

As Passed by the Senate

128th General Assembly

Regular Session

2009-2010

Am. 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**

—

A B I L L

To amend sections 109.573, 2901.07, 2953.21, 2953.23, 1
2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2
2953.76, 2953.77, 2953.78, 2953.79, 2953.81, 3
2953.83, and 2953.84, to enact sections 109.561, 4
2933.81, 2933.82, 2933.83, 2953.56, 2953.57, 5
2953.58, and 2953.59, and to repeal section 6
2953.82 of the Revised Code relative to the 7
expansion of DNA testing for certain convicted 8
felons, the elimination of the DNA testing 9
mechanism for felons who pleaded guilty or no 10
contest to the offense, the collection of DNA 11
specimens from all persons eighteen years of age 12
or older who are arrested for a felony offense, 13
the sealing of the official records of persons who 14
have their convictions vacated and set aside due 15
to DNA testing, the preservation and accessibility 16
of biological evidence in a criminal or 17
delinquency investigation or proceeding, the 18
improvement of eyewitness identification 19
procedures, and the electronic recording of 20

custodial interrogations. 21

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

Section 1. That sections 109.573, 2901.07, 2953.21, 2953.23, 22
2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2953.77, 23
2953.78, 2953.79, 2953.81, 2953.83, and 2953.84 be amended and 24
sections 109.561, 2933.81, 2933.82, 2933.83, 2953.56, 2953.57, 25
2953.58, and 2953.59 of the Revised Code be enacted to read as 26
follows: 27

Sec. 109.561. There is hereby established within the bureau 28
of criminal identification and investigation a preservation of 29
biological evidence task force. The task force shall consist of 30
officers and employees of the bureau, a representative from the 31
Ohio prosecutors association, a representative from the Ohio state 32
coroners association, a representative from the Ohio association 33
of chiefs of police, a representative from the Ohio public 34
defenders office, in consultation with the Ohio innocence project, 35
and a representative from the buckeye state sheriffs association. 36
The task force shall perform the duties and functions specified in 37
division (C) of section 2933.82 of the Revised Code. 38

Sec. 109.573. (A) As used in this section: 40

(1) "DNA" means human deoxyribonucleic acid. 41

(2) "DNA analysis" means a laboratory analysis of a DNA 42
specimen to identify DNA characteristics and to create a DNA 43
record. 44

(3) "DNA database" means a collection of DNA records from 45
forensic casework or from crime scenes, specimens from anonymous 46
and unidentified sources, and records collected pursuant to 47

sections 2152.74 and 2901.07 of the Revised Code and a population 48
statistics database for determining the frequency of occurrence of 49
characteristics in DNA records. 50

(4) "DNA record" means the objective result of a DNA analysis 51
of a DNA specimen, including representations of DNA fragment 52
lengths, digital images of autoradiographs, discrete allele 53
assignment numbers, and other DNA specimen characteristics that 54
aid in establishing the identity of an individual. 55

(5) "DNA specimen" includes human blood cells or 56
physiological tissues or body fluids. 57

(6) "Unidentified person database" means a collection of DNA 58
records, and, on and after May 21, 1998, of fingerprint and 59
photograph records, of unidentified human corpses, human remains, 60
or living individuals. 61

(7) "Relatives of missing persons database" means a 62
collection of DNA records of persons related by consanguinity to a 63
missing person. 64

(8) "Law enforcement agency" means a police department, the 65
office of a sheriff, the state highway patrol, a county 66
prosecuting attorney, or a federal, state, or local governmental 67
body that enforces criminal laws and that has employees who have a 68
statutory power of arrest. 69

(9) "Administration of criminal justice" means the 70
performance of detection, apprehension, detention, pretrial 71
release, post-trial release, prosecution, adjudication, 72
correctional supervision, or rehabilitation of accused persons or 73
criminal offenders. "Administration of criminal justice" also 74
includes criminal identification activities and the collection, 75
storage, and dissemination of criminal history record information. 76

(B)(1) The superintendent of the bureau of criminal 77
identification and investigation may do all of the following: 78

(a) Establish and maintain a state DNA laboratory to perform DNA analyses of DNA specimens;	79 80
(b) Establish and maintain a DNA database;	81
(c) Establish and maintain an unidentified person database to aid in the establishment of the identity of unknown human corpses, human remains, or living individuals;	82 83 84
(d) Establish and maintain a relatives of missing persons database for comparison with the unidentified person database to aid in the establishment of the identity of unknown human corpses, human remains, and living individuals.	85 86 87 88
(2) If the bureau of criminal identification and investigation establishes and maintains a DNA laboratory and a DNA database, the bureau may use or disclose information regarding DNA records for the following purposes:	89 90 91 92
(a) The bureau may disclose information to a law enforcement agency for the administration of criminal justice.	93 94
(b) The bureau shall disclose pursuant to a court order issued under section 3111.09 of the Revised Code any information necessary to determine the existence of a parent and child relationship in an action brought under sections 3111.01 to 3111.18 of the Revised Code.	95 96 97 98 99
(c) The bureau may use or disclose information from the population statistics database, for identification research and protocol development, or for quality control purposes.	100 101 102
(3) If the bureau of criminal identification and investigation establishes and maintains a relatives of missing persons database, all of the following apply:	103 104 105
(a) If a person has disappeared and has been continuously absent from the person's place of last domicile for a thirty-day or longer period of time without being heard from during the	106 107 108

period, persons related by consanguinity to the missing person may 109
submit to the bureau a DNA specimen, the bureau may include the 110
DNA record of the specimen in the relatives of missing persons 111
database, and, if the bureau does not include the DNA record of 112
the specimen in the relatives of missing persons database, the 113
bureau shall retain the DNA record for future reference and 114
inclusion as appropriate in that database. 115

(b) The bureau shall not charge a fee for the submission of a 116
DNA specimen pursuant to division (B)(3)(a) of this section. 117

(c) If the DNA specimen submitted pursuant to division 118
(B)(3)(a) of this section is collected by withdrawing blood from 119
the person or a similarly invasive procedure, a physician, 120
registered nurse, licensed practical nurse, duly licensed clinical 121
laboratory technician, or other qualified medical practitioner 122
shall conduct the collection procedure for the DNA specimen 123
submitted pursuant to division (B)(3)(a) of this section and shall 124
collect the DNA specimen in a medically approved manner. If the 125
DNA specimen is collected by swabbing for buccal cells or a 126
similarly noninvasive procedure, division (B)(3)(c) of this 127
section does not require that the DNA specimen be collected by a 128
qualified medical practitioner of that nature. No later than 129
fifteen days after the date of the collection of the DNA specimen, 130
the person conducting the DNA specimen collection procedure shall 131
cause the DNA specimen to be forwarded to the bureau of criminal 132
identification and investigation in accordance with procedures 133
established by the superintendent of the bureau under division (H) 134
of this section. The bureau may provide the specimen vials, 135
mailing tubes, labels, postage, and instruction needed for the 136
collection and forwarding of the DNA specimen to the bureau. 137

(d) The superintendent, in the superintendent's discretion, 138
may compare DNA records in the relatives of missing persons 139
database with the DNA records in the unidentified person database. 140

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

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

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

(D) When a DNA record is derived from a DNA specimen provided pursuant to section 2152.74 or 2901.07 of the Revised Code, the bureau of criminal identification and investigation shall attach to the DNA record personal identification information that identifies the person from whom the DNA specimen was taken. The personal identification information may include the subject person's fingerprints and any other information the bureau determines necessary. The DNA record and personal identification

information attached to it shall be used only for the purpose of 173
personal identification or for a purpose specified in this 174
section. 175

(E) DNA records, DNA specimens, fingerprints, and photographs 176
that the bureau of criminal identification and investigation 177
receives pursuant to this section and sections 313.08, 2152.74, 178
and 2901.07 of the Revised Code and personal identification 179
information attached to a DNA record are not public records under 180
section 149.43 of the Revised Code. 181

(F) The bureau of criminal identification and investigation 182
may charge a reasonable fee for providing information pursuant to 183
this section to any law enforcement agency located in another 184
state. 185

(G)(1) No person who because of the person's employment or 186
official position has access to a DNA specimen, a DNA record, or 187
other information contained in the DNA database that identifies an 188
individual shall knowingly disclose that specimen, record, or 189
information to any person or agency not entitled to receive it or 190
otherwise shall misuse that specimen, record, or information. 191

(2) No person without authorization or privilege to obtain 192
information contained in the DNA database that identifies an 193
individual person shall purposely obtain that information. 194

(H) The superintendent of the bureau of criminal 195
identification and investigation shall establish procedures for 196
all of the following: 197

(1) The forwarding to the bureau of DNA specimens collected 198
pursuant to division (H) of this section and sections 313.08, 199
2152.74, and 2901.07 of the Revised Code and of fingerprints and 200
photographs collected pursuant to section 313.08 of the Revised 201
Code; 202

(2) The collection, maintenance, preservation, and analysis 203

of DNA specimens;	204
(3) The creation, maintenance, and operation of the DNA database;	205 206
(4) The use and dissemination of information from the DNA database;	207 208
(5) The creation, maintenance, and operation of the unidentified person database;	209 210
(6) The use and dissemination of information from the unidentified person database;	211 212
(7) The creation, maintenance, and operation of the relatives of missing persons database;	213 214
(8) The use and dissemination of information from the relatives of missing persons database;	215 216
(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;	217 218 219
(10) The operation of the bureau and responsibilities of employees of the bureau with respect to the activities described in this section.	220 221 222
(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.	223 224 225 226 227 228 229
<u>(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.</u>	230 231 232 233

Sec. 2901.07. (A) As used in this section:	234
(1) "DNA analysis" and "DNA specimen" have the same meanings as in section 109.573 of the Revised Code.	235 236
(2) "Jail" and "community-based correctional facility" have the same meanings as in section 2929.01 of the Revised Code.	237 238
(3) "Post-release control" has the same meaning as in section 2967.01 of the Revised Code.	239 240
<u>(4) "Head of the arresting law enforcement agency" means whichever of the following is applicable regarding the arrest in question:</u>	241 242 243
<u>(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;</u>	244 245 246
<u>(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 agency that employs the officer who made the arrest;</u>	247 248 249 250
<u>(c) If the arrest was made by a constable or a law enforcement officer of a township police department or police district police force, the constable who made the arrest or the chief law enforcement officer of the department or agency that employs the officer who made the arrest;</u>	251 252 253 254 255
<u>(d) If the arrest was made by the superintendent or a trooper of the state highway patrol, the superintendent of the state highway patrol;</u>	256 257 258
<u>(e) If the arrest was made by a law enforcement officer not identified in division (A)(4)(a), (b), (c), or (d) of this section, the chief law enforcement officer of the law enforcement agency that employs the officer who made the arrest.</u>	259 260 261 262

(B)(1) On and after July 1, 2011, a person who is eighteen 263
years of age or older and who is arrested on or after July 1 2011, 264
for a felony offense shall submit to a DNA specimen collection 265
procedure administered by the head of the arresting law 266
enforcement agency. The head of the arresting law enforcement 267
agency shall cause the DNA specimen to be collected from the 268
person during the intake process at the jail, community-based 269
correctional facility, detention facility, or law enforcement 270
agency office or station to which the arrested person is taken 271
after the arrest. The head of the arresting law enforcement agency 272
shall cause the DNA specimen to be collected in accordance with 273
division (C) of this section. 274

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

serves the community residential sanction or term of imprisonment 296
in a jail, a community-based correctional facility, or another 297
county, multicounty, municipal, municipal-county, or 298
multicounty-municipal detention facility, the chief administrative 299
officer of the jail, community-based correctional facility, or 300
detention facility shall cause the DNA specimen to be collected 301
from the person during the intake process at the jail, 302
community-based correctional facility, or detention facility. The 303
DNA specimen shall be collected in accordance with division (C) of 304
this section. 305

