

As Passed by the Senate

130th General Assembly

Regular Session

2013-2014

Sub. H. B. No. 663

Representatives Buchy, Huffman

Cosponsors: Representatives Brenner, Maag, Scherer, Wachtmann

Speaker Batchelder

Senators Coley, Eklund, Hughes, Patton, Seitz

—

A B I L L

To amend sections 120.33, 149.43, 2317.02, 2941.51, 1
2945.10, and 2953.21 and to enact sections 2
2949.221 and 2949.222 of the Revised Code to 3
provide confidentiality and license protection for 4
persons and entities involved in executing a 5
sentence of capital punishment by lethal 6
injection, to provide for a schedule of fees to be 7
paid to appointed counsel in a capital case as set 8
by the Supreme Court, to provide that the attorney 9
client privilege does not apply if the case is a 10
capital case and the client subsequently claims 11
ineffective assistance of counsel regarding the 12
case, to provide for written jury instructions in 13
capital cases, to provide for a joint legislative 14
study committee to study the manner in which 15
families of homicide victims can best be 16
supported, to extend to 365 days the time for 17
filing a postconviction relief petition, and to 18
amend the version of section 149.43 of the Revised 19
Code that is scheduled to take effect on March 20, 20
2015, to continue the provisions of this act on 21

and after that date. 22

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 120.33, 149.43, 2317.02, 2941.51, 23
2945.10, and 2953.21 be amended and sections 2949.221 and 2949.222 24
of the Revised Code be enacted to read as follows: 25

Sec. 120.33. (A) In lieu of using a county public defender or 26
joint county public defender to represent indigent persons in the 27
proceedings set forth in division (A) of section 120.16 of the 28
Revised Code, the board of county commissioners of any county may 29
adopt a resolution to pay counsel who are either personally 30
selected by the indigent person or appointed by the court. The 31
resolution shall include those provisions the board of county 32
commissioners considers necessary to provide effective 33
representation of indigent persons in any proceeding for which 34
counsel is provided under this section. The resolution shall 35
include provisions for contracts with any municipal corporation 36
under which the municipal corporation shall reimburse the county 37
for counsel appointed to represent indigent persons charged with 38
violations of the ordinances of the municipal corporation. 39

(1) In a county that adopts a resolution to pay counsel, an 40
indigent person shall have the right to do either of the 41
following: 42

(a) To select the person's own personal counsel to represent 43
the person in any proceeding included within the provisions of the 44
resolution; 45

(b) To request the court to appoint counsel to represent the 46
person in such a proceeding. 47

(2) The court having jurisdiction over the proceeding in a 48
county that adopts a resolution to pay counsel shall, after 49

determining that the person is indigent and entitled to legal representation under this section, do either of the following:

(a) By signed journal entry recorded on its docket, enter the name of the lawyer selected by the indigent person as counsel of record;

(b) Appoint counsel for the indigent person if the person has requested the court to appoint counsel and, by signed journal entry recorded on its dockets, enter the name of the lawyer appointed for the indigent person as counsel of record.

(3) The board of county commissioners shall establish a schedule of fees by case or on an hourly basis to be paid to counsel for legal services provided pursuant to a resolution adopted under this section. Prior to establishing the schedule, the board of county commissioners shall request the bar association or associations of the county to submit a proposed schedule for cases other than capital cases. The schedule submitted shall be subject to the review, amendment, and approval of the board of county commissioners, except with respect to capital cases. With respect to capital cases, the schedule shall provide for fees by case or on an hourly basis to be paid to counsel in the amount or at the rate set by the supreme court pursuant to division (D) of this section, and the board of county commissioners shall approve that amount or rate.

(4) Counsel selected by the indigent person or appointed by the court at the request of an indigent person in a county that adopts a resolution to pay counsel, except for counsel appointed to represent a person charged with any violation of an ordinance of a municipal corporation that has not contracted with the county commissioners for the payment of appointed counsel, shall be paid by the county and shall receive the compensation and expenses the court approves. With respect to capital cases, the court shall approve compensation and expenses in accordance with the amount or

at the rate set by the supreme court pursuant to division (D) of 82
this section. Each request for payment shall be accompanied by a 83
financial disclosure form and an affidavit of indigency that are 84
completed by the indigent person on forms prescribed by the state 85
public defender. Compensation and expenses shall not exceed the 86
amounts fixed by the board of county commissioners in the schedule 87
adopted pursuant to division (A)(3) of this section. No court 88
shall approve compensation and expenses that exceed the amount 89
fixed pursuant to division (A)(3) of this section. 90

The fees and expenses approved by the court shall not be 91
taxed as part of the costs and shall be paid by the county. 92
However, if the person represented has, or may reasonably be 93
expected to have, the means to meet some part of the cost of the 94
services rendered to the person, the person shall pay the county 95
an amount that the person reasonably can be expected to pay. 96
Pursuant to section 120.04 of the Revised Code, the county shall 97
pay to the state public defender a percentage of the payment 98
received from the person in an amount proportionate to the 99
percentage of the costs of the person's case that were paid to the 100
county by the state public defender pursuant to this section. The 101
money paid to the state public defender shall be credited to the 102
client payment fund created pursuant to division (B)(5) of section 103
120.04 of the Revised Code. 104

The county auditor shall draw a warrant on the county 105
treasurer for the payment of counsel in the amount fixed by the 106
court, plus the expenses the court fixes and certifies to the 107
auditor. The county auditor shall report periodically, but not 108
less than annually, to the board of county commissioners and to 109
the state public defender the amounts paid out pursuant to the 110
approval of the court. The board of county commissioners, after 111
review and approval of the auditor's report, or the county 112
auditor, with permission from and notice to the board of county 113

commissioners, may then certify it to the state public defender 114
for reimbursement. The state public defender may pay a requested 115
reimbursement only if the request for reimbursement is accompanied 116
by a financial disclosure form and an affidavit of indigency 117
completed by the indigent person on forms prescribed by the state 118
public defender or if the court certifies by electronic signature 119
as prescribed by the state public defender that a financial 120
disclosure form and affidavit of indigency have been completed by 121
the indigent person and are available for inspection. If a request 122
for the reimbursement of the cost of counsel in any case is not 123
received by the state public defender within ninety days after the 124
end of the calendar month in which the case is finally disposed of 125
by the court, unless the county has requested and the state public 126
defender has granted an extension of the ninety-day limit, the 127
state public defender shall not pay the requested reimbursement. 128
The state public defender shall also review the report and, in 129
accordance with the standards, guidelines, and maximums 130
established pursuant to divisions (B)(7) and (8) of section 120.04 131
of the Revised Code, prepare a voucher for fifty per cent of the 132
total cost of each county appointed counsel system in the period 133
of time covered by the certified report and a voucher for fifty 134
per cent of the costs and expenses that are reimbursable under 135
section 120.35 of the Revised Code, if any, or, if the amount of 136
money appropriated by the general assembly to reimburse counties 137
for the operation of county public defender offices, joint county 138
public defender offices, and county appointed counsel systems is 139
not sufficient to pay fifty per cent of the total cost of all of 140
the offices and systems other than costs and expenses that are 141
reimbursable under section 120.35 of the Revised Code, for the 142
lesser amount required by section 120.34 of the Revised Code. 143

(5) If any county appointed counsel system fails to maintain 144
the standards for the conduct of the system established by the 145
rules of the Ohio public defender commission pursuant to divisions 146

(B) and (C) of section 120.03 or the standards established by the state public defender pursuant to division (B)(7) of section 120.04 of the Revised Code, the Ohio public defender commission shall notify the board of county commissioners of the county that the county appointed counsel system has failed to comply with its rules or the standards of the state public defender. Unless the board of county commissioners corrects the conduct of its appointed counsel system to comply with the rules and standards within ninety days after the date of the notice, the state public defender may deny all or part of the county's reimbursement from the state provided for in division (A)(4) of this section.

(B) In lieu of using a county public defender or joint county public defender to represent indigent persons in the proceedings set forth in division (A) of section 120.16 of the Revised Code, and in lieu of adopting the resolution and following the procedure described in division (A) of this section, the board of county commissioners of any county may contract with the state public defender for the state public defender's legal representation of indigent persons. A contract entered into pursuant to this division may provide for payment for the services provided on a per case, hourly, or fixed contract basis.

(C) If a court appoints an attorney pursuant to this section to represent a petitioner in a postconviction relief proceeding under section 2953.21 of the Revised Code, the petitioner has received a sentence of death, and the proceeding relates to that sentence, the attorney who represents the petitioner in the proceeding pursuant to the appointment shall be certified under Rule 20 of the Rules of Superintendence for the Courts of Ohio to represent indigent defendants charged with or convicted of an offense for which the death penalty can be or has been imposed.

(D) The supreme court shall set an amount by case, or a rate on an hourly basis, to be paid under this section to counsel in a

<u>capital case.</u>	179
Sec. 149.43. (A) As used in this section:	180
(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:	181 182 183 184 185 186 187
(a) Medical records;	188
(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;	189 190 191
(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;	192 193 194
(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under section 3705.12 of the Revised Code;	195 196 197
(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;	198 199 200 201 202 203
(f) Records listed in division (A) of section 3107.42 of the Revised Code or specified in division (A) of section 3107.52 of the Revised Code;	204 205 206
(g) Trial preparation records;	207

(h) Confidential law enforcement investigatory records;	208
(i) Records containing information that is confidential under section 2710.03 or 4112.05 of the Revised Code;	209 210
(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;	211 212
(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;	213 214 215 216
(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;	217 218 219 220
(m) Intellectual property records;	221
(n) Donor profile records;	222
(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;	223 224
(p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information;	225 226 227 228 229 230
(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;	231 232 233 234 235
(r) Information pertaining to the recreational activities of a person under the age of eighteen;	236 237

(s) Records provided to, statements made by review board	238
members during meetings of, and all work products of a child	239
fatality review board acting under sections 307.621 to 307.629 of	240
the Revised Code, and child fatality review data submitted by the	241
child fatality review board to the department of health or a	242
national child death review database, other than the report	243
prepared pursuant to division (A) of section 307.626 of the	244
Revised Code;	245
(t) Records provided to and statements made by the executive	246
director of a public children services agency or a prosecuting	247
attorney acting pursuant to section 5153.171 of the Revised Code	248
other than the information released under that section;	249
(u) Test materials, examinations, or evaluation tools used in	250
an examination for licensure as a nursing home administrator that	251
the board of executives of long-term services and supports	252
administers under section 4751.04 of the Revised Code or contracts	253
under that section with a private or government entity to	254
administer;	255
(v) Records the release of which is prohibited by state or	256
federal law;	257
(w) Proprietary information of or relating to any person that	258
is submitted to or compiled by the Ohio venture capital authority	259
created under section 150.01 of the Revised Code;	260
(x) Financial statements and data any person submits for any	261
purpose to the Ohio housing finance agency or the controlling	262
board in connection with applying for, receiving, or accounting	263
for financial assistance from the agency, and information that	264
identifies any individual who benefits directly or indirectly from	265
financial assistance from the agency;	266
(y) Records listed in section 5101.29 of the Revised Code;	267
(z) Discharges recorded with a county recorder under section	268

317.24 of the Revised Code, as specified in division (B)(2) of that section;	269 270
(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;	271 272 273
(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;	274 275 276
<u>(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code.</u>	277 278 279
(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:	280 281 282 283 284
(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;	285 286 287 288
(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;	289 290 291 292
(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;	293 294
(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.	295 296 297
(3) "Medical record" means any document or combination of	298

documents, except births, deaths, and the fact of admission to or 299
discharge from a hospital, that pertains to the medical history, 300
diagnosis, prognosis, or medical condition of a patient and that 301
is generated and maintained in the process of medical treatment. 302

(4) "Trial preparation record" means any record that contains 303
information that is specifically compiled in reasonable 304
anticipation of, or in defense of, a civil or criminal action or 305
proceeding, including the independent thought processes and 306
personal trial preparation of an attorney. 307

(5) "Intellectual property record" means a record, other than 308
a financial or administrative record, that is produced or 309
collected by or for faculty or staff of a state institution of 310
higher learning in the conduct of or as a result of study or 311
research on an educational, commercial, scientific, artistic, 312
technical, or scholarly issue, regardless of whether the study or 313
research was sponsored by the institution alone or in conjunction 314
with a governmental body or private concern, and that has not been 315
publicly released, published, or patented. 316

(6) "Donor profile record" means all records about donors or 317
potential donors to a public institution of higher education 318
except the names and reported addresses of the actual donors and 319
the date, amount, and conditions of the actual donation. 320

(7) "Peace officer, parole officer, probation officer, 321
bailiff, prosecuting attorney, assistant prosecuting attorney, 322
correctional employee, community-based correctional facility 323
employee, youth services employee, firefighter, EMT, or 324
investigator of the bureau of criminal identification and 325
investigation residential and familial information" means any 326
information that discloses any of the following about a peace 327
officer, parole officer, probation officer, bailiff, prosecuting 328
attorney, assistant prosecuting attorney, correctional employee, 329
community-based correctional facility employee, youth services 330

employee, firefighter, EMT, or investigator of the bureau of 331
criminal identification and investigation: 332

(a) The address of the actual personal residence of a peace 333
officer, parole officer, probation officer, bailiff, assistant 334
prosecuting attorney, correctional employee, community-based 335
correctional facility employee, youth services employee, 336
firefighter, EMT, or an investigator of the bureau of criminal 337
identification and investigation, except for the state or 338
political subdivision in which the peace officer, parole officer, 339
probation officer, bailiff, assistant prosecuting attorney, 340
correctional employee, community-based correctional facility 341
employee, youth services employee, firefighter, EMT, or 342
investigator of the bureau of criminal identification and 343
investigation resides; 344

(b) Information compiled from referral to or participation in 345
an employee assistance program; 346

(c) The social security number, the residential telephone 347
number, any bank account, debit card, charge card, or credit card 348
number, or the emergency telephone number of, or any medical 349
information pertaining to, a peace officer, parole officer, 350
probation officer, bailiff, prosecuting attorney, assistant 351
prosecuting attorney, correctional employee, community-based 352
correctional facility employee, youth services employee, 353
firefighter, EMT, or investigator of the bureau of criminal 354
identification and investigation; 355

