

**As Reported by the Senate Judiciary--Civil Justice Committee**

**128th General Assembly**

**Regular Session**

**2009-2010**

**Sub. S. B. No. 77**

**Senator Goodman**

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

**Kearney**

**—**

**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  
defender's office, in consultation with the Ohio innocence 35  
project, and a representative from the buckeye state sheriffs 36  
association. The task force shall perform the duties and functions 37  
specified in division (D) of section 2933.82 of the Revised Code. 38  
39

**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 <del>or 2953.82</del> 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
(4) <u>"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 the effective date of this amendment 427  
for any felony offense. The DNA specimen collection duties set 428  
forth in divisions (B)(2), (3), (4)(a), (4)(b), and (5) of this 429  
section apply to any person who has been convicted of, is 430  
convicted of, has pleaded guilty to, or pleads guilty to any 431  
felony offense or any of the following 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  
551

(4) "Profile" means a unique identifier of an individual, derived from DNA. 552  
553

(5) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code. 554  
555

(6) "Governmental evidence-retention entity" means all of the following: 556  
557

(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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560  
561

(b) Any official or employee of any entity or individual described in division (A)(6)(a) of this section. 562  
563

(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, 2907.03, or 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 section 2907.02 of the Revised Code, for a 576  
577  
578  
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period of thirty years if the offense or act remains unsolved; 580

(c) If any person is convicted of or pleads guilty to the 581  
offense, or is adjudicated a delinquent child for committing the 582  
delinquent act, for the period of time that the person remains 583  
incarcerated, in a department of youth services institution or 584  
other juvenile facility, under a community control sanction for 585  
that offense, under any order of disposition for that act, on 586  
probation or parole for that offense, under judicial release or 587  
supervised release for that act, under post-release control for 588  
that offense, involved in civil litigation in connection with that 589  
offense or act, or subject to registration and other duties 590  
imposed for that offense or act under sections 2950.04, 2950.041, 591  
2950.05, and 2950.06 of the Revised Code or for a period of thirty 592  
years, whichever is earlier. If after the period of thirty years 593  
the person remains incarcerated, then the governmental 594  
evidence-retention entity shall secure the biological evidence 595  
until the person is released from incarceration or dies. 596

(2) This section applies to evidence that was in the 597  
possession of any governmental evidence-retention entity during 598  
the investigation and prosecution of a criminal case or delinquent 599  
child case involving a violation of section 2903.01, 2903.02, 600  
2903.03, 2903.04, 2903.041, 2903.06, 2907.02, 2907.03, or 2907.05 601  
of the Revised Code or a violation of section 2923.02 of the 602  
Revised Code in an attempt to commit a violation of section 603  
2907.02 of the Revised Code and that, at the time the person is 604  
convicted of or pleads guilty to the offense or is adjudicated a 605  
delinquent child for the delinquent act, was likely to contain 606  
biological material. 607

(3) A governmental evidence-retention entity that possesses 608  
biological evidence shall retain the biological evidence in the 609  
amount and manner sufficient to develop a DNA profile from the 610  
biological material contained in or included on the evidence. 611

(4) Upon written request by the defendant in a criminal case 612  
or the alleged delinquent child in a delinquent child case 613  
involving a violation of section 2903.01, 2903.02, 2903.03, 614  
2903.04, 2903.041, 2903.06, 2907.02, 2907.03, or 2907.05 of the 615  
Revised Code or a violation of section 2923.02 of the Revised Code 616  
in an attempt to commit a violation of section 2907.02 of the 617  
Revised Code, a governmental evidence-retention entity that 618  
possesses biological evidence shall prepare an inventory of the 619  
biological evidence that has been preserved in connection with the 620  
defendant's criminal case or the alleged delinquent child's 621  
delinquent child case. 622

(5) A governmental evidence-retention entity that possesses 623  
biological evidence that includes biological material may destroy 624  
the evidence before the expiration of the applicable period of 625  
time specified in division (B)(1) of this section if all of the 626  
following apply: 627

(a) No other provision of federal or state law requires the 628  
state to preserve the evidence. 629

(b) The governmental evidence-retention entity, by certified 630  
mail, return receipt requested, provides notice of intent to 631  
destroy the evidence to all of the following: 632

(i) All persons who remain in custody, incarcerated, in a 633  
department of youth services institution or other juvenile 634  
facility, under a community control sanction, under any order of 635  
disposition, on probation or parole, under judicial release or 636  
supervised release, under post-release control, involved in civil 637  
litigation, or subject to registration and other duties imposed 638  
for that offense or act under sections 2950.04, 2950.041, 2950.05, 639  
and 2950.06 of the Revised Code as a result of a criminal 640  
conviction, delinquency adjudication, or commitment related to the 641  
evidence in question; 642

(ii) The attorney of record for each person who is in custody 643  
in any circumstance described in division (B)(5)(b)(i) of this 644  
section if the attorney of record can be located; 645

(iii) The state public defender; 646

(iv) The prosecutor of record in the case that resulted in 647  
the custody of the person in custody in any circumstance described 648  
in division (B)(5)(b)(i) of this section; 649

(v) The attorney general. 650

(c) No person who is notified under division (B)(5)(b) of 651  
this section does either of the following within one year after 652  
the date on which the person receives the notice: 653

(i) Files a motion for testing of evidence under sections 654  
2953.71 to 2953.81 or section 2953.82 of the Revised Code; 655

(ii) Submits a written request for retention of evidence to 656  
the governmental evidence-retention entity that provided notice of 657  
its intent to destroy evidence under division (B)(5)(b) of this 658  
section. 659

(6) If, after providing notice under division (B)(5)(b) of 660  
this section of its intent to destroy evidence, a governmental 661  
evidence-retention entity receives a written request for retention 662  
of the evidence from any person to whom the notice is provided, 663  
the governmental evidence-retention entity shall retain the 664  
evidence while the person referred to in division (B)(5)(b)(i) of 665  
this section remains in custody, incarcerated, in a department of 666  
youth services institution or other juvenile facility, under a 667  
community control sanction, under any order of disposition, on 668  
probation or parole, under judicial release or supervised release, 669  
under post-release control, involved in civil litigation, or 670  
subject to registration and other duties imposed for that offense 671  
or act under sections 2950.04, 2950.041, 2950.05, and 2950.06 of 672  
the Revised Code as a result of a criminal conviction, delinquency 673

adjudication, or commitment related to the evidence in question. 674

(7) A governmental evidence-retention entity shall not be 675  
required to preserve physical evidence pursuant to this section 676  
that is of such a size, bulk, or physical character as to render 677  
retention impracticable. When retention of physical evidence that 678  
otherwise would be required to be retained pursuant to this 679  
section is impracticable as described in this division, the 680  
governmental evidence-retention entity that otherwise would be 681  
required to retain the physical evidence shall remove and preserve 682  
portions of the material evidence likely to contain biological 683  
evidence related to the offense, in a quantity sufficient to 684  
permit future DNA testing before returning or disposing of that 685  
physical evidence. 686

(C)(1) The preservation of biological evidence task force 687  
established within the bureau of criminal identification and 688  
investigation under section 109.561 of the Revised Code shall 689  
establish a system regarding the proper preservation of biological 690  
evidence in this state. In establishing the system, the task force 691  
shall do all of the following: 692

(a) Devise standards regarding the proper collection, 693  
retention, and cataloging of biological evidence for ongoing 694  
investigations and prosecutions; 695

(b) Recommend practices, protocols, models, and resources for 696  
the cataloging and accessibility of preserved biological evidence 697  
already in the possession of governmental evidence-retention 698  
entities. 699

(2) In consultation with the preservation of biological 700  
evidence task force described in division (C)(1) of this section, 701  
the division of criminal justice services of the department of 702  
public safety shall administer and conduct training programs for 703  
law enforcement officers and other relevant employees who are 704

charged with preserving and cataloging biological evidence 705  
regarding the methods and procedures referenced in this section. 706

Sec. 2933.83. (A) As used in this section: 707

(1) "Administrator" means the person conducting a photo 708  
lineup or live lineup. 709

(2) "Blind administrator" means the administrator does not 710  
know the identity of the suspect. "Blind administrator" includes 711  
an administrator who conducts a photo lineup through the use of a 712  
folder system or a substantially similar system. 713

(3) "Blinded administrator" means the administrator may know 714  
who the suspect is, but does not know which lineup member is being 715  
viewed by the eyewitness. "Blinded administrator" includes an 716  
administrator who conducts a photo lineup through the use of a 717  
folder system or a substantially similar system. 718

(4) "Eyewitness" means a person who observes another person 719  
at or near the scene of an offense. 720

(5) "Filler" means either a person or a photograph of a 721  
person who is not suspected of an offense and is included in an 722  
identification procedure. 723

(6) "Folder system" means a system for conducting a photo 724  
lineup that satisfies all of the following: 725

(a) The investigating officer uses one "suspect photograph" 726  
that resembles the description of the suspected perpetrator of the 727  
offense provided by the witness, five "filler photographs" of 728  
persons not suspected of the offense that match the description of 729  
the suspected perpetrator but do not cause the suspect photograph 730  
to unduly stand out, four "blank photographs" that contain no 731  
images of any person, and ten empty folders. 732

(b) The investigating officer places one "filler photograph" 733  
into one of the empty folders and numbers it as folder 1. 734



(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.

(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."

(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.

(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 contains to the administrator.

