

As Introduced

**135th General Assembly
Regular Session
2023-2024**

S. B. No. 302

Senator Gavarone

A BILL

To amend sections 109.04, 1901.021, 1901.14, 1
1901.22, 1907.20, 2111.011, 2307.23, 2317.02, 2
2317.021, 2317.41, 2317.422, 2939.03, 2939.06, 3
2941.61, 2943.02, 2945.51, 2945.52, 2945.53, and 4
2945.54 and to repeal sections 1901.16, 1901.41, 5
1907.21, 1907.231, 2101.12, 2101.121, 2101.14, 6
2101.141, 2301.141, 2317.03, 2317.40, 2317.42, 7
2939.02, 2939.11, 2939.19, 2939.20, 2941.021, 8
2943.03, 2943.04, 2945.12, 2945.30, 2945.31, 9
2945.33, 2945.34, 2945.41, 2945.45, and 2945.50 10
of the Revised Code relative to courts and court 11
procedures. 12

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

Section 1. That sections 109.04, 1901.021, 1901.14, 13
1901.22, 1907.20, 2111.011, 2307.23, 2317.02, 2317.021, 2317.41, 14
2317.422, 2939.03, 2939.06, 2941.61, 2943.02, 2945.51, 2945.52, 15
2945.53, and 2945.54 of the Revised Code be amended to read as 16
follows: 17

Sec. 109.04. During the absence or disability of the 18
attorney general, or when so directed by the attorney general, 19

including all the rights, privileges, and powers conferred upon 20
the attorney general by sections 2939.10, ~~2939.11~~, and 2939.17 21
of the Revised Code, the first assistant attorney general shall 22
perform the duties of the attorney general. 23

Sec. 1901.021. (A) Except as otherwise provided in 24
division (M) of this section, the judge or judges of any 25
municipal court established under division (A) of section 26
1901.01 of the Revised Code having territorial jurisdiction 27
outside the corporate limits of the municipal corporation in 28
which it is located may sit outside the corporate limits of the 29
municipal corporation within the area of its territorial 30
jurisdiction. 31

(B) Two or more of the judges of the Hamilton county 32
municipal court may be assigned by the presiding judge of the 33
court to sit outside the municipal corporation of Cincinnati. 34

(C) Two of the judges of the Portage county municipal 35
court shall sit within the municipal corporation of Ravenna, and 36
one of the judges shall sit within the municipal corporation of 37
Kent. The judges may sit in other incorporated areas of Portage 38
county. 39

(D) The judges of the Wayne county municipal court shall 40
sit within the municipal corporation of Wooster and may sit in 41
other incorporated areas of Wayne county. 42

(E) The judge of the Auglaize county municipal court shall 43
sit within the municipal corporations of Wapakoneta and St. 44
Marys and may sit in other incorporated areas in Auglaize 45
county. 46

(F) At least one of the judges of the Miami county 47
municipal court shall sit within the municipal corporations of 48

Troy, Piqua, and Tipp City, and the judges may sit in other 49
incorporated areas of Miami county. 50

(G) The judge of the Crawford county municipal court shall 51
sit within the municipal corporations of Bucyrus and Galion and 52
may sit in other incorporated areas in Crawford county. 53

(H) The judge of the Jackson county municipal court shall 54
sit within the municipal corporations of Jackson and Wellston 55
and may sit in other incorporated areas in Jackson county. 56

(I) Each judge of the Columbiana county municipal court 57
may sit within the municipal corporation of Lisbon, Salem, or 58
East Palestine until the judges jointly select a central 59
location within the territorial jurisdiction of the court. When 60
the judges select a central location, the judges shall sit at 61
that location. 62

(J) In any municipal court, other than the Hamilton county 63
municipal court and the Montgomery county municipal court, that 64
has more than one judge, the decision for one or more judges to 65
sit outside the corporate limits of the municipal corporation 66
shall be made by rule of the court as provided in ~~division-~~ 67
divisions (A) (3) and (C) of sections ~~section 1901.14 and 1901.16-~~ 68
of the Revised Code. 69

(K) The assignment of a judge to sit in a municipal 70
corporation other than that in which the court is located does 71
not affect the jurisdiction of the mayor except as provided in 72
section 1905.01 of the Revised Code. 73

(L) The judges of the Clermont county municipal court may 74
sit in any municipal corporation or unincorporated territory 75
within Clermont county. 76

(M) Beginning July 1, 2010, the judges of the Montgomery 77

county municipal court shall sit in the same locations as the 78
judges of the Montgomery county county court sat before the 79
county court was abolished on that date. The legislative 80
authority of the Montgomery county municipal court may determine 81
after that date that the judges of the Montgomery county 82
municipal court shall sit in any municipal corporation or 83
unincorporated territory within Montgomery county. 84

(N) The judge of the Tiffin-Fostoria municipal court shall 85
sit within each of the municipal corporations of Tiffin and 86
Fostoria on a weekly basis. Cases that arise within the 87
municipal corporation of Tiffin and within Adams, Big Spring, 88
Bloom, Clinton, Eden, Hopewell, Liberty, Pleasant, Reed, Scioto, 89
Seneca, Thompson, and Venice townships in Seneca county shall be 90
filed in the office of the clerk of the court located in the 91
municipal corporation of Tiffin. Cases that arise in the 92
municipal corporation of Fostoria and within Loudon and Jackson 93
townships in Seneca county shall be filed in the office of the 94
special deputy clerk located in the municipal corporation of 95
Fostoria. Until January 2, 2024, cases that arise within 96
Washington township in Hancock county, and within Perry 97
township, except within the municipal corporation of West 98
Millgrove, in Wood county, shall be filed in the office of the 99
special deputy clerk located in the municipal corporation of 100
Fostoria. 101

(O) The judge of the Fulton county municipal court shall 102
sit within each of the municipal corporations of Wauseon and 103
Swanton on a weekly basis. Cases that arise within the municipal 104
corporation of Wauseon and within Chesterfield, Clinton, Dover, 105
Franklin, German, and Gorham townships in Fulton county shall be 106
filed in the office of the clerk of the court located in the 107
municipal corporation of Wauseon. Cases that arise in the 108

municipal corporation of Swanton and within Amboy, Fulton, Pike, 109
Swan Creek, Royalton, and York townships shall be filed in the 110
office of the special deputy clerk located in the municipal 111
corporation of Swanton. 112

Sec. 1901.14. (A) Municipal judges have the following 113
powers and duties: 114

(1) To perform marriage ceremonies anywhere in this state, 115
take acknowledgment of deeds and other instruments, administer 116
oaths, and perform any other duties that are conferred upon 117
judges of county courts. 118

All fees, including marriage fees, collected by a 119
municipal judge when not connected with any cause or proceeding 120
pending in the municipal court, shall be paid over to the clerk 121
of the municipal court to be paid to the city treasury, except 122
that, in a county-operated municipal court, the fees shall be 123
paid to the treasury of the county in which the court is 124
located. 125

(2) To adopt, publish, and revise rules for the regulation 126
of the practice and procedure of their respective courts, and 127
for the selection and manner of summoning persons to serve as 128
jurors in the court in accordance with the Rules of 129
Superintendence for the Courts of Ohio; 130

(3) To adopt, publish, and revise rules relating to the 131
administration of the court in accordance with the Rules of 132
Superintendence for the Courts of Ohio; 133

