Michael J. O'Neill *Legislative Service Commission*

Sub. S.B. 11

125th General Assembly
(As Passed by the Senate)

Sens. Goodman, Blessing, Hottinger, Harris, Jacobson, Randy Gardner, Coughlin, Carey, Prentiss, Spada, Herington, Schuring, Stivers, Dann, Brady, Carnes, Miller, Nein, Roberts, Schuler, Austria

BILL SUMMARY

- Establishes a mechanism pursuant to which inmates who were convicted by a judge or jury of a felony committed prior to the bill's effective date, who were sentenced for the felony to a prison term or a sentence of death, and who on the date on which they file an application under the bill requesting the testing have at least one year remaining on the prison term or are under the sentence of death, may request DNA testing to be performed under the bill's provisions (hereafter, this mechanism is referred to as the Not Guilty Plea Mechanism).

- Specifies that an inmate who pleaded guilty or no contest to an offense is not eligible to request DNA testing under the Not Guilty Plea Mechanism relative to that offense (see the discussion below of the bill's Guilty Plea Mechanism).

- Requires an inmate who is eligible to request DNA testing under the Not Guilty Plea Mechanism to submit an application in a specified form to the court of common pleas that heard the case that resulted in the inmate's prison term or sentence of death and an acknowledgement in a specified form of certain provisions related to the mechanism, and requires that the application and acknowledgement be submitted within one year after the bill's effective date.

- Requires an eligible inmate who files an application under the Not Guilty Plea Mechanism to serve a copy on the prosecuting attorney who tried the eligible inmate's case and the Attorney General, and authorizes a response by the prosecuting attorney or Attorney General, or both, that

states whether the prosecuting attorney or Attorney General agrees or disagrees that the application should be accepted.

- Establishes criteria that govern the court in screening an eligible inmate's application under the Not Guilty Plea Mechanism and in determining whether to accept or reject the application, requires the court to expedite its review of the application, and specifies that the application may be accepted only if the criteria are satisfied.

- States that the judgment of the judge of the court of common pleas rejecting an application for DNA testing under the Not Guilty Plea Mechanism is appealable as follows: (1) if the inmate was sentenced to death for the offense in question, the inmate may seek leave of the Supreme Court to appeal the rejection to that Court, and (2) if the inmate was not sentenced to death, the rejection is a final appealable order, and the inmate may appeal the rejection to the court of appeals.

- Establishes procedures for selecting the testing authority to be used for the conduct of DNA testing for an eligible inmate under the Not Guilty Plea Mechanism, procedures for determining whether relevant biological material exists, precautions that must be satisfied to ensure that biological materials that are to be used in DNA testing are not contaminated during transport or the testing process, and "chain of custody" provisions regarding the biological samples so used.

- Requires the Attorney General to approve or designate testing authorities that may be used for the conduct of DNA testing for eligible inmates under the Not Guilty Plea Mechanism and establishes criteria that a testing authority must satisfy in order to be so approved or designated.

- Establishes procedures for obtaining biological material from an inmate to be used in the conduct of DNA testing under the Not Guilty Plea Mechanism.

- Specifies the availability, and the uses that may be made, of the results of DNA testing of inmates conducted under the Not Guilty Plea Mechanism.

- Establishes a mechanism pursuant to which inmates who pleaded guilty or no contest to a felony committed prior to the bill's effective date, who were sentenced to a prison term or a sentence of death, and who on the

date on which they file an application under the bill with the court requesting agreement for DNA testing have at least one year remaining on the prison term or are under the sentence of death, may request DNA testing (hereafter, this mechanism is referred to as the "Guilty Plea Mechanism").

- Requires an inmate who is eligible to request DNA testing under the Guilty Plea Mechanism to file an application and acknowledgement (the same ones used under the Not Guilty Plea Mechanism) with the court of common pleas within one year after the bill's effective date and, upon filing the application, to serve a copy on the prosecuting attorney; requires the prosecuting attorney, within 45 days after the inmate files the application, to file a statement with the court that sets forth the prosecuting attorney's decisions as to whether he or she agrees or disagrees that the inmate should be permitted to obtain the DNA testing; provides that, if the prosecuting attorney provides the inmate with a written statement of agreement, the application and written statement thereafter must be considered for all purposes as if it were an application for DNA testing filed and accepted under the Not Guilty Plea Mechanism, and the inmate must be given a test under that Mechanism, provides that, if the prosecuting attorney disagrees that the inmate should be permitted to obtain DNA testing under the Guilty Plea Mechanism, the prosecuting attorney's disagreement is final and is not appealable by any person to any court, and no court has authority without the prosecutor's agreement, to order DNA testing regarding that inmate and the offense or offenses for which the inmate requested DNA testing in the application; and provides that, if the prosecuting attorney fails to file a written statement of agreement or disagreement as required under the Mechanism, the court may order the prosecuting attorney to file a statement of that nature within 15 days of the date of the order.

- States that, in any court proceeding under either the Not Guilty Plea Mechanism or the Guilty Plea Mechanism, the Rules of Criminal Procedure apply, except to the extent that any provision of either Mechanism provides a different procedure or to the extent that the Rules would by their nature be clearly inapplicable.

- States that, in conducting DNA analyses of DNA specimens, the state DNA laboratory established by the Bureau of Criminal Identification and Investigation and any laboratory with which the Bureau has entered into

a contract must 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 under either the Not Guilty Plea Mechanism or the Guilty Plea Mechanism.

- Expands the grounds for requesting relief under the Postconviction Relief Law to also permit a person to file a petition requesting relief under that Law, and permit a court to entertain a petition for relief under that Law that is filed after the expiration of the Law's 180-day period of limitations or a second petition or successive petitions for similar relief on behalf of a petitioner, if: (1) the person or petitioner was convicted of a felony, (2) the person or petitioner is an inmate for whom DNA testing was performed under either the Not Guilty Plea Mechanism or the Guilty Plea Mechanism, and (3) the results of the DNA testing provided results that 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.

