

As Introduced

133rd General Assembly

Regular Session

2019-2020

S. B. No. 196

Senator Eklund

Cosponsors: Senators Yuko, Antonio, Fedor, Craig

A BILL

To amend sections 2151.421, 2317.02, and 2921.22 of
the Revised Code to provide generally a
testimonial privilege for communications between
a qualified advocate rendering advocacy services
and a victim of domestic violence, human
trafficking, menacing by stalking, or sexual
violence, to exempt the nondisclosure of that
privileged communication from the offense of
failure to report a crime, to require a
qualified advocate to report knowledge or
reasonable suspicion of child abuse or neglect
of the victim except for privileged
communications, and to specify circumstances in
which the victim is considered to have waived
the privilege.

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

Section 1. That sections 2151.421, 2317.02, and 2921.22 of
the Revised Code be amended to read as follows:

Sec. 2151.421. (A) (1) (a) No person described in division

(A) (1) (b) of this section who is acting in an official or 19
professional capacity and knows, or has reasonable cause to 20
suspect based on facts that would cause a reasonable person in a 21
similar position to suspect, that a child under eighteen years 22
of age, or a person under twenty-one years of age with a 23
developmental disability or physical impairment, has suffered or 24
faces a threat of suffering any physical or mental wound, 25
injury, disability, or condition of a nature that reasonably 26
indicates abuse or neglect of the child shall fail to 27
immediately report that knowledge or reasonable cause to suspect 28
to the entity or persons specified in this division. Except as 29
otherwise provided in this division or section 5120.173 of the 30
Revised Code, the person making the report shall make it to the 31
public children services agency or a peace officer in the county 32
in which the child resides or in which the abuse or neglect is 33
occurring or has occurred. If the person making the report is a 34
peace officer, the officer shall make it to the public children 35
services agency in the county in which the child resides or in 36
which the abuse or neglect is occurring or has occurred. In the 37
circumstances described in section 5120.173 of the Revised Code, 38
the person making the report shall make it to the entity 39
specified in that section. 40

(b) Division (A) (1) (a) of this section applies to any 41
person who is an attorney; health care professional; 42
practitioner of a limited branch of medicine as specified in 43
section 4731.15 of the Revised Code; licensed school 44
psychologist; independent marriage and family therapist or 45
marriage and family therapist; coroner; administrator or 46
employee of a child day-care center; administrator or employee 47
of a residential camp, child day camp, or private, nonprofit 48
therapeutic wilderness camp; administrator or employee of a 49

certified child care agency or other public or private children 50
services agency; school teacher; school employee; school 51
authority; peace officer; agent of a county humane society; 52
person, other than a cleric, rendering spiritual treatment 53
through prayer in accordance with the tenets of a well- 54
recognized religion; employee of a county department of job and 55
family services who is a professional and who works with 56
children and families; superintendent or regional administrator 57
employed by the department of youth services; superintendent, 58
board member, or employee of a county board of developmental 59
disabilities; investigative agent contracted with by a county 60
board of developmental disabilities; employee of the department 61
of developmental disabilities; employee of a facility or home 62
that provides respite care in accordance with section 5123.171 63
of the Revised Code; employee of an entity that provides 64
homemaker services; a person performing the duties of an 65
assessor pursuant to Chapter 3107. or 5103. of the Revised Code; 66
third party employed by a public children services agency to 67
assist in providing child or family related services; court 68
appointed special advocate; ~~or~~ guardian ad litem; or qualified 69
advocate. 70

(c) If two or more health care professionals, after 71
providing health care services to a child, determine or suspect 72
that the child has been or is being abused or neglected, the 73
health care professionals may designate one of the health care 74
professionals to report the abuse or neglect. A single report 75
made under this division shall meet the reporting requirements 76
of division (A) (1) of this section. 77

(2) Except as provided in division (A) (3) of this section, 78
an attorney or a physician is not required to make a report 79
pursuant to division (A) (1) of this section concerning any 80

communication the attorney or physician receives from a client 81
or patient in an attorney-client or physician-patient 82
relationship, if, in accordance with division (A) or (B) of 83
section 2317.02 of the Revised Code, the attorney or physician 84
could not testify with respect to that communication in a civil 85
or criminal proceeding. 86

(3) The client or patient in an attorney-client or 87
physician-patient relationship described in division (A) (2) of 88
this section is deemed to have waived any testimonial privilege 89
under division (A) or (B) of section 2317.02 of the Revised Code 90
with respect to any communication the attorney or physician 91
receives from the client or patient in that attorney-client or 92
physician-patient relationship, and the attorney or physician 93
shall make a report pursuant to division (A) (1) of this section 94
with respect to that communication, if all of the following 95
apply: 96

(a) The client or patient, at the time of the 97
communication, is a child under eighteen years of age or is a 98
person under twenty-one years of age with a developmental 99
disability or physical impairment. 100

