



Ohio Revised Code

Section 2953.76 Prosecutor to consult with testing authority.

Effective: July 6, 2010

Legislation: Senate Bill 77 - 128th General Assembly

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

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

(B) The testing authority shall determine whether the parent sample has degraded or been contaminated to the extent that it has become scientifically unsuitable for testing and whether the parent sample otherwise has been preserved, and remains, in a condition that is suitable for testing. Upon making its determination under this division, the testing authority shall prepare a written document that contains its determination and the reasoning and rationale for that determination and shall provide a copy to the court, the eligible offender, the prosecuting attorney, and the attorney general.

(C) The court shall determine, from the chain of custody of the parent sample of the biological



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