

As Passed by the House

128th General Assembly

Regular Session

2009-2010

Sub. S. B. No. 77

Senator Goodman

**Cosponsors: Senators Seitz, Miller, R., Stewart, Schuring, Miller, D.,
Kearney, Cates, Coughlin, Fedor, Gibbs, Gillmor, Harris, Husted, Niehaus,
Patton, Sawyer, Schiavoni, Smith, Strahorn, Turner, Wagoner, Wilson,
Morano**

**Representatives Amstutz, Bacon, Balderson, Batchelder, Beck, Belcher,
Bolon, Boyd, Carney, Coley, Combs, Daniels, Derickson, Domenick,
Driehaus, Dyer, Evans, Fende, Gardner, Garland, Garrison, Gerberry,
Grossman, Hackett, Hagan, Hall, Harris, Heard, Hite, Hottinger, Koziura,
Lehner, Letson, Maag, Martin, McClain, McGregor, Mecklenborg, Oelslager,
Okey, Pillich, Ruhl, Sears, Snitchler, Sykes, Szollosi, Uecker, Ujvagi,
Wachtmann, Wagner, Weddington**

—

A B I L L

To amend sections 109.573, 2901.07, 2953.21, 2953.23,	1
2953.31, 2953.32, 2953.321, 2953.35, 2953.51,	2
2953.54, 2953.55, 2953.71, 2953.72, 2953.73,	3
2953.74, 2953.75, 2953.76, 2953.77, 2953.78,	4
2953.79, 2953.81, 2953.83, and 2953.84, to enact	5
sections 109.561, 2933.81, 2933.82, 2933.83,	6
2953.56, 2953.57, 2953.58, 2953.59, and 2953.60,	7
and to repeal section 2953.82 of the Revised Code	8
relative to the expansion of DNA testing for	9
certain convicted felons, the elimination of the	10
DNA testing mechanism for felons who pleaded	11
guilty or no contest to the offense, the	12

collection of DNA specimens from all persons 13
eighteen years of age or older who are arrested 14
for a felony offense, the sealing of the official 15
records of persons who have their convictions 16
vacated and set aside due to DNA testing, the 17
preservation and accessibility of biological 18
evidence in a criminal or delinquency 19
investigation or proceeding, the improvement of 20
eyewitness identification procedures, the 21
electronic recording of custodial interrogations, 22
and to provide that DNA records collected in the 23
DNA database and fingerprints filed for record 24
cannot be sealed unless certain circumstances 25
apply. 26

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

Section 1. That sections 109.573, 2901.07, 2953.21, 2953.23, 27
2953.31, 2953.32, 2953.321, 2953.35, 2953.51, 2953.54, 2953.55, 28
2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2953.77, 29
2953.78, 2953.79, 2953.81, 2953.83, and 2953.84 be amended and 30
sections 109.561, 2933.81, 2933.82, 2933.83, 2953.56, 2953.57, 31
2953.58, 2953.59, and 2953.60 of the Revised Code be enacted to 32
read as follows: 33

Sec. 109.561. There is hereby established within the bureau 34
of criminal identification and investigation a preservation of 35
biological evidence task force. The task force shall consist of 36
officers and employees of the bureau; a representative from the 37
Ohio prosecutors association; a representative from the Ohio state 38
coroners association; a representative from the Ohio association 39
of chiefs of police; a representative from the Ohio public 40
defenders office, in consultation with the Ohio innocence project; 41

and a representative from the buckeye state sheriffs association. 42
The task force shall perform the duties and functions specified in 43
division (C) of section 2933.82 of the Revised Code. 44

Sec. 109.573. (A) As used in this section: 45

(1) "DNA" means human deoxyribonucleic acid. 46

(2) "DNA analysis" means a laboratory analysis of a DNA 47
specimen to identify DNA characteristics and to create a DNA 48
record. 49

(3) "DNA database" means a collection of DNA records from 50
forensic casework or from crime scenes, specimens from anonymous 51
and unidentified sources, and records collected pursuant to 52
sections 2152.74 and 2901.07 of the Revised Code and a population 53
statistics database for determining the frequency of occurrence of 54
characteristics in DNA records. 55

(4) "DNA record" means the objective result of a DNA analysis 56
of a DNA specimen, including representations of DNA fragment 57
lengths, digital images of autoradiographs, discrete allele 58
assignment numbers, and other DNA specimen characteristics that 59
aid in establishing the identity of an individual. 60

(5) "DNA specimen" includes human blood cells or 61
physiological tissues or body fluids. 62

(6) "Unidentified person database" means a collection of DNA 63
records, and, on and after May 21, 1998, of fingerprint and 64
photograph records, of unidentified human corpses, human remains, 65
or living individuals. 66

(7) "Relatives of missing persons database" means a 67
collection of DNA records of persons related by consanguinity to a 68
missing person. 69

(8) "Law enforcement agency" means a police department, the 70

office of a sheriff, the state highway patrol, a county 71
prosecuting attorney, or a federal, state, or local governmental 72
body that enforces criminal laws and that has employees who have a 73
statutory power of arrest. 74

(9) "Administration of criminal justice" means the 75
performance of detection, apprehension, detention, pretrial 76
release, post-trial release, prosecution, adjudication, 77
correctional supervision, or rehabilitation of accused persons or 78
criminal offenders. "Administration of criminal justice" also 79
includes criminal identification activities and the collection, 80
storage, and dissemination of criminal history record information. 81

(B)(1) The superintendent of the bureau of criminal 82
identification and investigation may do all of the following: 83

(a) Establish and maintain a state DNA laboratory to perform 84
DNA analyses of DNA specimens; 85

(b) Establish and maintain a DNA database; 86

(c) Establish and maintain an unidentified person database to 87
aid in the establishment of the identity of unknown human corpses, 88
human remains, or living individuals; 89

(d) Establish and maintain a relatives of missing persons 90
database for comparison with the unidentified person database to 91
aid in the establishment of the identity of unknown human corpses, 92
human remains, and living individuals. 93

(2) If the bureau of criminal identification and 94
investigation establishes and maintains a DNA laboratory and a DNA 95
database, the bureau may use or disclose information regarding DNA 96
records for the following purposes: 97

(a) The bureau may disclose information to a law enforcement 98
agency for the administration of criminal justice. 99

(b) The bureau shall disclose pursuant to a court order 100

issued under section 3111.09 of the Revised Code any information 101
necessary to determine the existence of a parent and child 102
relationship in an action brought under sections 3111.01 to 103
3111.18 of the Revised Code. 104

(c) The bureau may use or disclose information from the 105
population statistics database, for identification research and 106
protocol development, or for quality control purposes. 107

(3) If the bureau of criminal identification and 108
investigation establishes and maintains a relatives of missing 109
persons database, all of the following apply: 110

(a) If a person has disappeared and has been continuously 111
absent from the person's place of last domicile for a thirty-day 112
or longer period of time without being heard from during the 113
period, persons related by consanguinity to the missing person may 114
submit to the bureau a DNA specimen, the bureau may include the 115
DNA record of the specimen in the relatives of missing persons 116
database, and, if the bureau does not include the DNA record of 117
the specimen in the relatives of missing persons database, the 118
bureau shall retain the DNA record for future reference and 119
inclusion as appropriate in that database. 120

(b) The bureau shall not charge a fee for the submission of a 121
DNA specimen pursuant to division (B)(3)(a) of this section. 122

(c) If the DNA specimen submitted pursuant to division 123
(B)(3)(a) of this section is collected by withdrawing blood from 124
the person or a similarly invasive procedure, a physician, 125
registered nurse, licensed practical nurse, duly licensed clinical 126
laboratory technician, or other qualified medical practitioner 127
shall conduct the collection procedure for the DNA specimen 128
submitted pursuant to division (B)(3)(a) of this section and shall 129
collect the DNA specimen in a medically approved manner. If the 130
DNA specimen is collected by swabbing for buccal cells or a 131

similarly noninvasive procedure, division (B)(3)(c) of this 132
section does not require that the DNA specimen be collected by a 133
qualified medical practitioner of that nature. No later than 134
fifteen days after the date of the collection of the DNA specimen, 135
the person conducting the DNA specimen collection procedure shall 136
cause the DNA specimen to be forwarded to the bureau of criminal 137
identification and investigation in accordance with procedures 138
established by the superintendent of the bureau under division (H) 139
of this section. The bureau may provide the specimen vials, 140
mailing tubes, labels, postage, and instruction needed for the 141
collection and forwarding of the DNA specimen to the bureau. 142

(d) The superintendent, in the superintendent's discretion, 143
may compare DNA records in the relatives of missing persons 144
database with the DNA records in the unidentified person database. 145

(4) If the bureau of criminal identification and 146
investigation establishes and maintains an unidentified person 147
database and if the superintendent of the bureau identifies a 148
matching DNA record for the DNA record of a person or deceased 149
person whose DNA record is contained in the unidentified person 150
database, the superintendent shall inform the coroner who 151
submitted or the law enforcement agency that submitted the DNA 152
specimen to the bureau of the match and, if possible, of the 153
identity of the unidentified person. 154

(5) The bureau of criminal identification and investigation 155
may enter into a contract with a qualified public or private 156
laboratory to perform DNA analyses, DNA specimen maintenance, 157
preservation, and storage, DNA record keeping, and other duties 158
required of the bureau under this section. A public or private 159
laboratory under contract with the bureau shall follow quality 160
assurance and privacy requirements established by the 161
superintendent of the bureau. 162

(C) The superintendent of the bureau of criminal 163

identification and investigation shall establish procedures for 164
entering into the DNA database the DNA records submitted pursuant 165
to sections 2152.74 and 2901.07 of the Revised Code and for 166
determining an order of priority for entry of the DNA records 167
based on the types of offenses committed by the persons whose 168
records are submitted and the available resources of the bureau. 169

(D) When a DNA record is derived from a DNA specimen provided 170
pursuant to section 2152.74 or 2901.07 of the Revised Code, the 171
bureau of criminal identification and investigation shall attach 172
to the DNA record personal identification information that 173
identifies the person from whom the DNA specimen was taken. The 174
personal identification information may include the subject 175
person's fingerprints and any other information the bureau 176
determines necessary. The DNA record and personal identification 177
information attached to it shall be used only for the purpose of 178
personal identification or for a purpose specified in this 179
section. 180

(E) DNA records, DNA specimens, fingerprints, and photographs 181
that the bureau of criminal identification and investigation 182
receives pursuant to this section and sections 313.08, 2152.74, 183
and 2901.07 of the Revised Code and personal identification 184
information attached to a DNA record are not public records under 185
section 149.43 of the Revised Code. 186

(F) The bureau of criminal identification and investigation 187
may charge a reasonable fee for providing information pursuant to 188
this section to any law enforcement agency located in another 189
state. 190

(G)(1) No person who because of the person's employment or 191
official position has access to a DNA specimen, a DNA record, or 192
other information contained in the DNA database that identifies an 193
individual shall knowingly disclose that specimen, record, or 194
information to any person or agency not entitled to receive it or 195

otherwise shall misuse that specimen, record, or information.	196
(2) No person without authorization or privilege to obtain information contained in the DNA database that identifies an individual person shall purposely obtain that information.	197 198 199
(H) The superintendent of the bureau of criminal identification and investigation shall establish procedures for all of the following:	200 201 202
(1) The forwarding to the bureau of DNA specimens collected pursuant to division (H) of this section and sections 313.08, 2152.74, and 2901.07 of the Revised Code and of fingerprints and photographs collected pursuant to section 313.08 of the Revised Code;	203 204 205 206 207
(2) The collection, maintenance, preservation, and analysis of DNA specimens;	208 209
(3) The creation, maintenance, and operation of the DNA database;	210 211
(4) The use and dissemination of information from the DNA database;	212 213
(5) The creation, maintenance, and operation of the unidentified person database;	214 215
(6) The use and dissemination of information from the unidentified person database;	216 217
(7) The creation, maintenance, and operation of the relatives of missing persons database;	218 219
(8) The use and dissemination of information from the relatives of missing persons database;	220 221
(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;	222 223 224

(10) The operation of the bureau and responsibilities of employees of the bureau with respect to the activities described in this section. 225
226
227

(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. 228
229
230
231
232
233
234

(J) The attorney general may develop procedures for entering into the national DNA index system the DNA records submitted pursuant to division (B)(1) of section 2901.07 of the Revised Code. 235
236
237
238

Sec. 2901.07. (A) As used in this section: 239

(1) "DNA analysis" and "DNA specimen" have the same meanings as in section 109.573 of the Revised Code. 240
241

(2) "Jail" and "community-based correctional facility" have the same meanings as in section 2929.01 of the Revised Code. 242
243

(3) "Post-release control" has the same meaning as in section 2967.01 of the Revised Code. 244
245

(4) "Head of the arresting law enforcement agency" means whichever of the following is applicable regarding the arrest in question: 246
247
248

(a) If the arrest was made by a sheriff or a deputy sheriff, the sheriff who made the arrest or who employs the deputy sheriff who made the arrest; 249
250
251

(b) If the arrest was made by a law enforcement officer of a law enforcement agency of a municipal corporation, the chief of police, marshal, or other chief law enforcement officer of the 252
253
254

agency that employs the officer who made the arrest; 255

(c) If the arrest was made by a constable or a law 256
enforcement officer of a township police department or police 257
district police force, the constable who made the arrest or the 258
chief law enforcement officer of the department or agency that 259
employs the officer who made the arrest; 260

(d) If the arrest was made by the superintendent or a trooper 261
of the state highway patrol, the superintendent of the state 262
highway patrol; 263

(e) If the arrest was made by a law enforcement officer not 264
identified in division (A)(4)(a), (b), (c), or (d) of this 265
section, the chief law enforcement officer of the law enforcement 266
agency that employs the officer who made the arrest. 267

(B)(1) On and after July 1, 2011, a person who is eighteen 268
years of age or older and who is arrested on or after July 1, 269
2011, for a felony offense shall submit to a DNA specimen 270
collection procedure administered by the head of the arresting law 271
enforcement agency. The head of the arresting law enforcement 272
agency shall cause the DNA specimen to be collected from the 273
person during the intake process at the jail, community-based 274
correctional facility, detention facility, or law enforcement 275
agency office or station to which the arrested person is taken 276
after the arrest. The head of the arresting law enforcement agency 277
shall cause the DNA specimen to be collected in accordance with 278
division (C) of this section. 279

(2) Regardless of when the conviction occurred or the guilty 280
plea was entered, a person who has been convicted of, is convicted 281
of, has pleaded guilty to, or pleads guilty to a felony offense 282
and, who is sentenced to a prison term or to a community 283
residential sanction in a jail or community-based correctional 284
facility for that offense pursuant to section 2929.16 of the 285

Revised Code, and who does not provide a DNA specimen pursuant to 286
division (B)(1) of this section, and a person who has been 287
convicted of, is convicted of, has pleaded guilty to, or pleads 288
guilty to a misdemeanor offense listed in division (D) of this 289
section and, who is sentenced to a term of imprisonment for that 290
offense, and who does not provide a DNA specimen pursuant to 291
division (B)(1) of this section, shall submit to a DNA specimen 292
collection procedure administered by the director of 293
rehabilitation and correction or the chief administrative officer 294
of the jail or other detention facility in which the person is 295
serving the term of imprisonment. If the person serves the prison 296
term in a state correctional institution, the director of 297
rehabilitation and correction shall cause the DNA specimen to be 298
collected from the person during the intake process at the 299
reception facility designated by the director. If the person 300
serves the community residential sanction or term of imprisonment 301
in a jail, a community-based correctional facility, or another 302
county, multicounty, municipal, municipal-county, or 303
multicounty-municipal detention facility, the chief administrative 304
officer of the jail, community-based correctional facility, or 305
detention facility shall cause the DNA specimen to be collected 306
from the person during the intake process at the jail, 307
community-based correctional facility, or detention facility. The 308
DNA specimen shall be collected in accordance with division (C) of 309
this section. 310

