~~for which the sentence of death or prison term was imposed upon~~ 1245  
~~the inmate offender.~~ 1246

(J) "Inconclusive" or "inconclusive result" means a result of 1247  
DNA testing that is rendered when a scientifically appropriate and 1248  
definitive DNA analysis or result, or both, cannot be determined. 1249

(K) "Inmate Offender" means ~~an inmate in a prison a criminal~~ 1250  
offender who was sentenced by a court, or by a jury and a court, 1251  
of this state. 1252

(L) "Outcome determinative" means that had the results of DNA 1253  
testing of the subject inmate offender been presented at the trial 1254  
of the subject inmate offender requesting DNA testing and been 1255  
found relevant and admissible with respect to the felony offense 1256  
for which the inmate offender is an eligible inmate offender and 1257  
is requesting the DNA testing ~~or for which the inmate is~~ 1258  
~~requesting the DNA testing under section 2953.82 of the Revised~~ 1259  
~~Code, and had those results been analyzed in the context of and~~ 1260  
upon consideration of all available admissible evidence related to 1261  
the ~~inmate's~~ offender's case as described in division (D) of 1262  
section 2953.74 of the Revised Code, there is a strong probability 1263  
that no reasonable factfinder would have found the inmate offender 1264

guilty of that offense or, if the ~~inmate~~ offender was sentenced to 1265  
death relative to that offense, would have found the ~~inmate~~ 1266  
offender guilty of the aggravating circumstance or circumstances 1267  
the ~~inmate~~ offender was found guilty of committing and that is or 1268  
are the basis of that sentence of death. 1269

(M) "Parent sample" means the biological material first 1270  
obtained from a crime scene or a victim of an offense for which an 1271  
~~inmate~~ offender is an eligible ~~inmate~~ ~~or for which the inmate is~~ 1272  
~~requesting the DNA testing under section 2953.82 of the Revised~~ 1273  
~~Code~~ offender, and from which a sample will be presently taken to 1274  
do a DNA comparison to the DNA of the subject ~~inmate~~ offender 1275  
under sections 2953.71 to 2953.81 ~~or section 2953.82~~ of the 1276  
Revised Code. 1277

(N) "Prison" ~~has~~ and "community control sanction" have the 1278  
same ~~meaning~~ meanings as in section 2929.01 of the Revised Code. 1279

(O) "Prosecuting attorney" means the prosecuting attorney 1280  
who, or whose office, prosecuted the case in which the subject 1281  
~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ 1282  
offender is an eligible ~~inmate~~ offender and is requesting the DNA 1283  
testing ~~or for which the inmate is requesting the DNA testing~~ 1284  
~~under section 2953.82 of the Revised Code.~~ 1285

(P) "Prosecuting authority" means the prosecuting attorney or 1286  
the attorney general. 1287

(Q) "Reasonable diligence" means a degree of diligence that 1288  
is comparable to the diligence a reasonable person would employ in 1289  
searching for information regarding an important matter in the 1290  
person's own life. 1291

(R) "Testing authority" means a laboratory at which DNA 1292  
testing will be conducted under sections 2953.71 to 2953.81 ~~or~~ 1293  
~~section 2953.82~~ of the Revised Code. 1294

(S) "Parole" and "post-release control" have the same 1295

meanings as in section 2967.01 of the Revised Code. 1296

(T) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code. 1297  
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**Sec. 2953.72.** (A) Any eligible inmate offender who wishes to 1300  
request DNA testing under sections 2953.71 to 2953.81 of the 1301  
Revised Code shall submit an application for the testing to the 1302  
court of common pleas specified in section 2953.73 of the Revised 1303  
Code, on a form prescribed by the attorney general for this 1304  
purpose. The eligible inmate offender shall submit the application 1305  
in accordance with the procedures set forth in section 2953.73 of 1306  
the Revised Code. The eligible inmate offender shall specify on 1307  
the application the offense or offenses for which the inmate 1308  
offender is an eligible inmate offender and is requesting the DNA 1309  
testing. Along with the application, the eligible inmate offender 1310  
shall submit an acknowledgment that is on a form prescribed by the 1311  
attorney general for this purpose and that is signed by the inmate 1312  
offender. The acknowledgment shall set forth all of the following: 1313

(1) That sections 2953.71 to 2953.81 of the Revised Code 1314  
contemplate applications for DNA testing of an eligible inmates 1315  
offender at a stage of a prosecution or case after the inmate 1316  
offender has been sentenced ~~to a prison term or a sentence of~~ 1317  
~~death~~, that any exclusion or inclusion result of DNA testing 1318  
rendered pursuant to those sections may be used by a party in any 1319  
proceeding as described in section 2953.81 of the Revised Code, 1320  
and that all requests for any DNA testing made at trial will 1321  
continue to be handled by the prosecuting attorney in the case; 1322

(2) That the process of conducting postconviction DNA testing 1323  
for an eligible inmate offender under sections 2953.71 to 2953.81 1324  
of the Revised Code begins when the inmate offender submits an 1325  
application under section 2953.73 of the Revised Code and the 1326

acknowledgment described in this section; 1327

(3) That the eligible ~~inmate~~ offender must submit the 1328  
application and acknowledgment to the court of common pleas that 1329  
heard the case in which the ~~inmate~~ offender was convicted of the 1330  
offense for which the ~~inmate~~ offender is an eligible offender and 1331  
is requesting the DNA testing; 1332

