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133rd General Assembly

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Am. Sub. H. B. No. 464

Representatives Cupp, Rogers

Cosponsors: Representatives Lipps, Seitz, Hambley, Grendell, Miranda, Roemer, Ingram, Miller, J., Carruthers, Galonski, Hicks-Hudson, Miller, A., Patterson, Reineke, Scherer, Skindell, West

Senators Manning, Coley, Eklund, Antonio, Blessing, Burke, Craig, Gavarone, Hackett, Hoagland, Hottinger, Huffman, M., Kunze, Lehner, O'Brien, Sykes, Wilson

A BILL

To amend sections 339.02, 1721.21, 1901.123, 1
1907.143, 2106.13, 2108.05, 2108.06, 2108.07, 2
2108.23, 2108.24, 2108.34, 2111.10, 2111.50, 3
2133.07, 2701.10, 2717.01, 2945.37, 2945.371, 4
2945.38, 5122.02, 5122.03, 5122.11, 5122.111, 5
5122.15, 5804.11, 5805.06, 5816.02, 5816.05, 6
5816.06, 5816.09, 5816.10, and 5816.14; to 7
amend, for the purpose of adopting a new section 8
number as indicated in parentheses, section 9
2717.01 (2717.02); to enact new section 2717.01 10
and sections 2717.03, 2717.04, 2717.05, 2717.06, 11
2717.07, 2717.08, 2717.09, 2717.10, 2717.11, 12
2717.13, 2717.14, 2717.16, 2717.18, 2717.19, and 13
5122.112; and to repeal section 2133.16 of the 14
Revised Code to expand a guardian's authority to 15
create estate plans for their wards, to clarify 16
a surviving spouse's allowance for support upon 17
the spouse's selection of an automobile, to make 18
changes in the Ohio Trust Code and the Ohio 19
Legacy Trust Act, to make changes in the law 20
pertaining to the referral of actions to a 21

retired judge, to make changes to the law 22
regarding cemetery endowment care trusts, to 23
permit a nonprofit corporation to serve as 24
guardian of the person of an incompetent, to 25
eliminate a donor's ability to make an 26
anatomical gift through a will or a declaration 27
or living will, to clarify the membership of the 28
appointing authority for boards of county 29
hospital trustees, to make changes to the 30
requirements for competency evaluations and 31
mental health treatment in criminal cases, and 32
to make changes to the laws dealing with 33
reimbursement of municipal and county court 34
judges, procedures in involuntary mental health 35
placements, and change of name procedures. 36

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

Section 1. That sections 339.02, 1721.21, 1901.123, 37
1907.143, 2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 2108.24, 38
2108.34, 2111.10, 2111.50, 2133.07, 2701.10, 2717.01, 2945.37, 39
2945.371, 2945.38, 5122.02, 5122.03, 5122.11, 5122.111, 5122.15, 40
5804.11, 5805.06, 5816.02, 5816.05, 5816.06, 5816.09, 5816.10, 41
and 5816.14 be amended; section 2717.01 (2717.02) be amended for 42
the purpose of adopting a new section number as indicated in 43
parentheses; and new section 2717.01 and sections 2717.03, 44
2717.04, 2717.05, 2717.06, 2717.07, 2717.08, 2717.09, 2717.10, 45
2717.11, 2717.13, 2717.14, 2717.16, 2717.18, 2717.19, and 46
5122.112 of the Revised Code be enacted to read as follows: 47

Sec. 339.02. (A) As used in this section, ~~"area:~~ 48

(1) "Area served by the hospital" means the geographic area, whether or not included within the county, from which a county hospital regularly draws patients. 49
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(2) "Appointing authority" means the board of county commissioners, the probate judge of the county senior in point of service, and the judge, other than the probate judge of the county senior in point of service, of the court of common pleas of the county senior in point of service. 52
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(B) Unless a board of county hospital trustees for the county is in existence in accordance with this section, such board shall be created pursuant to this section after the board of county commissioners first determines by resolution to establish a county hospital. Copies of such resolution shall be certified to the probate judge of the county senior in point of service and to the judge, other than a probate judge, of the court of common pleas of the county senior in point of service. The ~~board of county commissioners together with the probate judge of the county senior in point of service and the judge of the court of common pleas of the county senior in point of service~~ appointing authority shall, within ten days after such certification, appoint a board of county hospital trustees. 57
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(C) In making appointments to a board of county hospital trustees, both of the following apply with respect to the individuals who may be appointed: 70
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(1) Members shall be electors and representative of the area served by the hospital, except that not more than two members may be electors of the area served by the hospital that is outside the county in which the hospital is located. 73
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(2) A physician may serve as a member, including a 77

physician who is authorized to admit and treat patients at the hospital, except as follows:

(a) Not more than two physicians may serve as members at the same time;

(b) No physician who is employed by the hospital may serve as a member.

(D) A board of county hospital trustees shall be composed of six members, unless the board of county commissioners determines that the board of trustees can more effectively function with eight or ten members in which case there may be eight or ten members, as designated by the board of county commissioners.

(E) With respect to the initial appointment of members to a board of county hospital trustees, all of the following apply:

(1) When the board is composed of six members, their terms of office shall be one for one year, one for two years, one for three years, one for four years, one for five years, and one for six years from the first Monday of March thereafter.

(2) When the board is composed of eight members, their terms of office shall be one for one year, one for two years, two for three years, one for four years, one for five years, and two for six years from the first Monday of March thereafter.

(3) When the board is composed of ten members, their terms of office shall be two for one year, one for two years, two for three years, two for four years, one for five years, and two for six years from the first Monday of March thereafter.

(F) Except as provided in division (G) (2) of this section, all of the following apply with respect to vacancies on a board

of county hospital trustees: 106

(1) Annually, on the first Monday of March, the ~~board of~~ 107
~~county commissioners together with the probate judge of the~~ 108
~~county senior in point of service and the judge of the court of~~ 109
~~common pleas of the county senior in point of service~~ appointing 110
authority shall appoint or reappoint for a term of six years a 111
sufficient number of members to replace those members whose 112
terms have expired. The appointing authority shall be comprised 113
of five votes, with each of the three county commissioners 114
receiving one vote, the probate judge of the county senior in 115
point of service receiving one vote, and the judge, other than 116
the probate judge of the county senior in point of service, of 117
the court of common pleas of the county senior in point of 118
service receiving one vote. 119

(2) The appointing authority shall fill a vacancy not 120
later than six months after the vacancy occurs. If the vacancy 121
remains unfilled on that date, the remaining members of the 122
board, by majority vote, shall appoint an individual to fill the 123
vacancy. 124

(3) The appointing authority may fill a vacancy by seeking 125
nominations from a selection committee consisting of one county 126
commissioner designated by the board of county commissioners, 127
the chair of the board of county hospital trustees, and the 128
county hospital administrator. If nominations for filling a 129
vacancy are sought from a selection committee, the committee 130
shall nominate at least three individuals for the vacancy. The 131
appointing authority may fill the vacancy by appointing one of 132
the nominated individuals or by appointing another individual 133
selected by the appointing authority. 134

(4) Any member appointed to fill a vacancy occurring prior 135

to the expiration date of the term for which the member's 136
predecessor was appointed shall hold office as a member for the 137
remainder of that term. 138

(G) (1) ~~The board of county commissioners together with the~~ 139
~~probate judge senior in point of service and the judge of the~~ 140
~~court of common pleas senior in point of service~~ appointing 141
authority in any county in which a board of county hospital 142
trustees has been appointed may expand the number of members to 143
eight or to ten. When the number of members is increased to 144
eight, one shall be appointed for a three-year and one for a 145
six-year term from the first Monday of March thereafter. When 146
the number of members is increased from six to ten, the term for 147
additional members shall be: one for one year, one for three 148
years, one for four years, and one for six years from the first 149
Monday of March thereafter. When the number of members is 150
increased from eight to ten, the term for additional members 151
shall be: one for one year and one for four years from the first 152
Monday of March thereafter. Thereafter, except as provided in 153
division (G) (2) of this section, upon the expiration of the term 154
of office of each member, the vacancy shall be filled in the 155
manner specified in division (F) of this section. 156

(2) ~~The board of county commissioners together with the~~ 157
~~probate judge senior in point of service and the judge of the~~ 158
~~court of common pleas senior in point of service~~ appointing 159
authority may reduce the number of members of a board of county 160
hospital trustees to eight or to six. The reduction shall occur 161
on expiration of a member's term of office, at which time no 162
appointment shall be made. While the ~~board of county~~ 163
~~commissioners and the judges are~~ appointing authority is in the 164
process of reducing the number of members, the board of county 165
hospital trustees may consist of nine or seven members for one 166

year. 167

(H) Any member of a board of county hospital trustees may 168
be removed from office by the appointing authority for neglect 169
of duty, misconduct, or malfeasance in office. The member shall 170
be informed in writing of the charges and afforded an 171
opportunity for a hearing before the appointing authority. The 172
appointing authority shall not remove a member from office for 173
political reasons. 174

(I) The board of county commissioners may provide members 175
of a board of county hospital trustees a stipend for their 176
service or require the members to serve without compensation. 177
The members shall be allowed their necessary and reasonable 178
expenses incurred in the performance of their duties, including 179
the cost of their participation in any continuing education 180
programs or developmental programs that the members consider 181
necessary. Allowable stipends and expenses shall be paid out of 182
the funds provided for the county hospital. 183

(J) The persons selected to be members of a board of 184
county hospital trustees shall forthwith be notified, by mail, 185
of their appointment. When a board is initially appointed, the 186
notice shall state a time, not more than ten days later, when 187
such board shall meet at the county seat of such county to 188
organize. On the date stated, the board shall meet and organize. 189

(K) A board of county hospital trustees shall organize by 190
electing one of its number as chairperson and such other 191
officers as specified in the board's rules. Four members of a 192
six-member board constitute a quorum, five members constitute a 193
quorum of an eight-member board, and six members constitute a 194
quorum of a ten-member board. 195

A board of county hospital trustees shall hold meetings at 196
least quarterly, shall adopt necessary rules of procedure, and 197
shall keep a record of its proceedings and a strict account of 198
all its receipts, disbursements, and expenditures. On completion 199
of the construction and equipping of a county hospital, the 200
board shall file such account with the board of county 201
commissioners and make final settlement with the board of county 202
commissioners for the construction and equipping of the 203
hospital. 204

Members of the board of county hospital trustees may 205
attend board meetings by means of communications equipment 206
authorized under this division by rule of the board, including 207
by video conference or teleconference. Notwithstanding division 208
(C) of section 121.22 of the Revised Code, board members who 209
attend a board meeting by means of authorized communications 210
equipment shall be considered present in person at the meeting, 211
shall be permitted to vote, and shall be counted for purposes of 212
determining whether a quorum is present at the meeting. 213

The board of county hospital trustees shall maintain a 214
record of any vote or other action taken at a board meeting 215
conducted by means of authorized communications equipment. The 216
record also shall identify the members attending the board 217
meeting by means of authorized communications equipment. 218

The board of county hospital trustees shall adopt rules 219
designating the communications equipment that is authorized for 220
use during board meetings. The board also shall adopt rules that 221
establish procedures and guidelines for using authorized 222
communications equipment during board meetings and that ensure 223
verification of the identity of any board members attending 224
board meetings by such means. 225

Sec. 1721.21. (A) As used in this section:	226
(1) "Person" means any corporation, company, partnership, individual, or other entity owning or operating a cemetery for the disposition of human remains.	227 228 229
(2) "Cemetery" means any one or a combination of more than one of the following:	230 231
(a) A burial ground for earth interments;	232
(b) A mausoleum for crypt entombments;	233
(c) A columbarium for the deposit of cremated remains;	234
(d) A scattering ground for the spreading of cremated remains.	235 236
(3) "Interment" means the disposition of human remains by earth burial, entombment, or inurnment.	237 238
(4) "Burial right" means the right of earth interment.	239
(5) "Entombment right" means the right of entombment in a mausoleum.	240 241
(6) "Columbarium right" means the right of inurnment in a columbarium for cremated remains.	242 243
(7) "Human remains" means any part of the body of a deceased human being, in any stage of decomposition or state of preservation, or the remaining bone fragments from the body of a deceased human being that has been reduced by cremation or alternative disposition.	244 245 246 247 248
(B) No person shall operate or continue to operate any cemetery in this state unless an endowment care trust is established and maintained as required by this section.	249 250 251

(C) Any person desiring to operate any cemetery that is 252
organized or developed after July 1, 1970, before offering to 253
sell or selling any burial lot, burial right, entombment right, 254
or columbarium right in that cemetery, shall first establish an 255
endowment care trust, segregated from other assets, and place in 256
that fund a minimum of fifty thousand dollars in cash or in 257
bonds of the United States, this state, or any county or 258
municipal corporation of this state. 259

Whenever any person described in this division has placed 260
another fifty thousand dollars in the endowment care trust out 261
of gross sales proceeds, in addition to the deposit required by 262
this division, that person, after submitting proof of this fact 263
to the trustees of the endowment care trust, may be paid a 264
distribution in the sum of fifty thousand dollars from the 265
endowment care trust. 266

(D) Any person desiring to operate or to continue to 267
operate any cemetery after July 1, 1970, shall place into the 268
endowment care trust as required by this section not less than 269
ten per cent of the gross sales proceeds received from the sale 270
of any burial lot, burial right, entombment right, or 271
columbarium right. This percentage shall be placed in the 272
endowment care trust no later than thirty days following the 273
month in which the entire gross sales are received. 274

(E) The trustees of the endowment care trust shall consist 275
of at least three individuals who have been residents of the 276
county in which the cemetery is located for at least one year, 277
or a trust company licensed under Chapter 1111. of the Revised 278
Code or a national bank or federal savings association that has 279
securities pledged in accordance with section 1111.04 of the 280
Revised Code. If the trustees are not a financial institution or 281

trust company, the trustees shall be bonded by a fidelity bond, 282
or insured under an insurance policy less any deductible, in an 283
aggregate amount of not less than one hundred per cent of the 284
funds held by the trustees. The trustees or their agent shall, 285
on a continuous basis, keep exact records as to the amount of 286
funds under any joint account or trust instrument being held for 287
the individual beneficiaries showing the amount paid, the amount 288
deposited and invested, and accruals and income. 289

The funds of the endowment care trust shall be held and 290
invested in the manner in which trust funds are permitted to be 291
held and invested pursuant to sections 2109.37 and 2109.371 of 292
the Revised Code or, if provided for in the instrument creating 293
the trust, pursuant to the Ohio Uniform Prudent Investor Act. 294

(F) Any person offering to sell or selling any burial lot, 295
burial right, entombment right, or columbarium right shall give 296
to the purchaser of the lot or right, at the time of sale, a 297
written agreement that identifies and unconditionally guarantees 298
to the purchaser the specific location of the lot or the 299
specific location to which the right applies. 300

(G) No person shall open or close any grave, crypt, or 301
niche for the interment of human remains in a cemetery without 302
the permission of the cemetery association or other entity 303
having control and management of the cemetery. 304

(H) Except as provided in division (G) of this section, 305
this section does not apply to a family cemetery as defined in 306
section 4767.02 of the Revised Code, to any cemetery that is 307
owned and operated entirely and exclusively by churches, 308
religious societies, established fraternal organizations, 309
municipal corporations, or other political subdivisions of the 310
state, or to a national cemetery. 311

(I) The ~~dividend and interest income distribution~~ from the 312
endowment care trust shall be used only to pay for the both of 313
the following: 314

(1) The cost and expenses incurred to establish, manage, 315
invest, and administer the records and the trust ~~and for the;~~ 316

(2) The maintenance, supervision, improvement, and 317
preservation of the grounds, lots, buildings, equipment, 318
statuary, and other real and personal property of the cemetery. 319

(J) (1) Annual reports of all the assets and investments of 320
the endowment care trust shall be prepared and maintained, and 321
shall be available for inspection at reasonable times by any 322
owner of interment rights in the cemetery. 323

(2) Every cemetery required to establish and maintain an 324
endowment care trust shall ensure each of the following: 325

(a) That the cemetery has deposited, at the time specified 326
in division (D) of this section, the amounts required by that 327
division in the cemetery's endowment care trust; 328

(b) That ~~only dividend and interest income have been paid~~ 329
~~from the endowment care trust,~~ and the cemetery used the amounts 330
withdrawn only for the purposes specified in division (I) of 331
this section; 332

(c) ~~That~~ Subject to division (K) (5) of this section, that 333
all principal and capital gains, less any payment of taxes 334
associated with such gains, have remained in the endowment care 335
trust; 336

(d) That the endowment care trust has not been used to 337
collateralize or guarantee loans and has not otherwise been 338
subjected to any consensual lien; 339

(e) That the endowment care trust is invested in 340
compliance with the investing standards set forth in sections 341
2109.37 and 2109.371 of the Revised Code, or, if provided for in 342
the instrument creating the trust, the Ohio Uniform Prudent 343
Investor Act. 344

(3) Every cemetery required to establish and maintain an 345
endowment care trust shall ~~file~~ do both of the following: 346

(a) File an affidavit annually with the division of real 347
estate of the department of commerce, in a form prescribed by 348
the division, certifying under oath the cemetery satisfied 349
division (J) (2) of this section; 350

(b) Notify the division of real estate of the department 351
of commerce, in a form prescribed by the division, of the 352
percentage of the unitrust distribution from the endowment care 353
trust, as described in divisions (K) (2) (a) (ii) and (b) of this 354
section. 355

(K) (1) Every cemetery shall choose the distribution of 356
either of the following from the endowment care trust: 357

(a) All net ordinary income, which includes collected 358
dividends, interest, and other income earned by the trust, 359
reduced by any expenses, including, but not limited to, taxes on 360
income, fees, commissions, and costs; 361

(b) A unitrust disbursement not exceeding five per cent of 362
the fair market value of the endowment care fund. "Fair market 363
value," for the purpose of division (K) (1) (b) of this section, 364
means the average of the net fair market value of the assets of 365
the endowment care trust as of the last trading day for each of 366
the three preceding fiscal year ends. 367

(2) (a) A cemetery that selects the unitrust disbursement 368

distribution method, as provided in division (K) (1) (b) of this 369
section, shall do both of the following: 370

(i) Deliver to the trustees of the endowment care trust 371
written instructions, including the disbursement percentage 372
selected, not later than sixty days prior to the beginning of a 373
calendar year; 374

(ii) Deliver to the division of real estate of the 375
department of commerce notification that the cemetery selected 376
the unitrust disbursement method and the percentage selected, in 377
compliance with division (J) (3) (b) of this section. 378

(b) The distribution method and, if a unitrust 379
disbursement, the disbursement percentage selected shall remain 380
in effect unless the cemetery notifies the trustees and the 381
division of real estate of the department of commerce of its 382
desire to effect a change. The trustees shall ensure that an 383
investment policy is in place whose goals and objectives are 384
supportive of the growth of the endowment care trust. 385

(3) Distributions from the endowment care trust shall be 386
made on a monthly, quarterly, semiannual, or annual basis, as 387
agreed upon by the cemetery and the trustees. If the trustees do 388
not receive written instructions from the cemetery informing the 389
trustees of the method of calculation and distribution chosen, 390
the trustees shall calculate and distribute the net income, as 391
earned, on a monthly basis. 392

(4) In order to withdraw a unitrust disbursement, the fair 393
market value of the endowment care trust after the disbursement 394
shall be greater than eighty per cent of the aggregate fair 395
market value of the endowment care trust as of the end of the 396
immediately preceding calendar year. Should this not be the 397

case, disbursement shall be limited for that year to net 398
ordinary income. 399

(5) The trustees shall pay reasonable operating expenses 400
and taxes of the endowment care trust itself. If the operating 401
expenses and taxes paid are greater than two and one-half per 402
cent of the fair market value for the preceding calendar year 403
end and the cemetery has selected a unitrust disbursement, the 404
trustees shall reduce the unitrust disbursement by the amount 405
exceeding two and one-half per cent. 406

Sec. 1901.123. (A) (1) Subject to reimbursement under 407
division (B) of this section, the treasurer of the county in 408
which a county-operated municipal court or other municipal court 409
is located shall pay the per diem compensation to which an 410
acting judge appointed pursuant to division (A) (2) (a), (B) (1), 411
or (C) (1) of section 1901.121 of the Revised Code is entitled 412
pursuant to division (A) (1) of section 1901.122 of the Revised 413
Code. 414

(2) The treasurer of the county in which a county-operated 415
municipal court or other municipal court is located shall pay 416
the per diem compensation to which an assigned judge assigned 417
pursuant to division (A) (1), (A) (2) (b), (B) (2), (C) (2), or (D) 418
of section 1901.121 of the Revised Code is entitled pursuant to 419
division (B) (1) or (4) of section 1901.122 of the Revised Code. 420

(3) Subject to reimbursement under division (B) of this 421
section, the treasurer of the county in which a county-operated 422
municipal court or other municipal court is located shall pay 423
the per diem compensation to which an assigned judge assigned 424
pursuant to division (A) (1), (A) (2) (b), (B) (2), (C) (2), or (D) 425
of section 1901.121 of the Revised Code is entitled pursuant to 426
division (B) (2) of section 1901.122 of the Revised Code. 427