(d) The name of any beneficiary of employment benefits, 356
including, but not limited to, life insurance benefits, provided 357
to a peace officer, parole officer, probation officer, bailiff, 358
prosecuting attorney, assistant prosecuting attorney, correctional 359
employee, community-based correctional facility employee, youth 360
services employee, firefighter, EMT, or investigator of the bureau 361
of criminal identification and investigation by the peace 362

officer's, parole officer's, probation officer's, bailiff's, 363
prosecuting attorney's, assistant prosecuting attorney's, 364
correctional employee's, community-based correctional facility 365
employee's, youth services employee's, firefighter's, EMT's, or 366
investigator of the bureau of criminal identification and 367
investigation's employer; 368

(e) The identity and amount of any charitable or employment 369
benefit deduction made by the peace officer's, parole officer's, 370
probation officer's, bailiff's, prosecuting attorney's, assistant 371
prosecuting attorney's, correctional employee's, community-based 372
correctional facility employee's, youth services employee's, 373
firefighter's, EMT's, or investigator of the bureau of criminal 374
identification and investigation's employer from the peace 375
officer's, parole officer's, probation officer's, bailiff's, 376
prosecuting attorney's, assistant prosecuting attorney's, 377
correctional employee's, community-based correctional facility 378
employee's, youth services employee's, firefighter's, EMT's, or 379
investigator of the bureau of criminal identification and 380
investigation's compensation unless the amount of the deduction is 381
required by state or federal law; 382

(f) The name, the residential address, the name of the 383
employer, the address of the employer, the social security number, 384
the residential telephone number, any bank account, debit card, 385
charge card, or credit card number, or the emergency telephone 386
number of the spouse, a former spouse, or any child of a peace 387
officer, parole officer, probation officer, bailiff, prosecuting 388
attorney, assistant prosecuting attorney, correctional employee, 389
community-based correctional facility employee, youth services 390
employee, firefighter, EMT, or investigator of the bureau of 391
criminal identification and investigation; 392

(g) A photograph of a peace officer who holds a position or 393
has an assignment that may include undercover or plain clothes 394

positions or assignments as determined by the peace officer's 395
appointing authority. 396

As used in divisions (A)(7) and (B)(9) of this section, 397
"peace officer" has the same meaning as in section 109.71 of the 398
Revised Code and also includes the superintendent and troopers of 399
the state highway patrol; it does not include the sheriff of a 400
county or a supervisory employee who, in the absence of the 401
sheriff, is authorized to stand in for, exercise the authority of, 402
and perform the duties of the sheriff. 403

As used in divisions (A)(7) and (B)~~(5)~~(9) of this section, 404
"correctional employee" means any employee of the department of 405
rehabilitation and correction who in the course of performing the 406
employee's job duties has or has had contact with inmates and 407
persons under supervision. 408

As used in divisions (A)(7) and (B)~~(5)~~(9) of this section, 409
"youth services employee" means any employee of the department of 410
youth services who in the course of performing the employee's job 411
duties has or has had contact with children committed to the 412
custody of the department of youth services. 413

As used in divisions (A)(7) and (B)(9) of this section, 414
"firefighter" means any regular, paid or volunteer, member of a 415
lawfully constituted fire department of a municipal corporation, 416
township, fire district, or village. 417

As used in divisions (A)(7) and (B)(9) of this section, "EMT" 418
means EMTs-basic, EMTs-I, and paramedics that provide emergency 419
medical services for a public emergency medical service 420
organization. "Emergency medical service organization," 421
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as in 422
section 4765.01 of the Revised Code. 423

As used in divisions (A)(7) and (B)(9) of this section, 424
"investigator of the bureau of criminal identification and 425

investigation" has the meaning defined in section 2903.11 of the Revised Code.

(8) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(9) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(11) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(12) "Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.

(B)(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be promptly prepared and made available for inspection to any person at all reasonable times during regular business hours. Subject to division (B)(8) of this section, upon request, a public office or person responsible for public records shall make copies of the requested public record available at cost and within a reasonable period of time. If a public record contains information that is exempt from the duty to permit public inspection or to copy the public record, the public office or the person responsible for the public record shall make available all of the information within the public record that is not exempt. When making that public record available for public inspection or copying that public record, the public office or the person responsible for the public record shall notify the requester of any redaction or make the redaction plainly visible. A redaction shall be deemed a denial of a request to inspect or copy the redacted information, except if federal or state law authorizes or requires a public office to make the redaction.

(2) To facilitate broader access to public records, a public office or the person responsible for public records shall organize and maintain public records in a manner that they can be made available for inspection or copying in accordance with division (B) of this section. A public office also shall have available a copy of its current records retention schedule at a location readily available to the public. If a requester makes an ambiguous or overly broad request or has difficulty in making a request for copies or inspection of public records under this section such that the public office or the person responsible for the requested public record cannot reasonably identify what public records are being requested, the public office or the person responsible for the requested public record may deny the request but shall provide the requester with an opportunity to revise the request by

informing the requester of the manner in which records are 489
maintained by the public office and accessed in the ordinary 490
course of the public office's or person's duties. 491

(3) If a request is ultimately denied, in part or in whole, 492
the public office or the person responsible for the requested 493
public record shall provide the requester with an explanation, 494
including legal authority, setting forth why the request was 495
denied. If the initial request was provided in writing, the 496
explanation also shall be provided to the requester in writing. 497
The explanation shall not preclude the public office or the person 498
responsible for the requested public record from relying upon 499
additional reasons or legal authority in defending an action 500
commenced under division (C) of this section. 501

(4) Unless specifically required or authorized by state or 502
federal law or in accordance with division (B) of this section, no 503
public office or person responsible for public records may limit 504
or condition the availability of public records by requiring 505
disclosure of the requester's identity or the intended use of the 506
requested public record. Any requirement that the requester 507
disclose the requestor's identity or the intended use of the 508
requested public record constitutes a denial of the request. 509

(5) A public office or person responsible for public records 510
may ask a requester to make the request in writing, may ask for 511
the requester's identity, and may inquire about the intended use 512
of the information requested, but may do so only after disclosing 513
to the requester that a written request is not mandatory and that 514
the requester may decline to reveal the requester's identity or 515
the intended use and when a written request or disclosure of the 516
identity or intended use would benefit the requester by enhancing 517
the ability of the public office or person responsible for public 518
records to identify, locate, or deliver the public records sought 519
by the requester. 520

(6) If any person chooses to obtain a copy of a public record 521
in accordance with division (B) of this section, the public office 522
or person responsible for the public record may require that 523
person to pay in advance the cost involved in providing the copy 524
of the public record in accordance with the choice made by the 525
person seeking the copy under this division. The public office or 526
the person responsible for the public record shall permit that 527
person to choose to have the public record duplicated upon paper, 528
upon the same medium upon which the public office or person 529
responsible for the public record keeps it, or upon any other 530
medium upon which the public office or person responsible for the 531
public record determines that it reasonably can be duplicated as 532
an integral part of the normal operations of the public office or 533
person responsible for the public record. When the person seeking 534
the copy makes a choice under this division, the public office or 535
person responsible for the public record shall provide a copy of 536
it in accordance with the choice made by the person seeking the 537
copy. Nothing in this section requires a public office or person 538
responsible for the public record to allow the person seeking a 539
copy of the public record to make the copies of the public record. 540

(7) Upon a request made in accordance with division (B) of 541
this section and subject to division (B)(6) of this section, a 542
public office or person responsible for public records shall 543
transmit a copy of a public record to any person by United States 544
mail or by any other means of delivery or transmission within a 545
reasonable period of time after receiving the request for the 546
copy. The public office or person responsible for the public 547
record may require the person making the request to pay in advance 548
the cost of postage if the copy is transmitted by United States 549
mail or the cost of delivery if the copy is transmitted other than 550
by United States mail, and to pay in advance the costs incurred 551
for other supplies used in the mailing, delivery, or transmission. 552

Any public office may adopt a policy and procedures that it 553
will follow in transmitting, within a reasonable period of time 554
after receiving a request, copies of public records by United 555
States mail or by any other means of delivery or transmission 556
pursuant to this division. A public office that adopts a policy 557
and procedures under this division shall comply with them in 558
performing its duties under this division. 559

In any policy and procedures adopted under this division, a 560
public office may limit the number of records requested by a 561
person that the office will transmit by United States mail to ten 562
per month, unless the person certifies to the office in writing 563
that the person does not intend to use or forward the requested 564
records, or the information contained in them, for commercial 565
purposes. For purposes of this division, "commercial" shall be 566
narrowly construed and does not include reporting or gathering 567
news, reporting or gathering information to assist citizen 568
oversight or understanding of the operation or activities of 569
government, or nonprofit educational research. 570

(8) A public office or person responsible for public records 571
is not required to permit a person who is incarcerated pursuant to 572
a criminal conviction or a juvenile adjudication to inspect or to 573
obtain a copy of any public record concerning a criminal 574
investigation or prosecution or concerning what would be a 575
criminal investigation or prosecution if the subject of the 576
investigation or prosecution were an adult, unless the request to 577
inspect or to obtain a copy of the record is for the purpose of 578
acquiring information that is subject to release as a public 579
record under this section and the judge who imposed the sentence 580
or made the adjudication with respect to the person, or the 581
judge's successor in office, finds that the information sought in 582
the public record is necessary to support what appears to be a 583
justiciable claim of the person. 584

(9)(a) Upon written request made and signed by a journalist 585
on or after December 16, 1999, a public office, or person 586
responsible for public records, having custody of the records of 587
the agency employing a specified peace officer, parole officer, 588
probation officer, bailiff, prosecuting attorney, assistant 589
prosecuting attorney, correctional employee, community-based 590
correctional facility employee, youth services employee, 591
firefighter, EMT, or investigator of the bureau of criminal 592
identification and investigation shall disclose to the journalist 593
the address of the actual personal residence of the peace officer, 594
parole officer, probation officer, bailiff, prosecuting attorney, 595
assistant prosecuting attorney, correctional employee, 596
community-based correctional facility employee, youth services 597
employee, firefighter, EMT, or investigator of the bureau of 598
criminal identification and investigation and, if the peace 599
officer's, parole officer's, probation officer's, bailiff's, 600
prosecuting attorney's, assistant prosecuting attorney's, 601
correctional employee's, community-based correctional facility 602
employee's, youth services employee's, firefighter's, EMT's, or 603
investigator of the bureau of criminal identification and 604
investigation's spouse, former spouse, or child is employed by a 605
public office, the name and address of the employer of the peace 606
officer's, parole officer's, probation officer's, bailiff's, 607
prosecuting attorney's, assistant prosecuting attorney's, 608
correctional employee's, community-based correctional facility 609
employee's, youth services employee's, firefighter's, EMT's, or 610
investigator of the bureau of criminal identification and 611
investigation's spouse, former spouse, or child. The request shall 612
include the journalist's name and title and the name and address 613
of the journalist's employer and shall state that disclosure of 614
the information sought would be in the public interest. 615

(b) Division (B)(9)(a) of this section also applies to 616
journalist requests for customer information maintained by a 617

municipally owned or operated public utility, other than social 618
security numbers and any private financial information such as 619
credit reports, payment methods, credit card numbers, and bank 620
account information. 621

(c) As used in division (B)(9) of this section, "journalist" 622
means a person engaged in, connected with, or employed by any news 623
medium, including a newspaper, magazine, press association, news 624
agency, or wire service, a radio or television station, or a 625
similar medium, for the purpose of gathering, processing, 626
transmitting, compiling, editing, or disseminating information for 627
the general public. 628

(C)(1) If a person allegedly is aggrieved by the failure of a 629
public office or the person responsible for public records to 630
promptly prepare a public record and to make it available to the 631
person for inspection in accordance with division (B) of this 632
section or by any other failure of a public office or the person 633
responsible for public records to comply with an obligation in 634
accordance with division (B) of this section, the person allegedly 635
aggrieved may commence a mandamus action to obtain a judgment that 636
orders the public office or the person responsible for the public 637
record to comply with division (B) of this section, that awards 638
court costs and reasonable attorney's fees to the person that 639
instituted the mandamus action, and, if applicable, that includes 640
an order fixing statutory damages under division (C)(1) of this 641
section. The mandamus action may be commenced in the court of 642
common pleas of the county in which division (B) of this section 643
allegedly was not complied with, in the supreme court pursuant to 644
its original jurisdiction under Section 2 of Article IV, Ohio 645
Constitution, or in the court of appeals for the appellate 646
district in which division (B) of this section allegedly was not 647
complied with pursuant to its original jurisdiction under Section 648
3 of Article IV, Ohio Constitution. 649

If a requestor transmits a written request by hand delivery 650
or certified mail to inspect or receive copies of any public 651
record in a manner that fairly describes the public record or 652
class of public records to the public office or person responsible 653
for the requested public records, except as otherwise provided in 654
this section, the requestor shall be entitled to recover the 655
amount of statutory damages set forth in this division if a court 656
determines that the public office or the person responsible for 657
public records failed to comply with an obligation in accordance 658
with division (B) of this section. 659

The amount of statutory damages shall be fixed at one hundred 660
dollars for each business day during which the public office or 661
person responsible for the requested public records failed to 662
comply with an obligation in accordance with division (B) of this 663
section, beginning with the day on which the requester files a 664
mandamus action to recover statutory damages, up to a maximum of 665
one thousand dollars. The award of statutory damages shall not be 666
construed as a penalty, but as compensation for injury arising 667
from lost use of the requested information. The existence of this 668
injury shall be conclusively presumed. The award of statutory 669
damages shall be in addition to all other remedies authorized by 670
this section. 671

The court may reduce an award of statutory damages or not 672
award statutory damages if the court determines both of the 673
following: 674

(a) That, based on the ordinary application of statutory law 675
and case law as it existed at the time of the conduct or 676
threatened conduct of the public office or person responsible for 677
the requested public records that allegedly constitutes a failure 678
to comply with an obligation in accordance with division (B) of 679
this section and that was the basis of the mandamus action, a 680
well-informed public office or person responsible for the 681

requested public records reasonably would believe that the conduct 682
or threatened conduct of the public office or person responsible 683
for the requested public records did not constitute a failure to 684
comply with an obligation in accordance with division (B) of this 685
section; 686

(b) That a well-informed public office or person responsible 687
for the requested public records reasonably would believe that the 688
conduct or threatened conduct of the public office or person 689
responsible for the requested public records would serve the 690
public policy that underlies the authority that is asserted as 691
permitting that conduct or threatened conduct. 692

(2)(a) If the court issues a writ of mandamus that orders the 693
public office or the person responsible for the public record to 694
comply with division (B) of this section and determines that the 695
circumstances described in division (C)(1) of this section exist, 696
the court shall determine and award to the relator all court 697
costs. 698

