



## Ohio Revised Code

### Section 2953.72 Application for testing.

Effective: July 6, 2010

Legislation: Senate Bill 77 - 128th General Assembly

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

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

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

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

(4) That the state has established a set of criteria set forth in section 2953.74 of the Revised Code by which eligible offender applications for DNA testing will be screened and that a judge of a court of common pleas upon receipt of a properly filed application and accompanying acknowledgment will



apply those criteria to determine whether to accept or reject the application;

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

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

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

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

(9) That the manner in which sections 2953.71 to 2953.81 of the Revised Code with respect to the



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

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

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

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



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

(b) One of the following applies:

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

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

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

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

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