(4) That the state has established a set of criteria set 1333  
forth in section 2953.74 of the Revised Code by which eligible 1334  
~~inmate~~ offender applications for DNA testing will be screened and 1335  
that a judge of a court of common pleas upon receipt of a properly 1336  
filed application and accompanying acknowledgment will apply those 1337  
criteria to determine whether to accept or reject the application; 1338

(5) That the results of DNA testing conducted under sections 1339  
2953.71 to 2953.81 of the Revised Code will be provided as 1340  
described in section 2953.81 of the Revised Code to all parties in 1341  
the postconviction proceedings and will be reported to various 1342  
courts; 1343

(6) That, if DNA testing is conducted with respect to an 1344  
~~inmate~~ offender under sections 2953.71 to 2953.81 of the Revised 1345  
Code, the state will not offer the ~~inmate~~ offender a retest if an 1346  
inclusion result is achieved relative to the testing and that, if 1347  
the state were to offer a retest after an inclusion result, the 1348  
policy would create an atmosphere in which endless testing could 1349  
occur and in which postconviction proceedings could be stalled for 1350  
many years; 1351

(7) That, if the court rejects an eligible ~~inmate's~~ 1352  
offender's application for DNA testing because the ~~inmate~~ offender 1353  
does not satisfy the acceptance criteria described in division 1354  
(A)(4) of this section, the court will not accept or consider 1355  
subsequent applications; 1356

(8) That the acknowledgment memorializes the provisions of 1357

sections 2953.71 to 2953.81 of the Revised Code with respect to 1358  
the application of postconviction DNA testing to ~~inmates~~ 1359  
offenders, that those provisions do not give any ~~inmate~~ offender 1360  
any additional constitutional right that the ~~inmate~~ offender did 1361  
not already have, that the court has no duty or obligation to 1362  
provide postconviction DNA testing to ~~inmates~~ offenders, that the 1363  
court of common pleas has the sole discretion subject to an appeal 1364  
as described in this division to determine whether an ~~inmate~~ 1365  
offender is an eligible ~~inmate~~ offender and whether an eligible 1366  
~~inmate's~~ offender's application for DNA testing satisfies the 1367  
acceptance criteria described in division (A)(4) of this section 1368  
and whether the application should be accepted or rejected, that 1369  
if the court of common pleas rejects an eligible ~~inmate's~~ 1370  
offender's application, the ~~inmate~~ offender may seek leave of the 1371  
supreme court to appeal the rejection to that court if the ~~inmate~~ 1372  
offender was sentenced to death for the offense for which the 1373  
~~inmate~~ offender is requesting the DNA testing and, if the ~~inmate~~ 1374  
offender was not sentenced to death for that offense, may appeal 1375  
the rejection to the court of appeals, and that no determination 1376  
otherwise made by the court of common pleas in the exercise of its 1377  
discretion regarding the eligibility of an ~~inmate~~ offender or 1378  
regarding postconviction DNA testing under those provisions is 1379  
reviewable by or appealable to any court; 1380

(9) That the manner in which sections 2953.71 to 2953.81 of 1381  
the Revised Code with respect to the offering of postconviction 1382  
DNA testing to ~~inmates~~ offenders are carried out does not confer 1383  
any constitutional right upon any ~~inmate~~ offender, that the state 1384  
has established guidelines and procedures relative to those 1385  
provisions to ensure that they are carried out with both justice 1386  
and efficiency in mind, and that an ~~inmate~~ offender who 1387  
participates in any phase of the mechanism contained in those 1388  
provisions, including, but not limited to, applying for DNA 1389  
testing and being rejected, having an application for DNA testing 1390

accepted and not receiving the test, or having DNA testing 1391  
conducted and receiving unfavorable results, does not gain as a 1392  
result of the participation any constitutional right to challenge, 1393  
or, except as provided in division (A)(8) of this section, any 1394  
right to any review or appeal of, the manner in which those 1395  
provisions are carried out; 1396

(10) That the most basic aspect of sections 2953.71 to 1397  
2953.81 of the Revised Code is that, in order for DNA testing to 1398  
occur, there must be an ~~inmate~~ offender sample against which other 1399  
evidence may be compared, that, if an eligible ~~inmate's~~ offender's 1400  
application is accepted but the ~~inmate~~ offender subsequently 1401  
refuses to submit to the collection of the sample of biological 1402  
material from the ~~inmate~~ offender or hinders the state from 1403  
obtaining a sample of biological material from the ~~inmate~~ 1404  
offender, the goal of those provisions will be frustrated, and 1405  
that an ~~inmate's~~ offender's refusal or hindrance shall cause the 1406  
court to rescind its prior acceptance of the application for DNA 1407  
testing for the ~~inmate~~ offender and deny the application; 1408