(4) Subject to reimbursement under division (C) of this 428
section, the supreme court shall pay the per diem compensation 429
to which an assigned judge assigned pursuant to division (A) (1), 430
(A) (2) (b), (B) (2), (C) (2), or (D) of section 1901.121 of the 431
Revised Code is entitled pursuant to division (B) (3) of section 432
1901.122 of the Revised Code. 433

(B) The treasurer of a county that, pursuant to division 434
(A) (1) or (3) of this section, is required to pay ~~any the per~~ 435
diem compensation to which an acting judge or assigned judge is 436
entitled ~~under division (A) (5) or (6) of section 141.04 of the~~ 437
~~Revised Code~~, shall submit to the administrative director of the 438
supreme court quarterly requests for reimbursements of the state 439
portion of the per diem amounts so paid. The requests shall 440
include verifications of the payment of those amounts and an 441
affidavit from the acting judge or assigned judge stating the 442
days and hours worked. The administrative director shall cause 443
reimbursements of ~~those the state portion of the per diem~~ 444
amounts paid to be issued to the county if the administrative 445
director verifies that those amounts were, in fact, so paid. 446

(C) ~~The~~ If the supreme court, pursuant to division (A) ~~(2)~~ 447
(4) of this section, is required to pay ~~any the per diem~~ 448
compensation to which an assigned judge is entitled ~~under~~ 449
~~division (A) (5) or (6) of section 141.04 of the Revised Code.~~ 450
Annually, annually, on the first day of August, the 451
administrative director of the supreme court shall issue a 452
billing to the county treasurer of any county to which such a 453
judge was assigned to a municipal court for reimbursement of the 454
county or local portion of the per diem compensation previously 455
paid by the ~~state supreme court~~ for the twelve-month period 456
preceding the last day of June. The county or local portion of 457
the per diem compensation shall be that part of each per diem 458

paid by the state which is proportional to the county or local 459
shares of the total compensation of a resident judge of such 460
court. The county treasurer shall forward the payment within 461
thirty days. After forwarding the payment, the county treasurer 462
shall seek reimbursement from the applicable local 463
municipalities as appropriate. 464

Sec. 1907.143. (A) (1) Subject to reimbursement under 465
division (B) of this section, the treasurer of the county in 466
which a county court is located shall pay the per diem 467
compensation to which an acting judge appointed pursuant to 468
division (A) (2) ~~(b)~~ (a), (B) (1), or (C) (1) of section 1907.141 of 469
the Revised Code is entitled pursuant to division (A) of section 470
1907.142 of the Revised Code. 471

(2) The treasurer of the county in which a county court is 472
located shall pay the per diem compensation to which an assigned 473
judge assigned pursuant to division (A) (1), (A) (2) (b), (B) (2), 474
or (C) (2) of section 1907.141 of the Revised Code is entitled 475
pursuant to division (B) (1) or (4) of section 1907.142 of the 476
Revised Code. 477

(3) Subject to reimbursement under division (B) of this 478
section, the treasurer of the county in which a county court is 479
located shall pay the per diem compensation to which an assigned 480
judge assigned pursuant to division (A) (1), (A) (2) (b), (B) (2), 481
or (C) (2) of section 1907.141 of the Revised Code is entitled 482
pursuant to division (B) (2) of section 1907.142 of the Revised 483
Code. 484

(4) Subject to reimbursement under division (C) of this 485
section, the supreme court shall pay the per diem compensation 486
to which an assigned judge assigned pursuant to division (A) (1), 487
(A) (2) (b), (B) (2), or (C) (2) of section 1907.141 of the Revised 488

Code is entitled pursuant to division (B) (3) of section 1907.142 489
of the Revised Code. 490

(B) The treasurer of a county that, pursuant to division 491
(A) (1) or (3) of this section, is required to pay ~~any~~ the per 492
diem compensation to which an acting judge or assigned judge is 493
entitled ~~under division (A) (5) or (6) of section 141.04 of the~~ 494
~~Revised Code~~, shall submit to the administrative director of the 495
supreme court quarterly requests for reimbursements of the state 496
portion of the per diem amounts so paid. The requests shall 497
include verifications of the payment of those amounts and an 498
affidavit from the acting judge or assigned judge stating the 499
days and hours worked. The administrative director shall cause 500
reimbursements of ~~those~~ the state portion of the per diem 501
amounts paid to be issued to the county if the administrative 502
director verifies that those amounts were, in fact, so paid. 503

(C) ~~The~~ If the supreme court, pursuant to division (A) ~~(2)~~ 504
(4) of this section, is required to pay ~~any~~ the per diem 505
compensation to which an assigned judge is entitled ~~under~~ 506
~~division (A) (5) or (6) of section 141.04 of the Revised Code.~~ 507
Annually, annually, on the first day of August, the 508
administrative director of the supreme court shall issue a 509
billing to the county treasurer of any county to which such a 510
judge was assigned to a county court for reimbursement of the 511
county portion of the per diem compensation previously paid by 512
the ~~state~~ supreme court for the twelve-month period preceding 513
the last day of June. The county portion of the per diem 514
compensation shall be that part of each per diem paid by the 515
state which is proportional to the county shares of the total 516
compensation of a resident judge of such court. The county 517
treasurer shall forward the payment within thirty days. After 518
forwarding the payment, the county treasurer shall seek 519

reimbursement from the applicable local municipalities as 520
appropriate. 521

Sec. 2106.13. (A) If a person dies leaving a surviving 522
spouse and no minor children, leaving a surviving spouse and 523
minor children, or leaving minor children and no surviving 524
spouse, the surviving spouse, minor children, or both shall be 525
entitled to receive, subject to division (B) of this section, in 526
money or property the sum of forty thousand dollars as an 527
allowance for support. If the surviving spouse selected ~~one or~~ 528
~~more automobiles~~ more than one automobile under section 2106.18 529
of the Revised Code, the allowance for support prescribed by 530
this section shall be reduced by the value of the automobile 531
having the lowest value ~~if more than one automobile is of the~~ 532
automobiles so selected. The money or property set off as an 533
allowance for support shall be considered estate assets. 534

(B) The probate court shall order the distribution of the 535
allowance for support described in division (A) of this section 536
as follows: 537

(1) If the person died leaving a surviving spouse and no 538
minor children, one hundred per cent to the surviving spouse; 539

(2) If the person died leaving a surviving spouse and 540
minor children, and if all of the minor children are the 541
children of the surviving spouse, one hundred per cent to the 542
surviving spouse; 543

(3) If the person died leaving a surviving spouse and 544
minor children, and if not all of the minor children are 545
children of the surviving spouse, in equitable shares, as fixed 546
by the probate court in accordance with this division, to the 547
surviving spouse and the minor children who are not the children 548

of the surviving spouse. In determining equitable shares under 549
this division, the probate court shall do all of the following: 550

(a) Consider the respective needs of the surviving spouse, 551
the minor children who are children of the surviving spouse, and 552
the minor children who are not children of the surviving spouse; 553

(b) Allocate to the surviving spouse, the share that is 554
equitable in light of the needs of the surviving spouse and the 555
minor children who are children of the surviving spouse; 556

(c) Allocate to the minor children who are not children of 557
the surviving spouse, the share that is equitable in light of 558
the needs of those minor children. 559

(4) If the person died leaving minor children and no 560
surviving spouse, in equitable shares, as fixed by the probate 561
court in accordance with this division, to the minor children. 562
In determining equitable shares under this division, the probate 563
court shall consider the respective needs of the minor children 564
and allocate to each minor child the share that is equitable in 565
light of the child's needs. 566

(C) If the surviving spouse selected ~~one or more~~ 567
~~automobiles~~ more than one automobile under section 2106.18 of 568
the Revised Code, the probate court, in considering the 569
respective needs of the surviving spouse and the minor children 570
when allocating an allowance for support under division (B) (3) 571
of this section, shall consider the benefit derived by the 572
surviving spouse from the transfer of the automobile having the 573
lowest value ~~if more than one automobile is~~ of the automobiles 574
so selected. 575

(D) If, pursuant to this section, the probate court must 576
allocate the allowance for support, the administrator or 577

executor, within five months of the initial appointment of an 578
administrator or executor, shall file with the probate court an 579
application to allocate the allowance for support. 580

(E) The administrator or executor shall pay the allowance 581
for support unless a competent adult or a guardian with the 582
consent of the court having jurisdiction over the guardianship 583
waives the allowance for support to which the adult or the ward 584
represented by the guardian is entitled. 585

(F) For the purposes of this section, the value of an 586
automobile that a surviving spouse selects pursuant to section 587
2106.18 of the Revised Code is the value that the surviving 588
spouse specifies for the automobile in the affidavit executed 589
pursuant to division (B) of section 4505.10 of the Revised Code. 590

Sec. 2108.05. (A) A donor may make an anatomical gift by 591
doing any of the following: 592

(1) Authorizing a statement or symbol to be imprinted on 593
the donor's driver's license or identification card indicating 594
that the donor has certified a willingness to make an anatomical 595
gift; 596

~~(2) Specifying in the donor's will an intent to make an 597
anatomical gift;~~ 598

~~(3) Specifying an intent to make an anatomical gift in the 599
donor's declaration as described in section 2133.16 of the 600
Revised Code;~~ 601

~~(4) During a terminal illness or injury of the donor, 602
communicating in any manner to a minimum of two adults, at least 603
one of whom is a disinterested witness, that the donor intends 604
to make an anatomical gift;~~ 605

~~(5)~~ (3) Following the procedure in division (B) of this section. 606
607

(B) A donor or other person authorized to make an anatomical gift under section 2108.04 of the Revised Code may make a gift by a donor card or other record signed by the donor or other person making the gift or by authorizing that a statement or symbol indicating that the donor has certified a willingness to make an anatomical gift be included in a donor registry. If the donor or other person is physically unable to sign a record, the record may be signed by another individual at the direction of the donor or other person and shall do both of the following: 608
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(1) Be witnessed by at least two adults, at least one of whom is a disinterested witness, who have signed at the request of the donor or the other person; 618
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(2) State that it has been signed and witnessed as provided in division (B) (1) of this section. 621
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(C) Once a donor has authorized a statement or symbol to be imprinted on the donor's driver's license or identification card indicating that the donor has certified a willingness to make an anatomical gift, the donor does not need to recertify the donor's willingness to make an anatomical gift upon renewal of the driver's license or identification card. The authorization shall remain in effect until the donor withdraws that authorization. 623
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(D) Revocation, suspension, expiration, or cancellation of a driver's license or identification card upon which an anatomical gift is indicated does not invalidate the gift. 631
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~~(E) An anatomical gift made by will takes effect on the~~ 634

~~donor's death whether or not the will is probated. Invalidation
of the will after the donor's death does not invalidate the
gift.~~ 635
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Sec. 2108.06. (A) Subject to section 2108.08 of the 638
Revised Code, an anatomical gift made under section 2108.04 of 639
the Revised Code may be amended by any of the following means: 640

(1) By a record signed by the donor or other person 641
authorized to make an anatomical gift under section 2108.04 of 642
the Revised Code; 643

(2) Subject to division (C) of this section, by a record 644
signed by another individual acting at the direction of the 645
donor or other person authorized to make an anatomical gift 646
under section 2108.04 of the Revised Code if the donor or other 647
person is physically unable to sign; 648

(3) By a later-executed document of gift that amends a 649
previous anatomical gift or portion of an anatomical gift, 650
either expressly or by inconsistency; 651

(4) By any form of communication during a terminal illness 652
or injury addressed to at least two adults; 653

(5) By a parent who is reasonably available, if the donor 654
is an unemancipated minor who has died; 655

~~(6) If made in a will, by the manner provided for
amendment of wills or by any of the applicable means described
in divisions (B)(1) to (5) of this section.~~ 656
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(B) Subject to section 2108.08 of the Revised Code, an 659
anatomical gift made under section 2108.04 of the Revised Code 660
may be revoked by any of the following means: 661

(1) By a record signed by the donor or other person 662

authorized to make an anatomical gift under section 2108.04 of 663
the Revised Code; 664

(2) Subject to division (C) of this section, by a record 665
signed by another individual acting at the direction of the 666
donor or other person authorized to make an anatomical gift 667
under section 2108.04 of the Revised Code if the donor or other 668
person is physically unable to sign; 669

(3) By a later-executed document of gift that revokes a 670
previous anatomical gift or portion of an anatomical gift, 671
either expressly or by inconsistency; 672

(4) By any form of communication during a terminal illness 673
or injury addressed to at least two adults; 674

(5) By a parent who is reasonably available, if the donor 675
is an unemancipated minor who has died; 676

(6) By the destruction or cancellation of the document of 677
gift, or the portion of the document of gift, used to make the 678
gift, with the intent to revoke the gift; 679

~~(7) If made in a will, by the manner provided for 680
revocation of wills or by any of the applicable means described 681
in divisions (B) (1) to (6) of this section. 682~~

(C) A record signed pursuant to division (A) (2) or (B) (2) 683
of this section shall do both of the following: 684

(1) Be witnessed by a minimum of two adults who have 685
signed at the request of the donor or other person; 686

(2) State that it has been signed and witnessed as 687
provided in division (C) (1) of this section. 688

Sec. 2108.07. (A) An individual may refuse to make an 689

anatomical gift of the individual's body or part by doing any of 690
the following: 691

(1) Indicating a refusal in a record signed by either of 692
the following: 693

(a) The individual; 694

(b) Subject to division (B) of this section, another 695
individual acting at the direction of the individual, if the 696
individual is physically unable to sign. 697

~~(2) Indicating a refusal in the individual's will, whether 698
or not the will is admitted to probate or invalidated after the 699
individual's death; 700~~

~~(3) Indicating a refusal by any form of communication made 701
by the individual during the individual's terminal illness or 702
injury addressed to a minimum of two adults. 703~~

(B) A record signed pursuant to division (A) (1) (b) of this 704
section shall do both of the following: 705

(1) Be witnessed by at least two adults who have signed at 706
the request of the individual; 707

(2) State that it has been signed and witnessed as 708
provided in division (B) (1) of this section. 709

(C) An individual who has made a refusal may amend or 710
revoke the refusal by doing any of the following: 711

(1) Amending or revoking the refusal in the manner 712
provided in division (A) of this section for making a refusal; 713

(2) Subsequently making an anatomical gift pursuant to 714
section 2108.05 of the Revised Code that is inconsistent with 715
the refusal; 716

(3) Destroying or canceling the record evidencing the refusal, or the portion of the record used to make the refusal, with the intent to revoke the refusal.

(D) Except as provided in division (E) of this section, in the absence of an express, contrary indication by the individual set forth in the refusal, an individual's unrevoked refusal to make an anatomical gift of the individual's body or part bars all other persons from making an anatomical gift of the individual's body or part.

(E) The parent of a deceased unemancipated minor who is reasonably available may revoke a refusal made by the minor.

Sec. 2108.23. (A) (1) The bureau of motor vehicles shall develop and maintain a donor registry that identifies each individual who has agreed to make an anatomical gift by a designation on a driver's license or identification card as provided in division (A) (1) of section 2108.05 of the Revised Code. The registry shall be fully operational not later than July 1, 2002.

(2) Any person who provides to the bureau the form set forth in division ~~(D) (2)~~ (C) (2) of section 2133.07 of the Revised Code requesting to be included in the donor registry shall be included.

(B) The bureau shall maintain the registry in a manner that provides to organ procurement organizations, tissue banks, and eye banks immediate access to the information in the registry twenty-four hours a day and seven days a week.

(C) (1) The registrar of motor vehicles, in consultation with the director of health and the second chance trust fund advisory committee created under section 2108.35 of the Revised

Code, shall formulate proposed rules that specify all of the 746
following: 747

(a) The information to be included in the registry; 748

(b) A process, in accordance with division (B) of section 749
2108.06 of the Revised Code, for an individual to revoke the 750
individual's intent to make an anatomical gift and for updating 751
information in the registry; 752

(c) How the registry will be made available to organ 753
procurement organizations, tissue banks, and eye banks; 754

(d) Limitations on the use of and access to the registry; 755

(e) How information on organ, tissue, and eye donation 756
will be developed and disseminated to the public by the bureau 757
and the department of health; 758

(f) Anything else the registrar considers appropriate. 759

(2) In adopting the proposed rules under this division, 760
the registrar may consult with any person or entity that 761
expresses an interest in the matters to be dealt with in the 762
rules. 763

(3) Following formulation of the proposed rules, but not 764
later than January 1, 2002, the registrar shall adopt rules in 765
accordance with Chapter 119. of the Revised Code. 766

(D) The costs of developing and initially implementing the 767
registry shall be paid from the second chance trust fund created 768
in section 2108.34 of the Revised Code. 769

Sec. 2108.24. (A) As used in this section: 770

(1) "Advance health-care directive" means a durable power 771
of attorney for health care or a record signed by a prospective 772

donor containing the prospective donor's direction concerning a 773
health-care decision. 774

(2) ~~"Declaration" means a written document executed in~~ 775
~~accordance with section 2133.02 of the Revised Code.~~ 776

~~(3)~~ "Health care decision" means any decision regarding 777
the health care of the prospective donor. 778

(B) If a prospective donor has ~~a declaration or an~~ advance 779
health-care directive the terms of which are in conflict with 780
the express or implied terms of a potential anatomical gift with 781
regard to administration of measures necessary to ensure the 782
medical suitability of a part for transplantation or therapy and 783
the prospective donor is capable of resolving the conflict, 784
subject to division (G) of this section, the prospective donor's 785
attending physician shall confer with the prospective donor to 786
resolve the conflict. 787

(C) If a prospective donor has ~~a declaration or an~~ advance 788
health-care directive the terms of which are in conflict with 789
the express or implied terms of a potential anatomical gift with 790
regard to administration of measures necessary to ensure the 791
medical suitability of a part for transplantation or therapy and 792
the prospective donor is incapable of resolving the conflict, 793
one of the following shall apply depending on the circumstances: 794

(1) If the prospective donor has an agent, the agent 795
shall, subject to division (G) of this section, act for the 796
prospective donor to resolve the conflict. 797

(2) If the prospective donor does not have an agent, the 798
individual or class of individuals determined in the following 799
descending order of priority and subject to divisions (D), (E), 800
(F), and (G) of this section shall act for the prospective donor 801

to resolve the conflict:	802
(a) The prospective donor's surviving spouse;	803
(b) The prospective donor's surviving adult children;	804
(c) The prospective donor's surviving parent or parents;	805
(d) The prospective donor's surviving adult siblings;	806
(e) The prospective donor's surviving adult grandchildren;	807
(f) The prospective donor's surviving grandparent or grandparents;	808 809
(g) A surviving adult who exhibited special care and concern for the prospective donor;	810 811
(h) The prospective donor's guardians of the person;	812
(i) The persons, other than those in divisions (C) (2) (a) to (h) of this section, to whom the prospective donor has assigned the right of disposition for the prospective donor's body pursuant to section 2108.70 of the Revised Code or who have the right of disposition for the prospective donor's body at the time of death as described in section 2108.81 of the Revised Code.	813 814 815 816 817 818 819
(D) If an appropriate individual entitled to resolve a conflict between the terms of a prospective donor's declaration or advance health-care directive and the express or implied terms of a potential anatomical gift as described in division (C) of this section is not reasonably available to resolve the conflict, is incapacitated, or declines to resolve the conflict, the next priority individual or class of individuals specified in that division is authorized to resolve the conflict.	820 821 822 823 824 825 826 827
(E) If at least one individual in a class of individuals	828

entitled to resolve a conflict between the terms of a 829
prospective donor's ~~declaration or~~ advance health-care directive 830
and the express or implied terms of a potential anatomical gift 831
is not reasonably available, is incapacitated, or declines to 832
resolve the conflict, the conflict shall be resolved by the 833
individual or individuals in the class who are reasonably 834
available, not incapacitated, and willing to resolve the 835
conflict. 836

(F) If individuals in a class of individuals determined in 837
accordance with division (C) (2) of this section disagree on how 838
a conflict between the terms of a prospective donor's 839
~~declaration or~~ advance health-care directive and the express or 840
implied terms of a potential anatomical gift should be resolved, 841
the opinion of the majority of the individuals who are 842
reasonably available, not incapacitated, and are willing to 843
resolve the conflict shall prevail. 844

(G) A conflict between the terms of a prospective donor's 845
~~declaration or~~ advance health-care directive and the express or 846
implied terms of a potential anatomical gift with regard to the 847
administration of measures necessary to ensure the medical 848
suitability of a part for transplantation or therapy shall be 849
resolved as expeditiously as possible. Information relevant to 850
the resolution of the conflict may be obtained from the 851
appropriate procurement organization and any other person 852
authorized to make an anatomical gift for the prospective donor 853
under section 2108.09 of the Revised Code. Before resolution of 854
the conflict, measures necessary to ensure the medical 855
suitability of the part shall not be withheld or withdrawn from 856
the prospective donor unless withholding or withdrawing the 857
measures is necessary for appropriate end-of-life care. 858

Sec. 2108.34. (A) There is hereby created in the state 859
treasury the second chance trust fund. The fund shall consist of 860
voluntary contributions deposited as provided in sections 861
4503.721, 4506.081, 4507.231, and 4507.501 of the Revised Code. 862
All investment earnings of the fund shall be credited to the 863
fund. 864

(B) The director of health shall use the money in the fund 865
only for the following purposes: 866

(1) Development and implementation of a campaign that 867
explains and promotes the second chance trust fund; 868

(2) Development and implementation of local and statewide 869
public education programs about organ, tissue, and eye donation, 870
including the informational material required to be provided 871
under sections 4506.081, 4507.231, and 4507.501 of the Revised 872
Code; 873

(3) Development and implementation of local and statewide 874
donor awareness programs in schools; 875

(4) Development and implementation of local and statewide 876
programs to recognize donor families; 877

(5) Development and distribution of materials promoting 878
organ, tissue, and eye donation; 879

(6) Cooperation with the Ohio Supreme Court, Ohio State 880
Bar Association, and law schools of this state to more 881
effectively educate attorneys about the donation of anatomical 882
gifts and to encourage them to assist their clients in donating 883
anatomical gifts through anatomical gift declarations, durable 884
powers of attorney for health care, ~~declarations as defined in~~ 885
~~section 2133.01 of the Revised Code, wills,~~ and any other 886
appropriate means; 887

(7) Cooperation with the state medical board, state	888
medical, osteopathic, and ophthalmological associations, and	889
colleges of medicine and osteopathic medicine in this state to	890
more effectively educate physicians about the donation of	891
anatomical gifts and to encourage them to assist their patients	892
in making declarations of anatomical gifts;	893
(8) Development of statewide hospital training programs to	894
encourage and facilitate compliance with sections 2108.14 and	895
2108.15 of the Revised Code;	896
(9) Reimbursement of the bureau of motor vehicles for the	897
administrative costs incurred in the performance of duties under	898
sections 4506.081, 4507.231, and 4507.501 of the Revised Code;	899
(10) Reimbursement of the department of health for	900
administrative costs incurred in the performance of duties under	901
this section and section 2108.35 of the Revised Code;	902
(11) Reimbursement of members of the second chance fund	903
advisory committee for actual and necessary expenses incurred in	904
the performance of official duties.	905
(C) The director shall make the materials developed under	906
division (B) (5) of this section available to other state	907
agencies.	908
(D) The director shall consider recommendations made by	909
the second chance trust fund advisory committee pursuant to	910
section 2108.35 of the Revised Code. The director shall	911
determine the appropriateness of and approve or disapprove	912
projects recommended by the advisory committee for funding and	913
approve or disapprove the disbursement of money from the second	914
chance trust fund.	915
Sec. 2111.10. (A) As used in this section, "developmental	916

disability" has the same meaning as in section 5123.01 of the Revised Code.