- Makes other changes in the Postconviction Relief Law that relate to petitions filed under that Law, the suspension of a sentence of death to which a person who files a petition under that Law is subject, and the appointment of counsel for an indigent person who has been sentenced to death and who files a petition under that Law.

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CONTENT AND OPERATION

The bill establishes two mechanisms pursuant to which prison inmates under a sentence for a felony may request and, in specified circumstances, be accepted for DNA testing to be conducted under its provisions, and provides for the use in certain circumstances of the results of a DNA test so conducted in a postconviction relief proceeding.

Mechanism for inmates who pleaded not guilty to the felony

Inmates who are "eligible inmates" who may apply for DNA testing

The bill specifies that an "inmate" (see below) is eligible to request DNA testing to be conducted under its provisions in R.C. 2953.71 to 2953.81 (hereafter, the "Not Guilty Plea Mechanism" or the "NGP Mechanism") only if: (1) the offense for which the inmate claims to be an eligible inmate is a felony that was committed prior to the bill's effective date, and the inmate was convicted by a judge or jury of that offense, (2) the inmate was sentenced to a prison term or sentence of death for the felony described in (1) and, on the bill's effective date, is in prison serving that prison term or under that sentence of death, and (3) on the date on which the application is filed, the inmate has at least one year remaining on the prison term described in (2) or the inmate is in prison under a sentence of death as described in (2). An inmate is *not eligible* to request DNA testing under this provision *regarding any offense to which the inmate pleaded guilty or no contest*. For purposes of the bill, the bill defines "eligible inmate" as an inmate who satisfies the specified criteria and defines "inmate" as an inmate in a "prison" (see "***Other definitions***," below) who was sentenced by a court, or by a jury and court, of Ohio. (R.C. 2953.71(F) and (K) and 2953.72(C).)

Application for DNA testing

In general; time for filing. Under the bill, any eligible inmate who wishes to request DNA testing under the NGP Mechanism must submit an application for the testing to the court of common pleas specified below, on a form prescribed by the Attorney General (the AG) for this purpose. The eligible inmate must submit the application within the period of time, and in accordance with the procedures, described below in "***Submission of an application to the court of common pleas***." The eligible inmate must specify on the application the offense or offenses for which the inmate is an eligible inmate and is requesting the DNA testing. Along with the application, the eligible inmate must submit an acknowledgment, as described below in "***Acknowledgment that must accompany an application***."

An eligible inmate must submit the application for DNA testing to the appropriate court of common pleas not later than one year after the bill's effective date. No court of common pleas may accept an application for DNA testing after the expiration of the applicable period of time specified in the preceding sentence. (R.C. 2953.72(A) and 2953.73(A).)

Submission of an application to the court of common pleas. An eligible inmate must submit an application for DNA testing on a form prescribed by the AG for this purpose and to the court of common pleas that sentenced the inmate for the offense for which the inmate is an eligible inmate and is requesting DNA testing (R.C. 2953.73(A)).

The bill specifies that, notwithstanding any provision of law regarding fees and costs, no filing fee may be required of, and no court costs may be assessed against, an eligible offender who is indigent and who submits an application for DNA testing under the NGP Mechanism (R.C. 2953.73(F)).

Acknowledgment that must accompany an application

An eligible inmate must submit, along with an application for DNA testing under the NGP Mechanism, an acknowledgment, on a form prescribed by the AG for this purpose, that is signed by the inmate, and that sets forth all of the following (R.C. 2953.72(A)):

(1) That the NGP Mechanism contemplates applications for DNA testing of eligible inmates at a stage of a prosecution or case after the inmate has been sentenced to a prison term or a sentence of death, that any "exclusion" or "inclusion result" of DNA testing (see "***Other definitions***," below) rendered pursuant to those provisions may be used as described in another part of the bill by a party in any proceeding, 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 inmate under the NGP Mechanism begins when the inmate submits an application and the required acknowledgment;

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

(4) That the state has established a set of criteria by which eligible inmate 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 the NGP Mechanism will be provided as described below under "***Distribution and use of DNA test results***" 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 inmate under the NGP Mechanism, the state will not offer the inmate a retest if an inclusion result is achieved relative to the test 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 inmate's application for DNA testing because the inmate does not satisfy the acceptance criteria, the state will not accept or consider subsequent applications;

(8) That the acknowledgment memorializes the NGP Mechanism with respect to the application of postconviction DNA testing to inmates, that those provisions do not give any inmate any additional constitutional right that the inmate did not have prior to the bill's effective date, that the court has no duty or obligation to offer postconviction DNA testing to inmates, that the court of common pleas has the sole discretion subject to an appeal as described in this paragraph to determine whether an inmate is an eligible inmate and whether an eligible inmate's application for DNA testing satisfies the acceptance criteria and whether the application should be accepted or rejected, that if the court of common pleas rejects an eligible inmate's application, the inmate may seek leave of the Supreme Court to appeal the rejection to that Court if the inmate was sentenced to death for the offense for which the inmate is requesting the DNA testing and, if the inmate 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 inmate or regarding postconviction DNA testing under the bill is reviewable by or appealable to any court;

(9) That the manner in which the NGP Mechanism with respect to the offering of postconviction DNA testing to inmates are carried out does not confer any constitutional right upon any inmate, 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 inmate who participates in any phase of the mechanism does not gain as a result of the participation any constitutional right to challenge, or, except as described in (8), above, any right to any review or appeal of, the manner in which the Mechanism is carried out;

(10) That the most basic aspect of the NGP Mechanism is that, in order for DNA testing to occur, there must be an inmate sample against which other evidence may be compared, that, if an eligible inmate's application is accepted but the inmate subsequently refuses to submit to the collection of the sample of "biological material" (see "***Other definitions***," below) from the inmate or hinders the state from obtaining a sample of biological material from the inmate, the goal of those provisions will be frustrated, and that an inmate's refusal or hindrance will cause the court to rescind its prior acceptance of the application for DNA testing for the inmate and deny the application.