~~(11) That, if the inmate is an inmate who pleaded guilty or 1409  
no contest to a felony offense and who is using the application 1410  
and acknowledgment to request DNA testing under section 2953.82 of 1411  
the Revised Code, all references in the acknowledgment to an 1412  
"eligible inmate" are considered to be references to, and apply 1413  
to, the inmate and all references in the acknowledgment to 1414  
"sections 2953.71 to 2953.81 of the Revised Code" are considered 1415  
to be references to "section 2953.82 of the Revised Code."~~ 1416

(B) The attorney general shall prescribe a form to be used to 1417  
make an application for DNA testing under division (A) of this 1418  
section and section 2953.73 of the Revised Code and a form to be 1419  
used to provide the acknowledgment described in division (A) of 1420  
this section. The forms shall include all information described in 1421  
division (A) of this section, spaces for an ~~inmate~~ offender to 1422

insert all information necessary to complete the forms, including, 1423  
but not limited to, specifying the offense or offenses for which 1424  
the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 1425  
requesting the DNA testing ~~or for which the inmate is requesting~~ 1426  
~~the DNA testing under section 2953.82 of the Revised Code, and any~~ 1427  
other information or material the attorney general determines is 1428  
necessary or relevant. ~~The forms also shall be used to make an~~ 1429  
~~application requesting DNA testing under section 2953.82 of the~~ 1430  
~~Revised Code, and the attorney general shall ensure that they are~~ 1431  
~~sufficient for that type of use, and that they include all~~ 1432  
~~information and spaces necessary for that type of use.~~ The 1433  
attorney general shall distribute copies of the prescribed forms 1434  
to the department of rehabilitation and correction, the department 1435  
shall ensure that each prison in which ~~inmates~~ offenders are 1436  
housed has a supply of copies of the forms, and the department 1437  
shall ensure that copies of the forms are provided free of charge 1438  
to any ~~inmate~~ offender who requests them. 1439

(C)(1) An ~~inmate~~ offender is eligible to request DNA testing 1440  
to be conducted under sections 2953.71 to 2953.81 of the Revised 1441  
Code only if all of the following apply: 1442

(a) The offense for which the ~~inmate~~ offender claims to be an 1443  
eligible ~~inmate~~ offender is a felony, and the ~~inmate~~ offender was 1444  
convicted by a judge or jury of that offense. 1445

(b) One of the following applies: 1446

(i) The ~~inmate~~ offender was sentenced to a prison term or 1447  
sentence of death for the felony described in division (C)(1)(a) 1448  
of this section, and the offender is in prison serving that prison 1449  
term or under that sentence of death, has been paroled or is on 1450  
probation regarding that felony, is under post-release control 1451  
regarding that felony, or has been released from that prison term 1452  
and is under a community control sanction regarding that felony. 1453

(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. 1454  
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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. 1458  
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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.~~ 1463  
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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. 1467  
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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. 1470  
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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. 1474  
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(B) If an eligible ~~inmate~~ offender submits an application for DNA testing under division (A) of this section, upon the 1482  
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submission of the application, all of the following apply: 1484

(1) The eligible ~~inmate~~ offender shall serve a copy of the 1485  
application on the prosecuting attorney and the attorney general. 1486

(2) The application shall be assigned to the judge of that 1487  
court of common pleas who was the trial judge in the case in which 1488  
the eligible ~~inmate~~ offender was convicted of the offense for 1489  
which the ~~inmate~~ offender is requesting DNA testing, or, if that 1490  
judge no longer is a judge of that court, it shall be assigned 1491  
according to court rules. The judge to whom the application is 1492  
assigned shall decide the application. The application shall 1493  
become part of the file in the case. 1494

(C) If an eligible ~~inmate~~ offender submits an application for 1495  
DNA testing under division (A) of this section, regardless of 1496  
whether the ~~inmate~~ offender has commenced any federal habeas 1497  
corpus proceeding relative to the case in which the ~~inmate~~ 1498  
offender was convicted of the offense for which the ~~inmate~~ 1499  
offender is an eligible ~~inmate~~ offender and is requesting DNA 1500  
testing, any response to the application by the prosecuting 1501  
attorney or the attorney general shall be filed not later than 1502  
forty-five days after the date on which the eligible ~~inmate~~ 1503  
offender submits the application. The prosecuting attorney or the 1504  
attorney general, or both, may, but are not required to, file a 1505  
response to the application. If the prosecuting attorney or the 1506  
attorney general files a response under this division, the 1507  
prosecuting attorney or attorney general, whoever filed the 1508  
response, shall serve a copy of the response on the eligible 1509  
~~inmate~~ offender. 1510