(4) On or before the last day of March of each year, the 134
court shall render a complete report of its operation during the 135
preceding calendar year to the legislative authority and to the 136
board of county commissioners of each county within its 137

territory. The report shall show the work performed by the 138
court, a statement of receipts and expenditures of the civil and 139
criminal branches, respectively, the number of cases heard, 140
decided, and settled, and any other data that the supreme court, 141
the secretary of state, the legislative authority, and the board 142
of county commissioners requires. 143

(B) Any rule adopted pursuant to division (A) (2) or (3) of 144
this section does not apply to the housing or environmental 145
division of the municipal court if the judge of the housing or 146
environmental division has adopted rules pursuant to division 147
(C) of this section, unless the rules adopted pursuant to 148
division (C) of this section do not regulate the subject 149
regulated by the rule adopted pursuant to division (A) (2) or (3) 150
of this section. 151

(C) Judges of the housing or environmental division of a 152
municipal court, other than the judge of the environmental 153
division of the Franklin county municipal court, may adopt, 154
publish, and revise rules for the regulation of the practice and 155
procedure of the division, for the selection and manner of 156
summoning persons to serve as jurors in the division, and for 157
the administration of the division, in accordance with the Rules 158
of Superintendence for the Courts of Ohio. 159

Sec. 1901.22. Civil actions and proceedings in the 160
municipal court shall be commenced pursuant to the Civil Rules 161
by filing a complaint upon which summons or writ shall be issued 162
by the clerk of the municipal court. A form of summons or writ 163
shall be prescribed by rule of court. The procedure in a civil 164
case in the municipal court shall be in accordance with the 165
following provisions: 166

(A) The return day shall be fixed by rule of court, and 167

the summons or writ shall, unless accompanied by an order to 168
arrest, be served at least three days before the time of 169
appearance. 170

(B) In attachment and garnishment proceedings, a true copy 171
of the affidavit shall be served with the summons and order of 172
attachment or garnishment. 173

(C) In any action in a municipal court for the recovery of 174
personal property, the appraised value of which exceeds the 175
jurisdictional amount as defined in section 1901.17 of the 176
Revised Code, the judge, upon the return of the appraisalment 177
prior to judgment, shall certify the proceedings in the case to 178
the court of common pleas. 179

(D) Whenever any property is seized or sought to be 180
recovered in any action in a municipal court, the property shall 181
be at once appraised. The value of such property may be 182
ascertained by the oath of two disinterested freeholders who are 183
residents of the territory of the court. 184

(E) In any action in a municipal court in which the amount 185
claimed by any defendant in any statement of counterclaim 186
exceeds the jurisdictional amount, the judge shall certify the 187
proceedings in the case to the court of common pleas, except in 188
the Cleveland municipal court. 189

(F) When the amount due either party exceeds the sum for 190
which a municipal court is authorized to enter judgment, such 191
party may in writing remit the excess and judgment shall be 192
entered for the residue. ~~Any party defendant may, at his option,~~ 193
~~withhold setting up any statement of counterclaim and make the~~ 194
~~counterclaim the subject of a separate action.~~ 195

(G) Upon certification of any proceedings to the court of 196

common pleas, the clerk of the municipal court shall forthwith 197
transmit the original papers and pleadings, together with a 198
certified transcript of the journal entries in the case, to the 199
clerk of the court of common pleas to be filed. The bailiff 200
shall turn over the property in ~~his~~ the bailiff's possession to 201
the sheriff of the county to be held by ~~him~~ the sheriff as in 202
like cases originating in the court of common pleas. The case 203
shall then proceed as if it had been commenced originally in the 204
court of common pleas. 205

Sec. 1907.20. (A) The clerk of courts shall be the clerk 206
of the county court, except that the board of county 207
commissioners, with the concurrence of the county court judges, 208
may appoint a clerk for each county court judge, who shall serve 209
at the pleasure of the board and shall receive compensation as 210
set by the board, payable in semimonthly installments from the 211
treasury of the county. Except as otherwise provided in section 212
3.061 of the Revised Code, an appointed clerk, before entering 213
upon the duties of the office, shall give bond of not less than 214
five thousand dollars, as determined by the board of county 215
commissioners, conditioned upon the faithful performance of the 216
clerk's duties. 217

The clerks of courts of common pleas, when acting as the 218
clerks of county courts, and upon assuming their county court 219
duties, shall receive compensation at one-fourth the rate 220
prescribed for the clerks of courts of common pleas as 221
determined in accordance with the population of the county and 222
the rates set forth in sections 325.08 and 325.18 of the Revised 223
Code. This compensation shall be paid from the county treasury 224
in semimonthly installments and is in addition to the annual 225
compensation received for the performance of the duties of the 226
clerk of a court of common pleas as provided in sections 325.08 227

and 325.18 of the Revised Code. 228

(B) The clerk of a county court shall have general powers 229
to administer oaths, take affidavits, and issue executions upon 230
any judgment rendered in the county court, including a judgment 231
for unpaid costs, power to issue and sign all writs, process, 232
subpoenas, and papers issuing out of the court, and to attach 233
the seal of the court to them, and power to approve all bonds, 234
sureties, recognizances, and undertakings fixed by any judge of 235
the court or by law. The clerk shall file and safely keep all 236
journals, records, books, and papers belonging or appertaining 237
to the court, record its proceedings, perform all other duties 238
that the judges of the court may prescribe, and keep a book 239
showing all receipts and disbursements, which shall be open for 240
public inspection at all times. The clerk may refuse to accept 241
for filing any pleading or paper submitted for filing by a 242
person who has been found to be a vexatious litigator under 243
section 2323.52 of the Revised Code and who has failed to obtain 244
leave to proceed under that section. 245

The clerk shall prepare and maintain a general index, a 246
docket as prescribed by the court, which shall be furnished by 247
the board of county commissioners, and such other records as the 248
court, by rule, requires, all of which shall be the public 249
records of the court. In the docket, the clerk shall enter at 250
times of the commencement of an action, the names of the parties 251
in full, the names of the counsel, and the nature of the 252
proceedings. Under proper dates, the clerk shall note the filing 253
of the complaint, issuing of summons or other process, returns, 254
and pleadings subsequent thereto. The clerk also shall enter all 255
reports, verdicts, orders, judgments, and proceedings of the 256
court, clearly specifying the relief granted or orders made in 257
each action. The court may order an extended record of any of 258

the above to be made and entered, under the proper action 259
heading, upon the docket at the request of any party to the 260
case, the expense of which may be taxed as costs in the case or 261
may be required to be prepaid by the party demanding the 262
extended record, upon order of the court. 263

(C) The clerk of a county court shall receive and collect 264
all costs, fees, fines, penalties, bail, and other moneys 265
payable to the office or to any officer of the court and issue 266
receipts therefor, and shall on or before the twentieth day of 267
the month following the month in which they are collected 268
disburse the costs, fees, fines, penalties, bail, and other 269
moneys to the proper persons or officers and take receipts 270
therefor. Subject to sections 307.515, 4511.19, 4511.193, and 271
5503.04 of the Revised Code and all other statutes that require 272
a different distribution of fines, fines received for violations 273
of municipal ordinances shall be paid into the treasury of the 274
municipal corporation whose ordinance was violated, fines 275
received for violations of township resolutions adopted pursuant 276
to section 503.52 or 503.53 or Chapter 504. of the Revised Code 277
shall be paid into the treasury of the township whose resolution 278
was violated, and fines collected for the violation of state 279
laws shall be paid into the county treasury. Moneys deposited as 280
security for costs shall be retained pending the litigation. 281