(b) The attorney or physician knows, or has reasonable 101
cause to suspect based on facts that would cause a reasonable 102
person in similar position to suspect that the client or patient 103
has suffered or faces a threat of suffering any physical or 104
mental wound, injury, disability, or condition of a nature that 105
reasonably indicates abuse or neglect of the client or patient. 106

(c) The abuse or neglect does not arise out of the 107
client's or patient's attempt to have an abortion without the 108
notification of her parents, guardian, or custodian in 109
accordance with section 2151.85 of the Revised Code. 110

(4) (a) No cleric and no person, other than a volunteer, 111
designated by any church, religious society, or faith acting as 112
a leader, official, or delegate on behalf of the church, 113
religious society, or faith who is acting in an official or 114
professional capacity, who knows, or has reasonable cause to 115
believe based on facts that would cause a reasonable person in a 116
similar position to believe, that a child under eighteen years 117
of age, or a person under twenty-one years of age with a 118
developmental disability or physical impairment, has suffered or 119
faces a threat of suffering any physical or mental wound, 120
injury, disability, or condition of a nature that reasonably 121
indicates abuse or neglect of the child, and who knows, or has 122
reasonable cause to believe based on facts that would cause a 123
reasonable person in a similar position to believe, that another 124
cleric or another person, other than a volunteer, designated by 125
a church, religious society, or faith acting as a leader, 126
official, or delegate on behalf of the church, religious 127
society, or faith caused, or poses the threat of causing, the 128
wound, injury, disability, or condition that reasonably 129
indicates abuse or neglect shall fail to immediately report that 130
knowledge or reasonable cause to believe to the entity or 131
persons specified in this division. Except as provided in 132
section 5120.173 of the Revised Code, the person making the 133
report shall make it to the public children services agency or a 134
peace officer in the county in which the child resides or in 135
which the abuse or neglect is occurring or has occurred. In the 136
circumstances described in section 5120.173 of the Revised Code, 137
the person making the report shall make it to the entity 138
specified in that section. 139

(b) Except as provided in division (A) (4) (c) of this 140
section, a cleric is not required to make a report pursuant to 141

division (A) (4) (a) of this section concerning any communication 142
the cleric receives from a penitent in a cleric-penitent 143
relationship, if, in accordance with division (C) of section 144
2317.02 of the Revised Code, the cleric could not testify with 145
respect to that communication in a civil or criminal proceeding. 146

(c) The penitent in a cleric-penitent relationship 147
described in division (A) (4) (b) of this section is deemed to 148
have waived any testimonial privilege under division (C) of 149
section 2317.02 of the Revised Code with respect to any 150
communication the cleric receives from the penitent in that 151
cleric-penitent relationship, and the cleric shall make a report 152
pursuant to division (A) (4) (a) of this section with respect to 153
that communication, if all of the following apply: 154

(i) The penitent, at the time of the communication, is a 155
child under eighteen years of age or is a person under twenty- 156
one years of age with a developmental disability or physical 157
impairment. 158

(ii) The cleric knows, or has reasonable cause to believe 159
based on facts that would cause a reasonable person in a similar 160
position to believe, as a result of the communication or any 161
observations made during that communication, the penitent has 162
suffered or faces a threat of suffering any physical or mental 163
wound, injury, disability, or condition of a nature that 164
reasonably indicates abuse or neglect of the penitent. 165

(iii) The abuse or neglect does not arise out of the 166
penitent's attempt to have an abortion performed upon a child 167
under eighteen years of age or upon a person under twenty-one 168
years of age with a developmental disability or physical 169
impairment without the notification of her parents, guardian, or 170
custodian in accordance with section 2151.85 of the Revised 171

Code.	172
(d) Divisions (A) (4) (a) and (c) of this section do not apply in a cleric-penitent relationship when the disclosure of any communication the cleric receives from the penitent is in violation of the sacred trust.	173 174 175 176
(e) As used in divisions (A) (1) and (4) of this section, "cleric" and "sacred trust" have the same meanings as in section 2317.02 of the Revised Code.	177 178 179
<u>(5) (a) Except as provided in division (A) (5) (b) of this section, a qualified advocate is not required to make a report pursuant to division (A) (1) of this section concerning any confidential communication the qualified advocate receives from a victim in a qualified advocate-victim relationship, if, in accordance with division (M) of section 2317.02 of the Revised Code, the qualified advocate could not testify with respect to that communication in a civil, criminal, administrative, or education discipline proceeding.</u>	180 181 182 183 184 185 186 187 188
<u>(b) The victim in a qualified advocate-victim relationship described in division (A) (5) (a) of this section is considered to have waived any testimonial privilege under division (M) of section 2317.02 of the Revised Code with respect to any confidential communication the qualified advocate receives from the victim in that qualified advocate-victim relationship, and the qualified advocate shall make a report pursuant to division (A) (1) of this section with respect to that communication, if all of the following apply:</u>	189 190 191 192 193 194 195 196 197
<u>(i) The victim, at the time of the communication, is either a child under eighteen years of age or a person under twenty-one years of age with a developmental disability or</u>	198 199 200

physical impairment. 201

(ii) The qualified advocate knows, or has reasonable cause 202
to believe based on facts that would cause a reasonable person 203
in a similar position to believe, as a result of the 204
communication or any observations made during that 205
communication, the victim has suffered or faces a threat of 206
suffering any physical or mental wound, injury, disability, or 207
condition of a nature that reasonably indicates abuse or neglect 208
of the victim. 209