(b) If the court renders a judgment that orders the public 699
office or the person responsible for the public record to comply 700
with division (B) of this section, the court may award reasonable 701
attorney's fees subject to reduction as described in division 702
(C)(2)(c) of this section. The court shall award reasonable 703
attorney's fees, subject to reduction as described in division 704
(C)(2)(c) of this section when either of the following applies: 705

(i) The public office or the person responsible for the 706
public records failed to respond affirmatively or negatively to 707
the public records request in accordance with the time allowed 708
under division (B) of this section. 709

(ii) The public office or the person responsible for the 710
public records promised to permit the relator to inspect or 711
receive copies of the public records requested within a specified 712

period of time but failed to fulfill that promise within that 713
specified period of time. 714

(c) Court costs and reasonable attorney's fees awarded under 715
this section shall be construed as remedial and not punitive. 716
Reasonable attorney's fees shall include reasonable fees incurred 717
to produce proof of the reasonableness and amount of the fees and 718
to otherwise litigate entitlement to the fees. The court may 719
reduce an award of attorney's fees to the relator or not award 720
attorney's fees to the relator if the court determines both of the 721
following: 722

(i) That, based on the ordinary application of statutory law 723
and case law as it existed at the time of the conduct or 724
threatened conduct of the public office or person responsible for 725
the requested public records that allegedly constitutes a failure 726
to comply with an obligation in accordance with division (B) of 727
this section and that was the basis of the mandamus action, a 728
well-informed public office or person responsible for the 729
requested public records reasonably would believe that the conduct 730
or threatened conduct of the public office or person responsible 731
for the requested public records did not constitute a failure to 732
comply with an obligation in accordance with division (B) of this 733
section; 734

(ii) That a well-informed public office or person responsible 735
for the requested public records reasonably would believe that the 736
conduct or threatened conduct of the public office or person 737
responsible for the requested public records as described in 738
division (C)(2)(c)(i) of this section would serve the public 739
policy that underlies the authority that is asserted as permitting 740
that conduct or threatened conduct. 741

(D) Chapter 1347. of the Revised Code does not limit the 742
provisions of this section. 743

(E)(1) To ensure that all employees of public offices are 744
appropriately educated about a public office's obligations under 745
division (B) of this section, all elected officials or their 746
appropriate designees shall attend training approved by the 747
attorney general as provided in section 109.43 of the Revised 748
Code. In addition, all public offices shall adopt a public records 749
policy in compliance with this section for responding to public 750
records requests. In adopting a public records policy under this 751
division, a public office may obtain guidance from the model 752
public records policy developed and provided to the public office 753
by the attorney general under section 109.43 of the Revised Code. 754
Except as otherwise provided in this section, the policy may not 755
limit the number of public records that the public office will 756
make available to a single person, may not limit the number of 757
public records that it will make available during a fixed period 758
of time, and may not establish a fixed period of time before it 759
will respond to a request for inspection or copying of public 760
records, unless that period is less than eight hours. 761

(2) The public office shall distribute the public records 762
policy adopted by the public office under division (E)(1) of this 763
section to the employee of the public office who is the records 764
custodian or records manager or otherwise has custody of the 765
records of that office. The public office shall require that 766
employee to acknowledge receipt of the copy of the public records 767
policy. The public office shall create a poster that describes its 768
public records policy and shall post the poster in a conspicuous 769
place in the public office and in all locations where the public 770
office has branch offices. The public office may post its public 771
records policy on the internet web site of the public office if 772
the public office maintains an internet web site. A public office 773
that has established a manual or handbook of its general policies 774
and procedures for all employees of the public office shall 775
include the public records policy of the public office in the 776

manual or handbook. 777

(F)(1) The bureau of motor vehicles may adopt rules pursuant 778
to Chapter 119. of the Revised Code to reasonably limit the number 779
of bulk commercial special extraction requests made by a person 780
for the same records or for updated records during a calendar 781
year. The rules may include provisions for charges to be made for 782
bulk commercial special extraction requests for the actual cost of 783
the bureau, plus special extraction costs, plus ten per cent. The 784
bureau may charge for expenses for redacting information, the 785
release of which is prohibited by law. 786

(2) As used in division (F)(1) of this section: 787

(a) "Actual cost" means the cost of depleted supplies, 788
records storage media costs, actual mailing and alternative 789
delivery costs, or other transmitting costs, and any direct 790
equipment operating and maintenance costs, including actual costs 791
paid to private contractors for copying services. 792

(b) "Bulk commercial special extraction request" means a 793
request for copies of a record for information in a format other 794
than the format already available, or information that cannot be 795
extracted without examination of all items in a records series, 796
class of records, or database by a person who intends to use or 797
forward the copies for surveys, marketing, solicitation, or resale 798
for commercial purposes. "Bulk commercial special extraction 799
request" does not include a request by a person who gives 800
assurance to the bureau that the person making the request does 801
not intend to use or forward the requested copies for surveys, 802
marketing, solicitation, or resale for commercial purposes. 803

(c) "Commercial" means profit-seeking production, buying, or 804
selling of any good, service, or other product. 805

(d) "Special extraction costs" means the cost of the time 806
spent by the lowest paid employee competent to perform the task, 807

the actual amount paid to outside private contractors employed by 808
the bureau, or the actual cost incurred to create computer 809
programs to make the special extraction. "Special extraction 810
costs" include any charges paid to a public agency for computer or 811
records services. 812

(3) For purposes of divisions (F)(1) and (2) of this section, 813
"surveys, marketing, solicitation, or resale for commercial 814
purposes" shall be narrowly construed and does not include 815
reporting or gathering news, reporting or gathering information to 816
assist citizen oversight or understanding of the operation or 817
activities of government, or nonprofit educational research. 818

Sec. 2317.02. The following persons shall not testify in 819
certain respects: 820

(A)(1) An attorney, concerning a communication made to the 821
attorney by a client in that relation or concerning the attorney's 822
advice to a client, except that the attorney may testify by 823
express consent of the client or, if the client is deceased, by 824
the express consent of the surviving spouse or the executor or 825
administrator of the estate of the deceased client. However, if 826
the client voluntarily reveals the substance of attorney-client 827
communications in a nonprivileged context or is deemed by section 828
2151.421 of the Revised Code to have waived any testimonial 829
privilege under this division, the attorney may be compelled to 830
testify on the same subject. 831

The testimonial privilege established under this division 832
does not apply concerning a either of the following: 833

(a) A communication between a client in a capital case, as 834
defined in section 2901.02 of the Revised Code, and the client's 835
attorney if the communication is relevant to a subsequent 836
ineffective assistance of counsel claim by the client alleging 837
that the attorney did not effectively represent the client in the 838

case; 839

(b) A communication between a client who has since died and 840
the deceased client's attorney if the communication is relevant to 841
a dispute between parties who claim through that deceased client, 842
regardless of whether the claims are by testate or intestate 843
succession or by inter vivos transaction, and the dispute 844
addresses the competency of the deceased client when the deceased 845
client executed a document that is the basis of the dispute or 846
whether the deceased client was a victim of fraud, undue 847
influence, or duress when the deceased client executed a document 848
that is the basis of the dispute. 849

(2) An attorney, concerning a communication made to the 850
attorney by a client in that relationship or the attorney's advice 851
to a client, except that if the client is an insurance company, 852
the attorney may be compelled to testify, subject to an in camera 853
inspection by a court, about communications made by the client to 854
the attorney or by the attorney to the client that are related to 855
the attorney's aiding or furthering an ongoing or future 856
commission of bad faith by the client, if the party seeking 857
disclosure of the communications has made a prima-facie showing of 858
bad faith, fraud, or criminal misconduct by the client. 859

(B)(1) A physician or a dentist concerning a communication 860
made to the physician or dentist by a patient in that relation or 861
the physician's or dentist's advice to a patient, except as 862
otherwise provided in this division, division (B)(2), and division 863
(B)(3) of this section, and except that, if the patient is deemed 864
by section 2151.421 of the Revised Code to have waived any 865
testimonial privilege under this division, the physician may be 866
compelled to testify on the same subject. 867

The testimonial privilege established under this division 868
does not apply, and a physician or dentist may testify or may be 869
compelled to testify, in any of the following circumstances: 870

(a) In any civil action, in accordance with the discovery provisions of the Rules of Civil Procedure in connection with a civil action, or in connection with a claim under Chapter 4123. of the Revised Code, under any of the following circumstances:

(i) If the patient or the guardian or other legal representative of the patient gives express consent;

(ii) If the patient is deceased, the spouse of the patient or the executor or administrator of the patient's estate gives express consent;

(iii) If a medical claim, dental claim, chiropractic claim, or optometric claim, as defined in section 2305.113 of the Revised Code, an action for wrongful death, any other type of civil action, or a claim under Chapter 4123. of the Revised Code is filed by the patient, the personal representative of the estate of the patient if deceased, or the patient's guardian or other legal representative.

(b) In any civil action concerning court-ordered treatment or services received by a patient, if the court-ordered treatment or services were ordered as part of a case plan journalized under section 2151.412 of the Revised Code or the court-ordered treatment or services are necessary or relevant to dependency, neglect, or abuse or temporary or permanent custody proceedings under Chapter 2151. of the Revised Code.

(c) In any criminal action concerning any test or the results of any test that determines the presence or concentration of alcohol, a drug of abuse, a combination of them, a controlled substance, or a metabolite of a controlled substance in the patient's whole blood, blood serum or plasma, breath, urine, or other bodily substance at any time relevant to the criminal offense in question.

(d) In any criminal action against a physician or dentist. In

such an action, the testimonial privilege established under this 902
division does not prohibit the admission into evidence, in 903
accordance with the Rules of Evidence, of a patient's medical or 904
dental records or other communications between a patient and the 905
physician or dentist that are related to the action and obtained 906
by subpoena, search warrant, or other lawful means. A court that 907
permits or compels a physician or dentist to testify in such an 908
action or permits the introduction into evidence of patient 909
records or other communications in such an action shall require 910
that appropriate measures be taken to ensure that the 911
confidentiality of any patient named or otherwise identified in 912
the records is maintained. Measures to ensure confidentiality that 913
may be taken by the court include sealing its records or deleting 914
specific information from its records. 915

(e)(i) If the communication was between a patient who has 916
since died and the deceased patient's physician or dentist, the 917
communication is relevant to a dispute between parties who claim 918
through that deceased patient, regardless of whether the claims 919
are by testate or intestate succession or by inter vivos 920
transaction, and the dispute addresses the competency of the 921
deceased patient when the deceased patient executed a document 922
that is the basis of the dispute or whether the deceased patient 923
was a victim of fraud, undue influence, or duress when the 924
deceased patient executed a document that is the basis of the 925
dispute. 926

(ii) If neither the spouse of a patient nor the executor or 927
administrator of that patient's estate gives consent under 928
division (B)(1)(a)(ii) of this section, testimony or the 929
disclosure of the patient's medical records by a physician, 930
dentist, or other health care provider under division (B)(1)(e)(i) 931
of this section is a permitted use or disclosure of protected 932
health information, as defined in 45 C.F.R. 160.103, and an 933

authorization or opportunity to be heard shall not be required. 934

(iii) Division (B)(1)(e)(i) of this section does not require 935
a mental health professional to disclose psychotherapy notes, as 936
defined in 45 C.F.R. 164.501. 937

(iv) An interested person who objects to testimony or 938
disclosure under division (B)(1)(e)(i) of this section may seek a 939
protective order pursuant to Civil Rule 26. 940

(v) A person to whom protected health information is 941
disclosed under division (B)(1)(e)(i) of this section shall not 942
use or disclose the protected health information for any purpose 943
other than the litigation or proceeding for which the information 944
was requested and shall return the protected health information to 945
the covered entity or destroy the protected health information, 946
including all copies made, at the conclusion of the litigation or 947
proceeding. 948

(2)(a) If any law enforcement officer submits a written 949
statement to a health care provider that states that an official 950
criminal investigation has begun regarding a specified person or 951
that a criminal action or proceeding has been commenced against a 952
specified person, that requests the provider to supply to the 953
officer copies of any records the provider possesses that pertain 954
to any test or the results of any test administered to the 955
specified person to determine the presence or concentration of 956
alcohol, a drug of abuse, a combination of them, a controlled 957
substance, or a metabolite of a controlled substance in the 958
person's whole blood, blood serum or plasma, breath, or urine at 959
any time relevant to the criminal offense in question, and that 960
conforms to section 2317.022 of the Revised Code, the provider, 961
except to the extent specifically prohibited by any law of this 962
state or of the United States, shall supply to the officer a copy 963
of any of the requested records the provider possesses. If the 964
health care provider does not possess any of the requested 965

records, the provider shall give the officer a written statement 966
that indicates that the provider does not possess any of the 967
requested records. 968

(b) If a health care provider possesses any records of the 969
type described in division (B)(2)(a) of this section regarding the 970
person in question at any time relevant to the criminal offense in 971
question, in lieu of personally testifying as to the results of 972
the test in question, the custodian of the records may submit a 973
certified copy of the records, and, upon its submission, the 974
certified copy is qualified as authentic evidence and may be 975
admitted as evidence in accordance with the Rules of Evidence. 976
Division (A) of section 2317.422 of the Revised Code does not 977
apply to any certified copy of records submitted in accordance 978
with this division. Nothing in this division shall be construed to 979
limit the right of any party to call as a witness the person who 980
administered the test to which the records pertain, the person 981
under whose supervision the test was administered, the custodian 982
of the records, the person who made the records, or the person 983
under whose supervision the records were made. 984

(3)(a) If the testimonial privilege described in division 985
(B)(1) of this section does not apply as provided in division 986
(B)(1)(a)(iii) of this section, a physician or dentist may be 987
compelled to testify or to submit to discovery under the Rules of 988
Civil Procedure only as to a communication made to the physician 989
or dentist by the patient in question in that relation, or the 990
physician's or dentist's advice to the patient in question, that 991
related causally or historically to physical or mental injuries 992
that are relevant to issues in the medical claim, dental claim, 993
chiropractic claim, or optometric claim, action for wrongful 994
death, other civil action, or claim under Chapter 4123. of the 995
Revised Code. 996

(b) If the testimonial privilege described in division (B)(1) 997

of this section does not apply to a physician or dentist as 998
provided in division (B)(1)(c) of this section, the physician or 999
dentist, in lieu of personally testifying as to the results of the 1000
test in question, may submit a certified copy of those results, 1001
and, upon its submission, the certified copy is qualified as 1002
authentic evidence and may be admitted as evidence in accordance 1003
with the Rules of Evidence. Division (A) of section 2317.422 of 1004
the Revised Code does not apply to any certified copy of results 1005
submitted in accordance with this division. Nothing in this 1006
division shall be construed to limit the right of any party to 1007
call as a witness the person who administered the test in 1008
question, the person under whose supervision the test was 1009
administered, the custodian of the results of the test, the person 1010
who compiled the results, or the person under whose supervision 1011
the results were compiled. 1012