(g) The administrator follows the procedures specified in this division for a second viewing if the witness requests to view each of the folders a second time, handing them to the witness in

the same order as during the first viewing; the witness is not 767  
permitted to have more than two viewings of the folders; and the 768  
administrator preserves the order of the folders and the 769  
photographs they contain in a facedown position in order to 770  
document the steps specified in division (A)(6)(h) of this 771  
section. 772

(h) The administrator documents and records the results of 773  
the procedure described in divisions (A)(6)(a) to (f) of this 774  
section before the witness views each of the folders a second time 775  
and before the administrator views any photograph that the witness 776  
identifies as being of the person the witness saw. The 777  
documentation and record includes the date, time, and location of 778  
the lineup procedure; the name of the administrator; the names of 779  
all of the individuals present during the lineup; the number of 780  
photographs shown to the witness; copies of each photograph shown 781  
to the witness; the order in which the folders were presented to 782  
the witness; the source of each photograph that was used in the 783  
procedure; a statement of the witness' confidence in the witness' 784  
own words as to the certainty of the witness' identification of 785  
the photographs as being of the person the witness saw that is 786  
taken immediately upon the reaction of the witness to viewing the 787  
photograph; and any additional information the administrator 788  
considers pertinent to the lineup procedure. If the witness views 789  
each of the folders a second time, the administrator shall 790  
document and record the statement of the witness's confidence in 791  
the witness's own words as to the certainty of the witness's 792  
identification of a photograph as being of the person the witness 793  
saw and document that the identification was made during a second 794  
viewing of each of the folders by the witness. 795

(i) The administrator shall not say anything to the witness 796  
or give any oral or nonverbal cues as to whether or not the 797  
witness identified the "suspect photograph" until the 798

administrator documents and records the results of the procedure 799  
described in divisions (A)(6)(a) to (f) of this section and the 800  
photo lineup has concluded. 801

(7) "Live lineup" means an identification procedure in which 802  
a group of persons, including the suspected perpetrator of an 803  
offense and other persons not suspected of the offense, is 804  
displayed to an eyewitness for the purpose of determining whether 805  
the eyewitness identifies the suspect as the perpetrator of the 806  
offense. 807

(8) "Photo lineup" means an identification procedure in which 808  
an array of photographs, including a photograph of the suspected 809  
perpetrator of an offense and additional photographs of other 810  
persons not suspected of the offense, is displayed to an 811  
eyewitness for the purpose of determining whether the eyewitness 812  
identifies the suspect as the perpetrator of the offense. 813

(9) "Perpetrator" means the person who committed the offense. 814

(10) "Suspect" means the person believed by law enforcement 815  
to be the possible perpetrator of the offense. 816

(B) Prior to conducting any live lineup or photo lineup on or 817  
after the effective date of this section, any law enforcement 818  
agency or criminal justice entity in this state that conducts live 819  
lineups or photo lineups shall adopt specific procedures for 820  
conducting the lineups. The procedures, at a minimum, shall impose 821  
the following requirements: 822

(1) Unless impracticable, a blind or blinded administrator 823  
shall conduct the live lineup or photo lineup. 824

(2) When it is impracticable for a blind administrator to 825  
conduct the live lineup or photo lineup, the administrator shall 826  
state in writing the reason for that impracticability. 827

(3) When it is impracticable for either a blind or blinded 828

administrator to conduct the live lineup or photo lineup, the 829  
administrator shall state in writing the reason for that 830  
impracticability. 831

(4) The administrator conducting the lineup shall make a 832  
written record that includes all of the following information: 833

(a) All identification and nonidentification results obtained 834  
during the lineup, signed by the eyewitnesses, including the 835  
eyewitnesses' confidence statements made immediately at the time 836  
of the identification; 837

(b) The names of all persons present at the lineup; 838

(c) The date and time of the lineup; 839

(d) Any eyewitness identification of one or more fillers in 840  
the lineup; 841

(e) The names of the lineup members and other relevant 842  
identifying information, and the sources of all photographs or 843  
persons used in the lineup. 844

(5) If a blind administrator is conducting the live lineup or 845  
the photo lineup, the administrator shall inform the witness that 846  
the suspect may or may not be in the lineup and that the 847  
administrator does not know who the suspect is. 848

(C) For any photo lineup or live lineup that is administered 849  
on or after the effective date of this section, all of the 850  
following apply: 851

(1) Evidence of a failure to comply with any of the 852  
provisions of this section or with any procedure for conducting 853  
lineups that has been adopted by a law enforcement agency or 854  
criminal justice agency pursuant to division (B) of this section 855  
and that conforms to any provision of divisions (B)(1) to (5) of 856  
this section shall be considered by trial courts in adjudicating 857  
motions to suppress eyewitness identification resulting from or 858

related to the lineup. 859

(2) Evidence of a failure to comply with any of the 860  
provisions of this section or with any procedure for conducting 861  
lineups that has been adopted by a law enforcement agency or 862  
criminal justice agency pursuant to division (B) of this section 863  
and that conforms to any provision of divisions (B)(1) to (5) of 864  
this section shall be admissible in support of any claim of 865  
eyewitness misidentification resulting from or related to the 866  
lineup as long as that evidence otherwise is admissible. 867

(3) When evidence of a failure to comply with any of the 868  
provisions of this section, or with any procedure for conducting 869  
lineups that has been adopted by a law enforcement agency or 870  
criminal justice agency pursuant to division (B) of this section 871  
and that conforms to any provision of divisions (B)(1) to (5) of 872  
this section, is presented at trial, the jury shall be instructed 873  
that it may consider credible evidence of noncompliance in 874  
determining the reliability of any eyewitness identification 875  
resulting from or related to the lineup. 876

**Sec. 2953.21.** (A)(1)(a) Any person who has been convicted of 877  
a criminal offense or adjudicated a delinquent child and who 878  
claims that there was such a denial or infringement of the 879  
person's rights as to render the judgment void or voidable under 880  
the Ohio Constitution or the Constitution of the United States, 881  
and any person who has been convicted of a criminal offense that 882  
is a felony, and who is an inmate, ~~and~~ offender for whom DNA 883  
testing that was performed under sections 2953.71 to 2953.81 of 884  
the Revised Code or under former section 2953.82 of the Revised 885  
Code and analyzed in the context of and upon consideration of all 886  
available admissible evidence related to the ~~inmate's~~ person's 887  
case as described in division (D) of section 2953.74 of the 888  
Revised Code provided results that establish, by clear and 889

convincing evidence, actual innocence of that felony offense or, 890  
if the person was sentenced to death, establish, by clear and 891  
convincing evidence, actual innocence of the aggravating 892  
circumstance or circumstances the person was found guilty of 893  
committing and that is or are the basis of that sentence of death, 894  
may file a petition in the court that imposed sentence, stating 895  
the grounds for relief relied upon, and asking the court to vacate 896  
or set aside the judgment or sentence or to grant other 897  
appropriate relief. The petitioner may file a supporting affidavit 898  
and other documentary evidence in support of the claim for relief. 899

(b) As used in division (A)(1)(a) of this section, "actual 900  
innocence" means that, had the results of the DNA testing 901  
conducted under sections 2953.71 to 2953.81 of the Revised Code or 902  
under former section 2953.82 of the Revised Code been presented at 903  
trial, and had those results been analyzed in the context of and 904  
upon consideration of all available admissible evidence related to 905  
the ~~inmate's~~ person's case as described in division (D) of section 906  
2953.74 of the Revised Code, no reasonable factfinder would have 907  
found the petitioner guilty of the offense of which the petitioner 908  
was convicted, or, if the person was sentenced to death, no 909  
reasonable factfinder would have found the petitioner guilty of 910  
the aggravating circumstance or circumstances the petitioner was 911  
found guilty of committing and that is or are the basis of that 912  
sentence of death. 913  
914

(c) As used in divisions (A)(1)(a) and (b) of this section, 915  
"former section 2953.82 of the Revised Code" means section 2953.82 916  
of the Revised Code as it existed prior to the effective date of 917  
this amendment. 918

(2) Except as otherwise provided in section 2953.23 of the 919  
Revised Code, a petition under division (A)(1) of this section 920  
shall be filed no later than one hundred eighty days after the 921

date on which the trial transcript is filed in the court of 922  
appeals in the direct appeal of the judgment of conviction or 923  
adjudication or, if the direct appeal involves a sentence of 924  
death, the date on which the trial transcript is filed in the 925  
supreme court. If no appeal is taken, except as otherwise provided 926  
in section 2953.23 of the Revised Code, the petition shall be 927  
filed no later than one hundred eighty days after the expiration 928  
of the time for filing the appeal. 929

(3) In a petition filed under division (A) of this section, a 930  
person who has been sentenced to death may ask the court to render 931  
void or voidable the judgment with respect to the conviction of 932  
aggravated murder or the specification of an aggravating 933  
circumstance or the sentence of death. 934

(4) A petitioner shall state in the original or amended 935  
petition filed under division (A) of this section all grounds for 936  
relief claimed by the petitioner. Except as provided in section 937  
2953.23 of the Revised Code, any ground for relief that is not so 938  
stated in the petition is waived. 939

(5) If the petitioner in a petition filed under division (A) 940  
of this section was convicted of or pleaded guilty to a felony, 941  
the petition may include a claim that the petitioner was denied 942  
the equal protection of the laws in violation of the Ohio 943  
Constitution or the United States Constitution because the 944  
sentence imposed upon the petitioner for the felony was part of a 945  
consistent pattern of disparity in sentencing by the judge who 946  
imposed the sentence, with regard to the petitioner's race, 947  
gender, ethnic background, or religion. If the supreme court 948  
adopts a rule requiring a court of common pleas to maintain 949  
information with regard to an offender's race, gender, ethnic 950  
background, or religion, the supporting evidence for the petition 951  
shall include, but shall not be limited to, a copy of that type of 952  
information relative to the petitioner's sentence and copies of 953

that type of information relative to sentences that the same judge 954  
imposed upon other persons. 955