(D) If an eligible ~~inmate~~ offender submits an application for 1511  
DNA testing under division (A) of this section, the court shall 1512  
make the determination as to whether the application should be 1513  
accepted or rejected. The court shall expedite its review of the 1514  
application. The court shall make the determination in accordance 1515

with the criteria and procedures set forth in sections 2953.74 to 1516  
2953.81 of the Revised Code and, in making the determination, 1517  
shall consider the application, the supporting affidavits, and the 1518  
documentary evidence and, in addition to those materials, shall 1519  
consider all the files and records pertaining to the proceedings 1520  
against the applicant, including, but not limited to, the 1521  
indictment, the court's journal entries, the journalized records 1522  
of the clerk of the court, and the court reporter's transcript and 1523  
all responses to the application filed under division (C) of this 1524  
section by a prosecuting attorney or the attorney general, unless 1525  
the application and the files and records show the applicant is 1526  
not entitled to DNA testing, in which case the application may be 1527  
denied. The court is not required to conduct an evidentiary 1528  
hearing in conducting its review of, and in making its 1529  
determination as to whether to accept or reject, the application. 1530  
Upon making its determination, the court shall enter a judgment 1531  
and order that either accepts or rejects the application and that 1532  
includes within the judgment and order the reasons for the 1533  
acceptance or rejection as applied to the criteria and procedures 1534  
set forth in sections 2953.71 to 2953.81 of the Revised Code. The 1535  
court shall send a copy of the judgment and order to the eligible 1536  
~~inmate~~ offender who filed it, the prosecuting attorney, and the 1537  
attorney general. 1538

(E) A judgment and order of a court entered under division 1539  
(D) of this section is appealable only as provided in this 1540  
division. If an eligible ~~inmate~~ offender submits an application 1541  
for DNA testing under section 2953.73 of the Revised Code and the 1542  
court of common pleas rejects the application under division (D) 1543  
of this section, one of the following applies: 1544

(1) If the ~~inmate~~ offender was sentenced to death for the 1545  
offense for which the ~~inmate~~ offender claims to be an eligible 1546  
~~inmate~~ offender and is requesting DNA testing, the ~~inmate~~ offender 1547

may seek leave of the supreme court to appeal the rejection to the 1548  
supreme court. Courts of appeals do not have jurisdiction to 1549  
review any rejection if the ~~inmate~~ offender was sentenced to death 1550  
for the offense for which the ~~inmate~~ offender claims to be an 1551  
eligible ~~inmate~~ offender and is requesting DNA testing. 1552

(2) If the ~~inmate~~ offender was not sentenced to death for the 1553  
offense for which the ~~inmate~~ offender claims to be an eligible 1554  
~~inmate~~ offender and is requesting DNA testing, the rejection is a 1555  
final appealable order, and the ~~inmate~~ offender may appeal it to 1556  
the court of appeals of the district in which is located that 1557  
court of common pleas. 1558

(F) Notwithstanding any provision of law regarding fees and 1559  
costs, no filing fee shall be required of, and no court costs 1560  
shall be assessed against, an eligible offender who is indigent 1561  
and who submits an application under this section. 1562

(G) If a court rejects an eligible ~~inmate's~~ offender's 1563  
application for DNA testing under division (D) of this section, 1564  
unless the rejection is overturned on appeal, no court shall 1565  
require the state to administer a DNA test under sections 2953.71 1566  
to 2953.81 of the Revised Code on the eligible ~~inmate~~ offender. 1567

**Sec. 2953.74.** (A) If an eligible ~~inmate~~ offender submits an 1568  
application for DNA testing under section 2953.73 of the Revised 1569  
Code and a prior definitive DNA test has been conducted regarding 1570  
the same biological evidence that the ~~inmate~~ offender seeks to 1571  
have tested, the court shall reject the ~~inmate's~~ offender's 1572  
application. If an eligible ~~inmate~~ offender files an application 1573  
for DNA testing and a prior inconclusive DNA test has been 1574  
conducted regarding the same biological evidence that the ~~inmate~~ 1575  
offender seeks to have tested, the court shall review the 1576  
application and has the discretion, on a case-by-case basis, to 1577  
either accept or reject the application. The court may direct a 1578

testing authority to provide the court with information that the 1579  
court may use in determining whether prior DNA test results were 1580  
definitive or inconclusive and whether to accept or reject an 1581  
application in relation to which there were prior inconclusive DNA 1582  
test results. 1583

(B) If an eligible inmate offender submits an application for 1584  
DNA testing under section 2953.73 of the Revised Code, the court 1585  
may accept the application only if one of the following applies: 1586

(1) The inmate offender did not have a DNA test taken at the 1587  
trial stage in the case in which the inmate offender was convicted 1588  
of the offense for which the inmate offender is an eligible inmate 1589  
offender and is requesting the DNA testing regarding the same 1590  
biological evidence that the inmate offender seeks to have tested, 1591  
the inmate offender shows that DNA exclusion when analyzed in the 1592  
context of and upon consideration of all available admissible 1593  
evidence related to the subject inmate's offender's case as 1594  
described in division (D) of this section would have been outcome 1595  
determinative at that trial stage in that case, and, at the time 1596  
of the trial stage in that case, DNA testing was not generally 1597  
accepted, the results of DNA testing were not generally admissible 1598  
in evidence, or DNA testing was not yet available. 1599