(4) The testimonial privilege described in division (B)(1) of 1013
this section is not waived when a communication is made by a 1014
physician to a pharmacist or when there is communication between a 1015
patient and a pharmacist in furtherance of the physician-patient 1016
relation. 1017

(5)(a) As used in divisions (B)(1) to (4) of this section, 1018
"communication" means acquiring, recording, or transmitting any 1019
information, in any manner, concerning any facts, opinions, or 1020
statements necessary to enable a physician or dentist to diagnose, 1021
treat, prescribe, or act for a patient. A "communication" may 1022
include, but is not limited to, any medical or dental, office, or 1023
hospital communication such as a record, chart, letter, 1024
memorandum, laboratory test and results, x-ray, photograph, 1025
financial statement, diagnosis, or prognosis. 1026

(b) As used in division (B)(2) of this section, "health care 1027
provider" means a hospital, ambulatory care facility, long-term 1028
care facility, pharmacy, emergency facility, or health care 1029

practitioner. 1030

(c) As used in division (B)(5)(b) of this section: 1031

(i) "Ambulatory care facility" means a facility that provides 1032
medical, diagnostic, or surgical treatment to patients who do not 1033
require hospitalization, including a dialysis center, ambulatory 1034
surgical facility, cardiac catheterization facility, diagnostic 1035
imaging center, extracorporeal shock wave lithotripsy center, home 1036
health agency, inpatient hospice, birthing center, radiation 1037
therapy center, emergency facility, and an urgent care center. 1038
"Ambulatory health care facility" does not include the private 1039
office of a physician or dentist, whether the office is for an 1040
individual or group practice. 1041

(ii) "Emergency facility" means a hospital emergency 1042
department or any other facility that provides emergency medical 1043
services. 1044

(iii) "Health care practitioner" has the same meaning as in 1045
section 4769.01 of the Revised Code. 1046

(iv) "Hospital" has the same meaning as in section 3727.01 of 1047
the Revised Code. 1048

(v) "Long-term care facility" means a nursing home, 1049
residential care facility, or home for the aging, as those terms 1050
are defined in section 3721.01 of the Revised Code; a residential 1051
facility licensed under section 5119.34 of the Revised Code that 1052
provides accommodations, supervision, and personal care services 1053
for three to sixteen unrelated adults; a nursing facility, as 1054
defined in section 5165.01 of the Revised Code; a skilled nursing 1055
facility, as defined in section 5165.01 of the Revised Code; and 1056
an intermediate care facility for individuals with intellectual 1057
disabilities, as defined in section 5124.01 of the Revised Code. 1058

(vi) "Pharmacy" has the same meaning as in section 4729.01 of 1059
the Revised Code. 1060

(d) As used in divisions (B)(1) and (2) of this section, 1061
"drug of abuse" has the same meaning as in section 4506.01 of the 1062
Revised Code. 1063

(6) Divisions (B)(1), (2), (3), (4), and (5) of this section 1064
apply to doctors of medicine, doctors of osteopathic medicine, 1065
doctors of podiatry, and dentists. 1066

(7) Nothing in divisions (B)(1) to (6) of this section 1067
affects, or shall be construed as affecting, the immunity from 1068
civil liability conferred by section 307.628 of the Revised Code 1069
or the immunity from civil liability conferred by section 2305.33 1070
of the Revised Code upon physicians who report an employee's use 1071
of a drug of abuse, or a condition of an employee other than one 1072
involving the use of a drug of abuse, to the employer of the 1073
employee in accordance with division (B) of that section. As used 1074
in division (B)(7) of this section, "employee," "employer," and 1075
"physician" have the same meanings as in section 2305.33 of the 1076
Revised Code. 1077

(C)(1) A cleric, when the cleric remains accountable to the 1078
authority of that cleric's church, denomination, or sect, 1079
concerning a confession made, or any information confidentially 1080
communicated, to the cleric for a religious counseling purpose in 1081
the cleric's professional character. The cleric may testify by 1082
express consent of the person making the communication, except 1083
when the disclosure of the information is in violation of a sacred 1084
trust and except that, if the person voluntarily testifies or is 1085
deemed by division (A)(4)(c) of section 2151.421 of the Revised 1086
Code to have waived any testimonial privilege under this division, 1087
the cleric may be compelled to testify on the same subject except 1088
when disclosure of the information is in violation of a sacred 1089
trust. 1090

(2) As used in division (C) of this section: 1091

(a) "Cleric" means a member of the clergy, rabbi, priest,	1092
Christian Science practitioner, or regularly ordained, accredited,	1093
or licensed minister of an established and legally cognizable	1094
church, denomination, or sect.	1095
(b) "Sacred trust" means a confession or confidential	1096
communication made to a cleric in the cleric's ecclesiastical	1097
capacity in the course of discipline enjoined by the church to	1098
which the cleric belongs, including, but not limited to, the	1099
Catholic Church, if both of the following apply:	1100
(i) The confession or confidential communication was made	1101
directly to the cleric.	1102
(ii) The confession or confidential communication was made in	1103
the manner and context that places the cleric specifically and	1104
strictly under a level of confidentiality that is considered	1105
inviolable by canon law or church doctrine.	1106
(D) Husband or wife, concerning any communication made by one	1107
to the other, or an act done by either in the presence of the	1108
other, during coverture, unless the communication was made, or act	1109
done, in the known presence or hearing of a third person competent	1110
to be a witness; and such rule is the same if the marital relation	1111
has ceased to exist;	1112
(E) A person who assigns a claim or interest, concerning any	1113
matter in respect to which the person would not, if a party, be	1114
permitted to testify;	1115
(F) A person who, if a party, would be restricted under	1116
section 2317.03 of the Revised Code, when the property or thing is	1117
sold or transferred by an executor, administrator, guardian,	1118
trustee, heir, devisee, or legatee, shall be restricted in the	1119
same manner in any action or proceeding concerning the property or	1120
thing.	1121
(G)(1) A school guidance counselor who holds a valid educator	1122

license from the state board of education as provided for in 1123
section 3319.22 of the Revised Code, a person licensed under 1124
Chapter 4757. of the Revised Code as a licensed professional 1125
clinical counselor, licensed professional counselor, social 1126
worker, independent social worker, marriage and family therapist 1127
or independent marriage and family therapist, or registered under 1128
Chapter 4757. of the Revised Code as a social work assistant 1129
concerning a confidential communication received from a client in 1130
that relation or the person's advice to a client unless any of the 1131
following applies: 1132

(a) The communication or advice indicates clear and present 1133
danger to the client or other persons. For the purposes of this 1134
division, cases in which there are indications of present or past 1135
child abuse or neglect of the client constitute a clear and 1136
present danger. 1137

(b) The client gives express consent to the testimony. 1138

(c) If the client is deceased, the surviving spouse or the 1139
executor or administrator of the estate of the deceased client 1140
gives express consent. 1141

(d) The client voluntarily testifies, in which case the 1142
school guidance counselor or person licensed or registered under 1143
Chapter 4757. of the Revised Code may be compelled to testify on 1144
the same subject. 1145

(e) The court in camera determines that the information 1146
communicated by the client is not germane to the counselor-client, 1147
marriage and family therapist-client, or social worker-client 1148
relationship. 1149

(f) A court, in an action brought against a school, its 1150
administration, or any of its personnel by the client, rules after 1151
an in-camera inspection that the testimony of the school guidance 1152
counselor is relevant to that action. 1153

(g) The testimony is sought in a civil action and concerns 1154
court-ordered treatment or services received by a patient as part 1155
of a case plan journalized under section 2151.412 of the Revised 1156
Code or the court-ordered treatment or services are necessary or 1157
relevant to dependency, neglect, or abuse or temporary or 1158
permanent custody proceedings under Chapter 2151. of the Revised 1159
Code. 1160

(2) Nothing in division (G)(1) of this section shall relieve 1161
a school guidance counselor or a person licensed or registered 1162
under Chapter 4757. of the Revised Code from the requirement to 1163
report information concerning child abuse or neglect under section 1164
2151.421 of the Revised Code. 1165

(H) A mediator acting under a mediation order issued under 1166
division (A) of section 3109.052 of the Revised Code or otherwise 1167
issued in any proceeding for divorce, dissolution, legal 1168
separation, annulment, or the allocation of parental rights and 1169
responsibilities for the care of children, in any action or 1170
proceeding, other than a criminal, delinquency, child abuse, child 1171
neglect, or dependent child action or proceeding, that is brought 1172
by or against either parent who takes part in mediation in 1173
accordance with the order and that pertains to the mediation 1174
process, to any information discussed or presented in the 1175
mediation process, to the allocation of parental rights and 1176
responsibilities for the care of the parents' children, or to the 1177
awarding of parenting time rights in relation to their children; 1178

(I) A communications assistant, acting within the scope of 1179
the communication assistant's authority, when providing 1180
telecommunications relay service pursuant to section 4931.06 of 1181
the Revised Code or Title II of the "Communications Act of 1934," 1182
104 Stat. 366 (1990), 47 U.S.C. 225, concerning a communication 1183
made through a telecommunications relay service. Nothing in this 1184
section shall limit the obligation of a communications assistant 1185

to divulge information or testify when mandated by federal law or 1186
regulation or pursuant to subpoena in a criminal proceeding. 1187

Nothing in this section shall limit any immunity or privilege 1188
granted under federal law or regulation. 1189

(J)(1) A chiropractor in a civil proceeding concerning a 1190
communication made to the chiropractor by a patient in that 1191
relation or the chiropractor's advice to a patient, except as 1192
otherwise provided in this division. The testimonial privilege 1193
established under this division does not apply, and a chiropractor 1194
may testify or may be compelled to testify, in any civil action, 1195
in accordance with the discovery provisions of the Rules of Civil 1196
Procedure in connection with a civil action, or in connection with 1197
a claim under Chapter 4123. of the Revised Code, under any of the 1198
following circumstances: 1199

(a) If the patient or the guardian or other legal 1200
representative of the patient gives express consent. 1201

(b) If the patient is deceased, the spouse of the patient or 1202
the executor or administrator of the patient's estate gives 1203
express consent. 1204

(c) If a medical claim, dental claim, chiropractic claim, or 1205
optometric claim, as defined in section 2305.113 of the Revised 1206
Code, an action for wrongful death, any other type of civil 1207
action, or a claim under Chapter 4123. of the Revised Code is 1208
filed by the patient, the personal representative of the estate of 1209
the patient if deceased, or the patient's guardian or other legal 1210
representative. 1211

(2) If the testimonial privilege described in division (J)(1) 1212
of this section does not apply as provided in division (J)(1)(c) 1213
of this section, a chiropractor may be compelled to testify or to 1214
submit to discovery under the Rules of Civil Procedure only as to 1215
a communication made to the chiropractor by the patient in 1216

question in that relation, or the chiropractor's advice to the 1217
patient in question, that related causally or historically to 1218
physical or mental injuries that are relevant to issues in the 1219
medical claim, dental claim, chiropractic claim, or optometric 1220
claim, action for wrongful death, other civil action, or claim 1221
under Chapter 4123. of the Revised Code. 1222

(3) The testimonial privilege established under this division 1223
does not apply, and a chiropractor may testify or be compelled to 1224
testify, in any criminal action or administrative proceeding. 1225

(4) As used in this division, "communication" means 1226
acquiring, recording, or transmitting any information, in any 1227
manner, concerning any facts, opinions, or statements necessary to 1228
enable a chiropractor to diagnose, treat, or act for a patient. A 1229
communication may include, but is not limited to, any 1230
chiropractic, office, or hospital communication such as a record, 1231
chart, letter, memorandum, laboratory test and results, x-ray, 1232
photograph, financial statement, diagnosis, or prognosis. 1233

(K)(1) Except as provided under division (K)(2) of this 1234
section, a critical incident stress management team member 1235
concerning a communication received from an individual who 1236
receives crisis response services from the team member, or the 1237
team member's advice to the individual, during a debriefing 1238
session. 1239

(2) The testimonial privilege established under division 1240
(K)(1) of this section does not apply if any of the following are 1241
true: 1242

(a) The communication or advice indicates clear and present 1243
danger to the individual who receives crisis response services or 1244
to other persons. For purposes of this division, cases in which 1245
there are indications of present or past child abuse or neglect of 1246
the individual constitute a clear and present danger. 1247