(B) The clerk of the court in which the petition is filed 956  
shall docket the petition and bring it promptly to the attention 957  
of the court. The clerk of the court in which the petition is 958  
filed immediately shall forward a copy of the petition to the 959  
prosecuting attorney of that county. 960

(C) The court shall consider a petition that is timely filed 961  
under division (A)(2) of this section even if a direct appeal of 962  
the judgment is pending. Before granting a hearing on a petition 963  
filed under division (A) of this section, the court shall 964  
determine whether there are substantive grounds for relief. In 965  
making such a determination, the court shall consider, in addition 966  
to the petition, the supporting affidavits, and the documentary 967  
evidence, all the files and records pertaining to the proceedings 968  
against the petitioner, including, but not limited to, the 969  
indictment, the court's journal entries, the journalized records 970  
of the clerk of the court, and the court reporter's transcript. 971  
The court reporter's transcript, if ordered and certified by the 972  
court, shall be taxed as court costs. If the court dismisses the 973  
petition, it shall make and file findings of fact and conclusions 974  
of law with respect to such dismissal. 975

(D) Within ten days after the docketing of the petition, or 976  
within any further time that the court may fix for good cause 977  
shown, the prosecuting attorney shall respond by answer or motion. 978  
Within twenty days from the date the issues are raised, either 979  
party may move for summary judgment. The right to summary judgment 980  
shall appear on the face of the record. 981

(E) Unless the petition and the files and records of the case 982  
show the petitioner is not entitled to relief, the court shall 983  
proceed to a prompt hearing on the issues even if a direct appeal 984  
of the case is pending. If the court notifies the parties that it 985



has found grounds for granting relief, either party may request an 986  
appellate court in which a direct appeal of the judgment is 987  
pending to remand the pending case to the court. 988

(F) At any time before the answer or motion is filed, the 989  
petitioner may amend the petition with or without leave or 990  
prejudice to the proceedings. The petitioner may amend the 991  
petition with leave of court at any time thereafter. 992

(G) If the court does not find grounds for granting relief, 993  
it shall make and file findings of fact and conclusions of law and 994  
shall enter judgment denying relief on the petition. If no direct 995  
appeal of the case is pending and the court finds grounds for 996  
relief or if a pending direct appeal of the case has been remanded 997  
to the court pursuant to a request made pursuant to division (E) 998  
of this section and the court finds grounds for granting relief, 999  
it shall make and file findings of fact and conclusions of law and 1000  
shall enter a judgment that vacates and sets aside the judgment in 1001  
question, and, in the case of a petitioner who is a prisoner in 1002  
custody, shall discharge or resentence the petitioner or grant a 1003  
new trial as the court determines appropriate. The court also may 1004  
make supplementary orders to the relief granted, concerning such 1005  
matters as arraignment, retrial, custody, and bail. If the trial 1006  
court's order granting the petition is reversed on appeal and if 1007  
the direct appeal of the case has been remanded from an appellate 1008  
court pursuant to a request under division (E) of this section, 1009  
the appellate court reversing the order granting the petition 1010  
shall notify the appellate court in which the direct appeal of the 1011  
case was pending at the time of the remand of the reversal and 1012  
remand of the trial court's order. Upon the reversal and remand of 1013  
the trial court's order granting the petition, regardless of 1014  
whether notice is sent or received, the direct appeal of the case 1015  
that was remanded is reinstated. 1016

(H) Upon the filing of a petition pursuant to division (A) of 1017

this section by a person sentenced to death, only the supreme 1018  
court may stay execution of the sentence of death. 1019

(I)(1) If a person sentenced to death intends to file a 1020  
petition under this section, the court shall appoint counsel to 1021  
represent the person upon a finding that the person is indigent 1022  
and that the person either accepts the appointment of counsel or 1023  
is unable to make a competent decision whether to accept or reject 1024  
the appointment of counsel. The court may decline to appoint 1025  
counsel for the person only upon a finding, after a hearing if 1026  
necessary, that the person rejects the appointment of counsel and 1027  
understands the legal consequences of that decision or upon a 1028  
finding that the person is not indigent. 1029

(2) The court shall not appoint as counsel under division 1030  
(I)(1) of this section an attorney who represented the petitioner 1031  
at trial in the case to which the petition relates unless the 1032  
person and the attorney expressly request the appointment. The 1033  
court shall appoint as counsel under division (I)(1) of this 1034  
section only an attorney who is certified under Rule 20 of the 1035  
Rules of Superintendence for the Courts of Ohio to represent 1036  
indigent defendants charged with or convicted of an offense for 1037  
which the death penalty can be or has been imposed. The 1038  
ineffectiveness or incompetence of counsel during proceedings 1039  
under this section does not constitute grounds for relief in a 1040  
proceeding under this section, in an appeal of any action under 1041  
this section, or in an application to reopen a direct appeal. 1042

(3) Division (I) of this section does not preclude attorneys 1043  
who represent the state of Ohio from invoking the provisions of 28 1044  
U.S.C. 154 with respect to capital cases that were pending in 1045  
federal habeas corpus proceedings prior to July 1, 1996, insofar 1046  
as the petitioners in those cases were represented in proceedings 1047  
under this section by one or more counsel appointed by the court 1048  
under this section or section 120.06, 120.16, 120.26, or 120.33 of 1049

the Revised Code and those appointed counsel meet the requirements 1050  
of division (I)(2) of this section. 1051

(J) Subject to the appeal of a sentence for a felony that is 1052  
authorized by section 2953.08 of the Revised Code, the remedy set 1053  
forth in this section is the exclusive remedy by which a person 1054  
may bring a collateral challenge to the validity of a conviction 1055  
or sentence in a criminal case or to the validity of an 1056  
adjudication of a child as a delinquent child for the commission 1057  
of an act that would be a criminal offense if committed by an 1058  
adult or the validity of a related order of disposition. 1059

**Sec. 2953.23.** (A) Whether a hearing is or is not held on a 1060  
petition filed pursuant to section 2953.21 of the Revised Code, a 1061  
court may not entertain a petition filed after the expiration of 1062  
the period prescribed in division (A) of that section or a second 1063  
petition or successive petitions for similar relief on behalf of a 1064  
petitioner unless division (A)(1) or (2) of this section applies: 1065

(1) Both of the following apply: 1066

(a) Either the petitioner shows that the petitioner was 1067  
unavoidably prevented from discovery of the facts upon which the 1068  
petitioner must rely to present the claim for relief, or, 1069  
subsequent to the period prescribed in division (A)(2) of section 1070  
2953.21 of the Revised Code or to the filing of an earlier 1071  
petition, the United States Supreme Court recognized a new federal 1072  
or state right that applies retroactively to persons in the 1073  
petitioner's situation, and the petition asserts a claim based on 1074  
that right. 1075

(b) The petitioner shows by clear and convincing evidence 1076  
that, but for constitutional error at trial, no reasonable 1077  
factfinder would have found the petitioner guilty of the offense 1078  
of which the petitioner was convicted or, if the claim challenges 1079  
a sentence of death that, but for constitutional error at the 1080

sentencing hearing, no reasonable factfinder would have found the petitioner eligible for the death sentence.

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

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

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

Sec. 2953.56. (A) A court that enters a judgment that vacates and sets aside the conviction of a person because of DNA testing that was performed under sections 2953.71 to 2953.81 of the Revised Code or under section 2953.82 of the Revised Code shall issue ninety days after the court vacates and sets aside the conviction an order directing that all official records pertaining to the case involving the vacated conviction be sealed and that

the proceedings in the case shall be deemed not to have occurred. 1112

1113

(B) As used in sections 2953.56 to 2953.59 of the Revised 1114

Code, "official records" has the same meaning as in section 1115

2953.51 of the Revised Code. 1116

**Sec. 2953.57.** (A) The court shall send notice of an order to 1117

seal official records issued pursuant to section 2953.56 of the 1118

Revised Code to any public office or agency that the court knows 1119

or has reason to believe may have any record of the case, whether 1120

or not it is an official record, that is the subject of the order. 1121

The notice shall be sent by certified mail, return receipt 1122

requested. 1123

(B) A person whose official records have been sealed pursuant 1124

to an order issued pursuant to section 2953.56 of the Revised Code 1125

may present a copy of that order and a written request to comply 1126

with it, to a public office or agency that has a record of the 1127

case that is the subject of the order. 1128

(C) An order to seal official records issued pursuant to 1129

section 2953.56 of the Revised Code applies to every public office 1130

or agency that has a record of the case that is the subject of the 1131

order, regardless of whether it receives a copy of the order to 1132

seal the official records pursuant to division (A) or (B) of this 1133

section. 1134

(D) Upon receiving a copy of an order to seal official 1135

records pursuant to division (A) or (B) of this section or upon 1136

otherwise becoming aware of an applicable order to seal official 1137

records issued pursuant to section 2953.56 of the Revised Code, a 1138

public office or agency shall comply with the order and, if 1139

applicable, with the provisions of section 2953.58 of the Revised 1140

Code, except that it may maintain a record of the case that is the 1141

subject of the order if the record is maintained for the purpose 1142

of compiling statistical data only and does not contain any 1143  
reference to the person who is the subject of the case and the 1144  
order. 1145