~~(2)~~(3) Regardless of when the conviction occurred or the 311
guilty plea was entered, if a person has been convicted of, is 312
convicted of, has pleaded guilty to, or pleads guilty to a felony 313
offense or a misdemeanor offense listed in division (D) of this 314
section, is serving a prison term, community residential sanction, 315
or term of imprisonment for that offense, and does not provide a 316
DNA specimen pursuant to division (B)(1) or (2) of this section, 317
prior to the person's release from the prison term, community 318

residential sanction, or imprisonment, the person shall submit to, 319
and the director of rehabilitation and correction or the chief 320
administrative officer of the jail, community-based correctional 321
facility, or detention facility in which the person is serving the 322
prison term, community residential sanction, or term of 323
imprisonment shall administer, a DNA specimen collection procedure 324
at the state correctional institution, jail, community-based 325
correctional facility, or detention facility in which the person 326
is serving the prison term, community residential sanction, or 327
term of imprisonment. The DNA specimen shall be collected in 328
accordance with division (C) of this section. 329

~~(3)~~(4)(a) Regardless of when the conviction occurred or the 330
guilty plea was entered, if a person has been convicted of, is 331
convicted of, has pleaded guilty to, or pleads guilty to a felony 332
offense or a misdemeanor offense listed in division (D) of this 333
section and the person is on probation, released on parole, under 334
transitional control, on community control, on post-release 335
control, or under any other type of supervised release under the 336
supervision of a probation department or the adult parole 337
authority for that offense, and did not provide a DNA specimen 338
pursuant to division (B)(1), (2), or (3) of this section, the 339
person shall submit to a DNA specimen collection procedure 340
administered by the chief administrative officer of the probation 341
department or the adult parole authority. The DNA specimen shall 342
be collected in accordance with division (C) of this section. If 343
the person refuses to submit to a DNA specimen collection 344
procedure as provided in this division, the person may be subject 345
to the provisions of section 2967.15 of the Revised Code. 346

(b) If a person to whom division (B)~~(3)~~(4)(a) of this section 347
applies is sent to jail or is returned to a jail, community-based 348
correctional facility, or state correctional institution for a 349
violation of the terms and conditions of the probation, parole, 350

transitional control, other release, or post-release control, if 351
the person was or will be serving a term of imprisonment, prison 352
term, or community residential sanction for committing a felony 353
offense or for committing a misdemeanor offense listed in division 354
(D) of this section, and if the person did not provide a DNA 355
specimen pursuant to division (B)(1), (2), (3), or ~~(3)(4)~~(a) of 356
this section, the person shall submit to, and the director of 357
rehabilitation and correction or the chief administrative officer 358
of the jail or community-based correctional facility shall 359
administer, a DNA specimen collection procedure at the jail, 360
community-based correctional facility, or state correctional 361
institution in which the person is serving the term of 362
imprisonment, prison term, or community residential sanction. The 363
DNA specimen shall be collected from the person in accordance with 364
division (C) of this section. 365

~~(4)(5)~~ Regardless of when the conviction occurred or the 366
guilty plea was entered, if a person has been convicted of, is 367
convicted of, has pleaded guilty to, or pleads guilty to a felony 368
offense or a misdemeanor offense listed in division (D) of this 369
section, the person is not sentenced to a prison term, a community 370
residential sanction in a jail or community-based correctional 371
facility, a term of imprisonment, or any type of supervised 372
release under the supervision of a probation department or the 373
adult parole authority, and the person does not provide a DNA 374
specimen pursuant to division (B)(1), (2), (3), (4)(a), or 375
~~(3)(4)~~(b) of this section, the sentencing court shall order the 376
person to report to the county probation department immediately 377
after sentencing to submit to a DNA specimen collection procedure 378
administered by the chief administrative officer of the county 379
probation office. If the person is incarcerated at the time of 380
sentencing, the person shall submit to a DNA specimen collection 381
procedure administered by the director of rehabilitation and 382
correction or the chief administrative officer of the jail or 383

other detention facility in which the person is incarcerated. The 384
DNA specimen shall be collected in accordance with division (C) of 385
this section. 386

(C) If the DNA specimen is collected by withdrawing blood 387
from the person or a similarly invasive procedure, a physician, 388
registered nurse, licensed practical nurse, duly licensed clinical 389
laboratory technician, or other qualified medical practitioner 390
shall collect in a medically approved manner the DNA specimen 391
required to be collected pursuant to division (B) of this section. 392
If the DNA specimen is collected by swabbing for buccal cells or a 393
similarly noninvasive procedure, this section does not require 394
that the DNA specimen be collected by a qualified medical 395
practitioner of that nature. No later than fifteen days after the 396
date of the collection of the DNA specimen, the head of the 397
arresting law enforcement agency regarding a DNA specimen taken 398
pursuant to division (B)(1) of this section, the director of 399
rehabilitation and correction or the chief administrative officer 400
of the jail, community-based correctional facility, or other 401
county, multicounty, municipal, municipal-county, or 402
multicounty-municipal detention facility, in which the person is 403
serving the prison term, community residential sanction, or term 404
of imprisonment regarding a DNA specimen taken pursuant to 405
division (B)(2), (3), or (4)(b) of this section, the chief 406
administrative officer of the probation department or the adult 407
parole authority regarding a DNA specimen taken pursuant to 408
division (B)(4)(a) of this section, or the chief administrative 409
officer of the county probation office, the director of 410
rehabilitation and correction, or the chief administrative officer 411
of the jail or other detention facility in which the person is 412
incarcerated regarding a DNA specimen taken pursuant to division 413
(B)(5) of this section, whichever is applicable, shall cause the 414
DNA specimen to be forwarded to the bureau of criminal 415
identification and investigation in accordance with procedures 416

established by the superintendent of the bureau under division (H) 417
of section 109.573 of the Revised Code. The bureau shall provide 418
the specimen vials, mailing tubes, labels, postage, and 419
instructions needed for the collection and forwarding of the DNA 420
specimen to the bureau. 421

(D) ~~The director of rehabilitation and correction, the chief 422
administrative officer of the jail, community based correctional 423
facility, or other county, multicounty, municipal, 424
municipal county, or multicounty municipal detention facility, or 425
the chief administrative officer of a county probation department 426
or the adult parole authority shall cause a DNA specimen to be 427
collected in accordance with divisions (B) and (C) of this section 428
from a person in its custody or under its supervision DNA specimen 429
collection duty set forth in division (B)(1) of this section 430
applies to any person who is eighteen years of age or older and 431
who is arrested on or after July 1, 2011, for any felony offense. 432
The DNA specimen collection duties set forth in divisions (B)(2), 433
(3), (4)(a), (4)(b), and (5) of this section apply to any person 434
who has been convicted of, is convicted of, has pleaded guilty to, 435
or pleads guilty to any felony offense or any of the following 436
misdemeanor offenses: 437~~

(1) A misdemeanor violation, an attempt to commit a 438
misdemeanor violation, or complicity in committing a misdemeanor 439
violation of section 2907.04 of the Revised Code; 440

(2) A misdemeanor violation of any law that arose out of the 441
same facts and circumstances and same act as did a charge against 442
the person of a violation of section 2903.01, 2903.02, 2905.01, 443
2907.02, 2907.03, 2907.04, 2907.05, or 2911.11 of the Revised Code 444
that previously was dismissed or amended or as did a charge 445
against the person of a violation of section 2907.12 of the 446
Revised Code as it existed prior to September 3, 1996, that 447
previously was dismissed or amended; 448

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

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

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

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

(1) "Custodial interrogation" means any interrogation involving a law enforcement officer's questioning that is reasonably likely to elicit incriminating responses and in which a reasonable person in the subject's position would consider self to be in custody, beginning when a person should have been advised of the person's right to counsel and right to remain silent and of the fact that anything the person says could be used against the person, as specified by the United States supreme court in *Miranda v. Arizona* (1966), 384 U.S. 436, and subsequent decisions, and ending when the questioning has completely finished.

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

(3) "Electronic recording" or "electronically recorded" means

an audio and visual recording that is an authentic, accurate, 479
unaltered record of a custodial interrogation. 480

(4) "Law enforcement agency" has the same meaning as in 481
section 109.573 of the Revised Code. 482

(5) "Law enforcement vehicle" means a vehicle primarily used 483
by a law enforcement agency or by an employee of a law enforcement 484
agency for official law enforcement purposes. 485

(6) "Local correctional facility" has the same meaning as in 486
section 2903.13 of the Revised Code. 487

(7) "Place of detention" means a jail, police or sheriff's 488
station, holding cell, state correctional institution, local 489
correctional facility, detention facility, or department of youth 490
services facility. "Place of detention" does not include a law 491
enforcement vehicle. 492

(8) "State correctional institution" has the same meaning as 493
in section 2967.01 of the Revised Code. 494

(9) "Statement" means an oral, written, sign language, or 495
nonverbal communication. 496

(B) All statements made by a person who is the suspect of a 497
violation of or possible violation of section 2903.01, 2903.02, or 498
2903.03, a violation of section 2903.04 or 2903.06 that is a 499
felony of the first or second degree, a violation of section 500
2907.02 or 2907.03, or an attempt to commit a violation of section 501
2907.02 of the Revised Code during a custodial interrogation in a 502
place of detention are presumed to be voluntary if the statements 503
made by the person are electronically recorded. The person making 504
the statements during the electronic recording of the custodial 505
interrogation has the burden of proving that the statements made 506
during the custodial interrogation were not voluntary. There shall 507
be no penalty against the law enforcement agency that employs a 508
law enforcement officer if the law enforcement officer fails to 509

electronically record as required by this division a custodial 510
interrogation. A law enforcement officer's failure to 511
electronically record a custodial interrogation does not create a 512
private cause of action against that law enforcement officer. 513

(C) A failure to electronically record a statement as 514
required by this section shall not provide the basis to exclude or 515
suppress the statement in any criminal proceeding, delinquent 516
child proceeding, or other legal proceeding. 517

(D)(1) Law enforcement personnel shall clearly identify and 518
catalog every electronic recording of a custodial interrogation 519
that is recorded pursuant to this section. 520

(2) If a criminal or delinquent child proceeding is brought 521
against a person who was the subject of a custodial interrogation 522
that was electronically recorded, law enforcement personnel shall 523
preserve the recording until the later of when all appeals, 524
post-conviction relief proceedings, and habeas corpus proceedings 525
are final and concluded or the expiration of the period of time 526
within which such appeals and proceedings must be brought. 527

(3) Upon motion by the defendant in a criminal proceeding or 528
the alleged delinquent child in a delinquent child proceeding, the 529
court may order that a copy of an electronic recording of a 530
custodial interrogation of the person be preserved for any period 531
beyond the expiration of all appeals, post-conviction relief 532
proceedings, and habeas corpus proceedings. 533

(4) If no criminal or delinquent child proceeding is brought 534
against a person who was the subject of a custodial interrogation 535
that was electronically recorded pursuant to this section, law 536
enforcement personnel are not required to preserve the related 537
recording. 538

Sec. 2933.82. (A) As used in this section: 539

<u>(1)(a) "Biological evidence" means any of the following:</u>	540
<u>(i) The contents of a sexual assault examination kit;</u>	541
<u>(ii) Any item that contains blood, semen, hair, saliva, skin</u>	542
<u>tissue, fingernail scrapings, bone, bodily fluids, or any other</u>	543
<u>identifiable biological material that was collected as part of a</u>	544
<u>criminal investigation or delinquent child investigation and that</u>	545
<u>reasonably may be used to incriminate or exculpate any person for</u>	546
<u>an offense or delinquent act.</u>	547
<u>(b) The definition of "biological evidence" set forth in</u>	548
<u>division (A)(1)(a) of this section applies whether the material in</u>	549
<u>question is cataloged separately, such as on a slide or swab or in</u>	550
<u>a test tube, or is present on other evidence, including, but not</u>	551
<u>limited to, clothing, ligatures, bedding or other household</u>	552
<u>material, drinking cups or containers, or cigarettes.</u>	553
<u>(2) "Biological material" has the same meaning as in section</u>	554
<u>2953.71 of the Revised Code.</u>	555
<u>(3) "DNA" has the same meaning as in section 109.573 of the</u>	556
<u>Revised Code.</u>	557
<u>(4) "Profile" means a unique identifier of an individual,</u>	558
<u>derived from DNA.</u>	559
<u>(5) "Prosecutor" has the same meaning as in section 2935.01</u>	560
<u>of the Revised Code.</u>	561
<u>(6) "Governmental evidence-retention entity" means all of the</u>	562
<u>following:</u>	563
<u>(a) Any law enforcement agency, prosecutor's office, court,</u>	564
<u>public hospital, crime laboratory, or other governmental or public</u>	565
<u>entity or individual within this state that is charged with the</u>	566
<u>collection, storage, or retrieval of biological evidence;</u>	567
<u>(b) Any official or employee of any entity or individual</u>	568
<u>described in division (A)(6)(a) of this section.</u>	569

(B)(1) Each governmental evidence-retention entity that 570
secures any biological evidence in relation to an investigation or 571
prosecution of a criminal offense or delinquent act that is a 572
violation of section 2903.01, 2903.02, or 2903.03, a violation of 573
section 2903.04 or 2903.06 that is a felony of the first or second 574
degree, a violation of section 2907.02 or 2907.03 or division 575
(A)(4) or (B) of section 2907.05 of the Revised Code, or an 576
attempt to commit a violation of section 2907.02 of the Revised 577
Code shall secure the biological evidence for whichever of the 578
following periods of time is applicable: 579

(a) For a violation of section 2903.01 or 2903.02 of the 580
Revised Code, for the period of time that the offense or act 581
remains unsolved; 582

(b) For a violation of section 2903.03, a violation of 583
section 2903.04 or 2903.06 that is a felony of the first or second 584
degree, a violation of section 2907.02 or 2907.03 or of division 585
(A)(4) or (B) of section 2907.05 of the Revised Code, or an 586
attempt to commit a violation of section 2907.02 of the Revised 587
Code, for a period of thirty years if the offense or act remains 588
unsolved; 589

(c) If any person is convicted of or pleads guilty to the 590
offense, or is adjudicated a delinquent child for committing the 591
delinquent act, for the earlier of the following: (i) the 592
expiration of the latest of the following periods of time that 593
apply to the person: the period of time that the person is 594
incarcerated, is in a department of youth services institution or 595
other juvenile facility, is under a community control sanction for 596
that offense, is under any order of disposition for that act, is 597
on probation or parole for that offense, is under judicial release 598
or supervised release for that act, is under post-release control 599
for that offense, is involved in civil litigation in connection 600
with that offense or act, or is subject to registration and other 601

duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code or (ii) thirty years. If after the period of thirty years the person remains incarcerated, then the governmental evidence-retention entity shall secure the biological evidence until the person is released from incarceration or dies.

(2) This section applies to evidence likely to contain biological material that was in the possession of any governmental evidence-retention entity during the investigation and prosecution of a criminal case or delinquent child case involving a violation of section 2903.01, 2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03 or of division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code.

(3) 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.

(4) Upon written request by the defendant in a criminal case or the alleged delinquent child in a delinquent child case involving a violation of section 2903.01, 2903.02, or 2903.03, a violation of section 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02 or 2907.03 or of division (A)(4) or (B) of section 2907.05 of the Revised Code, or an attempt to commit a violation of section 2907.02 of the Revised Code, 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.