~~(2)~~(3) Regardless of when the conviction occurred or the 306
guilty plea was entered, if a person has been convicted of, is 307
convicted of, has pleaded guilty to, or pleads guilty to a felony 308
offense or a misdemeanor offense listed in division (D) of this 309
section, is serving a prison term, community residential sanction, 310
or term of imprisonment for that offense, and does not provide a 311
DNA specimen pursuant to division (B)(1) or (2) of this section, 312
prior to the person's release from the prison term, community 313
residential sanction, or imprisonment, the person shall submit to, 314
and the director of rehabilitation and correction or the chief 315
administrative officer of the jail, community-based correctional 316
facility, or detention facility in which the person is serving the 317
prison term, community residential sanction, or term of 318
imprisonment shall administer, a DNA specimen collection procedure 319
at the state correctional institution, jail, community-based 320
correctional facility, or detention facility in which the person 321
is serving the prison term, community residential sanction, or 322
term of imprisonment. The DNA specimen shall be collected in 323
accordance with division (C) of this section. 324

~~(3)~~(4)(a) Regardless of when the conviction occurred or the 325
guilty plea was entered, if a person has been convicted of, is 326
convicted of, has pleaded guilty to, or pleads guilty to a felony 327

offense or a misdemeanor offense listed in division (D) of this 328
section and the person is on probation, released on parole, under 329
transitional control, on community control, on post-release 330
control, or under any other type of supervised release under the 331
supervision of a probation department or the adult parole 332
authority for that offense, and did not provide a DNA specimen 333
pursuant to division (B)(1), (2), or (3) of this section, the 334
person shall submit to a DNA specimen collection procedure 335
administered by the chief administrative officer of the probation 336
department or the adult parole authority. The DNA specimen shall 337
be collected in accordance with division (C) of this section. If 338
the person refuses to submit to a DNA specimen collection 339
procedure as provided in this division, the person may be subject 340
to the provisions of section 2967.15 of the Revised Code. 341

(b) If a person to whom division (B)~~(3)~~(4)(a) of this section 342
applies is sent to jail or is returned to a jail, community-based 343
correctional facility, or state correctional institution for a 344
violation of the terms and conditions of the probation, parole, 345
transitional control, other release, or post-release control, if 346
the person was or will be serving a term of imprisonment, prison 347
term, or community residential sanction for committing a felony 348
offense or for committing a misdemeanor offense listed in division 349
(D) of this section, and if the person did not provide a DNA 350
specimen pursuant to division (B)(1), (2), (3), or ~~(3)~~(4)(a) of 351
this section, the person shall submit to, and the director of 352
rehabilitation and correction or the chief administrative officer 353
of the jail or community-based correctional facility shall 354
administer, a DNA specimen collection procedure at the jail, 355
community-based correctional facility, or state correctional 356
institution in which the person is serving the term of 357
imprisonment, prison term, or community residential sanction. The 358
DNA specimen shall be collected from the person in accordance with 359
division (C) of this section. 360

~~(4)~~(5) Regardless of when the conviction occurred or the 361
guilty plea was entered, if a person has been convicted of, is 362
convicted of, has pleaded guilty to, or pleads guilty to a felony 363
offense or a misdemeanor offense listed in division (D) of this 364
section, the person is not sentenced to a prison term, a community 365
residential sanction in a jail or community-based correctional 366
facility, a term of imprisonment, or any type of supervised 367
release under the supervision of a probation department or the 368
adult parole authority, and the person does not provide a DNA 369
specimen pursuant to division (B)(1), (2), (3), (4)(a), or 370
~~(3)~~(4)(b) of this section, the sentencing court shall order the 371
person to report to the county probation department immediately 372
after sentencing to submit to a DNA specimen collection procedure 373
administered by the chief administrative officer of the county 374
probation office. If the person is incarcerated at the time of 375
sentencing, the person shall submit to a DNA specimen collection 376
procedure administered by the director of rehabilitation and 377
correction or the chief administrative officer of the jail or 378
other detention facility in which the person is incarcerated. The 379
DNA specimen shall be collected in accordance with division (C) of 380
this section. 381

(C) If the DNA specimen is collected by withdrawing blood 382
from the person or a similarly invasive procedure, a physician, 383
registered nurse, licensed practical nurse, duly licensed clinical 384
laboratory technician, or other qualified medical practitioner 385
shall collect in a medically approved manner the DNA specimen 386
required to be collected pursuant to division (B) of this section. 387
If the DNA specimen is collected by swabbing for buccal cells or a 388
similarly noninvasive procedure, this section does not require 389
that the DNA specimen be collected by a qualified medical 390
practitioner of that nature. No later than fifteen days after the 391
date of the collection of the DNA specimen, the head of the 392
arresting law enforcement agency regarding a DNA specimen taken 393

pursuant to division (B)(1) of this section, the director of 394
rehabilitation and correction or the chief administrative officer 395
of the jail, community-based correctional facility, or other 396
county, multicounty, municipal, municipal-county, or 397
multicounty-municipal detention facility, in which the person is 398
serving the prison term, community residential sanction, or term 399
of imprisonment regarding a DNA specimen taken pursuant to 400
division (B)(2), (3), or (4)(b) of this section, the chief 401
administrative officer of the probation department or the adult 402
parole authority regarding a DNA specimen taken pursuant to 403
division (B)(4)(a) of this section, or the chief administrative 404
officer of the county probation office, the director of 405
rehabilitation and correction, or the chief administrative officer 406
of the jail or other detention facility in which the person is 407
incarcerated regarding a DNA specimen taken pursuant to division 408
(B)(5) of this section, whichever is applicable, shall cause the 409
DNA specimen to be forwarded to the bureau of criminal 410
identification and investigation in accordance with procedures 411
established by the superintendent of the bureau under division (H) 412
of section 109.573 of the Revised Code. The bureau shall provide 413
the specimen vials, mailing tubes, labels, postage, and 414
instructions needed for the collection and forwarding of the DNA 415
specimen to the bureau. 416

(D) ~~The director of rehabilitation and correction, the chief~~ 417
~~administrative officer of the jail, community-based correctional~~ 418
~~facility, or other county, multicounty, municipal,~~ 419
~~municipal-county, or multicounty municipal detention facility, or~~ 420
~~the chief administrative officer of a county probation department~~ 421
~~or the adult parole authority shall cause a DNA specimen to be~~ 422
~~collected in accordance with divisions (B) and (C) of this section~~ 423
~~from a person in its custody or under its supervision DNA specimen~~ 424
~~collection duty set forth in division (B)(1) of this section~~ 425
~~applies to any person who is eighteen years of age or older and~~ 426

who is arrested on or after July 1, 2011, for any felony offense. 427
The DNA specimen collection duties set forth in divisions (B)(2), 428
(3), (4)(a), (4)(b), and (5) of this section apply to any person 429
who has been convicted of, is convicted of, has pleaded guilty to, 430
or pleads guilty to any felony offense or any of the following 431
misdemeanor offenses: 432

(1) A misdemeanor violation, an attempt to commit a 433
misdemeanor violation, or complicity in committing a misdemeanor 434
violation of section 2907.04 of the Revised Code; 435

(2) A misdemeanor violation of any law that arose out of the 436
same facts and circumstances and same act as did a charge against 437
the person of a violation of section 2903.01, 2903.02, 2905.01, 438
2907.02, 2907.03, 2907.04, 2907.05, or 2911.11 of the Revised Code 439
that previously was dismissed or amended or as did a charge 440
against the person of a violation of section 2907.12 of the 441
Revised Code as it existed prior to September 3, 1996, that 442
previously was dismissed or amended; 443

(3) A misdemeanor violation of section 2919.23 of the Revised 444
Code that would have been a violation of section 2905.04 of the 445
Revised Code as it existed prior to July 1, 1996, had it been 446
committed prior to that date; 447

(4) A sexually oriented offense or a child-victim oriented 448
offense, both as defined in section 2950.01 of the Revised Code, 449
that is a misdemeanor, if, in relation to that offense, the 450
offender is a tier III sex offender/child-victim offender, as 451
defined in section 2950.01 of the Revised Code. 452

(E) The director of rehabilitation and correction may 453
prescribe rules in accordance with Chapter 119. of the Revised 454
Code to collect a DNA specimen, as provided in this section, from 455
an offender whose supervision is transferred from another state to 456
this state in accordance with the interstate compact for adult 457

offender supervision described in section 5149.21 of the Revised Code. 458
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Sec. 2933.81. (A) As used in this section: 460

(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. 461
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(2) "Detention facility" has the same meaning as in section 2921.01 of the Revised Code. 471
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(3) "Electronic recording" or "electronically recorded" means an audio and visual recording that is an authentic, accurate, unaltered record of a custodial interrogation. 473
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(4) "Local correctional facility" has the same meaning as in section 2903.13 of the Revised Code. 476
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(5) "Place of detention" means a jail, police or sheriff's station, holding cell, state correctional institution, local correctional facility, detention facility, or department of youth services facility. 478
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(6) "State correctional institution" has the same meaning as in section 2967.01 of the Revised Code. 482
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(7) "Statement" means an oral, written, sign language, or nonverbal communication. 484
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(B) All statements made by a person who is the suspect of a violation of or possible violation of section 2903.01, 2903.02, 486
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2903.03, 2903.04, 2903.041, 2903.05, or 2903.06, a violation of 488
section 2907.02 or 2907.03, or an attempt to commit a violation of 489
section 2907.02 of the Revised Code during a custodial 490
interrogation in a place of detention shall be electronically 491
recorded. It is presumed that the statements made by a person 492
during the electronic recording of a custodial interrogation are 493
voluntary if the law enforcement officer follows the proper 494
procedures under this section with regard to the electronic 495
recording of a custodial interrogation. The person making the 496
statements during the electronic recording of the custodial 497
interrogation has the burden of proving that the statements made 498
during the custodial interrogation were not voluntary. There shall 499
be no penalty against the law enforcement agency that employs a 500
law enforcement officer if the law enforcement officer fails to 501
electronically record as required by this division a custodial 502
interrogation. 503

(C) A failure to electronically record a statement as 504
required by this section shall not provide the basis to exclude or 505
suppress the statement in any criminal proceeding, delinquent 506
child proceeding, or other legal proceeding. 507

(D)(1) Law enforcement personnel shall clearly identify and 508
catalogue every electronic recording of a custodial interrogation 509
that is recorded pursuant to this section. 510

(2) If a criminal or delinquent child proceeding is brought 511
against a person who was the subject of a custodial interrogation 512
that was electronically recorded, law enforcement personnel shall 513
preserve the recording until the later of when all appeals, 514
post-conviction relief proceedings, and habeas corpus proceedings 515
are final and concluded or the expiration of the period of time 516
within which such appeals and proceedings must be brought. 517

(3) Upon motion by the defendant in a criminal proceeding or 518
the alleged delinquent child in a delinquent child proceeding, the 519

court may order that a copy of an electronic recording of a 520
custodial interrogation of the person be preserved for any period 521
beyond the expiration of all appeals, post-conviction relief 522
proceedings, and habeas corpus proceedings. 523

(4) If no criminal or delinquent child proceeding is brought 524
against a person who was the subject of a custodial interrogation 525
that was electronically recorded pursuant to this section, law 526
enforcement personnel shall preserve the related recording until 527
all applicable state and federal statutes of limitations bar 528
prosecution of the person for any offense or violation based on or 529
related to any conduct discussed in the custodial interrogation, 530
until the person dies, or for a period of thirty years, whichever 531
occurs first. 532

Sec. 2933.82. (A) As used in this section: 533

(1)(a) "Biological evidence" means any of the following: 534

(i) The contents of a sexual assault examination kit; 535

(ii) Any item that contains blood, semen, hair, saliva, skin 536
tissue, fingernail scrapings, bone, bodily fluids, or any other 537
identifiable biological material that was collected as part of a 538
criminal investigation or delinquent child investigation and that 539
reasonably may be used to incriminate or exculpate any person for 540
an offense or delinquent act. 541

(b) The definition of "biological evidence" set forth in 542
division (A)(1)(a) of this section applies whether the material in 543
question is catalogued separately, such as on a slide or swab or 544
in a test tube, or is present on other evidence, including, but 545
not limited to, clothing, ligatures, bedding or other household 546
material, drinking cups or containers, or cigarettes. 547

(2) "Biological material" has the same meaning as in section 548
2953.71 of the Revised Code. 549