A public office or agency also may maintain an index of 1146  
sealed official records, in a form similar to that for sealed 1147  
records of conviction as set forth in division (F) of section 1148  
2953.32 of the Revised Code, access to which may not be afforded 1149  
to any person other than the person who has custody of the sealed 1150  
official records. The sealed official records to which such an 1151  
index pertains shall not be available to any person, except that 1152  
the official records of a case that have been sealed may be made 1153  
available to the following persons for the following purposes: 1154

(1) To the person who is the subject of the records upon 1155  
written application, and to any other person named in the 1156  
application, for any purpose; 1157

(2) To a law enforcement officer who was involved in the 1158  
case, for use in the officer's defense of a civil action arising 1159  
out of the officer's involvement in that case. 1160

**Sec. 2953.58.** (A) Except as otherwise provided in Chapter 1161  
2950. of the Revised Code, upon the issuance of an order by a 1162  
court under section 2953.56 of the Revised Code directing that all 1163  
official records pertaining to a case be sealed and that the 1164  
proceedings in the case be deemed not to have occurred: 1165

(1) Every law enforcement officer possessing records or 1166  
reports pertaining to the case that are the officer's specific 1167  
investigatory work product and that are excepted from the 1168  
definition of "official records" contained in section 2953.51 of 1169  
the Revised Code shall immediately deliver the records and reports 1170  
to the officer's employing law enforcement agency. Except as 1171  
provided in division (A)(3) of this section, no such officer shall 1172  
knowingly release, disseminate, or otherwise make the records and 1173

reports or any information contained in them available to, or 1174  
discuss any information contained in them with, any person not 1175  
employed by the officer's employing law enforcement agency. 1176

(2) Every law enforcement agency that possesses records or 1177  
reports pertaining to the case that are its specific investigatory 1178  
work product and that are excepted from the definition of 1179  
"official records" contained in section 2953.51 of the Revised 1180  
Code, or that are the specific investigatory work product of a law 1181  
enforcement officer it employs and that were delivered to it under 1182  
division (A)(1) of this section shall, except as provided in 1183  
division (A)(3) of this section, close the records and reports to 1184  
all persons who are not directly employed by the law enforcement 1185  
agency and shall, except as provided in division (A)(3) of this 1186  
section, treat the records and reports, in relation to all persons 1187  
other than those who are directly employed by the law enforcement 1188  
agency, as if they did not exist and had never existed. Except as 1189  
provided in division (A)(3) of this section, no person who is 1190  
employed by the law enforcement agency shall knowingly release, 1191  
disseminate, or otherwise make the records and reports in the 1192  
possession of the employing law enforcement agency or any 1193  
information contained in them available to, or discuss any 1194  
information contained in them with, any person not employed by the 1195  
employing law enforcement agency. 1196

(3) A law enforcement agency that possesses records or 1197  
reports pertaining to the case that are its specific investigatory 1198  
work product and that are excepted from the definition of 1199  
"official records" contained in division (D) of section 2953.51 of 1200  
the Revised Code, or that are the specific investigatory work 1201  
product of a law enforcement officer it employs and that were 1202  
delivered to it under division (A)(1) of this section may permit 1203  
another law enforcement agency to use the records or reports in 1204  
the investigation of another offense, if the facts incident to the 1205

offense being investigated by the other law enforcement agency and 1206  
the facts incident to an offense that is the subject of the case 1207  
are reasonably similar and if all references to the name or 1208  
identifying information of the person whose records were sealed 1209  
are redacted from the records or reports. The agency that provides 1210  
the records and reports may not provide the other agency with the 1211  
name of the person who is the subject of the case the records of 1212  
which were sealed. 1213

(B) Whoever violates division (A)(1), (2), or (3) of this 1214  
section is guilty of divulging confidential information, a 1215  
misdemeanor of the fourth degree. 1216

**Sec. 2953.59.** (A) In any application for employment, license, 1217  
or any other right or privilege, any appearance as a witness, or 1218  
any other inquiry, a person may not be questioned with respect to 1219  
any record that has been sealed pursuant to section 2953.56 of the 1220  
Revised Code. If an inquiry is made in violation of this section, 1221  
the person whose official record was sealed may respond as if the 1222  
arrest underlying the case to which the sealed official records 1223  
pertain and all other proceedings in that case did not occur, and 1224  
the person whose official record was sealed shall not be subject 1225  
to any adverse action because of the arrest, the proceedings, or 1226  
the person's response. 1227

(B) An officer or employee of the state or any of its 1228  
political subdivisions who knowingly releases, disseminates, or 1229  
makes available for any purpose involving employment, bonding, 1230  
licensing, or education to any person or to any department, 1231  
agency, or other instrumentality of the state, or of any of its 1232  
political subdivisions, any information or other data concerning 1233  
any arrest, complaint, indictment, information, trial, 1234  
adjudication, or correctional supervision, the records of which 1235  
have been sealed pursuant to section 2953.56 of the Revised Code, 1236



is guilty of divulging confidential information, a misdemeanor of 1237  
the fourth degree. 1238

**Sec. 2953.71.** As used in sections 2953.71 to 2953.83 of the 1239  
Revised Code: 1240

(A) "Application" or "application for DNA testing" means a 1241  
request through postconviction relief for the state to do DNA 1242  
testing on biological material from ~~whichever of the following is~~ 1243  
~~applicable.~~ 1244

~~(1) The case in which the inmate offender was convicted of~~ 1245  
~~the offense for which the inmate is an eligible inmate offender~~ 1246  
~~and is requesting the DNA testing under sections 2953.71 to~~ 1247  
~~2953.81 of the Revised Code.~~ 1248

~~(2) The case in which the inmate pleaded guilty or no contest~~ 1249  
~~to the offense for which the inmate is requesting the DNA testing~~ 1250  
~~under section 2953.82 of the Revised Code.~~ 1251

(B) "Biological material" means any product of a human body 1252  
containing DNA. 1253

(C) "Chain of custody" means a record or other evidence that 1254  
tracks a subject sample of biological material from the time the 1255  
biological material was first obtained until the time it currently 1256  
exists in its place of storage and, in relation to a DNA sample, a 1257  
record or other evidence that tracks the DNA sample from the time 1258  
it was first obtained until it currently exists in its place of 1259  
storage. For purposes of this division, examples of when 1260  
biological material or a DNA sample is first obtained include, but 1261  
are not limited to, obtaining the material or sample at the scene 1262  
of a crime, from a victim, from an inmate offender, or in any 1263  
other manner or time as is appropriate in the facts and 1264  
circumstances present. 1265

(D) "Custodial agency" means the group or entity that has the 1266

responsibility to maintain biological material in question. 1267

(E) "Custodian" means the person who is the primary 1268  
representative of a custodial agency. 1269

(F) "Eligible ~~inmate~~ offender" means an ~~inmate~~ offender who 1270  
is eligible under division (C) of section 2953.72 of the Revised 1271  
Code to request DNA testing to be conducted under sections 2953.71 1272  
to 2953.81 of the Revised Code. 1273

(G) "Exclusion" or "exclusion result" means a result of DNA 1274  
testing that scientifically precludes or forecloses the subject 1275  
~~inmate~~ offender as a contributor of biological material recovered 1276  
from the crime scene or victim in question, in relation to the 1277  
offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ 1278  
offender and for which the sentence of death or prison term was 1279  
imposed upon the ~~inmate or, regarding a request for DNA testing~~ 1280  
~~made under section 2953.82 of the Revised Code, in relation to the~~ 1281  
~~offense for which the inmate made the request and for which the~~ 1282  
~~sentence of death or prison term was imposed upon the inmate~~ 1283  
offender. 1284

(H) "Extracting personnel" means medically approved personnel 1285  
who are employed to physically obtain an ~~inmate~~ offender's DNA 1286  
specimen for purposes of DNA testing under sections 2953.71 to 1287  
2953.81 ~~or section 2953.82~~ of the Revised Code. 1288

(I) "Inclusion" or "inclusion result" means a result of DNA 1289  
testing that scientifically cannot exclude, or that holds 1290  
accountable, the subject ~~inmate~~ offender as a contributor of 1291  
biological material recovered from the crime scene or victim in 1292  
question, in relation to the offense for which the ~~inmate~~ offender 1293  
is an eligible ~~inmate~~ offender and for which the sentence of death 1294  
or prison term was imposed upon the ~~inmate or, regarding a request~~ 1295  
~~for DNA testing made under section 2953.82 of the Revised Code, in~~ 1296  
~~relation to the offense for which the inmate made the request and~~ 1297

~~for which the sentence of death or prison term was imposed upon~~ 1298  
~~the inmate offender.~~ 1299

(J) "Inconclusive" or "inconclusive result" means a result of 1300  
DNA testing that is rendered when a scientifically appropriate and 1301  
definitive DNA analysis or result, or both, cannot be determined. 1302

(K) "~~Inmate~~ Offender" means ~~an inmate in a prison a criminal~~ 1303  
offender who was sentenced by a court, or by a jury and a court, 1304  
of this state. 1305

(L) "Outcome determinative" means that had the results of DNA 1306  
testing of the subject ~~inmate~~ offender been presented at the trial 1307  
of the subject ~~inmate~~ offender requesting DNA testing and been 1308  
found relevant and admissible with respect to the felony offense 1309  
for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and 1310  
is requesting the DNA testing ~~or for which the inmate is~~ 1311  
~~requesting the DNA testing under section 2953.82 of the Revised~~ 1312  
~~Code~~, and had those results been analyzed in the context of and 1313  
upon consideration of all available admissible evidence related to 1314  
the ~~inmate's~~ offender's case as described in division (D) of 1315  
section 2953.74 of the Revised Code, there is a strong probability 1316  
that no reasonable factfinder would have found the ~~inmate~~ offender 1317  
guilty of that offense or, if the ~~inmate~~ offender was sentenced to 1318  
death relative to that offense, would have found the ~~inmate~~ 1319  
offender guilty of the aggravating circumstance or circumstances 1320  
the ~~inmate~~ offender was found guilty of committing and that is or 1321  
are the basis of that sentence of death. 1322