~~The clerk shall keep a separate account of all receipts~~ 282
~~and disbursements in civil and criminal cases. The separate~~ 283
~~account shall be a permanent public record of the office. On the~~ 284
~~expiration of a clerk's term, those records shall be delivered~~ 285
~~to the clerk's successor.~~ 286

The clerk shall have such other powers and duties as are 287
prescribed by rule or order of the court. 288

(D) All moneys paid into a county court shall be noted on 289
the record of the case in which they are paid and shall be 290
deposited in a state or national bank selected by the clerk. On 291
the first Monday in January of each year, the clerk shall make a 292
list of the titles of all cases in the county court that were 293
finally determined more than one year past in which there 294
remains unclaimed in the possession of the clerk any funds, or 295
any part of a deposit for security of costs not consumed by the 296
costs in the case. The clerk shall give notice of the moneys to 297
the parties entitled to them or to their attorneys of record. 298
All the moneys remaining unclaimed that are for restitution 299
payments for crime victims shall be sent to the reparations fund 300
created under section 2743.191 of the Revised Code, with a list 301
from the clerk or other officer responsible for the collection 302
and distribution of restitution payments specifying the amounts 303
and individual identifying information of the funds. All other 304
moneys remaining unclaimed on the first day of April of each 305
year shall be paid by the clerk to the county treasurer. Any 306
part of the moneys shall be paid by the county treasurer at any 307
time to the person having the right to them, upon proper 308
certification of the clerk. 309

(E) (1) In county court districts having appointed clerks, 310
deputy clerks may be appointed by the board of county 311
commissioners. Clerks and deputy clerks shall receive such 312
compensation payable in semimonthly installments out of the 313
county treasury as the board may prescribe. Each deputy clerk 314
shall take an oath of office before entering upon the duties of 315
the deputy clerk's office and, when so qualified, may perform 316
the duties appertaining to the office of the clerk. The clerk 317
may require any of the deputy clerks to give bond of not less 318
than three thousand dollars, conditioned for the faithful 319

performance of the deputy clerk's duties. 320

(2) A clerk of courts acting as clerk of the county court 321
may appoint deputy clerks to perform the duties pertaining to 322
the office of clerk of the county court. Each deputy clerk shall 323
take an oath of office before entering upon the deputy clerk's 324
duties, and the clerk of courts may require the deputy clerk to 325
give bond of not less than three thousand dollars, conditioned 326
for the faithful performance of the deputy clerk's duties. 327

(3) The clerk or a deputy clerk of a county court shall be 328
in attendance at all sessions of the court, although not 329
necessarily in the courtroom, and may administer oaths to 330
witnesses and jurors and receive verdicts. 331

(F) (1) In county court districts having appointed clerks, 332
the board of county commissioners may order the establishment of 333
one or more branch offices of the clerk and, with the 334
concurrence of the county judges, may appoint a special deputy 335
clerk to administer each branch office. Each special deputy 336
clerk shall take an oath of office before entering upon the 337
duties of the deputy clerk's office and, when so qualified, may 338
perform any one or more of the duties appertaining to the office 339
of clerk, as the board prescribes. Special deputy clerks shall 340
receive such compensation payable in semimonthly installments 341
out of the county treasury as the board may prescribe. Except as 342
otherwise provided in section 3.061 of the Revised Code, the 343
board may require any of the special deputy clerks to give bond 344
of not less than three thousand dollars, conditioned for the 345
faithful performance of the deputy clerk's duties. 346

The board of county commissioners may authorize the clerk 347
of the county court to operate one or more branch offices, to 348
divide the clerk's time between the offices, and to perform 349

duties appertaining to the office of clerk in locations that the board prescribes.

(2) A clerk of courts acting as clerk of the county court may establish one or more branch offices for the clerk's duties as clerk of the county court and, with the concurrence of the county court judges, may appoint a special deputy clerk to administer each branch office. Each special deputy clerk shall take an oath of office before entering upon the deputy clerk's duties and, when so qualified, may perform any of the duties pertaining to the office of clerk, as the clerk of courts prescribes. The clerk of courts may require any of the special deputy clerks to give bond of not less than three thousand dollars, conditioned for the faithful performance of the deputy clerk's duties.

(G) The clerk of courts of the county shall fix the compensation of deputy clerks and special deputy clerks appointed by the clerk pursuant to this section. Those personnel shall be paid and be subject to the same requirements as other employees of the clerk under the provisions of section 325.17 of the Revised Code insofar as that section is applicable.

Sec. 2111.011. (A) The clerk of the probate court shall furnish a guardianship guide, prepared either by the attorney general with the approval of the Ohio judicial conference or by the Ohio judicial conference under division (B) of this section, to a guardian at either of the following times, whichever is applicable:

(1) Upon the appointment of the guardian under section 2111.02 of the Revised Code;

(2) If the guardian was appointed prior to the effective

date of this section, upon the first filing by the guardian with 379
the probate court of either of the following, as applicable, 380
after that effective date: 381

(a) A guardian's account, other than a final account, that 382
is required to be filed under section 2109.302 of the Revised 383
Code; 384

(b) A guardian's report that is required to be filed under 385
section 2111.49 of the Revised Code. 386

(B) (1) If the attorney general subsequently prepares any 387
updated version of the guardianship guide, the updated guide 388
shall include the rights of a ward as stated in any relevant 389
provision of the Revised Code that is then current. The clerk of 390
the probate court shall furnish the most recent version of the 391
guide to a guardian at either of the following times, whichever 392
is applicable: 393

(a) Upon the appointment of the guardian under section 394
2111.02 of the Revised Code after the most recent version of the 395
guide is prepared; 396

(b) If the guardian was appointed prior to the date of the 397
most recent version of the guide, upon the first filing by the 398
guardian with the probate court of either of the documents 399
described in divisions (A) (2) (a) and (b) of this section, as 400
applicable, after that date. 401

(2) In the alternative, the Ohio judicial conference may 402
create, at their cost, an alternative guardianship guide for use 403
in all probate courts. The alternative guardianship guide shall 404
be distributed in accordance with all provisions contained in 405
this act. The court shall furnish this alternative guardianship 406
guide in accordance with the provisions of this section. 407

(C) The probate court shall establish a form for a guardian to sign acknowledging that the guardian received a guardianship guide pursuant to this section.

(D) Upon receiving a guardianship guide, the guardian shall sign the form specified in division (C) of this section. The signed form shall be kept ~~permanently in the guardianship file of the probate court~~ in accordance with the Rules of Superintendence for the Courts of Ohio.

Sec. 2307.23. (A) In determining the percentage of tortious conduct attributable to a party in a tort action under section 2307.22 or sections 2315.32 to 2315.36 of the Revised Code, the court in a nonjury action shall make findings of fact, and the jury in a jury action shall return a general verdict accompanied by answers to interrogatories, that shall specify all of the following:

(1) The percentage of tortious conduct that proximately caused the injury or loss to person or property or the wrongful death that is attributable to the plaintiff and to each party to the tort action from whom the plaintiff seeks recovery in this action;

(2) The percentage of tortious conduct that proximately caused the injury or loss to person or property or the wrongful death that is attributable to each person from whom the plaintiff does not seek recovery in this action.