(3) "DNA" has the same meaning as in section 109.573 of the Revised Code. 550
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(4) "Profile" means a unique identifier of an individual, derived from DNA. 552
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(5) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code. 554
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(6) "Governmental evidence-retention entity" means all of the following: 556
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(a) Any law enforcement agency, prosecutor's office, court, public hospital, crime laboratory, or other governmental or public entity or individual within this state that is charged with the collection, storage, or retrieval of biological evidence; 558
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(b) Any official or employee of any entity or individual described in division (A)(6)(a) of this section. 562
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(B)(1) Each governmental evidence-retention entity that secures any biological evidence in relation to an investigation or prosecution of a criminal offense or delinquent act that is a violation of section 2903.01, 2903.02, 2903.03, 2903.04, 2903.041, 2903.06, 2907.02, or 2907.03 or division (A)(4) or (B) of section 2907.05 of the Revised Code or of section 2923.02 of the Revised Code in an attempt to commit a violation of section 2907.02 of the Revised Code shall secure the biological evidence for whichever of the following periods of time is applicable: 564
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(a) For a violation of section 2903.01 or 2903.02 of the Revised Code, for the period of time that the offense or act remains unsolved; 573
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(b) For a violation of section 2903.03, 2903.04, 2903.041, 2903.06, 2907.02, or 2907.03 or of division (A)(4) or (B) of section 2907.05 of the Revised Code or a violation of section 2923.02 of the Revised Code in an attempt to commit a violation of 576
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section 2907.02 of the Revised Code, for a period of thirty years 580
if the offense or act remains unsolved; 581

(c) If any person is convicted of or pleads guilty to the 582
offense, or is adjudicated a delinquent child for committing the 583
delinquent act, for the period of time that the person remains 584
incarcerated, in a department of youth services institution or 585
other juvenile facility, under a community control sanction for 586
that offense, under any order of disposition for that act, on 587
probation or parole for that offense, under judicial release or 588
supervised release for that act, under post-release control for 589
that offense, involved in civil litigation in connection with that 590
offense or act, or subject to registration and other duties 591
imposed for that offense or act under sections 2950.04, 2950.041, 592
2950.05, and 2950.06 of the Revised Code or for a period of thirty 593
years, whichever is earlier. If after the period of thirty years 594
the person remains incarcerated, then the governmental 595
evidence-retention entity shall secure the biological evidence 596
until the person is released from incarceration or dies. 597

(2) This section applies to evidence that was in the 598
possession of any governmental evidence-retention entity during 599
the investigation and prosecution of a criminal case or delinquent 600
child case involving a violation of section 2903.01, 2903.02, 601
2903.03, 2903.04, 2903.041, 2903.06, 2907.02, or 2907.03 or of 602
division (A)(4) or (B) of section 2907.05 of the Revised Code or a 603
violation of section 2923.02 of the Revised Code in an attempt to 604
commit a violation of section 2907.02 of the Revised Code and 605
that, at the time the person is convicted of or pleads guilty to 606
the offense or is adjudicated a delinquent child for the 607
delinquent act, was likely to contain biological material. 608

(3) A governmental evidence-retention entity that possesses 609
biological evidence shall retain the biological evidence in the 610
amount and manner sufficient to develop a DNA profile from the 611

biological material contained in or included on the evidence. 612

(4) Upon written request by the defendant in a criminal case 613
or the alleged delinquent child in a delinquent child case 614
involving a violation of section 2903.01, 2903.02, 2903.03, 615
2903.04, 2903.041, 2903.06, 2907.02, or 2907.03 or of division 616
(A)(4) or (B) of section 2907.05 of the Revised Code or a 617
violation of section 2923.02 of the Revised Code in an attempt to 618
commit a violation of section 2907.02 of the Revised Code, a 619
governmental evidence-retention entity that possesses biological 620
evidence shall prepare an inventory of the biological evidence 621
that has been preserved in connection with the defendant's 622
criminal case or the alleged delinquent child's delinquent child 623
case. 624

(5) A governmental evidence-retention entity that possesses 625
biological evidence that includes biological material may destroy 626
the evidence before the expiration of the applicable period of 627
time specified in division (B)(1) of this section if all of the 628
following apply: 629

(a) No other provision of federal or state law requires the 630
state to preserve the evidence. 631

(b) The governmental evidence-retention entity, by certified 632
mail, return receipt requested, provides notice of intent to 633
destroy the evidence to all of the following: 634

(i) All persons who remain in custody, incarcerated, in a 635
department of youth services institution or other juvenile 636
facility, under a community control sanction, under any order of 637
disposition, on probation or parole, under judicial release or 638
supervised release, under post-release control, involved in civil 639
litigation, or subject to registration and other duties imposed 640
for that offense or act under sections 2950.04, 2950.041, 2950.05, 641
and 2950.06 of the Revised Code as a result of a criminal 642

conviction, delinquency adjudication, or commitment related to the 643
evidence in question; 644

(ii) The attorney of record for each person who is in custody 645
in any circumstance described in division (B)(5)(b)(i) of this 646
section if the attorney of record can be located; 647

(iii) The state public defender; 648

(iv) The prosecutor of record in the case that resulted in 649
the custody of the person in custody in any circumstance described 650
in division (B)(5)(b)(i) of this section; 651

(v) The attorney general. 652

(c) No person who is notified under division (B)(5)(b) of 653
this section does either of the following within one year after 654
the date on which the person receives the notice: 655

(i) Files a motion for testing of evidence under sections 656
2953.71 to 2953.81 or section 2953.82 of the Revised Code; 657

(ii) Submits a written request for retention of evidence to 658
the governmental evidence-retention entity that provided notice of 659
its intent to destroy evidence under division (B)(5)(b) of this 660
section. 661

(6) If, after providing notice under division (B)(5)(b) of 662
this section of its intent to destroy evidence, a governmental 663
evidence-retention entity receives a written request for retention 664
of the evidence from any person to whom the notice is provided, 665
the governmental evidence-retention entity shall retain the 666
evidence while the person referred to in division (B)(5)(b)(i) of 667
this section remains in custody, incarcerated, in a department of 668
youth services institution or other juvenile facility, under a 669
community control sanction, under any order of disposition, on 670
probation or parole, under judicial release or supervised release, 671
under post-release control, involved in civil litigation, or 672

subject to registration and other duties imposed for that offense 673
or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of 674
the Revised Code as a result of a criminal conviction, delinquency 675
adjudication, or commitment related to the evidence in question. 676

(7) A governmental evidence-retention entity shall not be 677
required to preserve physical evidence pursuant to this section 678
that is of such a size, bulk, or physical character as to render 679
retention impracticable. When retention of physical evidence that 680
otherwise would be required to be retained pursuant to this 681
section is impracticable as described in this division, the 682
governmental evidence-retention entity that otherwise would be 683
required to retain the physical evidence shall remove and preserve 684
portions of the material evidence likely to contain biological 685
evidence related to the offense, in a quantity sufficient to 686
permit future DNA testing before returning or disposing of that 687
physical evidence. 688

(C)(1) The preservation of biological evidence task force 689
established within the bureau of criminal identification and 690
investigation under section 109.561 of the Revised Code shall 691
establish a system regarding the proper preservation of biological 692
evidence in this state. In establishing the system, the task force 693
shall do all of the following: 694

(a) Devise standards regarding the proper collection, 695
retention, and cataloging of biological evidence for ongoing 696
investigations and prosecutions; 697

(b) Recommend practices, protocols, models, and resources for 698
the cataloging and accessibility of preserved biological evidence 699
already in the possession of governmental evidence-retention 700
entities. 701

(2) In consultation with the preservation of biological 702
evidence task force described in division (C)(1) of this section, 703

the division of criminal justice services of the department of 704
public safety shall administer and conduct training programs for 705
law enforcement officers and other relevant employees who are 706
charged with preserving and cataloging biological evidence 707
regarding the methods and procedures referenced in this section. 708

Sec. 2933.83. (A) As used in this section: 709

(1) "Administrator" means the person conducting a photo 710
lineup or live lineup. 711

(2) "Blind administrator" means the administrator does not 712
know the identity of the suspect. "Blind administrator" includes 713
an administrator who conducts a photo lineup through the use of a 714
folder system or a substantially similar system. 715

(3) "Blinded administrator" means the administrator may know 716
who the suspect is, but does not know which lineup member is being 717
viewed by the eyewitness. "Blinded administrator" includes an 718
administrator who conducts a photo lineup through the use of a 719
folder system or a substantially similar system. 720

(4) "Eyewitness" means a person who observes another person 721
at or near the scene of an offense. 722

(5) "Filler" means either a person or a photograph of a 723
person who is not suspected of an offense and is included in an 724
identification procedure. 725

(6) "Folder system" means a system for conducting a photo 726
lineup that satisfies all of the following: 727

(a) The investigating officer uses one "suspect photograph" 728
that resembles the description of the suspected perpetrator of the 729
offense provided by the witness, five "filler photographs" of 730
persons not suspected of the offense that match the description of 731
the suspected perpetrator but do not cause the suspect photograph 732
to unduly stand out, four "blank photographs" that contain no 733

images of any person, and ten empty folders. 734

(b) The investigating officer places one "filler photograph" into one of the empty folders and numbers it as folder 1. 735
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(c) The administrator places the "suspect photograph" and the other four "filler photographs" into five other empty folders, shuffles the five folders so that the administrator is unaware of which folder contains the "suspect photograph," and numbers the five shuffled folders as folders 2 through 6. 737
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(d) The administrator places the four "blank photographs" in the four remaining empty folders and numbers these folders as folders 7 through 10, and these folders serve as "dummy folders." 742
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(e) The administrator provides instructions to the witness as to the lineup procedure and informs the witness that a photograph of the alleged perpetrator of the offense may or may not be included in the photographs the witness is about to see and that the administrator does not know which, if any, of the folders contains the photograph of the alleged perpetrator. The administrator also shall instruct the witness that the administrator does not want to view any of the photographs and will not view any of the photographs and that the witness may not show the administrator any of the photographs. The administrator shall inform the witness that if the witness identifies a photograph as being the person the witness saw the witness shall identify the photograph only by the number of the photograph's corresponding folder. 745
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(f) The administrator hands each of the ten folders to the witness individually without looking at the photograph in the folder. Each time the witness has viewed a folder, the witness indicates whether the photograph is of the person the witness saw, indicates the degree of the witness' confidence in this identification, and returns the folder and the photograph it 759
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contains to the administrator. 765

(g) The administrator follows the procedures specified in 766
this division for a second viewing if the witness requests to view 767
each of the folders a second time, handing them to the witness in 768
the same order as during the first viewing; the witness is not 769
permitted to have more than two viewings of the folders; and the 770
administrator preserves the order of the folders and the 771
photographs they contain in a facedown position in order to 772
document the steps specified in division (A)(6)(h) of this 773
section. 774

(h) The administrator documents and records the results of 775
the procedure described in divisions (A)(6)(a) to (f) of this 776
section before the witness views each of the folders a second time 777
and before the administrator views any photograph that the witness 778
identifies as being of the person the witness saw. The 779
documentation and record includes the date, time, and location of 780
the lineup procedure; the name of the administrator; the names of 781
all of the individuals present during the lineup; the number of 782
photographs shown to the witness; copies of each photograph shown 783
to the witness; the order in which the folders were presented to 784
the witness; the source of each photograph that was used in the 785
procedure; a statement of the witness' confidence in the witness' 786
own words as to the certainty of the witness' identification of 787
the photographs as being of the person the witness saw that is 788
taken immediately upon the reaction of the witness to viewing the 789
photograph; and any additional information the administrator 790
considers pertinent to the lineup procedure. If the witness views 791
each of the folders a second time, the administrator shall 792
document and record the statement of the witness's confidence in 793
the witness's own words as to the certainty of the witness's 794
identification of a photograph as being of the person the witness 795
saw and document that the identification was made during a second 796

viewing of each of the folders by the witness. 797

(i) The administrator shall not say anything to the witness 798
or give any oral or nonverbal cues as to whether or not the 799
witness identified the "suspect photograph" until the 800
administrator documents and records the results of the procedure 801
described in divisions (A)(6)(a) to (g) of this section and the 802
photo lineup has concluded. 803

