Diana C. Talarek *Legislative Service Commission*

Sub. S.B. 262

126th General Assembly
(As Passed by the General Assembly)

Sens. **Goodman, Stivers, Clancy, Jacobson, Gardner, Padgett, Schuler, Fedor, Fingerhut, Miller, R., Dann, Kearney, Zurz, Armbruster, Carey, Coughlin, Hagan, Harris, Hottinger, Miller, D., Niehaus, Spada**

Reps. **Latta, Evans, D., Gilb, Willamowski, Seitz, DeGeeter, Mason, Healy, Barrett, Blessing, Brown, Cassell, Chandler, Combs, DeBose, Domenick, Evans, C., Fessler, Flowers, Garrison, Hood, Law, McGregor, J., Otterman, Perry, Raussen, Schaffer, Schneider, Skindell, Smith, G., Stewart, J., Strahorn, Wagoner, Webster, White, Yates, Yuko**

Effective date: *

ACT SUMMARY

- Eliminates the former two-year window for filing applications for post-conviction DNA testing for eligible inmates (which expired on October 29, 2005) and instead allows an eligible inmate to request post-conviction DNA testing at any time if specified criteria are met.

- Removes the provisions that specified that the felony offense for which an inmate is incarcerated must have been committed prior to October 29, 2003, and that the inmate must have been in prison on that date in order to be eligible for post-conviction DNA testing.

- Provides for a court's consideration of all available admissible evidence in determining whether the post-conviction DNA testing program's "outcome determinative" criterion is satisfied.

* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

- Specifies that the DNA specimen collection procedures for felons and specified misdemeanants apply regardless of when the offender's conviction occurred or guilty plea was entered.

- Allows an inmate or the court, once an application for post-conviction DNA testing has been approved, to have BCII compare the results of DNA testing of biological material from an unidentified person other than the inmate that was obtained from the crime scene or from a victim of the offense to CODIS and provides that if there is no match to CODIS, BCII may compare the test results to other previously obtained and acceptable DNA test results of any person whose identity is known.

- Requires BCII, if it determines the identity of the person who is the contributor of the biological material through either of the methods described in the previous dot point, to provide that information to the court that accepted the application, the inmate, and the prosecuting attorney and permits this information to be used by the inmate or the state for any lawful purpose.

- Declares an emergency.

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CONTENT AND OPERATION

Post-conviction DNA testing

The post-conviction DNA testing law, as amended by the act, allows certain incarcerated offenders (inmates) to submit an application for DNA testing to the court of common pleas that sentenced the inmate for the offense for which the inmate was requesting the testing. Generally, an inmate may submit an application for DNA testing if: (1) the offense for which the inmate was incarcerated and was requesting the testing was a felony, and the inmate was convicted by a judge or jury, (2) the inmate was sentenced to a prison term or sentence of death for the felony and is in prison serving that prison term or under that sentence of death, (3) on the date on which the application was filed, the inmate had at least one year remaining on the prison term, or the inmate was in prison under a sentence of death, and (4) the inmate did not plead guilty or no contest to the offense for which the inmate was incarcerated and was requesting the testing (R.C. 2953.72(C)). The court, based on statutory criteria and procedures (see "***Determination of whether an application should be accepted or rejected***," below), decides whether the application should be accepted or rejected; if the court rejects the application, a limited appeal of the rejection is available (R.C. 2953.73(D) and (E)).

The post-conviction DNA testing law also allows inmates who pleaded guilty or no contest to a felony offense to file an application for DNA testing regarding that felony if: (1) the inmate was sentenced to a prison term or sentence of death for the felony and is in prison serving that prison term or under that sentence of death, and (2) on the date on which the application was filed, the inmate had at least one year remaining on the prison term or the inmate was in prison under a sentence of death (R.C. 2953.82(A)). However, if an inmate filed an application as described in this paragraph, the prosecuting attorney has authority to refuse the application, the decision of which cannot be appealed by the offender. If the prosecuting attorney agrees that the inmate should be permitted to obtain the DNA testing, the application is considered as if it had been made under the provisions described in the preceding paragraph that the court accepted. (R.C. 2953.82(B) to (E).)

