

Baldwin's Ohio Revised Code Annotated [Currentness](#)

Title XXIX. Crimes--Procedure ([Refs & Annos](#))

▣ [Chapter 2953. Appeals; Other Postconviction Remedies \(Refs & Annos\)](#)

→ DNA Testing of Eligible Inmates

→ **2953.71 Definitions**

As used in sections 2953.71 to [2953.83 of the Revised Code](#):

(A) “Application” or “application for DNA testing” means a request through postconviction relief for the state to do DNA testing on biological material from the case in which the offender was convicted of the offense for which the offender is an eligible offender and is requesting the DNA testing under sections 2953.71 to [2953.81 of the Revised Code](#).

(B) “Biological material” means any product of a human body containing DNA.

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

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

(E) “Custodian” means the person who is the primary representative of a custodial agency.

(F) “Eligible offender” means an offender who is eligible under [division \(C\) of section 2953.72 of the Revised Code](#) to request DNA testing to be conducted under sections 2953.71 to [2953.81 of the Revised Code](#).

(G) “Exclusion” or “exclusion result” means a result of DNA testing that scientifically precludes or forecloses the subject offender as a contributor of biological material recovered from the crime scene or victim in question, in relation to the offense for which the offender is an eligible offender and for which the sentence of death or prison term was imposed upon the offender.

(H) “Extracting personnel” means medically approved personnel who are employed to physically obtain an offender's DNA specimen for purposes of DNA testing under sections 2953.71 to [2953.81 of the Revised Code](#).

(I) “Inclusion” or “inclusion result” means a result of DNA testing that scientifically cannot exclude, or that holds accountable, the subject offender as a contributor of biological material recovered from the crime scene or victim in question, in relation to the offense for which the offender is an eligible offender and for which the sentence of death or prison term was imposed upon the offender.

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

(K) “Offender” means a criminal offender who was sentenced by a court, or by a jury and a court, of this state.

(L) “Outcome determinative” means that had the results of DNA testing of the subject offender been presented at the trial of the subject offender requesting DNA testing and been found relevant and admissible with respect to the felony offense for which the offender is an eligible offender and is requesting the DNA testing, and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the offender's case as described in [division \(D\) of section 2953.74 of the Revised Code](#), there is a strong probability that no reasonable factfinder would have found the offender guilty of that offense or, if the offender was sentenced to death relative to that offense, would have found the offender guilty of the aggravating circumstance or circumstances the offender was found guilty of committing and that is or are the basis of that sentence of death.

(M) “Parent sample” means the biological material first obtained from a crime scene or a victim of an offense for which an offender is an eligible offender, and from which a sample will be presently taken to do a DNA comparison to the DNA of the subject offender under sections 2953.71 to [2953.81 of the Revised Code](#).

(N) “Prison” and “community control sanction” have the same meanings as in [section 2929.01 of the Revised Code](#).

(O) “Prosecuting attorney” means the prosecuting attorney who, or whose office, prosecuted the case in which the subject offender was convicted of the offense for which the offender is an eligible offender and is requesting the DNA testing.

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

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

(R) “Testing authority” means a laboratory at which DNA testing will be conducted under sections 2953.71 to [2953.81 of the Revised Code](#).

(S) “Parole” and “post-release control” have the same meanings as in [section 2967.01 of the Revised Code](#).

(T) “Sexually oriented offense” and “child-victim oriented offense” have the same meanings as in [section 2950.01 of the Revised Code](#).

(U) “Definitive DNA test” means a DNA test that clearly establishes that biological material from the perpetrator of the crime was recovered from the crime scene and also clearly establishes whether or not the biological material is that of the eligible offender. A prior DNA test is not definitive if the eligible offender proves by a preponderance of the evidence that because of advances in DNA technology there is a possibility of discovering new biological material from the perpetrator that the prior DNA test may have failed to discover. Prior testing may have been a prior “definitive DNA test” as to some biological evidence but may not have been a prior “definitive DNA test” as to other biological evidence.

### **2953.72 Application for postconviction testing**

(A) Any eligible offender who wishes to request DNA testing under [sections 2953.71 to 2953.81 of the Revised Code](#) shall submit an application for the testing to the court of common pleas specified in [section 2953.73 of the Revised Code](#), on a form prescribed by the attorney general for this purpose. The eligible offender shall submit the application in accordance with the procedures set forth in [section 2953.73 of the Revised Code](#). The eligible offender shall specify on the application the offense or offenses for which the offender is an eligible offender and is requesting the DNA testing. Along with the application, the eligible offender shall submit an acknowledgment that is on a form prescribed by the attorney general for this purpose and that is signed by the offender. The acknowledgment shall set forth all of the following:

(1) That [sections 2953.71 to 2953.81 of the Revised Code](#) contemplate applications for DNA testing of an eligible offender at a stage of a prosecution or case after the offender has been sentenced, that any exclusion or inclusion result of DNA testing rendered pursuant to those sections may be used by a party in any proceeding as described in [section 2953.81 of the Revised Code](#), and that all requests for any DNA testing made at trial will continue to be handled by the prosecuting attorney in the case;

