

As Introduced

**128th General Assembly
Regular Session
2009-2010**

S. B. No. 77

Senator Goodman

Cosponsors: Senators Seitz, Miller, R., Stewart, Schuring

—

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 78

aid in the establishment of the identity of unknown human corpses, 79
human remains, or living individuals; 80

(d) Establish and maintain a relatives of missing persons 81
database for comparison with the unidentified person database to 82
aid in the establishment of the identity of unknown human corpses, 83
human remains, and living individuals. 84

(2) If the bureau of criminal identification and 85
investigation establishes and maintains a DNA laboratory and a DNA 86
database, the bureau may use or disclose information regarding DNA 87
records for the following purposes: 88

(a) The bureau may disclose information to a law enforcement 89
agency for the administration of criminal justice. 90

(b) The bureau shall disclose pursuant to a court order 91
issued under section 3111.09 of the Revised Code any information 92
necessary to determine the existence of a parent and child 93
relationship in an action brought under sections 3111.01 to 94
3111.18 of the Revised Code. 95

(c) The bureau may use or disclose information from the 96
population statistics database, for identification research and 97
protocol development, or for quality control purposes. 98

(3) If the bureau of criminal identification and 99
investigation establishes and maintains a relatives of missing 100
persons database, all of the following apply: 101

(a) If a person has disappeared and has been continuously 102
absent from the person's place of last domicile for a thirty-day 103
or longer period of time without being heard from during the 104
period, persons related by consanguinity to the missing person may 105
submit to the bureau a DNA specimen, the bureau may include the 106
DNA record of the specimen in the relatives of missing persons 107
database, and, if the bureau does not include the DNA record of 108
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 203

| | |
|--|---|
| database; | 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 2953.82 of the Revised Code. | 219 220 221 222 223 224 225 |
| Sec. 2901.07. (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 2967.01 of the Revised Code. | 231 232 |

(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, 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 v. Arizona* (1966), 384 U.S. 436, and subsequent decisions, and ending when the questioning has completely finished. 458
459
460

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

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

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

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

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

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

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

(2) If any part of a custodial interrogation of a person takes place outside of a place of detention and it is not possible to electronically record the statements made by the person during that part of the interrogation, all statements made by the person during that part of the interrogation shall be recorded in an audio recording that is an authentic, accurate, unaltered record of that part of the interrogation. 481
482
483
484
485
486
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

(1) The statement is admissible under the Rules of Evidence. 517

(2) The statement is proven by clear and convincing evidence 518
to have been made by the person voluntarily. 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 evidence in a criminal case or delinquent child case;</u> | 546 547 548 |
| <u>(3) Each case in which any custodial interrogation was recorded and a plea of guilty to any felony charge was entered and</u> | 549 550 |

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 640
possession of any governmental evidence-retention entity during 641
the investigation and prosecution of a criminal case or delinquent 642

child case and that, at the time the person is convicted of or 643
pleads guilty to the offense or is adjudicated a delinquent child 644
for the delinquent act, was likely to contain biological material. 645

(3) If a person is convicted of or pleads guilty to an 646
offense or is adjudicated a delinquent child for the delinquent 647
act and if one or more additional co-defendants of that person are 648
convicted of or plead guilty to the same offense or are 649
adjudicated delinquent children for the same delinquent act, both 650
of the following apply: 651

(a) If a governmental evidence-retention entity possesses 652
biological evidence related to the offense or act, the 653
governmental evidence-retention entity shall not destroy the 654
biological evidence if any of those additional co-defendants 655
remain in custody, incarcerated, in a department of youth services 656
institution or other juvenile facility, under a community control 657
sanction for that offense, under any order of disposition for that 658
act, on probation or parole for that offense, under judicial 659
release or supervised release for that act, under post-release 660
control for that offense, involved in civil litigation in 661
connection with that offense or act, or subject to registration 662
and other duties imposed for that offense or act under sections 663
2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code. 664

(b) The governmental evidence-retention entity referred to in 665
division (B)(3)(a) of this section shall preserve the biological 666
evidence related to the offense for the period of time during 667
which any of those additional co-defendants remain in custody, 668
incarcerated, in an institution or facility, under a community 669
control sanction, under an order of disposition, on probation or 670
parole, under judicial release or supervised release, under 671
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 biological evidence shall retain the biological evidence in the amount and manner sufficient to develop a DNA profile from the biological material contained in or included on the evidence. 676
677
678
679