(M) "Parent sample" means the biological material first 1323  
obtained from a crime scene or a victim of an offense for which an 1324  
~~inmate~~ offender is an eligible ~~inmate~~ or for which the inmate is 1325  
~~requesting the DNA testing under section 2953.82 of the Revised~~ 1326  
~~Code~~ offender, and from which a sample will be presently taken to 1327  
do a DNA comparison to the DNA of the subject ~~inmate~~ offender 1328  
under sections 2953.71 to 2953.81 ~~or section 2953.82 of the~~ 1329

Revised Code. 1330

(N) "Prison" ~~has~~ and "community control sanction" have the 1331  
same ~~meaning~~ meanings as in section 2929.01 of the Revised Code. 1332

(O) "Prosecuting attorney" means the prosecuting attorney 1333  
who, or whose office, prosecuted the case in which the subject 1334  
~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ 1335  
offender is an eligible ~~inmate~~ offender and is requesting the DNA 1336  
testing ~~or for which the inmate is requesting the DNA testing~~ 1337  
~~under section 2953.82 of the Revised Code.~~ 1338

(P) "Prosecuting authority" means the prosecuting attorney or 1339  
the attorney general. 1340

(Q) "Reasonable diligence" means a degree of diligence that 1341  
is comparable to the diligence a reasonable person would employ in 1342  
searching for information regarding an important matter in the 1343  
person's own life. 1344

(R) "Testing authority" means a laboratory at which DNA 1345  
testing will be conducted under sections 2953.71 to 2953.81 ~~or~~ 1346  
~~section 2953.82~~ of the Revised Code. 1347

(S) "Parole" and "post-release control" have the same 1348  
meanings as in section 2967.01 of the Revised Code. 1349

(T) "Sexually oriented offense" and "child-victim oriented 1350  
offense" have the same meanings as in section 2950.01 of the 1351  
Revised Code. 1352

(U) "Definitive DNA test" means a DNA test that clearly 1353  
establishes that biological material from the perpetrator of the 1354  
crime was recovered from the crime scene and also clearly 1355  
establishes whether or not the biological material is that of the 1356  
eligible inmate. A prior DNA test is not definitive if the 1357  
eligible inmate proves by a preponderance of the evidence that 1358  
because of advances in DNA technology there is a possibility of 1359

discovering new biological material from the perpetrator that the 1360  
prior DNA test may have failed to discover. Prior testing may have 1361  
been a prior "definitive DNA test" as to some biological evidence 1362  
but may not have been a prior "definitive DNA test" as to other 1363  
biological evidence. 1364

**Sec. 2953.72.** (A) Any eligible ~~inmate~~ offender who wishes to 1365  
request DNA testing under sections 2953.71 to 2953.81 of the 1366  
Revised Code shall submit an application for the testing to the 1367  
court of common pleas specified in section 2953.73 of the Revised 1368  
Code, on a form prescribed by the attorney general for this 1369  
purpose. The eligible ~~inmate~~ offender shall submit the application 1370  
in accordance with the procedures set forth in section 2953.73 of 1371  
the Revised Code. The eligible ~~inmate~~ offender shall specify on 1372  
the application the offense or offenses for which the ~~inmate~~ 1373  
offender is an eligible ~~inmate~~ offender and is requesting the DNA 1374  
testing. Along with the application, the eligible ~~inmate~~ offender 1375  
shall submit an acknowledgment that is on a form prescribed by the 1376  
attorney general for this purpose and that is signed by the ~~inmate~~ 1377  
offender. The acknowledgment shall set forth all of the following: 1378

(1) That sections 2953.71 to 2953.81 of the Revised Code 1379  
contemplate applications for DNA testing of an eligible ~~inmates~~ 1380  
offender at a stage of a prosecution or case after the ~~inmate~~ 1381  
offender has been sentenced ~~to a prison term or a sentence of~~ 1382  
~~death~~, that any exclusion or inclusion result of DNA testing 1383  
rendered pursuant to those sections may be used by a party in any 1384  
proceeding as described in section 2953.81 of the Revised Code, 1385  
and that all requests for any DNA testing made at trial will 1386  
continue to be handled by the prosecuting attorney in the case; 1387

(2) That the process of conducting postconviction DNA testing 1388  
for an eligible ~~inmate~~ offender under sections 2953.71 to 2953.81 1389  
of the Revised Code begins when the ~~inmate~~ offender submits an 1390

application under section 2953.73 of the Revised Code and the 1391  
acknowledgment described in this section; 1392

(3) That the eligible ~~inmate~~ offender must submit the 1393  
application and acknowledgment to the court of common pleas that 1394  
heard the case in which the ~~inmate~~ offender was convicted of the 1395  
offense for which the ~~inmate~~ offender is an eligible offender and 1396  
is requesting the DNA testing; 1397

(4) That the state has established a set of criteria set 1398  
forth in section 2953.74 of the Revised Code by which eligible 1399  
~~inmate~~ offender applications for DNA testing will be screened and 1400  
that a judge of a court of common pleas upon receipt of a properly 1401  
filed application and accompanying acknowledgment will apply those 1402  
criteria to determine whether to accept or reject the application; 1403

(5) That the results of DNA testing conducted under sections 1404  
2953.71 to 2953.81 of the Revised Code will be provided as 1405  
described in section 2953.81 of the Revised Code to all parties in 1406  
the postconviction proceedings and will be reported to various 1407  
courts; 1408

(6) That, if DNA testing is conducted with respect to an 1409  
~~inmate~~ offender under sections 2953.71 to 2953.81 of the Revised 1410  
Code, the state will not offer the ~~inmate~~ offender a retest if an 1411  
inclusion result is achieved relative to the testing and that, if 1412  
the state were to offer a retest after an inclusion result, the 1413  
policy would create an atmosphere in which endless testing could 1414  
occur and in which postconviction proceedings could be stalled for 1415  
many years; 1416

(7) That, if the court rejects an eligible ~~inmate's~~ 1417  
offender's application for DNA testing because the ~~inmate~~ offender 1418  
does not satisfy the acceptance criteria described in division 1419  
(A)(4) of this section, the court will not accept or consider 1420  
subsequent applications; 1421

(8) That the acknowledgment memorializes the provisions of 1422  
sections 2953.71 to 2953.81 of the Revised Code with respect to 1423  
the application of postconviction DNA testing to ~~inmates~~ 1424  
offenders, that those provisions do not give any inmate offender 1425  
any additional constitutional right that the inmate offender did 1426  
not already have, that the court has no duty or obligation to 1427  
provide postconviction DNA testing to ~~inmates~~ offenders, that the 1428  
court of common pleas has the sole discretion subject to an appeal 1429  
as described in this division to determine whether an inmate 1430  
offender is an eligible inmate offender and whether an eligible 1431  
~~inmate's~~ offender's application for DNA testing satisfies the 1432  
acceptance criteria described in division (A)(4) of this section 1433  
and whether the application should be accepted or rejected, that 1434  
if the court of common pleas rejects an eligible ~~inmate's~~ 1435  
offender's application, the inmate offender may seek leave of the 1436  
supreme court to appeal the rejection to that court if the inmate 1437  
offender was sentenced to death for the offense for which the 1438  
inmate offender is requesting the DNA testing and, if the inmate 1439  
offender was not sentenced to death for that offense, may appeal 1440  
the rejection to the court of appeals, and that no determination 1441  
otherwise made by the court of common pleas in the exercise of its 1442  
discretion regarding the eligibility of an inmate offender or 1443  
regarding postconviction DNA testing under those provisions is 1444  
reviewable by or appealable to any court; 1445

(9) That the manner in which sections 2953.71 to 2953.81 of 1446  
the Revised Code with respect to the offering of postconviction 1447  
DNA testing to ~~inmates~~ offenders are carried out does not confer 1448  
any constitutional right upon any inmate offender, that the state 1449  
has established guidelines and procedures relative to those 1450  
provisions to ensure that they are carried out with both justice 1451  
and efficiency in mind, and that an inmate offender who 1452  
participates in any phase of the mechanism contained in those 1453  
provisions, including, but not limited to, applying for DNA 1454

testing and being rejected, having an application for DNA testing 1455  
accepted and not receiving the test, or having DNA testing 1456  
conducted and receiving unfavorable results, does not gain as a 1457  
result of the participation any constitutional right to challenge, 1458  
or, except as provided in division (A)(8) of this section, any 1459  
right to any review or appeal of, the manner in which those 1460  
provisions are carried out; 1461

(10) That the most basic aspect of sections 2953.71 to 1462  
2953.81 of the Revised Code is that, in order for DNA testing to 1463  
occur, there must be an ~~inmate~~ offender sample against which other 1464  
evidence may be compared, that, if an eligible ~~inmate's~~ offender's 1465  
application is accepted but the ~~inmate~~ offender subsequently 1466  
refuses to submit to the collection of the sample of biological 1467  
material from the ~~inmate~~ offender or hinders the state from 1468  
obtaining a sample of biological material from the ~~inmate~~ 1469  
offender, the goal of those provisions will be frustrated, and 1470  
that an ~~inmate's~~ offender's refusal or hindrance shall cause the 1471  
court to rescind its prior acceptance of the application for DNA 1472  
testing for the ~~inmate~~ offender and deny the application; 1473