(5) Except as otherwise provided in division (B)(7) of this

section, a governmental evidence-retention entity that possesses 634
biological evidence that includes biological material may destroy 635
the evidence before the expiration of the applicable period of 636
time specified in division (B)(1) of this section if all of the 637
following apply: 638

(a) No other provision of federal or state law requires the 639
state to preserve the evidence. 640

(b) The governmental evidence-retention entity, by certified 641
mail, return receipt requested, provides notice of intent to 642
destroy the evidence to all of the following: 643

(i) All persons who remain in custody, incarcerated, in a 644
department of youth services institution or other juvenile 645
facility, under a community control sanction, under any order of 646
disposition, on probation or parole, under judicial release or 647
supervised release, under post-release control, involved in civil 648
litigation, or subject to registration and other duties imposed 649
for that offense or act under sections 2950.04, 2950.041, 2950.05, 650
and 2950.06 of the Revised Code as a result of a criminal 651
conviction, delinquency adjudication, or commitment related to the 652
evidence in question; 653

(ii) The attorney of record for each person who is in custody 654
in any circumstance described in division (B)(5)(b)(i) of this 655
section if the attorney of record can be located; 656

(iii) The state public defender; 657

(iv) The office of the prosecutor of record in the case that 658
resulted in the custody of the person in custody in any 659
circumstance described in division (B)(5)(b)(i) of this section; 660

(v) The attorney general. 661

(c) No person who is notified under division (B)(5)(b) of 662
this section does either of the following within one year after 663

the date on which the person receives the notice: 664

(i) Files a motion for testing of evidence under sections 2953.71 to 2953.81 or section 2953.82 of the Revised Code; 665
666

(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)(5)(b) of this section. 667
668
669
670

(6) Except as otherwise provided in division (B)(7) of this section, if, after providing notice under division (B)(5)(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)(5)(b)(i) of this section remains in custody, incarcerated, in a department of youth services institution or other juvenile facility, under a community control sanction, under any order of disposition, on probation or parole, under judicial release or supervised release, under post-release control, involved in civil litigation, or subject to registration and other duties imposed for that offense or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code as a result of a criminal conviction, delinquency adjudication, or commitment related to the evidence in question. 671
672
673
674
675
676
677
678
679
680
681
682
683
684
685
686

(7) A governmental evidence-retention entity that possesses biological evidence that includes biological material may destroy the evidence five years after a person pleads guilty or no contest to a violation of section 2903.01, 2903.02, or 2903.03, a violation of 2903.04 or 2903.06 that is a felony of the first or second degree, a violation of section 2907.02, 2907.03, division (A)(4) or (B) of section 2907.05, or an attempt to commit a violation of section 2907.02 of the Revised Code and all appeals have been exhausted unless, upon a motion to the court by the 687
688
689
690
691
692
693
694
695

person who pleaded guilty or no contest or the person's attorney 696
and notice to those persons described in division (B)(5)(b) of 697
this section requesting that the evidence not be destroyed, the 698
court finds good cause as to why that evidence must be retained. 699

(8) A governmental evidence-retention entity shall not be 700
required to preserve physical evidence pursuant to this section 701
that is of such a size, bulk, or physical character as to render 702
retention impracticable. When retention of physical evidence that 703
otherwise would be required to be retained pursuant to this 704
section is impracticable as described in this division, the 705
governmental evidence-retention entity that otherwise would be 706
required to retain the physical evidence shall remove and preserve 707
portions of the material evidence likely to contain biological 708
evidence related to the offense, in a quantity sufficient to 709
permit future DNA testing before returning or disposing of that 710
physical evidence. 711

(C)(1) The preservation of biological evidence task force 712
established within the bureau of criminal identification and 713
investigation under section 109.561 of the Revised Code shall 714
establish a system regarding the proper preservation of biological 715
evidence in this state. In establishing the system, the task force 716
shall do all of the following: 717

(a) Devise standards regarding the proper collection, 718
retention, and cataloging of biological evidence for ongoing 719
investigations and prosecutions; 720

(b) Recommend practices, protocols, models, and resources for 721
the cataloging and accessibility of preserved biological evidence 722
already in the possession of governmental evidence-retention 723
entities. 724

(2) In consultation with the preservation of biological 725
evidence task force described in division (C)(1) of this section, 726

the division of criminal justice services of the department of 727
public safety shall administer and conduct training programs for 728
law enforcement officers and other relevant employees who are 729
charged with preserving and cataloging biological evidence 730
regarding the methods and procedures referenced in this section. 731

Sec. 2933.83. (A) As used in this section: 732

(1) "Administrator" means the person conducting a photo 733
lineup or live lineup. 734

(2) "Blind administrator" means the administrator does not 735
know the identity of the suspect. "Blind administrator" includes 736
an administrator who conducts a photo lineup through the use of a 737
folder system or a substantially similar system. 738

(3) "Blinded administrator" means the administrator may know 739
who the suspect is, but does not know which lineup member is being 740
viewed by the eyewitness. "Blinded administrator" includes an 741
administrator who conducts a photo lineup through the use of a 742
folder system or a substantially similar system. 743

(4) "Eyewitness" means a person who observes another person 744
at or near the scene of an offense. 745

(5) "Filler" means either a person or a photograph of a 746
person who is not suspected of an offense and is included in an 747
identification procedure. 748

(6) "Folder system" means a system for conducting a photo 749
lineup that satisfies all of the following: 750

(a) The investigating officer uses one "suspect photograph" 751
that resembles the description of the suspected perpetrator of the 752
offense provided by the eyewitness, five "filler photographs" of 753
persons not suspected of the offense that match the description of 754
the suspected perpetrator but do not cause the suspect photograph 755
to unduly stand out, four "blank photographs" that contain no 756

images of any person, and ten empty folders. 757

(b) The investigating officer places one "filler photograph" 758
into one of the empty folders and numbers it as folder 1. 759

(c) The administrator places the "suspect photograph" and the 760
other four "filler photographs" into five other empty folders, 761
shuffles the five folders so that the administrator is unaware of 762
which folder contains the "suspect photograph," and numbers the 763
five shuffled folders as folders 2 through 6. 764

(d) The administrator places the four "blank photographs" in 765
the four remaining empty folders and numbers these folders as 766
folders 7 through 10, and these folders serve as "dummy folders." 767

(e) The administrator provides instructions to the eyewitness 768
as to the lineup procedure and informs the eyewitness that a 769
photograph of the alleged perpetrator of the offense may or may 770
not be included in the photographs the eyewitness is about to see 771
and that the administrator does not know which, if any, of the 772
folders contains the photograph of the alleged perpetrator. The 773
administrator also shall instruct the eyewitness that the 774
administrator does not want to view any of the photographs and 775
will not view any of the photographs and that the eyewitness may 776
not show the administrator any of the photographs. The 777
administrator shall inform the eyewitness that if the eyewitness 778
identifies a photograph as being the person the eyewitness saw the 779
eyewitness shall identify the photograph only by the number of the 780
photograph's corresponding folder. 781

(f) The administrator hands each of the ten folders to the 782
eyewitness individually without looking at the photograph in the 783
folder. Each time the eyewitness has viewed a folder, the 784
eyewitness indicates whether the photograph is of the person the 785
eyewitness saw, indicates the degree of the eyewitness's 786
confidence in this identification, and returns the folder and the 787

photograph it contains to the administrator. 788

(g) The administrator follows the procedures specified in 789
this division for a second viewing if the eyewitness requests to 790
view each of the folders a second time, handing them to the 791
eyewitness in the same order as during the first viewing; the 792
eyewitness is not permitted to have more than two viewings of the 793
folders; and the administrator preserves the order of the folders 794
and the photographs they contain in a facedown position in order 795
to document the steps specified in division (A)(6)(h) of this 796
section. 797

(h) The administrator documents and records the results of 798
the procedure described in divisions (A)(6)(a) to (f) of this 799
section before the eyewitness views each of the folders a second 800
time and before the administrator views any photograph that the 801
eyewitness identifies as being of the person the eyewitness saw. 802
The documentation and record includes the date, time, and location 803
of the lineup procedure; the name of the administrator; the names 804
of all of the individuals present during the lineup; the number of 805
photographs shown to the eyewitness; copies of each photograph 806
shown to the eyewitness; the order in which the folders were 807
presented to the witness; the source of each photograph that was 808
used in the procedure; a statement of the eyewitness's confidence 809
in the eyewitness's own words as to the certainty of the 810
eyewitness's identification of the photographs as being of the 811
person the eyewitness saw that is taken immediately upon the 812
reaction of the eyewitness to viewing the photograph; and any 813
additional information the administrator considers pertinent to 814
the lineup procedure. If the eyewitness views each of the folders 815
a second time, the administrator shall document and record the 816
statement of the eyewitness's confidence in the eyewitness's own 817
words as to the certainty of the eyewitness's identification of a 818
photograph as being of the person the eyewitness saw and document 819

that the identification was made during a second viewing of each 820
of the folders by the eyewitness. 821

(i) The administrator shall not say anything to the 822
eyewitness or give any oral or nonverbal cues as to whether or not 823
the eyewitness identified the "suspect photograph" until the 824
administrator documents and records the results of the procedure 825
described in divisions (A)(6)(a) to (g) of this section and the 826
photo lineup has concluded. 827

(7) "Live lineup" means an identification procedure in which 828
a group of persons, including the suspected perpetrator of an 829
offense and other persons not suspected of the offense, is 830
displayed to an eyewitness for the purpose of determining whether 831
the eyewitness identifies the suspect as the perpetrator of the 832
offense. 833

(8) "Photo lineup" means an identification procedure in which 834
an array of photographs, including a photograph of the suspected 835
perpetrator of an offense and additional photographs of other 836
persons not suspected of the offense, is displayed to an 837
eyewitness for the purpose of determining whether the eyewitness 838
identifies the suspect as the perpetrator of the offense. 839

(9) "Perpetrator" means the person who committed the offense. 840

(10) "Suspect" means the person believed by law enforcement 841
to be the possible perpetrator of the offense. 842

(B) Prior to conducting any live lineup or photo lineup on or 843
after the effective date of this section, any law enforcement 844
agency or criminal justice entity in this state that conducts live 845
lineups or photo lineups shall adopt specific procedures for 846
conducting the lineups. The procedures, at a minimum, shall impose 847
the following requirements: 848

(1) Unless impracticable, a blind or blinded administrator 849
shall conduct the live lineup or photo lineup. 850

(2) When it is impracticable for a blind administrator to 851
conduct the live lineup or photo lineup, the administrator shall 852
state in writing the reason for that impracticability. 853

(3) When it is impracticable for either a blind or blinded 854
administrator to conduct the live lineup or photo lineup, the 855
administrator shall state in writing the reason for that 856
impracticability. 857

(4) The administrator conducting the lineup shall make a 858
written record that includes all of the following information: 859

(a) All identification and nonidentification results obtained 860
during the lineup, signed by the eyewitnesses, including the 861
eyewitnesses' confidence statements made immediately at the time 862
of the identification; 863

(b) The names of all persons present at the lineup; 864

(c) The date and time of the lineup; 865

(d) Any eyewitness identification of one or more fillers in 866
the lineup; 867

(e) The names of the lineup members and other relevant 868
identifying information, and the sources of all photographs or 869
persons used in the lineup. 870

(5) If a blind administrator is conducting the live lineup or 871
the photo lineup, the administrator shall inform the eyewitness 872
that the suspect may or may not be in the lineup and that the 873
administrator does not know who the suspect is. 874

(C) For any photo lineup or live lineup that is administered 875
on or after the effective date of this section, all of the 876
following apply: 877

(1) Evidence of a failure to comply with any of the 878
provisions of this section or with any procedure for conducting 879
lineups that has been adopted by a law enforcement agency or 880

criminal justice agency pursuant to division (B) of this section 881
and that conforms to any provision of divisions (B)(1) to (5) of 882
this section shall be considered by trial courts in adjudicating 883
motions to suppress eyewitness identification resulting from or 884
related to the lineup. 885

(2) Evidence of a failure to comply with any of the 886
provisions of this section or with any procedure for conducting 887
lineups that has been adopted by a law enforcement agency or 888
criminal justice agency pursuant to division (B) of this section 889
and that conforms to any provision of divisions (B)(1) to (5) of 890
this section shall be admissible in support of any claim of 891
eyewitness misidentification resulting from or related to the 892
lineup as long as that evidence otherwise is admissible. 893

(3) When evidence of a failure to comply with any of the 894
provisions of this section, or with any procedure for conducting 895
lineups that has been adopted by a law enforcement agency or 896
criminal justice agency pursuant to division (B) of this section 897
and that conforms to any provision of divisions (B)(1) to (5) of 898
this section, is presented at trial, the jury shall be instructed 899
that it may consider credible evidence of noncompliance in 900
determining the reliability of any eyewitness identification 901
resulting from or related to the lineup. 902

(D) The requirements in this section regarding the procedures 903
for live lineups or photo lineups conducted by a law enforcement 904
agency or criminal justice entity do not prohibit a law 905
enforcement agency or criminal justice entity from adopting other 906
scientifically accepted procedures for conducting live lineups or 907
photo lineups that the scientific community considers more 908
effective. 909

Sec. 2953.21. (A)(1)(a) Any person who has been convicted of 910
a criminal offense or adjudicated a delinquent child and who 911

claims that there was such a denial or infringement of the 912
person's rights as to render the judgment void or voidable under 913
the Ohio Constitution or the Constitution of the United States, 914
and any person who has been convicted of a criminal offense that 915
is a felony, and who is an ~~inmate,~~ and offender for whom DNA 916
testing that was performed under sections 2953.71 to 2953.81 of 917
the Revised Code or under former section 2953.82 of the Revised 918
Code and analyzed in the context of and upon consideration of all 919
available admissible evidence related to the ~~inmate's~~ person's 920
case as described in division (D) of section 2953.74 of the 921
Revised Code provided results that establish, by clear and 922
convincing evidence, actual innocence of that felony offense or, 923
if the person was sentenced to death, establish, by clear and 924
convincing evidence, actual innocence of the aggravating 925
circumstance or circumstances the person was found guilty of 926
committing and that is or are the basis of that sentence of death, 927
may file a petition in the court that imposed sentence, stating 928
the grounds for relief relied upon, and asking the court to vacate 929
or set aside the judgment or sentence or to grant other 930
appropriate relief. The petitioner may file a supporting affidavit 931
and other documentary evidence in support of the claim for relief. 932

(b) As used in division (A)(1)(a) of this section, "actual 933
innocence" means that, had the results of the DNA testing 934
conducted under sections 2953.71 to 2953.81 of the Revised Code or 935
under former section 2953.82 of the Revised Code been presented at 936
trial, and had those results been analyzed in the context of and 937
upon consideration of all available admissible evidence related to 938
the ~~inmate's~~ person's case as described in division (D) of section 939
2953.74 of the Revised Code, no reasonable factfinder would have 940
found the petitioner guilty of the offense of which the petitioner 941
was convicted, or, if the person was sentenced to death, no 942
reasonable factfinder would have found the petitioner guilty of 943
the aggravating circumstance or circumstances the petitioner was 944

found guilty of committing and that is or are the basis of that 945
sentence of death. 946

(c) As used in divisions (A)(1)(a) and (b) of this section, 947
"former section 2953.82 of the Revised Code" means section 2953.82 948
of the Revised Code as it existed prior to the effective date of 949
this amendment. 950

(2) Except as otherwise provided in section 2953.23 of the 951
Revised Code, a petition under division (A)(1) of this section 952
shall be filed no later than one hundred eighty days after the 953
date on which the trial transcript is filed in the court of 954
appeals in the direct appeal of the judgment of conviction or 955
adjudication or, if the direct appeal involves a sentence of 956
death, the date on which the trial transcript is filed in the 957
supreme court. If no appeal is taken, except as otherwise provided 958
in section 2953.23 of the Revised Code, the petition shall be 959
filed no later than one hundred eighty days after the expiration 960
of the time for filing the appeal. 961

(3) In a petition filed under division (A) of this section, a 962
person who has been sentenced to death may ask the court to render 963
void or voidable the judgment with respect to the conviction of 964
aggravated murder or the specification of an aggravating 965
circumstance or the sentence of death. 966

(4) A petitioner shall state in the original or amended 967
petition filed under division (A) of this section all grounds for 968
relief claimed by the petitioner. Except as provided in section 969
2953.23 of the Revised Code, any ground for relief that is not so 970
stated in the petition is waived. 971