(2) The inmate offender had a DNA test taken at the trial 1600  
stage in the case in which the inmate offender was convicted of 1601  
the offense for which the inmate offender is an eligible inmate 1602  
offender and is requesting the DNA testing regarding the same 1603  
biological evidence that the inmate offender seeks to have tested, 1604  
the test was not a prior definitive DNA test that is subject to 1605  
division (A) of this section, and the inmate offender shows that 1606  
DNA exclusion when analyzed in the context of and upon 1607  
consideration of all available admissible evidence related to the 1608  
subject inmate's offender's case as described in division (D) of 1609  
this section would have been outcome determinative at the trial 1610

stage in that case. 1611

(C) If an eligible ~~inmate~~ offender submits an application for 1612  
DNA testing under section 2953.73 of the Revised Code, the court 1613  
may accept the application only if all of the following apply: 1614

(1) The court determines pursuant to section 2953.75 of the 1615  
Revised Code that biological material was collected from the crime 1616  
scene or the victim of the offense for which the ~~inmate~~ offender 1617  
is an eligible ~~inmate~~ offender and is requesting the DNA testing 1618  
and that the parent sample of that biological material against 1619  
which a sample from the ~~inmate~~ offender can be compared still 1620  
exists at that point in time. 1621

(2) The testing authority determines all of the following 1622  
pursuant to section 2953.76 of the Revised Code regarding the 1623  
parent sample of the biological material described in division 1624  
(C)(1) of this section: 1625

(a) The parent sample of the biological material so collected 1626  
contains scientifically sufficient material to extract a test 1627  
sample. 1628

(b) The parent sample of the biological material so collected 1629  
is not so minute or fragile as to risk destruction of the parent 1630  
sample by the extraction described in division (C)(2)(a) of this 1631  
section; provided that the court may determine in its discretion, 1632  
on a case-by-case basis, that, even if the parent sample of the 1633  
biological material so collected is so minute or fragile as to 1634  
risk destruction of the parent sample by the extraction, the 1635  
application should not be rejected solely on the basis of that 1636  
risk. 1637

(c) The parent sample of the biological material so collected 1638  
has not degraded or been contaminated to the extent that it has 1639  
become scientifically unsuitable for testing, and the parent 1640  
sample otherwise has been preserved, and remains, in a condition 1641

that is scientifically suitable for testing. 1642

(3) The court determines that, at the trial stage in the case 1643  
in which the ~~inmate~~ offender was convicted of the offense for 1644  
which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 1645  
requesting the DNA testing, the identity of the person who 1646  
committed the offense was an issue. 1647

(4) The court determines that one or more of the defense 1648  
theories asserted by the ~~inmate~~ offender at the trial stage in the 1649  
case described in division (C)(3) of this section or in a retrial 1650  
of that case in a court of this state was of such a nature that, 1651  
if DNA testing is conducted and an exclusion result is obtained, 1652  
the exclusion result will be outcome determinative. 1653

(5) The court determines that, if DNA testing is conducted 1654  
and an exclusion result is obtained, the results of the testing 1655  
will be outcome determinative regarding that ~~inmate~~ offender. 1656

(6) The court determines pursuant to section 2953.76 of the 1657  
Revised Code from the chain of custody of the parent sample of the 1658  
biological material to be tested and of any test sample extracted 1659  
from the parent sample, and from the totality of circumstances 1660  
involved, that the parent sample and the extracted test sample are 1661  
the same sample as collected and that there is no reason to 1662  
believe that they have been out of state custody or have been 1663  
tampered with or contaminated since they were collected. 1664

(D) If an eligible ~~inmate~~ offender submits an application for 1665  
DNA testing under section 2953.73 of the Revised Code, the court, 1666  
in determining whether the "outcome determinative" criterion 1667  
described in divisions (B)(1) and (2) of this section has been 1668  
satisfied, shall consider all available admissible evidence 1669  
related to the subject ~~inmate's~~ offender's case. 1670

(E) If an eligible ~~inmate~~ offender submits an application for 1671  
DNA testing under section 2953.73 of the Revised Code and the 1672

court accepts the application, the eligible ~~inmate~~ offender may 1673  
request the court to order, or the court on its own initiative may 1674  
order, the bureau of criminal identification and investigation to 1675  
compare the results of DNA testing of biological material from an 1676  
unidentified person other than the ~~inmate~~ offender that was 1677  
obtained from the crime scene or from a victim of the offense for 1678  
which the ~~inmate~~ offender has been approved for DNA testing to the 1679  
combined DNA index system maintained by the federal bureau of 1680  
investigation. 1681

If the bureau, upon comparing the test results to the 1682  
combined DNA index system, determines the identity of the person 1683  
who is the contributor of the biological material, the bureau 1684  
shall provide that information to the court that accepted the 1685  
application, the ~~inmate~~ offender, and the prosecuting attorney. 1686  
The ~~inmate~~ offender or the state may use the information for any 1687  
lawful purpose. 1688

If the bureau, upon comparing the test results to the 1689  
combined DNA index system, is unable to determine the identity of 1690  
the person who is the contributor of the biological material, the 1691  
bureau may compare the test results to other previously obtained 1692  
and acceptable DNA test results of any person whose identity is 1693  
known other than the eligible ~~inmate~~ offender. If the bureau, upon 1694  
comparing the test results to the DNA test results of any person 1695  
whose identity is known, determines that the person whose identity 1696  
is known is the contributor of the biological material, the bureau 1697  
shall provide that information to the court that accepted the 1698  
application, the ~~inmate~~ offender, and the prosecuting attorney. 1699  
The ~~inmate~~ offender or the state may use the information for any 1700  
lawful purpose. 1701