(11) That, if the inmate is an inmate who pleaded guilty or no contest to a felony offense and who is using the application and acknowledgement to request DNA testing under R.C. 2953.82, as enacted in the bill (see "***Mechanism for inmates who pleaded guilty or no contest to the felony***," below) (hereafter "GP Mechanism"), all references in the acknowledgment to an "eligible inmate" are considered to be references to, and apply to, the inmate and all references in the acknowledgment to "R.C. 2953.71 to 2953.81" are considered to be references to "R.C. 2953.82."

Attorney General's duty to prescribe forms

The bill requires the AG to prescribe a form to be used to make an application for DNA testing under the NGP Mechanism, and a form to be used to provide the acknowledgment that must accompany the application form. The forms must include all information described in the bill regarding applications and acknowledgements, spaces for an inmate to insert all information necessary to complete the forms, including, but not limited to, specifying the offense or offenses for which the inmate is an eligible inmate and is requesting the DNA testing or for which the inmate is requesting DNA testing under R.C. 2953.82, and any other information or material the AG determines is necessary or relevant. The

forms also are to be used to make an application requesting DNA testing under the GP Mechanism, and the AG must ensure that they are sufficient, and include all information and spaces necessary, for that type of use. The AG must distribute copies of the forms to the Department of Rehabilitation and Correction, the Department must ensure that each prison in which inmates are housed has a supply of copies of the forms, and the Department must ensure that copies of the forms are provided free of charge to any inmate who requests them. (R.C. 2953.72(B).)

Procedures upon submission of an application for DNA testing

Clerks notice to prosecuting attorney and AG; assignment to trial judge; failure to provide notice. Upon the submission of an application for DNA testing under the NGP Mechanism, all of the following apply (R.C. 2953.73(B)):

(1) The eligible inmate must serve a copy of the application on the "prosecuting attorney" (see "***Other definitions***," below) and the AG.

(2) The application must be assigned to the judge of that court who was the trial judge in the case in which the inmate was convicted of the offense for which the inmate is requesting DNA testing, or, if that judge no longer is a judge of that court, it must be assigned according to court rules. The judge to whom it is assigned must decide the application, and it becomes a part of the file in the case. (R.C. 2953.73(B).)

Responses to an application. If an eligible inmate submits an application for DNA testing under the NGP Mechanism regardless of whether the inmate has not yet commenced any federal *habeas corpus* proceeding relative to the case in which the inmate was convicted of the offense for which the inmate is requesting DNA testing, any response to the application by the prosecuting attorney or the AG must be filed not later than 45 days after the date on which the inmate submitted the application. The prosecuting attorney, the AG, or both may, but are not required to, file a response to the application. If the prosecuting attorney or the AG files a response to the application, he or she must serve a copy of the response on the inmate. (R.C. 2953.73(C).)

Determination by judge to accept or reject application; possible appeal of rejection. The court must make the determination as to whether an application for DNA testing submitted to it under the NGP Mechanism should be accepted or rejected. The court must expedite its review of the application. The court must make the determination in accordance with the criteria and procedures set forth in the bill and, in making the determination, must consider the application, the supporting affidavits, and the documentary evidence and, in addition to those materials, must 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 by a prosecuting attorney or the AG, unless the application and the files and records show the applicant is not entitled to DNA testing, in which case the application may be denied. The court is not required to conduct an evidentiary hearing in conducting its review of, and in making its determination as to whether to accept or reject, the application. Upon making its determination, the court must enter a judgment and order that either accepts or rejects the application and that includes the reasons for the acceptance or rejection as applied to the criteria and procedures set forth in the NGP Mechanism. The court must send a copy of the judgment and order to the eligible inmate who filed it, the prosecuting attorney, and the AG.

A judgment and order of a court entered as described in this paragraph is appealable only as described in this paragraph. If the court of common pleas rejects an eligible inmate's application for DNA testing submitted under the GP Mechanism, one of the following applies: (1) if the inmate was sentenced to death for the offense for which the inmate claims to be an eligible inmate and is requesting DNA testing, the inmate may seek leave of the Supreme Court to appeal the rejection to that Court (courts of appeals do not have jurisdiction to review any rejection if the inmate was sentenced to death for the offense for which the inmate claims to be an eligible inmate and is requesting DNA testing), or (2) if the inmate was not sentenced to death for the offense for which the inmate claims to be an eligible inmate and is requesting DNA testing, the rejection is a final appealable order, and the inmate may appeal it to the court of appeals of the district in which is located that court of common pleas (see **COMMENT** 2). If a court rejects an eligible inmate's application, unless the rejection is overturned on appeal no court may require the state to administer a DNA test under the NGP Mechanism on the inmate who submitted the application. (R.C. 2953.73(D), (E), and (F).)

Criteria for screening applications

Screening criteria related to prior definitive or inconclusive DNA test. The court must reject an application for DNA testing submitted to it under the NGP Mechanism if a *prior definitive DNA test* has been conducted regarding the same biological evidence that the inmate seeks to have tested. If a *prior "inconclusive" DNA test* (see "***Other definitions***," below) has been conducted regarding the same biological evidence that an inmate seeks to have tested, the court must review the inmate's 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" (see "***Other definitions***," below) 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. (R.C. 2953.74(A).)