(B) Any appointment of a corporation as guardian shall apply to the estate only and not to the person, except that a when either of the following applies:

(1) A nonprofit corporation organized under the laws of this state and entitled to tax exempt status under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C.A. U.S.C. 501, as amended, that has a contract with the department of developmental disabilities to provide protective services may be appointed as a guardian of a person with a developmental disability and may serve as guardian pursuant to sections 5123.55 to 5123.59 of the Revised Code.

(2) A nonprofit corporation domiciled in this state and organized under the laws of this state and entitled to tax exempt status under section 501(a) of the "Internal Revenue Code of 1986," 100 Stat. 2085, 26 U.S.C. 501 may be appointed as a guardian of the person of an incompetent when certified by the probate court to receive such an appointment. The probate court shall certify that nonprofit corporation and any individual acting as a guardian on behalf of the nonprofit corporation upon meeting the requirements for serving as a guardian as prescribed by the supreme court in the Rules of Superintendence for the Courts of Ohio and the rules of court adopted by the probate court of the county exercising jurisdiction over the incompetent. A nonprofit corporation appointed as guardian of the person of an incompetent shall not be the residential caregiver, health care provider, or employer of the incompetent.

Sec. 2111.50. (A) (1) At all times, the probate court is the superior guardian of wards who are subject to its

jurisdiction, and all guardians who are subject to the 947
jurisdiction of the court shall obey all orders of the court 948
that concern their wards or guardianships. 949

(2) (a) Subject to divisions (A) (2) (b) and (c) of this 950
section, the control of a guardian over the person, the estate, 951
or both of the guardian's ward is limited to the authority that 952
is granted to the guardian by the Revised Code, relevant 953
decisions of the courts of this state, and orders or rules of 954
the probate court. 955

(b) Except for the powers specified in division (E) of 956
this section and unless otherwise provided in or inconsistent 957
with another section of the Revised Code, the probate court may 958
confer upon a guardian any power that this section grants to the 959
probate court in connection with wards. Nothing in this section 960
is intended to create or imply a duty upon a guardian to apply 961
for authority to exercise any power authorized in this section. 962
No inference of impropriety or liability of the guardian or 963
others associated with the guardian shall arise as a result of a 964
guardian not applying for authority to exercise a power 965
authorized in this section. 966

(c) For good cause shown, the probate court may limit or 967
deny, by order or rule, any power that is granted to a guardian 968
by a section of the Revised Code or relevant decisions of the 969
courts of this state. 970

(B) In connection with any person whom the probate court 971
has found to be an incompetent or a minor subject to 972
guardianship and for whom the court has appointed a guardian, 973
the court has, subject to divisions (C) to (E) of this section, 974
all the powers that relate to the person and estate of the ward 975
and that the ward could exercise if present and not a minor or 976

under a disability, except the power to make or revoke a will.	977
These powers include, but are not limited to, the power to do	978
any of the following:	979
(1) Convey or, release, or disclaim the present,	980
contingent, or expectant interests in real or personal property	981
of the ward, including, but not limited to, dower and any right	982
of survivorship incident to a <u>transfer on death designation,</u>	983
<u>payable on death designation,</u> survivorship tenancy, joint	984
tenancy, or tenancy by the entirety;	985
(2) Exercise or, release, or disclaim powers as a trustee,	986
personal representative, custodian for a minor, guardian, or	987
donee of a power of appointment;	988
(3) Enter <u>Subject to division (B)(4) of this section,</u>	989
<u>enter into contracts, or create revocable trusts of property of</u>	990
<u>the estate of the ward,</u> that may not extend beyond the minority,	991
disability, or life of the ward;	992
(4) <u>Create, amend, or revoke revocable trusts of property</u>	993
<u>of the estate of the ward that may extend beyond the minority,</u>	994
<u>disability, or life of the ward;</u>	995
<u>(5) Exercise options to purchase securities or other</u>	996
property;	997
(5) <u>(6) Exercise rights to elect options under annuities</u>	998
and insurance policies, <u>including changing beneficiaries of</u>	999
<u>insurance policies, retirement plans, individual retirement</u>	1000
<u>accounts, and annuities,</u> and to surrender an annuity or	1001
insurance policy for its cash value;	1002
(6) <u>(7) Exercise the right to an elective share in the</u>	1003
estate of the deceased spouse of the ward pursuant to section	1004
2106.08 <u>Chapter 2106.</u> of the Revised Code;	1005

~~(7)~~ (8) Make gifts, in trust or otherwise, to relatives of 1006
the ward and, consistent with any prior pattern of the ward of 1007
giving to charities or of providing support for friends, to 1008
charities and friends of the ward. 1009

(C) Except for the powers specified in division (D) of 1010
this section, all powers of the probate court that are specified 1011
in this chapter and that relate either to any person whom it has 1012
found to be an incompetent or a minor subject to guardianship 1013
and for whom it has appointed a guardian and all powers of a 1014
guardian that relate to the guardian's ward or guardianship as 1015
described in division (A) (2) of this section, shall be exercised 1016
in the best interest, as determined in the court's or guardian's 1017
judgment, of the following: 1018

(1) The ward whom the probate court has found to be an 1019
incompetent or a minor subject to guardianship; 1020

(2) The dependents of the ward; 1021

(3) The members of the household of the ward. 1022

(D) If the court is to exercise or direct the exercise, 1023
pursuant to division (B) of this section, of the power to make 1024
gifts in trust or otherwise, the following conditions shall 1025
apply: 1026

(1) The exercise of the particular power shall not impair 1027
the financial ability of the estate of the ward whom the probate 1028
court has found to be an incompetent or a minor subject to 1029
guardianship and for whom the court has appointed a guardian, to 1030
provide for the ward's foreseeable needs for maintenance and 1031
care; 1032

(2) If applicable, the court shall consider any of the 1033
following: 1034

(a) The estate, income, and other tax advantages of the 1035
exercise of a particular power to the estate of a ward whom the 1036
probate court has found to be an incompetent or a minor subject 1037
to guardianship and for whom the court has appointed a guardian; 1038

(b) Any pattern of giving of, or any pattern of support 1039
provided by, the ward prior to the ward's incompetence; 1040

(c) The disposition of property made by the ward's will or 1041
revocable trust; 1042

(d) If there is no knowledge of a will or revocable trust 1043
of the ward, the ward's prospective heirs; 1044

(e) Any relevant and trustworthy statements of the ward, 1045
whether established by hearsay or other evidence. 1046

(E) (1) The probate court shall cause notice as described 1047
in division (E) (2) of this section to be given and a hearing to 1048
be conducted prior to its exercise or direction of the exercise 1049
of any of the following powers pursuant to division (B) of this 1050
section: 1051

(a) The exercise ~~or~~ release, or disclaimer of powers as a 1052
donee of a power of appointment; 1053

(b) Unless the amount of the gift is no more than one 1054
thousand dollars, the making of a gift, in trust or otherwise; 1055

(c) The power to create, amend, or revoke a revocable 1056
trust as described in division (B) (4) of this section; 1057

(d) The power to exercise rights to elect options under 1058
annuities and insurance policies, including changing 1059
beneficiaries of insurance policies, retirement plans, 1060
individual retirement accounts, and annuities, and to surrender 1061
an annuity or insurance policy for its cash value, as described 1062

in division (B) (6) of this section. 1063

(2) The notice required by division (E) (1) of this section 1064
shall be given to the following persons: 1065

(a) Unless a guardian of a ward has applied for the 1066
exercise of a power specified in division (E) (1) of this 1067
section, to the guardian; 1068

(b) To the ward whom the probate court has found to be an 1069
incompetent or a minor subject to guardianship; 1070

(c) If known, to a guardian who applied for the exercise 1071
of a power specified in division (E) (1) of this section, to the 1072
prospective heirs of the ward whom the probate court has found 1073
to be an incompetent or a minor subject to guardianship under 1074
section 2105.06 of the Revised Code, to the beneficiaries under 1075
the last known will of the ward or under an existing revocable 1076
trust of the ward, and to any person who has a legal interest in 1077
property that may be divested or limited as the result of the 1078
exercise of a power specified in division (E) (1) of this 1079
section; 1080

(d) To all of the following as applicable: 1081

(i) The heirs at law and next of kin of the ward; 1082

(ii) The beneficiaries under an existing will or revocable 1083
trust of the ward; 1084

(iii) The beneficiaries of any insurance policies, 1085
retirement plans, individual retirement accounts, and annuities 1086
owned by the ward; 1087

(iv) The beneficiaries under any proposed revocable trust 1088
and the proposed beneficiaries under any changes in the 1089
designation of beneficiaries of any insurance policies, 1090

retirement plans, individual retirement accounts, or annuities 1091
as described in division (E) (2) (d) (iii) of this section. 1092

(e) To any other persons the court orders. 1093

(F) When considering any question related to, and issuing 1094
orders for, medical or surgical care or treatment of 1095
incompetents or minors subject to guardianship, the probate 1096
court has full parens patriae powers unless otherwise provided 1097
by a section of the Revised Code. 1098

Sec. 2133.07. (A) As used in this section+ 1099

~~(1) "Anatomical gift" has the same meaning as in section-~~ 1100
~~2108.01 of the Revised Code.~~ 1101

~~(2),~~ "DNR identification" has the same meaning as in 1102
section 2133.21 of the Revised Code. 1103

(B) A printed form of a declaration may be sold or 1104
otherwise distributed in this state for use by adults who are 1105
not advised by an attorney. By use of a printed form of that 1106
nature, a declarant may authorize the use or continuation, or 1107
the withholding or withdrawal, of life-sustaining treatment 1108
should the declarant be in a terminal condition, a permanently 1109
unconscious state, or either a terminal condition or a 1110
permanently unconscious state, may authorize the withholding or 1111
withdrawal of nutrition or hydration should the declarant be in 1112
a permanently unconscious state as described in division (A) (3) 1113
(a) of section 2133.02 of the Revised Code, and may designate 1114
one or more persons who are to be notified by the declarant's 1115
attending physician at any time that life-sustaining treatment 1116
would be withheld or withdrawn pursuant to the declaration. The 1117
printed form shall not be used as an instrument for granting any 1118
other type of authority or for making any other type of 1119

designation, except that the printed form may be used as a DNR 1120
identification if the declarant specifies on the form that the 1121
declarant wishes to use it as a DNR identification ~~and except as~~ 1122
~~provided in division (C) of this section.~~ 1123

~~(C) A printed form of a declaration under division (B) of~~ 1124
~~this section shall include, before the signature of the~~ 1125
~~declarant or another individual at the direction of the~~ 1126
~~declarant, statements that conform substantially to the~~ 1127
~~following form:~~ 1128

~~"ANATOMICAL GIFT (optional)"~~ 1129

~~Upon my death, the following are my directions regarding~~ 1130
~~donation of all or part of my body:~~ 1131

~~In the hope that I may help others upon my death, I hereby~~ 1132
~~give the following body parts:~~ 1133

~~_____~~ 1134

~~_____~~ 1135

~~for any purpose authorized by law: transplantation, therapy,~~ 1136
~~research, or education.~~ 1137

~~If I do not indicate a desire to donate all or part of my~~ 1138
~~body by filling in the lines above, no presumption is created~~ 1139
~~about my desire to make or refuse to make an anatomical gift."~~ 1140

~~(D)~~ (1) A printed form of a declaration under division (B) 1141
of this section shall include, as a separate page or as a 1142
portion of a page that can be detached from the declaration, a 1143
donor registry enrollment form that permits the donor to be 1144
included in the donor registry created under section 2108.23 of 1145
the Revised Code. 1146

(2) The donor registry enrollment form may be in any form 1147
that complies with the requirements of division (B) of section 1148
2108.05 of the Revised Code. On completion, the form shall be 1149
forwarded to the bureau of motor vehicles. 1150

Sec. 2701.10. (A) Any voluntarily retired judge, or any 1151
judge who is retired under Section 6 of Article IV, Ohio 1152
Constitution, may register with the clerk of any court of common 1153
pleas, municipal court, or county court for the purpose of 1154
receiving referrals for adjudication of civil actions or 1155
proceedings, and submissions for determination of specific 1156
issues or questions of fact or law in any civil action or 1157
proceeding, pending in the court. There is no limitation upon 1158
the number, type, or location of courts with which a retired 1159
judge may register under this division. Upon registration with 1160
the clerk of any court under this division, the retired judge is 1161
eligible to receive referrals and submissions from that court, 1162
in accordance with this section. Each court of common pleas, 1163
municipal court, and county court shall maintain an index of all 1164
retired judges who have registered with the clerk of that court 1165
pursuant to this division and shall make the index available to 1166
any person, upon request. 1167

(B) (1) The parties to any civil action or proceeding 1168
pending in any court of common pleas, municipal court, or county 1169
court unanimously may choose to have the action or proceeding in 1170
its entirety referred for adjudication, or to have any specific 1171
issue or question of fact or law in the action or proceeding 1172
submitted for determination, to a judge of their choosing who 1173
has registered with the clerk of that court in accordance with 1174
division (A) of this section. 1175

If the parties unanimously do choose to have a referral or 1176

submission made to a retired judge pursuant to this section, all 1177
of the parties to the action or proceeding shall enter into a 1178
written agreement with the retired judge that does all of the 1179
following: 1180

(a) Designates the retired judge to whom the referral or 1181
submission is to be made; 1182

(b) If a submission is to be made, describes in detail the 1183
specific issue or question to be submitted; 1184

(c) Indicates either of the following: 1185

(i) That the action or proceeding in its entirety is to be 1186
referred to, and is to be tried, determined, and adjudicated by 1187
that retired judge; 1188

(ii) Indicates that the issue or question is to be 1189
submitted, and is to be tried and determined by that retired 1190
judge. 1191

(d) Indicates that the parties will assume the 1192
responsibility for providing facilities, equipment, and 1193
personnel reasonably needed by the retired judge during ~~his~~ the 1194
retired judge's consideration of the action or proceeding and 1195
will pay all costs arising out of the provision of the 1196
facilities, equipment, and personnel; 1197

(e) Identifies an amount of compensation to be paid by the 1198
parties to the retired judge for ~~his~~ the retired judge's 1199
services and the manner of payment of the compensation; 1200

(f) Indicates a procedure for terminating the agreement 1201
with the retired judge. 1202

(2) In any case described in division (B)(1) of this 1203
section, the agreement shall be filed with the clerk of the 1204

court or the judge before whom the action or proceeding is 1205
pending. ~~Upon the filing of the agreement, the~~ The judge before 1206
whom the action or proceeding is pending shall address the 1207
agreement within fourteen days after its filing. That judge, by 1208
journal entry, ~~shall may,~~ at the judge's discretion, order the 1209
referral or submission in accordance with the agreement. No 1210
referral or submission shall be made to a retired judge under 1211
this section, unless the parties to the action or proceeding 1212
unanimously choose to have the referral or submission made, 1213
enter into an agreement of the type described in division (B) (1) 1214
of this section with the retired judge, and file the agreement 1215
in accordance with this division. 1216

(C) Upon the entry of an order of referral or submission 1217
in accordance with division (B) (2) of this section, the retired 1218
judge to whom the referral or submission is made, relative to 1219
the action or proceeding referred or the issue or question 1220
submitted, shall have all of the powers, duties, and authority 1221
of an active judge of the court in which the action or 1222
proceeding is pending. The court in which the action or 1223
proceeding is pending is not required to provide the retired 1224
judge with court or other facilities, equipment, or personnel 1225
during ~~his~~ the retired judge's consideration of the action, 1226
proceeding, issue, or question. The retired judge shall not 1227
receive any compensation, other than that agreed to by the 1228
parties and the retired judge, for ~~his~~ the retired judge's 1229
services during ~~his~~ consideration of the action, proceeding, 1230
issue, or question. 1231

(D) (1) A retired judge to whom a referral is made under 1232
this section shall try all of the issues in the action or 1233
proceeding, shall prepare relevant findings of fact and 1234
conclusions of law, and shall enter a judgment in the action or 1235

proceeding in the same manner as if ~~he~~ the retired judge were an 1236
active judge of the court. A retired judge to whom a submission 1237
is made under this section shall try the specific issue or 1238
question submitted, shall prepare relevant findings of fact or 1239
conclusions of law, shall make a determination on the issue or 1240
question submitted, and shall file the findings, conclusions, 1241
and determination with the clerk of the court in which the 1242
action or proceeding is pending. Any judgment entered, and any 1243
finding of fact, conclusion of law, or determination of an issue 1244
or question made, by a retired judge in accordance with this 1245
section shall have the same force and effect as if it had been 1246
entered or made by an active judge of the court, and any appeal 1247
from the judgment, finding, conclusion, or determination shall 1248
be made as if the judgment had been entered, or the finding, 1249
conclusion, or determination had been made, by an active judge 1250
of the court. 1251

(2) Upon conclusion of the referred action or proceeding 1252
or determination of the submitted issue or question, 1253
jurisdiction is returned to the referring judge. 1254

(E) Any judge who registers with any court in accordance 1255
with division (A) of this section may have ~~his~~ the judge's name 1256
removed from the index of registered retired judges maintained 1257
by that court at any time after the registration. On and after 1258
the date of removal of the name of a retired judge from the 1259
index of a court, the retired judge is not eligible under this 1260
section to receive referrals or submissions from that court. 1261

(F) This section does not affect, and shall not be 1262
construed as affecting, the provisions of section 141.16 of the 1263
Revised Code. This section does not apply to any action or 1264
proceeding pending in a small claims division of a municipal 1265

court or county court. 1266

Sec. 2717.01. As used in this chapter: 1267

(A) "Application" means, as context requires, an 1268
application under section 2717.02, 2717.04, or 2717.13 of the 1269
Revised Code. 1270

(B) "Applicant" means, as context requires, a person who 1271
makes the filing under section 2717.02 or 2717.04 of the Revised 1272
Code, or the minor on whose behalf a filing is made under 1273
section 2717.13 of the Revised Code. 1274

(C) "Conform" means to make a person's legal name 1275
consistent in all official identity documents by correcting a 1276
misspelling, inconsistency, or other error in an official 1277
identity document. 1278

(D) "Official identity document" means a birth record, 1279
marriage record, divorce decree, driver's license, state issued 1280
identification card, social security card with the social 1281
security number redacted, passport, or any other official 1282
government-issued document required or commonly used to verify a 1283
person's identity. 1284

(E) "Sexually oriented offense" and "child-victim oriented 1285
offense" have the same meanings as in section 2950.01 of the 1286
Revised Code. 1287

~~**Sec. 2717.01-2717.02.** (A) (1) A person desiring a to change~~ 1288
~~of the person's name may file an application in the probate~~ 1289
~~court of the county in which the person resides. The application~~ 1290
~~shall set forth that the applicant has been a bona fide resident~~ 1291
~~of that county for at least one year prior to the filing of the~~ 1292
~~application, the cause for which the change of name is sought,~~ 1293
~~and the requested new name. The application shall require the~~ 1294