(2) That the process of conducting postconviction DNA testing for an eligible offender under [sections 2953.71 to 2953.81 of the Revised Code](#) begins when the offender submits an application under [section 2953.73 of the Revised Code](#) and the acknowledgment described in this section;

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

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

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

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

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

(8) That the acknowledgment memorializes the provisions of [sections 2953.71 to 2953.81 of the Revised Code](#) with respect to the application of postconviction DNA testing to offenders, that those provisions do not give any offender any additional constitutional right that the offender did not already have, that the court has no duty or obligation to provide postconviction DNA testing to offenders, that the court of common pleas has the sole discretion subject to an appeal as described in this division to determine whether an offender is an eligible offender and whether an eligible offender's application for DNA testing satisfies the acceptance criteria described in division (A)(4) of this section and whether the application should be accepted or rejected, that if the court of common pleas rejects an eligible offender's application, the offender may seek leave of the supreme court to appeal the rejection to that court if the offender was sentenced to death for the offense for which the offender is requesting the DNA testing and, if the offender was not sentenced to death for that offense, may appeal the rejection to the court of appeals, and that no determination otherwise made by the court of common pleas in the exercise of its discretion regarding the eligibility of an offender or regarding postconviction DNA testing under those provisions is reviewable by or appealable to any court;

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

(10) That the most basic aspect of [sections 2953.71 to 2953.81 of the Revised Code](#) is that, in order for DNA testing to occur, there must be an offender sample against which other evidence may be compared, that, if an eligible offender's application is accepted but the offender subsequently refuses to submit to the collection of the sample of biological material from the offender or hinders the state from obtaining a sample of biological material from the offender, the goal of those provisions will be frustrated, and that an offender's refusal or

hindrance shall cause the court to rescind its prior acceptance of the application for DNA testing for the offender and deny the application

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

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

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

(b) One of the following applies:

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

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

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

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

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

the Revised Code.

### **2953.73 Submission of application**

(A) An eligible 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 offender for the offense for which the offender is an eligible offender and is requesting DNA testing.

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

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

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

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

(D) If an eligible offender submits an application for DNA testing under division (A) of this section, the court shall make the determination as to whether the application should be accepted or rejected. The court shall expedite its review of the application. The court shall make the determination in accordance with the criteria and procedures set forth in [sections 2953.74 to 2953.81 of the Revised Code](#) and, in making the determination, shall consider the application, the supporting affidavits, and the documentary evidence and, in addition to those materials, shall consider all the files and records pertaining to the proceedings against the applicant, including, but not limited to, the indictment, the court's journal entries, the journalized records of the clerk of the court, and the court reporter's transcript and all responses to the application filed under division (C) of this section by a prosecuting attorney or the attorney general, unless the application and the files and records show the applicant is not entitled to DNA testing, in which case the application may be denied. The court is not re-

quired to conduct an evidentiary hearing in conducting its review of, and in making its determination as to whether to accept or reject, the application. Upon making its determination, the court shall enter a judgment and order that either accepts or rejects the application and that includes within the judgment and order the reasons for the acceptance or rejection as applied to the criteria and procedures set forth in [sections 2953.71 to 2953.81 of the Revised Code](#). The court shall send a copy of the judgment and order to the eligible offender who filed it, the prosecuting attorney, and the attorney general.

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

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

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

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

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

#### **2953.74 Prior tests**

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

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

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

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

(C) If an eligible offender submits an application for DNA testing under [section 2953.73 of the Revised Code](#), the court may accept the application only if all of the following apply:

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

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

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

(b) The parent sample of the biological material so collected is not so minute or fragile as to risk destruction of the parent sample by the extraction described in division (C)(2)(a) of this section; provided that 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.

(c) The parent sample of the biological material so collected has not degraded or been contaminated to the extent that it has become scientifically unsuitable for testing, and the parent sample otherwise has been pre-

served, and remains, in a condition that is scientifically suitable for testing.

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

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

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

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

(D) If an eligible offender submits an application for DNA testing under [section 2953.73 of the Revised Code](#), the court, in determining whether the “outcome determinative” criterion described in divisions (B)(1) and (2) of this section has been satisfied, shall consider all available admissible evidence related to the subject offender’s case.

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

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

If the bureau, upon comparing the test results to the combined DNA index system, is unable to determine the identity of the person who is the contributor of the biological material, the bureau may compare the test results to other previously obtained and acceptable DNA test results of any person whose identity is known other than the eligible offender. If the bureau, upon comparing the test results to the DNA test results of any person

whose identity is known, determines that the person whose identity is known is the contributor of the biological material, the bureau shall provide that information to the court that accepted the application, the offender, and the prosecuting attorney. The offender or the state may use the information for any lawful purpose.

### **2953.75 Comparison samples**

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

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

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

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

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

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

(6) All other reasonable sources.

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

### **2953.76 Quality and quantity of samples**

If an eligible 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 offender is an eligible 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 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 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 offender, the prosecuting attorney, and the attorney general.