(7) "Live lineup" means an identification procedure in which 804
a group of persons, including the suspected perpetrator of an 805
offense and other persons not suspected of the offense, is 806
displayed to an eyewitness for the purpose of determining whether 807
the eyewitness identifies the suspect as the perpetrator of the 808
offense. 809

(8) "Photo lineup" means an identification procedure in which 810
an array of photographs, including a photograph of the suspected 811
perpetrator of an offense and additional photographs of other 812
persons not suspected of the offense, is displayed to an 813
eyewitness for the purpose of determining whether the eyewitness 814
identifies the suspect as the perpetrator of the offense. 815

(9) "Perpetrator" means the person who committed the offense. 816

(10) "Suspect" means the person believed by law enforcement 817
to be the possible perpetrator of the offense. 818

(B) Prior to conducting any live lineup or photo lineup on or 819
after the effective date of this section, any law enforcement 820
agency or criminal justice entity in this state that conducts live 821
lineups or photo lineups shall adopt specific procedures for 822
conducting the lineups. The procedures, at a minimum, shall impose 823
the following requirements: 824

(1) Unless impracticable, a blind or blinded administrator 825
shall conduct the live lineup or photo lineup. 826

(2) When it is impracticable for a blind administrator to 827
conduct the live lineup or photo lineup, the administrator shall 828
state in writing the reason for that impracticability. 829

(3) When it is impracticable for either a blind or blinded 830
administrator to conduct the live lineup or photo lineup, the 831
administrator shall state in writing the reason for that 832
impracticability. 833

(4) The administrator conducting the lineup shall make a 834
written record that includes all of the following information: 835

(a) All identification and nonidentification results obtained 836
during the lineup, signed by the eyewitnesses, including the 837
eyewitnesses' confidence statements made immediately at the time 838
of the identification; 839

(b) The names of all persons present at the lineup; 840

(c) The date and time of the lineup; 841

(d) Any eyewitness identification of one or more fillers in 842
the lineup; 843

(e) The names of the lineup members and other relevant 844
identifying information, and the sources of all photographs or 845
persons used in the lineup. 846

(5) If a blind administrator is conducting the live lineup or 847
the photo lineup, the administrator shall inform the witness that 848
the suspect may or may not be in the lineup and that the 849
administrator does not know who the suspect is. 850

(C) For any photo lineup or live lineup that is administered 851
on or after the effective date of this section, all of the 852
following apply: 853

(1) Evidence of a failure to comply with any of the 854
provisions of this section or with any procedure for conducting 855
lineups that has been adopted by a law enforcement agency or 856

criminal justice agency pursuant to division (B) of this section 857
and that conforms to any provision of divisions (B)(1) to (5) of 858
this section shall be considered by trial courts in adjudicating 859
motions to suppress eyewitness identification resulting from or 860
related to the lineup. 861

(2) Evidence of a failure to comply with any of the 862
provisions of this section or with any procedure for conducting 863
lineups that has been adopted by a law enforcement agency or 864
criminal justice agency pursuant to division (B) of this section 865
and that conforms to any provision of divisions (B)(1) to (5) of 866
this section shall be admissible in support of any claim of 867
eyewitness misidentification resulting from or related to the 868
lineup as long as that evidence otherwise is admissible. 869

(3) When evidence of a failure to comply with any of the 870
provisions of this section, or with any procedure for conducting 871
lineups that has been adopted by a law enforcement agency or 872
criminal justice agency pursuant to division (B) of this section 873
and that conforms to any provision of divisions (B)(1) to (5) of 874
this section, is presented at trial, the jury shall be instructed 875
that it may consider credible evidence of noncompliance in 876
determining the reliability of any eyewitness identification 877
resulting from or related to the lineup. 878

Sec. 2953.21. (A)(1)(a) Any person who has been convicted of 879
a criminal offense or adjudicated a delinquent child and who 880
claims that there was such a denial or infringement of the 881
person's rights as to render the judgment void or voidable under 882
the Ohio Constitution or the Constitution of the United States, 883
and any person who has been convicted of a criminal offense that 884
is a felony, and who is an ~~inmate,~~ and offender for whom DNA 885
testing that was performed under sections 2953.71 to 2953.81 of 886
the Revised Code or under former section 2953.82 of the Revised 887

Code and analyzed in the context of and upon consideration of all 888
available admissible evidence related to the ~~inmate's~~ person's 889
case as described in division (D) of section 2953.74 of the 890
Revised Code provided results that establish, by clear and 891
convincing evidence, actual innocence of that felony offense or, 892
if the person was sentenced to death, establish, by clear and 893
convincing evidence, actual innocence of the aggravating 894
circumstance or circumstances the person was found guilty of 895
committing and that is or are the basis of that sentence of death, 896
may file a petition in the court that imposed sentence, stating 897
the grounds for relief relied upon, and asking the court to vacate 898
or set aside the judgment or sentence or to grant other 899
appropriate relief. The petitioner may file a supporting affidavit 900
and other documentary evidence in support of the claim for relief. 901

(b) As used in division (A)(1)(a) of this section, "actual 903
innocence" means that, had the results of the DNA testing 904
conducted under sections 2953.71 to 2953.81 of the Revised Code or 905
under former section 2953.82 of the Revised Code been presented at 906
trial, and had those results been analyzed in the context of and 907
upon consideration of all available admissible evidence related to 908
the ~~inmate's~~ person's case as described in division (D) of section 909
2953.74 of the Revised Code, no reasonable factfinder would have 910
found the petitioner guilty of the offense of which the petitioner 911
was convicted, or, if the person was sentenced to death, no 912
reasonable factfinder would have found the petitioner guilty of 913
the aggravating circumstance or circumstances the petitioner was 914
found guilty of committing and that is or are the basis of that 915
sentence of death. 916

(c) As used in divisions (A)(1)(a) and (b) of this section, 917
"former section 2953.82 of the Revised Code" means section 2953.82 918
of the Revised Code as it existed prior to the effective date of 919

this amendment. 920

(2) Except as otherwise provided in section 2953.23 of the Revised Code, a petition under division (A)(1) of this section shall be filed no later than one hundred eighty days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the supreme court. If no appeal is taken, except as otherwise provided in section 2953.23 of the Revised Code, the petition shall be filed no later than one hundred eighty days after the expiration of the time for filing the appeal. 921
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(3) In a petition filed under division (A) of this section, a person who has been sentenced to death may ask the court to render void or voidable the judgment with respect to the conviction of aggravated murder or the specification of an aggravating circumstance or the sentence of death. 932
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(4) A petitioner shall state in the original or amended petition filed under division (A) of this section all grounds for relief claimed by the petitioner. Except as provided in section 2953.23 of the Revised Code, any ground for relief that is not so stated in the petition is waived. 937
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(5) If the petitioner in a petition filed under division (A) of this section was convicted of or pleaded guilty to a felony, the petition may include a claim that the petitioner was denied the equal protection of the laws in violation of the Ohio Constitution or the United States Constitution because the sentence imposed upon the petitioner for the felony was part of a consistent pattern of disparity in sentencing by the judge who imposed the sentence, with regard to the petitioner's race, gender, ethnic background, or religion. If the supreme court adopts a rule requiring a court of common pleas to maintain 942
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information with regard to an offender's race, gender, ethnic 952
background, or religion, the supporting evidence for the petition 953
shall include, but shall not be limited to, a copy of that type of 954
information relative to the petitioner's sentence and copies of 955
that type of information relative to sentences that the same judge 956
imposed upon other persons. 957

(B) The clerk of the court in which the petition is filed 958
shall docket the petition and bring it promptly to the attention 959
of the court. The clerk of the court in which the petition is 960
filed immediately shall forward a copy of the petition to the 961
prosecuting attorney of that county. 962

(C) The court shall consider a petition that is timely filed 963
under division (A)(2) of this section even if a direct appeal of 964
the judgment is pending. Before granting a hearing on a petition 965
filed under division (A) of this section, the court shall 966
determine whether there are substantive grounds for relief. In 967
making such a determination, the court shall consider, in addition 968
to the petition, the supporting affidavits, and the documentary 969
evidence, all the files and records pertaining to the proceedings 970
against the petitioner, including, but not limited to, the 971
indictment, the court's journal entries, the journalized records 972
of the clerk of the court, and the court reporter's transcript. 973
The court reporter's transcript, if ordered and certified by the 974
court, shall be taxed as court costs. If the court dismisses the 975
petition, it shall make and file findings of fact and conclusions 976
of law with respect to such dismissal. 977

(D) Within ten days after the docketing of the petition, or 978
within any further time that the court may fix for good cause 979
shown, the prosecuting attorney shall respond by answer or motion. 980
Within twenty days from the date the issues are raised, either 981
party may move for summary judgment. The right to summary judgment 982
shall appear on the face of the record. 983

(E) Unless the petition and the files and records of the case 984
show the petitioner is not entitled to relief, the court shall 985
proceed to a prompt hearing on the issues even if a direct appeal 986
of the case is pending. If the court notifies the parties that it 987
has found grounds for granting relief, either party may request an 988
appellate court in which a direct appeal of the judgment is 989
pending to remand the pending case to the court. 990

(F) At any time before the answer or motion is filed, the 991
petitioner may amend the petition with or without leave or 992
prejudice to the proceedings. The petitioner may amend the 993
petition with leave of court at any time thereafter. 994

(G) If the court does not find grounds for granting relief, 995
it shall make and file findings of fact and conclusions of law and 996
shall enter judgment denying relief on the petition. If no direct 997
appeal of the case is pending and the court finds grounds for 998
relief or if a pending direct appeal of the case has been remanded 999
to the court pursuant to a request made pursuant to division (E) 1000
of this section and the court finds grounds for granting relief, 1001
it shall make and file findings of fact and conclusions of law and 1002
shall enter a judgment that vacates and sets aside the judgment in 1003
question, and, in the case of a petitioner who is a prisoner in 1004
custody, shall discharge or resentence the petitioner or grant a 1005
new trial as the court determines appropriate. The court also may 1006
make supplementary orders to the relief granted, concerning such 1007
matters as rearraignment, retrial, custody, and bail. If the trial 1008
court's order granting the petition is reversed on appeal and if 1009
the direct appeal of the case has been remanded from an appellate 1010
court pursuant to a request under division (E) of this section, 1011
the appellate court reversing the order granting the petition 1012
shall notify the appellate court in which the direct appeal of the 1013
case was pending at the time of the remand of the reversal and 1014
remand of the trial court's order. Upon the reversal and remand of 1015

the trial court's order granting the petition, regardless of 1016
whether notice is sent or received, the direct appeal of the case 1017
that was remanded is reinstated. 1018

(H) Upon the filing of a petition pursuant to division (A) of 1019
this section by a person sentenced to death, only the supreme 1020
court may stay execution of the sentence of death. 1021

(I)(1) If a person sentenced to death intends to file a 1022
petition under this section, the court shall appoint counsel to 1023
represent the person upon a finding that the person is indigent 1024
and that the person either accepts the appointment of counsel or 1025
is unable to make a competent decision whether to accept or reject 1026
the appointment of counsel. The court may decline to appoint 1027
counsel for the person only upon a finding, after a hearing if 1028
necessary, that the person rejects the appointment of counsel and 1029
understands the legal consequences of that decision or upon a 1030
finding that the person is not indigent. 1031

(2) The court shall not appoint as counsel under division 1032
(I)(1) of this section an attorney who represented the petitioner 1033
at trial in the case to which the petition relates unless the 1034
person and the attorney expressly request the appointment. The 1035
court shall appoint as counsel under division (I)(1) of this 1036
section only an attorney who is certified under Rule 20 of the 1037
Rules of Superintendence for the Courts of Ohio to represent 1038
indigent defendants charged with or convicted of an offense for 1039
which the death penalty can be or has been imposed. The 1040
ineffectiveness or incompetence of counsel during proceedings 1041
under this section does not constitute grounds for relief in a 1042
proceeding under this section, in an appeal of any action under 1043
this section, or in an application to reopen a direct appeal. 1044