~~(11) That, if the inmate is an inmate who pleaded guilty or 1474  
no contest to a felony offense and who is using the application 1475  
and acknowledgment to request DNA testing under section 2953.82 of 1476  
the Revised Code, all references in the acknowledgment to an 1477  
"eligible inmate" are considered to be references to, and apply 1478  
to, the inmate and all references in the acknowledgment to 1479  
"sections 2953.71 to 2953.81 of the Revised Code" are considered 1480  
to be references to "section 2953.82 of the Revised Code."~~ 1481

(B) The attorney general shall prescribe a form to be used to 1482  
make an application for DNA testing under division (A) of this 1483  
section and section 2953.73 of the Revised Code and a form to be 1484  
used to provide the acknowledgment described in division (A) of 1485  
this section. The forms shall include all information described in 1486



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

(C)(1) An inmate offender is eligible to request DNA testing 1505  
to be conducted under sections 2953.71 to 2953.81 of the Revised 1506  
Code only if all of the following apply: 1507

(a) The offense for which the inmate offender claims to be an 1508  
eligible inmate offender is a felony, and the inmate offender was 1509  
convicted by a judge or jury of that offense. 1510

(b) One of the following applies: 1511

(i) The inmate offender was sentenced to a prison term or 1512  
sentence of death for the felony described in division (C)(1)(a) 1513  
of this section, and the offender is in prison serving that prison 1514  
term or under that sentence of death, has been paroled or is on 1515  
probation regarding that felony, is under post-release control 1516  
regarding that felony, or has been released from that prison term 1517  
and is under a community control sanction regarding that felony. 1518

(ii) The offender was not sentenced to a prison term or sentence of death for the felony described in division (C)(1)(a) of this section, but was sentenced to a community control sanction for that felony and is under that community control sanction. 1519  
1520  
1521  
1522

(iii) The felony described in division (C)(1)(a) of this section was a sexually oriented offense or child-victim oriented offense, and the offender has a duty to comply with sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code relative to that felony. 1523  
1524  
1525  
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~~(c) On the date on which the application is filed, the inmate has at least one year remaining on the prison term described in division (C)(1)(b) of this section, or the inmate is in prison under a sentence of death as described in that division.~~ 1528  
1529  
1530  
1531

(2) An ~~inmate~~ offender is not an eligible ~~inmate~~ offender under division (C)(1) of this section regarding any offense to which the ~~inmate~~ offender pleaded guilty or no contest. 1532  
1533  
1534

(3) An offender is not an eligible offender under division (C)(1) of this section regarding any offense if the offender dies prior to submitting an application for DNA testing related to that offense under section 2953.73 of the Revised Code. 1535  
1536  
1537  
1538

**Sec. 2953.73.** (A) An eligible ~~inmate~~ offender who wishes to request DNA testing to be conducted under sections 2953.71 to 2953.81 of the Revised Code shall submit an application for DNA testing on a form prescribed by the attorney general for this purpose and shall submit the form to the court of common pleas that sentenced the ~~inmate~~ offender for the offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is requesting DNA testing. 1539  
1540  
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(B) If an eligible ~~inmate~~ offender submits an application for DNA testing under division (A) of this section, upon the 1547  
1548

submission of the application, all of the following apply: 1549

(1) The eligible ~~inmate~~ offender shall serve a copy of the 1550  
application on the prosecuting attorney and the attorney general. 1551

(2) The application shall be assigned to the judge of that 1552  
court of common pleas who was the trial judge in the case in which 1553  
the eligible ~~inmate~~ offender was convicted of the offense for 1554  
which the ~~inmate~~ offender is requesting DNA testing, or, if that 1555  
judge no longer is a judge of that court, it shall be assigned 1556  
according to court rules. The judge to whom the application is 1557  
assigned shall decide the application. The application shall 1558  
become part of the file in the case. 1559

(C) If an eligible ~~inmate~~ offender submits an application for 1560  
DNA testing under division (A) of this section, regardless of 1561  
whether the ~~inmate~~ offender has commenced any federal habeas 1562  
corpus proceeding relative to the case in which the ~~inmate~~ 1563  
offender was convicted of the offense for which the ~~inmate~~ 1564  
offender is an eligible ~~inmate~~ offender and is requesting DNA 1565  
testing, any response to the application by the prosecuting 1566  
attorney or the attorney general shall be filed not later than 1567  
forty-five days after the date on which the eligible ~~inmate~~ 1568  
offender submits the application. The prosecuting attorney or the 1569  
attorney general, or both, may, but are not required to, file a 1570  
response to the application. If the prosecuting attorney or the 1571  
attorney general files a response under this division, the 1572  
prosecuting attorney or attorney general, whoever filed the 1573  
response, shall serve a copy of the response on the eligible 1574  
~~inmate~~ offender. 1575

(D) If an eligible ~~inmate~~ offender submits an application for 1576  
DNA testing under division (A) of this section, the court shall 1577  
make the determination as to whether the application should be 1578  
accepted or rejected. The court shall expedite its review of the 1579  
application. The court shall make the determination in accordance 1580

with the criteria and procedures set forth in sections 2953.74 to 1581  
2953.81 of the Revised Code and, in making the determination, 1582  
shall consider the application, the supporting affidavits, and the 1583  
documentary evidence and, in addition to those materials, shall 1584  
consider all the files and records pertaining to the proceedings 1585  
against the applicant, including, but not limited to, the 1586  
indictment, the court's journal entries, the journalized records 1587  
of the clerk of the court, and the court reporter's transcript and 1588  
all responses to the application filed under division (C) of this 1589  
section by a prosecuting attorney or the attorney general, unless 1590  
the application and the files and records show the applicant is 1591  
not entitled to DNA testing, in which case the application may be 1592  
denied. The court is not required to conduct an evidentiary 1593  
hearing in conducting its review of, and in making its 1594  
determination as to whether to accept or reject, the application. 1595  
Upon making its determination, the court shall enter a judgment 1596  
and order that either accepts or rejects the application and that 1597  
includes within the judgment and order the reasons for the 1598  
acceptance or rejection as applied to the criteria and procedures 1599  
set forth in sections 2953.71 to 2953.81 of the Revised Code. The 1600  
court shall send a copy of the judgment and order to the eligible 1601  
~~inmate~~ offender who filed it, the prosecuting attorney, and the 1602  
attorney general. 1603

(E) A judgment and order of a court entered under division 1604  
(D) of this section is appealable only as provided in this 1605  
division. If an eligible ~~inmate~~ offender submits an application 1606  
for DNA testing under section 2953.73 of the Revised Code and the 1607  
court of common pleas rejects the application under division (D) 1608  
of this section, one of the following applies: 1609

(1) If the ~~inmate~~ offender was sentenced to death for the 1610  
offense for which the ~~inmate~~ offender claims to be an eligible 1611  
~~inmate~~ offender and is requesting DNA testing, the ~~inmate~~ offender 1612

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

(2) If the ~~inmate~~ offender was not sentenced to death for the 1618  
offense for which the ~~inmate~~ offender claims to be an eligible 1619  
~~inmate~~ offender and is requesting DNA testing, the rejection is a 1620  
final appealable order, and the ~~inmate~~ offender may appeal it to 1621  
the court of appeals of the district in which is located that 1622  
court of common pleas. 1623

(F) Notwithstanding any provision of law regarding fees and 1624  
costs, no filing fee shall be required of, and no court costs 1625  
shall be assessed against, an eligible offender who is indigent 1626  
and who submits an application under this section. 1627

(G) If a court rejects an eligible ~~inmate's~~ offender's 1628  
application for DNA testing under division (D) of this section, 1629  
unless the rejection is overturned on appeal, no court shall 1630  
require the state to administer a DNA test under sections 2953.71 1631  
to 2953.81 of the Revised Code on the eligible ~~inmate~~ offender. 1632

**Sec. 2953.74.** (A) If an eligible ~~inmate~~ offender submits an 1633  
application for DNA testing under section 2953.73 of the Revised 1634  
Code and a prior definitive DNA test has been conducted regarding 1635  
the same biological evidence that the ~~inmate~~ offender seeks to 1636  
have tested, the court shall reject the ~~inmate's~~ offender's 1637  
application. If an eligible ~~inmate~~ offender files an application 1638  
for DNA testing and a prior inconclusive DNA test has been 1639  
conducted regarding the same biological evidence that the ~~inmate~~ 1640  
offender seeks to have tested, the court shall review the 1641  
application and has the discretion, on a case-by-case basis, to 1642  
either accept or reject the application. The court may direct a 1643

testing authority to provide the court with information that the 1644  
court may use in determining whether prior DNA test results were 1645  
definitive or inconclusive and whether to accept or reject an 1646  
application in relation to which there were prior inconclusive DNA 1647  
test results. 1648

(B) If an eligible inmate offender submits an application for 1649  
DNA testing under section 2953.73 of the Revised Code, the court 1650  
may accept the application only if one of the following applies: 1651

(1) The inmate offender did not have a DNA test taken at the 1652  
trial stage in the case in which the inmate offender was convicted 1653  
of the offense for which the inmate offender is an eligible inmate 1654  
offender and is requesting the DNA testing regarding the same 1655  
biological evidence that the inmate offender seeks to have tested, 1656  
the inmate offender shows that DNA exclusion when analyzed in the 1657  
context of and upon consideration of all available admissible 1658  
evidence related to the subject inmate's offender's case as 1659  
described in division (D) of this section would have been outcome 1660  
determinative at that trial stage in that case, and, at the time 1661  
of the trial stage in that case, DNA testing was not generally 1662  
accepted, the results of DNA testing were not generally admissible 1663  
in evidence, or DNA testing was not yet available. 1664