If an inmate files an application under the provisions described in either of the two preceding paragraphs and the application is accepted, the DNA test is conducted (R.C. 2953.77 to 2953.31, not in the act). If the DNA test establishes, by clear and convincing evidence, the actual innocence of the inmate, the inmate may file a petition for postconviction relief asking the court to set aside or vacate the judgment or sentence or grant other appropriate relief. (R.C. 2953.21, not in the act.)

Under prior law, the ability of an eligible inmate to apply for post-conviction DNA testing expired on October 29, 2005, and an inmate was only eligible if the felony for which the inmate was incarcerated was committed prior to October 29, 2003. The act removes these date restrictions and allows an inmate to file an application for DNA testing at any time and regardless of when the offense for which the inmate is incarcerated was committed. (R.C. 2953.72(A), (C)(1)(a), and (C)(1)(b), 2953.73(A), and 2953.82(A) and (B).)

Determination of whether an application should be accepted or rejected

Continuing law. Continuing law specifies that, if an eligible inmate submits an application for DNA testing under the provisions described above that apply to inmates who did not plead guilty or no contest and a prior definitive DNA test has been conducted regarding the same biological evidence that the inmate seeks to have tested, the court must reject the inmate's application. If a prior inconclusive DNA test has been conducted regarding the same biological evidence that the inmate seeks to have tested, the court must 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 it 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 results.

Continuing law specifies a series of criteria that must be satisfied in order for a court to approve an application for DNA testing filed by an eligible inmate under the provisions described above that apply to inmates who did not plead guilty or no contest. Among the criteria, existing law provides that, if an eligible inmate submits an application under those provisions, the court may accept the application only if one of the following applies: (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 for which the inmate is an eligible inmate and is requesting the DNA testing regarding the same biological evidence that the inmate seeks to have tested, the inmate shows that "DNA exclusion" would have been "outcome determinative" (see below) 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, or (2) the inmate had a DNA test taken at the trial stage in 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 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 provisions described in the preceding paragraph, and the inmate shows that "DNA exclusion" would have been "outcome determinative" (see below) at the trial stage in that case. Other criteria that must

be satisfied in order for a court to approve an application for DNA testing are described in **COMMENT**. (R.C. 2953.74(A) and (B).)

Continuing law defines "exclusion" or "exclusion result" as 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 DNA testing made by a person who pleaded guilty or no contest to the offense, 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 (R.C. 2953.71(G)).

Former law, partially modified by the act, specified that "outcome determinative" meant that had the results of DNA testing been presented at the trial of the subject inmate requesting DNA testing and been found relevant and admissible with respect to the felony offense for which the inmate was an eligible inmate and was requesting the DNA testing under the provisions that apply to inmates who did not plead guilty or no contest, or for which the inmate was requesting the DNA testing under the provisions that applied to inmates who pleaded guilty or no contest, 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 (R.C. 2953.71(L)).

Operation of the act. The act changes the "outcome determinative" criterion described above that must be satisfied in order for a court to approve an application for DNA testing filed by an eligible inmate under the provisions described above that apply to inmates who did not plead guilty or no contest. Under the act, if an eligible inmate submits an application under those provisions, the court may accept the application only if one of the following applies: (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 for which the inmate is an eligible inmate and is requesting the DNA testing regarding the same biological evidence that the inmate seeks to have tested, the inmate shows that "DNA exclusion" (unchanged by the act), *when analyzed in the context of and upon consideration of all available admissible evidence related to the subject inmate's case* (as described in a provision the act enacts that is summarized in the next paragraph), would have been "outcome determinative" (modified by the act as described below) 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, or (2) the inmate

had a DNA test taken at the trial stage in 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 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 provisions described in the preceding paragraph, and the inmate shows that "DNA exclusion" (unchanged by the act), *when analyzed in the context of and upon consideration of all available admissible evidence related to the subject inmate's case* (as described in a provision the act enacts that is summarized in the next paragraph), would have been "outcome determinative" (modified by the act as described below) at the trial stage in that case. (R.C. 2953.74(B).)

The act provides that, if an eligible inmate submits an application for DNA testing under R.C. 2953.73, the court, in determining whether the applicable "outcome determinative" criterion described in the preceding paragraph has been satisfied, must consider all available admissible evidence related to the subject inmate's case (R.C. 2953.74(D)).