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

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

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

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

(i) All persons who remain in custody, incarcerated, in a department of youth services institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code as a result of a criminal conviction, delinquency adjudication, or commitment related to the 697
698
699
700
701
702
703
704
705

| | |
|---|--|
| <u>evidence in question;</u> | 706 |
| <u>(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;</u> | 707 708 709 |
| <u>(iii) The state public defender;</u> | 710 |
| <u>(iv) The prosecutor of record in the case that resulted in the custody of the person in custody in any circumstance described in division (B)(6)(b)(i) of this section;</u> | 711 712 713 |
| <u>(v) The attorney general.</u> | 714 |
| <u>(c) No person who is notified under division (B)(6)(b) of this section does either of the following within one year after the date on which the person receives the notice:</u> | 715 716 717 |
| <u>(i) Files a motion for testing of evidence under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code;</u> | 718 719 |
| <u>(ii) Submits a written request for retention of evidence to the governmental evidence-retention entity that provided notice of its intent to destroy evidence under division (B)(6)(b) of this section.</u> | 720 721 722 723 |
| <u>(7) If, after providing notice under division (B)(6)(b) of this section of its intent to destroy evidence, a governmental evidence-retention entity receives a written request for retention of the evidence from any person to whom the notice is provided, the governmental evidence-retention entity shall retain the evidence while the person referred to in division (B)(6)(b)(i) of this section remains in custody, incarcerated, in a department of youth services institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to registration and other duties imposed for that offense</u> | 724 725 726 727 728 729 730 731 732 733 734 735 |

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 764
the cataloging and accessibility of preserved biological evidence 765
already in the possession of governmental evidence-retention 766

entities. 767

(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 cataloging biological evidence regarding the methods and procedures referenced in this section. 768
769
770
771
772
773
774

Sec. 2933.83. (A) As used in this section: 775

(1) "Administrator" means the person conducting a photo lineup or live lineup. 776
777

(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
779
780
781

(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
783
784

(4) "Eyewitness" means a person who observes another person at or near the scene of an offense. 785
786

(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
788
789

(6) "Folder system" means a system for conducting a photo lineup that satisfies all of the following: 790
791

(a) The investigating officer uses one "suspect photograph" that resembles the description of the suspected perpetrator of the offense provided by the witness, five "filler photographs" of persons not suspected of the offense that match the description of the suspected perpetrator but do not cause the suspect photograph 792
793
794
795
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 858

to be the possible perpetrator of the offense. 859

(B) Prior to conducting any live lineup or photo lineup on or 860
after the effective date of this section, any law enforcement 861
agency or criminal justice entity in this state that conducts live 862
lineups or photo lineups shall adopt specific procedures for 863
conducting the lineups. The procedures, at a minimum, shall impose 864
the following requirements: 865

(1) Unless impracticable, a blind or blinded administrator 866
shall conduct the live lineup or photo lineup. 867

(2) When it is impracticable for a blind administrator to 868
conduct the live lineup or photo lineup, the administrator shall 869
state in writing the reason for that impracticability. 870

(3) When it is impracticable for either a blind or blinded 871
administrator to conduct the live lineup or photo lineup, the 872
administrator shall state in writing the reason for that 873
impracticability. 874

(4) Unless impracticable, a video record of the live lineup 875
or photo lineup shall be made that includes all of the following 876
information: 877

(a) All identification and nonidentification results obtained 878
during the lineup, signed by the eyewitnesses, including the 879
eyewitnesses' confidence statements; 880

(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 883
the lineup; 884

(e) The names of the lineup members and other relevant 885
identifying information, and the sources of all photographs or 886
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

(b) As used in division (A)(1)(a) of this section, "actual 981
innocence" means that, had the results of the DNA testing 982
conducted under sections 2953.71 to 2953.81 of the Revised Code or 983
984

under former section 2953.82 of the Revised Code been presented at 985
trial, and had those results been analyzed in the context of and 986
upon consideration of all available admissible evidence related to 987
the ~~inmate's~~ person's case as described in division (D) of section 988
2953.74 of the Revised Code, no reasonable factfinder would have 989
found the petitioner guilty of the offense of which the petitioner 990
was convicted, or, if the person was sentenced to death, no 991
reasonable factfinder would have found the petitioner guilty of 992
the aggravating circumstance or circumstances the petitioner was 993
found guilty of committing and that is or are the basis of that 994
sentence of death. 995

(c) As used in divisions (A)(1)(a) and (b) of this section, 996
"former section 2953.82 of the Revised Code" means section 2953.82 997
of the Revised Code as it existed prior to the effective date of 998
this amendment. 999