(2) The inmate offender had a DNA test taken at the trial 1665  
stage in the case in which the inmate offender was convicted of 1666  
the offense for which the inmate offender is an eligible inmate 1667  
offender and is requesting the DNA testing regarding the same 1668  
biological evidence that the inmate offender seeks to have tested, 1669  
the test was not a prior definitive DNA test that is subject to 1670  
division (A) of this section, and the inmate offender shows that 1671  
DNA exclusion when analyzed in the context of and upon 1672  
consideration of all available admissible evidence related to the 1673  
subject inmate's offender's case as described in division (D) of 1674  
this section would have been outcome determinative at the trial 1675

stage in that case. 1676

(C) If an eligible ~~inmate~~ offender submits an application for 1677  
DNA testing under section 2953.73 of the Revised Code, the court 1678  
may accept the application only if all of the following apply: 1679

(1) The court determines pursuant to section 2953.75 of the 1680  
Revised Code that biological material was collected from the crime 1681  
scene or the victim of the offense for which the ~~inmate~~ offender 1682  
is an eligible ~~inmate~~ offender and is requesting the DNA testing 1683  
and that the parent sample of that biological material against 1684  
which a sample from the ~~inmate~~ offender can be compared still 1685  
exists at that point in time. 1686

(2) The testing authority determines all of the following 1687  
pursuant to section 2953.76 of the Revised Code regarding the 1688  
parent sample of the biological material described in division 1689  
(C)(1) of this section: 1690

(a) The parent sample of the biological material so collected 1691  
contains scientifically sufficient material to extract a test 1692  
sample. 1693

(b) The parent sample of the biological material so collected 1694  
is not so minute or fragile as to risk destruction of the parent 1695  
sample by the extraction described in division (C)(2)(a) of this 1696  
section; provided that the court may determine in its discretion, 1697  
on a case-by-case basis, that, even if the parent sample of the 1698  
biological material so collected is so minute or fragile as to 1699  
risk destruction of the parent sample by the extraction, the 1700  
application should not be rejected solely on the basis of that 1701  
risk. 1702

(c) The parent sample of the biological material so collected 1703  
has not degraded or been contaminated to the extent that it has 1704  
become scientifically unsuitable for testing, and the parent 1705  
sample otherwise has been preserved, and remains, in a condition 1706

that is scientifically suitable for testing. 1707

(3) The court determines that, at the trial stage in the case 1708  
in which the ~~inmate~~ offender was convicted of the offense for 1709  
which the ~~inmate~~ offender is an eligible ~~inmate~~ offender and is 1710  
requesting the DNA testing, the identity of the person who 1711  
committed the offense was an issue. 1712

(4) The court determines that one or more of the defense 1713  
theories asserted by the ~~inmate~~ offender at the trial stage in the 1714  
case described in division (C)(3) of this section or in a retrial 1715  
of that case in a court of this state was of such a nature that, 1716  
if DNA testing is conducted and an exclusion result is obtained, 1717  
the exclusion result will be outcome determinative. 1718

(5) The court determines that, if DNA testing is conducted 1719  
and an exclusion result is obtained, the results of the testing 1720  
will be outcome determinative regarding that ~~inmate~~ offender. 1721

(6) The court determines pursuant to section 2953.76 of the 1722  
Revised Code from the chain of custody of the parent sample of the 1723  
biological material to be tested and of any test sample extracted 1724  
from the parent sample, and from the totality of circumstances 1725  
involved, that the parent sample and the extracted test sample are 1726  
the same sample as collected and that there is no reason to 1727  
believe that they have been out of state custody or have been 1728  
tampered with or contaminated since they were collected. 1729

(D) If an eligible ~~inmate~~ offender submits an application for 1730  
DNA testing under section 2953.73 of the Revised Code, the court, 1731  
in determining whether the "outcome determinative" criterion 1732  
described in divisions (B)(1) and (2) of this section has been 1733  
satisfied, shall consider all available admissible evidence 1734  
related to the subject ~~inmate's~~ offender's case. 1735

(E) If an eligible ~~inmate~~ offender submits an application for 1736  
DNA testing under section 2953.73 of the Revised Code and the 1737



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

If the bureau, upon comparing the test results to the 1747  
combined DNA index system, determines the identity of the person 1748  
who is the contributor of the biological material, the bureau 1749  
shall provide that information to the court that accepted the 1750  
application, the inmate offender, and the prosecuting attorney. 1751  
The inmate offender or the state may use the information for any 1752  
lawful purpose. 1753

If the bureau, upon comparing the test results to the 1754  
combined DNA index system, is unable to determine the identity of 1755  
the person who is the contributor of the biological material, the 1756  
bureau may compare the test results to other previously obtained 1757  
and acceptable DNA test results of any person whose identity is 1758  
known other than the eligible inmate offender. If the bureau, upon 1759  
comparing the test results to the DNA test results of any person 1760  
whose identity is known, determines that the person whose identity 1761  
is known is the contributor of the biological material, the bureau 1762  
shall provide that information to the court that accepted the 1763  
application, the inmate offender, and the prosecuting attorney. 1764  
The inmate offender or the state may use the information for any 1765  
lawful purpose. 1766

**Sec. 2953.75.** (A) If an eligible inmate offender submits an 1767  
application for DNA testing under section 2953.73 of the Revised 1768

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

(1) All prosecuting authorities in the case in which the 1779  
~~inmate~~ offender was convicted of the offense for which the ~~inmate~~ 1780  
offender is an eligible ~~inmate~~ offender and is requesting the DNA 1781  
testing and in the appeals of, and postconviction proceedings 1782  
related to, that case; 1783

(2) All law enforcement authorities involved in the 1784  
investigation of the offense for which the ~~inmate~~ offender is an 1785  
eligible offender and is requesting the DNA testing; 1786

(3) All custodial agencies involved at any time with the 1787  
biological material in question; 1788

(4) The custodian of all custodial agencies described in 1789  
division (A)(3) of this section; 1790

(5) All crime laboratories involved at any time with the 1791  
biological material in question; 1792

(6) All other reasonable sources. 1793

(B) The prosecuting attorney shall prepare a report that 1794  
contains the prosecuting attorney's determinations made under 1795  
division (A) of this section and shall file a copy of the report 1796  
with the court and provide a copy to the eligible ~~inmate~~ offender 1797  
and the attorney general. 1798

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

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

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

condition that is suitable for testing. Upon making its 1831  
determination under this division, the testing authority shall 1832  
prepare a written document that contains its determination and the 1833  
reasoning and rationale for that determination and shall provide a 1834  
copy to the court, the eligible ~~inmate~~ offender, the prosecuting 1835  
attorney, and the attorney general. 1836

(C) The court shall determine, from the chain of custody of 1837  
the parent sample of the biological material to be tested and of 1838  
any test sample extracted from the parent sample and from the 1839  
totality of circumstances involved, whether the parent sample and 1840  
the extracted test sample are the same sample as collected and 1841  
whether there is any reason to believe that they have been out of 1842  
state custody or have been tampered with or contaminated since 1843  
they were collected. Upon making its determination under this 1844  
division, the court shall prepare and retain a written document 1845  
that contains its determination and the reasoning and rationale 1846  
for that determination. 1847

**Sec. 2953.77.** (A) If an eligible ~~inmate~~ offender submits an 1848  
application for DNA testing under section 2953.73 of the Revised 1849  
Code and if the application is accepted and DNA testing is to be 1850  
performed, the court shall require that the chain of custody 1851  
remain intact and that all of the applicable following precautions 1852  
are satisfied to ensure that the parent sample of the biological 1853  
material collected from the crime scene or the victim of the 1854  
offense for which the ~~inmate~~ offender is an eligible ~~inmate~~ 1855  
offender and requested the DNA testing, and the test sample of the 1856  
parent sample that is extracted and actually is to be tested, are 1857  
not contaminated during transport or the testing process: 1858

(1) The court shall require that the chain of custody be 1859  
maintained and documented relative to the parent sample and the 1860  
test sample actually to be tested between the time they are 1861

removed from their place of storage or the time of their 1862  
extraction to the time at which the DNA testing will be performed. 1863

(2) The court, the testing authority, and the law enforcement 1864  
and prosecutorial personnel involved in the process, or any 1865  
combination of those entities and persons, shall coordinate the 1866  
transport of the parent sample and the test sample actually to be 1867  
tested between their place of storage and the place where the DNA 1868  
testing will be performed, and the court and testing authority 1869  
shall document the transport procedures so used. 1870

(3) The testing authority shall determine and document the 1871  
custodian of the parent sample and the test sample actually to be 1872  
tested after they are in the possession of the testing authority. 1873

(4) The testing authority shall maintain and preserve the 1874  
parent sample and the test sample actually to be tested after they 1875  
are in the possession of the testing authority and shall document 1876  
the maintenance and preservation procedures used. 1877

(5) After the DNA testing, the court, the testing authority, 1878  
and the original custodial agency of the parent sample, or any 1879  
combination of those entities, shall coordinate the return of the 1880  
remaining parent sample back to its place of storage with the 1881  
original custodial agency or to any other place determined in 1882  
accordance with this division and section 2953.81 of the Revised 1883  
Code. The court shall determine, in consultation with the testing 1884  
authority, the custodial agency to maintain any newly created, 1885  
extracted, or collected DNA material resulting from the testing. 1886  
The court and testing authority shall document the return 1887  
procedures for original materials and for any newly created, 1888  
extracted, or collected DNA material resulting from the testing, 1889  
and also the custodial agency to which those materials should be 1890  
taken. 1891