Screening criteria related to outcome determinativeness of DNA test. The court may accept an application for DNA testing submitted to it under the NGP Mechanism only if one of the following applies (R.C. 2953.74(B)):

(1) The inmate did not have a DNA test taken at the trial stage in the case in which the inmate was convicted of the offense regarding the same biological evidence that the inmate seeks to have tested, the inmate shows that DNA exclusion would have been "*outcome determinative*" (see "***Other definitions***," below) at the trial stage in the case, and at the time of the trial stage in the case, DNA testing was not generally accepted, the results of DNA testing were not generally admissible in evidence, or DNA testing was not yet available.

(2) The inmate had a DNA test taken at the trial stage in the case in which the inmate was convicted of the offense regarding the same biological evidence that the inmate seeks to have tested, the test was not a prior definitive DNA test that is subject to the denial provision described above, and the inmate shows that DNA exclusion would have been *outcome determinative* at the trial stage.

Other screening criteria. The court may accept an application for DNA testing submitted to it only if all of the following apply (R.C. 2953.74(C)):

(1) The court determines pursuant to the provisions described below in "***Determinations regarding existence of biological material***," that biological material was collected from the crime scene or the victim of the offense for which the inmate is requesting the DNA testing and that the "parent sample" (see "***Other definitions***," below) of that biological material against which a sample from the inmate can be compared still exists at that point in time;

(2) The testing authority determines all of the following pursuant to the provisions described below in "***Determinations regarding quantity and quality of biological material***" regarding the parent sample of the biological material described in (1): (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 (a); 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, and (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 preserved, 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 inmate was convicted of the offense for which the inmate 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 inmate at the trial stage in the case described in (3) or in a retrial of that case in an Ohio court was of such a nature that, if DNA testing is conducted and an exclusion result is obtained, the exclusion result would 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 inmate.

(6) The court determines pursuant to the provisions described below in "***Determinations regarding quantity and quality of biological material***" from the "chain of custody" (see "***Other definitions***," below) 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.

Determinations regarding existence of biological material

The court, upon the submission of an application for DNA testing under the NGP Mechanism, must require the prosecuting attorney to use "reasonable diligence" (see "***Other definitions***," below) to determine whether biological material was collected from the crime scene or victim of the offense for which the inmate is requesting the DNA testing against which a sample from the inmate 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 must rely upon all relevant sources, including, but not limited to, all of the following (R.C. 2953.75(A)):

(1) All prosecuting authorities in the case in which the inmate was convicted of the offense for which the inmate 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 that offense;

(3) All "custodial agencies" (see "***Other definitions***," below) involved at any time with the biological material in question;

(4) The "custodian" (see "***Other definitions***," below) of all custodial agencies described in (3);

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

(6) All other reasonable sources.

The prosecuting attorney must prepare a report that contains the prosecuting attorney's determinations made under the provisions described above and must file a copy of the report with the court and provide a copy to the eligible inmate and the AG (R.C. 2953.75(B)).

Determinations regarding quantity and quality of biological material

Upon the submission of an application for DNA testing under the NGP Mechanism, the court must 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 is requesting the DNA testing and that is to be tested, and of the chain of custody regarding that parent sample, as follows (R.C. 2953.76):

(1) The testing authority must 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, the testing authority must prepare a written document that contains its determination and the reasoning and rationale for that determination and must provide a copy to the court, the eligible inmate, the prosecuting attorney, and the AG. 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.

(2) The testing authority must 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, the testing authority must prepare a written document that contains its determination and the reasoning and rationale for that determination and must provide a copy to the court, the eligible inmate, the prosecuting attorney, and the AG.

(3) The court must 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, the court must prepare and retain a written document that contains its determination and the reasoning and rationale for that determination.

Anticontamination precautions upon acceptance of application

If an application for DNA testing under the NGP Mechanism is accepted and DNA testing is to be performed, the court must require that the chain of custody remain intact and that all of the applicable following precautions are satisfied to ensure that the parent sample of the biological material collected from the crime scene or the victim of the offense for which the inmate requested the DNA testing, and the test sample of the parent sample that is extracted and is to be tested, are not contaminated during transport or the testing process (R.C. 2953.77(A)):

(1) The court must 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, must 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 must document the transport procedures so used.

(3) The testing authority must 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 must 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 must 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, must 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 paragraph and the provisions discussed below in "***Distribution and use of DNA test results***." The court must 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 must 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.

A court or testing authority must provide the documentation required under the provisions described above in writing and must maintain that documentation (R.C. 2953.77(B)).

Selection of testing authority; approval or designation of testing authorities

Selection of testing authority; effect of inmate's objection to selected authority. If an application is accepted under the NGP Mechanism and DNA testing is to be performed, the court must select the testing authority to be used for the testing. A court cannot select or use a testing authority for DNA testing unless the AG approves or designates it pursuant to the provisions described below in "***Attorney General's approval or designation of testing authorities***" and unless the testing authority satisfies the criteria described below in "***Criteria for testing authority to be approved or designated***."

If a court so selects a testing authority to be used for DNA testing and the eligible inmate for whom the test is to be performed objects to the use of the selected testing authority, the court must rescind its prior acceptance of the application for DNA testing for the inmate and deny the application. An objection as described in this paragraph, and the resulting rescission and denial, do not preclude a court from accepting in the court's discretion, a subsequent application by the same eligible inmate requesting DNA testing. (R.C. 2953.78(A) and (B).)

Attorney General's approval or designation of testing authorities. The AG must approve or designate testing authorities that may be selected and used for the conduct of DNA testing, prepare a list of the approved or designated testing authorities, and provide copies of the list to all courts of common pleas. The AG

must update the list as appropriate to reflect changes in the approved or designated testing authorities and must provide copies of the updated list to all courts of common pleas. The AG cannot approve or designate a testing authority unless the testing authority satisfies the criteria described below in "***Criteria for testing authority to be approved or designated***." (R.C. 2953.78(C).)