~~applicant to state whether the applicant has been convicted of, 1295
pleaded guilty to, or been adjudicated a delinquent child for 1296
identity fraud or has a duty to comply with section 2950.04 or 1297
2950.041 of the Revised Code because the applicant was convicted 1298
of, pleaded guilty to, or was adjudicated a delinquent child for 1299
having committed a sexually oriented offense or a child victim- 1300
oriented offense. 1301~~

~~(2) Except as provided in division (A) (4) of this section, 1302
notice of the application shall be given once by publication in 1303
a newspaper of general circulation in the county at least thirty 1304
days before the hearing on the application. The notice shall set 1305
forth the court in which the application was filed, the case 1306
number, and the date and time of the hearing. 1307~~

~~(3) Except as provided by division (C) of this section, 1308
upon proof that proper notice was given or that notice was 1309
waived under division (A) (4) of this section and proof that the 1310
facts set forth in the application show reasonable and proper 1311
cause for changing the name of the applicant, the court may 1312
order the change of name. 1313~~

~~(4) If an applicant for a change of name submits to the 1314
court, along with the application described in division (A) (1) 1315
of this section, satisfactory proof that the publication of the 1316
notice under division (A) (2) of this section would jeopardize 1317
the applicant's personal safety, both of the following apply: 1318~~

~~(a) The court shall waive the notice requirement. 1319~~

~~(b) If the court orders the change of name under division 1320
(A) (3) of this section, the court shall order the records of the 1321
change of name proceeding to be sealed and to be opened only by 1322
order of the court for good cause shown or at the request of the 1323~~

~~applicant for any reason.~~ 1324

~~(B) An application for change of name may be made on
behalf of a minor by either of the minor's parents, a legal
guardian, or a guardian ad litem. When application is made on
behalf of a minor, in addition to the notice and proof required
pursuant to division (A) of this section, the consent of both
living, legal parents of the minor shall be filed, or notice of
the hearing shall be given to the parent or parents not
consenting by certified mail, return receipt requested. If there
is no known father of the minor, the notice shall be given to
the person who the mother of the minor alleges to be the father.
If no father is so alleged, or if either parent or the address
of either parent is unknown, notice pursuant to division (A) of
this section shall be sufficient as to the father or parent.~~ 1325
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~~Any additional notice required by this division may be
waived in writing by any person entitled to the notice.~~ 1338
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~~(C) (1) The court shall not order a change of name under
division (A) of this section if the person applying for a change
of name or for whom the application for a change of name is made
has a duty to comply with section 2950.04 or 2950.041 of the
Revised Code because the applicant or the person on whose behalf
the application for a change of name is made was convicted of,
pleaded guilty to, or was adjudicated a delinquent child for
having committed a sexually oriented offense or a child victim-
oriented offense.~~ 1340
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~~(2) The court shall not order a change of name under
division (A) of this section if the person applying for a change
of name or for whom the application for a change of name is made
has pleaded guilty to, been convicted of, or been adjudicated a
delinquent child for committing a violation of section 2913.49-~~ 1349
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~~of the Revised Code unless the guilty plea, conviction, or
adjudication has been reversed on appeal.~~ 1354
1355

~~(3) As used in this division, "sexually oriented offense"
and "child victim oriented offense" have the same meanings as in
section 2950.01 of the Revised Code.~~ 1356
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Sec. 2717.03. Subject to sections 2717.07 and 2717.19 of 1359
the Revised Code, an application for a change of name shall set 1360
forth all of the following: 1361

(A) That the applicant has been a bona fide resident of 1362
the county for at least sixty days prior to the filing of the 1363
application. 1364

(B) The reason for which the change of name is sought. 1365

(C) The requested new name. 1366

Sec. 2717.04. A person desiring to conform the person's 1367
legal name on an official identity document may file an 1368
application in the probate court of the county in which the 1369
person resides. 1370

Sec. 2717.05. Subject to sections 2717.07 and 2717.19 of 1371
the Revised Code, an application to conform a legal name shall 1372
set forth all of the following: 1373

(A) That the applicant has been a bona fide resident of 1374
the county where the applicant is filing for at least sixty days 1375
prior to the filing of the application. 1376

(B) An explanation of the misspelling, inconsistency, or 1377
other error in the name. 1378

(C) A description of the correction sought to conform the 1379
name on all official identity documents. 1380

Sec. 2717.06. (A) An application shall be supported by an affidavit verifying all of the following: 1381
1382

(1) The applicant's residency in the county for a period of at least sixty days; 1383
1384

(2) That the application is not made for the purpose of evading any creditors or other obligations; 1385
1386

(3) That the applicant is not a debtor in any currently pending bankruptcy proceeding; 1387
1388

(4) That all of the documentary evidence submitted under section 2717.07 of the Revised Code with the application is true, accurate, and complete; 1389
1390
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(5) Any other information the court may require. 1392

(B) The affidavit supporting a legal name change application shall also verify that the applicant has not been convicted of, pleaded guilty to, or been adjudicated a delinquent child for identity fraud or does not have a duty to comply with section 2950.04 or 2950.041 of the Revised Code because the applicant was convicted of, pleaded guilty to, or was adjudicated a delinquent child for having committed a sexually oriented offense or a child-victim oriented offense. 1393
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Sec. 2717.07. A probate court by local rule or order may require an applicant to submit a copy of any or all of the applicant's official identity documents or other documentary evidence relating to the applicant's identity that the court deems relevant to the application. 1401
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Sec. 2717.08. The probate court may hold a hearing on an application. Except as provided in sections 2717.11 and 2717.14 of the Revised Code, if the court requires a hearing, it shall 1406
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set the manner, scope, and content of the hearing notice the 1409
applicant must serve. 1410

Sec. 2717.09. Except as provided under section 2717.16 of 1411
the Revised Code, upon proof that the facts set forth in the 1412
application show reasonable and proper cause for changing the 1413
name of the applicant and, if applicable, upon proof that proper 1414
notice was served, the court may order the change of name. 1415

Sec. 2717.10. Upon proof that the facts set forth in the 1416
application show that a misspelling, inconsistency, or other 1417
error of the applicant's legal name on an official identity 1418
document exists, and that reasonable and proper cause exists for 1419
issuing an order that resolves the discrepancy and conforms the 1420
applicant's legal name, the court may issue an order to conform 1421
the name of the person. 1422

Sec. 2717.11. If an applicant submits to the court, along 1423
with the application, satisfactory proof that open records of 1424
the name change or conformity, or publication of the hearing 1425
notice under section 2717.08 of the Revised Code, would 1426
jeopardize the applicant's personal safety, both of the 1427
following apply: 1428

(A) The court shall waive the hearing notice requirement. 1429

(B) If the court orders the change of name under section 1430
2717.09 of the Revised Code or the name conformity under section 1431
2717.10 of the Revised Code, the court shall order the records 1432
of the proceeding to be sealed and to be opened only by order of 1433
the court for good cause shown or at the request of the 1434
applicant for any reason. 1435

Sec. 2717.13. An application for change of name under 1436
section 2717.02 of the Revised Code or to conform a name under 1437

section 2717.04 of the Revised Code may be made on behalf of a 1438
minor by either of the minor's parents, a legal guardian, a 1439
legal custodian, or a guardian ad litem. 1440

Sec. 2717.14. (A) When an application is made on behalf of 1441
a minor, in addition to the proof required under sections 1442
2717.03 or 2717.05 of the Revised Code and, if applicable, proof 1443
of the notice given under section 2717.08 of the Revised Code, 1444
the consent of both living, legal parents of the minor shall be 1445
filed, or notice of the hearing shall be given to the parent or 1446
parents not consenting by certified mail, return receipt 1447
requested. 1448

(B) If there is no known father of the minor, the notice 1449
shall be given to the person who the mother of the minor alleges 1450
to be the father. 1451

(C) If no father is so alleged, or if either parent or the 1452
address of either parent is unknown, notice by publication in a 1453
newspaper of general circulation in the county at least thirty 1454
days before the hearing shall be sufficient as to the father or 1455
parent. 1456

(D) Any additional notice required by this section may be 1457
waived in writing by any person entitled to the notice. 1458

Sec. 2717.16. (A) The court shall not order a change of 1459
name under section 2717.09 of the Revised Code if the person 1460
applying for a change of name has a duty to comply with section 1461
2950.04 or 2950.041 of the Revised Code because the applicant 1462
was convicted of, pleaded guilty to, or was adjudicated a 1463
delinquent child for having committed a sexually oriented 1464
offense or a child-victim oriented offense. 1465

(B) The court shall not order a change of name under 1466

section 2717.09 of the Revised Code if the person applying for a 1467
change of name has pleaded guilty to, been convicted of, or been 1468
adjudicated a delinquent child for committing a violation of 1469
section 2913.49 of the Revised Code unless the guilty plea, 1470
conviction, or adjudication has been reversed on appeal. 1471

Sec. 2717.18. An action to conform the legal name of a 1472
person under section 2717.04 of the Revised Code shall not be 1473
permitted in lieu of either of the following: 1474

(A) Correction of a birth record under section 3705.15 of 1475
the Revised Code; 1476

(B) Changing a legal name to a name that is not used in 1477
any existing official identity documents. 1478

Sec. 2717.19. (A) On receipt of an application, the 1479
probate court may order a criminal records check. 1480

(B) Any fee required for the criminal records check shall 1481
be paid by the applicant. 1482

Sec. 2945.37. (A) As used in sections 2945.37 to 2945.402 1483
of the Revised Code: 1484

(1) "Prosecutor" means a prosecuting attorney or a city 1485
director of law, village solicitor, or similar chief legal 1486
officer of a municipal corporation who has authority to 1487
prosecute a criminal case that is before the court or the 1488
criminal case in which a defendant in a criminal case has been 1489
found incompetent to stand trial or not guilty by reason of 1490
insanity. 1491

(2) "Examiner" means either of the following: 1492

(a) A psychiatrist or a licensed clinical psychologist who 1493
satisfies the criteria of division (I) of section 5122.01 of the 1494

Revised Code or is employed by a certified forensic center 1495
designated by the department of mental health and addiction 1496
services to conduct examinations or evaluations. 1497

(b) For purposes of a separate intellectual disability 1498
evaluation that is ordered by a court pursuant to division ~~(H)~~ 1499
(I) of section 2945.371 of the Revised Code, a psychologist 1500
designated by the director of developmental disabilities 1501
pursuant to that section to conduct that separate intellectual 1502
disability evaluation. 1503

(3) "Nonsecured status" means any unsupervised, off- 1504
grounds movement or trial visit from a hospital or institution, 1505
or any conditional release, that is granted to a person who is 1506
found incompetent to stand trial and is committed pursuant to 1507
section 2945.39 of the Revised Code or to a person who is found 1508
not guilty by reason of insanity and is committed pursuant to 1509
section 2945.40 of the Revised Code. 1510

(4) "Unsupervised, off-grounds movement" includes only 1511
off-grounds privileges that are unsupervised and that have an 1512
expectation of return to the hospital or institution on a daily 1513
basis. 1514

(5) "Trial visit" means a patient privilege of a longer 1515
stated duration of unsupervised community contact with an 1516
expectation of return to the hospital or institution at 1517
designated times. 1518

(6) "Conditional release" means a commitment status under 1519
which the trial court at any time may revoke a person's 1520
conditional release and order the rehospitalization or 1521
reinstitutionalization of the person as described in division 1522
(A) of section 2945.402 of the Revised Code and pursuant to 1523

which a person who is found incompetent to stand trial or a 1524
person who is found not guilty by reason of insanity lives and 1525
receives treatment in the community for a period of time that 1526
does not exceed the maximum prison term or term of imprisonment 1527
that the person could have received for the offense in question 1528
had the person been convicted of the offense instead of being 1529
found incompetent to stand trial on the charge of the offense or 1530
being found not guilty by reason of insanity relative to the 1531
offense. 1532

(7) "Licensed clinical psychologist," "mentally ill person 1533
subject to court order," and "psychiatrist" have the same 1534
meanings as in section 5122.01 of the Revised Code. 1535

(8) "Person with an intellectual disability subject to 1536
institutionalization by court order" has the same meaning as in 1537
section 5123.01 of the Revised Code. 1538

(B) In a criminal action in a court of common pleas, a 1539
county court, or a municipal court, the court, prosecutor, or 1540
defense may raise the issue of the defendant's competence to 1541
stand trial. If the issue is raised before the trial has 1542
commenced, the court shall hold a hearing on the issue as 1543
provided in this section. If the issue is raised after the trial 1544
has commenced, the court shall hold a hearing on the issue only 1545
for good cause shown or on the court's own motion. 1546

(C) The court shall conduct the hearing required or 1547
authorized under division (B) of this section within thirty days 1548
after the issue is raised, unless the defendant has been 1549
referred for evaluation in which case the court shall conduct 1550
the hearing within ten days after the filing of the report of 1551
the evaluation or, in the case of a defendant who is ordered by 1552
the court pursuant to division ~~(H)~~(I) of section 2945.371 of 1553

the Revised Code to undergo a separate intellectual disability 1554
evaluation conducted by a psychologist designated by the 1555
director of developmental disabilities, within ten days after 1556
the filing of the report of the separate intellectual disability 1557
evaluation under that division. A hearing may be continued for 1558
good cause. 1559

(D) The defendant shall be represented by counsel at the 1560
hearing conducted under division (C) of this section. If the 1561
defendant is unable to obtain counsel, the court shall appoint 1562
counsel under Chapter 120. of the Revised Code or under the 1563
authority recognized in division (C) of section 120.06, division 1564
(E) of section 120.16, division (E) of section 120.26, or 1565
section 2941.51 of the Revised Code before proceeding with the 1566
hearing. 1567

(E) The prosecutor and defense counsel may submit evidence 1568
on the issue of the defendant's competence to stand trial. A 1569
written report of the evaluation of the defendant may be 1570
admitted into evidence at the hearing by stipulation, but, if 1571
either the prosecution or defense objects to its admission, the 1572
report may be admitted under sections 2317.36 to 2317.38 of the 1573
Revised Code or any other applicable statute or rule. 1574

(F) The court shall not find a defendant incompetent to 1575
stand trial solely because the defendant is receiving or has 1576
received treatment as a voluntary or involuntary mentally ill 1577
patient under Chapter 5122. or a voluntary or involuntary 1578
resident with an intellectual disability under Chapter 5123. of 1579
the Revised Code or because the defendant is receiving or has 1580
received psychotropic drugs or other medication, even if the 1581
defendant might become incompetent to stand trial without the 1582
drugs or medication. 1583

(G) A defendant is presumed to be competent to stand trial. If, after a hearing, the court finds by a preponderance of the evidence that, because of the defendant's present mental condition, the defendant is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the defendant's defense, the court shall find the defendant incompetent to stand trial and shall enter an order authorized by section 2945.38 of the Revised Code.

(H) Municipal courts shall follow the procedures set forth in sections 2945.37 to 2945.402 of the Revised Code. Except as provided in section 2945.371 of the Revised Code, a municipal court shall not order an evaluation of the defendant's competence to stand trial or the defendant's mental condition at the time of the commission of the offense to be conducted at any hospital operated by the department of mental health and addiction services. Those evaluations shall be performed through community resources including, but not limited to, certified forensic centers, court probation departments, and community mental health services providers. All expenses of the evaluations shall be borne by the legislative authority of the municipal court, as defined in section 1901.03 of the Revised Code, and shall be taxed as costs in the case. If a defendant is found incompetent to stand trial or not guilty by reason of insanity, a municipal court may commit the defendant as provided in sections 2945.38 to 2945.402 of the Revised Code.

Sec. 2945.371. (A) If the issue of a defendant's competence to stand trial is raised or if a defendant enters a plea of not guilty by reason of insanity, the court may order one or more evaluations of the defendant's present mental condition or, in the case of a plea of not guilty by reason of insanity, of the defendant's mental condition at the time of the

offense charged. An examiner shall conduct the evaluation and 1615
the evaluation may be conducted through electronic means. 1616

(B) If the court orders more than one evaluation under 1617
division (A) of this section, the prosecutor and the defendant 1618
may recommend to the court an examiner whom each prefers to 1619
perform one of the evaluations. If a defendant enters a plea of 1620
not guilty by reason of insanity and if the court does not 1621
designate an examiner recommended by the defendant, the court 1622
shall inform the defendant that the defendant may have 1623
independent expert evaluation and that, if the defendant is 1624
unable to obtain independent expert evaluation, it will be 1625
obtained for the defendant at public expense if the defendant is 1626
indigent. 1627

(C) (1) If the court orders an evaluation under division 1628
(A) of this section, the defendant shall be available at the 1629
times and places established by the examiners who are to conduct 1630
the evaluation. The court may order a defendant who has been 1631
released on bail or recognizance to submit to an evaluation 1632
under this section. ~~If~~ 1633

(2) If a defendant who has been released on bail or 1634
recognizance refuses to submit to a complete evaluation, the 1635
court may amend the conditions of bail or recognizance and order 1636
the sheriff to take the defendant into custody and, except as 1637
provided in division (E) of this section, deliver the defendant 1638
to a center, program, or facility operated or certified by the 1639
department of mental health and addiction services or the 1640
department of developmental disabilities where the defendant may 1641
be held for evaluation for a reasonable period of time not to 1642
exceed twenty days. 1643

(D) (1) A defendant who has not been released on bail or 1644

recognizance may be evaluated at the defendant's place of 1645
detention. ~~Upon~~ 1646

(2) Upon the request of the examiner, the court may order 1647
the sheriff to transport the defendant to a program or facility 1648
operated or certified by the department of mental health and 1649
addiction services or the department of developmental 1650
disabilities, where the defendant may be held for evaluation for 1651
a reasonable period of time not to exceed twenty days, and to 1652
return the defendant to the place of detention after the 1653
evaluation. A municipal court may make an order under this 1654
division only upon the request of a certified forensic center 1655
examiner. 1656

(E) Except as provided in division (D) of this section, 1657
the court shall not order a defendant to be held for evaluation 1658
in a center, program, or facility operated by the department of 1659
mental health and addiction services or the department of 1660
developmental disabilities unless the defendant is charged with 1661
a felony or an offense of violence or unless the court 1662
determines, based on facts before the court, that the defendant 1663
is in need of immediate hospitalization. 1664

(F) If a court orders the evaluation to determine a 1665
defendant's mental condition at the time of the offense charged, 1666
the court shall inform the examiner of the offense with which 1667
the defendant is charged. 1668

~~(F)~~ (G) In conducting an evaluation of a defendant's 1669
mental condition at the time of the offense charged, the 1670
examiner shall consider all relevant evidence and may conduct 1671
the evaluation through electronic means. If the offense charged 1672
involves the use of force against another person, the relevant 1673
evidence to be considered includes, but is not limited to, any 1674

evidence that the defendant suffered, at the time of the 1675
commission of the offense, from the "battered woman syndrome." 1676

~~(G)~~ (H) The examiner shall file a written report with the 1677
court, under seal, within thirty days after entry of a court 1678
order for evaluation, ~~and the~~. The court shall provide copies 1679
of the report to the prosecutor and defense counsel and shall 1680
allow for inspection of the report by the defendant, the 1681
defendant's guardian, a probate court, a board of alcohol, drug 1682
addiction, and mental health services, and any mental health 1683
professional who performs a subsequent mental health evaluation 1684
of the defendant or who is involved in the treatment of the 1685
defendant, but the report shall not be open to public 1686
inspection. A person who is not among those permitted to inspect 1687
the report as described in this division may file a motion with 1688
the court seeking disclosure for good cause. When a motion for 1689
disclosure of a report is filed, the court shall notify the 1690
defendant of the pending motion and allow sufficient time for 1691
the defendant to object to the disclosure. If the defendant 1692
objects to the disclosure, the court shall schedule a hearing to 1693
determine whether the party seeking access has demonstrated that 1694
access to the report is necessary for treatment of the defendant 1695
or for a criminal adjudication of the defendant for which the 1696
report was originally created. At that time the defendant shall 1697
be allowed an opportunity to provide the court with grounds for 1698
the objection. The court shall not provide access to the report 1699
unless the party seeking access can demonstrate that access to 1700
the report is necessary for treatment of the defendant or for a 1701
criminal adjudication of the defendant for which the report was 1702
originally created. 1703

A defendant who is the subject of an examiner's report 1704
under this section prior to the effective date of this amendment 1705

may file a motion with the court to have that report placed 1706
under seal. Upon such a motion, the court shall place the report 1707
under seal, subject to the access and disclosure provisions 1708
provided in this section for reports filed after the effective 1709
date. 1710

The report shall include all of the following: 1711

(1) The examiner's findings; 1712

(2) The facts in reasonable detail on which the findings 1713
are based; 1714

(3) If the evaluation was ordered to determine the 1715
defendant's competence to stand trial, all of the following 1716
findings or recommendations that are applicable: 1717

(a) Whether the defendant is capable of understanding the 1718
nature and objective of the proceedings against the defendant or 1719
of assisting in the defendant's defense; 1720

(b) If the examiner's opinion is that the defendant is 1721
incapable of understanding the nature and objective of the 1722
proceedings against the defendant or of assisting in the 1723
defendant's defense, whether the defendant presently is mentally 1724
ill or has an intellectual disability and, if the examiner's 1725
opinion is that the defendant presently has an intellectual 1726
disability, whether the defendant appears to be a person with an 1727
intellectual disability subject to institutionalization by court 1728
order; 1729