**Sec. 2953.75.** (A) If an eligible ~~inmate~~ offender submits an 1702  
application for DNA testing under section 2953.73 of the Revised 1703

Code, the court shall require the prosecuting attorney to use 1704  
reasonable diligence to determine whether biological material was 1705  
collected from the crime scene or victim of the offense for which 1706  
the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 1707  
requesting the DNA testing against which a sample from the ~~inmate~~ 1708  
offender can be compared and whether the parent sample of that 1709  
biological material still exists at that point in time. In using 1710  
reasonable diligence to make those determinations, the prosecuting 1711  
attorney shall rely upon all relevant sources, including, but not 1712  
limited to, all of the following: 1713

(1) All prosecuting authorities in the case in which the 1714  
~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ 1715  
offender is an eligible ~~inmate~~ offender and is requesting the DNA 1716  
testing and in the appeals of, and postconviction proceedings 1717  
related to, that case; 1718

(2) All law enforcement authorities involved in the 1719  
investigation of the offense for which the ~~inmate~~ offender is an 1720  
eligible offender and is requesting the DNA testing; 1721

(3) All custodial agencies involved at any time with the 1722  
biological material in question; 1723

(4) The custodian of all custodial agencies described in 1724  
division (A)(3) of this section; 1725

(5) All crime laboratories involved at any time with the 1726  
biological material in question; 1727

(6) All other reasonable sources. 1728

(B) The prosecuting attorney shall prepare a report that 1729  
contains the prosecuting attorney's determinations made under 1730  
division (A) of this section and shall file a copy of the report 1731  
with the court and provide a copy to the eligible ~~inmate~~ offender 1732  
and the attorney general. 1733



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

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

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

condition that is suitable for testing. Upon making its 1766  
determination under this division, the testing authority shall 1767  
prepare a written document that contains its determination and the 1768  
reasoning and rationale for that determination and shall provide a 1769  
copy to the court, the eligible ~~inmate~~ offender, the prosecuting 1770  
attorney, and the attorney general. 1771

(C) The court shall determine, from the chain of custody of 1772  
the parent sample of the biological material to be tested and of 1773  
any test sample extracted from the parent sample and from the 1774  
totality of circumstances involved, whether the parent sample and 1775  
the extracted test sample are the same sample as collected and 1776  
whether there is any reason to believe that they have been out of 1777  
state custody or have been tampered with or contaminated since 1778  
they were collected. Upon making its determination under this 1779  
division, the court shall prepare and retain a written document 1780  
that contains its determination and the reasoning and rationale 1781  
for that determination. 1782

**Sec. 2953.77.** (A) If an eligible ~~inmate~~ offender submits an 1783  
application for DNA testing under section 2953.73 of the Revised 1784  
Code and if the application is accepted and DNA testing is to be 1785  
performed, the court shall require that the chain of custody 1786  
remain intact and that all of the applicable following precautions 1787  
are satisfied to ensure that the parent sample of the biological 1788  
material collected from the crime scene or the victim of the 1789  
offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ 1790  
offender and requested the DNA testing, and the test sample of the 1791  
parent sample that is extracted and actually is to be tested, are 1792  
not contaminated during transport or the testing process: 1793

(1) The court shall require that the chain of custody be 1794  
maintained and documented relative to the parent sample and the 1795  
test sample actually to be tested between the time they are 1796

removed from their place of storage or the time of their 1797  
extraction to the time at which the DNA testing will be performed. 1798

(2) The court, the testing authority, and the law enforcement 1799  
and prosecutorial personnel involved in the process, or any 1800  
combination of those entities and persons, shall coordinate the 1801  
transport of the parent sample and the test sample actually to be 1802  
tested between their place of storage and the place where the DNA 1803  
testing will be performed, and the court and testing authority 1804  
shall document the transport procedures so used. 1805

(3) The testing authority shall determine and document the 1806  
custodian of the parent sample and the test sample actually to be 1807  
tested after they are in the possession of the testing authority. 1808

(4) The testing authority shall maintain and preserve the 1809  
parent sample and the test sample actually to be tested after they 1810  
are in the possession of the testing authority and shall document 1811  
the maintenance and preservation procedures used. 1812

(5) After the DNA testing, the court, the testing authority, 1813  
and the original custodial agency of the parent sample, or any 1814  
combination of those entities, shall coordinate the return of the 1815  
remaining parent sample back to its place of storage with the 1816  
original custodial agency or to any other place determined in 1817  
accordance with this division and section 2953.81 of the Revised 1818  
Code. The court shall determine, in consultation with the testing 1819  
authority, the custodial agency to maintain any newly created, 1820  
extracted, or collected DNA material resulting from the testing. 1821  
The court and testing authority shall document the return 1822  
procedures for original materials and for any newly created, 1823  
extracted, or collected DNA material resulting from the testing, 1824  
and also the custodial agency to which those materials should be 1825  
taken. 1826

(B) A court or testing authority shall provide the 1827

documentation required under division (A) of this section in 1828  
writing and shall maintain that documentation. 1829