(B) The sum of the percentages of tortious conduct as determined pursuant to division (A) of this section shall equal one hundred per cent.

(C) For purposes of division (A) (2) of this section, it is an affirmative defense for each party to the tort action from

whom the plaintiff seeks recovery in this action that a specific 437
percentage of the tortious conduct that proximately caused the 438
injury or loss to person or property or the wrongful death is 439
attributable to one or more persons from whom the plaintiff does 440
not seek recovery in this action. Any party to the tort action 441
from whom the plaintiff seeks recovery in this action may raise 442
an affirmative defense under this division ~~at any time before~~ 443
~~the trial of the action~~in accordance with the Rules of Civil 444
Procedure and other rules of practice and procedure applicable 445
to civil actions. 446

Sec. 2317.02. The following persons shall not testify in 447
certain respects: 448

(A) (1) An attorney, concerning a communication made to the 449
attorney by a client in that relation or concerning the 450
attorney's advice to a client, except that the attorney may 451
testify by express consent of the client or, if the client is 452
deceased, by the express consent of the surviving spouse or the 453
executor or administrator of the estate of the deceased client. 454
However, if the client voluntarily reveals the substance of 455
attorney-client communications in a nonprivileged context or is 456
deemed by section 2151.421 of the Revised Code to have waived 457
any testimonial privilege under this division, the attorney may 458
be compelled to testify on the same subject. 459

The testimonial privilege established under this division 460
does not apply concerning either of the following: 461

(a) A communication between a client in a capital case, as 462
defined in section 2901.02 of the Revised Code, and the client's 463
attorney if the communication is relevant to a subsequent 464
ineffective assistance of counsel claim by the client alleging 465
that the attorney did not effectively represent the client in 466

the case; 467

(b) A communication between a client who has since died 468
and the deceased client's attorney if the communication is 469
relevant to a dispute between parties who claim through that 470
deceased client, regardless of whether the claims are by testate 471
or intestate succession or by inter vivos transaction, and the 472
dispute addresses the competency of the deceased client when the 473
deceased client executed a document that is the basis of the 474
dispute or whether the deceased client was a victim of fraud, 475
undue influence, or duress when the deceased client executed a 476
document that is the basis of the dispute. 477

(2) An attorney, concerning a communication made to the 478
attorney by a client in that relationship or the attorney's 479
advice to a client, except that if the client is an insurance 480
company, the attorney may be compelled to testify, subject to an 481
in camera inspection by a court, about communications made by 482
the client to the attorney or by the attorney to the client that 483
are related to the attorney's aiding or furthering an ongoing or 484
future commission of bad faith by the client, if the party 485
seeking disclosure of the communications has made a prima-facie 486
showing of bad faith, fraud, or criminal misconduct by the 487
client. 488

(B) (1) A physician, advanced practice registered nurse, or 489
dentist concerning a communication made to the physician, 490
advanced practice registered nurse, or dentist by a patient in 491
that relation or the advice of a physician, advanced practice 492
registered nurse, or dentist given to a patient, except as 493
otherwise provided in this division, division (B) (2), and 494
division (B) (3) of this section, and except that, if the patient 495
is deemed by section 2151.421 of the Revised Code to have waived 496

any testimonial privilege under this division, the physician or 497
advanced practice registered nurse may be compelled to testify 498
on the same subject. 499

The testimonial privilege established under this division 500
does not apply, and a physician, advanced practice registered 501
nurse, or dentist may testify or may be compelled to testify, in 502
any of the following circumstances: 503

(a) In any civil action, in accordance with the discovery 504
provisions of the Rules of Civil Procedure in connection with a 505
civil action, or in connection with a claim under Chapter 4123. 506
of the Revised Code, under any of the following circumstances: 507

(i) If the patient or the guardian or other legal 508
representative of the patient gives express consent; 509

(ii) If the patient is deceased, the spouse of the patient 510
or the executor or administrator of the patient's estate gives 511
express consent; 512

(iii) If a medical claim, dental claim, chiropractic 513
claim, or optometric claim, as defined in section 2305.113 of 514
the Revised Code, an action for wrongful death, any other type 515
of civil action, or a claim under Chapter 4123. of the Revised 516
Code is filed by the patient, the personal representative of the 517
estate of the patient if deceased, or the patient's guardian or 518
other legal representative. 519

(b) In any civil action concerning court-ordered treatment 520
or services received by a patient, if the court-ordered 521
treatment or services were ordered as part of a case plan 522
journalized under section 2151.412 of the Revised Code or the 523
court-ordered treatment or services are necessary or relevant to 524
dependency, neglect, or abuse or temporary or permanent custody 525

proceedings under Chapter 2151. of the Revised Code. 526

(c) In any criminal action concerning any test or the 527
results of any test that determines the presence or 528
concentration of alcohol, a drug of abuse, a combination of 529
them, a controlled substance, or a metabolite of a controlled 530
substance in the patient's whole blood, blood serum or plasma, 531
breath, urine, or other bodily substance at any time relevant to 532
the criminal offense in question. 533

(d) In any criminal action against a physician, advanced 534
practice registered nurse, or dentist. In such an action, the 535
testimonial privilege established under this division does not 536
prohibit the admission into evidence, in accordance with the 537
Rules of Evidence, of a patient's medical or dental records or 538
other communications between a patient and the physician, 539
advanced practice registered nurse, or dentist that are related 540
to the action and obtained by subpoena, search warrant, or other 541
lawful means. A court that permits or compels a physician, 542
advanced practice registered nurse, or dentist to testify in 543
such an action or permits the introduction into evidence of 544
patient records or other communications in such an action shall 545
require that appropriate measures be taken to ensure that the 546
confidentiality of any patient named or otherwise identified in 547
the records is maintained. Measures to ensure confidentiality 548
that may be taken by the court include sealing its records or 549
deleting specific information from its records. 550

(e) (i) If the communication was between a patient who has 551
since died and the deceased patient's physician, advanced 552
practice registered nurse, or dentist, the communication is 553
relevant to a dispute between parties who claim through that 554
deceased patient, regardless of whether the claims are by 555

testate or intestate succession or by inter vivos transaction, 556
and the dispute addresses the competency of the deceased patient 557
when the deceased patient executed a document that is the basis 558
of the dispute or whether the deceased patient was a victim of 559
fraud, undue influence, or duress when the deceased patient 560
executed a document that is the basis of the dispute. 561

(ii) If neither the spouse of a patient nor the executor 562
or administrator of that patient's estate gives consent under 563
division (B) (1) (a) (ii) of this section, testimony or the 564
disclosure of the patient's medical records by a physician, 565
advanced practice registered nurse, dentist, or other health 566
care provider under division (B) (1) (e) (i) of this section is a 567
permitted use or disclosure of protected health information, as 568
defined in 45 C.F.R. 160.103, and an authorization or 569
opportunity to be heard shall not be required. 570

(iii) Division (B) (1) (e) (i) of this section does not 571
require a mental health professional to disclose psychotherapy 572
notes, as defined in 45 C.F.R. 164.501. 573

(iv) An interested person who objects to testimony or 574
disclosure under division (B) (1) (e) (i) of this section may seek 575
a protective order pursuant to Civil Rule 26. 576