The act modifies the definition of "outcome determinative," consistent with its provisions described above. Under the act, "outcome determinative" means that, had the results of DNA testing *on the subject inmate* been presented at the trial of the subject inmate requesting DNA testing and been found relevant and admissible with respect to the felony offense for which the inmate is an eligible inmate and is requesting the DNA testing under the provisions that apply to inmates who did not plead guilty or no contest, or for which the inmate is requesting the DNA testing under the provisions that apply to inmates who pleaded guilty or no contest, *and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the subject inmate's case* (as described in a provision the act enacts that is summarized in the preceding paragraph), there is a strong probability that 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 (R.C. 2953.71(L)).

Authority to test DNA sample against third parties once application for DNA testing approved

The act allows an eligible inmate whose application for DNA testing is approved to request the court to order, or the court on its own initiative to order, BCII to compare the results of DNA testing of biological material from an unidentified person other than the inmate that was obtained from the crime scene or from a victim of the offense for which the inmate has been approved for DNA testing to the FBI's Combined DNA Index System ("CODIS"). If BCII, upon comparing the test results to CODIS, determines the identity of the person who is

the contributor of the biological material, BCII must provide that information to the court that accepted the application, the inmate, and the prosecuting attorney. If BCII, upon comparing the test results to CODIS, is unable to determine the identity of the person who is the contributor of the biological material, BCII 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 inmate. If BCII, upon comparing the test results to the DNA test results of any such person whose identity is known, determines that the person whose identity is known is the contributor of the biological material, BCII must provide that information to the court that accepted the application, the inmate, and the prosecuting attorney. The inmate or the state may use the information for any lawful purpose. (R.C. 2953.74(E).)

Approved DNA testing authorities

Ongoing law provides that if an eligible inmate's application for DNA testing under R.C. 2953.73 is approved, the court must select a testing authority approved by the Attorney General to conduct the test. The AG may only approve testing authorities that satisfy specified statutory criteria.

The act specifies that the AG may approve or designate a testing authority that is equipped to handle advanced DNA testing, provided the testing authority is in compliance with nationally accepted quality assurance standards for advanced DNA testing and satisfies other specified statutory criteria. (R.C. 2953.78 and 2953.80.)

DNA testing law not the exclusive means to obtain post-conviction DNA testing

The act specifies that the provisions of the DNA Testing Law (R.C. 2953.71 to 2953.82) by which an inmate may obtain post-conviction DNA testing are not the exclusive means by which an inmate may obtain post-conviction DNA testing and that that Law does not limit or affect any other means by which an inmate may obtain post-conviction DNA testing (R.C. 2953.84).

Miscellaneous changes

The act makes two other changes in the law regarding the mechanism for post-conviction DNA testing: (1) it modifies a provision that describes one of the statements that must be in an acknowledgment that an inmate must submit with an application, so that the statement must set forth that the provisions of the DNA Testing Law (R.C. 2953.71 to 2953.81) do not give any inmate any additional Constitutional right *that the inmate did not already have* instead of setting forth that those provisions do not give any inmate any additional Constitutional right

that the inmate did not have prior to October 29, 2003 (R.C. 2953.72(A)(8)), and (2) it modifies a provision that currently requires an inmate who pleaded guilty or no contest to a felony and who wishes to request DNA testing under the DNA Testing Law to *submit an application to* the court of common pleas and *the prosecuting attorney* so that it instead requires the inmate to submit an application to the court of common pleas and, *upon submitting the application to the court, to serve a copy on the prosecuting attorney* (R.C. 2953.82(B)).

Post-conviction relief proceeding

Continuing law

Continuing law, mostly unchanged by the act, provides that 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, and any person who has been convicted of a criminal offense that is a felony, who is an inmate, and for whom DNA testing that was performed under R.C. 2953.71 to 2953.81 or under R.C. 2953.82 (see "***Post-conviction DNA testing***," above) provided results that establish, by clear and convincing evidence, "actual innocence" (see 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, 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. The petitioner may file a supporting affidavit and other documentary evidence in support of the claim for relief. The petition generally 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; if no appeal is taken, the petition generally must be filed no later than 180 days after the expiration of the time for filing the appeal (the time for filing the petition is subject to extension under R.C. 2953.23). A petitioner must state in the original or amended petition all grounds for relief claimed by the petitioner. Generally, any ground for relief that is not so stated in the petition is waived.