(3) Division (I) of this section does not preclude attorneys 1045
who represent the state of Ohio from invoking the provisions of 28 1046
U.S.C. 154 with respect to capital cases that were pending in 1047

federal habeas corpus proceedings prior to July 1, 1996, insofar 1048
as the petitioners in those cases were represented in proceedings 1049
under this section by one or more counsel appointed by the court 1050
under this section or section 120.06, 120.16, 120.26, or 120.33 of 1051
the Revised Code and those appointed counsel meet the requirements 1052
of division (I)(2) of this section. 1053

(J) Subject to the appeal of a sentence for a felony that is 1054
authorized by section 2953.08 of the Revised Code, the remedy set 1055
forth in this section is the exclusive remedy by which a person 1056
may bring a collateral challenge to the validity of a conviction 1057
or sentence in a criminal case or to the validity of an 1058
adjudication of a child as a delinquent child for the commission 1059
of an act that would be a criminal offense if committed by an 1060
adult or the validity of a related order of disposition. 1061

Sec. 2953.23. (A) Whether a hearing is or is not held on a 1062
petition filed pursuant to section 2953.21 of the Revised Code, a 1063
court may not entertain a petition filed after the expiration of 1064
the period prescribed in division (A) of that section or a second 1065
petition or successive petitions for similar relief on behalf of a 1066
petitioner unless division (A)(1) or (2) of this section applies: 1067

(1) Both of the following apply: 1068

(a) Either the petitioner shows that the petitioner was 1069
unavoidably prevented from discovery of the facts upon which the 1070
petitioner must rely to present the claim for relief, or, 1071
subsequent to the period prescribed in division (A)(2) of section 1072
2953.21 of the Revised Code or to the filing of an earlier 1073
petition, the United States Supreme Court recognized a new federal 1074
or state right that applies retroactively to persons in the 1075
petitioner's situation, and the petition asserts a claim based on 1076
that right. 1077

(b) The petitioner shows by clear and convincing evidence 1078

that, but for constitutional error at trial, no reasonable 1079
factfinder would have found the petitioner guilty of the offense 1080
of which the petitioner was convicted or, if the claim challenges 1081
a sentence of death that, but for constitutional error at the 1082
sentencing hearing, no reasonable factfinder would have found the 1083
petitioner eligible for the death sentence. 1084

(2) The petitioner was convicted of a felony, the petitioner 1085
is an inmate offender for whom DNA testing was performed under 1086
sections 2953.71 to 2953.81 of the Revised Code or under former 1087
section 2953.82 of the Revised Code and analyzed in the context of 1088
and upon consideration of all available admissible evidence 1089
related to the inmate's case as described in division (D) of 1090
section 2953.74 of the Revised Code, and the results of the DNA 1091
testing establish, by clear and convincing evidence, actual 1092
innocence of that felony offense or, if the person was sentenced 1093
to death, establish, by clear and convincing evidence, actual 1094
innocence of the aggravating circumstance or circumstances the 1095
person was found guilty of committing and that is or are the basis 1096
of that sentence of death. 1097

As used in this division, "actual innocence" has the same 1098
meaning as in division (A)(1)(b) of section 2953.21 of the Revised 1099
Code, and "former section 2953.82 of the Revised Code" has the 1100
same meaning as in division (A)(1)(c) of section 2953.21 of the 1101
Revised Code. 1102

(B) An order awarding or denying relief sought in a petition 1103
filed pursuant to section 2953.21 of the Revised Code is a final 1104
judgment and may be appealed pursuant to Chapter 2953. of the 1105
Revised Code. 1106

Sec. 2953.56. (A) A court that enters a judgment that vacates 1107
and sets aside the conviction of a person because of DNA testing 1108
that was performed under sections 2953.71 to 2953.81 of the 1109

Revised Code or under section 2953.82 of the Revised Code shall 1110
issue ninety days after the court vacates and sets aside the 1111
conviction an order directing that all official records pertaining 1112
to the case involving the vacated conviction be sealed and that 1113
the proceedings in the case shall be deemed not to have occurred. 1114
1115

(B) As used in sections 2953.56 to 2953.59 of the Revised 1116
Code, "official records" has the same meaning as in section 1117
2953.51 of the Revised Code. 1118

Sec. 2953.57. (A) The court shall send notice of an order to 1119
seal official records issued pursuant to section 2953.56 of the 1120
Revised Code to any public office or agency that the court knows 1121
or has reason to believe may have any record of the case, whether 1122
or not it is an official record, that is the subject of the order. 1123
The notice shall be sent by certified mail, return receipt 1124
requested. 1125

(B) A person whose official records have been sealed pursuant 1126
to an order issued pursuant to section 2953.56 of the Revised Code 1127
may present a copy of that order and a written request to comply 1128
with it, to a public office or agency that has a record of the 1129
case that is the subject of the order. 1130

(C) An order to seal official records issued pursuant to 1131
section 2953.56 of the Revised Code applies to every public office 1132
or agency that has a record of the case that is the subject of the 1133
order, regardless of whether it receives a copy of the order to 1134
seal the official records pursuant to division (A) or (B) of this 1135
section. 1136

(D) Upon receiving a copy of an order to seal official 1137
records pursuant to division (A) or (B) of this section or upon 1138
otherwise becoming aware of an applicable order to seal official 1139
records issued pursuant to section 2953.56 of the Revised Code, a 1140

public office or agency shall comply with the order and, if 1141
applicable, with the provisions of section 2953.58 of the Revised 1142
Code, except that it may maintain a record of the case that is the 1143
subject of the order if the record is maintained for the purpose 1144
of compiling statistical data only and does not contain any 1145
reference to the person who is the subject of the case and the 1146
order. 1147

A public office or agency also may maintain an index of 1148
sealed official records, in a form similar to that for sealed 1149
records of conviction as set forth in division (F) of section 1150
2953.32 of the Revised Code, access to which may not be afforded 1151
to any person other than the person who has custody of the sealed 1152
official records. The sealed official records to which such an 1153
index pertains shall not be available to any person, except that 1154
the official records of a case that have been sealed may be made 1155
available to the following persons for the following purposes: 1156

(1) To the person who is the subject of the records upon 1157
written application, and to any other person named in the 1158
application, for any purpose; 1159

(2) To a law enforcement officer who was involved in the 1160
case, for use in the officer's defense of a civil action arising 1161
out of the officer's involvement in that case. 1162

Sec. 2953.58. (A) Except as otherwise provided in Chapter 1163
2950. of the Revised Code, upon the issuance of an order by a 1164
court under section 2953.56 of the Revised Code directing that all 1165
official records pertaining to a case be sealed and that the 1166
proceedings in the case be deemed not to have occurred: 1167

(1) Every law enforcement officer possessing records or 1168
reports pertaining to the case that are the officer's specific 1169
investigatory work product and that are excepted from the 1170
definition of "official records" contained in section 2953.51 of 1171

the Revised Code shall immediately deliver the records and reports 1172
to the officer's employing law enforcement agency. Except as 1173
provided in division (A)(3) of this section, no such officer shall 1174
knowingly release, disseminate, or otherwise make the records and 1175
reports or any information contained in them available to, or 1176
discuss any information contained in them with, any person not 1177
employed by the officer's employing law enforcement agency. 1178

(2) Every law enforcement agency that possesses records or 1179
reports pertaining to the case that are its specific investigatory 1180
work product and that are excepted from the definition of 1181
"official records" contained in section 2953.51 of the Revised 1182
Code, or that are the specific investigatory work product of a law 1183
enforcement officer it employs and that were delivered to it under 1184
division (A)(1) of this section shall, except as provided in 1185
division (A)(3) of this section, close the records and reports to 1186
all persons who are not directly employed by the law enforcement 1187
agency and shall, except as provided in division (A)(3) of this 1188
section, treat the records and reports, in relation to all persons 1189
other than those who are directly employed by the law enforcement 1190
agency, as if they did not exist and had never existed. Except as 1191
provided in division (A)(3) of this section, no person who is 1192
employed by the law enforcement agency shall knowingly release, 1193
disseminate, or otherwise make the records and reports in the 1194
possession of the employing law enforcement agency or any 1195
information contained in them available to, or discuss any 1196
information contained in them with, any person not employed by the 1197
employing law enforcement agency. 1198

(3) A law enforcement agency that possesses records or 1199
reports pertaining to the case that are its specific investigatory 1200
work product and that are excepted from the definition of 1201
"official records" contained in division (D) of section 2953.51 of 1202
the Revised Code, or that are the specific investigatory work 1203

product of a law enforcement officer it employs and that were 1204
delivered to it under division (A)(1) of this section may permit 1205
another law enforcement agency to use the records or reports in 1206
the investigation of another offense, if the facts incident to the 1207
offense being investigated by the other law enforcement agency and 1208
the facts incident to an offense that is the subject of the case 1209
are reasonably similar and if all references to the name or 1210
identifying information of the person whose records were sealed 1211
are redacted from the records or reports. The agency that provides 1212
the records and reports may not provide the other agency with the 1213
name of the person who is the subject of the case the records of 1214
which were sealed. 1215

(B) Whoever violates division (A)(1), (2), or (3) of this 1216
section is guilty of divulging confidential information, a 1217
misdemeanor of the fourth degree. 1218

Sec. 2953.59. (A) In any application for employment, license, 1219
or any other right or privilege, any appearance as a witness, or 1220
any other inquiry, a person may not be questioned with respect to 1221
any record that has been sealed pursuant to section 2953.56 of the 1222
Revised Code. If an inquiry is made in violation of this section, 1223
the person whose official record was sealed may respond as if the 1224
arrest underlying the case to which the sealed official records 1225
pertain and all other proceedings in that case did not occur, and 1226
the person whose official record was sealed shall not be subject 1227
to any adverse action because of the arrest, the proceedings, or 1228
the person's response. 1229

(B) An officer or employee of the state or any of its 1230
political subdivisions who knowingly releases, disseminates, or 1231
makes available for any purpose involving employment, bonding, 1232
licensing, or education to any person or to any department, 1233
agency, or other instrumentality of the state, or of any of its 1234

political subdivisions, any information or other data concerning 1235
any arrest, complaint, indictment, information, trial, 1236
adjudication, or correctional supervision, the records of which 1237
have been sealed pursuant to section 2953.56 of the Revised Code, 1238
is guilty of divulging confidential information, a misdemeanor of 1239
the fourth degree. 1240

Sec. 2953.71. As used in sections 2953.71 to 2953.83 of the 1241
Revised Code: 1242

(A) "Application" or "application for DNA testing" means a 1243
request through postconviction relief for the state to do DNA 1244
testing on biological material from ~~whichever of the following is~~ 1245
~~applicable:~~ 1246

~~(1) The case in which the inmate offender was convicted of~~ 1247
~~the offense for which the inmate is an eligible inmate offender~~ 1248
~~and is requesting the DNA testing under sections 2953.71 to~~ 1249
~~2953.81 of the Revised Code.~~ 1250

~~(2) The case in which the inmate pleaded guilty or no contest~~ 1251
~~to the offense for which the inmate is requesting the DNA testing~~ 1252
~~under section 2953.82 of the Revised Code.~~ 1253

(B) "Biological material" means any product of a human body 1254
containing DNA. 1255

(C) "Chain of custody" means a record or other evidence that 1256
tracks a subject sample of biological material from the time the 1257
biological material was first obtained until the time it currently 1258
exists in its place of storage and, in relation to a DNA sample, a 1259
record or other evidence that tracks the DNA sample from the time 1260
it was first obtained until it currently exists in its place of 1261
storage. For purposes of this division, examples of when 1262
biological material or a DNA sample is first obtained include, but 1263
are not limited to, obtaining the material or sample at the scene 1264

of a crime, from a victim, from an ~~inmate~~ offender, or in any 1265
other manner or time as is appropriate in the facts and 1266
circumstances present. 1267

(D) "Custodial agency" means the group or entity that has the 1268
responsibility to maintain biological material in question. 1269

(E) "Custodian" means the person who is the primary 1270
representative of a custodial agency. 1271