(v) A person to whom protected health information is 577
disclosed under division (B) (1) (e) (i) of this section shall not 578
use or disclose the protected health information for any purpose 579
other than the litigation or proceeding for which the 580
information was requested and shall return the protected health 581
information to the covered entity or destroy the protected 582
health information, including all copies made, at the conclusion 583
of the litigation or proceeding. 584

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

(b) If a health care provider possesses any records of the type described in division (B) (2) (a) of this section regarding the person in question at any time relevant to the criminal offense in question, in lieu of personally testifying as to the results of the test in question, the custodian of the records may submit a certified copy of the records, and, upon its submission, the certified copy is qualified as authentic evidence and may be admitted as evidence in accordance with the Rules of Evidence. Division (A) of section 2317.422 of the Revised Code does not apply to any certified copy of records submitted in accordance with this division. Nothing in this

division shall be construed to limit the right of any party to 616
call as a witness the person who administered the test to which 617
the records pertain, the person under whose supervision the test 618
was administered, the custodian of the records, the person who 619
made the records, or the person under whose supervision the 620
records were made. 621

(3) (a) If the testimonial privilege described in division 622
(B) (1) of this section does not apply as provided in division 623
(B) (1) (a) (iii) of this section, a physician, advanced practice 624
registered nurse, or dentist may be compelled to testify or to 625
submit to discovery under the Rules of Civil Procedure only as 626
to a communication made to the physician, advanced practice 627
registered nurse, or dentist by the patient in question in that 628
relation, or the advice of the physician, advanced practice 629
registered nurse, or dentist given to the patient in question, 630
that related causally or historically to physical or mental 631
injuries that are relevant to issues in the medical claim, 632
dental claim, chiropractic claim, or optometric claim, action 633
for wrongful death, other civil action, or claim under Chapter 634
4123. of the Revised Code. 635

(b) If the testimonial privilege described in division (B) 636
(1) of this section does not apply to a physician, advanced 637
practice registered nurse, or dentist as provided in division 638
(B) (1) (c) of this section, the physician, advanced practice 639
registered nurse, or dentist, in lieu of personally testifying 640
as to the results of the test in question, may submit a 641
certified copy of those results, and, upon its submission, the 642
certified copy is qualified as authentic evidence and may be 643
admitted as evidence in accordance with the Rules of Evidence. 644
Division (A) of section 2317.422 of the Revised Code does not 645
apply to any certified copy of results submitted in accordance 646

with this division. Nothing in this division shall be construed 647
to limit the right of any party to call as a witness the person 648
who administered the test in question, the person under whose 649
supervision the test was administered, the custodian of the 650
results of the test, the person who compiled the results, or the 651
person under whose supervision the results were compiled. 652

(4) The testimonial privilege described in division (B) (1) 653
of this section is not waived when a communication is made by a 654
physician or advanced practice registered nurse to a pharmacist 655
or when there is communication between a patient and a 656
pharmacist in furtherance of the physician-patient or advanced 657
practice registered nurse-patient relation. 658

(5) (a) As used in divisions (B) (1) to (4) of this section, 659
"communication" means acquiring, recording, or transmitting any 660
information, in any manner, concerning any facts, opinions, or 661
statements necessary to enable a physician, advanced practice 662
registered nurse, or dentist to diagnose, treat, prescribe, or 663
act for a patient. A "communication" may include, but is not 664
limited to, any medical or dental, office, or hospital 665
communication such as a record, chart, letter, memorandum, 666
laboratory test and results, x-ray, photograph, financial 667
statement, diagnosis, or prognosis. 668

(b) As used in division (B) (2) of this section, "health 669
care provider" means a hospital, ambulatory care facility, long- 670
term care facility, pharmacy, emergency facility, or health care 671
practitioner. 672

(c) As used in division (B) (5) (b) of this section: 673

(i) "Ambulatory care facility" means a facility that 674
provides medical, diagnostic, or surgical treatment to patients 675

who do not require hospitalization, including a dialysis center, 676
ambulatory surgical facility, cardiac catheterization facility, 677
diagnostic imaging center, extracorporeal shock wave lithotripsy 678
center, home health agency, inpatient hospice, birthing center, 679
radiation therapy center, emergency facility, and an urgent care 680
center. "Ambulatory health care facility" does not include the 681
private office of a physician, advanced practice registered 682
nurse, or dentist, whether the office is for an individual or 683
group practice. 684

(ii) "Emergency facility" means a hospital emergency 685
department or any other facility that provides emergency medical 686
services. 687

(iii) "Health care practitioner" has the same meaning as 688
in section 4769.01 of the Revised Code. 689

(iv) "Hospital" has the same meaning as in section 3727.01 690
of the Revised Code. 691

(v) "Long-term care facility" means a nursing home, 692
residential care facility, or home for the aging, as those terms 693
are defined in section 3721.01 of the Revised Code; a 694
residential facility licensed under section 5119.34 of the 695
Revised Code that provides accommodations, supervision, and 696
personal care services for three to sixteen unrelated adults; a 697
nursing facility, as defined in section 5165.01 of the Revised 698
Code; a skilled nursing facility, as defined in section 5165.01 699
of the Revised Code; and an intermediate care facility for 700
individuals with intellectual disabilities, as defined in 701
section 5124.01 of the Revised Code. 702

(vi) "Pharmacy" has the same meaning as in section 4729.01 703
of the Revised Code. 704

(d) As used in divisions (B) (1) and (2) of this section, 705
"drug of abuse" has the same meaning as in section 4506.01 of 706
the Revised Code. 707

(6) Divisions (B) (1), (2), (3), (4), and (5) of this 708
section apply to doctors of medicine, doctors of osteopathic 709
medicine, doctors of podiatry, advanced practice registered 710
nurses, and dentists. 711

(7) Nothing in divisions (B) (1) to (6) of this section 712
affects, or shall be construed as affecting, the immunity from 713
civil liability conferred by section 307.628 of the Revised Code 714
or the immunity from civil liability conferred by section 715
2305.33 of the Revised Code upon physicians or advanced practice 716
registered nurses who report an employee's use of a drug of 717
abuse, or a condition of an employee other than one involving 718
the use of a drug of abuse, to the employer of the employee in 719
accordance with division (B) of that section. As used in 720
division (B) (7) of this section, "employee," "employer," and 721
"physician" have the same meanings as in section 2305.33 of the 722
Revised Code and "advanced practice registered nurse" has the 723
same meaning as in section 4723.01 of the Revised Code. 724

(C) (1) A cleric, when the cleric remains accountable to 725
the authority of that cleric's church, denomination, or sect, 726
concerning a confession made, or any information confidentially 727
communicated, to the cleric for a religious counseling purpose 728
in the cleric's professional character. The cleric may testify 729
by express consent of the person making the communication, 730
except when the disclosure of the information is in violation of 731
a sacred trust and except that, if the person voluntarily 732
testifies or is deemed by division (A) (4) (c) of section 2151.421 733
of the Revised Code to have waived any testimonial privilege 734

under this division, the cleric may be compelled to testify on 735
the same subject except when disclosure of the information is in 736
violation of a sacred trust. 737

(2) As used in division (C) of this section: 738

(a) "Cleric" means a member of the clergy, rabbi, priest, 739
Christian Science practitioner, or regularly ordained, 740
accredited, or licensed minister of an established and legally 741
cognizable church, denomination, or sect. 742