(5) If the petitioner in a petition filed under division (A) 972
of this section was convicted of or pleaded guilty to a felony, 973
the petition may include a claim that the petitioner was denied 974
the equal protection of the laws in violation of the Ohio 975

Constitution or the United States Constitution because the 976
sentence imposed upon the petitioner for the felony was part of a 977
consistent pattern of disparity in sentencing by the judge who 978
imposed the sentence, with regard to the petitioner's race, 979
gender, ethnic background, or religion. If the supreme court 980
adopts a rule requiring a court of common pleas to maintain 981
information with regard to an offender's race, gender, ethnic 982
background, or religion, the supporting evidence for the petition 983
shall include, but shall not be limited to, a copy of that type of 984
information relative to the petitioner's sentence and copies of 985
that type of information relative to sentences that the same judge 986
imposed upon other persons. 987

(B) The clerk of the court in which the petition is filed 988
shall docket the petition and bring it promptly to the attention 989
of the court. The clerk of the court in which the petition is 990
filed immediately shall forward a copy of the petition to the 991
prosecuting attorney of that county. 992

(C) The court shall consider a petition that is timely filed 993
under division (A)(2) of this section even if a direct appeal of 994
the judgment is pending. Before granting a hearing on a petition 995
filed under division (A) of this section, the court shall 996
determine whether there are substantive grounds for relief. In 997
making such a determination, the court shall consider, in addition 998
to the petition, the supporting affidavits, and the documentary 999
evidence, all the files and records pertaining to the proceedings 1000
against the petitioner, including, but not limited to, the 1001
indictment, the court's journal entries, the journalized records 1002
of the clerk of the court, and the court reporter's transcript. 1003
The court reporter's transcript, if ordered and certified by the 1004
court, shall be taxed as court costs. If the court dismisses the 1005
petition, it shall make and file findings of fact and conclusions 1006
of law with respect to such dismissal. 1007

(D) Within ten days after the docketing of the petition, or 1008
within any further time that the court may fix for good cause 1009
shown, the prosecuting attorney shall respond by answer or motion. 1010
Within twenty days from the date the issues are raised, either 1011
party may move for summary judgment. The right to summary judgment 1012
shall appear on the face of the record. 1013

(E) Unless the petition and the files and records of the case 1014
show the petitioner is not entitled to relief, the court shall 1015
proceed to a prompt hearing on the issues even if a direct appeal 1016
of the case is pending. If the court notifies the parties that it 1017
has found grounds for granting relief, either party may request an 1018
appellate court in which a direct appeal of the judgment is 1019
pending to remand the pending case to the court. 1020

(F) At any time before the answer or motion is filed, the 1021
petitioner may amend the petition with or without leave or 1022
prejudice to the proceedings. The petitioner may amend the 1023
petition with leave of court at any time thereafter. 1024

(G) If the court does not find grounds for granting relief, 1025
it shall make and file findings of fact and conclusions of law and 1026
shall enter judgment denying relief on the petition. If no direct 1027
appeal of the case is pending and the court finds grounds for 1028
relief or if a pending direct appeal of the case has been remanded 1029
to the court pursuant to a request made pursuant to division (E) 1030
of this section and the court finds grounds for granting relief, 1031
it shall make and file findings of fact and conclusions of law and 1032
shall enter a judgment that vacates and sets aside the judgment in 1033
question, and, in the case of a petitioner who is a prisoner in 1034
custody, shall discharge or resentence the petitioner or grant a 1035
new trial as the court determines appropriate. The court also may 1036
make supplementary orders to the relief granted, concerning such 1037
matters as arraignment, retrial, custody, and bail. If the trial 1038
court's order granting the petition is reversed on appeal and if 1039

the direct appeal of the case has been remanded from an appellate 1040
court pursuant to a request under division (E) of this section, 1041
the appellate court reversing the order granting the petition 1042
shall notify the appellate court in which the direct appeal of the 1043
case was pending at the time of the remand of the reversal and 1044
remand of the trial court's order. Upon the reversal and remand of 1045
the trial court's order granting the petition, regardless of 1046
whether notice is sent or received, the direct appeal of the case 1047
that was remanded is reinstated. 1048

(H) Upon the filing of a petition pursuant to division (A) of 1049
this section by a person sentenced to death, only the supreme 1050
court may stay execution of the sentence of death. 1051

(I)(1) If a person sentenced to death intends to file a 1052
petition under this section, the court shall appoint counsel to 1053
represent the person upon a finding that the person is indigent 1054
and that the person either accepts the appointment of counsel or 1055
is unable to make a competent decision whether to accept or reject 1056
the appointment of counsel. The court may decline to appoint 1057
counsel for the person only upon a finding, after a hearing if 1058
necessary, that the person rejects the appointment of counsel and 1059
understands the legal consequences of that decision or upon a 1060
finding that the person is not indigent. 1061

(2) The court shall not appoint as counsel under division 1062
(I)(1) of this section an attorney who represented the petitioner 1063
at trial in the case to which the petition relates unless the 1064
person and the attorney expressly request the appointment. The 1065
court shall appoint as counsel under division (I)(1) of this 1066
section only an attorney who is certified under Rule 20 of the 1067
Rules of Superintendence for the Courts of Ohio to represent 1068
indigent defendants charged with or convicted of an offense for 1069
which the death penalty can be or has been imposed. The 1070
ineffectiveness or incompetence of counsel during proceedings 1071

under this section does not constitute grounds for relief in a 1072
proceeding under this section, in an appeal of any action under 1073
this section, or in an application to reopen a direct appeal. 1074

(3) Division (I) of this section does not preclude attorneys 1075
who represent the state of Ohio from invoking the provisions of 28 1076
U.S.C. 154 with respect to capital cases that were pending in 1077
federal habeas corpus proceedings prior to July 1, 1996, insofar 1078
as the petitioners in those cases were represented in proceedings 1079
under this section by one or more counsel appointed by the court 1080
under this section or section 120.06, 120.16, 120.26, or 120.33 of 1081
the Revised Code and those appointed counsel meet the requirements 1082
of division (I)(2) of this section. 1083

(J) Subject to the appeal of a sentence for a felony that is 1084
authorized by section 2953.08 of the Revised Code, the remedy set 1085
forth in this section is the exclusive remedy by which a person 1086
may bring a collateral challenge to the validity of a conviction 1087
or sentence in a criminal case or to the validity of an 1088
adjudication of a child as a delinquent child for the commission 1089
of an act that would be a criminal offense if committed by an 1090
adult or the validity of a related order of disposition. 1091

Sec. 2953.23. (A) Whether a hearing is or is not held on a 1092
petition filed pursuant to section 2953.21 of the Revised Code, a 1093
court may not entertain a petition filed after the expiration of 1094
the period prescribed in division (A) of that section or a second 1095
petition or successive petitions for similar relief on behalf of a 1096
petitioner unless division (A)(1) or (2) of this section applies: 1097

(1) Both of the following apply: 1098

(a) Either the petitioner shows that the petitioner was 1099
unavoidably prevented from discovery of the facts upon which the 1100
petitioner must rely to present the claim for relief, or, 1101
subsequent to the period prescribed in division (A)(2) of section 1102

2953.21 of the Revised Code or to the filing of an earlier 1103
petition, the United States Supreme Court recognized a new federal 1104
or state right that applies retroactively to persons in the 1105
petitioner's situation, and the petition asserts a claim based on 1106
that right. 1107

(b) The petitioner shows by clear and convincing evidence 1108
that, but for constitutional error at trial, no reasonable 1109
factfinder would have found the petitioner guilty of the offense 1110
of which the petitioner was convicted or, if the claim challenges 1111
a sentence of death that, but for constitutional error at the 1112
sentencing hearing, no reasonable factfinder would have found the 1113
petitioner eligible for the death sentence. 1114

(2) The petitioner was convicted of a felony, the petitioner 1115
is an ~~inmate~~ offender for whom DNA testing was performed under 1116
sections 2953.71 to 2953.81 of the Revised Code or under former 1117
section 2953.82 of the Revised Code and analyzed in the context of 1118
and upon consideration of all available admissible evidence 1119
related to the inmate's case as described in division (D) of 1120
section 2953.74 of the Revised Code, and the results of the DNA 1121
testing establish, by clear and convincing evidence, actual 1122
innocence of that felony offense or, if the person was sentenced 1123
to death, establish, by clear and convincing evidence, actual 1124
innocence of the aggravating circumstance or circumstances the 1125
person was found guilty of committing and that is or are the basis 1126
of that sentence of death. 1127

As used in this division, "actual innocence" has the same 1128
meaning as in division (A)(1)(b) of section 2953.21 of the Revised 1129
Code, and "former section 2953.82 of the Revised Code" has the 1130
same meaning as in division (A)(1)(c) of section 2953.21 of the 1131
Revised Code. 1132

(B) An order awarding or denying relief sought in a petition 1133
filed pursuant to section 2953.21 of the Revised Code is a final 1134

judgment and may be appealed pursuant to Chapter 2953. of the Revised Code.

Sec. 2953.31. As used in sections 2953.31 to 2953.36 of the Revised Code:

(A) "First offender" means anyone who has been convicted of an offense in this state or any other jurisdiction and who previously or subsequently has not been convicted of the same or a different offense in this state or any other jurisdiction. When two or more convictions result from or are connected with the same act or result from offenses committed at the same time, they shall be counted as one conviction. When two or three convictions result from the same indictment, information, or complaint, from the same plea of guilty, or from the same official proceeding, and result from related criminal acts that were committed within a three-month period but do not result from the same act or from offenses committed at the same time, they shall be counted as one conviction, provided that a court may decide as provided in division (C)(1)(a) of section 2953.32 of the Revised Code that it is not in the public interest for the two or three convictions to be counted as one conviction.

For purposes of, and except as otherwise provided in, this division, a conviction for a minor misdemeanor, for a violation of any section in Chapter 4507., 4510., 4511., 4513., or 4549. of the Revised Code, or for a violation of a municipal ordinance that is substantially similar to any section in those chapters is not a previous or subsequent conviction. However, a conviction for a violation of section 4511.19, 4511.251, 4549.02, 4549.021, 4549.03, 4549.042, or 4549.62 or sections 4549.41 to 4549.46 of the Revised Code, for a violation of section 4510.11 or 4510.14 of the Revised Code that is based upon the offender's operation of a vehicle during a suspension imposed under section 4511.191 or

4511.196 of the Revised Code, for a violation of a substantially 1166
equivalent municipal ordinance, for a felony violation of Title 1167
XLV of the Revised Code, or for a violation of a substantially 1168
equivalent former law of this state or former municipal ordinance 1169
shall be considered a previous or subsequent conviction. 1170

(B) "Prosecutor" means the county prosecuting attorney, city 1171
director of law, village solicitor, or similar chief legal 1172
officer, who has the authority to prosecute a criminal case in the 1173
court in which the case is filed. 1174

(C) "Bail forfeiture" means the forfeiture of bail by a 1175
defendant who is arrested for the commission of a misdemeanor, 1176
other than a defendant in a traffic case as defined in Traffic 1177
Rule 2, if the forfeiture is pursuant to an agreement with the 1178
court and prosecutor in the case. 1179

(D) "Official records" has the same meaning as in division 1180
(D) of section 2953.51 of the Revised Code. 1181

(E) "Official proceeding" has the same meaning as in section 1182
2921.01 of the Revised Code. 1183

(F) "Community control sanction" has the same meaning as in 1184
section 2929.01 of the Revised Code. 1185

(G) "Post-release control" and "post-release control 1186
sanction" have the same meanings as in section 2967.01 of the 1187
Revised Code. 1188

(H) "DNA database," "DNA record," and "law enforcement 1189
agency" have the same meanings as in section 109.573 of the 1190
Revised Code. 1191

(I) "Fingerprints filed for record" means any fingerprints 1192
obtained by the superintendent of the bureau of criminal 1193
identification and investigation pursuant to sections 109.57 and 1194
109.571 of the Revised Code. 1195

Sec. 2953.32. (A)(1) Except as provided in section 2953.61 of 1196
the Revised Code, a first offender may apply to the sentencing 1197
court if convicted in this state, or to a court of common pleas if 1198
convicted in another state or in a federal court, for the sealing 1199
of the conviction record. Application may be made at the 1200
expiration of three years after the offender's final discharge if 1201
convicted of a felony, or at the expiration of one year after the 1202
offender's final discharge if convicted of a misdemeanor. 1203

(2) Any person who has been arrested for any misdemeanor 1204
offense and who has effected a bail forfeiture may apply to the 1205
court in which the misdemeanor criminal case was pending when bail 1206
was forfeited for the sealing of the record of the case. Except as 1207
provided in section 2953.61 of the Revised Code, the application 1208
may be filed at any time after the expiration of one year from the 1209
date on which the bail forfeiture was entered upon the minutes of 1210
the court or the journal, whichever entry occurs first. 1211

(B) Upon the filing of an application under this section, the 1212
court shall set a date for a hearing and shall notify the 1213
prosecutor for the case of the hearing on the application. The 1214
prosecutor may object to the granting of the application by filing 1215
an objection with the court prior to the date set for the hearing. 1216
The prosecutor shall specify in the objection the reasons for 1217
believing a denial of the application is justified. The court 1218
shall direct its regular probation officer, a state probation 1219
officer, or the department of probation of the county in which the 1220
applicant resides to make inquiries and written reports as the 1221
court requires concerning the applicant. 1222

(C)(1) The court shall do each of the following: 1223

(a) Determine whether the applicant is a first offender or 1224
whether the forfeiture of bail was agreed to by the applicant and 1225
the prosecutor in the case. If the applicant applies as a first 1226

offender pursuant to division (A)(1) of this section and has two 1227
or three convictions that result from the same indictment, 1228
information, or complaint, from the same plea of guilty, or from 1229
the same official proceeding, and result from related criminal 1230
acts that were committed within a three-month period but do not 1231
result from the same act or from offenses committed at the same 1232
time, in making its determination under this division, the court 1233
initially shall determine whether it is not in the public interest 1234
for the two or three convictions to be counted as one conviction. 1235
If the court determines that it is not in the public interest for 1236
the two or three convictions to be counted as one conviction, the 1237
court shall determine that the applicant is not a first offender; 1238
if the court does not make that determination, the court shall 1239
determine that the offender is a first offender. 1240

(b) Determine whether criminal proceedings are pending 1241
against the applicant; 1242

(c) If the applicant is a first offender who applies pursuant 1243
to division (A)(1) of this section, determine whether the 1244
applicant has been rehabilitated to the satisfaction of the court; 1245

(d) If the prosecutor has filed an objection in accordance 1246
with division (B) of this section, consider the reasons against 1247
granting the application specified by the prosecutor in the 1248
objection; 1249

(e) Weigh the interests of the applicant in having the 1250
records pertaining to the applicant's conviction sealed against 1251
the legitimate needs, if any, of the government to maintain those 1252
records. 1253

(2) If the court determines, after complying with division 1254
(C)(1) of this section, that the applicant is a first offender or 1255
the subject of a bail forfeiture, that no criminal proceeding is 1256
pending against the applicant, and that the interests of the 1257

applicant in having the records pertaining to the applicant's 1258
conviction or bail forfeiture sealed are not outweighed by any 1259
legitimate governmental needs to maintain those records, and that 1260
the rehabilitation of an applicant who is a first offender 1261
applying pursuant to division (A)(1) of this section has been 1262
attained to the satisfaction of the court, the court, except as 1263
provided in ~~division~~ divisions (G) and (H) of this section, shall 1264
order all official records pertaining to the case sealed and, 1265
except as provided in division (F) of this section, all index 1266
references to the case deleted and, in the case of bail 1267
forfeitures, shall dismiss the charges in the case. The 1268
proceedings in the case shall be considered not to have occurred 1269
and the conviction or bail forfeiture of the person who is the 1270
subject of the proceedings shall be sealed, except that upon 1271
conviction of a subsequent offense, the sealed record of prior 1272
conviction or bail forfeiture may be considered by the court in 1273
determining the sentence or other appropriate disposition, 1274
including the relief provided for in sections 2953.31 to 2953.33 1275
of the Revised Code. 1276