(B) A court or testing authority shall provide the 1892

documentation required under division (A) of this section in 1893  
writing and shall maintain that documentation. 1894

**Sec. 2953.78.** (A) If an eligible inmate offender submits an 1895  
application for DNA testing under section 2953.73 of the Revised 1896  
Code and if the application is accepted and DNA testing is to be 1897  
performed, the court shall select the testing authority to be used 1898  
for the testing. A court shall not select or use a testing 1899  
authority for DNA testing unless the attorney general approves or 1900  
designates the testing authority pursuant to division (C) of this 1901  
section and unless the testing authority satisfies the criteria 1902  
set forth in section 2953.80 of the Revised Code. 1903

(B) If a court selects a testing authority pursuant to 1904  
division (A) of this section and the eligible inmate offender for 1905  
whom the test is to be performed objects to the use of the 1906  
selected testing authority, the court shall rescind its prior 1907  
acceptance of the application for DNA testing for the inmate 1908  
offender and deny the application. An objection as described in 1909  
this division, and the resulting rescission and denial, do not 1910  
preclude a court from accepting in the court's discretion, a 1911  
subsequent application by the same eligible inmate offender 1912  
requesting DNA testing. 1913

(C) The attorney general shall approve or designate testing 1914  
authorities that may be selected and used to conduct DNA testing, 1915  
shall prepare a list of the approved or designated testing 1916  
authorities, and shall provide copies of the list to all courts of 1917  
common pleas. The attorney general shall update the list as 1918  
appropriate to reflect changes in the approved or designated 1919  
testing authorities and shall provide copies of the updated list 1920  
to all courts of common pleas. The attorney general shall not 1921  
approve or designate a testing authority under this division 1922  
unless the testing authority satisfies the criteria set forth in 1923

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

(D) The attorney general's approval or designation of testing 1928  
authorities under division (C) of this section, and the selection 1929  
and use of any approved or designated testing authority, do not 1930  
afford an inmate offender any right to subsequently challenge the 1931  
approval, designation, selection, or use, and an inmate offender 1932  
may not appeal to any court the approval, designation, selection, 1933  
or use of a testing authority. 1934

**Sec. 2953.79.** (A) If an eligible inmate offender submits an 1935  
application for DNA testing under section 2953.73 of the Revised 1936  
Code and if the application is accepted and DNA testing is to be 1937  
performed, a sample of biological material shall be obtained from 1938  
the inmate offender in accordance with this section, to be 1939  
compared with the parent sample of biological material collected 1940  
from the crime scene or the victim of the offense for which the 1941  
inmate offender is an eligible inmate offender and requested the 1942  
DNA testing. The ~~inmate's offender's~~ filing of the application 1943  
constitutes the ~~inmate's offender's~~ consent to the obtaining of 1944  
the sample of biological material from the inmate offender. The 1945  
testing authority shall obtain the sample of biological material 1946  
from the inmate offender in accordance with medically accepted 1947  
procedures. 1948

(B) If DNA testing is to be performed for an inmate offender 1949  
as described in division (A) of this section, the court shall 1950  
require the state to coordinate with the department of 1951  
rehabilitation and correction or the other state agency or entity 1952  
of local government with custody of the offender, whichever is 1953  
applicable, as to the time and place at which the sample of 1954

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

The court also shall require the state to coordinate with the 1967  
testing authority regarding the obtaining of the sample from the 1968  
inmate offender. 1969

(C)(1) If DNA testing is to be performed for an inmate 1970  
offender as described in division (A) of this section, and the 1971  
inmate offender refuses to submit to the collection of the sample 1972  
of biological material from the inmate offender or hinders the 1973  
state from obtaining a sample of biological material from the 1974  
inmate offender, the court shall rescind its prior acceptance of 1975  
the application for DNA testing for the inmate offender and deny 1976  
the application. 1977

(2) For purposes of division (C)(1) of this section: 1978

(a) An inmate's offender's "refusal to submit to the 1979  
collection of a sample of biological material from the inmate 1980  
offender" includes, but is not limited to, the inmate's offender's 1981  
rejection of the physical manner in which a sample of the inmate's 1982  
offender's biological material is to be taken. 1983

(b) An inmate's offender's "hindrance of the state in 1984  
obtaining a sample of biological material from the inmate 1985



offender" includes, but is not limited to, the inmate offender 1986  
being physically or verbally uncooperative or antagonistic in the 1987  
taking of a sample of the ~~inmate's~~ offender's biological material. 1988

(D) The extracting personnel shall make the determination as 1989  
to whether an eligible inmate offender for whom DNA testing is to 1990  
be performed is refusing to submit to the collection of a sample 1991  
of biological material from the ~~inmate~~ offender or is hindering 1992  
the state from obtaining a sample of biological material from the 1993  
inmate offender at the time and date of the scheduled collection 1994  
of the sample. If the extracting personnel determine that an 1995  
inmate offender is refusing to submit to the collection of a 1996  
sample or is hindering the state from obtaining a sample, the 1997  
extracting personnel shall document in writing the conditions that 1998  
constitute the refusal or hindrance, maintain the documentation, 1999  
and notify the court of the ~~inmate's~~ offender's refusal or 2000  
hindrance. 2001

**Sec. 2953.81.** If an eligible offender submits an application 2002  
for DNA testing under section 2953.73 of the Revised Code and if 2003  
DNA testing is performed based on that application, upon 2004  
completion of the testing, all of the following apply: 2005

(A) The court or a designee of the court shall require the 2006  
state to maintain the results of the testing and to maintain and 2007  
preserve both the parent sample of the biological material used 2008  
and the ~~inmate~~ offender sample of the biological material used. 2009  
The testing authority may be designated as the person to maintain 2010  
the results of the testing or to maintain and preserve some or all 2011  
of the samples, or both. The results of the testing remain state's 2012  
evidence. The samples shall be preserved during the entire period 2013  
of time for which the ~~inmate~~ offender is imprisoned or confined 2014  
relative to the ~~prison term or sentence of death~~ in question and, 2015  
~~if that prison term expires or the inmate is executed under that~~ 2016

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

(B) The results of the testing are a public record. 2042

(C) The court or the testing authority shall provide a copy 2043  
of the results of the testing to the prosecuting attorney, the 2044  
attorney general, and the subject inmate offender. 2045

(D) If the postconviction proceeding in question is pending 2046  
at that time in a court of this state, the court of common pleas 2047  
that decided the DNA application or the testing authority shall 2048

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

(E) The testing authority shall provide a copy of the results 2054  
of the testing to the court of common pleas that decided the DNA 2055  
application. 2056

(F) The ~~inmate~~ offender or the state may enter the results of 2057  
the testing into any proceeding. 2058

**Sec. 2953.83.** In any court proceeding under sections 2953.71 2059  
to ~~2953.82~~ 2953.81 of the Revised Code, the Rules of Criminal 2060  
Procedure apply, except to the extent that sections 2953.71 to 2061  
~~2953.82~~ 2953.81 of the Revised Code provide a different procedure 2062  
or to the extent that the Rules would by their nature be clearly 2063  
inapplicable. 2064

**Sec. 2953.84.** The provisions of sections 2953.71 to ~~2953.82~~ 2065  
2953.81 of the Revised Code by which an ~~inmate~~ offender may obtain 2066  
postconviction DNA testing are not the exclusive means by which an 2067  
~~inmate~~ offender may obtain postconviction DNA testing, and the 2068  
provisions of those sections do not limit or affect any other 2069  
means by which an ~~inmate~~ offender may obtain postconviction DNA 2070  
testing. 2071

**Section 2.** That existing sections 109.573, 2901.07, 2953.21, 2072  
2953.23, 2953.71, 2953.72, 2953.73, 2953.74, 2953.75, 2953.76, 2073  
2953.77, 2953.78, 2953.79, 2953.81, 2953.83, and 2953.84 and 2074  
section 2953.82 of the Revised Code are hereby repealed. 2075

**Section 3.** (A) The General Assembly acknowledges the Supreme 2076  
Court's authority in prescribing rules governing practice and 2077

procedure in the courts of this state as provided in Section 5 of 2078  
Article IV of the Ohio Constitution. 2079

(B) The General Assembly hereby requests the Supreme Court to 2080  
adopt rules prescribing specific procedures to be followed for the 2081  
administration by law enforcement agencies and criminal justice 2082  
entities in this state of photo lineups, live lineups, and 2083  
showups. The General Assembly also requests that any rules adopted 2084  
by the Supreme Court be consistent with the requirements of 2085  
divisions (B) and (C) of section 2933.83 of the Revised Code. If 2086  
the Supreme Court adopts rules of the type described in this 2087  
division, on and after the date on which the rules take effect, 2088  
law enforcement agencies and criminal justice entities in this 2089  
state shall comply with the rules in conducting live lineups, 2090  
photo lineups, and showups. 2091

(C) The General Assembly hereby requests the Supreme Court to 2092  
adopt rules prescribing a cautionary jury charge about eyewitness 2093  
identification procedures and the accuracy of eyewitness 2094  
identification. If the Supreme Court adopts rules of the type 2095  
described in this division, on and after the effective date on 2096  
which the rules take effect, the jury charge shall be used in the 2097  
courts of this state in the manner specified by the Supreme Court 2098  
in the rules. 2099