(F) "Eligible ~~inmate~~ offender" means an ~~inmate~~ offender who 1272
is eligible under division (C) of section 2953.72 of the Revised 1273
Code to request DNA testing to be conducted under sections 2953.71 1274
to 2953.81 of the Revised Code. 1275

(G) "Exclusion" or "exclusion result" means a result of DNA 1276
testing that scientifically precludes or forecloses the subject 1277
~~inmate~~ offender as a contributor of biological material recovered 1278
from the crime scene or victim in question, in relation to the 1279
offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ 1280
offender and for which the sentence of death or prison term was 1281
imposed upon the ~~inmate~~ or, regarding a request for DNA testing 1282
~~made under section 2953.82 of the Revised Code, in relation to the~~ 1283
~~offense for which the inmate made the request and for which the~~ 1284
~~sentence of death or prison term was imposed upon the inmate~~ 1285
offender. 1286

(H) "Extracting personnel" means medically approved personnel 1287
who are employed to physically obtain an ~~inmate~~ offender's DNA 1288
specimen for purposes of DNA testing under sections 2953.71 to 1289
2953.81 ~~or section 2953.82~~ of the Revised Code. 1290

(I) "Inclusion" or "inclusion result" means a result of DNA 1291
testing that scientifically cannot exclude, or that holds 1292
accountable, the subject ~~inmate~~ offender as a contributor of 1293
biological material recovered from the crime scene or victim in 1294
question, in relation to the offense for which the ~~inmate~~ offender 1295

is an eligible ~~inmate~~ offender and for which the sentence of death 1296
or prison term was imposed upon the ~~inmate or, regarding a request~~ 1297
~~for DNA testing made under section 2953.82 of the Revised Code, in~~ 1298
~~relation to the offense for which the inmate made the request and~~ 1299
~~for which the sentence of death or prison term was imposed upon~~ 1300
~~the inmate~~ offender. 1301

(J) "Inconclusive" or "inconclusive result" means a result of 1302
DNA testing that is rendered when a scientifically appropriate and 1303
definitive DNA analysis or result, or both, cannot be determined. 1304

(K) "~~Inmate~~ Offender" means ~~an inmate in a prison a criminal~~ 1305
offender who was sentenced by a court, or by a jury and a court, 1306
of this state. 1307

(L) "Outcome determinative" means that had the results of DNA 1308
testing of the subject ~~inmate~~ offender been presented at the trial 1309
of the subject ~~inmate~~ offender requesting DNA testing and been 1310
found relevant and admissible with respect to the felony offense 1311
for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and 1312
is requesting the DNA testing ~~or for which the inmate is~~ 1313
~~requesting the DNA testing under section 2953.82 of the Revised~~ 1314
~~Code, and had those results been analyzed in the context of and~~ 1315
upon consideration of all available admissible evidence related to 1316
the ~~inmate's~~ offender's case as described in division (D) of 1317
section 2953.74 of the Revised Code, there is a strong probability 1318
that no reasonable factfinder would have found the ~~inmate~~ offender 1319
guilty of that offense or, if the ~~inmate~~ offender was sentenced to 1320
death relative to that offense, would have found the ~~inmate~~ 1321
offender guilty of the aggravating circumstance or circumstances 1322
the ~~inmate~~ offender was found guilty of committing and that is or 1323
are the basis of that sentence of death. 1324

(M) "Parent sample" means the biological material first 1325
obtained from a crime scene or a victim of an offense for which an 1326
~~inmate~~ offender is an eligible ~~inmate or for which the inmate is~~ 1327

requesting the DNA testing under section 2953.82 of the Revised Code offender, and from which a sample will be presently taken to do a DNA comparison to the DNA of the subject ~~inmate~~ offender under sections 2953.71 to 2953.81 ~~or section 2953.82~~ of the Revised Code.

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

(O) "Prosecuting attorney" means the prosecuting attorney who, or whose office, prosecuted the case in which the subject ~~inmate~~ offender was convicted of the offense 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.~~

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

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

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

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

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

(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 1358
eligible inmate. A prior DNA test is not definitive if the 1359
eligible inmate proves by a preponderance of the evidence that 1360
because of advances in DNA technology there is a possibility of 1361
discovering new biological material from the perpetrator that the 1362
prior DNA test may have failed to discover. Prior testing may have 1363
been a prior "definitive DNA test" as to some biological evidence 1364
but may not have been a prior "definitive DNA test" as to other 1365
biological evidence. 1366

Sec. 2953.72. (A) Any eligible ~~inmate~~ offender who wishes to 1367
request DNA testing under sections 2953.71 to 2953.81 of the 1368
Revised Code shall submit an application for the testing to the 1369
court of common pleas specified in section 2953.73 of the Revised 1370
Code, on a form prescribed by the attorney general for this 1371
purpose. The eligible ~~inmate~~ offender shall submit the application 1372
in accordance with the procedures set forth in section 2953.73 of 1373
the Revised Code. The eligible ~~inmate~~ offender shall specify on 1374
the application the offense or offenses for which the ~~inmate~~ 1375
offender is an eligible ~~inmate~~ offender and is requesting the DNA 1376
testing. Along with the application, the eligible ~~inmate~~ offender 1377
shall submit an acknowledgment that is on a form prescribed by the 1378
attorney general for this purpose and that is signed by the ~~inmate~~ 1379
offender. The acknowledgment shall set forth all of the following: 1380

(1) That sections 2953.71 to 2953.81 of the Revised Code 1381
contemplate applications for DNA testing of an eligible ~~inmates~~ 1382
offender at a stage of a prosecution or case after the ~~inmate~~ 1383
offender has been sentenced ~~to a prison term or a sentence of~~ 1384
~~death~~, that any exclusion or inclusion result of DNA testing 1385
rendered pursuant to those sections may be used by a party in any 1386
proceeding as described in section 2953.81 of the Revised Code, 1387
and that all requests for any DNA testing made at trial will 1388
continue to be handled by the prosecuting attorney in the case; 1389

(2) That the process of conducting postconviction DNA testing 1390
for an eligible inmate offender under sections 2953.71 to 2953.81 1391
of the Revised Code begins when the inmate offender submits an 1392
application under section 2953.73 of the Revised Code and the 1393
acknowledgment described in this section; 1394

(3) That the eligible inmate offender must submit the 1395
application and acknowledgment to the court of common pleas that 1396
heard the case in which the inmate offender was convicted of the 1397
offense for which the inmate offender is an eligible offender and 1398
is requesting the DNA testing; 1399

(4) That the state has established a set of criteria set 1400
forth in section 2953.74 of the Revised Code by which eligible 1401
inmate offender applications for DNA testing will be screened and 1402
that a judge of a court of common pleas upon receipt of a properly 1403
filed application and accompanying acknowledgment will apply those 1404
criteria to determine whether to accept or reject the application; 1405

(5) That the results of DNA testing conducted under sections 1406
2953.71 to 2953.81 of the Revised Code will be provided as 1407
described in section 2953.81 of the Revised Code to all parties in 1408
the postconviction proceedings and will be reported to various 1409
courts; 1410

(6) That, if DNA testing is conducted with respect to an 1411
inmate offender under sections 2953.71 to 2953.81 of the Revised 1412
Code, the state will not offer the inmate offender a retest if an 1413
inclusion result is achieved relative to the testing and that, if 1414
the state were to offer a retest after an inclusion result, the 1415
policy would create an atmosphere in which endless testing could 1416
occur and in which postconviction proceedings could be stalled for 1417
many years; 1418

(7) That, if the court rejects an eligible inmate's 1419
offender's application for DNA testing because the inmate offender 1420

does not satisfy the acceptance criteria described in division 1421
(A)(4) of this section, the court will not accept or consider 1422
subsequent applications; 1423

(8) That the acknowledgment memorializes the provisions of 1424
sections 2953.71 to 2953.81 of the Revised Code with respect to 1425
the application of postconviction DNA testing to ~~inmates~~ 1426
offenders, that those provisions do not give any ~~inmate~~ offender 1427
any additional constitutional right that the ~~inmate~~ offender did 1428
not already have, that the court has no duty or obligation to 1429
provide postconviction DNA testing to ~~inmates~~ offenders, that the 1430
court of common pleas has the sole discretion subject to an appeal 1431
as described in this division to determine whether an ~~inmate~~ 1432
offender is an eligible ~~inmate~~ offender and whether an eligible 1433
~~inmate's~~ offender's application for DNA testing satisfies the 1434
acceptance criteria described in division (A)(4) of this section 1435
and whether the application should be accepted or rejected, that 1436
if the court of common pleas rejects an eligible ~~inmate's~~ 1437
offender's application, the ~~inmate~~ offender may seek leave of the 1438
supreme court to appeal the rejection to that court if the ~~inmate~~ 1439
offender was sentenced to death for the offense for which the 1440
~~inmate~~ offender is requesting the DNA testing and, if the ~~inmate~~ 1441
offender was not sentenced to death for that offense, may appeal 1442
the rejection to the court of appeals, and that no determination 1443
otherwise made by the court of common pleas in the exercise of its 1444
discretion regarding the eligibility of an ~~inmate~~ offender or 1445
regarding postconviction DNA testing under those provisions is 1446
reviewable by or appealable to any court; 1447

(9) That the manner in which sections 2953.71 to 2953.81 of 1448
the Revised Code with respect to the offering of postconviction 1449
DNA testing to ~~inmates~~ offenders are carried out does not confer 1450
any constitutional right upon any ~~inmate~~ offender, that the state 1451
has established guidelines and procedures relative to those 1452

provisions to ensure that they are carried out with both justice 1453
and efficiency in mind, and that an inmate offender who 1454
participates in any phase of the mechanism contained in those 1455
provisions, including, but not limited to, applying for DNA 1456
testing and being rejected, having an application for DNA testing 1457
accepted and not receiving the test, or having DNA testing 1458
conducted and receiving unfavorable results, does not gain as a 1459
result of the participation any constitutional right to challenge, 1460
or, except as provided in division (A)(8) of this section, any 1461
right to any review or appeal of, the manner in which those 1462
provisions are carried out; 1463

(10) That the most basic aspect of sections 2953.71 to 1464
2953.81 of the Revised Code is that, in order for DNA testing to 1465
occur, there must be an inmate offender sample against which other 1466
evidence may be compared, that, if an eligible ~~inmate's~~ offender's 1467
application is accepted but the inmate offender subsequently 1468
refuses to submit to the collection of the sample of biological 1469
material from the inmate offender or hinders the state from 1470
obtaining a sample of biological material from the inmate 1471
offender, the goal of those provisions will be frustrated, and 1472
that an ~~inmate's~~ offender's refusal or hindrance shall cause the 1473
court to rescind its prior acceptance of the application for DNA 1474
testing for the inmate offender and deny the application; 1475

~~(11) That, if the inmate is an inmate who pleaded guilty or 1476
no contest to a felony offense and who is using the application 1477
and acknowledgment to request DNA testing under section 2953.82 of 1478
the Revised Code, all references in the acknowledgment to an 1479
"eligible inmate" are considered to be references to, and apply 1480
to, the inmate and all references in the acknowledgment to 1481
"sections 2953.71 to 2953.81 of the Revised Code" are considered 1482
to be references to "section 2953.82 of the Revised Code."~~ 1483

(B) The attorney general shall prescribe a form to be used to 1484

make an application for DNA testing under division (A) of this 1485
section and section 2953.73 of the Revised Code and a form to be 1486
used to provide the acknowledgment described in division (A) of 1487
this section. The forms shall include all information described in 1488
division (A) of this section, spaces for an inmate offender to 1489
insert all information necessary to complete the forms, including, 1490
but not limited to, specifying the offense or offenses for which 1491
the inmate offender is an eligible inmate offender and is 1492
requesting the DNA testing ~~or for which the inmate is requesting~~ 1493
~~the DNA testing under section 2953.82 of the Revised Code,~~ and any 1494
other information or material the attorney general determines is 1495
necessary or relevant. ~~The forms also shall be used to make an~~ 1496
~~application requesting DNA testing under section 2953.82 of the~~ 1497
~~Revised Code, and the attorney general shall ensure that they are~~ 1498
~~sufficient for that type of use, and that they include all~~ 1499
~~information and spaces necessary for that type of use.~~ The 1500
attorney general shall distribute copies of the prescribed forms 1501
to the department of rehabilitation and correction, the department 1502
shall ensure that each prison in which inmates offenders are 1503
housed has a supply of copies of the forms, and the department 1504
shall ensure that copies of the forms are provided free of charge 1505
to any inmate offender who requests them. 1506