(2) Except as otherwise provided in section 2953.23 of the 1000
Revised Code, a petition under division (A)(1) of this section 1001
shall be filed no later than one hundred eighty days after the 1002
date on which the trial transcript is filed in the court of 1003
appeals in the direct appeal of the judgment of conviction or 1004
adjudication or, if the direct appeal involves a sentence of 1005
death, the date on which the trial transcript is filed in the 1006
supreme court. If no appeal is taken, except as otherwise provided 1007
in section 2953.23 of the Revised Code, the petition shall be 1008
filed no later than one hundred eighty days after the expiration 1009
of the time for filing the appeal. 1010

(3) In a petition filed under division (A) of this section, a 1011
person who has been sentenced to death may ask the court to render 1012
void or voidable the judgment with respect to the conviction of 1013
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 relief claimed by the petitioner. Except as provided in section 2953.23 of the Revised Code, any ground for relief that is not so stated in the petition is waived.

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

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

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

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 rearraignment, 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 1141
petition filed pursuant to section 2953.21 of the Revised Code, a 1142
court may not entertain a petition filed after the expiration of 1143

the period prescribed in division (A) of that section or a second 1144
petition or successive petitions for similar relief on behalf of a 1145
petitioner unless division (A)(1) or (2) of this section applies: 1146

(1) Both of the following apply: 1147

(a) Either the petitioner shows that the petitioner was 1148
unavoidably prevented from discovery of the facts upon which the 1149
petitioner must rely to present the claim for relief, or, 1150
subsequent to the period prescribed in division (A)(2) of section 1151
2953.21 of the Revised Code or to the filing of an earlier 1152
petition, the United States Supreme Court recognized a new federal 1153
or state right that applies retroactively to persons in the 1154
petitioner's situation, and the petition asserts a claim based on 1155
that right. 1156

(b) The petitioner shows by clear and convincing evidence 1157
that, but for constitutional error at trial, no reasonable 1158
factfinder would have found the petitioner guilty of the offense 1159
of which the petitioner was convicted or, if the claim challenges 1160
a sentence of death that, but for constitutional error at the 1161
sentencing hearing, no reasonable factfinder would have found the 1162
petitioner eligible for the death sentence. 1163

(2) The petitioner was convicted of a felony, the petitioner 1164
is an ~~inmate~~ offender for whom DNA testing was performed under 1165
sections 2953.71 to 2953.81 of the Revised Code or under former 1166
section 2953.82 of the Revised Code and analyzed in the context of 1167
and upon consideration of all available admissible evidence 1168
related to the inmate's case as described in division (D) of 1169
section 2953.74 of the Revised Code, and the results of the DNA 1170
testing establish, by clear and convincing evidence, actual 1171
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~~ offender ~~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 1297
offense" have the same meanings as in section 2950.01 of the 1298

Revised Code. 1299

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 1454
sentence of death for the felony described in division (C)(1)(a) 1455
of this section, but was sentenced to a community control sanction 1456

for that felony and is under that community control sanction. 1457

(iii) The felony described in division (C)(1)(a) of this 1458
section was a sexually oriented offense or child-victim oriented 1459
offense, and the offender has a duty to comply with sections 1460
2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code 1461
relative to that felony. 1462

~~(c) On the date on which the application is filed, the inmate~~ 1463
~~has at least one year remaining on the prison term described in~~ 1464
~~division (C)(1)(b) of this section, or the inmate is in prison~~ 1465
~~under a sentence of death as described in that division.~~ 1466

(2) An ~~inmate~~ offender is not an eligible ~~inmate~~ offender 1467
under division (C)(1) of this section regarding any offense to 1468
which the ~~inmate~~ offender pleaded guilty or no contest. 1469

(3) An offender is not an eligible offender under division 1470
(C)(1) of this section regarding any offense if the offender dies 1471
prior to submitting an application for DNA testing related to that 1472
offense under section 2953.73 of the Revised Code. 1473

Sec. 2953.73. (A) An eligible ~~inmate~~ offender who wishes to 1474
request DNA testing to be conducted under sections 2953.71 to 1475
2953.81 of the Revised Code shall submit an application for DNA 1476
testing on a form prescribed by the attorney general for this 1477
purpose and shall submit the form to the court of common pleas 1478
that sentenced the ~~inmate~~ offender for the offense for which the 1479
~~inmate~~ offender is an eligible ~~inmate~~ offender and is requesting 1480
DNA testing. 1481

(B) If an eligible ~~inmate~~ offender submits an application for 1482
DNA testing under division (A) of this section, upon the 1483
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 court of common pleas who was the trial judge in the case in which the eligible ~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ offender is requesting DNA testing, or, if that judge no longer is a judge of that court, it shall be assigned according to court rules. The judge to whom the application is assigned shall decide the application. The application shall become part of the file in the case.