(b) "Sacred trust" means a confession or confidential 743
communication made to a cleric in the cleric's ecclesiastical 744
capacity in the course of discipline enjoined by the church to 745
which the cleric belongs, including, but not limited to, the 746
Catholic Church, if both of the following apply: 747

(i) The confession or confidential communication was made 748
directly to the cleric. 749

(ii) The confession or confidential communication was made 750
in the manner and context that places the cleric specifically 751
and strictly under a level of confidentiality that is considered 752
inviolable by canon law or church doctrine. 753

(D) Husband or wife, concerning any communication made by 754
one to the other, or an act done by either in the presence of 755
the other, during coverture, unless the communication was made, 756
or act done, in the known presence or hearing of a third person 757
competent to be a witness; and such rule is the same if the 758
marital relation has ceased to exist; 759

(E) A person who assigns a claim or interest, concerning 760
any matter in respect to which the person would not, if a party, 761
be permitted to testify; 762

~~(F) A person who, if a party, would be restricted under section 2317.03 of the Revised Code, when the property or thing is sold or transferred by an executor, administrator, guardian, trustee, heir, devisee, or legatee, shall be restricted in the same manner in any action or proceeding concerning the property or thing.~~

~~(G) (1) (F) (1)~~ A school guidance counselor who holds a valid educator license from the state board of education as provided for in section 3319.22 of the Revised Code, a person licensed under Chapter 4757. of the Revised Code as a licensed professional clinical counselor, licensed professional counselor, social worker, independent social worker, marriage and family therapist or independent marriage and family therapist, or registered under Chapter 4757. of the Revised Code as a social work assistant concerning a confidential communication received from a client in that relation or the person's advice to a client unless any of the following applies:

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

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

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

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

the same subject. 792

(e) The court in camera determines that the information 793
communicated by the client is not germane to the counselor- 794
client, marriage and family therapist-client, or social worker- 795
client relationship. 796

(f) A court, in an action brought against a school, its 797
administration, or any of its personnel by the client, rules 798
after an in-camera inspection that the testimony of the school 799
guidance counselor is relevant to that action. 800

(g) The testimony is sought in a civil action and concerns 801
court-ordered treatment or services received by a patient as 802
part of a case plan journalized under section 2151.412 of the 803
Revised Code or the court-ordered treatment or services are 804
necessary or relevant to dependency, neglect, or abuse or 805
temporary or permanent custody proceedings under Chapter 2151. 806
of the Revised Code. 807

(2) Nothing in division ~~(G) (1)~~ (F) (1) of this section 808
shall relieve a school guidance counselor or a person licensed 809
or registered under Chapter 4757. of the Revised Code from the 810
requirement to report information concerning child abuse or 811
neglect under section 2151.421 of the Revised Code. 812

~~(H)~~ (G) A mediator acting under a mediation order issued 813
under division (A) of section 3109.052 of the Revised Code or 814
otherwise issued in any proceeding for divorce, dissolution, 815
legal separation, annulment, or the allocation of parental 816
rights and responsibilities for the care of children, in any 817
action or proceeding, other than a criminal, delinquency, child 818
abuse, child neglect, or dependent child action or proceeding, 819
that is brought by or against either parent who takes part in 820

mediation in accordance with the order and that pertains to the 821
mediation process, to any information discussed or presented in 822
the mediation process, to the allocation of parental rights and 823
responsibilities for the care of the parents' children, or to 824
the awarding of parenting time rights in relation to their 825
children; 826

~~(I)~~ (H) A communications assistant, acting within the 827
scope of the communication assistant's authority, when providing 828
telecommunications relay service pursuant to section 4931.06 of 829
the Revised Code or Title II of the "Communications Act of 830
1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a 831
communication made through a telecommunications relay service. 832
Nothing in this section shall limit the obligation of a 833
communications assistant to divulge information or testify when 834
mandated by federal law or regulation or pursuant to subpoena in 835
a criminal proceeding. 836

Nothing in this section shall limit any immunity or 837
privilege granted under federal law or regulation. 838

~~(J) (1)~~ (I) (1) A chiropractor in a civil proceeding 839
concerning a communication made to the chiropractor by a patient 840
in that relation or the chiropractor's advice to a patient, 841
except as otherwise provided in this division. The testimonial 842
privilege established under this division does not apply, and a 843
chiropractor may testify or may be compelled to testify, in any 844
civil action, in accordance with the discovery provisions of the 845
Rules of Civil Procedure in connection with a civil action, or 846
in connection with a claim under Chapter 4123. of the Revised 847
Code, under any of the following circumstances: 848

(a) If the patient or the guardian or other legal 849
representative of the patient gives express consent. 850

(b) If the patient is deceased, the spouse of the patient 851
or the executor or administrator of the patient's estate gives 852
express consent. 853

(c) If a medical claim, dental claim, chiropractic claim, 854
or optometric claim, as defined in section 2305.113 of the 855
Revised Code, an action for wrongful death, any other type of 856
civil action, or a claim under Chapter 4123. of the Revised Code 857
is filed by the patient, the personal representative of the 858
estate of the patient if deceased, or the patient's guardian or 859
other legal representative. 860

(2) If the testimonial privilege described in division ~~(J)~~ 861
~~(1)~~ (I) (1) of this section does not apply as provided in 862
division ~~(J) (1) (e)~~ (I) (1) (c) of this section, a chiropractor may 863
be compelled to testify or to submit to discovery under the 864
Rules of Civil Procedure only as to a communication made to the 865
chiropractor by the patient in question in that relation, or the 866
chiropractor's advice to the patient in question, that related 867
causally or historically to physical or mental injuries that are 868
relevant to issues in the medical claim, dental claim, 869
chiropractic claim, or optometric claim, action for wrongful 870
death, other civil action, or claim under Chapter 4123. of the 871
Revised Code. 872

(3) The testimonial privilege established under this 873
division does not apply, and a chiropractor may testify or be 874
compelled to testify, in any criminal action or administrative 875
proceeding. 876

(4) As used in this division, "communication" means 877
acquiring, recording, or transmitting any information, in any 878
manner, concerning any facts, opinions, or statements necessary 879
to enable a chiropractor to diagnose, treat, or act for a 880

patient. A communication may include, but is not limited to, any 881
chiropractic, office, or hospital communication such as a 882
record, chart, letter, memorandum, laboratory test and results, 883
x-ray, photograph, financial statement, diagnosis, or prognosis. 884

~~(K) (1)~~ (J) (1) Except as provided under division ~~(K) (2)~~ (J) 885
(2) of this section, a critical incident stress management team 886
member concerning a communication received from an individual 887
who receives crisis response services from the team member, or 888
the team member's advice to the individual, during a debriefing 889
session. 890

(2) The testimonial privilege established under division 891
~~(K) (1)~~ (J) (1) of this section does not apply if any of the 892
following are true: 893

(a) The communication or advice indicates clear and 894
present danger to the individual who receives crisis response 895
services or to other persons. For purposes of this division, 896
cases in which there are indications of present or past child 897
abuse or neglect of the individual constitute a clear and 898
present danger. 899

(b) The individual who received crisis response services 900
gives express consent to the testimony. 901

(c) If the individual who received crisis response 902
services is deceased, the surviving spouse or the executor or 903
administrator of the estate of the deceased individual gives 904
express consent. 905