(3) Upon the filing of an application under this section, the 1277
applicant, unless indigent, shall pay a fee of fifty dollars. The 1278
court shall pay thirty dollars of the fee into the state treasury. 1279
It shall pay twenty dollars of the fee into the county general 1280
revenue fund if the sealed conviction or bail forfeiture was 1281
pursuant to a state statute, or into the general revenue fund of 1282
the municipal corporation involved if the sealed conviction or 1283
bail forfeiture was pursuant to a municipal ordinance. 1284

(D) Inspection of the sealed records included in the order 1285
may be made only by the following persons or for the following 1286
purposes: 1287

(1) By a law enforcement officer or prosecutor, or the 1288
assistants of either, to determine whether the nature and 1289

character of the offense with which a person is to be charged	1290
would be affected by virtue of the person's previously having been	1291
convicted of a crime;	1292
(2) By the parole or probation officer of the person who is	1293
the subject of the records, for the exclusive use of the officer	1294
in supervising the person while on parole or under a community	1295
control sanction or a post-release control sanction, and in making	1296
inquiries and written reports as requested by the court or adult	1297
parole authority;	1298
(3) Upon application by the person who is the subject of the	1299
records, by the persons named in the application;	1300
(4) By a law enforcement officer who was involved in the	1301
case, for use in the officer's defense of a civil action arising	1302
out of the officer's involvement in that case;	1303
(5) By a prosecuting attorney or the prosecuting attorney's	1304
assistants, to determine a defendant's eligibility to enter a	1305
pre-trial diversion program established pursuant to section	1306
2935.36 of the Revised Code;	1307
(6) By any law enforcement agency or any authorized employee	1308
of a law enforcement agency or by the department of rehabilitation	1309
and correction as part of a background investigation of a person	1310
who applies for employment with the agency as a law enforcement	1311
officer or with the department as a corrections officer;	1312
(7) By any law enforcement agency or any authorized employee	1313
of a law enforcement agency, for the purposes set forth in, and in	1314
the manner provided in, section 2953.321 of the Revised Code;	1315
(8) By the bureau of criminal identification and	1316
investigation or any authorized employee of the bureau for the	1317
purpose of providing information to a board or person pursuant to	1318
division (F) or (G) of section 109.57 of the Revised Code;	1319

(9) By the bureau of criminal identification and 1320
investigation or any authorized employee of the bureau for the 1321
purpose of performing a criminal history records check on a person 1322
to whom a certificate as prescribed in section 109.77 of the 1323
Revised Code is to be awarded; 1324

(10) By the bureau of criminal identification and 1325
investigation or any authorized employee of the bureau for the 1326
purpose of conducting a criminal records check of an individual 1327
pursuant to division (B) of section 109.572 of the Revised Code 1328
that was requested pursuant to any of the sections identified in 1329
division (B)(1) of that section; 1330

(11) By the bureau of criminal identification and 1331
investigation, an authorized employee of the bureau, a sheriff, or 1332
an authorized employee of a sheriff in connection with a criminal 1333
records check described in section 311.41 of the Revised Code; 1334

(12) By the attorney general or an authorized employee of the 1335
attorney general or a court for purposes of determining a person's 1336
classification pursuant to Chapter 2950. of the Revised Code. 1337

When the nature and character of the offense with which a 1338
person is to be charged would be affected by the information, it 1339
may be used for the purpose of charging the person with an 1340
offense. 1341

(E) In any criminal proceeding, proof of any otherwise 1342
admissible prior conviction may be introduced and proved, 1343
notwithstanding the fact that for any such prior conviction an 1344
order of sealing previously was issued pursuant to sections 1345
2953.31 to 2953.36 of the Revised Code. 1346

(F) The person or governmental agency, office, or department 1347
that maintains sealed records pertaining to convictions or bail 1348
forfeitures that have been sealed pursuant to this section may 1349
maintain a manual or computerized index to the sealed records. The 1350

index shall contain only the name of, and alphanumeric identifiers 1351
that relate to, the persons who are the subject of the sealed 1352
records, the word "sealed," and the name of the person, agency, 1353
office, or department that has custody of the sealed records, and 1354
shall not contain the name of the crime committed. The index shall 1355
be made available by the person who has custody of the sealed 1356
records only for the purposes set forth in divisions (C), (D), and 1357
(E) of this section. 1358

(G) Notwithstanding any provision of this section or section 1359
2953.33 of the Revised Code that requires otherwise, a board of 1360
education of a city, local, exempted village, or joint vocational 1361
school district that maintains records of an individual who has 1362
been permanently excluded under sections 3301.121 and 3313.662 of 1363
the Revised Code is permitted to maintain records regarding a 1364
conviction that was used as the basis for the individual's 1365
permanent exclusion, regardless of a court order to seal the 1366
record. An order issued under this section to seal the record of a 1367
conviction does not revoke the adjudication order of the 1368
superintendent of public instruction to permanently exclude the 1369
individual who is the subject of the sealing order. An order 1370
issued under this section to seal the record of a conviction of an 1371
individual may be presented to a district superintendent as 1372
evidence to support the contention that the superintendent should 1373
recommend that the permanent exclusion of the individual who is 1374
the subject of the sealing order be revoked. Except as otherwise 1375
authorized by this division and sections 3301.121 and 3313.662 of 1376
the Revised Code, any school employee in possession of or having 1377
access to the sealed conviction records of an individual that were 1378
the basis of a permanent exclusion of the individual is subject to 1379
section 2953.35 of the Revised Code. 1380

(H) For purposes of sections 2953.31 to 2953.36 of the 1381
Revised Code, DNA records collected in the DNA database and 1382

fingerprints filed for record by the superintendent of the bureau 1383
of criminal identification and investigation shall not be sealed 1384
unless the superintendent receives a certified copy of a final 1385
court order establishing that the offender's conviction has been 1386
overturned. For purposes of this section, a court order is not 1387
"final" if time remains for an appeal or application for 1388
discretionary review with respect to the order. 1389

Sec. 2953.321. (A) As used in this section, "investigatory 1390
work product" means any records or reports of a law enforcement 1391
officer or agency that are excepted from the definition of 1392
"official records" contained in section 2953.51 of the Revised 1393
Code and that pertain to a case the records of which have been 1394
ordered sealed pursuant to division (C)(2) of section 2953.32 of 1395
the Revised Code. 1396

(B) Upon the issuance of an order by a court pursuant to 1397
division (C)(2) of section 2953.32 of the Revised Code directing 1398
that all official records pertaining to a case be sealed: 1399

(1) Every law enforcement officer who possesses investigatory 1400
work product immediately shall deliver that work product to ~~his~~ 1401
the law enforcement officer's employing law enforcement agency. 1402

(2) Except as provided in division (B)(3) of this section, 1403
every law enforcement agency that possesses investigatory work 1404
product shall close that work product to all persons who are not 1405
directly employed by the law enforcement agency and shall treat 1406
that work product, in relation to all persons other than those who 1407
are directly employed by the law enforcement agency, as if it did 1408
not exist and never had existed. 1409

(3) A law enforcement agency that possesses investigatory 1410
work product may permit another law enforcement agency to use that 1411
work product in the investigation of another offense if the facts 1412
incident to the offense being investigated by the other law 1413

enforcement agency and the facts incident to an offense that is 1414
the subject of the case are reasonably similar. The agency that 1415
permits the use of investigatory work product may provide the 1416
other agency with the name of the person who is the subject of the 1417
case if it believes that the name of the person is necessary to 1418
the conduct of the investigation by the other agency. 1419

(C)(1) Except as provided in division (B)(3) of this section, 1420
no law enforcement officer or other person employed by a law 1421
enforcement agency shall knowingly release, disseminate, or 1422
otherwise make the investigatory work product or any information 1423
contained in that work product available to, or discuss any 1424
information contained in it with, any person not employed by the 1425
employing law enforcement agency. 1426

(2) No law enforcement agency, or person employed by a law 1427
enforcement agency, that receives investigatory work product 1428
pursuant to division (B)(3) of this section shall use that work 1429
product for any purpose other than the investigation of the 1430
offense for which it was obtained from the other law enforcement 1431
agency, or disclose the name of the person who is the subject of 1432
the work product except when necessary for the conduct of the 1433
investigation of the offense, or the prosecution of the person for 1434
committing the offense, for which it was obtained from the other 1435
law enforcement agency. 1436

(3) It is not a violation of division (C)(1) or (2) of this 1437
section for the bureau of criminal identification and 1438
investigation or any authorized employee of the bureau 1439
participating in the investigation of criminal activity to 1440
release, disseminate, or otherwise make available to, or discuss 1441
with, a person directly employed by a law enforcement agency DNA 1442
records collected in the DNA database or fingerprints filed for 1443
record by the superintendent of the bureau of criminal 1444
identification and investigation. 1445

(D) Whoever violates division (C)(1) or (2) of this section 1446
is guilty of divulging confidential investigatory work product, a 1447
misdemeanor of the fourth degree. 1448

Sec. 2953.35. (A) Except as authorized by divisions (D), (E), 1449
and (F) of section 2953.32 of the Revised Code or by Chapter 2950. 1450
of the Revised Code, any officer or employee of the state, or a 1451
political subdivision of the state, who releases or otherwise 1452
disseminates or makes available for any purpose involving 1453
employment, bonding, or licensing in connection with any business, 1454
trade, or profession to any person, or to any department, agency, 1455
or other instrumentality of the state, or any political 1456
subdivision of the state, any information or other data concerning 1457
any arrest, complaint, indictment, trial, hearing, adjudication, 1458
conviction, or correctional supervision the records with respect 1459
to which the officer or employee had knowledge of were sealed by 1460
an existing order issued pursuant to sections 2953.31 to 2953.36 1461
of the Revised Code, or were expunged by an order issued pursuant 1462
to section 2953.42 of the Revised Code as it existed prior to ~~the~~ 1463
~~effective date of this amendment~~ June 29, 1988, is guilty of 1464
divulging confidential information, a misdemeanor of the fourth 1465
degree. 1466

(B) Any person who, in violation of section 2953.32 of the 1467
Revised Code, uses, disseminates, or otherwise makes available any 1468
index prepared pursuant to division (F) of section 2953.32 of the 1469
Revised Code is guilty of a misdemeanor of the fourth degree. 1470

(C) It is not a violation of this section for the bureau of 1471
criminal identification and investigation or any authorized 1472
employee of the bureau participating in the investigation of 1473
criminal activity to release, disseminate, or otherwise make 1474
available to, or discuss with, a person directly employed by a law 1475
enforcement agency DNA records collected in the DNA database or 1476

fingerprints filed for record by the superintendent of the bureau 1477
of criminal identification and investigation. 1478

Sec. 2953.51. As used in sections 2953.51 to ~~2953.55~~ 2953.56 1479
of the Revised Code: 1480

(A) "No bill" means a report by the foreperson or deputy 1481
foreperson of a grand jury that an indictment is not found by the 1482
grand jury against a person who has been held to answer before the 1483
grand jury for the commission of an offense. 1484

(B) "Prosecutor" has the same meaning as in section 2953.31 1485
of the Revised Code. 1486

(C) "Court" means the court in which a case is pending at the 1487
time a finding of not guilty in the case or a dismissal of the 1488
complaint, indictment, or information in the case is entered on 1489
the minutes or journal of the court, or the court to which the 1490
foreperson or deputy foreperson of a grand jury reports, pursuant 1491
to section 2939.23 of the Revised Code, that the grand jury has 1492
returned a no bill. 1493

(D) "Official records" means all records that are possessed 1494
by any public office or agency that relate to a criminal case, 1495
including, but not limited to: the notation to the case in the 1496
criminal docket; all subpoenas issued in the case; all papers and 1497
documents filed by the defendant or the prosecutor in the case; 1498
all records of all testimony and evidence presented in all 1499
proceedings in the case; all court files, papers, documents, 1500
folders, entries, affidavits, or writs that pertain to the case; 1501
all computer, microfilm, microfiche, or microdot records, indices, 1502
or references to the case; all index references to the case; all 1503
fingerprints and photographs; all records and investigative 1504
reports pertaining to the case that are possessed by any law 1505
enforcement officer or agency, except that any records or reports 1506
that are the specific investigatory work product of a law 1507

enforcement officer or agency are not and shall not be considered 1508
to be official records when they are in the possession of that 1509
officer or agency; and all investigative records and reports other 1510
than those possessed by a law enforcement officer or agency 1511
pertaining to the case. "Official records" does not include 1512
records or reports maintained pursuant to section 2151.421 of the 1513
Revised Code by a public children services agency or the 1514
department of job and family services. 1515

(E) "DNA database," "DNA record," and "law enforcement 1516
agency" have the same meanings as in section 109.573 of the 1517
Revised Code. 1518

(F) "Fingerprints filed for record" has the same meaning as 1519
in section 2953.31 of the Revised Code. 1520

Sec. 2953.54. (A) Except as otherwise provided in Chapter 1521
2950. of the Revised Code, upon the issuance of an order by a 1522
court under division (B) of section 2953.52 of the Revised Code 1523
directing that all official records pertaining to a case be sealed 1524
and that the proceedings in the case be deemed not to have 1525
occurred: 1526

(1) Every law enforcement officer possessing records or 1527
reports pertaining to the case that are the officer's specific 1528
investigatory work product and that are excepted from the 1529
definition of "official records" contained in section 2953.51 of 1530
the Revised Code shall immediately deliver the records and reports 1531
to ~~his~~ the officer's employing law enforcement agency. Except as 1532
provided in division (A)(3) of this section, no such officer shall 1533
knowingly release, disseminate, or otherwise make the records and 1534
reports or any information contained in them available to, or 1535
discuss any information contained in them with, any person not 1536
employed by the officer's employing law enforcement agency. 1537

(2) Every law enforcement agency that possesses records or 1538

reports pertaining to the case that are its specific investigatory 1539
work product and that are excepted from the definition of 1540
"official records" contained in section 2953.51 of the Revised 1541
Code, or that are the specific investigatory work product of a law 1542
enforcement officer it employs and that were delivered to it under 1543
division (A)(1) of this section shall, except as provided in 1544
division (A)(3) of this section, close the records and reports to 1545
all persons who are not directly employed by the law enforcement 1546
agency and shall, except as provided in division (A)(3) of this 1547
section, treat the records and reports, in relation to all persons 1548
other than those who are directly employed by the law enforcement 1549
agency, as if they did not exist and had never existed. Except as 1550
provided in division (A)(3) of this section, no person who is 1551
employed by the law enforcement agency shall knowingly release, 1552
disseminate, or otherwise make the records and reports in the 1553
possession of the employing law enforcement agency or any 1554
information contained in them available to, or discuss any 1555
information contained in them with, any person not employed by the 1556
employing law enforcement agency. 1557

(3) A law enforcement agency that possesses records or 1558
reports pertaining to the case that are its specific investigatory 1559
work product and that are excepted from the definition of 1560
"official records" contained in division (D) of section 2953.51 of 1561
the Revised Code, or that are the specific investigatory work 1562
product of a law enforcement officer it employs and that were 1563
delivered to it under division (A)(1) of this section may permit 1564
another law enforcement agency to use the records or reports in 1565
the investigation of another offense, if the facts incident to the 1566
offense being investigated by the other law enforcement agency and 1567
the facts incident to an offense that is the subject of the case 1568
are reasonably similar. The agency that provides the records and 1569
reports may provide the other agency with the name of the person 1570
who is the subject of the case, if it believes that the name of 1571

the person is necessary to the conduct of the investigation by the 1572
other agency. 1573