(c) If the examiner's opinion is that the defendant is 1730
incapable of understanding the nature and objective of the 1731
proceedings against the defendant or of assisting in the 1732
defendant's defense, the examiner's opinion as to the likelihood 1733
of the defendant becoming capable of understanding the nature 1734

and objective of the proceedings against the defendant and of 1735
assisting in the defendant's defense within one year if the 1736
defendant is provided with a course of treatment; 1737

(d) If the examiner's opinion is that the defendant is 1738
incapable of understanding the nature and objective of the 1739
proceedings against the defendant or of assisting in the 1740
defendant's defense and that the defendant presently is mentally 1741
ill or has an intellectual disability, the examiner's 1742
recommendation as to the least restrictive placement or 1743
commitment alternative, including consideration of housing needs 1744
and the availability of mental health treatment in the 1745
community, consistent with the defendant's treatment needs for 1746
restoration to competency and with the safety of the community. 1747

(4) If the evaluation was ordered to determine the 1748
defendant's mental condition at the time of the offense charged, 1749
the examiner's findings as to whether the defendant, at the time 1750
of the offense charged, did not know, as a result of a severe 1751
mental disease or defect, the wrongfulness of the defendant's 1752
acts charged. 1753

~~(H)~~ (I) If the examiner's report filed under division ~~(G)~~ 1754
(H) of this section indicates that in the examiner's opinion the 1755
defendant is incapable of understanding the nature and objective 1756
of the proceedings against the defendant or of assisting in the 1757
defendant's defense and that in the examiner's opinion the 1758
defendant appears to be a person with an intellectual disability 1759
subject to institutionalization by court order, the court shall 1760
order the defendant to undergo a separate intellectual 1761
disability evaluation conducted by a psychologist designated by 1762
the director of developmental disabilities. Divisions (C) to ~~(F)~~ 1763
(G) of this section apply in relation to a separate intellectual 1764

disability evaluation conducted under this division. The 1765
psychologist appointed under this division to conduct the 1766
separate intellectual disability evaluation shall file a written 1767
report with the court within thirty days after the entry of the 1768
court order requiring the separate intellectual disability 1769
evaluation, ~~and the court~~. The court shall file the report 1770
under seal in the same manner as a report submitted by an 1771
examiner under division (H) of this section and shall provide 1772
copies of the report to the prosecutor and defense counsel. The 1773
report shall include all of the information described in 1774
divisions ~~(G) (1)~~ (H) (1) to (4) of this section. If the court 1775
orders a separate intellectual disability evaluation of a 1776
defendant under this division, the court shall not conduct a 1777
hearing under divisions (B) to (H) of section 2945.37 of the 1778
Revised Code regarding that defendant until a report of the 1779
separate intellectual disability evaluation conducted under this 1780
division has been filed. Upon the filing of that report, the 1781
court shall conduct the hearing within the period of time 1782
specified in division (C) of section 2945.37 of the Revised 1783
Code. 1784

~~(I)~~ (J) An examiner appointed under divisions (A) and (B) 1785
of this section or under division ~~(H)~~ (I) of this section to 1786
evaluate a defendant to determine the defendant's competence to 1787
stand trial also may be appointed to evaluate a defendant who 1788
has entered a plea of not guilty by reason of insanity, but an 1789
examiner of that nature shall prepare separate reports on the 1790
issue of competence to stand trial and the defense of not guilty 1791
by reason of insanity. 1792

~~(J)~~ (K) No statement that a defendant makes in an 1793
evaluation or hearing under divisions (A) to ~~(H)~~ (I) of this 1794
section relating to the defendant's competence to stand trial or 1795

to the defendant's mental condition at the time of the offense 1796
charged shall be used against the defendant on the issue of 1797
guilt in any criminal action or proceeding, but, in a criminal 1798
action or proceeding, the prosecutor or defense counsel may call 1799
as a witness any person who evaluated the defendant or prepared 1800
a report pursuant to a referral under this section. Neither the 1801
appointment nor the testimony of an examiner appointed under 1802
this section precludes the prosecutor or defense counsel from 1803
calling other witnesses or presenting other evidence on 1804
competency or insanity issues. 1805

~~(K)~~ (L) Persons appointed as examiners under divisions (A) 1806
and (B) of this section or under division ~~(H)~~ (I) of this 1807
section shall be paid a reasonable amount for their services and 1808
expenses, as certified by the court. The certified amount shall 1809
be paid by the county in the case of county courts and courts of 1810
common pleas and by the legislative authority, as defined in 1811
section 1901.03 of the Revised Code, in the case of municipal 1812
courts. 1813

Sec. 2945.38. (A) If the issue of a defendant's competence 1814
to stand trial is raised and if the court, upon conducting the 1815
hearing provided for in section 2945.37 of the Revised Code, 1816
finds that the defendant is incompetent to stand trial, the 1817
defendant shall be proceeded against as provided by law. If the 1818
court finds the defendant competent to stand trial and the 1819
defendant is receiving psychotropic drugs or other medication, 1820
the court may authorize the continued administration of the 1821
drugs or medication or other appropriate treatment in order to 1822
maintain the defendant's competence to stand trial, unless the 1823
defendant's attending physician advises the court against 1824
continuation of the drugs, other medication, or treatment. 1825

(B) (1) (a) (i) If the defendant has been charged with a 1826
felony offense or a misdemeanor offense of violence for which 1827
the prosecutor has not recommended the procedures under division 1828
(B) (1) (a) (vi) of this section and if, after taking into 1829
consideration all relevant reports, information, and other 1830
evidence, the court finds that the defendant is incompetent to 1831
stand trial and that there is a substantial probability that the 1832
defendant will become competent to stand trial within one year 1833
if the defendant is provided with a course of treatment, the 1834
court shall order the defendant to undergo treatment. 1835

(ii) If the defendant has been charged with a felony 1836
offense and if, after taking into consideration all relevant 1837
reports, information, and other evidence, the court finds that 1838
the defendant is incompetent to stand trial, but the court is 1839
unable at that time to determine whether there is a substantial 1840
probability that the defendant will become competent to stand 1841
trial within one year if the defendant is provided with a course 1842
of treatment, the court shall order continuing evaluation and 1843
treatment of the defendant for a period not to exceed four 1844
months to determine whether there is a substantial probability 1845
that the defendant will become competent to stand trial within 1846
one year if the defendant is provided with a course of 1847
treatment. 1848

(iii) If the defendant has not been charged with a felony 1849
offense but has been charged with a misdemeanor offense of 1850
violence and if, after taking into consideration all relevant 1851
reports, information, and other evidence, the court finds that 1852
the defendant is incompetent to stand trial, but the court is 1853
unable at that time to determine whether there is a substantial 1854
probability that the defendant will become competent to stand 1855
trial within the time frame permitted under division (C) (1) of 1856

this section, the court may order continuing evaluation and 1857
treatment of the defendant for a period not to exceed the 1858
maximum period permitted under that division. 1859

(iv) If the defendant has not been charged with a felony 1860
offense or a misdemeanor offense of violence, but has been 1861
charged with a misdemeanor offense that is not a misdemeanor 1862
offense of violence and if, after taking into consideration all 1863
relevant reports, information, and other evidence, the court 1864
finds that the defendant is incompetent to stand trial, but the 1865
court is unable at that time to determine whether there is a 1866
substantial probability that the defendant will become competent 1867
to stand trial within the time frame permitted under division 1868
(C) (1) of this section, the court shall dismiss the charges and 1869
follow the process outlined in division (B) (1) (a) (v) (I) of this 1870
section. 1871

(v) If the defendant has not been charged with a felony 1872
offense or a misdemeanor offense of violence, or if the 1873
defendant has been charged with a misdemeanor offense of 1874
violence and the prosecutor has recommended the procedures under 1875
division (B) (1) (a) (vi) of this section, and if, after taking 1876
into consideration all relevant reports, information, and other 1877
evidence, the trial court finds that the defendant is 1878
incompetent to stand trial, the trial court shall do one of the 1879
following: 1880

(I) Dismiss the charges pending against the defendant. A 1881
dismissal under this division is not a bar to further 1882
prosecution based on the same conduct. Upon dismissal of the 1883
charges, the trial court shall discharge the defendant unless 1884
the court or prosecutor, after consideration of the requirements 1885
of section 5122.11 of the Revised Code, files an affidavit in 1886

probate court alleging that the defendant is a mentally ill 1887
person subject to court order or a person with an intellectual 1888
disability subject to institutionalization by court order. If an 1889
affidavit is filed in probate court, the trial court may detain 1890
the defendant for ten days pending a hearing in the probate 1891
court and shall send to the probate court copies of all written 1892
reports of the defendant's mental condition that were prepared 1893
pursuant to section 2945.371 of the Revised Code. The trial 1894
court or prosecutor shall specify in the appropriate space on 1895
the affidavit that the defendant is a person described in this 1896
subdivision. 1897

(II) Order the defendant to undergo outpatient competency 1898
restoration treatment at a facility operated or certified by the 1899
department of mental health and addiction services as being 1900
qualified to treat mental illness, at a public or community 1901
mental health facility, or in the care of a psychiatrist or 1902
other mental health professional. If a defendant who has been 1903
released on bail or recognizance refuses to comply with court- 1904
ordered outpatient treatment under this division, the court may 1905
dismiss the charges pending against the defendant and proceed 1906
under division (B)(1)(a)(v)(I) of this section or may amend the 1907
conditions of bail or recognizance and order the sheriff to take 1908
the defendant into custody and deliver the defendant to a 1909
center, program, or facility operated or certified by the 1910
department of mental health and addiction services for 1911
treatment. 1912

(vi) If the defendant has not been charged with a felony 1913
offense but has been charged with a misdemeanor offense of 1914
violence and after taking into consideration all relevant 1915
reports, information, and other evidence, the court finds that 1916
the defendant is incompetent to stand trial, the prosecutor in 1917

the case may recommend that the court follow the procedures 1918
prescribed in division (B) (1) (a) (v) of this section. If the 1919
prosecutor does not make such a recommendation, the court shall 1920
follow the procedures in division (B) (1) (a) (i) of this section. 1921

(b) The court order for the defendant to undergo treatment 1922
or continuing evaluation and treatment under division (B) (1) (a) 1923
of this section shall specify that the defendant, if determined 1924
to require mental health treatment or continuing evaluation and 1925
treatment, either shall be committed to the department of mental 1926
health and addiction services for treatment or continuing 1927
evaluation and treatment at a hospital, facility, or agency, as 1928
determined to be clinically appropriate by the department of 1929
mental health and addiction services or shall be committed to a 1930
facility certified by the department of mental health and 1931
addiction services as being qualified to treat mental illness, 1932
to a public or community mental health facility, or to a 1933
psychiatrist or another mental health professional for treatment 1934
or continuing evaluation and treatment. Prior to placing the 1935
defendant, the department of mental health and addiction 1936
services shall obtain court approval for that placement 1937
following a hearing. The court order for the defendant to 1938
undergo treatment or continuing evaluation and treatment under 1939
division (B) (1) (a) of this section shall specify that the 1940
defendant, if determined to require treatment or continuing 1941
evaluation and treatment for an intellectual disability, shall 1942
receive treatment or continuing evaluation and treatment at an 1943
institution or facility operated by the department of 1944
developmental disabilities, at a facility certified by the 1945
department of developmental disabilities as being qualified to 1946
treat intellectual disabilities, at a public or private 1947
intellectual disabilities facility, or by a psychiatrist or 1948

another intellectual disabilities professional. In any case, the 1949
order may restrict the defendant's freedom of movement as the 1950
court considers necessary. The prosecutor in the defendant's 1951
case shall send to the chief clinical officer of the hospital, 1952
facility, or agency where the defendant is placed by the 1953
department of mental health and addiction services, or to the 1954
managing officer of the institution, the director of the program 1955
or facility, or the person to which the defendant is committed, 1956
copies of relevant police reports and other background 1957
information that pertains to the defendant and is available to 1958
the prosecutor unless the prosecutor determines that the release 1959
of any of the information in the police reports or any of the 1960
other background information to unauthorized persons would 1961
interfere with the effective prosecution of any person or would 1962
create a substantial risk of harm to any person. 1963

In determining the place of commitment, the court shall 1964
consider the extent to which the person is a danger to the 1965
person and to others, the need for security, the availability of 1966
housing and supportive services, including outpatient mental 1967
health services in the community, and the type of crime involved 1968
and shall order the least restrictive alternative available that 1969
is consistent with public safety and treatment goals. In 1970
weighing these factors, the court shall give preference to 1971
protecting public safety and the availability of housing and 1972
supportive services. 1973

(c) If the defendant is found incompetent to stand trial, 1974
if the chief clinical officer of the hospital, facility, or 1975
agency where the defendant is placed, or the managing officer of 1976
the institution, the director of the program or facility, or the 1977
person to which the defendant is committed for treatment or 1978
continuing evaluation and treatment under division (B) (1) (b) of 1979

this section determines that medication is necessary to restore 1980
the defendant's competency to stand trial, and if the defendant 1981
lacks the capacity to give informed consent or refuses 1982
medication, the chief clinical officer of the hospital, 1983
facility, or agency where the defendant is placed, or the 1984
managing officer of the institution, the director of the program 1985
or facility, or the person to which the defendant is committed 1986
for treatment or continuing evaluation and treatment may 1987
petition the court for authorization for the involuntary 1988
administration of medication. The court shall hold a hearing on 1989
the petition within five days of the filing of the petition if 1990
the petition was filed in a municipal court or a county court 1991
regarding an incompetent defendant charged with a misdemeanor or 1992
within ten days of the filing of the petition if the petition 1993
was filed in a court of common pleas regarding an incompetent 1994
defendant charged with a felony offense. Following the hearing, 1995
the court may authorize the involuntary administration of 1996
medication or may dismiss the petition. 1997

(2) If the court finds that the defendant is incompetent 1998
to stand trial and that, even if the defendant is provided with 1999
a course of treatment, there is not a substantial probability 2000
that the defendant will become competent to stand trial within 2001
one year, the court shall order the discharge of the defendant, 2002
unless upon motion of the prosecutor or on its own motion, the 2003
court either seeks to retain jurisdiction over the defendant 2004
pursuant to section 2945.39 of the Revised Code or files an 2005
affidavit in the probate court for the civil commitment of the 2006
defendant pursuant to Chapter 5122. or 5123. of the Revised Code 2007
alleging that the defendant is a mentally ill person subject to 2008
court order or a person with an intellectual disability subject 2009
to institutionalization by court order. If an affidavit is filed 2010

in the probate court, the trial court shall send to the probate court copies of all written reports of the defendant's mental condition that were prepared pursuant to section 2945.371 of the Revised Code.

The trial court may issue the temporary order of detention that a probate court may issue under section 5122.11 or 5123.71 of the Revised Code, to remain in effect until the probable cause or initial hearing in the probate court. Further proceedings in the probate court are civil proceedings governed by Chapter 5122. or 5123. of the Revised Code.

(C) No defendant shall be required to undergo treatment, including any continuing evaluation and treatment, under division (B)(1) of this section for longer than whichever of the following periods is applicable:

(1) One year, if the most serious offense with which the defendant is charged is one of the following offenses:

(a) Aggravated murder, murder, or an offense of violence for which a sentence of death or life imprisonment may be imposed;

(b) An offense of violence that is a felony of the first or second degree;

(c) A conspiracy to commit, an attempt to commit, or complicity in the commission of an offense described in division (C)(1)(a) or (b) of this section if the conspiracy, attempt, or complicity is a felony of the first or second degree.

(2) Six months, if the most serious offense with which the defendant is charged is a felony other than a felony described in division (C)(1) of this section;

(3) Sixty days, if the most serious offense with which the defendant is charged is a misdemeanor of the first or second degree;

(4) Thirty days, if the most serious offense with which the defendant is charged is a misdemeanor of the third or fourth degree, a minor misdemeanor, or an unclassified misdemeanor.

(D) Any defendant who is committed pursuant to this section shall not voluntarily admit the defendant or be voluntarily admitted to a hospital or institution pursuant to section 5122.02, 5122.15, 5123.69, or 5123.76 of the Revised Code.

(E) Except as otherwise provided in this division, a defendant who is charged with an offense and is committed by the court under this section to the department of mental health and addiction services or is committed to an institution or facility for the treatment of intellectual disabilities shall not be granted unsupervised on-grounds movement, supervised off-grounds movement, or nonsecured status except in accordance with the court order. The court may grant a defendant supervised off-grounds movement to obtain medical treatment or specialized habilitation treatment services if the person who supervises the treatment or the continuing evaluation and treatment of the defendant ordered under division (B)(1)(a) of this section informs the court that the treatment or continuing evaluation and treatment cannot be provided at the hospital or facility where the defendant is placed by the department of mental health and addiction services or the institution or facility to which the defendant is committed. The chief clinical officer of the hospital or facility where the defendant is placed by the department of mental health and addiction services or the

managing officer of the institution or director of the facility 2069
to which the defendant is committed, or a designee of any of 2070
those persons, may grant a defendant movement to a medical 2071
facility for an emergency medical situation with appropriate 2072
supervision to ensure the safety of the defendant, staff, and 2073
community during that emergency medical situation. The chief 2074
clinical officer of the hospital or facility where the defendant 2075
is placed by the department of mental health and addiction 2076
services or the managing officer of the institution or director 2077
of the facility to which the defendant is committed shall notify 2078
the court within twenty-four hours of the defendant's movement 2079
to the medical facility for an emergency medical situation under 2080
this division. 2081

(F) The person who supervises the treatment or continuing 2082
evaluation and treatment of a defendant ordered to undergo 2083
treatment or continuing evaluation and treatment under division 2084
(B) (1) (a) of this section shall file a written report with the 2085
court at the following times: 2086

(1) Whenever the person believes the defendant is capable 2087
of understanding the nature and objective of the proceedings 2088
against the defendant and of assisting in the defendant's 2089
defense; 2090

(2) For a felony offense, fourteen days before expiration 2091
of the maximum time for treatment as specified in division (C) 2092
of this section and fourteen days before the expiration of the 2093
maximum time for continuing evaluation and treatment as 2094
specified in division (B) (1) (a) of this section, and, for a 2095
misdemeanor offense, ten days before the expiration of the 2096
maximum time for treatment, as specified in division (C) of this 2097
section; 2098

(3) At a minimum, after each six months of treatment; 2099

(4) Whenever the person who supervises the treatment or 2100
continuing evaluation and treatment of a defendant ordered under 2101
division (B)(1)(a) of this section believes that there is not a 2102
substantial probability that the defendant will become capable 2103
of understanding the nature and objective of the proceedings 2104
against the defendant or of assisting in the defendant's defense 2105
even if the defendant is provided with a course of treatment. 2106

(G) A report under division (F) of this section shall 2107
contain the examiner's findings, the facts in reasonable detail 2108
on which the findings are based, and the examiner's opinion as 2109
to the defendant's capability of understanding the nature and 2110
objective of the proceedings against the defendant and of 2111
assisting in the defendant's defense. If, in the examiner's 2112
opinion, the defendant remains incapable of understanding the 2113
nature and objective of the proceedings against the defendant 2114
and of assisting in the defendant's defense and there is a 2115
substantial probability that the defendant will become capable 2116
of understanding the nature and objective of the proceedings 2117
against the defendant and of assisting in the defendant's 2118
defense if the defendant is provided with a course of treatment, 2119
if in the examiner's opinion the defendant remains mentally ill 2120
or continues to have an intellectual disability, and if the 2121
maximum time for treatment as specified in division (C) of this 2122
section has not expired, the report also shall contain the 2123
examiner's recommendation as to the least restrictive placement 2124
or commitment alternative that is consistent with the 2125
defendant's treatment needs for restoration to competency and 2126
with the safety of the community. The court shall provide copies 2127
of the report to the prosecutor and defense counsel. 2128

(H) If a defendant is committed pursuant to division (B) 2129
(1) of this section, within ten days after the treating 2130
physician of the defendant or the examiner of the defendant who 2131
is employed or retained by the treating facility advises that 2132
there is not a substantial probability that the defendant will 2133
become capable of understanding the nature and objective of the 2134
proceedings against the defendant or of assisting in the 2135
defendant's defense even if the defendant is provided with a 2136
course of treatment, within ten days after the expiration of the 2137
maximum time for treatment as specified in division (C) of this 2138
section, within ten days after the expiration of the maximum 2139
time for continuing evaluation and treatment as specified in 2140
division (B) (1) (a) of this section, within thirty days after a 2141
defendant's request for a hearing that is made after six months 2142
of treatment, or within thirty days after being advised by the 2143
treating physician or examiner that the defendant is competent 2144
to stand trial, whichever is the earliest, the court shall 2145
conduct another hearing to determine if the defendant is 2146
competent to stand trial and shall do whichever of the following 2147
is applicable: 2148

(1) If the court finds that the defendant is competent to 2149
stand trial, the defendant shall be proceeded against as 2150
provided by law. 2151

(2) If the court finds that the defendant is incompetent 2152
to stand trial, but that there is a substantial probability that 2153
the defendant will become competent to stand trial if the 2154
defendant is provided with a course of treatment, and the 2155
maximum time for treatment as specified in division (C) of this 2156
section has not expired, the court, after consideration of the 2157
examiner's recommendation, shall order that treatment be 2158
continued, may change the facility or program at which the 2159

treatment is to be continued, and shall specify whether the 2160
treatment is to be continued at the same or a different facility 2161
or program. 2162