(b) The individual who received crisis response services	1248
gives express consent to the testimony.	1249
(c) If the individual who received crisis response services	1250
is deceased, the surviving spouse or the executor or administrator	1251
of the estate of the deceased individual gives express consent.	1252
(d) The individual who received crisis response services	1253
voluntarily testifies, in which case the team member may be	1254
compelled to testify on the same subject.	1255
(e) The court in camera determines that the information	1256
communicated by the individual who received crisis response	1257
services is not germane to the relationship between the individual	1258
and the team member.	1259
(f) The communication or advice pertains or is related to any	1260
criminal act.	1261
(3) As used in division (K) of this section:	1262
(a) "Crisis response services" means consultation, risk	1263
assessment, referral, and on-site crisis intervention services	1264
provided by a critical incident stress management team to	1265
individuals affected by crisis or disaster.	1266
(b) "Critical incident stress management team member" or	1267
"team member" means an individual specially trained to provide	1268
crisis response services as a member of an organized community or	1269
local crisis response team that holds membership in the Ohio	1270
critical incident stress management network.	1271
(c) "Debriefing session" means a session at which crisis	1272
response services are rendered by a critical incident stress	1273
management team member during or after a crisis or disaster.	1274
(L)(1) Subject to division (L)(2) of this section and except	1275
as provided in division (L)(3) of this section, an employee	1276
assistance professional, concerning a communication made to the	1277

employee assistance professional by a client in the employee	1278
assistance professional's official capacity as an employee	1279
assistance professional.	1280
(2) Division (L)(1) of this section applies to an employee	1281
assistance professional who meets either or both of the following	1282
requirements:	1283
(a) Is certified by the employee assistance certification	1284
commission to engage in the employee assistance profession;	1285
(b) Has education, training, and experience in all of the	1286
following:	1287
(i) Providing workplace-based services designed to address	1288
employer and employee productivity issues;	1289
(ii) Providing assistance to employees and employees'	1290
dependents in identifying and finding the means to resolve	1291
personal problems that affect the employees or the employees'	1292
performance;	1293
(iii) Identifying and resolving productivity problems	1294
associated with an employee's concerns about any of the following	1295
matters: health, marriage, family, finances, substance abuse or	1296
other addiction, workplace, law, and emotional issues;	1297
(iv) Selecting and evaluating available community resources;	1298
(v) Making appropriate referrals;	1299
(vi) Local and national employee assistance agreements;	1300
(vii) Client confidentiality.	1301
(3) Division (L)(1) of this section does not apply to any of	1302
the following:	1303
(a) A criminal action or proceeding involving an offense	1304
under sections 2903.01 to 2903.06 of the Revised Code if the	1305
employee assistance professional's disclosure or testimony relates	1306

directly to the facts or immediate circumstances of the offense;	1307
(b) A communication made by a client to an employee	1308
assistance professional that reveals the contemplation or	1309
commission of a crime or serious, harmful act;	1310
(c) A communication that is made by a client who is an	1311
unemancipated minor or an adult adjudicated to be incompetent and	1312
indicates that the client was the victim of a crime or abuse;	1313
(d) A civil proceeding to determine an individual's mental	1314
competency or a criminal action in which a plea of not guilty by	1315
reason of insanity is entered;	1316
(e) A civil or criminal malpractice action brought against	1317
the employee assistance professional;	1318
(f) When the employee assistance professional has the express	1319
consent of the client or, if the client is deceased or disabled,	1320
the client's legal representative;	1321
(g) When the testimonial privilege otherwise provided by	1322
division (L)(1) of this section is abrogated under law.	1323
Sec. 2941.51. (A) Counsel appointed to a case or selected by	1324
an indigent person under division (E) of section 120.16 or	1325
division (E) of section 120.26 of the Revised Code, or otherwise	1326
appointed by the court, except for counsel appointed by the court	1327
to provide legal representation for a person charged with a	1328
violation of an ordinance of a municipal corporation, shall be	1329
paid for their services by the county the compensation and	1330
expenses that the trial court approves. Each request for payment	1331
shall be accompanied by a financial disclosure form and an	1332
affidavit of indigency that are completed by the indigent person	1333
on forms prescribed by the state public defender. Compensation and	1334
expenses shall not exceed the amounts fixed by the board of county	1335
commissioners pursuant to division (B) of this section.	1336

(B) The board of county commissioners shall establish a
schedule of fees by case or on an hourly basis to be paid by the
county for legal services provided by appointed counsel. Prior to
establishing such schedule, the board shall request the bar
association or associations of the county to submit a proposed
schedule for cases other than capital cases. The schedule
submitted shall be subject to the review, amendment, and approval
of the board of county commissioners, except with respect to
capital cases. With respect to capital cases, the schedule shall
provide for fees by case or on an hourly basis to be paid to
counsel in the amount or at the rate set by the supreme court
pursuant to division (D) of section 120.33 of the Revised Code,
and the board of county commissioners shall approve that amount or
rate.

With respect to capital cases, counsel shall be paid
compensation and expenses in accordance with the amount or at the
rate set by the supreme court pursuant to division (D) of section
120.33 of the Revised Code.

(C) In a case where counsel have been appointed to conduct an
appeal under Chapter 120. of the Revised Code, such compensation
shall be fixed by the court of appeals or the supreme court, as
provided in divisions (A) and (B) of this section.

(D) The fees and expenses approved by the court under this
section shall not be taxed as part of the costs and shall be paid
by the county. However, if the person represented has, or
reasonably may be expected to have, the means to meet some part of
the cost of the services rendered to the person, the person shall
pay the county an amount that the person reasonably can be
expected to pay. Pursuant to section 120.04 of the Revised Code,
the county shall pay to the state public defender a percentage of
the payment received from the person in an amount proportionate to
the percentage of the costs of the person's case that were paid to

the county by the state public defender pursuant to this section. 1369
The money paid to the state public defender shall be credited to 1370
the client payment fund created pursuant to division (B)(5) of 1371
section 120.04 of the Revised Code. 1372

(E) The county auditor shall draw a warrant on the county 1373
treasurer for the payment of such counsel in the amount fixed by 1374
the court, plus the expenses that the court fixes and certifies to 1375
the auditor. The county auditor shall report periodically, but not 1376
less than annually, to the board of county commissioners and to 1377
the Ohio public defender commission the amounts paid out pursuant 1378
to the approval of the court under this section, separately 1379
stating costs and expenses that are reimbursable under section 1380
120.35 of the Revised Code. The board, after review and approval 1381
of the auditor's report, may then certify it to the state public 1382
defender for reimbursement. The request for reimbursement shall be 1383
accompanied by a financial disclosure form completed by each 1384
indigent person for whom counsel was provided on a form prescribed 1385
by the state public defender. The state public defender shall 1386
review the report and, in accordance with the standards, 1387
guidelines, and maximums established pursuant to divisions (B)(7) 1388
and (8) of section 120.04 of the Revised Code, pay fifty per cent 1389
of the total cost, other than costs and expenses that are 1390
reimbursable under section 120.35 of the Revised Code, if any, of 1391
paying appointed counsel in each county and pay fifty per cent of 1392
costs and expenses that are reimbursable under section 120.35 of 1393
the Revised Code, if any, to the board. 1394

(F) If any county system for paying appointed counsel fails 1395
to maintain the standards for the conduct of the system 1396
established by the rules of the Ohio public defender commission 1397
pursuant to divisions (B) and (C) of section 120.03 of the Revised 1398
Code or the standards established by the state public defender 1399
pursuant to division (B)(7) of section 120.04 of the Revised Code, 1400

the commission shall notify the board of county commissioners of 1401
the county that the county system for paying appointed counsel has 1402
failed to comply with its rules. Unless the board corrects the 1403
conduct of its appointed counsel system to comply with the rules 1404
within ninety days after the date of the notice, the state public 1405
defender may deny all or part of the county's reimbursement from 1406
the state provided for in this section. 1407

Sec. 2945.10. The trial of an issue upon an indictment or 1408
information shall proceed before the trial court or jury as 1409
follows: 1410

(A) Counsel for the state must first state the case for the 1411
prosecution, and may briefly state the evidence by which ~~he~~ the 1412
counsel for the state expects to sustain it. 1413

(B) The defendant or ~~his~~ the defendant's counsel must then 1414
state ~~his~~ the defense, and may briefly state the evidence which ~~he~~ 1415
the defendant or the defendant's counsel expects to offer in 1416
support of it. 1417

(C) The state must first produce its evidence and the 1418
defendant shall then produce ~~his~~ the defendant's evidence. 1419

(D) The state will then be confined to rebutting evidence, 1420
but the court, for good reason, in furtherance of justice, may 1421
permit evidence to be offered by either side out of its order. 1422

(E) When the evidence is concluded, one of the following 1423
applies regarding jury instructions: 1424

(1) In a capital case that is being heard by a jury, the 1425
court shall prepare written instructions to the jury on the points 1426
of law, shall provide copies of the written instructions to the 1427
jury before orally instructing the jury, and shall permit the jury 1428
to retain and consult the instructions during the court's 1429
presentation of the oral instructions and during the jury's 1430

deliberations. 1431

(2) In a case that is not a capital case, either party may 1432
request instructions to the jury on the points of law, which 1433
instructions shall be reduced to writing if either party requests 1434
it. 1435

(F) When the evidence is concluded, unless the case is 1436
submitted without argument, the counsel for the state shall 1437
commence, the defendant or ~~his~~ the defendant's counsel follow, and 1438
the counsel for the state conclude the argument to the jury. 1439

(G) The court, after the argument is concluded and before 1440
proceeding with other business, shall forthwith charge the jury. 1441
Such charge shall be reduced to writing by the court if either 1442
party requests it before the argument to the jury is commenced. 1443
Such charge, or other charge or instruction provided for in this 1444
section, when so written and given, shall not be orally qualified, 1445
modified, or explained to the jury by the court. Written charges 1446
and instructions shall be taken by the jury in their retirement 1447
and returned with their verdict into court and remain on file with 1448
the papers of the case. 1449

The court may deviate from the order of proceedings listed in 1450
this section. 1451

Sec. 2949.221. (A) As used in this section: 1452

(1) "Person" has the same meaning as in section 1.59 of the 1453
Revised Code. 1454

(2) "Licensing authority" means an entity, board, department, 1455
commission, association, or agency that issues a license to a 1456
person or entity. 1457

(3) "Public office" has the same meaning as in section 117.01 1458
of the Revised Code. 1459

(B) If, at any time prior to the day that is twenty-four 1460

months after the effective date of this section, a person 1461
manufactures, compounds, imports, transports, distributes, 1462
supplies, prescribes, prepares, administers, uses, or tests any of 1463
the compounding equipment or components, the active pharmaceutical 1464
ingredients, the drugs or combination of drugs, the medical 1465
supplies, or the medical equipment used in the application of a 1466
lethal injection of a drug or combination of drugs in the 1467
administration of a death sentence by lethal injection as provided 1468
for in division (A) of section 2949.22 of the Revised Code, 1469
notwithstanding any provision of law to the contrary, all of the 1470
following apply regarding any information or record in the 1471
possession of any public office that identifies or reasonably 1472
leads to the identification of the person and the person's 1473
participation in any activity described in this division: 1474

(1) The information or record shall be classified as 1475
confidential, is privileged under law, and is not subject to 1476
disclosure by any person, state agency, governmental entity, 1477
board, or commission or any political subdivision as a public 1478
record under section 149.43 of the Revised Code or otherwise. 1479

(2) The information or record shall not be subject to 1480
disclosure by or during any judicial proceeding, inquiry, or 1481
process, except as described in division (B)(4) of this section or 1482
in section 2949.222 of the Revised Code. 1483

(3) The information or record shall not be subject to 1484
discovery, subpoena, or any other means of legal compulsion for 1485
disclosure to any person or entity, except as described in 1486
division (B)(4) of this section or in section 2949.222 of the 1487
Revised Code. 1488

(4)(a) If the information or record pertains to the 1489
manufacture, compounding, importing, transportation, distribution, 1490
or supplying of any of the items or materials described in 1491
division (B) of this section, the person or entity that maintains 1492

the information or record shall disclose the information or record 1493
to the Ohio ethics commission and the commission may use the 1494
information or record, subject to division (B)(1) of this section, 1495
only to confirm the following: 1496

(i) That the relationship between the person and the 1497
department of rehabilitation and correction is consistent with and 1498
complies with the ethics laws of this state; 1499

(ii) That at the time of the specified conduct, the person 1500
has all licenses required under the laws of this state to engage 1501
in that conduct and the licenses are valid. 1502

(b) If the Ohio ethics commission receives any information or 1503
record pursuant to division (B)(4)(a) of this section, the 1504
commission shall complete its use of the information or record for 1505
the purposes described in that division within fourteen days of 1506
its receipt and shall promptly report its findings to the director 1507
of rehabilitation and correction. 1508

(C)(1) If, at any time prior to the day that is twenty-four 1509
months after the effective date of this section, an employee or 1510
former employee of the department of rehabilitation and correction 1511
or any other individual selected or designated by the director of 1512
the department participates or participated in the administration 1513
of a sentence of death by lethal injection, as provided for in 1514
division (A) of section 2949.22 of the Revised Code, subject to 1515
division (C)(2) of this section and notwithstanding any other 1516
provision of law to the contrary, the protections and limitations 1517
specified in divisions (B)(1), (2), and (3) of this section shall 1518
apply regarding any information or record in the possession of any 1519
public office that identifies or reasonably leads to the 1520
identification of the employee, former employee, or other 1521
individual and the employee's, former employee's, or individual's 1522
participation in the administration of the sentence of death by 1523
lethal injection described in this division. 1524

(2) Division (C)(1) of this section does not apply with 1525
respect to information or a record that identifies or reasonably 1526
leads to the identification of the director of rehabilitation and 1527
correction or the warden of the state correctional institution in 1528
which the administration of the sentence of death takes place. 1529

(D) The protections and limitations specified in divisions 1530
(B)(1), (2), and (3) of this section regarding information and 1531
records that identify or may reasonably lead to the identification 1532
of a person described in divisions (B) or (C) of this section and 1533
the person's participation in any activity described in the 1534
particular division are rights that shall be recognized as 1535
follows: 1536

(1) With respect to a person that is an individual, without 1537
any requirement for the person to take any action or specifically 1538
apply for recognition of such rights. 1539

(2) With respect to a person that is not an individual, the 1540
rights do not exist unless the person requests to have the rights 1541
recognized by applying in writing to the director of 1542
rehabilitation and correction. 1543

The director of rehabilitation and correction by rule shall 1544
establish the procedure according to which a person who is not an 1545
individual may apply in writing for the rights described in 1546
divisions (B)(1), (2), and (3) of this section. The director shall 1547
approve an application that is submitted in compliance with the 1548
rules. A person whose application is approved is entitled to the 1549
rights for twenty years after the person ceases the qualifying 1550
activity as contemplated by the first paragraph of division (B) of 1551
this section. The director shall notify any person, who is not an 1552
individual and who is entitled to the rights, of the application 1553
procedures. 1554

(E) If a person or entity that, at any time prior to the day 1555

that is twenty-four months after the effective date of this 1556
section, participates in, consults regarding, performs any 1557
function with respect to, including any activity described in 1558
division (B) of this section, or provides any expert opinion 1559
testimony regarding an execution by lethal injection conducted in 1560
accordance with division (A) of section 2949.22 of the Revised 1561
Code is licensed by a licensing authority, notwithstanding any 1562
provision of law to the contrary, the licensing authority shall 1563
not do any of the following as a result of that participation, 1564
consultation, performance, activity, or testimony by the person or 1565
entity: 1566

(1) Challenge, reprimand, suspend, or revoke the person's or 1567
entity's license; 1568

(2) Take any disciplinary action against the person or entity 1569
or the person's or entity's licensure. 1570