No law enforcement agency, or person employed by a law 1574
enforcement agency, that receives from another law enforcement 1575
agency records or reports pertaining to a case the records of 1576
which have been ordered sealed pursuant to division (B) of section 1577
2953.52 of the Revised Code shall use the records and reports for 1578
any purpose other than the investigation of the offense for which 1579
they were obtained from the other law enforcement agency, or 1580
disclose the name of the person who is the subject of the records 1581
or reports except when necessary for the conduct of the 1582
investigation of the offense, or the prosecution of the person for 1583
committing the offense, for which they were obtained from the 1584
other law enforcement agency. 1585

(B) Whoever violates division (A)(1), (2), or (3) of this 1586
section is guilty of divulging confidential information, a 1587
misdemeanor of the fourth degree. 1588

(C) It is not a violation of this section for the bureau of 1589
criminal identification and investigation or any authorized 1590
employee of the bureau participating in the investigation of 1591
criminal activity to release, disseminate, or otherwise make 1592
available to, or discuss with, a person directly employed by a law 1593
enforcement agency DNA records collected in the DNA database or 1594
fingerprints filed for record by the superintendent of the bureau 1595
of criminal identification and investigation. 1596

Sec. 2953.55. (A) In any application for employment, license, 1597
or any other right or privilege, any appearance as a witness, or 1598
any other inquiry, a person may not be questioned with respect to 1599
any record that has been sealed pursuant to section 2953.52 of the 1600
Revised Code. If an inquiry is made in violation of this section, 1601
the person whose official record was sealed may respond as if the 1602

arrest underlying the case to which the sealed official records 1603
pertain and all other proceedings in that case did not occur, and 1604
the person whose official record was sealed shall not be subject 1605
to any adverse action because of the arrest, the proceedings, or 1606
~~his~~ the person's response. 1607

(B) An officer or employee of the state or any of its 1608
political subdivisions who knowingly releases, disseminates, or 1609
makes available for any purpose involving employment, bonding, 1610
licensing, or education to any person or to any department, 1611
agency, or other instrumentality of the state, or of any of its 1612
political subdivisions, any information or other data concerning 1613
any arrest, complaint, indictment, information, trial, 1614
adjudication, or correctional supervision, the records of which 1615
have been sealed pursuant to section 2953.52 of the Revised Code, 1616
is guilty of divulging confidential information, a misdemeanor of 1617
the fourth degree. 1618

(C) It is not a violation of this section for the bureau of 1619
criminal identification and investigation or any authorized 1620
employee of the bureau participating in the investigation of 1621
criminal activity to release, disseminate, or otherwise make 1622
available to, or discuss with, a person directly employed by a law 1623
enforcement agency DNA records collected in the DNA database or 1624
fingerprints filed for record by the superintendent of the bureau 1625
of criminal identification and investigation. 1626

Sec. 2953.56. Violations of sections 2953.31 to 2953.61 of 1627
the Revised Code shall not provide the basis to exclude or 1628
suppress any of the following evidence that is otherwise 1629
admissible in a criminal proceeding, delinquent child proceeding, 1630
or other legal proceeding: 1631

(A) DNA records collected in the DNA database; 1632

(B) Fingerprints filed for record by the superintendent of 1633

the bureau of criminal identification and investigation; 1634

(C) Other evidence that was obtained or discovered as the 1635
direct or indirect result of divulging or otherwise using the 1636
records described in divisions (A) and (B) of this section. 1637

Sec. 2953.57. (A) A court that enters a judgment that vacates 1638
and sets aside the conviction of a person because of DNA testing 1639
that was performed under sections 2953.71 to 2953.81 of the 1640
Revised Code or under section 2953.82 of the Revised Code shall 1641
issue ninety days after the court vacates and sets aside the 1642
conviction an order directing that all official records pertaining 1643
to the case involving the vacated conviction be sealed and that 1644
the proceedings in the case shall be deemed not to have occurred. 1645

(B) As used in sections 2953.57 to 2953.60 of the Revised 1646
Code, "official records" has the same meaning as in section 1647
2953.51 of the Revised Code. 1648

Sec. 2953.58. (A) The court shall send notice of an order to 1649
seal official records issued pursuant to section 2953.57 of the 1650
Revised Code to any public office or agency that the court knows 1651
or has reason to believe may have any record of the case, whether 1652
or not it is an official record, that is the subject of the order. 1653
The notice shall be sent by certified mail, return receipt 1654
requested. 1655

(B) A person whose official records have been sealed pursuant 1656
to an order issued pursuant to section 2953.57 of the Revised Code 1657
may present a copy of that order and a written request to comply 1658
with it, to a public office or agency that has a record of the 1659
case that is the subject of the order. 1660

(C) An order to seal official records issued pursuant to 1661
section 2953.57 of the Revised Code applies to every public office 1662
or agency that has a record of the case that is the subject of the 1663

order, regardless of whether it receives a copy of the order to seal the official records pursuant to division (A) or (B) of this section. 1664
1665
1666

(D) Upon receiving a copy of an order to seal official records pursuant to division (A) or (B) of this section or upon otherwise becoming aware of an applicable order to seal official records issued pursuant to section 2953.57 of the Revised Code, a public office or agency shall comply with the order and, if applicable, with the provisions of section 2953.59 of the Revised Code, except that it may maintain a record of the case that is the subject of the order if the record is maintained for the purpose of compiling statistical data only and does not contain any reference to the person who is the subject of the case and the order. 1667
1668
1669
1670
1671
1672
1673
1674
1675
1676
1677

A public office or agency also may maintain an index of sealed official records, in a form similar to that for sealed records of conviction as set forth in division (F) of section 2953.32 of the Revised Code, access to which may not be afforded to any person other than the person who has custody of the sealed official records. The sealed official records to which such an index pertains shall not be available to any person, except that the official records of a case that have been sealed may be made available to the following persons for the following purposes: 1678
1679
1680
1681
1682
1683
1684
1685
1686

(1) To the person who is the subject of the records upon written application, and to any other person named in the application, for any purpose; 1687
1688
1689

(2) To a law enforcement officer who was involved in the case, for use in the officer's defense of a civil action arising out of the officer's involvement in that case. 1690
1691
1692

Sec. 2953.59. (A) Except as otherwise provided in Chapter 2950. of the Revised Code, upon the issuance of an order by a 1693
1694

court under section 2953.57 of the Revised Code directing that all 1695
official records pertaining to a case be sealed and that the 1696
proceedings in the case be deemed not to have occurred: 1697

(1) Every law enforcement officer possessing records or 1698
reports pertaining to the case that are the officer's specific 1699
investigatory work product and that are excepted from the 1700
definition of "official records" contained in section 2953.51 of 1701
the Revised Code shall immediately deliver the records and reports 1702
to the officer's employing law enforcement agency. Except as 1703
provided in division (A)(3) of this section, no such officer shall 1704
knowingly release, disseminate, or otherwise make the records and 1705
reports or any information contained in them available to, or 1706
discuss any information contained in them with, any person not 1707
employed by the officer's employing law enforcement agency. 1708

(2) Every law enforcement agency that possesses records or 1709
reports pertaining to the case that are its specific investigatory 1710
work product and that are excepted from the definition of 1711
"official records" contained in section 2953.51 of the Revised 1712
Code, or that are the specific investigatory work product of a law 1713
enforcement officer it employs and that were delivered to it under 1714
division (A)(1) of this section shall, except as provided in 1715
division (A)(3) of this section, close the records and reports to 1716
all persons who are not directly employed by the law enforcement 1717
agency and shall, except as provided in division (A)(3) of this 1718
section, treat the records and reports, in relation to all persons 1719
other than those who are directly employed by the law enforcement 1720
agency, as if they did not exist and had never existed. Except as 1721
provided in division (A)(3) of this section, no person who is 1722
employed by the law enforcement agency shall knowingly release, 1723
disseminate, or otherwise make the records and reports in the 1724
possession of the employing law enforcement agency or any 1725
information contained in them available to, or discuss any 1726

information contained in them with, any person not employed by the 1727
employing law enforcement agency. 1728

(3) A law enforcement agency that possesses records or 1729
reports pertaining to the case that are its specific investigatory 1730
work product and that are excepted from the definition of 1731
"official records" contained in division (D) of section 2953.51 of 1732
the Revised Code, or that are the specific investigatory work 1733
product of a law enforcement officer it employs and that were 1734
delivered to it under division (A)(1) of this section may permit 1735
another law enforcement agency to use the records or reports in 1736
the investigation of another offense, if the facts incident to the 1737
offense being investigated by the other law enforcement agency and 1738
the facts incident to an offense that is the subject of the case 1739
are reasonably similar and if all references to the name or 1740
identifying information of the person whose records were sealed 1741
are redacted from the records or reports. The agency that provides 1742
the records and reports may not provide the other agency with the 1743
name of the person who is the subject of the case the records of 1744
which were sealed. 1745

(B) Whoever violates division (A)(1), (2), or (3) of this 1746
section is guilty of divulging confidential information, a 1747
misdemeanor of the fourth degree. 1748

Sec. 2953.60. (A) In any application for employment, license, 1749
or any other right or privilege, any appearance as a witness, or 1750
any other inquiry, a person may not be questioned with respect to 1751
any record that has been sealed pursuant to section 2953.57 of the 1752
Revised Code. If an inquiry is made in violation of this section, 1753
the person whose official record was sealed may respond as if the 1754
arrest underlying the case to which the sealed official records 1755
pertain and all other proceedings in that case did not occur, and 1756
the person whose official record was sealed shall not be subject 1757

to any adverse action because of the arrest, the proceedings, or 1758
the person's response. 1759

(B) An officer or employee of the state or any of its 1760
political subdivisions who knowingly releases, disseminates, or 1761
makes available for any purpose involving employment, bonding, 1762
licensing, or education to any person or to any department, 1763
agency, or other instrumentality of the state, or of any of its 1764
political subdivisions, any information or other data concerning 1765
any arrest, complaint, indictment, information, trial, 1766
adjudication, or correctional supervision, the records of which 1767
have been sealed pursuant to section 2953.57 of the Revised Code, 1768
is guilty of divulging confidential information, a misdemeanor of 1769
the fourth degree. 1770

Sec. 2953.71. As used in sections 2953.71 to 2953.83 of the 1771
Revised Code: 1772

(A) "Application" or "application for DNA testing" means a 1773
request through postconviction relief for the state to do DNA 1774
testing on biological material from ~~whichever of the following is~~ 1775
~~applicable:~~ 1776

~~(1) The case in which the inmate offender was convicted of~~ 1777
~~the offense for which the inmate offender is an eligible inmate~~ 1778
~~offender and is requesting the DNA testing under sections 2953.71~~ 1779
~~to 2953.81 of the Revised Code.~~ 1780

~~(2) The case in which the inmate pleaded guilty or no contest~~ 1781
~~to the offense for which the inmate is requesting the DNA testing~~ 1782
~~under section 2953.82 of the Revised Code.~~ 1783

(B) "Biological material" means any product of a human body 1784
containing DNA. 1785

(C) "Chain of custody" means a record or other evidence that 1786
tracks a subject sample of biological material from the time the 1787

biological material was first obtained until the time it currently 1788
exists in its place of storage and, in relation to a DNA sample, a 1789
record or other evidence that tracks the DNA sample from the time 1790
it was first obtained until it currently exists in its place of 1791
storage. For purposes of this division, examples of when 1792
biological material or a DNA sample is first obtained include, but 1793
are not limited to, obtaining the material or sample at the scene 1794
of a crime, from a victim, from an inmate offender, or in any 1795
other manner or time as is appropriate in the facts and 1796
circumstances present. 1797

(D) "Custodial agency" means the group or entity that has the 1798
responsibility to maintain biological material in question. 1799

(E) "Custodian" means the person who is the primary 1800
representative of a custodial agency. 1801

(F) "Eligible inmate offender" means an inmate offender who 1802
is eligible under division (C) of section 2953.72 of the Revised 1803
Code to request DNA testing to be conducted under sections 2953.71 1804
to 2953.81 of the Revised Code. 1805

(G) "Exclusion" or "exclusion result" means a result of DNA 1806
testing that scientifically precludes or forecloses the subject 1807
inmate offender as a contributor of biological material recovered 1808
from the crime scene or victim in question, in relation to the 1809
offense for which the inmate offender is an eligible inmate 1810
offender and for which the sentence of death or prison term was 1811
imposed upon the ~~inmate or, regarding a request for DNA testing~~ 1812
~~made under section 2953.82 of the Revised Code, in relation to the~~ 1813
~~offense for which the inmate made the request and for which the~~ 1814
~~sentence of death or prison term was imposed upon the inmate~~ 1815
offender. 1816

(H) "Extracting personnel" means medically approved personnel 1817
who are employed to physically obtain an inmate offender's DNA 1818

specimen for purposes of DNA testing under sections 2953.71 to 1819
2953.81 ~~or section 2953.82~~ of the Revised Code. 1820

(I) "Inclusion" or "inclusion result" means a result of DNA 1821
testing that scientifically cannot exclude, or that holds 1822
accountable, the subject ~~inmate~~ offender as a contributor of 1823
biological material recovered from the crime scene or victim in 1824
question, in relation to the offense for which the ~~inmate~~ offender 1825
is an eligible ~~inmate~~ offender and for which the sentence of death 1826
or prison term was imposed upon the ~~inmate~~ or, regarding a request 1827
~~for DNA testing made under section 2953.82 of the Revised Code, in~~ 1828
~~relation to the offense for which the inmate made the request and~~ 1829
~~for which the sentence of death or prison term was imposed upon~~ 1830
~~the inmate~~ offender. 1831

(J) "Inconclusive" or "inconclusive result" means a result of 1832
DNA testing that is rendered when a scientifically appropriate and 1833
definitive DNA analysis or result, or both, cannot be determined. 1834

(K) "~~Inmate~~ Offender" means ~~an inmate in a prison a criminal~~ 1835
offender who was sentenced by a court, or by a jury and a court, 1836
of this state. 1837

(L) "Outcome determinative" means that had the results of DNA 1838
testing of the subject ~~inmate~~ offender been presented at the trial 1839
of the subject ~~inmate~~ offender requesting DNA testing and been 1840
found relevant and admissible with respect to the felony offense 1841
for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and 1842
is requesting the DNA testing ~~or for which the inmate is~~ 1843
~~requesting the DNA testing under section 2953.82 of the Revised~~ 1844
~~Code, and had those results been analyzed in the context of and~~ 1845
upon consideration of all available admissible evidence related to 1846
the ~~inmate's~~ offender's case as described in division (D) of 1847
section 2953.74 of the Revised Code, there is a strong probability 1848
that no reasonable factfinder would have found the ~~inmate~~ offender 1849
guilty of that offense or, if the ~~inmate~~ offender was sentenced to 1850

death relative to that offense, would have found the ~~inmate~~ 1851
offender guilty of the aggravating circumstance or circumstances 1852
the ~~inmate~~ offender was found guilty of committing and that is or 1853
are the basis of that sentence of death. 1854

(M) "Parent sample" means the biological material first 1855
obtained from a crime scene or a victim of an offense for which an 1856
~~inmate~~ offender is an eligible ~~inmate~~ ~~or for which the inmate is~~ 1857
~~requesting the DNA testing under section 2953.82 of the Revised~~ 1858
~~Code~~ offender, and from which a sample will be presently taken to 1859
do a DNA comparison to the DNA of the subject ~~inmate~~ offender 1860
under sections 2953.71 to 2953.81 ~~or section 2953.82~~ of the 1861
Revised Code. 1862

(N) "Prison" ~~has~~ and "community control sanction" have the 1863
same ~~meaning~~ meanings as in section 2929.01 of the Revised Code. 1864

(O) "Prosecuting attorney" means the prosecuting attorney 1865
who, or whose office, prosecuted the case in which the subject 1866
~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ 1867
offender is an eligible ~~inmate~~ offender and is requesting the DNA 1868
testing ~~or for which the inmate is requesting the DNA testing~~ 1869
~~under section 2953.82 of the Revised Code.~~ 1870

(P) "Prosecuting authority" means the prosecuting attorney or 1871
the attorney general. 1872