(3) If the court finds that the defendant is incompetent 2163
to stand trial, if the defendant is charged with an offense 2164
listed in division (C)(1) of this section, and if the court 2165
finds that there is not a substantial probability that the 2166
defendant will become competent to stand trial even if the 2167
defendant is provided with a course of treatment, or if the 2168
maximum time for treatment relative to that offense as specified 2169
in division (C) of this section has expired, further proceedings 2170
shall be as provided in sections 2945.39, 2945.401, and 2945.402 2171
of the Revised Code. 2172

(4) If the court finds that the defendant is incompetent 2173
to stand trial, if the most serious offense with which the 2174
defendant is charged is a misdemeanor or a felony other than a 2175
felony listed in division (C)(1) of this section, and if the 2176
court finds that there is not a substantial probability that the 2177
defendant will become competent to stand trial even if the 2178
defendant is provided with a course of treatment, or if the 2179
maximum time for treatment relative to that offense as specified 2180
in division (C) of this section has expired, the court shall 2181
dismiss the indictment, information, or complaint against the 2182
defendant. A dismissal under this division is not a bar to 2183
further prosecution based on the same conduct. The court shall 2184
discharge the defendant unless the court or prosecutor files an 2185
affidavit in probate court for civil commitment pursuant to 2186
Chapter 5122. or 5123. of the Revised Code. If an affidavit for 2187
civil commitment is filed, the court may detain the defendant 2188
for ten days pending civil commitment- and shall send to the 2189
probate court copies of all written reports of the defendant's 2190

mental condition prepared pursuant to section 2945.371 of the 2191
Revised Code. 2192

All of the following provisions apply to persons charged 2193
with a misdemeanor or a felony other than a felony listed in 2194
division (C)(1) of this section who are committed by the probate 2195
court subsequent to the court's or prosecutor's filing of an 2196
affidavit for civil commitment under authority of this division: 2197

(a) The chief clinical officer of the entity, hospital, or 2198
facility, the managing officer of the institution, the director 2199
of the program, or the person to which the defendant is 2200
committed or admitted shall do all of the following: 2201

(i) Notify the prosecutor, in writing, of the discharge of 2202
the defendant, send the notice at least ten days prior to the 2203
discharge unless the discharge is by the probate court, and 2204
state in the notice the date on which the defendant will be 2205
discharged; 2206

(ii) Notify the prosecutor, in writing, when the defendant 2207
is absent without leave or is granted unsupervised, off-grounds 2208
movement, and send this notice promptly after the discovery of 2209
the absence without leave or prior to the granting of the 2210
unsupervised, off-grounds movement, whichever is applicable; 2211

(iii) Notify the prosecutor, in writing, of the change of 2212
the defendant's commitment or admission to voluntary status, 2213
send the notice promptly upon learning of the change to 2214
voluntary status, and state in the notice the date on which the 2215
defendant was committed or admitted on a voluntary status. 2216

(b) Upon receiving notice that the defendant will be 2217
granted unsupervised, off-grounds movement, the prosecutor 2218
either shall re-indict the defendant or promptly notify the 2219

court that the prosecutor does not intend to prosecute the 2220
charges against the defendant. 2221

(I) If a defendant is convicted of a crime and sentenced 2222
to a jail or workhouse, the defendant's sentence shall be 2223
reduced by the total number of days the defendant is confined 2224
for evaluation to determine the defendant's competence to stand 2225
trial or treatment under this section and sections 2945.37 and 2226
2945.371 of the Revised Code or by the total number of days the 2227
defendant is confined for evaluation to determine the 2228
defendant's mental condition at the time of the offense charged. 2229

Sec. 5122.02. (A) Except as provided in division (D) of 2230
this section, any person who is eighteen years of age or older 2231
and who is, appears to be, or believes self to be mentally ill 2232
may make written application for voluntary admission to the 2233
chief medical officer of a hospital. 2234

(B) Except as provided in division (D) of this section, 2235
the application also may be made on behalf of a minor by a 2236
parent, a guardian of the person, or the person with custody of 2237
the minor, and on behalf of an adult incompetent person by the 2238
guardian or the person with custody of the incompetent person. 2239

Any person whose admission is applied for under division 2240
(A) or (B) of this section may be admitted for observation, 2241
diagnosis, care, or treatment, in any hospital unless the chief 2242
clinical officer finds that hospitalization is inappropriate, 2243
and except that, in the case of a public hospital, no person 2244
shall be admitted without the authorization of the board of the 2245
person's county of residence. 2246

(C) If a minor or person adjudicated incompetent due to 2247
mental illness whose voluntary admission is applied for under 2248

division (B) of this section is admitted, the court shall 2249
determine, upon petition by private or otherwise appointed 2250
counsel, a relative, or one acting as next friend, whether the 2251
admission or continued hospitalization is in the best interest 2252
of the minor or incompetent. 2253

The chief clinical officer shall discharge any voluntary 2254
patient who has recovered or whose hospitalization the officer 2255
determines to be no longer advisable ~~and may discharge any~~ 2256
~~voluntary patient who refuses to accept treatment consistent~~ 2257
~~with the written treatment plan required by section 5122.27 of~~ 2258
~~the Revised Code. In the case of a voluntary patient who refuses~~ 2259
to accept treatment consistent with the written treatment plan 2260
required by section 5122.27 of the Revised Code, the chief 2261
clinical officer may file an affidavit under section 5122.11 of 2262
the Revised Code. If the chief clinical officer decides not to 2263
file such an affidavit and to, instead, discharge the patient, 2264
and a trial court or prosecutor had, within the past twelve 2265
months, filed an affidavit in probate court pursuant to division 2266
(B) (1) (a) (v) (I) of section 2945.38 of the Revised Code relating 2267
to the patient, the chief clinical officer, to the extent that 2268
the chief clinical officer has knowledge of the patient's prior 2269
status, shall immediately notify such trial court or prosecutor 2270
of the intent to discharge. Not later than three court days 2271
after being notified of the intent to discharge, the trial court 2272
or prosecutor may file or cause to be filed with the court of 2273
the county where the patient is hospitalized, or the court of 2274
the county where the patient resides, an affidavit under section 2275
5122.11 of the Revised Code. If such an affidavit is filed, the 2276
patient's discharge must be postponed until a hearing under 2277
section 5122.141 of the Revised Code is held. 2278

(D) A person who is found incompetent to stand trial or 2279

not guilty by reason of insanity and who is committed pursuant 2280
to section 2945.39, 2945.40, 2945.401, or 2945.402 of the 2281
Revised Code shall not voluntarily admit the person or be 2282
voluntarily admitted to a hospital pursuant to this section 2283
until after the final termination of the commitment, as 2284
described in division (J) of section 2945.401 of the Revised 2285
Code. 2286

Sec. 5122.03. A patient admitted under section 5122.02 of 2287
the Revised Code who requests release in writing, or whose 2288
release is requested in writing by the patient's counsel, legal 2289
guardian, parent, spouse, or adult next of kin shall be released 2290
forthwith, except ~~that~~ when any of the following is the case: 2291

(A) The patient was admitted on the patient's own 2292
application and the request for release is made by a person 2293
other than the patient, release may be conditional upon the 2294
agreement of the patient, ~~or.~~ 2295

(B) The patient was, within the past twelve months, a 2296
defendant described in division (B)(1)(a)(v)(I) of section 2297
2945.38 of the Revised Code and the chief clinical officer of 2298
the hospital decides not to file or cause to be filed an 2299
affidavit under section 5122.11 of the Revised Code as described 2300
in division (C) of this section. In that circumstance, the chief 2301
clinical officer shall immediately notify the trial court or 2302
prosecutor described in division (B)(1)(a)(v)(I) of section 2303
2945.38 of the Revised Code of the chief clinical officer's 2304
decision and intent to release the patient. Not later than three 2305
court days after being notified of the intent to release, the 2306
trial court or prosecutor may file or cause to be filed with the 2307
court of the county where the patient is hospitalized, or the 2308
court of the county where the patient resides, an affidavit 2309

under section 5122.11 of the Revised Code. If such an affidavit 2310
is filed, the patient's release must be postponed until a 2311
hearing under section 5122.141 of the Revised Code is held. 2312

(C) The chief clinical officer of the hospital, within 2313
three court days from the receipt of the request for release, 2314
files or causes to be filed with the court of the county where 2315
the patient is hospitalized or of the county where the patient 2316
is a resident, an affidavit under section 5122.11 of the Revised 2317
Code. Release may be postponed until the hearing held under 2318
section 5122.141 of the Revised Code. A telephone communication 2319
within three court days from the receipt of the request for 2320
release from the chief clinical officer to the court, indicating 2321
that the required affidavit has been mailed, is sufficient 2322
compliance with the time limit for filing such affidavit. 2323

Unless the patient is released within three days from the 2324
receipt of the request by the chief clinical officer, the 2325
request shall serve as a request for an initial hearing under 2326
section 5122.141 of the Revised Code. If the court finds that 2327
the patient is a mentally ill person subject to court order, all 2328
provisions of this chapter with respect to involuntary 2329
hospitalization apply to such person. 2330

Judicial proceedings for hospitalization shall not be 2331
commenced with respect to a voluntary patient except pursuant to 2332
this section. 2333

Sections 5121.30 to 5121.56 of the Revised Code apply to 2334
persons received in a hospital operated by the department of 2335
mental health and addiction services on a voluntary application. 2336

The chief clinical officer of the hospital shall provide 2337
reasonable means and arrangements for informing patients of 2338

their rights to release as provided in this section and for 2339
assisting them in making and presenting requests for release or 2340
for a hearing under section 5122.141 of the Revised Code. 2341

Before a patient is released from a public hospital, the 2342
chief clinical officer shall, when possible, notify the board of 2343
the patient's county of residence of the patient's pending 2344
release after the chief clinical officer has informed the 2345
patient that the board will be so notified. 2346

Sec. 5122.11. Proceedings for a mentally ill person 2347
subject to court order pursuant to sections 5122.11 to 5122.15 2348
of the Revised Code shall be commenced by the filing of an 2349
affidavit in the manner prescribed by the department of mental 2350
health and addiction services and in a form prescribed in 2351
section 5122.111 of the Revised Code, by any person or persons 2352
with the probate court, either on reliable information or actual 2353
knowledge, whichever is determined to be proper by the court. 2354
This section does not apply to the hospitalization of a person 2355
pursuant to section 2945.39, 2945.40, 2945.401, or 2945.402 of 2356
the Revised Code. 2357

The affidavit shall contain an allegation setting forth 2358
the specific category or categories under division (B) of 2359
section 5122.01 of the Revised Code upon which the jurisdiction 2360
of the court is based and a statement of alleged facts 2361
sufficient to indicate probable cause to believe that the person 2362
is a mentally ill person subject to court order. The affidavit 2363
may be accompanied, or the court may require that the affidavit 2364
be accompanied, by a certificate of a psychiatrist, or a 2365
certificate signed by a licensed clinical psychologist and a 2366
certificate signed by a licensed physician stating that the 2367
person who issued the certificate has examined the person and is 2368

of the opinion that the person is a mentally ill person subject 2369
to court order, or shall be accompanied by a written statement 2370
by the applicant, under oath, that the person has refused to 2371
submit to an examination by a psychiatrist, or by a licensed 2372
clinical psychologist and licensed physician. 2373

~~Upon~~ With regard to a defendant described in division (B) 2374
(1) (a) (v) (I) of section 2945.38 of the Revised Code for whom 2375
criminal charges were dismissed, the affidavit shall contain a 2376
space for the trial court or prosecutor filing the affidavit to 2377
indicate that the person named in the affidavit is such a 2378
defendant. 2379

Upon receipt of the affidavit, if a judge of the court or 2380
a referee who is an attorney at law appointed by the court has 2381
probable cause to believe that the person named in the affidavit 2382
is a mentally ill person subject to court order, the judge or 2383
referee may issue a temporary order of detention ordering any 2384
health or police officer or sheriff to take into custody and 2385
transport the person to a hospital or other place designated in 2386
section 5122.17 of the Revised Code, or may set the matter for 2387
further hearing. If a temporary order of detention is issued and 2388
the person is transported to a hospital or other designated 2389
place, the court that issued the order shall retain jurisdiction 2390
over the case as it relates to the person's outpatient 2391
treatment, notwithstanding that the hospital or other designated 2392
place to which the person is transported is outside the 2393
territorial jurisdiction of the court. 2394

The person may be observed and treated until the hearing 2395
provided for in section 5122.141 of the Revised Code. If no such 2396
hearing is held, the person may be observed and treated until 2397
the hearing provided for in section 5122.15 of the Revised Code. 2398

Sec. 5122.111. To initiate proceedings for court-ordered 2399
treatment of a person under section 5122.11 of the Revised Code, 2400
a person or persons shall file an affidavit with the probate 2401
court that is identical in form and content to the following: 2402

AFFIDAVIT OF MENTAL ILLNESS 2403

The State of Ohio 2404

_____ County, ss. 2405

_____ Court 2406

_____ 2407
the undersigned, residing at 2408

_____ 2409
says, that he/she has information to believe or has actual 2410
knowledge that 2411

_____ 2412
(Please specify specific category(ies) below with an X.) 2413

[] Represents a substantial risk of physical harm to self as 2414
manifested by evidence of threats of, or attempts at, suicide or 2415
serious self-inflicted bodily harm; 2416

[] Represents a substantial risk of physical harm to others as 2417
manifested by evidence of recent homicidal or other violent 2418
behavior or evidence of recent threats that place another in 2419
reasonable fear of violent behavior and serious physical harm or 2420
other evidence of present dangerousness; 2421

[] Represents a substantial and immediate risk of serious 2422
physical impairment or injury to self as manifested by evidence 2423
of being unable to provide for and of not providing for basic 2424
physical needs because of mental illness and that appropriate 2425

provision for such needs cannot be made immediately available in 2426
the community; 2427

[] Would benefit from treatment for mental illness and is in 2428
need of such treatment as manifested by evidence of behavior 2429
that creates a grave and imminent risk to substantial rights of 2430
others or the person; or 2431

[] Would benefit from treatment as manifested by evidence of 2432
behavior that indicates all of the following: 2433

(a) The person is unlikely to survive safely in the community 2434
without supervision, based on a clinical determination. 2435

(b) The person has a history of lack of compliance with 2436
treatment for mental illness and one of the following applies: 2437

(i) At least twice within the thirty-six months prior to the 2438
filing of an affidavit seeking court-ordered treatment of the 2439
person under section 5122.111 of the Revised Code, the lack of 2440
compliance has been a significant factor in necessitating 2441
hospitalization in a hospital or receipt of services in a 2442
forensic or other mental health unit of a correctional facility, 2443
provided that the thirty-six-month period shall be extended by 2444
the length of any hospitalization or incarceration of the person 2445
that occurred within the thirty-six-month period. 2446

(ii) Within the forty-eight months prior to the filing of an 2447
affidavit seeking court-ordered treatment of the person under 2448
section 5122.111 of the Revised Code, the lack of compliance 2449
resulted in one or more acts of serious violent behavior toward 2450
self or others or threats of, or attempts at, serious physical 2451
harm to self or others, provided that the forty-eight-month 2452
period shall be extended by the length of any hospitalization or 2453
incarceration of the person that occurred within the forty- 2454

eight-month period. 2455

(c) The person, as a result of mental illness, is unlikely to 2456
voluntarily participate in necessary treatment. 2457

(d) In view of the person's treatment history and current 2458
behavior, the person is in need of treatment in order to prevent 2459
a relapse or deterioration that would be likely to result in 2460
substantial risk of serious harm to the person or others. 2461

_____ 2462

(Name of the party filing the affidavit) further says that the 2463
facts supporting this belief are as follows: 2464

_____ 2465
_____ 2466
_____ 2467
_____ 2468
_____ 2469
_____ 2470

These facts being sufficient to indicate probable cause that the 2471
above said person is a mentally ill person subject to court 2472
order. 2473

Name—The undersigned represents a trial court or a prosecutor 2474
who, as described in division (B) (1) (a) (v) (I) of section 2945.38 2475
of the Revised Code, is alleging that the above said person is a 2476
mentally ill person subject to court order: [] Yes [] No 2477
(please specify answer with an X). If Yes, please specify the 2478
name and address of the trial court or prosecutor: 2479

_____ 2480
_____ 2481

Name of Patient's Last Physician or Licensed Clinical 2482

Psychologist 2483

_____ 2484

Address of Patient's Last Physician or Licensed Clinical 2485

Psychologist 2486

_____ 2487

_____ 2488

The name and address of respondent's legal guardian, spouse, and 2489

adult next of kin are: 2490

Name	Kinship	Address	
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_____	Legal Guardian	_____	2492
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_____		_____	2493
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_____	Spouse	_____	2494
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_____		_____	2495
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_____	Adult Next of Kin	_____	2496
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_____		_____	2497
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_____	Adult Next of Kin	_____	2498
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_____		_____	2499
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The following constitutes additional information that may be 2500

necessary for the purpose of determining residence: 2501

_____ 2502

_____ 2503

_____ 2504

_____ 2505

_____ 2506

Dated this _____ day of _____, 20__ 2507

_____ 2508

Signature of the party filing 2509

the affidavit 2510

Sworn to before me and signed in my presence on the day and year 2511
above dated. 2512

Signature of Probate Judge, 2514
Deputy Clerk, or Notary 2515
Public 2516

WAIVER 2517

I, the undersigned party filing the affidavit hereby waive the 2518
issuing and service of notice of the hearing on said affidavit, 2519
and voluntarily enter my appearance herein. 2520

Dated this _____ day of _____, 20____ 2521

Signature of the party filing 2522
the affidavit 2523
2524

Sec. 5122.112. A probate court that terminates 2525
jurisdiction over a defendant described in division (B) (1) (a) (v) 2526
(I) of section 2945.38 of the Revised Code, for whom a trial 2527
court or prosecutor initiated proceedings alleging that the 2528
defendant is a mentally ill person subject to court order 2529
pursuant to sections 5122.11 to 5122.15 of the Revised Code, 2530
shall immediately do both of the following: 2531

(A) Notify the initiating court or prosecutor of the 2532
termination; 2533

(B) Transmit to the initiating court a copy of any records 2534
in its possession that pertain to the defendant's mental illness 2535
or treatment for mental illness. 2536

Sec. 5122.15. (A) Full hearings shall be conducted in a 2537

manner consistent with this chapter and with due process of law. 2538
The hearings shall be conducted by a judge of the probate court 2539
or a referee designated by a judge of the probate court and may 2540
be conducted in or out of the county in which the respondent is 2541
held. Any referee designated under this division shall be an 2542
attorney. 2543

(1) With the consent of the respondent, the following 2544
shall be made available to counsel for the respondent: 2545

(a) All relevant documents, information, and evidence in 2546
the custody or control of the state or prosecutor; 2547

(b) All relevant documents, information, and evidence in 2548
the custody or control of the hospital in which the respondent 2549
currently is held, or in which the respondent has been held 2550
pursuant to this chapter; 2551

(c) All relevant documents, information, and evidence in 2552
the custody or control of any hospital, facility, or person not 2553
included in division (A) (1) (a) or (b) of this section. 2554

(2) The respondent has the right to attend the hearing and 2555
to be represented by counsel of the respondent's choice. The 2556
right to attend the hearing may be waived only by the respondent 2557
or counsel for the respondent after consultation with the 2558
respondent. 2559

(3) If the respondent is not represented by counsel, is 2560
absent from the hearing, and has not validly waived the right to 2561
counsel, the court shall appoint counsel immediately to 2562
represent the respondent at the hearing, reserving the right to 2563
tax costs of appointed counsel to the respondent, unless it is 2564
shown that the respondent is indigent. If the court appoints 2565
counsel, or if the court determines that the evidence relevant 2566

to the respondent's absence does not justify the absence, the 2567
court shall continue the case. 2568

(4) The respondent shall be informed that the respondent 2569
may retain counsel and have independent expert evaluation. If 2570
the respondent is unable to obtain an attorney, the respondent 2571
shall be represented by court-appointed counsel. If the 2572
respondent is indigent, court-appointed counsel and independent 2573
expert evaluation shall be provided as an expense under section 2574
5122.43 of the Revised Code. 2575

(5) The hearing shall be closed to the public, unless 2576
counsel for the respondent, with the permission of the 2577
respondent, requests that the hearing be open to the public. 2578

(6) If the hearing is closed to the public, the court, for 2579
good cause shown, may admit persons who have a legitimate 2580
interest in the proceedings. If the respondent, the respondent's 2581
counsel, or the designee of the director or of the chief 2582
clinical officer objects to the admission of any person, the 2583
court shall hear the objection and any opposing argument and 2584
shall rule upon the admission of the person to the hearing. 2585

(7) The affiant under section 5122.11 of the Revised Code 2586
shall be subject to subpoena by either party. 2587

(8) The court shall examine the sufficiency of all 2588
documents filed and shall inform the respondent, if present, and 2589
the respondent's counsel of the nature and content of the 2590
documents and the reason for which the respondent is being 2591
detained, or for which the respondent's placement is being 2592
sought. 2593

(9) The court shall receive only reliable, competent, and 2594
material evidence. 2595

(10) Unless proceedings are initiated pursuant to section 2596
5120.17 or 5139.08 of the Revised Code, an attorney that the 2597
board designates shall present the case demonstrating that the 2598
respondent is a mentally ill person subject to court order. The 2599
attorney shall offer evidence of the diagnosis, prognosis, 2600
record of treatment, if any, and less restrictive treatment 2601
plans, if any. In proceedings pursuant to section 5120.17 or 2602
5139.08 of the Revised Code, the attorney general shall 2603
designate an attorney who shall present the case demonstrating 2604
that the respondent is a mentally ill person subject to court 2605
order. The attorney shall offer evidence of the diagnosis, 2606
prognosis, record of treatment, if any, and less restrictive 2607
treatment plans, if any. 2608

(11) The respondent or the respondent's counsel has the 2609
right to subpoena witnesses and documents and to examine and 2610
cross-examine witnesses. 2611

(12) The respondent has the right, but shall not be 2612
compelled, to testify, and shall be so advised by the court. 2613

(13) On motion of the respondent or the respondent's 2614
counsel for good cause shown, or on the court's own motion, the 2615
court may order a continuance of the hearing. 2616

(14) If the respondent is represented by counsel and the 2617
respondent's counsel requests a transcript and record, or if the 2618
respondent is not represented by counsel, the court shall make 2619
and maintain a full transcript and record of the proceeding. If 2620
the respondent is indigent and the transcript and record is 2621
made, a copy shall be provided to the respondent upon request 2622
and be treated as an expense under section 5122.43 of the 2623
Revised Code. 2624

(15) To the extent not inconsistent with this chapter, the Rules of Civil Procedure are applicable.