(d) The individual who received crisis response services 906
voluntarily testifies, in which case the team member may be 907
compelled to testify on the same subject. 908

(e) The court in camera determines that the information 909

communicated by the individual who received crisis response 910
services is not germane to the relationship between the 911
individual and the team member. 912

(f) The communication or advice pertains or is related to 913
any criminal act. 914

(3) As used in division ~~(K)~~ (J) of this section: 915

(a) "Crisis response services" means consultation, risk 916
assessment, referral, and on-site crisis intervention services 917
provided by a critical incident stress management team to 918
individuals affected by crisis or disaster. 919

(b) "Critical incident stress management team member" or 920
"team member" means an individual specially trained to provide 921
crisis response services as a member of an organized community 922
or local crisis response team that holds membership in the Ohio 923
critical incident stress management network. 924

(c) "Debriefing session" means a session at which crisis 925
response services are rendered by a critical incident stress 926
management team member during or after a crisis or disaster. 927

~~(L) (1)~~ (K) (1) Subject to division ~~(L) (2)~~ (K) (2) of this 928
section and except as provided in division ~~(L) (3)~~ (K) (3) of this 929
section, an employee assistance professional, concerning a 930
communication made to the employee assistance professional by a 931
client in the employee assistance professional's official 932
capacity as an employee assistance professional. 933

(2) Division ~~(L) (1)~~ (K) (1) of this section applies to an 934
employee assistance professional who meets either or both of the 935
following requirements: 936

(a) Is certified by the employee assistance certification 937

commission to engage in the employee assistance profession;	938
(b) Has education, training, and experience in all of the following:	939
(i) Providing workplace-based services designed to address employer and employee productivity issues;	940
(ii) Providing assistance to employees and employees' dependents in identifying and finding the means to resolve personal problems that affect the employees or the employees' performance;	941
(iii) Identifying and resolving productivity problems associated with an employee's concerns about any of the following matters: health, marriage, family, finances, substance abuse or other addiction, workplace, law, and emotional issues;	942
(iv) Selecting and evaluating available community resources;	943
(v) Making appropriate referrals;	944
(vi) Local and national employee assistance agreements;	945
(vii) Client confidentiality.	946
(3) Division (L)(1) <u>(K)(1)</u> of this section does not apply to any of the following:	947
(a) A criminal action or proceeding involving an offense under sections 2903.01 to 2903.06 of the Revised Code if the employee assistance professional's disclosure or testimony relates directly to the facts or immediate circumstances of the offense;	948
(b) A communication made by a client to an employee assistance professional that reveals the contemplation or	949
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commission of a crime or serious, harmful act;	965
(c) A communication that is made by a client who is an unemancipated minor or an adult adjudicated to be incompetent and indicates that the client was the victim of a crime or abuse;	966 967 968 969
(d) A civil proceeding to determine an individual's mental competency or a criminal action in which a plea of not guilty by reason of insanity is entered;	970 971 972
(e) A civil or criminal malpractice action brought against the employee assistance professional;	973 974
(f) When the employee assistance professional has the express consent of the client or, if the client is deceased or disabled, the client's legal representative;	975 976 977
(g) When the testimonial privilege otherwise provided by division (L) (1) <u>(K) (1)</u> of this section is abrogated under law.	978 979
Sec. 2317.021. (A) As used in division (A) of section 2317.02 of the Revised Code:	980 981
"Client" means a person, firm, partnership, corporation, or other association that, directly or through any representative, consults an attorney for the purpose of retaining the attorney or securing legal service or advice from the attorney in the attorney's professional capacity, or consults an attorney employee for legal service or advice, and who communicates, either directly or through an agent, employee, or other representative, with such attorney; and includes an incompetent person whose guardian so consults the attorney in behalf of the incompetent person.	982 983 984 985 986 987 988 989 990 991
Where a corporation or association is a client having the	992

privilege and it has been dissolved, the privilege shall extend 993
to the last board of directors, their successors or assigns, or 994
to the trustees, their successors or assigns. 995

This section shall be construed as in addition to, and not 996
in limitation of, other laws affording protection to 997
communications under the attorney-client privilege. 998

(B) As used in this section and in ~~sections~~ section 999
2317.02 ~~and 2317.03~~ of the Revised Code, "incompetent" or 1000
"incompetent person" means a person who is so mentally impaired, 1001
as a result of a mental or physical illness or disability, as a 1002
result of an intellectual disability, or as a result of chronic 1003
substance abuse, that the person is incapable of taking proper 1004
care of the person's self or property or fails to provide for 1005
the person's family or other persons for whom the person is 1006
charged by law to provide. 1007

Sec. 2317.41. "Photograph" as used in this section 1008
includes but is not limited to microphotograph, a roll or strip 1009
of film, a roll or strip of microfilm, a photostatic copy, or an 1010
optically-imaged copy. 1011

To the extent that a record would be competent evidence 1012
under ~~section 2317.40 of the Revised Code~~ the Rules of Evidence, 1013
a photograph of such record shall be competent evidence if the 1014
custodian of the photograph or the person who made such 1015
photograph or under whose supervision such photograph was made 1016
testifies to the identity of and the mode of making such 1017
photograph, and if, in the opinion of the trial court, the 1018
record has been destroyed or otherwise disposed of in good faith 1019
in the regular course of business, and the mode of making such 1020
photograph was such as to justify its admission. If a photograph 1021
is admissible under this section, the court may admit the whole 1022

or a part thereof. 1023

Such photograph shall be admissible only if the party 1024
offering it has delivered a copy of it, or so much thereof as 1025
relates to the controversy, to the adverse party a reasonable 1026
time before trial, unless in the opinion of the court the 1027
adverse party has not been unfairly surprised by the failure to 1028
deliver such copy. No such photograph need be submitted to the 1029
adverse party as prescribed in this section unless the original 1030
instrument would be required to be so submitted. 1031

Sec. 2317.422. (A) ~~Notwithstanding sections 2317.40 and~~ 1032
~~2317.41 of the Revised Code but subject~~ Subject to division (B) 1033
of this section, the records, or copies or photographs of the 1034
records, of a hospital, homes required to be licensed pursuant 1035
to section 3721.01 of the Revised Code, and residential 1036
facilities licensed pursuant to section 5119.34 of the Revised 1037
Code that provides accommodations, supervision, and personal 1038
care services for three to sixteen unrelated adults, in lieu of 1039
the testimony in open court of their custodian, person who made 1040
them, or person under whose supervision they were made, may be 1041
qualified as authentic evidence if any such person endorses 1042
thereon the person's verified certification identifying such 1043
records, giving the mode and time of their preparation, and 1044
stating that they were prepared in the usual course of the 1045
business of the institution. Such records, copies, or 1046
photographs may not be qualified by certification as provided in 1047
this section unless the party intending to offer them delivers a 1048
copy of them, or of their relevant portions, to the attorney of 1049
record for each adverse party not less than five days before 1050
trial. Nothing in this section shall be construed to limit the 1051
right of any party to call the custodian, person who made such 1052
records, or person under whose supervision they were made, as a 1053

witness. 1054

(B) Division (A) of this section does not apply to any 1055
certified copy of the results of any test given to determine the 1056
presence or concentration of alcohol, a drug of abuse, a 1057
combination of them, a controlled substance, or a metabolite of 1058
a controlled substance in a patient's whole blood, blood serum 1059
or plasma, breath, or urine at any time relevant to a criminal 1060
offense that is submitted in a criminal action or proceeding in 1061
accordance with division (B) (2) (b) or (B) (3) (b) of section 1062
2317.02 of the Revised Code. 1063