(C)(1) An inmate offender is eligible to request DNA testing 1507
to be conducted under sections 2953.71 to 2953.81 of the Revised 1508
Code only if all of the following apply: 1509

(a) The offense for which the inmate offender claims to be an 1510
eligible inmate offender is a felony, and the inmate offender was 1511
convicted by a judge or jury of that offense. 1512

(b) One of the following applies: 1513

(i) The inmate offender was sentenced to a prison term or 1514
sentence of death for the felony described in division (C)(1)(a) 1515
of this section, and the offender is in prison serving that prison 1516

term or under that sentence of death, has been paroled or is on 1517
probation regarding that felony, is under post-release control 1518
regarding that felony, or has been released from that prison term 1519
and is under a community control sanction regarding that felony. 1520

(ii) The offender was not sentenced to a prison term or 1521
sentence of death for the felony described in division (C)(1)(a) 1522
of this section, but was sentenced to a community control sanction 1523
for that felony and is under that community control sanction. 1524

(iii) The felony described in division (C)(1)(a) of this 1525
section was a sexually oriented offense or child-victim oriented 1526
offense, and the offender has a duty to comply with sections 1527
2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code 1528
relative to that felony. 1529

~~(c) On the date on which the application is filed, the inmate~~ 1530
~~has at least one year remaining on the prison term described in~~ 1531
~~division (C)(1)(b) of this section, or the inmate is in prison~~ 1532
~~under a sentence of death as described in that division.~~ 1533

(2) An inmate offender is not an eligible inmate offender 1534
under division (C)(1) of this section regarding any offense to 1535
which the inmate offender pleaded guilty or no contest. 1536

(3) An offender is not an eligible offender under division 1537
(C)(1) of this section regarding any offense if the offender dies 1538
prior to submitting an application for DNA testing related to that 1539
offense under section 2953.73 of the Revised Code. 1540

Sec. 2953.73. (A) An eligible inmate offender who wishes to 1541
request DNA testing to be conducted under sections 2953.71 to 1542
2953.81 of the Revised Code shall submit an application for DNA 1543
testing on a form prescribed by the attorney general for this 1544
purpose and shall submit the form to the court of common pleas 1545
that sentenced the inmate offender for the offense for which the 1546

inmate offender is an eligible inmate offender and is requesting DNA testing. 1547
1548

(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: 1549
1550
1551

(1) The eligible inmate offender shall serve a copy of the application on the prosecuting attorney and the attorney general. 1552
1553

(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. 1554
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(C) If an eligible inmate offender submits an application for DNA testing under division (A) of this section, regardless of whether the inmate offender has commenced any federal habeas corpus proceeding relative to the case in which the inmate offender was convicted of the offense for which the inmate offender is an eligible inmate offender and is requesting DNA testing, any response to the application by the prosecuting attorney or the attorney general shall be filed not later than forty-five days after the date on which the eligible inmate offender submits the application. The prosecuting attorney or the attorney general, or both, may, but are not required to, file a response to the application. If the prosecuting attorney or the attorney general files a response under this division, the prosecuting attorney or attorney general, whoever filed the response, shall serve a copy of the response on the eligible inmate offender. 1562
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(D) If an eligible ~~inmate~~ offender submits an application for DNA testing under division (A) of this section, the court shall make the determination as to whether the application should be accepted or rejected. The court shall expedite its review of the application. The court shall make the determination in accordance with the criteria and procedures set forth in sections 2953.74 to 2953.81 of the Revised Code and, in making the determination, shall consider the application, the supporting affidavits, and the documentary evidence and, in addition to those materials, shall consider all the files and records pertaining to the proceedings against the applicant, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript and all responses to the application filed under division (C) of this section by a prosecuting attorney or the attorney general, unless the application and the files and records show the applicant is not entitled to DNA testing, in which case the application may be denied. The court is not required to conduct an evidentiary hearing in conducting its review of, and in making its determination as to whether to accept or reject, the application. Upon making its determination, the court shall enter a judgment and order that either accepts or rejects the application and that includes within the judgment and order the reasons for the acceptance or rejection as applied to the criteria and procedures set forth in sections 2953.71 to 2953.81 of the Revised Code. The court shall send a copy of the judgment and order to the eligible ~~inmate~~ offender who filed it, the prosecuting attorney, and the attorney general.

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

of this section, one of the following applies: 1611

(1) If the ~~inmate~~ offender was sentenced to death for the 1612
offense for which the ~~inmate~~ offender claims to be an eligible 1613
~~inmate~~ offender and is requesting DNA testing, the ~~inmate~~ offender 1614
may seek leave of the supreme court to appeal the rejection to the 1615
supreme court. Courts of appeals do not have jurisdiction to 1616
review any rejection if the ~~inmate~~ offender was sentenced to death 1617
for the offense for which the ~~inmate~~ offender claims to be an 1618
eligible ~~inmate~~ offender and is requesting DNA testing. 1619

(2) If the ~~inmate~~ offender was not sentenced to death for the 1620
offense for which the ~~inmate~~ offender claims to be an eligible 1621
~~inmate~~ offender and is requesting DNA testing, the rejection is a 1622
final appealable order, and the ~~inmate~~ offender may appeal it to 1623
the court of appeals of the district in which is located that 1624
court of common pleas. 1625

(F) Notwithstanding any provision of law regarding fees and 1626
costs, no filing fee shall be required of, and no court costs 1627
shall be assessed against, an eligible offender who is indigent 1628
and who submits an application under this section. 1629

(G) If a court rejects an eligible ~~inmate's~~ offender's 1630
application for DNA testing under division (D) of this section, 1631
unless the rejection is overturned on appeal, no court shall 1632
require the state to administer a DNA test under sections 2953.71 1633
to 2953.81 of the Revised Code on the eligible ~~inmate~~ offender. 1634

Sec. 2953.74. (A) If an eligible ~~inmate~~ offender submits an 1635
application for DNA testing under section 2953.73 of the Revised 1636
Code and a prior definitive DNA test has been conducted regarding 1637
the same biological evidence that the ~~inmate~~ offender seeks to 1638
have tested, the court shall reject the ~~inmate's~~ offender's 1639
application. If an eligible ~~inmate~~ offender files an application 1640
for DNA testing and a prior inconclusive DNA test has been 1641

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 1674
consideration of all available admissible evidence related to the 1675
subject ~~inmate's~~ offender's case as described in division (D) of 1676
this section would have been outcome determinative at the trial 1677
stage in that case. 1678

(C) If an eligible ~~inmate~~ offender submits an application for 1679
DNA testing under section 2953.73 of the Revised Code, the court 1680
may accept the application only if all of the following apply: 1681

(1) The court determines pursuant to section 2953.75 of the 1682
Revised Code that biological material was collected from the crime 1683
scene or the victim of the offense for which the ~~inmate~~ offender 1684
is an eligible ~~inmate~~ offender and is requesting the DNA testing 1685
and that the parent sample of that biological material against 1686
which a sample from the ~~inmate~~ offender can be compared still 1687
exists at that point in time. 1688

(2) The testing authority determines all of the following 1689
pursuant to section 2953.76 of the Revised Code regarding the 1690
parent sample of the biological material described in division 1691
(C)(1) of this section: 1692

(a) The parent sample of the biological material so collected 1693
contains scientifically sufficient material to extract a test 1694
sample. 1695

(b) The parent sample of the biological material so collected 1696
is not so minute or fragile as to risk destruction of the parent 1697
sample by the extraction described in division (C)(2)(a) of this 1698
section; provided that the court may determine in its discretion, 1699
on a case-by-case basis, that, even if the parent sample of the 1700
biological material so collected is so minute or fragile as to 1701
risk destruction of the parent sample by the extraction, the 1702
application should not be rejected solely on the basis of that 1703
risk. 1704

(c) The parent sample of the biological material so collected 1705
has not degraded or been contaminated to the extent that it has 1706
become scientifically unsuitable for testing, and the parent 1707
sample otherwise has been preserved, and remains, in a condition 1708
that is scientifically suitable for testing. 1709

(3) The court determines that, at the trial stage in the case 1710
in which the ~~inmate~~ offender was convicted of the offense for 1711
which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 1712
requesting the DNA testing, the identity of the person who 1713
committed the offense was an issue. 1714

(4) The court determines that one or more of the defense 1715
theories asserted by the ~~inmate~~ offender at the trial stage in the 1716
case described in division (C)(3) of this section or in a retrial 1717
of that case in a court of this state was of such a nature that, 1718
if DNA testing is conducted and an exclusion result is obtained, 1719
the exclusion result will be outcome determinative. 1720

(5) The court determines that, if DNA testing is conducted 1721
and an exclusion result is obtained, the results of the testing 1722
will be outcome determinative regarding that ~~inmate~~ offender. 1723

(6) The court determines pursuant to section 2953.76 of the 1724
Revised Code from the chain of custody of the parent sample of the 1725
biological material to be tested and of any test sample extracted 1726
from the parent sample, and from the totality of circumstances 1727
involved, that the parent sample and the extracted test sample are 1728
the same sample as collected and that there is no reason to 1729
believe that they have been out of state custody or have been 1730
tampered with or contaminated since they were collected. 1731

(D) If an eligible ~~inmate~~ offender submits an application for 1732
DNA testing under section 2953.73 of the Revised Code, the court, 1733
in determining whether the "outcome determinative" criterion 1734
described in divisions (B)(1) and (2) of this section has been 1735

satisfied, shall consider all available admissible evidence 1736
related to the subject ~~inmate's~~ offender's case. 1737

(E) If an eligible ~~inmate~~ offender submits an application for 1738
DNA testing under section 2953.73 of the Revised Code and the 1739
court accepts the application, the eligible ~~inmate~~ offender may 1740
request the court to order, or the court on its own initiative may 1741
order, the bureau of criminal identification and investigation to 1742
compare the results of DNA testing of biological material from an 1743
unidentified person other than the ~~inmate~~ offender that was 1744
obtained from the crime scene or from a victim of the offense for 1745
which the ~~inmate~~ offender has been approved for DNA testing to the 1746
combined DNA index system maintained by the federal bureau of 1747
investigation. 1748

If the bureau, upon comparing the test results to the 1749
combined DNA index system, determines the identity of the person 1750
who is the contributor of the biological material, the bureau 1751
shall provide that information to the court that accepted the 1752
application, the ~~inmate~~ offender, and the prosecuting attorney. 1753
The ~~inmate~~ offender or the state may use the information for any 1754
lawful purpose. 1755

If the bureau, upon comparing the test results to the 1756
combined DNA index system, is unable to determine the identity of 1757
the person who is the contributor of the biological material, the 1758
bureau may compare the test results to other previously obtained 1759
and acceptable DNA test results of any person whose identity is 1760
known other than the eligible ~~inmate~~ offender. If the bureau, upon 1761
comparing the test results to the DNA test results of any person 1762
whose identity is known, determines that the person whose identity 1763
is known is the contributor of the biological material, the bureau 1764
shall provide that information to the court that accepted the 1765
application, the ~~inmate~~ offender, and the prosecuting attorney. 1766
The ~~inmate~~ offender or the state may use the information for any 1767

lawful purpose. 1768

Sec. 2953.75. (A) If an eligible ~~inmate~~ offender submits an 1769
application for DNA testing under section 2953.73 of the Revised 1770
Code, the court shall require the prosecuting attorney to use 1771
reasonable diligence to determine whether biological material was 1772
collected from the crime scene or victim of the offense for which 1773
the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 1774
requesting the DNA testing against which a sample from the ~~inmate~~ 1775
offender can be compared and whether the parent sample of that 1776
biological material still exists at that point in time. In using 1777
reasonable diligence to make those determinations, the prosecuting 1778
attorney shall rely upon all relevant sources, including, but not 1779
limited to, all of the following: 1780