(B) Unless, upon completion of the hearing the court finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, it shall order the respondent's discharge immediately.

(C) If, upon completion of the hearing, the court finds by clear and convincing evidence that the respondent is a mentally ill person subject to court order, the court shall order the respondent for a period not to exceed ninety days to any of the following:

(1) A hospital operated by the department of mental health and addiction services if the respondent is committed pursuant to section 5139.08 of the Revised Code;

(2) A nonpublic hospital;

(3) The veterans' administration or other agency of the United States government;

(4) A board of alcohol, drug addiction, and mental health services or services provider the board designates;

(5) Receive private psychiatric or psychological care and treatment;

(6) Any other suitable facility or person consistent with the diagnosis, prognosis, and treatment needs of the respondent. A jail or other local correctional facility is not a suitable facility.

(D) Any order made pursuant to division (C) (2), (3), (5), or (6) of this section shall be conditioned upon the receipt by the court of consent by the hospital, facility, agency, or

person to accept the respondent and may include a requirement 2653
that a person or entity described in division (C) (2), (3), (5), 2654
or (6) of this section inform the board of alcohol, drug 2655
addiction, and mental health services or community mental health 2656
services provider the board designates about the progress of the 2657
respondent with the treatment plan. 2658

(E) In determining the entity or person to which the 2659
respondent is to be committed under division (C) of this 2660
section, the court shall consider ~~the~~ all of the following: 2661

(1) The respondent's diagnosis, and prognosis, made by a 2662
psychiatrist, licensed clinical psychologist, clinical nurse 2663
specialist who is certified as a psychiatric-mental health 2664
clinical nurse specialist by the American nurses credentialing 2665
center, or certified nurse practitioner who is certified as a 2666
psychiatric-mental health nurse practitioner by the American 2667
nurses credentialing center; 2668

(2) The respondent's preferences ~~of the respondent and 2669
the;~~ 2670

(3) The respondent's projected treatment plan ~~for the 2671
respondent and.~~ 2672

The court shall order the implementation of the least 2673
restrictive alternative available and consistent with treatment 2674
goals. If the court determines that the least restrictive 2675
alternative available that is consistent with treatment goals is 2676
inpatient hospitalization, the court's order shall so state. 2677

(F) During the ninety-day period the entity or person 2678
shall examine and treat the respondent. If the respondent is 2679
receiving treatment in an outpatient setting, or receives 2680
treatment in an outpatient setting during a subsequent period of 2681

continued commitment under division (H) of this section, the 2682
entity or person to whom the respondent is committed shall 2683
determine the appropriate outpatient treatment for the 2684
respondent. If, at any time prior to the expiration of the 2685
ninety-day period, it is determined by the entity or person that 2686
the respondent's treatment needs could be equally well met in an 2687
available and appropriate less restrictive setting, both of the 2688
following apply: 2689

(1) The respondent shall be released from the care of the 2690
entity or person immediately and shall be referred to the court 2691
together with a report of the findings and recommendations of 2692
the entity or person; 2693

(2) The entity or person shall notify the respondent's 2694
counsel or the attorney designated by a board of alcohol, drug 2695
addiction, and mental health services or, if the respondent was 2696
committed to a board or a services provider designated by the 2697
board, it shall place the respondent in the least restrictive 2698
setting available consistent with treatment goals and notify the 2699
court and the respondent's counsel of the placement. 2700

The court shall dismiss the case or order placement in the 2701
least restrictive setting. 2702

(G) (1) Except as provided in division (G) (2) of this 2703
section, any person for whom proceedings for treatment have been 2704
commenced pursuant to section 5122.11 of the Revised Code, may 2705
apply at any time for voluntary admission or treatment to the 2706
entity or person to which the person was committed. Upon 2707
admission as a voluntary patient the chief clinical officer of 2708
the entity or the person immediately shall notify the court, the 2709
patient's counsel, and the attorney designated by the board, if 2710
the attorney has entered the proceedings, in writing of that 2711

fact, and, upon receipt of the notice, the court shall dismiss 2712
the case. 2713

(2) A person who is found incompetent to stand trial or 2714
not guilty by reason of insanity and who is committed pursuant 2715
to section 2945.39, 2945.40, 2945.401, or 2945.402 of the 2716
Revised Code shall not voluntarily commit the person pursuant to 2717
this section until after the final termination of the 2718
commitment, as described in division (J) of section 2945.401 of 2719
the Revised Code. 2720

(H) If, at the end of the first ninety-day period or any 2721
subsequent period of continued commitment, there has been no 2722
disposition of the case, either by discharge or voluntary 2723
admission or treatment, the entity or person shall discharge the 2724
patient immediately, unless at least ten days before the 2725
expiration of the period the attorney the board designates or 2726
the prosecutor files with the court an application for continued 2727
commitment. The application of the attorney or the prosecutor 2728
shall include a written report containing the diagnosis, 2729
prognosis, past treatment, a list of alternative treatment 2730
settings and plans, and identification of the treatment setting 2731
that is the least restrictive consistent with treatment needs. 2732
The attorney the board designates or the prosecutor shall file 2733
the written report at least three days prior to the full 2734
hearing. A copy of the application and written report shall be 2735
provided to the respondent's counsel immediately. 2736

The court shall hold a full hearing on applications for 2737
continued commitment at the expiration of the first ninety-day 2738
period and at least every two years after the expiration of the 2739
first ninety-day period. 2740

Hearings following any application for continued 2741

commitment are mandatory and may not be waived. 2742

For a respondent who is ordered to receive treatment in an 2743
outpatient setting, if at any time after the first ninety-day 2744
period the entity or person to whom the respondent was ordered 2745
determines that the respondent has demonstrated voluntary 2746
consent for treatment, that entity or person shall immediately 2747
notify the respondent, the respondent's counsel, the attorney 2748
designated by the board, and the court. The entity or person 2749
shall submit to the court a report of the findings and 2750
recommendations. The court may dismiss the case upon review of 2751
the facts. 2752

Upon request of a person who is involuntarily committed 2753
under this section, or the person's counsel, that is made more 2754
than one hundred eighty days after the person's last full 2755
hearing, mandatory or requested, the court shall hold a full 2756
hearing on the person's continued commitment. Upon the 2757
application of a person involuntarily committed under this 2758
section, supported by an affidavit of a psychiatrist or licensed 2759
clinical psychologist, alleging that the person no longer is a 2760
mentally ill person subject to court order, the court for good 2761
cause shown may hold a full hearing on the person's continued 2762
commitment prior to the expiration of one hundred eighty days 2763
after the person's last full hearing. Section 5122.12 of the 2764
Revised Code applies to all hearings on continued commitment. 2765

If the court, after a hearing for continued commitment 2766
finds by clear and convincing evidence that the respondent is a 2767
mentally ill person subject to court order, the court may order 2768
continued commitment at places or to persons specified in 2769
division (C) of this section. 2770

(I) Unless the admission is pursuant to section 5120.17 or 2771

5139.08 of the Revised Code, the chief clinical officer of the 2772
entity admitting a respondent pursuant to a judicial proceeding, 2773
within ten working days of the admission, shall make a report of 2774
the admission to the board of alcohol, drug addiction, and 2775
mental health services serving the respondent's county of 2776
residence. 2777

(J) A referee appointed by the court may make all orders 2778
that a judge may make under this section and sections 5122.11 2779
and 5122.141 of the Revised Code, except an order of contempt of 2780
court. The orders of a referee take effect immediately. Within 2781
fourteen days of the making of an order by a referee, a party 2782
may file written objections to the order with the court. The 2783
filed objections shall be considered a motion, shall be 2784
specific, and shall state their grounds with particularity. 2785
Within ten days of the filing of the objections, a judge of the 2786
court shall hold a hearing on the objections and may hear and 2787
consider any testimony or other evidence relating to the 2788
respondent's mental condition. At the conclusion of the hearing, 2789
the judge may ratify, rescind, or modify the referee's order. 2790

(K) An order of the court under division (C), (H), or (J) 2791
of this section is a final order. 2792

(L) Before a board, or a services provider the board 2793
designates, may place an unconsenting respondent in an inpatient 2794
setting from a less restrictive placement, the board or services 2795
provider shall do all of the following: 2796

(1) Determine that the respondent is in immediate need of 2797
treatment in an inpatient setting because the respondent 2798
represents a substantial risk of physical harm to the respondent 2799
or others if allowed to remain in a less restrictive setting; 2800

(2) On the day of placement in the inpatient setting or on the next court day, file with the court a motion for transfer to an inpatient setting or communicate to the court by telephone that the required motion has been mailed;

(3) Ensure that every reasonable and appropriate effort is made to take the respondent to the inpatient setting in the least conspicuous manner possible;

(4) Immediately notify the board's designated attorney and the respondent's attorney.

At the respondent's request, the court shall hold a hearing on the motion and make a determination pursuant to division (E) of this section within five days of the placement.

(M) Before a board, or a services provider the board designates, may move a respondent from one residential placement to another, the board or services provider shall consult with the respondent about the placement. If the respondent objects to the placement, the proposed placement and the need for it shall be reviewed by a qualified mental health professional who otherwise is not involved in the treatment of the respondent.

(N) The entity or person to whom the respondent was ordered for treatment in an outpatient setting may submit a report to the court indicating that the respondent has either failed to comply with the treatment plan or begun to demonstrate signs of decompensation that may be grounds for hospitalization. On receipt of the report, the court shall promptly schedule a hearing to review the case. The court shall conduct the hearing in a manner consistent with this chapter and due process of law. The board shall receive notice of the hearing and the board and entity or person treating the respondent shall submit a report

to the court with a plan for appropriate alternative treatment, 2830
if any, or recommend that the court discontinue the court- 2831
ordered treatment. The court shall consider available and 2832
appropriate alternative placements but shall not impose criminal 2833
sanctions that result in confinement in a jail or other local 2834
correctional facility based on the respondent's failure to 2835
comply with the treatment plan. The court may not order the 2836
respondent to a more restrictive placement unless the criteria 2837
specified in division (L) of this section are met and may not 2838
order the respondent to an inpatient setting unless the court 2839
determines by clear and convincing evidence presented by the 2840
board that the respondent meets the criteria specified in 2841
divisions (A) and (B) (1), (2), (3), or (4) of section 5122.01 of 2842
the Revised Code. 2843

Sec. 5804.11. (A) If upon petition the court finds that 2844
the settlor and all beneficiaries consent to the modification or 2845
termination of a noncharitable irrevocable trust, that all 2846
consents, including any given by representatives under Chapter 2847
5803. of the Revised Code, are valid, and that all parties 2848
giving consent are competent to do so, the court shall enter an 2849
order approving the modification or termination even if the 2850
modification or termination is inconsistent with a material 2851
purpose of the trust. An agent under a power of attorney may 2852
exercise a settlor's power to consent to a trust's modification 2853
or termination only to the extent expressly authorized by both 2854
the power of attorney and the terms of the trust. The settlor's 2855
guardian of the estate may exercise a settlor's power to consent 2856
to a trust's modification or termination with the approval of 2857
the court supervising the guardianship if an agent is not so 2858
authorized. The guardian of the settlor's person may exercise a 2859
settlor's power to consent to a trust's modification or 2860

termination with the approval of the court supervising the 2861
guardianship if an agent is not so authorized and a guardian of 2862
the estate has not been appointed. This division does not apply 2863
to a noncharitable irrevocable trust described in 42 U.S.C. 2864
1396p(d)(4). 2865

(B) A noncharitable irrevocable trust may be terminated 2866
upon consent of all of the beneficiaries if the court concludes 2867
that continuance of the trust is not necessary to achieve any 2868
material purpose of the trust. A noncharitable irrevocable trust 2869
may be modified, but not to remove or replace the currently 2870
serving trustee, upon consent of all of the beneficiaries if the 2871
court concludes that modification is not inconsistent with a 2872
material purpose of the trust. A spendthrift provision in the 2873
terms of the trust may, but is not presumed to, constitute a 2874
material purpose of the trust. In determining what constitutes a 2875
material purpose of a trust, a court may but is not required to 2876
consider extrinsic evidence indicating a settlor's intent at the 2877
time the instrument was executed. 2878

(C) Upon termination of a trust under division (A) or (B) 2879
of this section, the trustee shall distribute the trust property 2880
as agreed by the beneficiaries. 2881

(D) If not all of the beneficiaries consent to a proposed 2882
modification or termination of the trust under division (A) or 2883
(B) of this section, the court may approve the modification or 2884
termination if the court is satisfied of both of the following: 2885

(1) That if all of the beneficiaries had consented, the 2886
trust could have been modified or terminated under this section; 2887

(2) That the interests of a beneficiary who does not 2888
consent will be adequately protected. 2889

Sec. 5805.06. (A) Whether or not the terms of a trust	2890
contain a spendthrift provision, all of the following apply:	2891
(1) During the lifetime of the settlor, the property of a	2892
revocable trust is subject to claims of the settlor's creditors.	2893
(2) Except to the extent that a trust is established	2894
pursuant to, or otherwise is wholly or partially governed by or	2895
subject to Chapter 5816. of the Revised Code, with respect to an	2896
irrevocable trust, a creditor or assignee of the settlor may	2897
reach the maximum amount that can be distributed to or for the	2898
settlor's benefit. If an irrevocable trust has more than one	2899
settlor, the amount distributable to or for a settlor's benefit	2900
that the creditor or assignee of a particular settlor may reach	2901
may not exceed that settlor's interest in the portion of the	2902
trust attributable to that settlor's contribution. The right of	2903
a creditor or assignee to reach a settlor's interest in an	2904
irrevocable trust shall be subject to Chapter 5816. of the	2905
Revised Code to the extent that that chapter applies to that	2906
trust.	2907
(3) With respect to a trust described in 42 U.S.C. section	2908
1396p(d)(4)(A) or (C), the court may limit the award of a	2909
settlor's creditor under division (A)(1) or (2) of this section	2910
to the relief that is appropriate under the circumstances,	2911
considering among any other factors determined appropriate by	2912
the court, the supplemental needs of the beneficiary.	2913
(B) For purposes of this section, all of the following	2914
apply:	2915
(1) The holder of a power of withdrawal is treated in the	2916
same manner as the settlor of a revocable trust to the extent of	2917
the property subject to the power during the period the power	2918

may be exercised. 2919

~~(2) Upon the lapse, release, or waiver of the power of withdrawal, the holder is treated as the settlor of the trust only to the extent the value of the property affected by the lapse, release, or waiver exceeds the greatest of the following amounts:~~ 2920
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2922
2923
2924

~~(a) The amount specified in section 2041(b)(2) or 2514(e) of the Internal Revenue Code;~~ 2925
2926

~~(b) If the donor of the property subject to the holder's power of withdrawal is not married at the time of the transfer of the property to the trust, the amount specified in section 2503(b) of the Internal Revenue Code;~~ 2927
2928
2929
2930

~~(c) If the donor of the property subject to the holder's power of withdrawal is married at the time of the transfer of the property to the trust, twice the amount specified in section 2503(b) of the Internal Revenue Code.~~ 2931
2932
2933
2934

~~(3) None of the following shall be considered an amount that can be distributed to or for the benefit of the settlor:~~ 2935
2936

(a) Trust property that could be, but has not yet been, distributed to or for the benefit of the settlor only as a result of the exercise of a power of appointment held in a nonfiduciary capacity by any person other than the settlor; 2937
2938
2939
2940

(b) Trust property that could be, but has not yet been, distributed to or for the benefit of the settlor of a trust pursuant to the power of the trustee to make distributions or pursuant to the power of another in a fiduciary capacity to direct distributions, if and to the extent that the distributions could be made from trust property the value of which was included in the gross estate of the settlor's spouse 2941
2942
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2944
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for federal estate tax purposes under section 2041 or 2044 of 2948
the Internal Revenue Code or that was treated as a transfer by 2949
the settlor's spouse under section 2514 or 2519 of the Internal 2950
Revenue Code; 2951

(c) Trust property that, pursuant to the exercise of a 2952
discretionary power by a person other than the settlor, could be 2953
paid to a taxing authority or to reimburse the settlor for any 2954
income tax on trust income or principal that is payable by the 2955
settlor under the law imposing the tax. 2956

Sec. 5816.02. As used in this chapter, unless the context 2957
otherwise requires: 2958

(A) (1) "Advisor" means a person to whom both of the 2959
following apply: 2960

(a) The person satisfies the eligibility criteria 2961
specified in division (A) of section 5816.11 of the Revised 2962
Code. 2963

(b) The person is given the authority by the terms of a 2964
legacy trust to remove or appoint one or more trustees of the 2965
trust or to direct, consent to, or disapprove a trustee's actual 2966
or proposed investment, distribution, or other decisions. 2967

(2) Any person to whom division (A) (1) of this section 2968
applies is considered an advisor even if that person is 2969
denominated by another title, such as protector. 2970

(B) "Asset" means property of a transferor but does not 2971
include any of the following: 2972

(1) Property to the extent it is encumbered by a valid 2973
lien; 2974

(2) Property to the extent it is exempt at the time of a 2975

qualified disposition under any applicable nonbankruptcy law, 2976
including, but not limited to, section 2329.66 of the Revised 2977
Code; 2978

(3) Property held in the form of a tenancy by the 2979
entireties to the extent that, under the law governing the 2980
entireties estate at the time of a qualified disposition, it is 2981
not subject to process by a creditor holding a claim against 2982
only one tenant; 2983

(4) Any property transferred from a nonlegacy trust to a 2984
legacy trust to the extent that the property would not be 2985
subject to attachment under the applicable nonbankruptcy law 2986
governing that nonlegacy trust. 2987

(C) "Bankruptcy Code" means the United States Bankruptcy 2988
Code, 11 U.S.C. Chapter 11, as amended. 2989

(D) "Beneficiary" has the same meaning as in section 2990
5801.01 of the Revised Code. 2991

(E) "Claim" means a right to payment, whether or not the 2992
right is reduced to judgment or is liquidated, unliquidated, 2993
fixed, contingent, matured, unmatured, disputed, undisputed, 2994
legal, equitable, secured, or unsecured. 2995

(F) "Creditor" means a person who has a claim against a 2996
transferor and any transferee or assignee of, or successor to, 2997
that claim. 2998

(G) "Debt" means a liability on a claim. 2999

(H) "Disposition" means a direct or indirect transfer, 3000
conveyance, or assignment of property, including, but not 3001
limited to, a partial, contingent, undivided, or co-ownership 3002
interest in property. "Disposition" includes the exercise of a 3003

general power so as to cause a transfer of property to a trustee 3004
or trustees but does not include any of the following: 3005

(1) The release or relinquishment of an interest in 3006
property that, until the release or relinquishment, was the 3007
subject of a qualified disposition; 3008

(2) The exercise of a limited power so as to cause a 3009
transfer of property to a trustee or trustees; 3010

(3) A disclaimer of an interest in a trust, bequest, 3011
devise, or inheritance. 3012

(I) "Internal Revenue Code" means the "Internal Revenue 3013
Code of 1986," 100 Stat. 2085, 26 U.S.C. 1 et seq., as amended. 3014

(J) "Investment decision" means any participation in any 3015
decision regarding the retention, purchase, sale, exchange, 3016
tender, or other transaction affecting the ownership of or 3017
rights in investments. 3018

(K) (1) "Legacy trust" means a trust evidenced by a written 3019
trust instrument to which all of the following apply: 3020

(a) The trust has, names, or appoints at least one 3021
qualified trustee for or in connection with the property that is 3022
the subject of a qualified disposition. 3023

(b) The trust expressly incorporates the laws of this 3024
state to wholly or partially govern its validity, construction, 3025
and administration. 3026