Sec. 2939.03. Except for a foreperson selected by the 1064
judge of the court of common pleas under ~~section 2939.02 of the~~ 1065
~~Revised Code~~ the Rules of Criminal Procedure, a grand jury is 1066
drawn and notified in the same manner as other jurors are drawn 1067
and notified under Chapter 2313. of the Revised Code. Grand 1068
jurors so drawn and notified are not entitled to an exemption 1069
for any reason but may be excused from service or have their 1070
service postponed for the same reasons and in the same manner as 1071
other jurors under that chapter and not otherwise. Grand jurors 1072
are subject to the same fines and penalties for nonattendance 1073
and otherwise as are other jurors under that chapter. The duties 1074
and the powers of courts of common pleas, clerks of courts of 1075
common pleas, and commissioners of jurors in regard to grand 1076
jurors in all respects are the same as in regard to other 1077
jurors. 1078

Sec. 2939.06. (A) When a grand jury is impaneled, the 1079
court of common pleas ~~shall appoint one of the members of the~~ 1080
~~grand jury as foreperson,~~ and shall administer, or cause to be 1081
administered, to the jurors an oath in the following words to 1082
which the jurors shall respond "I do solemnly swear" or "I do 1083

solemnly affirm": 1084

"Do you solemnly swear or affirm that you will diligently 1085
inquire into and carefully deliberate all matters that shall 1086
come to your attention concerning this service; and do you 1087
solemnly swear or affirm that you will keep secret all 1088
proceedings of the grand jury unless you are required in a court 1089
of justice to make disclosure; and do you solemnly swear or 1090
affirm that you will indict no person through malice, hatred, or 1091
ill will; and do you solemnly swear or affirm that you will not 1092
leave unindicted any person through fear, favor, or affection, 1093
or for any reward or hope thereof; and do you solemnly swear or 1094
affirm that in all your deliberations you will present the 1095
truth, the whole truth, and nothing but the truth, according to 1096
the best of your skill and understanding, as you shall answer 1097
unto God or under the penalties of perjury?" 1098

(B) If, on or after ~~the effective date of this amendment~~ 1099
March 24, 2003, a court impaneling a grand jury uses the grand 1100
juror's oath that was in effect prior to ~~the effective date of~~ 1101
~~this amendment~~ March 24, 2003, instead of the oath set forth in 1102
division (A) of this section, the court's use of the former oath 1103
does not invalidate or affect the validity of the impanelment of 1104
the grand jury, any proceeding, inquiry, or presentation of the 1105
grand jury, any indictment or other document found, returned, or 1106
issued by the grand jury, or any other action taken by the grand 1107
jury. 1108

Sec. 2941.61. After a demurrer to an indictment is 1109
overruled, the accused may plead under ~~section 2943.03 of the~~ 1110
~~Revised Code~~ the Rules of Criminal Procedure. 1111

Sec. 2943.02. ~~An accused person shall be arraigned by the~~ 1112
~~clerk of the court of common pleas, or his deputy, reading the~~ 1113

~~indictment or information to the accused, unless the accused or~~ 1114
~~his attorney waives the reading thereof. He shall then be asked~~ 1115
~~to plead thereto.~~ Arraignment shall be made immediately after 1116
the disposition of exceptions to the indictment, if any are 1117
filed, or, if no exceptions are filed, after reasonable 1118
opportunity has been given the accused to file such exceptions. 1119

Sec. 2945.51. When a deposition is to be taken in this 1120
state, ~~and a commission is granted under section 2945.50 of the~~ 1121
~~Revised Code~~ while the defendant is confined in jail, the 1122
sheriff or deputy or other person having custody of the 1123
defendant shall be ordered by the court to take the defendant to 1124
the place of the taking of the deposition, and have ~~him~~ the 1125
defendant before the officer at the time of taking such 1126
deposition. ~~Such~~ The sheriff or deputy or other person having 1127
custody of the defendant shall be reimbursed for actual 1128
reasonable traveling expenses for ~~himself~~ self and the 1129
defendant, the bills for the same, upon the approval of the 1130
board of county commissioners, to be paid from the county 1131
treasury on the warrant of the county auditor. ~~Such~~ The sheriff 1132
shall receive as fees therefor, one dollar for each day in 1133
attendance ~~thereat~~ at the place of the taking of the deposition. 1134
Such fees and traveling expenses shall be taxed and collected as 1135
other fees and costs in the case. 1136

Sec. 2945.52. Counsel assigned by the court to represent 1137
the defendant may attend upon and represent the defendant at the 1138
taking of a deposition ~~under section 2945.50 of the Revised~~ 1139
~~Code~~, and ~~said~~ the counsel shall be paid a reasonable fee for 1140
~~his~~ the counsel's services in taking such deposition, in addition 1141
to the compensation allowed for defending ~~such~~ the defendant, to 1142
be fixed by the court. ~~He~~ The counsel shall also be allowed 1143
~~his~~ the counsel's actual expenses incurred in going to and from 1144

the place of taking the deposition. 1145

Sec. 2945.53. In all cases in which depositions are taken 1146
by the state or the accused, to be used by or against the 1147
accused, as provided in ~~sections 2945.50 to 2945.52, inclusive,~~ 1148
~~of the Revised Code~~the Rules of Criminal Procedure, the court 1149
shall by proper order provide and secure to the accused the 1150
means and opportunity to be present in person and with counsel 1151
at the taking of such deposition, and to examine the witness 1152
face to face, as fully and in the same manner as if in court. 1153
All expenses necessarily incurred in the securing of such means 1154
and opportunity, and the expenses of the prosecuting attorney in 1155
attending the taking of such deposition, shall be paid out of 1156
the county treasury upon the certificate of the court making 1157
such order. 1158

Sec. 2945.54. The examination of witnesses by deposition 1159
in criminal cases shall be taken and certified, and the return 1160
thereof to the court made as for taking depositions under 1161
sections 2319.05 to 2319.31, ~~inclusive,~~ of the Revised Code. ~~The~~ 1162
~~commissioners appointed under section 2945.50 of the Revised~~ 1163
~~Code to take depositions shall receive such compensation as the~~ 1164
~~court directs, to be paid out of the county treasury and taxed~~ 1165
~~as part of the costs in the case.~~ 1166

Section 2. That existing sections 109.04, 1901.021, 1167
1901.14, 1901.22, 1907.20, 2111.011, 2307.23, 2317.02, 2317.021, 1168
2317.41, 2317.422, 2939.03, 2939.06, 2941.61, 2943.02, 2945.51, 1169
2945.52, 2945.53, and 2945.54 of the Revised Code are hereby 1170
repealed. 1171

Section 3. That sections 1901.16, 1901.41, 1907.21, 1172
1907.231, 2101.12, 2101.121, 2101.14, 2101.141, 2301.141, 1173
2317.03, 2317.40, 2317.42, 2939.02, 2939.11, 2939.19, 2939.20, 1174

2941.021, 2943.03, 2943.04, 2945.12, 2945.30, 2945.31, 2945.33,	1175
2945.34, 2945.41, 2945.45, and 2945.50 of the Revised Code are	1176
hereby repealed.	1177