**Sec. 2953.78.** (A) If an eligible ~~inmate~~ offender submits an 1830  
application for DNA testing under section 2953.73 of the Revised 1831  
Code and if the application is accepted and DNA testing is to be 1832  
performed, the court shall select the testing authority to be used 1833  
for the testing. A court shall not select or use a testing 1834  
authority for DNA testing unless the attorney general approves or 1835  
designates the testing authority pursuant to division (C) of this 1836  
section and unless the testing authority satisfies the criteria 1837  
set forth in section 2953.80 of the Revised Code. 1838

(B) If a court selects a testing authority pursuant to 1839  
division (A) of this section and the eligible ~~inmate~~ offender for 1840  
whom the test is to be performed objects to the use of the 1841  
selected testing authority, the court shall rescind its prior 1842  
acceptance of the application for DNA testing for the ~~inmate~~ 1843  
offender and deny the application. An objection as described in 1844  
this division, and the resulting rescission and denial, do not 1845  
preclude a court from accepting in the court's discretion, a 1846  
subsequent application by the same eligible ~~inmate~~ offender 1847  
requesting DNA testing. 1848

(C) The attorney general shall approve or designate testing 1849  
authorities that may be selected and used to conduct DNA testing, 1850  
shall prepare a list of the approved or designated testing 1851  
authorities, and shall provide copies of the list to all courts of 1852  
common pleas. The attorney general shall update the list as 1853  
appropriate to reflect changes in the approved or designated 1854  
testing authorities and shall provide copies of the updated list 1855  
to all courts of common pleas. The attorney general shall not 1856  
approve or designate a testing authority under this division 1857  
unless the testing authority satisfies the criteria set forth in 1858

section 2953.80 of the Revised Code. A testing authority that is 1859  
equipped to handle advanced DNA testing may be approved or 1860  
designated under this division, provided it satisfies the criteria 1861  
set forth in that section. 1862

(D) The attorney general's approval or designation of testing 1863  
authorities under division (C) of this section, and the selection 1864  
and use of any approved or designated testing authority, do not 1865  
afford an inmate offender any right to subsequently challenge the 1866  
approval, designation, selection, or use, and an inmate offender 1867  
may not appeal to any court the approval, designation, selection, 1868  
or use of a testing authority. 1869

**Sec. 2953.79.** (A) If an eligible inmate offender submits an 1870  
application for DNA testing under section 2953.73 of the Revised 1871  
Code and if the application is accepted and DNA testing is to be 1872  
performed, a sample of biological material shall be obtained from 1873  
the inmate offender in accordance with this section, to be 1874  
compared with the parent sample of biological material collected 1875  
from the crime scene or the victim of the offense for which the 1876  
inmate offender is an eligible inmate offender and requested the 1877  
DNA testing. The ~~inmate's offender's~~ filing of the application 1878  
constitutes the ~~inmate's offender's~~ consent to the obtaining of 1879  
the sample of biological material from the inmate offender. The 1880  
testing authority shall obtain the sample of biological material 1881  
from the inmate offender in accordance with medically accepted 1882  
procedures. 1883

(B) If DNA testing is to be performed for an inmate offender 1884  
as described in division (A) of this section, the court shall 1885  
require the state to coordinate with the department of 1886  
rehabilitation and correction or the other state agency or entity 1887  
of local government with custody of the offender, whichever is 1888  
applicable, as to the time and place at which the sample of 1889

biological material will be obtained from the inmate offender. The 1890  
If the offender is in prison or is in custody in another facility 1891  
at the time the DNA testing is to be performed, the sample of 1892  
biological material shall be obtained from the inmate offender at 1893  
the facility in which the inmate offender is housed, and the 1894  
department of rehabilitation and correction or the other state 1895  
agency or entity of local government with custody of the offender, 1896  
whichever is applicable, shall make the inmate offender available 1897  
at the specified time. The court shall require the state to 1898  
provide notice to the inmate offender and to the inmate's 1899  
offender's counsel of the date on which, and the time and place at 1900  
which, the sample will be so obtained. 1901

The court also shall require the state to coordinate with the 1902  
testing authority regarding the obtaining of the sample from the 1903  
inmate offender. 1904

(C)(1) If DNA testing is to be performed for an inmate 1905  
offender as described in division (A) of this section, and the 1906  
inmate offender refuses to submit to the collection of the sample 1907  
of biological material from the inmate offender or hinders the 1908  
state from obtaining a sample of biological material from the 1909  
inmate offender, the court shall rescind its prior acceptance of 1910  
the application for DNA testing for the inmate offender and deny 1911  
the application. 1912

(2) For purposes of division (C)(1) of this section: 1913

(a) An inmate's offender's "refusal to submit to the 1914  
collection of a sample of biological material from the inmate 1915  
offender" includes, but is not limited to, the inmate's offender's 1916  
rejection of the physical manner in which a sample of the inmate's 1917  
offender's biological material is to be taken. 1918