(F) A person may not, without the approval of the director of 1571
rehabilitation and correction, knowingly disclose the identity and 1572
participation in an activity described in the particular division 1573
of any person to whom division (B) of this section applies and 1574
that is made confidential, privileged, and not subject to 1575
disclosure under that division or of an employee, former employee, 1576
or other individual to whom division (C)(1) of this section 1577
applies and that is made confidential, privileged, and not subject 1578
to disclosure under that division. Any person, employee, former 1579
employee, or individual whose identity and participation in a 1580
specified activity is disclosed in violation of this division has 1581
a civil cause of action against any person who discloses the 1582
identity and participation in the activity in violation of this 1583
division. In a civil action brought under this division, the 1584
plaintiff is entitled to recover from the defendant actual 1585
damages, punitive or exemplary damages upon a showing of a willful 1586
violation of this division, and reasonable attorney's fees and 1587

court costs. 1588

(G) If division (B), (C), or (D) of this section applies to a 1589
person with respect to any conduct or activity of the person 1590
occurring at a time prior to the day that is twenty-four months 1591
after the effective date of this section, the expiration of that 1592
twenty-four month period does not affect, add to, or diminish the 1593
protections and limitations specified in division (B) or (C), 1594
division (D), and division (E) of this section with respect to 1595
their application to that person. 1596

Sec. 2949.222. (A) As used in this section, "seal a record" 1597
means to remove a record from the main file of similar records and 1598
to secure it in a separate file that contains only sealed records 1599
accessible only to the court. 1600

(B) The court promptly shall order the immediate sealing of 1601
records containing information described in division (B) or (C) of 1602
section 2949.221 of the Revised Code and the person's 1603
participation in any activity described in the particular 1604
division, whenever the records come into the court's possession. 1605

(C) If a record containing information described in division 1606
(B) or (C) of section 2949.221 of the Revised Code and the 1607
person's participation in any activity described in the particular 1608
division, is subpoenaed or requested by a court order, the 1609
director of rehabilitation and correction shall provide the 1610
record. If the court determines that the record is necessary for 1611
just adjudication, the court shall order the director to appear at 1612
a private hearing with a copy of the record and any other relevant 1613
evidence. The information is not otherwise subject to disclosure 1614
unless the court, through clear and convincing evidence presented 1615
in the private hearing, finds that the person whose identity is 1616
protected appears to have acted unlawfully with respect to the 1617
person's involvement in the administration of a lethal injection 1618

as contemplated by the first paragraph of division (B) and by 1619
division (C)(1) of section 2949.221 of the Revised Code. 1620

Sec. 2953.21. (A)(1)(a) Any person who has been convicted of 1621
a criminal offense or adjudicated a delinquent child and who 1622
claims that there was such a denial or infringement of the 1623
person's rights as to render the judgment void or voidable under 1624
the Ohio Constitution or the Constitution of the United States, 1625
and any person who has been convicted of a criminal offense that 1626
is a felony and who is an offender for whom DNA testing that was 1627
performed under sections 2953.71 to 2953.81 of the Revised Code or 1628
under former section 2953.82 of the Revised Code and analyzed in 1629
the context of and upon consideration of all available admissible 1630
evidence related to the person's case as described in division (D) 1631
of section 2953.74 of the Revised Code provided results that 1632
establish, by clear and convincing evidence, actual innocence of 1633
that felony offense or, if the person was sentenced to death, 1634
establish, by clear and convincing evidence, actual innocence of 1635
the aggravating circumstance or circumstances the person was found 1636
guilty of committing and that is or are the basis of that sentence 1637
of death, may file a petition in the court that imposed sentence, 1638
stating the grounds for relief relied upon, and asking the court 1639
to vacate or set aside the judgment or sentence or to grant other 1640
appropriate relief. The petitioner may file a supporting affidavit 1641
and other documentary evidence in support of the claim for relief. 1642

(b) As used in division (A)(1)(a) of this section, "actual 1643
innocence" means that, had the results of the DNA testing 1644
conducted under sections 2953.71 to 2953.81 of the Revised Code or 1645
under former section 2953.82 of the Revised Code been presented at 1646
trial, and had those results been analyzed in the context of and 1647
upon consideration of all available admissible evidence related to 1648
the person's case as described in division (D) of section 2953.74 1649
of the Revised Code, no reasonable factfinder would have found the 1650

petitioner guilty of the offense of which the petitioner was 1651
convicted, or, if the person was sentenced to death, no reasonable 1652
factfinder would have found the petitioner guilty of the 1653
aggravating circumstance or circumstances the petitioner was found 1654
guilty of committing and that is or are the basis of that sentence 1655
of death. 1656

(c) As used in divisions (A)(1)(a) and (b) of this section, 1657
"former section 2953.82 of the Revised Code" means section 2953.82 1658
of the Revised Code as it existed prior to ~~the effective date of~~ 1659
~~this amendment~~ July 6, 2010. 1660

(2) Except as otherwise provided in section 2953.23 of the 1661
Revised Code, a petition under division (A)(1) of this section 1662
shall be filed no later than ~~one~~ three hundred ~~eighty~~ sixty-five 1663
days after the date on which the trial transcript is filed in the 1664
court of appeals in the direct appeal of the judgment of 1665
conviction or adjudication or, if the direct appeal involves a 1666
sentence of death, the date on which the trial transcript is filed 1667
in the supreme court. If no appeal is taken, except as otherwise 1668
provided in section 2953.23 of the Revised Code, the petition 1669
shall be filed no later than ~~one~~ three hundred ~~eighty~~ sixty-five 1670
days after the expiration of the time for filing the appeal. 1671

(3) In a petition filed under division (A) of this section, a 1672
person who has been sentenced to death may ask the court to render 1673
void or voidable the judgment with respect to the conviction of 1674
aggravated murder or the specification of an aggravating 1675
circumstance or the sentence of death. 1676

(4) A petitioner shall state in the original or amended 1677
petition filed under division (A) of this section all grounds for 1678
relief claimed by the petitioner. Except as provided in section 1679
2953.23 of the Revised Code, any ground for relief that is not so 1680
stated in the petition is waived. 1681

(5) If the petitioner in a petition filed under division (A) 1682
of this section was convicted of or pleaded guilty to a felony, 1683
the petition may include a claim that the petitioner was denied 1684
the equal protection of the laws in violation of the Ohio 1685
Constitution or the United States Constitution because the 1686
sentence imposed upon the petitioner for the felony was part of a 1687
consistent pattern of disparity in sentencing by the judge who 1688
imposed the sentence, with regard to the petitioner's race, 1689
gender, ethnic background, or religion. If the supreme court 1690
adopts a rule requiring a court of common pleas to maintain 1691
information with regard to an offender's race, gender, ethnic 1692
background, or religion, the supporting evidence for the petition 1693
shall include, but shall not be limited to, a copy of that type of 1694
information relative to the petitioner's sentence and copies of 1695
that type of information relative to sentences that the same judge 1696
imposed upon other persons. 1697

(B) The clerk of the court in which the petition is filed 1698
shall docket the petition and bring it promptly to the attention 1699
of the court. The clerk of the court in which the petition is 1700
filed immediately shall forward a copy of the petition to the 1701
prosecuting attorney of that county. 1702

(C) The court shall consider a petition that is timely filed 1703
under division (A)(2) of this section even if a direct appeal of 1704
the judgment is pending. Before granting a hearing on a petition 1705
filed under division (A) of this section, the court shall 1706
determine whether there are substantive grounds for relief. In 1707
making such a determination, the court shall consider, in addition 1708
to the petition, the supporting affidavits, and the documentary 1709
evidence, all the files and records pertaining to the proceedings 1710
against the petitioner, including, but not limited to, the 1711
indictment, the court's journal entries, the journalized records 1712
of the clerk of the court, and the court reporter's transcript. 1713

The court reporter's transcript, if ordered and certified by the court, shall be taxed as court costs. If the court dismisses the petition, it shall make and file findings of fact and conclusions of law with respect to such dismissal.

(D) 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 shall respond by answer or motion. Within twenty days from the date the issues are raised, either party may move for summary judgment. The right to summary judgment shall appear on the face of the record.

(E) Unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court shall proceed to a prompt hearing on the issues 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.

(F) 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. The petitioner may amend the petition with leave of court at any time thereafter.

(G) If the court does not find grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall 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 made pursuant to division (E) of this section and the court finds grounds for granting relief, it shall make and file findings of fact and conclusions of law and shall 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, shall discharge or resentence the petitioner or grant a

new trial as the court determines appropriate. The court also may 1746
make supplementary orders to the relief granted, concerning such 1747
matters as rearraignment, retrial, custody, and bail. If the trial 1748
court's order granting the petition is reversed on appeal and if 1749
the direct appeal of the case has been remanded from an appellate 1750
court pursuant to a request under division (E) of this section, 1751
the appellate court reversing the order granting the petition 1752
shall notify the appellate court in which the direct appeal of the 1753
case was pending at the time of the remand of the reversal and 1754
remand of the trial court's order. Upon the reversal and remand of 1755
the trial court's order granting the petition, regardless of 1756
whether notice is sent or received, the direct appeal of the case 1757
that was remanded is reinstated. 1758

(H) Upon the filing of a petition pursuant to division (A) of 1759
this section by a person sentenced to death, only the supreme 1760
court may stay execution of the sentence of death. 1761

(I)(1) If a person sentenced to death intends to file a 1762
petition under this section, the court shall appoint counsel to 1763
represent the person upon a finding that the person is indigent 1764
and that the person either accepts the appointment of counsel or 1765
is unable to make a competent decision whether to accept or reject 1766
the appointment of counsel. The court may decline to appoint 1767
counsel for the person only upon a finding, after a hearing if 1768
necessary, that the person rejects the appointment of counsel and 1769
understands the legal consequences of that decision or upon a 1770
finding that the person is not indigent. 1771

(2) The court shall not appoint as counsel under division 1772
(I)(1) of this section an attorney who represented the petitioner 1773
at trial in the case to which the petition relates unless the 1774
person and the attorney expressly request the appointment. The 1775
court shall appoint as counsel under division (I)(1) of this 1776
section only an attorney who is certified under Rule 20 of the 1777

Rules of Superintendence for the Courts of Ohio to represent 1778
indigent defendants charged with or convicted of an offense for 1779
which the death penalty can be or has been imposed. The 1780
ineffectiveness or incompetence of counsel during proceedings 1781
under this section does not constitute grounds for relief in a 1782
proceeding under this section, in an appeal of any action under 1783
this section, or in an application to reopen a direct appeal. 1784

(3) Division (I) of this section does not preclude attorneys 1785
who represent the state of Ohio from invoking the provisions of 28 1786
U.S.C. 154 with respect to capital cases that were pending in 1787
federal habeas corpus proceedings prior to July 1, 1996, insofar 1788
as the petitioners in those cases were represented in proceedings 1789
under this section by one or more counsel appointed by the court 1790
under this section or section 120.06, 120.16, 120.26, or 120.33 of 1791
the Revised Code and those appointed counsel meet the requirements 1792
of division (I)(2) of this section. 1793

(J) Subject to the appeal of a sentence for a felony that is 1794
authorized by section 2953.08 of the Revised Code, the remedy set 1795
forth in this section is the exclusive remedy by which a person 1796
may bring a collateral challenge to the validity of a conviction 1797
or sentence in a criminal case or to the validity of an 1798
adjudication of a child as a delinquent child for the commission 1799
of an act that would be a criminal offense if committed by an 1800
adult or the validity of a related order of disposition. 1801

Section 2. That existing sections 120.33, 149.43, 2317.02, 1802
2941.51, 2945.10, and 2953.21 of the Revised Code are hereby 1803
repealed. 1804

Section 3. That the version of section 149.43 of the Revised 1805
Code that is scheduled to take effect on March 20, 2015, be 1806
amended to read as follows: 1807

Sec. 149.43. (A) As used in this section:	1808
(1) "Public record" means records kept by any public office, including, but not limited to, state, county, city, village, township, and school district units, and records pertaining to the delivery of educational services by an alternative school in this state kept by the nonprofit or for-profit entity operating the alternative school pursuant to section 3313.533 of the Revised Code. "Public record" does not mean any of the following:	1809 1810 1811 1812 1813 1814 1815
(a) Medical records;	1816
(b) Records pertaining to probation and parole proceedings or to proceedings related to the imposition of community control sanctions and post-release control sanctions;	1817 1818 1819
(c) Records pertaining to actions under section 2151.85 and division (C) of section 2919.121 of the Revised Code and to appeals of actions arising under those sections;	1820 1821 1822
(d) Records pertaining to adoption proceedings, including the contents of an adoption file maintained by the department of health under sections 3705.12 to 3705.124 of the Revised Code;	1823 1824 1825
(e) Information in a record contained in the putative father registry established by section 3107.062 of the Revised Code, regardless of whether the information is held by the department of job and family services or, pursuant to section 3111.69 of the Revised Code, the office of child support in the department or a child support enforcement agency;	1826 1827 1828 1829 1830 1831
(f) Records specified in division (A) of section 3107.52 of the Revised Code;	1832 1833
(g) Trial preparation records;	1834
(h) Confidential law enforcement investigatory records;	1835
(i) Records containing information that is confidential under	1836

section 2710.03 or 4112.05 of the Revised Code;	1837
(j) DNA records stored in the DNA database pursuant to section 109.573 of the Revised Code;	1838 1839
(k) Inmate records released by the department of rehabilitation and correction to the department of youth services or a court of record pursuant to division (E) of section 5120.21 of the Revised Code;	1840 1841 1842 1843
(l) Records maintained by the department of youth services pertaining to children in its custody released by the department of youth services to the department of rehabilitation and correction pursuant to section 5139.05 of the Revised Code;	1844 1845 1846 1847
(m) Intellectual property records;	1848
(n) Donor profile records;	1849
(o) Records maintained by the department of job and family services pursuant to section 3121.894 of the Revised Code;	1850 1851
(p) Peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation residential and familial information;	1852 1853 1854 1855 1856 1857
(q) In the case of a county hospital operated pursuant to Chapter 339. of the Revised Code or a municipal hospital operated pursuant to Chapter 749. of the Revised Code, information that constitutes a trade secret, as defined in section 1333.61 of the Revised Code;	1858 1859 1860 1861 1862
(r) Information pertaining to the recreational activities of a person under the age of eighteen;	1863 1864
(s) Records provided to, statements made by review board members during meetings of, and all work products of a child	1865 1866

fatality review board acting under sections 307.621 to 307.629 of 1867
the Revised Code, and child fatality review data submitted by the 1868
child fatality review board to the department of health or a 1869
national child death review database, other than the report 1870
prepared pursuant to division (A) of section 307.626 of the 1871
Revised Code; 1872

(t) Records provided to and statements made by the executive 1873
director of a public children services agency or a prosecuting 1874
attorney acting pursuant to section 5153.171 of the Revised Code 1875
other than the information released under that section; 1876