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

(D) If an eligible ~~inmate~~ offender submits an application for DNA testing under division (A) of this section, the court shall make the determination as to whether the application should be accepted or rejected. The court shall expedite its review of the application. The court shall make the determination in accordance with the criteria and procedures set forth in sections 2953.74 to 2953.81 of the Revised Code and, in making the determination, shall consider the application, the supporting affidavits, and the

documentary evidence and, in addition to those materials, shall 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 test results. 1582
1583

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

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

(2) The inmate offender had a DNA test taken at the trial stage in the case in which the inmate offender was convicted of the offense for which the inmate offender is an eligible inmate offender and is requesting the DNA testing regarding the same biological evidence that the inmate offender seeks to have tested, the test was not a prior definitive DNA test that is subject to division (A) of this section, and the inmate offender shows that DNA exclusion when analyzed in the context of and upon consideration of all available admissible evidence related to the subject inmate's offender's case as described in division (D) of this section would have been outcome determinative at the trial stage in that case. 1600
1601
1602
1603
1604
1605
1606
1607
1608
1609
1610
1611

(C) If an eligible inmate offender submits an application for DNA testing under section 2953.73 of the Revised Code, the court 1612
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 1734
application for DNA testing under section 2953.73 of the Revised 1735

Code, the court shall require the prosecuting attorney to consult 1736
with the testing authority and to prepare findings regarding the 1737
quantity and quality of the parent sample of the biological 1738
material collected from the crime scene or victim of the offense 1739
for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and 1740
is requesting the DNA testing and that is to be tested, and of the 1741
chain of custody and reliability regarding that parent sample, as 1742
follows: 1743

(A) The testing authority shall determine whether there is a 1744
scientifically sufficient quantity of the parent sample to test 1745
and whether the parent sample is so minute or fragile that there 1746
is a substantial risk that the parent sample could be destroyed in 1747
testing. The testing authority may determine that there is not a 1748
sufficient quantity to test in order to preserve the state's 1749
ability to present in the future the original evidence presented 1750
at trial, if another trial is required. Upon making its 1751
determination under this division, the testing authority shall 1752
prepare a written document that contains its determination and the 1753
reasoning and rationale for that determination and shall provide a 1754
copy to the court, the eligible ~~inmate~~ offender, the prosecuting 1755
attorney, and the attorney general. The court may determine in its 1756
discretion, on a case-by-case basis, that, even if the parent 1757
sample of the biological material so collected is so minute or 1758
fragile as to risk destruction of the parent sample by the 1759
extraction, the application should not be rejected solely on the 1760
basis of that risk. 1761

(B) The testing authority shall determine whether the parent 1762
sample has degraded or been contaminated to the extent that it has 1763
become scientifically unsuitable for testing and whether the 1764
parent sample otherwise has been preserved, and remains, in a 1765
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 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.

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

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

(1) The court shall require that the chain of custody be maintained and documented relative to the parent sample and the test sample actually to be tested between the time they are removed from their place of storage or the time of their extraction to the time at which the DNA testing will be performed.

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

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

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

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

(B) A court or testing authority shall provide the documentation required under division (A) of this section in writing and shall maintain that documentation.

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

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

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

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 to whether an eligible ~~inmate~~ offender for whom DNA testing is to be performed is refusing to submit to the collection of a sample of biological material from the ~~inmate~~ offender or is hindering the state from obtaining a sample of biological material from the ~~inmate~~ offender at the time and date of the scheduled collection of the sample. If the extracting personnel determine that an ~~inmate~~ offender is refusing to submit to the collection of a sample or is hindering the state from obtaining a sample, the extracting personnel shall document in writing the conditions that constitute the refusal or hindrance, maintain the documentation, and notify the court of the ~~inmate's~~ offender's refusal or hindrance.

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

(A) The court or a designee of the court shall require the state to maintain the results of the testing and to maintain and preserve both the parent sample of the biological material used and the ~~inmate~~ offender sample of the biological material used. The testing authority may be designated as the person to maintain the results of the testing or to maintain and preserve some or all of the samples, or both. The results of the testing remain state's evidence. The samples shall be preserved during the entire period of time for which the ~~inmate~~ offender is imprisoned or confined relative to the ~~prison term or sentence of death~~ in question ~~and, if that prison term expires or the inmate is executed under that sentence of death,~~ is on parole or probation relative to that sentence, is under post-release control or a community control sanction relative to that sentence, or has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised

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 ~~or~~, 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 ~~or~~, 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