No right to challenge or appeal approval, selection, or use. The AG's approval or designation of testing authorities under these provisions, and the selection and use of any such approved or designated testing authority, do not afford an inmate any right to subsequently challenge the approval, designation, selection, or use, and an inmate may not appeal to any court the approval, designation, selection, or use (R.C. 2953.78(D)).

Obtaining inmate DNA sample

In general. If an application is accepted under the NGP Mechanism and DNA testing is to be performed, a sample of biological material must be obtained from the inmate, as described below, to be compared with the parent sample of biological material collected from the crime scene or the victim of the offense for which the inmate requested the DNA testing. The inmate's filing of the application constitutes the inmate's consent to the obtaining of the sample of biological material from the inmate. The testing authority must obtain the sample of the biological material from the inmate in accordance with medically accepted procedures.

If DNA testing is to be performed for an inmate, the court must require the state to coordinate with the Department of Rehabilitation and Correction as to the time and place at which the sample of biological material will be obtained from the inmate. The sample must be obtained from the inmate at the facility in which the inmate is housed, and the Department must make the inmate available at the specified time. The court must require the state to provide notice to the inmate and to the inmate's counsel of the date on which, and the time and place at which, the sample will be so obtained. The court also must require the state to coordinate with the testing authority regarding the obtaining of the sample from the inmate. (R.C. 2953.79(A) and (B).)

Inmate's refusal to submit to, or hindrance of, collection of sample. If DNA testing is to be performed for an inmate and the inmate refuses to submit to the collection of the sample of biological material from the inmate or hinders the state from obtaining a sample of biological material from the inmate, the court must rescind its prior acceptance of the application for DNA testing for the inmate and deny the application.

For purposes of this provision, an inmate's "refusal to submit to the collection of a sample of biological material from the inmate" includes, but is not limited to, the inmate's rejection of the physical manner in which a sample of the inmate's biological material is to be taken; and an inmate's "hindrance of the state in obtaining a sample of biological material from the inmate" includes, but is not limited to, the inmate being physically or verbally uncooperative or antagonistic in the taking of a sample of the inmate's biological material.

The "extracting personnel" (see "***Other definitions***," below) are to make the determination as to whether an eligible inmate is refusing to submit to the collection of a sample of biological material from the inmate or is hindering the state from obtaining a sample of biological material from the inmate at the time and date of the scheduled collection of the sample. If the extracting personnel determine that an inmate is refusing to submit to the collection of a sample or is hindering the state from obtaining a sample, the extracting personnel must document in writing the conditions that constitute the refusal or hindrance, must maintain the documentation, and notify the court of the inmate's refusal or hindrance. (R.C. 2953.79(C) and (D).)

Criteria for testing authority to be approved or designated

The bill prohibits the AG from approving or designating a testing authority for conducting DNA testing under the NGP Mechanism, and prohibits a court from selecting or using a testing authority for DNA testing under that Mechanism, 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, 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 audit" or "external audit" (see below) for quality assurance, in conformity with the standards identified in clause (1), and (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 clause (1).

As used in this provision, "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; and "internal audit" means an internal review of a testing authority that is conducted by the testing authority itself. (R.C. 2953.80.)

Distribution and use of DNA test results

If DNA testing is performed based on an application submitted under the NGP Mechanism, upon completion of the testing, all of the following apply (R.C. 2953.81):

(1) The court or a designee of the court must require the state to maintain the results of the testing and to maintain and preserve both the parent sample of the biological material used and the inmate 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 must be preserved during the entire period of time for which the inmate is imprisoned relative to the prison term or sentence of death in question, and, if that prison term expires or the inmate is executed under that sentence of death, for a reasonable period of time of not less than 24 months after the term expires or the inmate is executed. The court must determine the period of time that is reasonable for purposes of this provision, provided that the period cannot be less than 24 months after the term expires or the inmate is executed.

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

(3) The court or the testing authority must provide a copy of the results of the test to the prosecuting attorney, the AG, and the subject inmate.

(4) If the postconviction proceeding in question is pending at that time in an Ohio or federal court, the court or the testing authority must provide a copy of the results of the testing to any Ohio court, and, if it is pending in a federal court, the court or the testing authority must provide a copy of the results of the testing to that federal court.

(5) The testing authority must provide a copy of the results of the testing to the court.

(6) The inmate or the state may enter the results of the testing into any proceeding.

Mechanism for inmates who pleaded guilty or no contest to the felony

Inmates who may apply for DNA testing

The bill specifies that an inmate who pleaded guilty or no contest to a felony offense that was committed prior to the bill's effective date may request DNA testing under R.C. 2953.82 (hereafter, the provisions of this section are referred to as the "Guilty Plea Mechanism" or the "GP Mechanism") regarding

that offense if all of the following apply (R.C. 2953.82(A)): (1) the inmate was sentenced to a prison term or sentence of death for that felony and, on the bill's effective date, is in prison serving that prison term or under that sentence of death, and (2) on the date on which the inmate files the application requesting the testing with the court as described below in "***Application for DNA testing***," the inmate has at least one year remaining on the prison term described in clause (1) or the inmate is in prison under a sentence of death as described in that clause.

Application for DNA testing

In general; time for filing. Under the bill, an inmate who pleaded guilty or no contest to a felony offense that was committed prior to the bill's effective date, who satisfies the criteria set forth in the preceding paragraph, and who wishes to request DNA testing under the GP Mechanism must submit, in accordance with the procedures described in this paragraph and the following paragraph, an application for the testing to the court of common pleas and the "prosecuting attorney" (see "***Other definitions***," below). The inmate must specify on the application the offense or offenses for which the inmate is requesting the DNA testing under the Mechanism. Along with the application, the inmate must submit an acknowledgement that is signed by the inmate. The application and acknowledgement required under this provision of the GP Mechanism are the same application and acknowledgement as are used by eligible inmates who request DNA testing under the NGP Mechanism, as described above.