(u) Test materials, examinations, or evaluation tools used in 1877
an examination for licensure as a nursing home administrator that 1878
the board of executives of long-term services and supports 1879
administers under section 4751.04 of the Revised Code or contracts 1880
under that section with a private or government entity to 1881
administer; 1882

(v) Records the release of which is prohibited by state or 1883
federal law; 1884

(w) Proprietary information of or relating to any person that 1885
is submitted to or compiled by the Ohio venture capital authority 1886
created under section 150.01 of the Revised Code; 1887

(x) Financial statements and data any person submits for any 1888
purpose to the Ohio housing finance agency or the controlling 1889
board in connection with applying for, receiving, or accounting 1890
for financial assistance from the agency, and information that 1891
identifies any individual who benefits directly or indirectly from 1892
financial assistance from the agency; 1893

(y) Records listed in section 5101.29 of the Revised Code; 1894

(z) Discharges recorded with a county recorder under section 1895
317.24 of the Revised Code, as specified in division (B)(2) of 1896
that section; 1897

(aa) Usage information including names and addresses of specific residential and commercial customers of a municipally owned or operated public utility;	1898 1899 1900
(bb) Records described in division (C) of section 187.04 of the Revised Code that are not designated to be made available to the public as provided in that division;	1901 1902 1903
<u>(cc) Information and records that are made confidential, privileged, and not subject to disclosure under divisions (B) and (C) of section 2949.221 of the Revised Code.</u>	1904 1905 1906
(2) "Confidential law enforcement investigatory record" means any record that pertains to a law enforcement matter of a criminal, quasi-criminal, civil, or administrative nature, but only to the extent that the release of the record would create a high probability of disclosure of any of the following:	1907 1908 1909 1910 1911
(a) The identity of a suspect who has not been charged with the offense to which the record pertains, or of an information source or witness to whom confidentiality has been reasonably promised;	1912 1913 1914 1915
(b) Information provided by an information source or witness to whom confidentiality has been reasonably promised, which information would reasonably tend to disclose the source's or witness's identity;	1916 1917 1918 1919
(c) Specific confidential investigatory techniques or procedures or specific investigatory work product;	1920 1921
(d) Information that would endanger the life or physical safety of law enforcement personnel, a crime victim, a witness, or a confidential information source.	1922 1923 1924
(3) "Medical record" means any document or combination of documents, except births, deaths, and the fact of admission to or discharge from a hospital, that pertains to the medical history,	1925 1926 1927

diagnosis, prognosis, or medical condition of a patient and that 1928
is generated and maintained in the process of medical treatment. 1929

(4) "Trial preparation record" means any record that contains 1930
information that is specifically compiled in reasonable 1931
anticipation of, or in defense of, a civil or criminal action or 1932
proceeding, including the independent thought processes and 1933
personal trial preparation of an attorney. 1934

(5) "Intellectual property record" means a record, other than 1935
a financial or administrative record, that is produced or 1936
collected by or for faculty or staff of a state institution of 1937
higher learning in the conduct of or as a result of study or 1938
research on an educational, commercial, scientific, artistic, 1939
technical, or scholarly issue, regardless of whether the study or 1940
research was sponsored by the institution alone or in conjunction 1941
with a governmental body or private concern, and that has not been 1942
publicly released, published, or patented. 1943

(6) "Donor profile record" means all records about donors or 1944
potential donors to a public institution of higher education 1945
except the names and reported addresses of the actual donors and 1946
the date, amount, and conditions of the actual donation. 1947

(7) "Peace officer, parole officer, probation officer, 1948
bailiff, prosecuting attorney, assistant prosecuting attorney, 1949
correctional employee, community-based correctional facility 1950
employee, youth services employee, firefighter, EMT, or 1951
investigator of the bureau of criminal identification and 1952
investigation residential and familial information" means any 1953
information that discloses any of the following about a peace 1954
officer, parole officer, probation officer, bailiff, prosecuting 1955
attorney, assistant prosecuting attorney, correctional employee, 1956
community-based correctional facility employee, youth services 1957
employee, firefighter, EMT, or investigator of the bureau of 1958
criminal identification and investigation: 1959

(a) The address of the actual personal residence of a peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or an investigator of the bureau of criminal identification and investigation, except for the state or political subdivision in which the peace officer, parole officer, probation officer, bailiff, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation resides;	1960 1961 1962 1963 1964 1965 1966 1967 1968 1969 1970 1971
(b) Information compiled from referral to or participation in an employee assistance program;	1972 1973
(c) The social security number, the residential telephone number, any bank account, debit card, charge card, or credit card number, or the emergency telephone number of, or any medical information pertaining to, a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation;	1974 1975 1976 1977 1978 1979 1980 1981 1982
(d) The name of any beneficiary of employment benefits, including, but not limited to, life insurance benefits, provided to a peace officer, parole officer, probation officer, bailiff, prosecuting attorney, assistant prosecuting attorney, correctional employee, community-based correctional facility employee, youth services employee, firefighter, EMT, or investigator of the bureau of criminal identification and investigation by the peace officer's, parole officer's, probation officer's, bailiff's, prosecuting attorney's, assistant prosecuting attorney's,	1983 1984 1985 1986 1987 1988 1989 1990 1991

correctional employee's, community-based correctional facility 1992
employee's, youth services employee's, firefighter's, EMT's, or 1993
investigator of the bureau of criminal identification and 1994
investigation's employer; 1995

(e) The identity and amount of any charitable or employment 1996
benefit deduction made by the peace officer's, parole officer's, 1997
probation officer's, bailiff's, prosecuting attorney's, assistant 1998
prosecuting attorney's, correctional employee's, community-based 1999
correctional facility employee's, youth services employee's, 2000
firefighter's, EMT's, or investigator of the bureau of criminal 2001
identification and investigation's employer from the peace 2002
officer's, parole officer's, probation officer's, bailiff's, 2003
prosecuting attorney's, assistant prosecuting attorney's, 2004
correctional employee's, community-based correctional facility 2005
employee's, youth services employee's, firefighter's, EMT's, or 2006
investigator of the bureau of criminal identification and 2007
investigation's compensation unless the amount of the deduction is 2008
required by state or federal law; 2009

(f) The name, the residential address, the name of the 2010
employer, the address of the employer, the social security number, 2011
the residential telephone number, any bank account, debit card, 2012
charge card, or credit card number, or the emergency telephone 2013
number of the spouse, a former spouse, or any child of a peace 2014
officer, parole officer, probation officer, bailiff, prosecuting 2015
attorney, assistant prosecuting attorney, correctional employee, 2016
community-based correctional facility employee, youth services 2017
employee, firefighter, EMT, or investigator of the bureau of 2018
criminal identification and investigation; 2019

(g) A photograph of a peace officer who holds a position or 2020
has an assignment that may include undercover or plain clothes 2021
positions or assignments as determined by the peace officer's 2022
appointing authority. 2023

As used in divisions (A)(7) and (B)(9) of this section, 2024
"peace officer" has the same meaning as in section 109.71 of the 2025
Revised Code and also includes the superintendent and troopers of 2026
the state highway patrol; it does not include the sheriff of a 2027
county or a supervisory employee who, in the absence of the 2028
sheriff, is authorized to stand in for, exercise the authority of, 2029
and perform the duties of the sheriff. 2030

As used in divisions (A)(7) and (B)(9) of this section, 2031
"correctional employee" means any employee of the department of 2032
rehabilitation and correction who in the course of performing the 2033
employee's job duties has or has had contact with inmates and 2034
persons under supervision. 2035

As used in divisions (A)(7) and (B)(9) of this section, 2036
"youth services employee" means any employee of the department of 2037
youth services who in the course of performing the employee's job 2038
duties has or has had contact with children committed to the 2039
custody of the department of youth services. 2040

As used in divisions (A)(7) and (B)(9) of this section, 2041
"firefighter" means any regular, paid or volunteer, member of a 2042
lawfully constituted fire department of a municipal corporation, 2043
township, fire district, or village. 2044

As used in divisions (A)(7) and (B)(9) of this section, "EMT" 2045
means EMTs-basic, EMTs-I, and paramedics that provide emergency 2046
medical services for a public emergency medical service 2047
organization. "Emergency medical service organization," 2048
"EMT-basic," "EMT-I," and "paramedic" have the same meanings as in 2049
section 4765.01 of the Revised Code. 2050

As used in divisions (A)(7) and (B)(9) of this section, 2051
"investigator of the bureau of criminal identification and 2052
investigation" has the meaning defined in section 2903.11 of the 2053
Revised Code. 2054

(8) "Information pertaining to the recreational activities of a person under the age of eighteen" means information that is kept in the ordinary course of business by a public office, that pertains to the recreational activities of a person under the age of eighteen years, and that discloses any of the following:

(a) The address or telephone number of a person under the age of eighteen or the address or telephone number of that person's parent, guardian, custodian, or emergency contact person;

(b) The social security number, birth date, or photographic image of a person under the age of eighteen;

(c) Any medical record, history, or information pertaining to a person under the age of eighteen;

(d) Any additional information sought or required about a person under the age of eighteen for the purpose of allowing that person to participate in any recreational activity conducted or sponsored by a public office or to use or obtain admission privileges to any recreational facility owned or operated by a public office.

(9) "Community control sanction" has the same meaning as in section 2929.01 of the Revised Code.

(10) "Post-release control sanction" has the same meaning as in section 2967.01 of the Revised Code.

(11) "Redaction" means obscuring or deleting any information that is exempt from the duty to permit public inspection or copying from an item that otherwise meets the definition of a "record" in section 149.011 of the Revised Code.

(12) "Designee" and "elected official" have the same meanings as in section 109.43 of the Revised Code.

(B)(1) Upon request and subject to division (B)(8) of this section, all public records responsive to the request shall be

promptly prepared and made available for inspection to any person 2085
at all reasonable times during regular business hours. Subject to 2086
division (B)(8) of this section, upon request, a public office or 2087
person responsible for public records shall make copies of the 2088
requested public record available at cost and within a reasonable 2089
period of time. If a public record contains information that is 2090
exempt from the duty to permit public inspection or to copy the 2091
public record, the public office or the person responsible for the 2092
public record shall make available all of the information within 2093
the public record that is not exempt. When making that public 2094
record available for public inspection or copying that public 2095
record, the public office or the person responsible for the public 2096
record shall notify the requester of any redaction or make the 2097
redaction plainly visible. A redaction shall be deemed a denial of 2098
a request to inspect or copy the redacted information, except if 2099
federal or state law authorizes or requires a public office to 2100
make the redaction. 2101

(2) To facilitate broader access to public records, a public 2102
office or the person responsible for public records shall organize 2103
and maintain public records in a manner that they can be made 2104
available for inspection or copying in accordance with division 2105
(B) of this section. A public office also shall have available a 2106
copy of its current records retention schedule at a location 2107
readily available to the public. If a requester makes an ambiguous 2108
or overly broad request or has difficulty in making a request for 2109
copies or inspection of public records under this section such 2110
that the public office or the person responsible for the requested 2111
public record cannot reasonably identify what public records are 2112
being requested, the public office or the person responsible for 2113
the requested public record may deny the request but shall provide 2114
the requester with an opportunity to revise the request by 2115
informing the requester of the manner in which records are 2116
maintained by the public office and accessed in the ordinary 2117

course of the public office's or person's duties. 2118

(3) If a request is ultimately denied, in part or in whole, 2119
the public office or the person responsible for the requested 2120
public record shall provide the requester with an explanation, 2121
including legal authority, setting forth why the request was 2122
denied. If the initial request was provided in writing, the 2123
explanation also shall be provided to the requester in writing. 2124
The explanation shall not preclude the public office or the person 2125
responsible for the requested public record from relying upon 2126
additional reasons or legal authority in defending an action 2127
commenced under division (C) of this section. 2128

(4) Unless specifically required or authorized by state or 2129
federal law or in accordance with division (B) of this section, no 2130
public office or person responsible for public records may limit 2131
or condition the availability of public records by requiring 2132
disclosure of the requester's identity or the intended use of the 2133
requested public record. Any requirement that the requester 2134
disclose the requestor's identity or the intended use of the 2135
requested public record constitutes a denial of the request. 2136

(5) A public office or person responsible for public records 2137
may ask a requester to make the request in writing, may ask for 2138
the requester's identity, and may inquire about the intended use 2139
of the information requested, but may do so only after disclosing 2140
to the requester that a written request is not mandatory and that 2141
the requester may decline to reveal the requester's identity or 2142
the intended use and when a written request or disclosure of the 2143
identity or intended use would benefit the requester by enhancing 2144
the ability of the public office or person responsible for public 2145
records to identify, locate, or deliver the public records sought 2146
by the requester. 2147

(6) If any person chooses to obtain a copy of a public record 2148
in accordance with division (B) of this section, the public office 2149

or person responsible for the public record may require that 2150
person to pay in advance the cost involved in providing the copy 2151
of the public record in accordance with the choice made by the 2152
person seeking the copy under this division. The public office or 2153
the person responsible for the public record shall permit that 2154
person to choose to have the public record duplicated upon paper, 2155
upon the same medium upon which the public office or person 2156
responsible for the public record keeps it, or upon any other 2157
medium upon which the public office or person responsible for the 2158
public record determines that it reasonably can be duplicated as 2159
an integral part of the normal operations of the public office or 2160
person responsible for the public record. When the person seeking 2161
the copy makes a choice under this division, the public office or 2162
person responsible for the public record shall provide a copy of 2163
it in accordance with the choice made by the person seeking the 2164
copy. Nothing in this section requires a public office or person 2165
responsible for the public record to allow the person seeking a 2166
copy of the public record to make the copies of the public record. 2167

(7) Upon a request made in accordance with division (B) of 2168
this section and subject to division (B)(6) of this section, a 2169
public office or person responsible for public records shall 2170
transmit a copy of a public record to any person by United States 2171
mail or by any other means of delivery or transmission within a 2172
reasonable period of time after receiving the request for the 2173
copy. The public office or person responsible for the public 2174
record may require the person making the request to pay in advance 2175
the cost of postage if the copy is transmitted by United States 2176
mail or the cost of delivery if the copy is transmitted other than 2177
by United States mail, and to pay in advance the costs incurred 2178
for other supplies used in the mailing, delivery, or transmission. 2179

Any public office may adopt a policy and procedures that it 2180
will follow in transmitting, within a reasonable period of time 2181

after receiving a request, copies of public records by United States mail or by any other means of delivery or transmission pursuant to this division. A public office that adopts a policy and procedures under this division shall comply with them in performing its duties under this division.