(Q) "Reasonable diligence" means a degree of diligence that 1873
is comparable to the diligence a reasonable person would employ in 1874
searching for information regarding an important matter in the 1875
person's own life. 1876

(R) "Testing authority" means a laboratory at which DNA 1877
testing will be conducted under sections 2953.71 to 2953.81 ~~or~~ 1878
~~section 2953.82~~ of the Revised Code. 1879

(S) "Parole" and "post-release control" have the same 1880
meanings as in section 2967.01 of the Revised Code. 1881

(T) "Sexually oriented offense" and "child-victim oriented offense" have the same meanings as in section 2950.01 of the Revised Code. 1882
1883
1884

(U) "Definitive DNA test" means a DNA test that clearly establishes that biological material from the perpetrator of the crime was recovered from the crime scene and also clearly establishes whether or not the biological material is that of the eligible offender. A prior DNA test is not definitive if the eligible offender proves by a preponderance of the evidence that because of advances in DNA technology there is a possibility of discovering new biological material from the perpetrator that the prior DNA test may have failed to discover. Prior testing may have been a prior "definitive DNA test" as to some biological evidence but may not have been a prior "definitive DNA test" as to other biological evidence. 1885
1886
1887
1888
1889
1890
1891
1892
1893
1894
1895
1896

Sec. 2953.72. (A) Any eligible ~~inmate~~ offender who wishes to request DNA testing under sections 2953.71 to 2953.81 of the Revised Code shall submit an application for the testing to the court of common pleas specified in section 2953.73 of the Revised Code, on a form prescribed by the attorney general for this purpose. The eligible ~~inmate~~ offender shall submit the application in accordance with the procedures set forth in section 2953.73 of the Revised Code. The eligible ~~inmate~~ offender shall specify on the application the offense or offenses for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is requesting the DNA testing. Along with the application, the eligible ~~inmate~~ offender shall submit an acknowledgment that is on a form prescribed by the attorney general for this purpose and that is signed by the ~~inmate~~ offender. The acknowledgment shall set forth all of the following: 1897
1898
1899
1900
1901
1902
1903
1904
1905
1906
1907
1908
1909
1910

(1) That sections 2953.71 to 2953.81 of the Revised Code contemplate applications for DNA testing of an eligible ~~inmates~~ 1911
1912

offender at a stage of a prosecution or case after the inmate 1913
offender has been sentenced to a prison term or a sentence of 1914
~~death~~, that any exclusion or inclusion result of DNA testing 1915
rendered pursuant to those sections may be used by a party in any 1916
proceeding as described in section 2953.81 of the Revised Code, 1917
and that all requests for any DNA testing made at trial will 1918
continue to be handled by the prosecuting attorney in the case; 1919

(2) That the process of conducting postconviction DNA testing 1920
for an eligible inmate offender under sections 2953.71 to 2953.81 1921
of the Revised Code begins when the inmate offender submits an 1922
application under section 2953.73 of the Revised Code and the 1923
acknowledgment described in this section; 1924

(3) That the eligible inmate offender must submit the 1925
application and acknowledgment to the court of common pleas that 1926
heard the case in which the inmate offender was convicted of the 1927
offense for which the inmate offender is an eligible offender and 1928
is requesting the DNA testing; 1929

(4) That the state has established a set of criteria set 1930
forth in section 2953.74 of the Revised Code by which eligible 1931
inmate offender applications for DNA testing will be screened and 1932
that a judge of a court of common pleas upon receipt of a properly 1933
filed application and accompanying acknowledgment will apply those 1934
criteria to determine whether to accept or reject the application; 1935

(5) That the results of DNA testing conducted under sections 1936
2953.71 to 2953.81 of the Revised Code will be provided as 1937
described in section 2953.81 of the Revised Code to all parties in 1938
the postconviction proceedings and will be reported to various 1939
courts; 1940

(6) That, if DNA testing is conducted with respect to an 1941
inmate offender under sections 2953.71 to 2953.81 of the Revised 1942
Code, the state will not offer the inmate offender a retest if an 1943

inclusion result is achieved relative to the testing and that, if 1944
the state were to offer a retest after an inclusion result, the 1945
policy would create an atmosphere in which endless testing could 1946
occur and in which postconviction proceedings could be stalled for 1947
many years; 1948

(7) That, if the court rejects an eligible ~~inmate's~~ 1949
offender's application for DNA testing because the ~~inmate~~ offender 1950
does not satisfy the acceptance criteria described in division 1951
(A)(4) of this section, the court will not accept or consider 1952
subsequent applications; 1953

(8) That the acknowledgment memorializes the provisions of 1954
sections 2953.71 to 2953.81 of the Revised Code with respect to 1955
the application of postconviction DNA testing to ~~inmates~~ 1956
offenders, that those provisions do not give any ~~inmate~~ offender 1957
any additional constitutional right that the ~~inmate~~ offender did 1958
not already have, that the court has no duty or obligation to 1959
provide postconviction DNA testing to ~~inmates~~ offenders, that the 1960
court of common pleas has the sole discretion subject to an appeal 1961
as described in this division to determine whether an ~~inmate~~ 1962
offender is an eligible ~~inmate~~ offender and whether an eligible 1963
~~inmate's~~ offender's application for DNA testing satisfies the 1964
acceptance criteria described in division (A)(4) of this section 1965
and whether the application should be accepted or rejected, that 1966
if the court of common pleas rejects an eligible ~~inmate's~~ 1967
offender's application, the ~~inmate~~ offender may seek leave of the 1968
supreme court to appeal the rejection to that court if the ~~inmate~~ 1969
offender was sentenced to death for the offense for which the 1970
~~inmate~~ offender is requesting the DNA testing and, if the ~~inmate~~ 1971
offender was not sentenced to death for that offense, may appeal 1972
the rejection to the court of appeals, and that no determination 1973
otherwise made by the court of common pleas in the exercise of its 1974
discretion regarding the eligibility of an ~~inmate~~ offender or 1975

regarding postconviction DNA testing under those provisions is 1976
reviewable by or appealable to any court; 1977

(9) That the manner in which sections 2953.71 to 2953.81 of 1978
the Revised Code with respect to the offering of postconviction 1979
DNA testing to ~~inmates~~ offenders are carried out does not confer 1980
any constitutional right upon any ~~inmate~~ offender, that the state 1981
has established guidelines and procedures relative to those 1982
provisions to ensure that they are carried out with both justice 1983
and efficiency in mind, and that an ~~inmate~~ offender who 1984
participates in any phase of the mechanism contained in those 1985
provisions, including, but not limited to, applying for DNA 1986
testing and being rejected, having an application for DNA testing 1987
accepted and not receiving the test, or having DNA testing 1988
conducted and receiving unfavorable results, does not gain as a 1989
result of the participation any constitutional right to challenge, 1990
or, except as provided in division (A)(8) of this section, any 1991
right to any review or appeal of, the manner in which those 1992
provisions are carried out; 1993

(10) That the most basic aspect of sections 2953.71 to 1994
2953.81 of the Revised Code is that, in order for DNA testing to 1995
occur, there must be an ~~inmate~~ offender sample against which other 1996
evidence may be compared, that, if an eligible ~~inmate's~~ offender's 1997
application is accepted but the ~~inmate~~ offender subsequently 1998
refuses to submit to the collection of the sample of biological 1999
material from the ~~inmate~~ offender or hinders the state from 2000
obtaining a sample of biological material from the ~~inmate~~ 2001
offender, the goal of those provisions will be frustrated, and 2002
that an ~~inmate's~~ offender's refusal or hindrance shall cause the 2003
court to rescind its prior acceptance of the application for DNA 2004
testing for the ~~inmate~~ offender and deny the application; 2005

~~(11) That, if the inmate is an inmate who pleaded guilty or 2006
no contest to a felony offense and who is using the application 2007~~

~~and acknowledgment to request DNA testing under section 2953.82 of the Revised Code, all references in the acknowledgment to an "eligible inmate" are considered to be references to, and apply to, the inmate and all references in the acknowledgment to "sections 2953.71 to 2953.81 of the Revised Code" are considered to be references to "section 2953.82 of the Revised Code."~~

(B) The attorney general shall prescribe a form to be used to make an application for DNA testing under division (A) of this section and section 2953.73 of the Revised Code and a form to be used to provide the acknowledgment described in division (A) of this section. The forms shall include all information described in division (A) of this section, spaces for an inmate offender to insert all information necessary to complete the forms, including, but not limited to, specifying the offense or offenses for which the inmate offender is an eligible inmate offender and is requesting the DNA testing ~~or for which the inmate is requesting the DNA testing under section 2953.82 of the Revised Code~~, and any other information or material the attorney general determines is necessary or relevant. ~~The forms also shall be used to make an application requesting DNA testing under section 2953.82 of the Revised Code, and the attorney general shall ensure that they are sufficient for that type of use, and that they include all information and spaces necessary for that type of use.~~ The attorney general shall distribute copies of the prescribed forms to the department of rehabilitation and correction, the department shall ensure that each prison in which inmates offenders are housed has a supply of copies of the forms, and the department shall ensure that copies of the forms are provided free of charge to any inmate offender who requests them.

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

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

(b) One of the following applies:

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

(ii) The offender was not sentenced to a prison term or sentence of death for the felony described in division (C)(1)(a) of this section, but was sentenced to a community control sanction for that felony and is under that community control sanction.

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

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

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

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

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

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

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

(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 2102
response to the application. If the prosecuting attorney or the 2103
attorney general files a response under this division, the 2104
prosecuting attorney or attorney general, whoever filed the 2105
response, shall serve a copy of the response on the eligible 2106
~~inmate~~ offender. 2107

(D) If an eligible ~~inmate~~ offender submits an application for 2108
DNA testing under division (A) of this section, the court shall 2109
make the determination as to whether the application should be 2110
accepted or rejected. The court shall expedite its review of the 2111
application. The court shall make the determination in accordance 2112
with the criteria and procedures set forth in sections 2953.74 to 2113
2953.81 of the Revised Code and, in making the determination, 2114
shall consider the application, the supporting affidavits, and the 2115
documentary evidence and, in addition to those materials, shall 2116
consider all the files and records pertaining to the proceedings 2117
against the applicant, including, but not limited to, the 2118
indictment, the court's journal entries, the journalized records 2119
of the clerk of the court, and the court reporter's transcript and 2120
all responses to the application filed under division (C) of this 2121
section by a prosecuting attorney or the attorney general, unless 2122
the application and the files and records show the applicant is 2123
not entitled to DNA testing, in which case the application may be 2124
denied. The court is not required to conduct an evidentiary 2125
hearing in conducting its review of, and in making its 2126
determination as to whether to accept or reject, the application. 2127
Upon making its determination, the court shall enter a judgment 2128
and order that either accepts or rejects the application and that 2129
includes within the judgment and order the reasons for the 2130
acceptance or rejection as applied to the criteria and procedures 2131
set forth in sections 2953.71 to 2953.81 of the Revised Code. The 2132
court shall send a copy of the judgment and order to the eligible 2133
~~inmate~~ offender who filed it, the prosecuting attorney, and the 2134

attorney general. 2135

(E) A judgment and order of a court entered under division 2136
(D) of this section is appealable only as provided in this 2137
division. If an eligible ~~inmate~~ offender submits an application 2138
for DNA testing under section 2953.73 of the Revised Code and the 2139
court of common pleas rejects the application under division (D) 2140
of this section, one of the following applies: 2141

(1) If the ~~inmate~~ offender was sentenced to death for the 2142
offense for which the ~~inmate~~ offender claims to be an eligible 2143
~~inmate~~ offender and is requesting DNA testing, the ~~inmate~~ offender 2144
may seek leave of the supreme court to appeal the rejection to the 2145
supreme court. Courts of appeals do not have jurisdiction to 2146
review any rejection if the ~~inmate~~ offender was sentenced to death 2147
for the offense for which the ~~inmate~~ offender claims to be an 2148
eligible ~~inmate~~ offender and is requesting DNA testing. 2149

(2) If the ~~inmate~~ offender was not sentenced to death for the 2150
offense for which the ~~inmate~~ offender claims to be an eligible 2151
~~inmate~~ offender and is requesting DNA testing, the rejection is a 2152
final appealable order, and the ~~inmate~~ offender may appeal it to 2153
the court of appeals of the district in which is located that 2154
court of common pleas. 2155

(F) Notwithstanding any provision of law regarding fees and 2156
costs, no filing fee shall be required of, and no court costs 2157
shall be assessed against, an eligible offender who is indigent 2158
and who submits an application under this section. 2159

(G) If a court rejects an eligible ~~inmate's~~ offender's 2160
application for DNA testing under division (D) of this section, 2161
unless the rejection is overturned on appeal, no court shall 2162
require the state to administer a DNA test under sections 2953.71 2163
to 2953.81 of the Revised Code on the eligible ~~inmate~~ offender. 2164

Sec. 2953.74. (A) If an eligible inmate offender submits an application for DNA testing under section 2953.73 of the Revised Code and a prior definitive DNA test has been conducted regarding the same biological evidence that the inmate offender seeks to have tested, the court shall reject the inmate's offender's application. If an eligible inmate offender files an application for DNA testing and a prior inconclusive DNA test has been conducted regarding the same biological evidence that the inmate offender seeks to have tested, the court shall review the application and has the discretion, on a case-by-case basis, to either accept or reject the application. The court may direct a testing authority to provide the court with information that the court may use in determining whether prior DNA test results were definitive or inconclusive and whether to accept or reject an application in relation to which there were prior inconclusive DNA test results.

(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:

(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.

(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.

(C) 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 all of the following apply:

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

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

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

(b) The parent sample of the biological material so collected is not so minute or fragile as to risk destruction of the parent

sample by the extraction described in division (C)(2)(a) of this 2228
section; provided that the court may determine in its discretion, 2229
on a case-by-case basis, that, even if the parent sample of the 2230
biological material so collected is so minute or fragile as to 2231
risk destruction of the parent sample by the extraction, the 2232
application should not be rejected solely on the basis of that 2233
risk. 2234

(c) The parent sample of the biological material so collected 2235
has not degraded or been contaminated to the extent that it has 2236
become scientifically unsuitable for testing, and the parent 2237
sample otherwise has been preserved, and remains, in a condition 2238
that is scientifically suitable for testing. 2239

(3) The court determines that, at the trial stage in the case 2240
in which the ~~inmate~~ offender was convicted of the offense for 2241
which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 2242
requesting the DNA testing, the identity of the person who 2243
committed the offense was an issue. 2244

(4) The court determines that one or more of the defense 2245
theories asserted by the ~~inmate~~ offender at the trial stage in the 2246
case described in division (C)(3) of this section or in a retrial 2247
of that case in a court of this state was of such a nature that, 2248
if DNA testing is conducted and an exclusion result is obtained, 2249
the exclusion result will be outcome determinative. 2250

(5) The court determines that, if DNA testing is conducted 2251
and an exclusion result is obtained, the results of the testing 2252
will be outcome determinative regarding that ~~inmate~~ offender. 2253

(6) The court determines pursuant to section 2953.76 of the 2254
Revised Code from the chain of custody of the parent sample of the 2255
biological material to be tested and of any test sample extracted 2256
from the parent sample, and from the totality of circumstances 2257
involved, that the parent sample and the extracted test sample are 2258

the same sample as collected and that there is no reason to 2259
believe that they have been out of state custody or have been 2260
tampered with or contaminated since they were collected. 2261

(D) If an eligible ~~inmate~~ offender submits an application for 2262
DNA testing under section 2953.73 of the Revised Code, the court, 2263
in determining whether the "outcome determinative" criterion 2264
described in divisions (B)(1) and (2) of this section has been 2265
satisfied, shall consider all available admissible evidence 2266
related to the subject ~~inmate's~~ offender's case. 2267