The inmate must file the application with the court of common pleas not later than one year after the bill's effective date. Upon filing the application the inmate must serve a copy on the prosecuting attorney. (R.C. 2953.82(B).)

Functions of prosecuting attorney upon the filing of an application; filing of statement agreeing to, or disagreeing with, DNA testing; use and effect of agreement or disagreement. If an inmate who pleaded guilty or no contest to a felony that was committed prior to the bill's effective date and who satisfied the eligibility criteria described above filed an application requesting DNA testing with the court as described above, within 45 days after the filing of the application, the prosecuting attorney must file a statement with the court that indicates whether the prosecuting attorney agrees or disagrees that the inmate should be permitted to obtain DNA testing under the GP Mechanism. If the prosecuting attorney agrees that the inmate should be permitted to obtain DNA testing under the Mechanism, all of the following apply: (1) the application and the written statement must be considered for all purposes as if they were an application for DNA testing filed under the NGP Mechanism that the court accepted under that Mechanism, the court, the prosecuting attorney, the AG, the inmate, law enforcement personnel, and all other involved persons must proceed regarding DNA testing for the inmate pursuant to R.C. 2953.77 to 2953.81, as contained in the NGP Mechanism and as

described above, in the same manner as if the inmate was an eligible inmate for whom an application for DNA testing had been accepted, and (2) upon completion of the DNA testing, R.C. 2953.81, as contained in the NGP Mechanism and as described above, applies. (R.C. 2953.82(C).)

If the prosecuting attorney disagrees that the inmate should be permitted to obtain DNA testing under the GP Mechanism, the prosecuting attorney's disagreement is final and is not appealable by any person to any court, and no court has authority, without agreement of the prosecuting attorney, to order DNA testing regarding that inmate and the offense or offenses for which the inmate requested DNA testing in the application (R.C. 2953.82(D)).

Prosecutor's failure to file the required statement. If the prosecuting attorney fails to file a written statement of agreement or disagreement as required under the Mechanism, and as described above, the court may order the prosecuting attorney to file a statement of that nature within 15 days of the date of the order (R.C. 2953.82(E)).

Application of Criminal Rules

The bill states that, in any court proceeding under either the NGP Mechanism or the GP Mechanism, the Rules of Criminal Procedure apply, except to the extent that any provision of either Mechanism provides a different procedure or to the extent that the Rules would by their nature be clearly inapplicable (R.C. 2953.83).

State DNA laboratory--give priority to ongoing investigations or prosecutions

Existing law permits the Superintendent of the Bureau of Criminal Identification and Investigation of the AG's Office to establish and maintain a state DNA laboratory to perform DNA analyses of DNA specimens and specifies the uses and disclosures that may be made of information regarding DNA records, including the disclosure to law enforcement agencies for purposes of identification, if the Bureau establishes and maintains the laboratory. Existing law also permits the Bureau to enter into a contract with a qualified public or private laboratory to perform DNA analyses and other related functions. (R.C. 109.573.)

The bill provides that, in conducting DNA analyses of DNA specimens, the state DNA laboratory and any laboratory with which the Bureau has entered into a contract as described in the preceding paragraph must 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 under the bill's NGP Mechanism or its GP Mechanism (R.C. 109.573(G)(11)).

Changes in the Postconviction Relief Law

Existing law

In general. R.C. 2953.21 to 2953.23 contain the Postconviction Relief Law. Under that Law, any person who has been convicted of a criminal offense or adjudicated a delinquent child and who claims that there was *such a denial or infringement of the person's rights as to render the judgment void or voidable under the Ohio Constitution or the Constitution of the United States* may file a petition in the court that imposed sentence, stating the grounds for relief relied upon, and asking the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. Subject to the exception described in the next paragraph, the petition must be filed *no later than 180 days after the date on which the trial transcript is filed in the court of appeals in the direct appeal of the judgment of conviction or adjudication or, if the direct appeal involves a sentence of death, the date on which the trial transcript is filed in the Supreme Court*. Subject to the exception, if no appeal is taken, the petition must be *filed no later than 180 days after the expiration of the time for filing the appeal*. At any time before the answer or motion is filed, the petitioner may amend the petition with or without leave or prejudice to the proceedings; thereafter, the petitioner may amend the petition with leave of court. The provisions of the Law pertaining to the content of the petition, the court's consideration of the petition, the court's findings and orders regarding the petition, and the exclusivity of the Law's remedy, and special provisions of the Law that pertain to prisoners under a sentence of death, are discussed in the **COMMENT** 1. (R.C. 2953.21.)

Filing of petition after the expiration of period of limitations; second or subsequent petitions. The Postconviction Relief Law specifies that, regardless of whether a hearing is held on a petition filed under the Law, *a court may not entertain a petition filed after the expiration of the 180-day period of limitations described above or a second petition or successive petitions for similar relief on behalf of a petitioner* unless both of the following apply:

(1) Either the petitioner shows that the petitioner was unavoidably prevented from discovery of the facts upon which the petitioner must rely to present the claim for relief, or, subsequent to that period of limitations or to the filing of an earlier petition, the United States Supreme Court recognized a new federal or state right that applies retroactively to persons in the petitioner's situation, and the petition asserts a claim based on that right.

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

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

An order awarding or denying relief sought in a petition filed under the Postconviction Relief Law is a final judgment and may be appealed. (R.C. 2953.23.)