In any policy and procedures adopted under this division, a public office may limit the number of records requested by a person that the office will transmit by United States mail to ten per month, unless the person certifies to the office in writing that the person does not intend to use or forward the requested records, or the information contained in them, for commercial purposes. For purposes of this division, "commercial" shall be narrowly construed and does not include reporting or gathering news, reporting or gathering information to assist citizen oversight or understanding of the operation or activities of government, or nonprofit educational research.

(8) A public office or person responsible for public records is not required to permit a person who is incarcerated pursuant to a criminal conviction or a juvenile adjudication to inspect or to obtain a copy of any public record concerning a criminal investigation or prosecution or concerning what would be a criminal investigation or prosecution if the subject of the investigation or prosecution were an adult, unless the request to inspect or to obtain a copy of the record is for the purpose of acquiring information that is subject to release as a public record under this section and the judge who imposed the sentence or made the adjudication with respect to the person, or the judge's successor in office, finds that the information sought in the public record is necessary to support what appears to be a justiciable claim of the person.

(9)(a) Upon written request made and signed by a journalist on or after December 16, 1999, a public office, or person

responsible for public records, having custody of the records of 2214
the agency employing a specified peace officer, parole officer, 2215
probation officer, bailiff, prosecuting attorney, assistant 2216
prosecuting attorney, correctional employee, community-based 2217
correctional facility employee, youth services employee, 2218
firefighter, EMT, or investigator of the bureau of criminal 2219
identification and investigation shall disclose to the journalist 2220
the address of the actual personal residence of the peace officer, 2221
parole officer, probation officer, bailiff, prosecuting attorney, 2222
assistant prosecuting attorney, correctional employee, 2223
community-based correctional facility employee, youth services 2224
employee, firefighter, EMT, or investigator of the bureau of 2225
criminal identification and investigation and, if the peace 2226
officer's, parole officer's, probation officer's, bailiff's, 2227
prosecuting attorney's, assistant prosecuting attorney's, 2228
correctional employee's, community-based correctional facility 2229
employee's, youth services employee's, firefighter's, EMT's, or 2230
investigator of the bureau of criminal identification and 2231
investigation's spouse, former spouse, or child is employed by a 2232
public office, the name and address of the employer of the peace 2233
officer's, parole officer's, probation officer's, bailiff's, 2234
prosecuting attorney's, assistant prosecuting attorney's, 2235
correctional employee's, community-based correctional facility 2236
employee's, youth services employee's, firefighter's, EMT's, or 2237
investigator of the bureau of criminal identification and 2238
investigation's spouse, former spouse, or child. The request shall 2239
include the journalist's name and title and the name and address 2240
of the journalist's employer and shall state that disclosure of 2241
the information sought would be in the public interest. 2242

(b) Division (B)(9)(a) of this section also applies to 2243
journalist requests for customer information maintained by a 2244
municipally owned or operated public utility, other than social 2245
security numbers and any private financial information such as 2246

credit reports, payment methods, credit card numbers, and bank 2247
account information. 2248

(c) As used in division (B)(9) of this section, "journalist" 2249
means a person engaged in, connected with, or employed by any news 2250
medium, including a newspaper, magazine, press association, news 2251
agency, or wire service, a radio or television station, or a 2252
similar medium, for the purpose of gathering, processing, 2253
transmitting, compiling, editing, or disseminating information for 2254
the general public. 2255

(C)(1) If a person allegedly is aggrieved by the failure of a 2256
public office or the person responsible for public records to 2257
promptly prepare a public record and to make it available to the 2258
person for inspection in accordance with division (B) of this 2259
section or by any other failure of a public office or the person 2260
responsible for public records to comply with an obligation in 2261
accordance with division (B) of this section, the person allegedly 2262
aggrieved may commence a mandamus action to obtain a judgment that 2263
orders the public office or the person responsible for the public 2264
record to comply with division (B) of this section, that awards 2265
court costs and reasonable attorney's fees to the person that 2266
instituted the mandamus action, and, if applicable, that includes 2267
an order fixing statutory damages under division (C)(1) of this 2268
section. The mandamus action may be commenced in the court of 2269
common pleas of the county in which division (B) of this section 2270
allegedly was not complied with, in the supreme court pursuant to 2271
its original jurisdiction under Section 2 of Article IV, Ohio 2272
Constitution, or in the court of appeals for the appellate 2273
district in which division (B) of this section allegedly was not 2274
complied with pursuant to its original jurisdiction under Section 2275
3 of Article IV, Ohio Constitution. 2276

If a requestor transmits a written request by hand delivery 2277
or certified mail to inspect or receive copies of any public 2278

record in a manner that fairly describes the public record or 2279
class of public records to the public office or person responsible 2280
for the requested public records, except as otherwise provided in 2281
this section, the requestor shall be entitled to recover the 2282
amount of statutory damages set forth in this division if a court 2283
determines that the public office or the person responsible for 2284
public records failed to comply with an obligation in accordance 2285
with division (B) of this section. 2286

The amount of statutory damages shall be fixed at one hundred 2287
dollars for each business day during which the public office or 2288
person responsible for the requested public records failed to 2289
comply with an obligation in accordance with division (B) of this 2290
section, beginning with the day on which the requester files a 2291
mandamus action to recover statutory damages, up to a maximum of 2292
one thousand dollars. The award of statutory damages shall not be 2293
construed as a penalty, but as compensation for injury arising 2294
from lost use of the requested information. The existence of this 2295
injury shall be conclusively presumed. The award of statutory 2296
damages shall be in addition to all other remedies authorized by 2297
this section. 2298

The court may reduce an award of statutory damages or not 2299
award statutory damages if the court determines both of the 2300
following: 2301

(a) That, based on the ordinary application of statutory law 2302
and case law as it existed at the time of the conduct or 2303
threatened conduct of the public office or person responsible for 2304
the requested public records that allegedly constitutes a failure 2305
to comply with an obligation in accordance with division (B) of 2306
this section and that was the basis of the mandamus action, a 2307
well-informed public office or person responsible for the 2308
requested public records reasonably would believe that the conduct 2309
or threatened conduct of the public office or person responsible 2310

for the requested public records did not constitute a failure to 2311
comply with an obligation in accordance with division (B) of this 2312
section; 2313

(b) That a well-informed public office or person responsible 2314
for the requested public records reasonably would believe that the 2315
conduct or threatened conduct of the public office or person 2316
responsible for the requested public records would serve the 2317
public policy that underlies the authority that is asserted as 2318
permitting that conduct or threatened conduct. 2319

(2)(a) If the court issues a writ of mandamus that orders the 2320
public office or the person responsible for the public record to 2321
comply with division (B) of this section and determines that the 2322
circumstances described in division (C)(1) of this section exist, 2323
the court shall determine and award to the relator all court 2324
costs. 2325

(b) If the court renders a judgment that orders the public 2326
office or the person responsible for the public record to comply 2327
with division (B) of this section, the court may award reasonable 2328
attorney's fees subject to reduction as described in division 2329
(C)(2)(c) of this section. The court shall award reasonable 2330
attorney's fees, subject to reduction as described in division 2331
(C)(2)(c) of this section when either of the following applies: 2332

(i) The public office or the person responsible for the 2333
public records failed to respond affirmatively or negatively to 2334
the public records request in accordance with the time allowed 2335
under division (B) of this section. 2336

(ii) The public office or the person responsible for the 2337
public records promised to permit the relator to inspect or 2338
receive copies of the public records requested within a specified 2339
period of time but failed to fulfill that promise within that 2340
specified period of time. 2341

(c) Court costs and reasonable attorney's fees awarded under 2342
this section shall be construed as remedial and not punitive. 2343
Reasonable attorney's fees shall include reasonable fees incurred 2344
to produce proof of the reasonableness and amount of the fees and 2345
to otherwise litigate entitlement to the fees. The court may 2346
reduce an award of attorney's fees to the relator or not award 2347
attorney's fees to the relator if the court determines both of the 2348
following: 2349

(i) That, based on the ordinary application of statutory law 2350
and case law as it existed at the time of the conduct or 2351
threatened conduct of the public office or person responsible for 2352
the requested public records that allegedly constitutes a failure 2353
to comply with an obligation in accordance with division (B) of 2354
this section and that was the basis of the mandamus action, a 2355
well-informed public office or person responsible for the 2356
requested public records reasonably would believe that the conduct 2357
or threatened conduct of the public office or person responsible 2358
for the requested public records did not constitute a failure to 2359
comply with an obligation in accordance with division (B) of this 2360
section; 2361

(ii) That a well-informed public office or person responsible 2362
for the requested public records reasonably would believe that the 2363
conduct or threatened conduct of the public office or person 2364
responsible for the requested public records as described in 2365
division (C)(2)(c)(i) of this section would serve the public 2366
policy that underlies the authority that is asserted as permitting 2367
that conduct or threatened conduct. 2368

(D) Chapter 1347. of the Revised Code does not limit the 2369
provisions of this section. 2370

(E)(1) To ensure that all employees of public offices are 2371
appropriately educated about a public office's obligations under 2372
division (B) of this section, all elected officials or their 2373

appropriate designees shall attend training approved by the 2374
attorney general as provided in section 109.43 of the Revised 2375
Code. In addition, all public offices shall adopt a public records 2376
policy in compliance with this section for responding to public 2377
records requests. In adopting a public records policy under this 2378
division, a public office may obtain guidance from the model 2379
public records policy developed and provided to the public office 2380
by the attorney general under section 109.43 of the Revised Code. 2381
Except as otherwise provided in this section, the policy may not 2382
limit the number of public records that the public office will 2383
make available to a single person, may not limit the number of 2384
public records that it will make available during a fixed period 2385
of time, and may not establish a fixed period of time before it 2386
will respond to a request for inspection or copying of public 2387
records, unless that period is less than eight hours. 2388

(2) The public office shall distribute the public records 2389
policy adopted by the public office under division (E)(1) of this 2390
section to the employee of the public office who is the records 2391
custodian or records manager or otherwise has custody of the 2392
records of that office. The public office shall require that 2393
employee to acknowledge receipt of the copy of the public records 2394
policy. The public office shall create a poster that describes its 2395
public records policy and shall post the poster in a conspicuous 2396
place in the public office and in all locations where the public 2397
office has branch offices. The public office may post its public 2398
records policy on the internet web site of the public office if 2399
the public office maintains an internet web site. A public office 2400
that has established a manual or handbook of its general policies 2401
and procedures for all employees of the public office shall 2402
include the public records policy of the public office in the 2403
manual or handbook. 2404

(F)(1) The bureau of motor vehicles may adopt rules pursuant 2405

to Chapter 119. of the Revised Code to reasonably limit the number 2406
of bulk commercial special extraction requests made by a person 2407
for the same records or for updated records during a calendar 2408
year. The rules may include provisions for charges to be made for 2409
bulk commercial special extraction requests for the actual cost of 2410
the bureau, plus special extraction costs, plus ten per cent. The 2411
bureau may charge for expenses for redacting information, the 2412
release of which is prohibited by law. 2413

(2) As used in division (F)(1) of this section: 2414

(a) "Actual cost" means the cost of depleted supplies, 2415
records storage media costs, actual mailing and alternative 2416
delivery costs, or other transmitting costs, and any direct 2417
equipment operating and maintenance costs, including actual costs 2418
paid to private contractors for copying services. 2419

(b) "Bulk commercial special extraction request" means a 2420
request for copies of a record for information in a format other 2421
than the format already available, or information that cannot be 2422
extracted without examination of all items in a records series, 2423
class of records, or database by a person who intends to use or 2424
forward the copies for surveys, marketing, solicitation, or resale 2425
for commercial purposes. "Bulk commercial special extraction 2426
request" does not include a request by a person who gives 2427
assurance to the bureau that the person making the request does 2428
not intend to use or forward the requested copies for surveys, 2429
marketing, solicitation, or resale for commercial purposes. 2430

(c) "Commercial" means profit-seeking production, buying, or 2431
selling of any good, service, or other product. 2432

(d) "Special extraction costs" means the cost of the time 2433
spent by the lowest paid employee competent to perform the task, 2434
the actual amount paid to outside private contractors employed by 2435
the bureau, or the actual cost incurred to create computer 2436

programs to make the special extraction. "Special extraction 2437
costs" include any charges paid to a public agency for computer or 2438
records services. 2439

(3) For purposes of divisions (F)(1) and (2) of this section, 2440
"surveys, marketing, solicitation, or resale for commercial 2441
purposes" shall be narrowly construed and does not include 2442
reporting or gathering news, reporting or gathering information to 2443
assist citizen oversight or understanding of the operation or 2444
activities of government, or nonprofit educational research. 2445

Section 4. That the existing version of section 149.43 of the 2446
Revised Code that is scheduled to take effect on March 20, 2015, 2447
is hereby repealed. 2448

Section 5. Sections 3 and 4 of this act shall take effect on 2449
March 20, 2015. 2450

Section 6. There is hereby established a joint committee of 2451
members of the Senate and members of the House of Representatives 2452
to study the manner in which families of homicide victims in this 2453
state can best be supported by government programs, social service 2454
entities, and charitable organizations and the manner and means by 2455
which a court-ordered sentence of death is performed in Ohio, 2456
consistent with judicial precedent. The study shall consider the 2457
issues with respect to both short-term and long-term 2458
considerations. 2459

The Committee shall be comprised of six members. The 2460
President of the Senate and the Speaker of the House of 2461
Representatives shall each appoint two members of their respective 2462
houses to serve on the Committee. The Minority Leader of the 2463
Senate and the Minority Leader of the House of Representatives 2464
shall each appoint one member of their respective houses to serve 2465
on the committee. At their first meeting, the members of the 2466

Committee shall select a Chairperson and Vice-Chairperson. The 2467
Committee shall meet in the same manner, shall be governed by the 2468
rules applicable to, and shall be afforded staffing in the same 2469
manner as standing committees of the Senate and House of 2470
Representatives. 2471

Section 7. (A) As used in this section, "lethal injection" 2472
means the application of a lethal injection of a drug or a 2473
combination of drugs in carrying out a sentence of death. 2474

(B) The intent of the General Assembly in enacting this act 2475
is to protect the identities of persons who assist the Department 2476
of Rehabilitation and Correction in carrying out a court-ordered 2477
sentence of death by lethal injection, in order to protect those 2478
persons from harassment and potential physical harm. 2479

(C) It is the intent of the General Assembly in enacting this 2480
act to enable the Department of Rehabilitation and Correction to 2481
obtain the necessary assistance of persons in carrying out a 2482
court-ordered sentence of death by lethal injection or the drugs 2483
needed to administer such a sentence. 2484