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

#### **2953.77 Chain of custody**

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

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

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

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

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

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

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

### **2953.78 Laboratory selection**

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

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

(C) The attorney general shall approve or designate testing authorities that may be selected and used to conduct DNA testing, shall prepare a list of the approved or designated testing authorities, and shall provide copies of the list to all courts of common pleas. The attorney general shall update the list as appropriate to reflect

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

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

### **2953.79 Offender samples**

(A) If an eligible offender submits an application for DNA testing under [section 2953.73 of the Revised Code](#) and if the application is accepted and DNA testing is to be performed, a sample of biological material shall be obtained from the offender in accordance with this section, to be compared with the parent sample of biological material collected from the crime scene or the victim of the offense for which the offender is an eligible offender and requested the DNA testing. The offender's filing of the application constitutes the offender's consent to the obtaining of the sample of biological material from the offender. The testing authority shall obtain the sample of biological material from the offender in accordance with medically accepted procedures.

(B) If DNA testing is to be performed for an offender as described in division (A) of this section, the court shall require the state to coordinate with the department of rehabilitation and correction or the other state agency or entity of local government with custody of the offender, whichever is applicable, as to the time and place at which the sample of biological material will be obtained from the offender. If the offender is in prison or is in custody in another facility at the time the DNA testing is to be performed, the sample of biological material shall be obtained from the offender at the facility in which the offender is housed, and the department of rehabilitation and correction or the other state agency or entity of local government with custody of the offender, whichever is applicable, shall make the offender available at the specified time. The court shall require the state to provide notice to the offender and to the offender's counsel of the date on which, and the time and place at which, the sample will be so obtained.

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

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

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

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

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

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

#### **2953.80 Qualification of laboratory**

(A) The attorney general shall not approve or designate a testing authority for conducting DNA testing under [section 2953.78 of the Revised Code](#), and a court shall not select or use a testing authority for DNA testing under that section, unless the testing authority satisfies all of the following criteria:

(1) It is in compliance with nationally accepted quality assurance standards for forensic DNA testing or advanced DNA testing, as published in the quality assurance standards for forensic DNA testing laboratories issued by the director of the federal bureau of investigation.

(2) It undergoes an annual internal or external audit for quality assurance in conformity with the standards identified in division (A)(1) of this section.

(3) At least once in the preceding two-year period, and at least once each two-year period thereafter, it undergoes an external audit for quality assurance in conformity with the standards identified in division (A)(1) of this section.

(B) As used in division (A) of this section:

(1) "External audit" means a quality assurance review of a testing authority that is conducted by a forensic DNA testing agency outside of, and not affiliated with, the testing authority.

(2) "Internal audit" means an internal review of a testing authority that is conducted by the testing authority itself.

### 2953.81 Results; preservation of samples

If an eligible offender [FN1] submits an application for DNA testing under [section 2953.73 of the Revised Code](#) and if DNA testing is performed based on that application, upon completion of the testing, all of the following apply:

(A) The court or a designee of the court shall require the state to maintain the results of the testing and to maintain and preserve both the parent sample of the biological material used and the offender sample of the biological material used. The testing authority may be designated as the person to maintain the results of the testing or to maintain and preserve some or all of the samples, or both. The results of the testing remain state's evidence. The samples shall be preserved during the entire period of time for which the offender is imprisoned or confined relative to the sentence in question, is on parole or probation relative to that sentence, is under post-release control or a community control sanction relative to that sentence, or has a duty to comply with [sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code](#) relative to that sentence. Additionally, if the prison term or confinement under the sentence in question expires, if the sentence in question is a sentence of death and the offender is executed, or if the parole or probation period, the period of post-release control, the community control sanction, or the duty to comply with [sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code](#) under the sentence in question ends, the samples shall be preserved for a reasonable period of time of not less than twenty-four months after the term or confinement expires, the offender is executed, or the parole or probation period, the period of post-release control, the community control sanction, or the duty to comply with [sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code](#) ends, whichever is applicable. The court shall determine the period of time that is reasonable for purposes of this division, provided that the period shall not be less than twenty-four months after the term or confinement expires, the offender is executed, or the parole or probation period, the period of post-release control, the community control sanction, or the duty to comply with [sections 2950.04, 2950.041, 2950.05, and 2950.06 of the Revised Code](#) ends, whichever is applicable.

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

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

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

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

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

[FN1] Prior and current versions differ; although no amendment to this language was indicated in 2010 S 77, “offender” appeared as “inmate” in 2003 S 11.

#### **2953.82 Testing for inmates who pleaded guilty or no contest--Repealed**

#### **2953.83 Procedure**

In any court proceeding under [sections 2953.71 to 2953.81 of the Revised Code](#), the Rules of Criminal Procedure apply, except to the extent that [sections 2953.71 to 2953.81 of the Revised Code](#) provide a different procedure or to the extent that the Rules would by their nature be clearly inapplicable.

#### **2953.84 Remedies not exclusive**

The provisions of [sections 2953.71 to 2953.81 of the Revised Code](#) by which an offender may obtain postconviction DNA testing are not the exclusive means by which an offender may obtain postconviction DNA testing, and the provisions of those sections do not limit or affect any other means by which an offender may obtain postconviction DNA testing.

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