(1) All prosecuting authorities in the case in which the 1781
~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ 1782
offender is an eligible ~~inmate~~ offender and is requesting the DNA 1783
testing and in the appeals of, and postconviction proceedings 1784
related to, that case; 1785

(2) All law enforcement authorities involved in the 1786
investigation of the offense for which the ~~inmate~~ offender is an 1787
eligible offender and is requesting the DNA testing; 1788

(3) All custodial agencies involved at any time with the 1789
biological material in question; 1790

(4) The custodian of all custodial agencies described in 1791
division (A)(3) of this section; 1792

(5) All crime laboratories involved at any time with the 1793
biological material in question; 1794

(6) All other reasonable sources. 1795

(B) The prosecuting attorney shall prepare a report that 1796
contains the prosecuting attorney's determinations made under 1797

division (A) of this section and shall file a copy of the report 1798
with the court and provide a copy to the eligible ~~inmate~~ offender 1799
and the attorney general. 1800

Sec. 2953.76. If an eligible ~~inmate~~ offender submits an 1801
application for DNA testing under section 2953.73 of the Revised 1802
Code, the court shall require the prosecuting attorney to consult 1803
with the testing authority and to prepare findings regarding the 1804
quantity and quality of the parent sample of the biological 1805
material collected from the crime scene or victim of the offense 1806
for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and 1807
is requesting the DNA testing and that is to be tested, and of the 1808
chain of custody and reliability regarding that parent sample, as 1809
follows: 1810

(A) The testing authority shall determine whether there is a 1811
scientifically sufficient quantity of the parent sample to test 1812
and whether the parent sample is so minute or fragile that there 1813
is a substantial risk that the parent sample could be destroyed in 1814
testing. The testing authority may determine that there is not a 1815
sufficient quantity to test in order to preserve the state's 1816
ability to present in the future the original evidence presented 1817
at trial, if another trial is required. Upon making its 1818
determination under this division, the testing authority shall 1819
prepare a written document that contains its determination and the 1820
reasoning and rationale for that determination and shall provide a 1821
copy to the court, the eligible ~~inmate~~ offender, the prosecuting 1822
attorney, and the attorney general. The court may determine in its 1823
discretion, on a case-by-case basis, that, even if the parent 1824
sample of the biological material so collected is so minute or 1825
fragile as to risk destruction of the parent sample by the 1826
extraction, the application should not be rejected solely on the 1827
basis of that risk. 1828

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

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

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

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

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

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

taken. 1893

(B) A court or testing authority shall provide the 1894
documentation required under division (A) of this section in 1895
writing and shall maintain that documentation. 1896

Sec. 2953.78. (A) If an eligible ~~inmate~~ offender submits an 1897
application for DNA testing under section 2953.73 of the Revised 1898
Code and if the application is accepted and DNA testing is to be 1899
performed, the court shall select the testing authority to be used 1900
for the testing. A court shall not select or use a testing 1901
authority for DNA testing unless the attorney general approves or 1902
designates the testing authority pursuant to division (C) of this 1903
section and unless the testing authority satisfies the criteria 1904
set forth in section 2953.80 of the Revised Code. 1905

(B) If a court selects a testing authority pursuant to 1906
division (A) of this section and the eligible ~~inmate~~ offender for 1907
whom the test is to be performed objects to the use of the 1908
selected testing authority, the court shall rescind its prior 1909
acceptance of the application for DNA testing for the ~~inmate~~ 1910
offender and deny the application. An objection as described in 1911
this division, and the resulting rescission and denial, do not 1912
preclude a court from accepting in the court's discretion, a 1913
subsequent application by the same eligible ~~inmate~~ offender 1914
requesting DNA testing. 1915

(C) The attorney general shall approve or designate testing 1916
authorities that may be selected and used to conduct DNA testing, 1917
shall prepare a list of the approved or designated testing 1918
authorities, and shall provide copies of the list to all courts of 1919
common pleas. The attorney general shall update the list as 1920
appropriate to reflect changes in the approved or designated 1921
testing authorities and shall provide copies of the updated list 1922
to all courts of common pleas. The attorney general shall not 1923

approve or designate a testing authority under this division 1924
unless the testing authority satisfies the criteria set forth in 1925
section 2953.80 of the Revised Code. A testing authority that is 1926
equipped to handle advanced DNA testing may be approved or 1927
designated under this division, provided it satisfies the criteria 1928
set forth in that section. 1929

(D) The attorney general's approval or designation of testing 1930
authorities under division (C) of this section, and the selection 1931
and use of any approved or designated testing authority, do not 1932
afford an inmate offender any right to subsequently challenge the 1933
approval, designation, selection, or use, and an inmate offender 1934
may not appeal to any court the approval, designation, selection, 1935
or use of a testing authority. 1936

Sec. 2953.79. (A) If an eligible inmate offender submits an 1937
application for DNA testing under section 2953.73 of the Revised 1938
Code and if the application is accepted and DNA testing is to be 1939
performed, a sample of biological material shall be obtained from 1940
the inmate offender in accordance with this section, to be 1941
compared with the parent sample of biological material collected 1942
from the crime scene or the victim of the offense for which the 1943
inmate offender is an eligible inmate offender and requested the 1944
DNA testing. The inmate's offender's filing of the application 1945
constitutes the inmate's offender's consent to the obtaining of 1946
the sample of biological material from the inmate offender. The 1947
testing authority shall obtain the sample of biological material 1948
from the inmate offender in accordance with medically accepted 1949
procedures. 1950

(B) If DNA testing is to be performed for an inmate offender 1951
as described in division (A) of this section, the court shall 1952
require the state to coordinate with the department of 1953
rehabilitation and correction or the other state agency or entity 1954

of local government with custody of the offender, whichever is 1955
applicable, as to the time and place at which the sample of 1956
biological material will be obtained from the inmate offender. ~~The~~ 1957
If the offender is in prison or is in custody in another facility 1958
at the time the DNA testing is to be performed, the sample of 1959
biological material shall be obtained from the inmate offender at 1960
the facility in which the inmate offender is housed, and the 1961
department of rehabilitation and correction or the other state 1962
agency or entity of local government with custody of the offender, 1963
whichever is applicable, shall make the inmate offender available 1964
at the specified time. The court shall require the state to 1965
provide notice to the inmate offender and to the inmate's 1966
offender's counsel of the date on which, and the time and place at 1967
which, the sample will be so obtained. 1968

The court also shall require the state to coordinate with the 1969
testing authority regarding the obtaining of the sample from the 1970
inmate offender. 1971

(C)(1) If DNA testing is to be performed for an inmate 1972
offender as described in division (A) of this section, and the 1973
inmate offender refuses to submit to the collection of the sample 1974
of biological material from the inmate offender or hinders the 1975
state from obtaining a sample of biological material from the 1976
inmate offender, the court shall rescind its prior acceptance of 1977
the application for DNA testing for the inmate offender and deny 1978
the application. 1979

(2) For purposes of division (C)(1) of this section: 1980

(a) An inmate's offender's "refusal to submit to the 1981
collection of a sample of biological material from the inmate 1982
offender" includes, but is not limited to, the inmate's offender's 1983
rejection of the physical manner in which a sample of the inmate's 1984
offender's biological material is to be taken. 1985

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

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

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

(A) The court or a designee of the court shall require the
state to maintain the results of the testing and to maintain and
preserve both the parent sample of the biological material used
and the ~~inmate~~ offender sample of the biological material used.
The testing authority may be designated as the person to maintain
the results of the testing or to maintain and preserve some or all
of the samples, or both. The results of the testing remain state's
evidence. The samples shall be preserved during the entire period
of time for which the ~~inmate~~ offender is imprisoned or confined

relative to the ~~prison term or sentence of death~~ in question and, 2017
if that ~~prison term expires or the inmate is executed under that~~ 2018
~~sentence of death, is on parole or probation relative to that~~ 2019
sentence, is under post-release control or a community control 2020
sanction relative to that sentence, or has a duty to comply with 2021
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 2022
Code relative to that sentence. Additionally, if the prison term 2023
or confinement under the sentence in question expires, if the 2024
sentence in question is a sentence of death and the offender is 2025
executed, or if the parole or probation period, the period of 2026
post-release control, the community control sanction, or the duty 2027
to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of 2028
the Revised Code under the sentence in question ends, the samples 2029
shall be preserved for a reasonable period of time of not less 2030
than twenty-four months after the term or confinement expires ~~or,~~ 2031
the ~~inmate~~ offender is executed, or the parole or probation 2032
period, the period of post-release control, the community control 2033
sanction, or the duty to comply with sections 2950.04, 2950.041, 2034
2950.05, and 2950.06 of the Revised Code ends, whichever is 2035
applicable. The court shall determine the period of time that is 2036
reasonable for purposes of this division, provided that the period 2037
shall not be less than twenty-four months after the term or 2038
confinement expires ~~or,~~ the ~~inmate~~ offender is executed, or the 2039
parole or probation period, the period of post-release control, 2040
the community control sanction, or the duty to comply with 2041
sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised 2042
Code ends, whichever is applicable. 2043

(B) The results of the testing are a public record. 2044

(C) The court or the testing authority shall provide a copy 2045
of the results of the testing to the prosecuting attorney, the 2046
attorney general, and the subject ~~inmate~~ offender. 2047

(D) If the postconviction proceeding in question is pending 2048

at that time in a court of this state, the court of common pleas 2049
that decided the DNA application or the testing authority shall 2050
provide a copy of the results of the testing to any court of this 2051
state, and, if it is pending in a federal court, the court of 2052
common pleas that decided the DNA application or the testing 2053
authority shall provide a copy of the results of the testing to 2054
that federal court. 2055

(E) The testing authority shall provide a copy of the results 2056
of the testing to the court of common pleas that decided the DNA 2057
application. 2058

(F) The ~~inmate~~ offender or the state may enter the results of 2059
the testing into any proceeding. 2060

Sec. 2953.83. In any court proceeding under sections 2953.71 2061
to ~~2953.82~~ 2953.81 of the Revised Code, the Rules of Criminal 2062
Procedure apply, except to the extent that sections 2953.71 to 2063
~~2953.82~~ 2953.81 of the Revised Code provide a different procedure 2064
or to the extent that the Rules would by their nature be clearly 2065
inapplicable. 2066

Sec. 2953.84. The provisions of sections 2953.71 to ~~2953.82~~ 2067
2953.81 of the Revised Code by which an ~~inmate~~ offender may obtain 2068
postconviction DNA testing are not the exclusive means by which an 2069
~~inmate~~ offender may obtain postconviction DNA testing, and the 2070
provisions of those sections do not limit or affect any other 2071
means by which an ~~inmate~~ offender may obtain postconviction DNA 2072
testing. 2073

Section 2. That existing sections 109.573, 2901.07, 2953.21, 2074
2953.23, 2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2075
2953.77, 2953.78, 2953.79, 2953.81, 2953.83, and 2953.84 and 2076
section 2953.82 of the Revised Code are hereby repealed. 2077

Section 3. (A) The General Assembly acknowledges the Supreme Court's authority in prescribing rules governing practice and procedure in the courts of this state as provided in Section 5 of Article IV of the Ohio Constitution.

(B) The General Assembly hereby requests the Supreme Court to adopt rules prescribing specific procedures to be followed for the administration by law enforcement agencies and criminal justice entities in this state of photo lineups, live lineups, and showups. The General Assembly also requests that any rules adopted by the Supreme Court be consistent with the requirements of divisions (B) and (C) of section 2933.83 of the Revised Code. If the Supreme Court adopts rules of the type described in this division, on and after the date on which the rules take effect, law enforcement agencies and criminal justice entities in this state shall comply with the rules in conducting live lineups, photo lineups, and showups.

(C) The General Assembly hereby requests the Supreme Court to adopt rules prescribing a cautionary jury charge about eyewitness identification procedures and the accuracy of eyewitness identification. If the Supreme Court adopts rules of the type described in this division, on and after the effective date on which the rules take effect, the jury charge shall be used in the courts of this state in the manner specified by the Supreme Court in the rules.