The clerk of the court in which the petition is filed must docket the petition and bring it promptly to the attention of the court. The clerk immediately must forward a copy of the petition to the prosecuting attorney of that county. Within ten days after the docketing of the petition, or within any further time that the court may fix for good cause shown, the prosecuting attorney must respond by answer or motion. Within 20 days from the date the issues are raised, either party

may move for summary judgment. The right to summary judgment must appear on the face of the record.

Unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court must proceed to a prompt hearing on the issues (to be conducted under R.C. 2953.22) even if a direct appeal of the case is pending. If the court notifies the parties that it has found grounds for granting relief, either party may request an appellate court in which a direct appeal of the judgment is pending to remand the pending case to the court. 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 pursuant to a request 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. Special procedures apply regarding the filing of a petition by a person sentenced to death.

Subject to the appeal of a sentence for a felony that is authorized by R.C. 2953.08, the remedy described above 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.

As used in the provisions described above, "actual innocence" means that, had the results of the DNA testing conducted under R.C. 2953.71 to 2953.81 or under R.C. 2953.82 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.)

Operation of the act

The act modifies post-conviction relief provisions, as they apply regarding a person for whom DNA testing that was performed under R.C. 2953.71 to 2953.81 or under R.C. 2953.82 (see "***Post-conviction DNA testing***," above), in two ways:

(1) It revises the grounds upon which a person for whom DNA testing was so performed to specify that any person who has been convicted of a criminal offense that is a felony, who is an inmate, and for whom DNA testing that was performed under R.C. 2953.71 to 2953.81 or under R.C. 2953.82 *and analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of R.C. 2953.74* (see "***Determination of whether an application should be accepted or rejected***," above), provided results that establish, by clear and convincing evidence, "actual innocence" (see (2), 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, 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 (R.C. 2953.21(A)(1)(a) and 2953.23(A)(2)).

(2) It modifies the definition of "actual innocence" that applies to the provisions so that "actual innocence" means that, had the results of the DNA testing conducted under R.C. 2953.71 to 2953.81 or under R.C. 2953.82 been presented at trial, *and had those results been analyzed in the context of and upon consideration of all available admissible evidence related to the inmate's case as described in division (D) of R.C. 2953.74* (see "***Determination of whether an application should be accepted or rejected***," above), 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)).

Mandatory DNA testing of offenders

Continuing law

Continuing law provides for the collection of a DNA specimen from certain criminal offenders, in specified circumstances. It specifies that (R.C. 2901.07(B)):

(1) A person who is convicted of or pleads guilty to a felony offense and who is sentenced to a prison term or to a community residential sanction in a jail or community-based correctional facility pursuant to R.C. 2929.16, and a person who is convicted of or pleads guilty to a specified misdemeanor offense and who is sentenced to a term of imprisonment must submit to a DNA specimen collection procedure administered by the Director of Rehabilitation and Correction or the chief administrative officer of the jail or other detention facility in which the person is serving the term of imprisonment. If the person serves the prison term in

a state correctional institution, the Director of Rehabilitation and Correction must cause the DNA specimen to be collected from the person during the intake process at the reception facility. If the person serves the community residential sanction or term of imprisonment in a jail, a community-based correctional facility, or another county, multicounty, municipal, municipal-county, or multicounty-municipal detention facility, the chief administrative officer of the jail or facility must cause the DNA specimen to be collected from the person during the intake process at the jail or facility. The law specifies a manner in which DNA specimens must be collected and provides for their delivery to BCII.

(2) If a person is convicted of or pleads guilty to a felony offense or a specified misdemeanor offense, is serving a prison term, community residential sanction, or term of imprisonment for that offense, and does not provide a DNA specimen pursuant to the provision described above in (1), prior to the person's release from the prison term, community residential sanction, or imprisonment, the person must submit to, and the Director of Rehabilitation and Correction or the chief administrative officer of the jail, community-based correctional facility, or detention facility in which the person is serving the term or sanction must administer, a DNA specimen collection procedure at the state correctional institution, jail, or facility in which the person is serving the prison term, community residential sanction, or term of imprisonment. The law specifies a manner in which DNA specimens must be collected and provides for their delivery to BCII.