Operation of the bill

The bill modifies the Postconviction Relief Law in the following ways:

(1) It expands the provision that identifies the reasons for which a claim may be brought under that Law to also permit a person to file a petition under that Law if: (a) the person has been convicted of a criminal offense that is a felony, (b) the person is an inmate, and (c) DNA testing was performed for the person under the bill's NGP Mechanism or its GP Mechanism and the testing provided results that establish, by clear and convincing evidence, actual innocence (see (6), below) 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. Similar to existing law, the person's petition must be filed in the court that imposed sentence, must state the grounds for relief relied upon, and must ask the court to vacate or set aside the judgment or sentence or to grant other appropriate relief. (R.C. 2953.21(A)(1)(a).)

(2) It modifies the provision that specifies that a person who has been sentenced to death and files a petition under that Law may ask the court to render void or voidable the judgment with respect to the conviction of aggravated murder or the specification of an aggravating circumstance, so that the provision also permits the person to ask the court to render void or voidable the judgment with respect to the sentence of death (R.C. 2953.21(A)(3)).

(3) It repeals an existing provision that specifies that, when a person files a petition under that Law, the person need not serve a copy of the petition on the prosecuting attorney (R.C. 2953.21(B)).

(4) It revises the provision that currently states that, if a person who has been sentenced to death and is in a state correctional institution files a petition under that Law, "the court" may stay execution of the judgment challenged by the petition. Under the bill, if a person sentenced to death files a petition under that Law, only the Supreme Court may stay execution of the sentence of death (R.C. 2953.21(H)).

(5) It expands existing law by providing an additional set of circumstances in which a court may entertain a petition filed after the expiration of the 180-day period of limitations described above or a second petition or successive petitions for similar relief on behalf of a petitioner. Under the bill, a court also may entertain a petition filed after the expiration of the 180-day period of limitations described above or a second or successive petition if the petitioner was convicted of a felony, the petitioner is an inmate for whom DNA testing was performed under the bill's NGP Mechanism or its GP Mechanism, and the results of the DNA testing establish by clear and convincing evidence, actual innocence (see (6), below) 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. The bill also makes related conforming and clarifying changes in the Law. (R.C. 2953.21(A)(2) and 2953.23.)

(6) Finally, it specifies that, for purposes of the provisions described above in (1) and (5), "actual innocence" means that, had the results of the DNA testing conducted under the bill's NGP Mechanism or its GP Mechanism been presented at trial, no reasonable factfinder would have found the petitioner guilty of the offense of which the petitioner was convicted, or, if the person was sentenced to death, no reasonable factfinder would have found the petitioner guilty of the aggravating circumstance or circumstances the petitioner was found guilty of committing and that is or are the basis of that sentence of death (R.C. 2953.21(A)(1)(b) and 2953.23(A)(2)).

Other definitions

In addition to the defined terms that are discussed in prior portions of this analysis, the bill defines the following terms for use in its provisions (R.C. 2953.71):

(1) "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 inmate was convicted of the offense for which the inmate is an eligible inmate and is requesting the DNA testing under the bill's NGP Mechanism or the case in which the inmate pleaded guilty or no contest to the offense for which he or she is requesting DNA testing under the bill's GP Mechanism.

(2) "Biological material" means any product of a human body containing DNA.

(3) "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 in 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 provision, examples of when biological material is first obtained include, but are not limited to, obtaining the material at the scene of a crime, from a victim, from an inmate, or in any other manner or time as is appropriate in the facts and circumstances present.

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

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

(6) "Exclusion" or "exclusion result" means a result of DNA testing that scientifically precludes or forecloses the subject inmate as a contributor of biological material recovered from the crime scene or victim in question, in relation to the offense for which the inmate is an eligible inmate and for which the sentence of death or prison term was imposed upon the inmate or, regarding a request for testing made under the bill's GP Mechanism, in relation to the offense for which the inmate made the request and for which the sentence of death or prison term was imposed upon the inmate.

(7) "Extracting personnel" means medically approved personnel who are employed to physically obtain an inmate DNA specimen for purposes of DNA testing under the bill's NGP Mechanism or its GP Mechanisms.

(8) "Inclusion" or "inclusion result" means a result of DNA testing that scientifically cannot exclude, or that holds accountable, the subject inmate as a contributor of biological material recovered from the crime scene or victim in question, in relation to the offense for which the inmate is an eligible inmate and for which the sentence of death or prison term was imposed upon the inmate or, regarding a request for testing made under the bill's GP Mechanism, in relation to the offense for which the inmate made the request and for which the sentence of death or prison term was imposed upon the inmate.

(9) "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.

(10) "Outcome determinative" means that had the results of DNA testing been presented at the subject inmate's trial and been found relevant and admissible with respect to the felony offense for which the subject inmate is an eligible inmate and requesting the DNA testing or for which the inmate is requesting

testing under the bill's GP Mechanism, no reasonable factfinder would have found the inmate guilty of that offense or, if the inmate was sentenced to death relative to that offense, would have found the inmate guilty of the aggravating circumstance or circumstances the inmate was found guilty of committing and that is or are the basis of that sentence of death.

(11) "Parent sample" means the biological material first obtained from a crime scene or a victim of an offense for which an inmate is an eligible inmate or for which the inmate is requesting testing under the bill's GP Mechanism, and from which a sample will be presently taken to do a DNA comparison to the DNA of the subject inmate under the bill.

(12) "Prison" has the same meaning as in the existing Criminal Sentencing Law, not in the bill.

(13) "Prosecuting attorney" means the prosecuting attorney who, or whose office, prosecuted the case in which the subject inmate was convicted the offense for which the inmate is an eligible inmate and is requesting the DNA testing or for which the inmate is requesting testing under the bill's GP Mechanism.

(14) "Prosecuting authority" means the prosecuting attorney or the AG.

(15) "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.

(16) "Testing authority" means a laboratory at which DNA testing will be conducted under the bill.