(E) If an eligible ~~inmate~~ offender submits an application for 2268
DNA testing under section 2953.73 of the Revised Code and the 2269
court accepts the application, the eligible ~~inmate~~ offender may 2270
request the court to order, or the court on its own initiative may 2271
order, the bureau of criminal identification and investigation to 2272
compare the results of DNA testing of biological material from an 2273
unidentified person other than the ~~inmate~~ offender that was 2274
obtained from the crime scene or from a victim of the offense for 2275
which the ~~inmate~~ offender has been approved for DNA testing to the 2276
combined DNA index system maintained by the federal bureau of 2277
investigation. 2278

If the bureau, upon comparing the test results to the 2279
combined DNA index system, determines the identity of the person 2280
who is the contributor of the biological material, the bureau 2281
shall provide that information to the court that accepted the 2282
application, the ~~inmate~~ offender, and the prosecuting attorney. 2283
The ~~inmate~~ offender or the state may use the information for any 2284
lawful purpose. 2285

If the bureau, upon comparing the test results to the 2286
combined DNA index system, is unable to determine the identity of 2287
the person who is the contributor of the biological material, the 2288
bureau may compare the test results to other previously obtained 2289
and acceptable DNA test results of any person whose identity is 2290

known other than the eligible ~~inmate~~ offender. If the bureau, upon 2291
comparing the test results to the DNA test results of any person 2292
whose identity is known, determines that the person whose identity 2293
is known is the contributor of the biological material, the bureau 2294
shall provide that information to the court that accepted the 2295
application, the ~~inmate~~ offender, and the prosecuting attorney. 2296
The ~~inmate~~ offender or the state may use the information for any 2297
lawful purpose. 2298

Sec. 2953.75. (A) If an eligible ~~inmate~~ offender submits an 2299
application for DNA testing under section 2953.73 of the Revised 2300
Code, the court shall require the prosecuting attorney to use 2301
reasonable diligence to determine whether biological material was 2302
collected from the crime scene or victim of the offense for which 2303
the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 2304
requesting the DNA testing against which a sample from the ~~inmate~~ 2305
offender can be compared and whether the parent sample of that 2306
biological material still exists at that point in time. In using 2307
reasonable diligence to make those determinations, the prosecuting 2308
attorney shall rely upon all relevant sources, including, but not 2309
limited to, all of the following: 2310

(1) All prosecuting authorities in the case in which the 2311
~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ 2312
offender is an eligible ~~inmate~~ offender and is requesting the DNA 2313
testing and in the appeals of, and postconviction proceedings 2314
related to, that case; 2315

(2) All law enforcement authorities involved in the 2316
investigation of the offense for which the ~~inmate~~ offender is an 2317
eligible offender and is requesting the DNA testing; 2318

(3) All custodial agencies involved at any time with the 2319
biological material in question; 2320

(4) The custodian of all custodial agencies described in 2321

division (A)(3) of this section; 2322

(5) All crime laboratories involved at any time with the 2323
biological material in question; 2324

(6) All other reasonable sources. 2325

(B) The prosecuting attorney shall prepare a report that 2326
contains the prosecuting attorney's determinations made under 2327
division (A) of this section and shall file a copy of the report 2328
with the court and provide a copy to the eligible ~~inmate~~ offender 2329
and the attorney general. 2330

Sec. 2953.76. If an eligible ~~inmate~~ offender submits an 2331
application for DNA testing under section 2953.73 of the Revised 2332
Code, the court shall require the prosecuting attorney to consult 2333
with the testing authority and to prepare findings regarding the 2334
quantity and quality of the parent sample of the biological 2335
material collected from the crime scene or victim of the offense 2336
for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and 2337
is requesting the DNA testing and that is to be tested, and of the 2338
chain of custody and reliability regarding that parent sample, as 2339
follows: 2340

(A) The testing authority shall determine whether there is a 2341
scientifically sufficient quantity of the parent sample to test 2342
and whether the parent sample is so minute or fragile that there 2343
is a substantial risk that the parent sample could be destroyed in 2344
testing. The testing authority may determine that there is not a 2345
sufficient quantity to test in order to preserve the state's 2346
ability to present in the future the original evidence presented 2347
at trial, if another trial is required. Upon making its 2348
determination under this division, the testing authority shall 2349
prepare a written document that contains its determination and the 2350
reasoning and rationale for that determination and shall provide a 2351
copy to the court, the eligible ~~inmate~~ offender, the prosecuting 2352

attorney, and the attorney general. The court may determine in its discretion, on a case-by-case basis, that, even if the parent sample of the biological material so collected is so minute or fragile as to risk destruction of the parent sample by the extraction, the application should not be rejected solely on the basis of that risk.

(B) The testing authority shall determine whether the parent sample has degraded or been contaminated to the extent that it has become scientifically unsuitable for testing and whether the parent sample otherwise has been preserved, and remains, in a condition that is suitable for testing. Upon making its determination under this division, the testing authority shall prepare a written document that contains its determination and the reasoning and rationale for that determination and shall provide a copy to the court, the eligible ~~inmate~~ offender, the prosecuting attorney, and the attorney general.

(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 2384
are satisfied to ensure that the parent sample of the biological 2385
material collected from the crime scene or the victim of the 2386
offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ 2387
offender and requested the DNA testing, and the test sample of the 2388
parent sample that is extracted and actually is to be tested, are 2389
not contaminated during transport or the testing process: 2390

(1) The court shall require that the chain of custody be 2391
maintained and documented relative to the parent sample and the 2392
test sample actually to be tested between the time they are 2393
removed from their place of storage or the time of their 2394
extraction to the time at which the DNA testing will be performed. 2395

(2) The court, the testing authority, and the law enforcement 2396
and prosecutorial personnel involved in the process, or any 2397
combination of those entities and persons, shall coordinate the 2398
transport of the parent sample and the test sample actually to be 2399
tested between their place of storage and the place where the DNA 2400
testing will be performed, and the court and testing authority 2401
shall document the transport procedures so used. 2402

(3) The testing authority shall determine and document the 2403
custodian of the parent sample and the test sample actually to be 2404
tested after they are in the possession of the testing authority. 2405

(4) The testing authority shall maintain and preserve the 2406
parent sample and the test sample actually to be tested after they 2407
are in the possession of the testing authority and shall document 2408
the maintenance and preservation procedures used. 2409

(5) After the DNA testing, the court, the testing authority, 2410
and the original custodial agency of the parent sample, or any 2411
combination of those entities, shall coordinate the return of the 2412
remaining parent sample back to its place of storage with the 2413
original custodial agency or to any other place determined in 2414

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 2446
authorities that may be selected and used to conduct DNA testing, 2447
shall prepare a list of the approved or designated testing 2448
authorities, and shall provide copies of the list to all courts of 2449
common pleas. The attorney general shall update the list as 2450
appropriate to reflect changes in the approved or designated 2451
testing authorities and shall provide copies of the updated list 2452
to all courts of common pleas. The attorney general shall not 2453
approve or designate a testing authority under this division 2454
unless the testing authority satisfies the criteria set forth in 2455
section 2953.80 of the Revised Code. A testing authority that is 2456
equipped to handle advanced DNA testing may be approved or 2457
designated under this division, provided it satisfies the criteria 2458
set forth in that section. 2459

(D) The attorney general's approval or designation of testing 2460
authorities under division (C) of this section, and the selection 2461
and use of any approved or designated testing authority, do not 2462
afford an inmate offender any right to subsequently challenge the 2463
approval, designation, selection, or use, and an inmate offender 2464
may not appeal to any court the approval, designation, selection, 2465
or use of a testing authority. 2466

Sec. 2953.79. (A) If an eligible inmate offender submits an 2467
application for DNA testing under section 2953.73 of the Revised 2468
Code and if the application is accepted and DNA testing is to be 2469
performed, a sample of biological material shall be obtained from 2470
the inmate offender in accordance with this section, to be 2471
compared with the parent sample of biological material collected 2472
from the crime scene or the victim of the offense for which the 2473
inmate offender is an eligible inmate offender and requested the 2474
DNA testing. The inmate's offender's filing of the application 2475
constitutes the inmate's offender's consent to the obtaining of 2476
the sample of biological material from the inmate offender. The 2477

testing authority shall obtain the sample of biological material 2478
from the inmate offender in accordance with medically accepted 2479
procedures. 2480

(B) If DNA testing is to be performed for an inmate offender 2481
as described in division (A) of this section, the court shall 2482
require the state to coordinate with the department of 2483
rehabilitation and correction or the other state agency or entity 2484
of local government with custody of the offender, whichever is 2485
applicable, as to the time and place at which the sample of 2486
biological material will be obtained from the inmate offender. The 2487
If the offender is in prison or is in custody in another facility 2488
at the time the DNA testing is to be performed, the sample of 2489
biological material shall be obtained from the inmate offender at 2490
the facility in which the inmate offender is housed, and the 2491
department of rehabilitation and correction or the other state 2492
agency or entity of local government with custody of the offender, 2493
whichever is applicable, shall make the inmate offender available 2494
at the specified time. The court shall require the state to 2495
provide notice to the inmate offender and to the inmate's 2496
offender's counsel of the date on which, and the time and place at 2497
which, the sample will be so obtained. 2498

The court also shall require the state to coordinate with the 2499
testing authority regarding the obtaining of the sample from the 2500
inmate offender. 2501

(C)(1) If DNA testing is to be performed for an inmate 2502
offender as described in division (A) of this section, and the 2503
inmate offender refuses to submit to the collection of the sample 2504
of biological material from the inmate offender or hinders the 2505
state from obtaining a sample of biological material from the 2506
inmate offender, the court shall rescind its prior acceptance of 2507
the application for DNA testing for the inmate offender and deny 2508

the application. 2509

(2) For purposes of division (C)(1) of this section: 2510

(a) An ~~inmate's~~ offender's "refusal to submit to the 2511
collection of a sample of biological material from the ~~inmate~~ 2512
offender" includes, but is not limited to, the ~~inmate's~~ offender's 2513
rejection of the physical manner in which a sample of the ~~inmate's~~ 2514
offender's biological material is to be taken. 2515

(b) An ~~inmate's~~ offender's "hindrance of the state in 2516
obtaining a sample of biological material from the ~~inmate~~ 2517
offender" includes, but is not limited to, the ~~inmate~~ offender 2518
being physically or verbally uncooperative or antagonistic in the 2519
taking of a sample of the ~~inmate's~~ offender's biological material. 2520

(D) The extracting personnel shall make the determination as 2521
to whether an eligible ~~inmate~~ offender for whom DNA testing is to 2522
be performed is refusing to submit to the collection of a sample 2523
of biological material from the ~~inmate~~ offender or is hindering 2524
the state from obtaining a sample of biological material from the 2525
~~inmate~~ offender at the time and date of the scheduled collection 2526
of the sample. If the extracting personnel determine that an 2527
~~inmate~~ offender is refusing to submit to the collection of a 2528
sample or is hindering the state from obtaining a sample, the 2529
extracting personnel shall document in writing the conditions that 2530
constitute the refusal or hindrance, maintain the documentation, 2531
and notify the court of the ~~inmate's~~ offender's refusal or 2532
hindrance. 2533

Sec. 2953.81. If an eligible offender submits an application 2534
for DNA testing under section 2953.73 of the Revised Code and if 2535
DNA testing is performed based on that application, upon 2536
completion of the testing, all of the following apply: 2537

(A) The court or a designee of the court shall require the 2538

state to maintain the results of the testing and to maintain and 2539
preserve both the parent sample of the biological material used 2540
and the ~~inmate~~ offender sample of the biological material used. 2541
The testing authority may be designated as the person to maintain 2542
the results of the testing or to maintain and preserve some or all 2543
of the samples, or both. The results of the testing remain state's 2544
evidence. The samples shall be preserved during the entire period 2545
of time for which the ~~inmate~~ offender is imprisoned or confined 2546
relative to the ~~prison term or sentence of death~~ in question ~~and,~~ 2547
~~if that prison term expires or the inmate is executed under that~~ 2548
~~sentence of death,~~ is on parole or probation relative to that 2549
sentence, is under post-release control or a community control 2550
sanction relative to that sentence, or has a duty to comply with 2551
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 2552
Code relative to that sentence. Additionally, if the prison term 2553
or confinement under the sentence in question expires, if the 2554
sentence in question is a sentence of death and the offender is 2555
executed, or if the parole or probation period, the period of 2556
post-release control, the community control sanction, or the duty 2557
to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of 2558
the Revised Code under the sentence in question ends, the samples 2559
shall be preserved for a reasonable period of time of not less 2560
than twenty-four months after the term or confinement expires ~~or,~~ 2561
the ~~inmate~~ offender is executed, or the parole or probation 2562
period, the period of post-release control, the community control 2563
sanction, or the duty to comply with sections 2950.04, 2950.041, 2564
2950.05, and 2950.06 of the Revised Code ends, whichever is 2565
applicable. The court shall determine the period of time that is 2566
reasonable for purposes of this division, provided that the period 2567
shall not be less than twenty-four months after the term or 2568
confinement expires ~~or,~~ the inmate offender is executed, or the 2569
parole or probation period, the period of post-release control, 2570
the community control sanction, or the duty to comply with 2571

sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code ends, whichever is applicable. 2572
2573

(B) The results of the testing are a public record. 2574

(C) The court or the testing authority shall provide a copy 2575
of the results of the testing to the prosecuting attorney, the 2576
attorney general, and the subject ~~inmate~~ offender. 2577

(D) If the postconviction proceeding in question is pending 2578
at that time in a court of this state, the court of common pleas 2579
that decided the DNA application or the testing authority shall 2580
provide a copy of the results of the testing to any court of this 2581
state, and, if it is pending in a federal court, the court of 2582
common pleas that decided the DNA application or the testing 2583
authority shall provide a copy of the results of the testing to 2584
that federal court. 2585

(E) The testing authority shall provide a copy of the results 2586
of the testing to the court of common pleas that decided the DNA 2587
application. 2588

(F) The ~~inmate~~ offender or the state may enter the results of 2589
the testing into any proceeding. 2590

Sec. 2953.83. In any court proceeding under sections 2953.71 2591
to ~~2953.82~~ 2953.81 of the Revised Code, the Rules of Criminal 2592
Procedure apply, except to the extent that sections 2953.71 to 2593
~~2953.82~~ 2953.81 of the Revised Code provide a different procedure 2594
or to the extent that the Rules would by their nature be clearly 2595
inapplicable. 2596

Sec. 2953.84. The provisions of sections 2953.71 to ~~2953.82~~ 2597
2953.81 of the Revised Code by which an ~~inmate~~ offender may obtain 2598
postconviction DNA testing are not the exclusive means by which an 2599
~~inmate~~ offender may obtain postconviction DNA testing, and the 2600
provisions of those sections do not limit or affect any other 2601

means by which an ~~inmate~~ offender may obtain postconviction DNA 2602
testing. 2603

Section 2. That existing sections 109.573, 2901.07, 2953.21, 2604
2953.23, 2953.31, 2953.32, 2953.321, 2953.35, 2953.51, 2953.54, 2605
2953.55, 2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2606
2953.77, 2953.78, 2953.79, 2953.81, 2953.83, and 2953.84 and 2607
section 2953.82 of the Revised Code are hereby repealed. 2608

Section 3. (A) The General Assembly hereby requests the 2609
Attorney General to adopt rules pursuant to Chapter 119. of the 2610
Revised Code prescribing specific procedures to be followed for 2611
the administration by law enforcement agencies and criminal 2612
justice entities in this state of photo lineups, live lineups, and 2613
showups. The General Assembly also requests that any rules adopted 2614
by the Attorney General be consistent with the requirements of 2615
divisions (B) and (C) of section 2933.83 of the Revised Code. If 2616
the Attorney General adopts rules of the type described in this 2617
division, on and after the date on which the rules take effect, 2618
law enforcement agencies and criminal justice entities in this 2619
state shall comply with the rules in conducting live lineups, 2620
photo lineups, and showups. 2621

(B) The General Assembly hereby requests the Ohio Judicial 2622
Conference to review existing jury instructions regarding 2623
eyewitness identification for compliance with this act. 2624