(b) An inmate's offender's "hindrance of the state in 1919  
obtaining a sample of biological material from the inmate 1920

offender" includes, but is not limited to, the inmate offender 1921  
being physically or verbally uncooperative or antagonistic in the 1922  
taking of a sample of the ~~inmate's~~ offender's biological material. 1923

(D) The extracting personnel shall make the determination as 1924  
to whether an eligible inmate offender for whom DNA testing is to 1925  
be performed is refusing to submit to the collection of a sample 1926  
of biological material from the ~~inmate~~ offender or is hindering 1927  
the state from obtaining a sample of biological material from the 1928  
inmate offender at the time and date of the scheduled collection 1929  
of the sample. If the extracting personnel determine that an 1930  
inmate offender is refusing to submit to the collection of a 1931  
sample or is hindering the state from obtaining a sample, the 1932  
extracting personnel shall document in writing the conditions that 1933  
constitute the refusal or hindrance, maintain the documentation, 1934  
and notify the court of the ~~inmate's~~ offender's refusal or 1935  
hindrance. 1936

**Sec. 2953.81.** If an eligible offender submits an application 1937  
for DNA testing under section 2953.73 of the Revised Code and if 1938  
DNA testing is performed based on that application, upon 1939  
completion of the testing, all of the following apply: 1940

(A) The court or a designee of the court shall require the 1941  
state to maintain the results of the testing and to maintain and 1942  
preserve both the parent sample of the biological material used 1943  
and the ~~inmate~~ offender sample of the biological material used. 1944  
The testing authority may be designated as the person to maintain 1945  
the results of the testing or to maintain and preserve some or all 1946  
of the samples, or both. The results of the testing remain state's 1947  
evidence. The samples shall be preserved during the entire period 1948  
of time for which the ~~inmate~~ offender is imprisoned or confined 1949  
relative to the ~~prison term or sentence of death~~ in question and, 1950  
~~if that prison term expires or the inmate is executed under that~~ 1951

sentence of death, is on parole or probation relative to that 1952  
sentence, is under post-release control or a community control 1953  
sanction relative to that sentence, or has a duty to comply with 1954  
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 1955  
Code relative to that sentence. Additionally, if the prison term 1956  
or confinement under the sentence in question expires, if the 1957  
sentence in question is a sentence of death and the offender is 1958  
executed, or if the parole or probation period, the period of 1959  
post-release control, the community control sanction, or the duty 1960  
to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of 1961  
the Revised Code under the sentence in question ends, the samples 1962  
shall be preserved for a reasonable period of time of not less 1963  
than twenty-four months after the term or confinement expires, 1964  
the inmate offender is executed, or the parole or probation 1965  
period, the period of post-release control, the community control 1966  
sanction, or the duty to comply with sections 2950.04, 2950.041, 1967  
2950.05, and 2950.06 of the Revised Code ends, whichever is 1968  
applicable. The court shall determine the period of time that is 1969  
reasonable for purposes of this division, provided that the period 1970  
shall not be less than twenty-four months after the term or 1971  
confinement expires, the inmate offender is executed, or the 1972  
parole or probation period, the period of post-release control, 1973  
the community control sanction, or the duty to comply with 1974  
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 1975  
Code ends, whichever is applicable. 1976

(B) The results of the testing are a public record. 1977

(C) The court or the testing authority shall provide a copy 1978  
of the results of the testing to the prosecuting attorney, the 1979  
attorney general, and the subject inmate offender. 1980

(D) If the postconviction proceeding in question is pending 1981  
at that time in a court of this state, the court of common pleas 1982  
that decided the DNA application or the testing authority shall 1983



provide a copy of the results of the testing to any court of this 1984  
state, and, if it is pending in a federal court, the court of 1985  
common pleas that decided the DNA application or the testing 1986  
authority shall provide a copy of the results of the testing to 1987  
that federal court. 1988

(E) The testing authority shall provide a copy of the results 1989  
of the testing to the court of common pleas that decided the DNA 1990  
application. 1991

(F) The ~~inmate~~ offender or the state may enter the results of 1992  
the testing into any proceeding. 1993

**Sec. 2953.83.** In any court proceeding under sections 2953.71 1994  
to ~~2953.82~~ 2953.81 of the Revised Code, the Rules of Criminal 1995  
Procedure apply, except to the extent that sections 2953.71 to 1996  
~~2953.82~~ 2953.81 of the Revised Code provide a different procedure 1997  
or to the extent that the Rules would by their nature be clearly 1998  
inapplicable. 1999

**Sec. 2953.84.** The provisions of sections 2953.71 to ~~2953.82~~ 2000  
2953.81 of the Revised Code by which an ~~inmate~~ offender may obtain 2001  
postconviction DNA testing are not the exclusive means by which an 2002  
~~inmate~~ offender may obtain postconviction DNA testing, and the 2003  
provisions of those sections do not limit or affect any other 2004  
means by which an ~~inmate~~ offender may obtain postconviction DNA 2005  
testing. 2006

**Section 2.** That existing sections 109.573, 2901.07, 2953.21, 2007  
2953.23, 2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2008  
2953.77, 2953.78, 2953.79, 2953.81, 2953.83, and 2953.84 and 2009  
section 2953.82 of the Revised Code are hereby repealed. 2010