(3) If a person is convicted of or pleads guilty to a felony offense or a specified misdemeanor offense and the person is on probation, released on parole, under transitional control, on community control, on post-release control, or under any other type of supervised release under the supervision of a probation department or the adult parole authority, the person must submit to a DNA specimen collection procedure administered by the chief administrative officer of the probation department or the Adult Parole Authority. The law specifies a manner in which DNA specimens must be collected and provides for their delivery to BCII, and a procedure that may be used if the person refuses to submit to a DNA specimen collection procedure. If the person is sent to jail or is returned to a jail, community-based correctional facility, or state correctional institution for a violation of the terms and conditions of the probation, parole, transitional control, other release, or post-release control, if the person was or will be serving a term of imprisonment, prison term, or community residential sanction for committing a felony offense or for committing a specified misdemeanor offense, and if the person did not provide a DNA specimen pursuant to the provision described in (1) or (2), above, or the provision previously described in this paragraph, the person must submit to, and the Director of Rehabilitation and Correction or the chief administrative officer of the jail or community-based correctional facility must

administer, a DNA specimen collection procedure at the jail, facility, or state correctional institution in which the person is serving the term or sanction. The law specifies a manner in which DNA specimens must be collected and provides for their delivery to BCII.

(4) If a person is convicted of or pleads guilty to a felony offense or a specified misdemeanor offense, the person is not sentenced to a prison term, a community residential sanction in a jail or community-based correctional facility, a term of imprisonment, or any type of supervised release under the supervision of a probation department or the Adult Parole Authority, and the person does not provide a DNA specimen under the provisions described in (1), (2), or (3), above, the sentencing court must order the person to report to the county probation department immediately after sentencing to submit to a DNA specimen collection procedure administered by the chief administrative officer of the county probation office. If the person is incarcerated at the time of sentencing, the person must submit to a DNA specimen collection procedure administered by the Director of Rehabilitation and Correction or the chief administrative officer of the jail or other detention facility in which the person is incarcerated. The law specifies a manner in which DNA specimens must be collected and provides for their delivery to BCII.

Continuing law also contains a DNA specimen collection mechanism that applies to children who have been adjudicated a delinquent child for any act that would be a felony if committed by an adult or that would be a specified misdemeanor if committed by an adult (R.C. 2152.74, not in the act).

Operation of the act

The act specifies that all of the provisions that specify the categories of offenders that are subject to the DNA testing, as described above, apply regardless of when the conviction referred to in the provisions occurred or the guilty plea referred to in the provisions was entered (R.C. 2901.07(B)(1), (2), (3)(a), (3)(b), and (4), and (D)).

The act includes a provision that specifies that the General Assembly declares that its purpose in amending R.C. 2901.07 in the act is to reaffirm that it is the General Assembly's intent that, under that section as it existed prior to the act's effective date, a person who is in any of the categories of offenders described above in "***Continuing law***," in relation to a sentence imposed for a felony offense or a specified misdemeanor offense is subject to the DNA specimen collection provisions of that section regardless of when the conviction of or plea of guilty to the felony offense or the misdemeanor offense occurs or is entered. The General Assembly declares that it believes that those amendments are not substantive in nature and merely clarify that the provisions of the section operate as described in

the preceding sentence, and that those amendments thus are remedial in nature. The General Assembly declares that it intends that the clarifying, remedial amendments to R.C. 2901.07 apply to all convicted offenders described above in "***Continuing law***," regardless of when the conviction referred to in the provisions occurred or the guilty plea was entered. The act also states that in compliance with the Ohio Supreme Court decision in *Van Fossen v. Babcock & Wilcox Co.* (1988), 36 Ohio St.3d 100 and with R.C. 1.48, the General Assembly expressly states its intent that the act's amendments to R.C. 2901.07 apply retrospectively. (Section 3.)

The act does not change the DNA specimen collection mechanism that applies to delinquent children, as contained in existing R.C. 2152.74 (not in the act).

COMMENT

The post-conviction DNA testing law also provides that, if an eligible inmate submits an application for DNA testing under the provisions that apply to inmates who did not plead guilty or no contest, the court may accept the application only if all of the following apply (R.C. 2953.74(C)):

(1) The court determines pursuant to R.C. 2953.75 that biological material was collected from the crime scene or the victim of the offense for which the inmate is an eligible inmate and is requesting the DNA testing and that the parent sample 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 R.C. 2953.76 regarding the parent sample of the biological material described in paragraph (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 clause (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 an eligible inmate 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 inmate at the trial stage in the case described in paragraph (3), above, 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 inmate.

(6) The court determines pursuant to R.C. 2953.76 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.

HISTORY

ACTION	DATE
Introduced	01-31-06
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