(c) The trust expressly states that it is irrevocable. 3027

(d) The trust has a spendthrift provision applicable to 3028
the interests of any beneficiary in the trust property, 3029
including any interests of a transferor in the trust property. 3030

(2) A trust that satisfies the criteria specified in 3031
division (K)(1) of this section is considered a legacy trust 3032
even if the trust instrument also allows for one or more 3033
nonqualified trustees and regardless of the language used to 3034
satisfy those criteria. 3035

(L) "Lien" has the same meaning as in section 1336.01 of 3036
the Revised Code. 3037

(M) "Nonlegacy trust" means any trust other than a legacy 3038
trust. 3039

(N) "Nonqualified trustee" means any trustee other than a 3040
qualified trustee. 3041

(O) "Person" has the same meaning as in section 5801.01 of 3042
the Revised Code. 3043

(P) "Property" has the same meaning as in section 5801.01 3044
of the Revised Code. 3045

(Q) "Qualified affidavit" means an affidavit that meets 3046
the requirements of section 5816.06 of the Revised Code. 3047

(R) "Qualified disposition" means a disposition by or from 3048
a transferor to any trustee of a trust that is, was, or becomes 3049
a legacy trust. 3050

(S) "Qualified trustee" means a person who is not a 3051
transferor and to whom both of the following apply: 3052

(1) (a) The person, if a natural person, is a resident of 3053
this state. 3054

(b) The person, if not a natural person, is authorized by 3055
the law of this state or by a court of competent jurisdiction of 3056
this state to act as a trustee and ~~whose~~ either of the following 3057

applies: 3058

(i) The activities of that person are subject to 3059
supervision by the Ohio superintendent of ~~banks~~financial 3060
institutions, the federal deposit insurance corporation, the 3061
comptroller of the currency, or the office of thrift supervision 3062
or a successor of any of them. 3063

(ii) That person is a "family trust company," as defined 3064
in section 1112.01 of the Revised Code, and that family trust 3065
company may be licensed or unlicensed for purposes of Chapter 3066
1112. of the Revised Code, provided that all of the following 3067
also apply regardless of the family trust company's licensing 3068
status: 3069

(I) The family trust company shall maintain an office in 3070
this state, on either an exclusive basis or on a shared basis 3071
with one or more other persons. 3072

(II) The family trust company shall open and maintain at 3073
least one bank or brokerage account in this state. 3074

(III) The family trust company shall maintain in this 3075
state, on an exclusive or nonexclusive basis, electronic or 3076
physical records for the legacy trust. 3077

(IV) The family trust company shall satisfy all of the 3078
requirements imposed by divisions (B), (C), (D), and (E) (1) of 3079
section 1112.14 of the Revised Code. 3080

(V) No beneficiary of a legacy trust, when acting for or 3081
on behalf of a family trust company, or when acting as an 3082
officer, manager, director, employee, or other agent or 3083
representative of a family trust company, may have any vote or 3084
authority regarding any decision to make or withhold any 3085
distribution from such legacy trust to or for the benefit of 3086

that beneficiary. 3087

Nothing in division (S) (1) (b) (ii) of this section shall 3088
prohibit a beneficiary from exercising any rights, powers, 3089
privileges, or authority granted to that beneficiary by or in 3090
any trust instrument governing a legacy trust. 3091

(2) The person maintains or arranges for custody in this 3092
state of some or all of the property that is the subject of the 3093
qualified disposition, maintains electronic or physical records 3094
for the legacy trust on an exclusive or nonexclusive basis, 3095
prepares or arranges for the preparation of required income tax 3096
returns for the legacy trust, or otherwise materially 3097
participates in the administration of the legacy trust. 3098

(T) "Spendthrift provision" has the same meaning as in 3099
section 5801.01 of the Revised Code. 3100

(U) "Spouse" and "former spouse" means only the person to 3101
whom a transferor was married on or before a qualified 3102
disposition is made. 3103

(V) "Transferor" means a person who directly or indirectly 3104
makes a disposition. 3105

(W) "Valid lien" has the same meaning as in section 3106
1336.01 of the Revised Code. 3107

Sec. 5816.05. A legacy trust may allow or provide for any 3108
or all of the following rights, powers, interests, or 3109
provisions, none of which grants, or is considered to be, either 3110
alone or in any combination, a right or power to revoke a trust 3111
or to voluntarily or involuntarily transfer an interest in that 3112
trust: 3113

(A) A provision that, upon the happening of a defined 3114

event or a stated contingency, results in the termination of a 3115
transferor's right to mandatory income or principal; 3116

(B) The power of a transferor to veto a distribution from 3117
the trust; 3118

(C) A power of appointment, other than a power to appoint 3119
to a transferor, a creditor of the transferor, the estate of the 3120
transferor, or a creditor of the transferor's estate, that is 3121
exercisable by will or by other written instrument of a 3122
transferor effective upon the death of the transferor or during 3123
the lifetime of the transferor; 3124

(D) The right of a transferor to receive trust income as 3125
set forth in the trust instrument. 3126

(E) Both of the following: 3127

(1) A transferor's potential or actual receipt of income 3128
or principal from a charitable remainder unitrust or charitable 3129
remainder annuity trust as those terms are defined in section 3130
664 of the Internal Revenue Code; 3131

(2) The transferor's right, at any time and from time to 3132
time by written instrument delivered to the trustee, to release 3133
the transferor's retained interest in that unitrust or annuity 3134
trust, in whole or in part, in favor of one or more charitable 3135
organizations that have a succeeding beneficial interest in that 3136
unitrust or annuity trust; 3137

(F) The power of a transferor to consume, invade, or 3138
appropriate property of the trust, but only if limited in each 3139
calendar year to five per cent of the value of the trust 3140
principal at the time of the exercise of the power; 3141

(G) A transferor's potential or actual receipt or use of 3142

principal or income of the trust if the potential or actual 3143
receipt or use is or would be the result of any of the following 3144
that applies with respect to one or more of the qualified 3145
trustees: 3146

(1) A qualified trustee's acting in the trustee's 3147
discretion. For purposes of division (G) (1) of this section, a 3148
qualified trustee shall have discretion with respect to the 3149
distribution or use of principal or income unless the discretion 3150
is expressly denied to the trustee by the terms of the trust 3151
instrument. 3152

(2) A qualified trustee's acting pursuant to a standard in 3153
the trust instrument that governs the distribution or use of 3154
principal or income; 3155

(3) A qualified trustee's acting at the direction of an 3156
advisor who is acting in the advisor's discretion or pursuant to 3157
a standard in the trust instrument that governs the distribution 3158
or use of principal or income. If an advisor is authorized to 3159
direct that distribution or use, the advisor's authority shall 3160
be discretionary unless otherwise expressly stated in the trust 3161
instrument. 3162

(H) The right of a transferor to remove any advisor and 3163
appoint a new advisor who satisfies the eligibility criteria set 3164
forth in division (A) of section 5816.11 of the Revised Code; 3165

(I) The right of a transferor to remove any trustee and 3166
appoint a new trustee; 3167

(J) A transferor's potential or actual use of real 3168
property or tangible personal property, including, but not 3169
limited to, property held under a qualified personal residence 3170
trust as described in section 2702(c) of the Internal Revenue 3171

Code and regulations promulgated under that section, or a 3172
transferor's possession and enjoyment of a qualified interest as 3173
defined in section 2702(b) of the Internal Revenue Code; 3174

(K) Any provision requiring or permitting the potential or 3175
actual use of trust income or principal to pay, in whole or in 3176
part, income taxes due on the income of the trust, including, 3177
but not limited to, any provision permitting that use in the 3178
discretion of any one or more of the qualified trustees acting 3179
in the qualified trustee's discretion or at the direction of an 3180
advisor who is acting in the advisor's discretion; 3181

(L) The ability of a qualified trustee, whether pursuant 3182
to the qualified trustee's discretion or the terms of the legacy 3183
trust instrument or at the direction of an advisor, to pay after 3184
the death of a transferor all or any part of the debts of the 3185
transferor outstanding on or before the transferor's death, the 3186
expenses of administering the transferor's estate, or any 3187
estate, gift, generation skipping transfer, or inheritance tax; 3188

(M) Any provision that pours back after the death of a 3189
transferor all or part of the trust property to the transferor's 3190
estate or any trust; 3191

(N) A power held by a transferor allowing the transferor, 3192
while acting in a nonfiduciary capacity, to substitute property 3193
of equivalent value for any property that is part of the 3194
principal of the legacy trust; 3195

(O) Any other rights, powers, interests, or provisions 3196
permitted or allowed by any other section of this chapter. 3197

Sec. 5816.06. (A) Except as otherwise provided in this 3198
section, a transferor shall sign a qualified affidavit before or 3199
substantially contemporaneously with making a qualified 3200

disposition.	3201
(B) A qualified affidavit shall be notarized and shall	3202
contain all of the following statements under oath:	3203
(1) The property being transferred to the trust was not	3204
derived from unlawful activities.	3205
(2) The transferor has full right, title, and authority to	3206
transfer the property to the legacy trust.	3207
(3) The transferor will not be rendered insolvent	3208
immediately after the transfer of the property to the legacy	3209
trust.	3210
(4) The transferor does not intend to defraud any creditor	3211
by transferring the property to the legacy trust.	3212
(5) There are no pending or threatened court actions	3213
against the transferor, except for any court action identified	3214
by the affidavit or an attachment to the affidavit.	3215
(6) The transferor is not involved in any administrative	3216
proceeding, except for any proceeding identified by the	3217
affidavit or an attachment to the affidavit.	3218
(7) The transferor does not contemplate at the time of the	3219
transfer the filing for relief under the Bankruptcy Code.	3220
(C) A qualified affidavit is considered defective if it	3221
materially fails to meet the requirements set forth in division	3222
(B) of this section, but a qualified affidavit is not considered	3223
defective due to any one or more of the following:	3224
(1) Any nonsubstantive variances from the language set	3225
forth in division (B) of this section;	3226
(2) Any statements or representations in addition to those	3227

set forth in division (B) of this section if the statements or 3228
representations do not materially contradict the statements or 3229
representations required by that division; 3230

(3) Any technical errors in the form, substance, or method 3231
of administering an oath if those errors were not the fault of 3232
the affiant, and the affiant reasonably relied upon another 3233
person to prepare or administer the oath. 3234

(D) (1) A qualified affidavit is not required from a 3235
transferor who is not a beneficiary of the legacy trust that 3236
receives the disposition. 3237

(2) A subsequent qualified affidavit is not required in 3238
connection with any qualified disposition made after the 3239
execution of an earlier qualified affidavit if that disposition 3240
is a part of, is required by, or is the direct result of, a 3241
prior qualified disposition that was made in connection with 3242
that earlier qualified affidavit. 3243

(E) If a qualified affidavit is required by this section 3244
and a transferor fails to timely sign a qualified affidavit or 3245
signs a defective qualified affidavit, then, subject to the 3246
normal rules of evidence, that failure or defect may be 3247
considered as evidence in any proceeding commenced pursuant to 3248
section 5816.07 of the Revised Code, but the legacy trust or the 3249
validity of any attempted qualified disposition shall not be 3250
affected in any other way due to that failure or defect. 3251

Sec. 5816.09. Any successor or replacement trustees of a 3252
legacy trust shall be determined or selected in the following 3253
manners: 3254

(A) (1) Division (A) (2) of this section applies if in any 3255
action involving a legacy trust or any trustee of the legacy 3256

trust a court ~~takes an action~~ enters or issues any order in 3257
which or by which the court declines to apply the law of this 3258
state in determining any of the following matters: 3259

(a) The validity, construction, or administration of the 3260
trust; 3261

(b) The effect of any term or condition of the trust, 3262
including, but not limited to, a spendthrift provision; 3263

(c) The rights and remedies of any creditor or other 3264
suitor in connection with a qualified disposition. 3265

(2) Immediately upon the court's ~~action under entry or~~ 3266
issuance of an order referred to in division (A) (1) of this 3267
section, and without the need for any other order of any court, 3268
any qualified trustee who is a party to that action shall cease 3269
in all respects to be a trustee of the legacy trust, and the 3270
position of trustee shall be occupied in accordance with the 3271
terms of the trust instrument that governed the legacy trust 3272
immediately before that cessation, or, if the terms of the trust 3273
instrument do not provide for another trustee and the trust 3274
would otherwise be without a trustee, any court of this state, 3275
upon the application of any beneficiary of the legacy trust, 3276
shall appoint a successor qualified trustee upon the terms and 3277
conditions that it determines to be consistent with the purposes 3278
of the trust and this chapter. Upon a qualified trustee ceasing 3279
to be a trustee pursuant to division (A) (2) of this section, 3280
that qualified trustee shall have no power or authority other 3281
than to convey trust property to any other trustee that is 3282
appointed, installed, or serving in accordance with that 3283
division. 3284

(3) For purposes of division (A) of this section, ~~"court":~~ 3285

(a) "Court" includes a judicial tribunal, an administrative tribunal, or other adjudicative body or panel.

(b) "Order" includes any order, writ, judgment, entry, edict, mandate, directive, instruction, or decree issued or entered by any court.

(B) In all cases other than the situation described in division (A) of this section, both of the following apply:

(1) If a legacy trust ceases to have at least one qualified trustee, the vacancy in the qualified trusteeship shall be filled pursuant to section 5807.04 of the Revised Code except to the extent that the legacy trust expressly provides otherwise.

(2) If a legacy trust ceases to have at least one trustee, the vacancy in the trusteeship shall be filled pursuant to section 5807.04 of the Revised Code, and the successor trustee shall be a qualified trustee unless the legacy trust instrument expressly provides otherwise.

Sec. 5816.10. (A) In the event of any conflict between any provision of this chapter and any provision of Chapter 1336. of the Revised Code, including, but not limited to, any similar provision of law adopted, promulgated, or enacted by a jurisdiction other than this state, or any other provision of law similar to any provision of Chapter 1336. of the Revised Code, the provision of this chapter shall control and prevail to the maximum extent permitted by the Ohio Constitution and the United States Constitution. When determining whether a provision of law is similar to any provision of Chapter 1336. of the Revised Code, a court shall be liberal in finding that such similarity exists.

(B) A statement in a trust instrument stating that it 3315
"shall be governed by the laws of Ohio" or other statement to 3316
similar effect or of similar import is considered to expressly 3317
incorporate the laws of this state to govern the validity, 3318
construction, and administration of that trust instrument and to 3319
satisfy division (K) (1) (b) of section 5816.02 of the Revised 3320
Code. 3321

(C) A disposition by a nonqualified trustee to a qualified 3322
trustee shall not be treated as other than a qualified 3323
disposition solely because the nonqualified trustee is a trustee 3324
of a nonlegacy trust. 3325

(D) A disposition to any nonqualified trustee of a legacy 3326
trust shall be treated as a qualified disposition if at the time 3327
of the disposition any of the following applies: 3328

(1) There is at least one qualified trustee serving 3329
pursuant to the terms of that legacy trust. 3330

(2) There is no qualified trustee serving but the 3331
circumstances require the appointment or installation of a 3332
qualified trustee pursuant to division (A) (2) of section 5816.09 3333
of the Revised Code. 3334

(3) There is no qualified trustee serving but within one 3335
hundred eighty days after the date of disposition a qualified 3336
trustee fills the vacancy in the qualified trusteeship or an 3337
application to appoint a qualified trustee is filed pursuant to 3338
division (B) of section 5816.09 of the Revised Code. 3339

(E) If a disposition is made by a trustee of a nonlegacy 3340
trust to a trustee of a legacy trust, both of the following 3341
apply: 3342

(1) Except to the extent expressly stated otherwise by the 3343

terms of that disposition, the disposition shall be considered a 3344
qualified disposition for the benefit of all of the persons who 3345
are the beneficiaries of both the nonlegacy trust and the legacy 3346
trust. 3347

(2) The date of the disposition to the legacy trust shall 3348
be considered to be the date on which the property that was part 3349
of the nonlegacy trust was first continuously subject to any law 3350
of a jurisdiction other than this state that is similar to this 3351
chapter. ~~A court shall liberally construe and apply division (E)~~ 3352
~~(2) of this section~~ When applying division (E) (2) of this 3353
section, a court shall be liberal in finding that such 3354
continuity and similarity exist. 3355

(F) A legacy trust may contain any terms or conditions 3356
that provide for changes in or to the place of administration, 3357
situs, governing law, trustees or advisors, or the terms or 3358
conditions of the legacy trust or for other changes permitted by 3359
law. 3360

(G) Any valid lien attaching to property before a 3361
disposition of that property to a trustee of a legacy trust 3362
shall survive the disposition, and the trustee shall take title 3363
to the property subject to the valid lien and subject to any 3364
agreements that created or perfected the valid lien. Nothing in 3365
this chapter shall be construed to authorize any disposition 3366
that is prohibited by the terms of any agreements, notes, 3367
guaranties, mortgages, indentures, instruments, undertakings, or 3368
other documents. In the event of any conflict between this 3369
division and any other provision of this chapter, this division 3370
shall control. 3371

(H) To the maximum extent permitted by the Ohio 3372
Constitution and the United States Constitution, the courts of 3373

this state shall exercise jurisdiction over any legacy trust, any legacy trust matter, or any qualified disposition and shall adjudicate any case or controversy brought before them regarding, arising out of, or related to, any legacy trust, any legacy trust matter, or any qualified disposition if that case or controversy is otherwise within the subject matter jurisdiction of the court. Subject to the Ohio Constitution and the United States Constitution, no court of this state shall dismiss or otherwise decline to adjudicate any case or controversy described in this division on the ground that a court of another jurisdiction has acquired or may acquire proper jurisdiction over, or may provide proper venue for, that case or controversy or the parties to the case or controversy. Nothing in this division shall be construed to do either of the following:

(1) Prohibit a transfer or other reassignment of any case or controversy from one court of this state to another court of this state;

(2) Expand or limit the subject matter jurisdiction of any court of this state.

(I) (1) If any disposition is made by a trustee of a legacy trust, referred to in division (I) of this section as the "first legacy trust," to a trustee of a second legacy trust, referred to in division (I) of this section as the "second legacy trust," whether pursuant to section 5808.18 of the Revised Code or any other applicable law, then all of the following apply to any property involved in such disposition:

(a) Except to the extent expressly stated otherwise by the terms of that disposition, the disposition shall be considered a qualified disposition for the benefit of all persons who are the

beneficiaries of both the first legacy trust and the second 3404
legacy trust. 3405

(b) An item of property shall be treated as having been 3406
transferred to a trustee of the second legacy trust on the 3407
earlier of any of the following: 3408

(i) The date of the original qualified disposition of the 3409
item to a trustee of the first legacy trust; 3410

(ii) If, before being held by the trustee of the first 3411
legacy trust, the item previously was held by a trustee of a 3412
predecessor legacy trust, or by one or more trustees of a 3413
consecutive and uninterrupted series of predecessor legacy 3414
trusts, then the date of the original qualified disposition to 3415
the first trustee to hold that item as part of any such 3416
predecessor legacy trust; 3417

(iii) If, before being held by the trustee of the first 3418
legacy trust, that item was held by a trustee of a nonlegacy 3419
trust referred to in division (E)(2) of this section, then the 3420
date determined pursuant to that division; 3421

(iv) The earliest date determined by any combination of 3422
divisions (I)(1)(b)(i) to (iii) of this section. 3423

(2) For purposes of division (I)(1)(b) of this section, 3424
any reference to an item of property shall include any proceeds 3425
of or substitutes for that item. 3426

(3) Notwithstanding division (S) of section 5816.02 of the 3427
Revised Code, a qualified trustee of the first legacy trust may 3428
serve as a qualified trustee of the second legacy trust. 3429

(4) The dispositions covered by division (I) of this 3430
section include, but are not limited to, any disposition that is 3431

made by a trustee of the first legacy trust acting pursuant to a 3432
direction issued by a person having the power to direct a 3433
distribution of trust property pursuant to the trust instrument 3434
governing the first legacy trust, including, but not limited to, 3435
a power to direct as provided in division (G) of section 5808.18 3436
of the Revised Code. 3437

(J) Any reference in this chapter to an "action" or a 3438
"proceeding" shall be broadly construed to encompass any suit or 3439
proceeding in any jurisdiction or before any judicial tribunal, 3440
administrative tribunal, or other adjudicative body or panel. 3441

(K) This chapter and its provisions reflect and embody the 3442
strong public policy of this state. 3443

Sec. 5816.14. This chapter applies to qualified 3444
dispositions made on or after ~~the effective date of this section~~ 3445
March 27, 2013, except that division (S)(1)(b)(ii) of section 3446
5816.02 of the Revised Code applies to any legacy trust settled 3447
or administered on or after the effective date of this 3448
amendment. 3449

Section 2. That existing sections 339.02, 1721.21, 3450
1901.123, 1907.143, 2106.13, 2108.05, 2108.06, 2108.07, 2108.23, 3451
2108.24, 2108.34, 2111.10, 2111.50, 2133.07, 2701.10, 2717.01, 3452
2945.37, 2945.371, 2945.38, 5122.02, 5122.03, 5122.11, 5122.111, 3453
5122.15, 5804.11, 5805.06, 5816.02, 5816.05, 5816.06, 5816.09, 3454
5816.10, and 5816.14 of the Revised Code are hereby repealed. 3455

Section 3. That section 2133.16 of the Revised Code is 3456
hereby repealed. 3457