COMMENT

1. The Postconviction Relief Law, contained in R.C. 2953.21 to 2953.23, specifies that, in a petition for relief filed under its provisions, the petitioner must state in the original or amended petition all grounds for relief claimed by the petitioner and, except as provided in R.C. 2953.23 (see the main body of the analysis), any ground for relief that is not so stated in the petition is waived. If the petitioner was convicted of or pleaded guilty to a felony, the petition may include a claim that the petitioner was denied the equal protection of the laws in violation of the Ohio Constitution or the United States Constitution because the sentence imposed upon the petitioner for the felony was part of a consistent pattern of disparity in sentencing by the judge who imposed the sentence, with regard to the petitioner's race, gender, ethnic background, or religion.

The court must consider a petition that is timely filed under the Law even if a direct appeal of the judgment is pending. Before granting a hearing on the petition, the court must determine whether there are substantive grounds for relief. In making the determination, the court must consider, in addition to the petition, the supporting affidavits, and the documentary evidence, all the files and records pertaining to the proceedings against the petitioner, 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. The Law sets forth other procedures that apply regarding petitions filed under it and hearings on those petitions.

If the court does not find grounds for granting relief, it must make and file findings of fact and conclusions of law and enter judgment denying relief on the petition. If no direct appeal of the case is pending and the court finds grounds for relief or if a pending direct appeal of the case has been remanded to the court and the court finds grounds for granting relief, it must make and file findings of fact and conclusions of law and enter a judgment that vacates and sets aside the judgment in question, and, in the case of a petitioner who is a prisoner in custody, must discharge or resentence the petitioner or grant a new trial as the court determines appropriate. The court also may make supplementary orders to the relief granted, concerning such matters as rearraignment, retrial, custody, and bail.

The Law states that, subject to the appeal of a sentence for a felony that is authorized by existing R.C. 2953.08 (not in the bill), the remedy it contains is the exclusive remedy by which a person may bring a collateral challenge to the validity of a conviction or sentence in a criminal case or to the validity of an adjudication of a child as a delinquent child for the commission of an act that would be a criminal offense if committed by an adult or the validity of a related order of disposition.

Special provisions of the Law apply regarding prisoners who are under a sentence of death:

(a) Upon the filing of a petition by such a prisoner in a state correctional institution, the court may stay execution of the judgment challenged by the petition.

(b) If such a prisoner intends to file a petition, except as described below, the court must appoint counsel to represent the prisoner upon a finding that the prisoner is indigent and that the prisoner either accepts the appointment of counsel or is unable to make a competent decision whether to accept or reject it. The court may decline to appoint counsel only upon a finding, after a hearing if necessary, that the prisoner rejects the appointment of counsel and understands the legal consequences of that decision or upon a finding that the prisoner is not indigent.

(c) The court cannot appoint as counsel under the provision described above in (b) an attorney who represented the petitioner at trial in the case to which the petition relates unless the prisoner and the attorney expressly request the appointment. The court may appoint as counsel under that provision only an attorney who is certified under Rule 20 of the Rules of Superintendence for Courts of Common Pleas to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed. The ineffectiveness or incompetence of counsel during proceedings under the Law does not constitute grounds for relief in a proceeding under the Law, in an appeal of any action under the Law, or in an application to reopen a direct appeal. (R.C. 2953.21.)

2. Sections 2 and 3, Article IV, Ohio Constitution, set forth, respectively, the jurisdiction of the Ohio Supreme Court and the Ohio courts of appeals. The constitutional provisions give each court original jurisdiction in specified circumstances and appellate jurisdiction in other specified circumstances. A summary of the provisions follows:

(a) ***Supreme Court***. Section 2, Article IV provides that the Supreme Court has original jurisdiction in the following: (i) *quo warranto*, (ii) mandamus, (iii) *habeas corpus*, (iv) prohibition, (v) *procedendo*, (vi) in any cause on review as may be necessary to its complete determination, and (vii) admission to the practice of law, the discipline of persons so admitted, and all other matters relating to the practice of law.

It provides that the Supreme Court has appellate jurisdiction as follows: (i) in appeals from the courts of appeals as a matter of right in cases originating in the courts of appeals and in cases involving questions arising under the Ohio Constitution or the United States Constitution, (ii) in appeals from the courts of appeals in cases of felony on leave first obtained, (iii) in direct appeals from the courts of common pleas or other courts of record inferior to the court of appeals as a matter of right in cases in which the death penalty has been imposed, (iv) such revisory jurisdiction of the proceedings of administrative officers or agencies as may be conferred by law, (v) in cases of public or great general interest, the Supreme Court may direct any court of appeals to certify its record to the Supreme Court, and may review and affirm, modify, or reverse the judgment of the court of appeals, and (vi) the Supreme Court must review and affirm, modify, or reverse the judgment in any case certified by any court of appeals pursuant to Section 3, Article IV, as described below in the last paragraph of (b).

(b) ***Courts of appeals***. Section 3, Article IV provides that courts of appeals have original jurisdiction in the following: (i) *quo warranto*, (ii) mandamus, (iii) *habeas corpus*, (iv) prohibition, (v) *procedendo*, and (vi) in any cause on review as may be necessary to its complete determination.

It provides that courts of appeals have such jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the courts of record inferior to the court of appeals within the district, except that courts of appeals do not have jurisdiction to review on direct appeal a judgment that imposes a sentence of death. Courts of appeals have such appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse final orders or actions of administrative officers or agencies.

Whenever the judges of a court of appeals find that a judgment upon which they have agreed is in conflict with a judgment pronounced upon the same question by any other court of appeals, the judges must certify the record of the case to the Supreme Court for review and final determination.

HISTORY

ACTION	DATE	JOURNAL ENTRY	
Introduced	01-23-03	p.	66
Reported, S. Judiciary on Criminal Justice	04-09-03	p.	264
Passed Senate (33-0)	04-09-03	p.	274

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