(iii) The abuse or neglect does not arise out of the 210
victim's attempt to have an abortion without the notification of 211
her parents, guardian, or custodian in accordance with section 212
2151.85 of the Revised Code. 213

(c) As used in divisions (A) (1) and (5) of this section, 214
"confidential communication," "qualified advocate," and "victim" 215
have the same meanings as in section 2317.02 of the Revised 216
Code. 217

(B) Anyone who knows, or has reasonable cause to suspect 218
based on facts that would cause a reasonable person in similar 219
circumstances to suspect, that a child under eighteen years of 220
age, or a person under twenty-one years of age with a 221
developmental disability or physical impairment, has suffered or 222
faces a threat of suffering any physical or mental wound, 223
injury, disability, or other condition of a nature that 224
reasonably indicates abuse or neglect of the child may report or 225
cause reports to be made of that knowledge or reasonable cause 226
to suspect to the entity or persons specified in this division. 227
Except as provided in section 5120.173 of the Revised Code, a 228
person making a report or causing a report to be made under this 229
division shall make it or cause it to be made to the public 230

children services agency or to a peace officer. In the 231
circumstances described in section 5120.173 of the Revised Code, 232
a person making a report or causing a report to be made under 233
this division shall make it or cause it to be made to the entity 234
specified in that section. 235

(C) Any report made pursuant to division (A) or (B) of 236
this section shall be made forthwith either by telephone or in 237
person and shall be followed by a written report, if requested 238
by the receiving agency or officer. The written report shall 239
contain: 240

(1) The names and addresses of the child and the child's 241
parents or the person or persons having custody of the child, if 242
known; 243

(2) The child's age and the nature and extent of the 244
child's injuries, abuse, or neglect that is known or reasonably 245
suspected or believed, as applicable, to have occurred or of the 246
threat of injury, abuse, or neglect that is known or reasonably 247
suspected or believed, as applicable, to exist, including any 248
evidence of previous injuries, abuse, or neglect; 249

(3) Any other information, including, but not limited to, 250
results and reports of any medical examinations, tests, or 251
procedures performed under division (D) of this section, that 252
might be helpful in establishing the cause of the injury, abuse, 253
or neglect that is known or reasonably suspected or believed, as 254
applicable, to have occurred or of the threat of injury, abuse, 255
or neglect that is known or reasonably suspected or believed, as 256
applicable, to exist. 257

(D) (1) Any person, who is required by division (A) of this 258
section to report child abuse or child neglect that is known or 259

reasonably suspected or believed to have occurred, may take or 260
cause to be taken color photographs of areas of trauma visible 261
on a child and, if medically necessary for the purpose of 262
diagnosing or treating injuries that are suspected to have 263
occurred as a result of child abuse or child neglect, perform or 264
cause to be performed radiological examinations and any other 265
medical examinations of, and tests or procedures on, the child. 266

(2) The results and any available reports of examinations, 267
tests, or procedures made under division (D) (1) of this section 268
shall be included in a report made pursuant to division (A) of 269
this section. Any additional reports of examinations, tests, or 270
procedures that become available shall be provided to the public 271
children services agency, upon request. 272

(3) If a health care professional provides health care 273
services in a hospital, children's advocacy center, or emergency 274
medical facility to a child about whom a report has been made 275
under division (A) of this section, the health care professional 276
may take any steps that are reasonably necessary for the release 277
or discharge of the child to an appropriate environment. Before 278
the child's release or discharge, the health care professional 279
may obtain information, or consider information obtained, from 280
other entities or individuals that have knowledge about the 281
child. Nothing in division (D) (3) of this section shall be 282
construed to alter the responsibilities of any person under 283
sections 2151.27 and 2151.31 of the Revised Code. 284

(4) A health care professional may conduct medical 285
examinations, tests, or procedures on the siblings of a child 286
about whom a report has been made under division (A) of this 287
section and on other children who reside in the same home as the 288
child, if the professional determines that the examinations, 289

tests, or procedures are medically necessary to diagnose or 290
treat the siblings or other children in order to determine 291
whether reports under division (A) of this section are warranted 292
with respect to such siblings or other children. The results of 293
the examinations, tests, or procedures on the siblings and other 294
children may be included in a report made pursuant to division 295
(A) of this section. 296

(5) Medical examinations, tests, or procedures conducted 297
under divisions (D) (1) and (4) of this section and decisions 298
regarding the release or discharge of a child under division (D) 299
(3) of this section do not constitute a law enforcement 300
investigation or activity. 301

(E) (1) When a peace officer receives a report made 302
pursuant to division (A) or (B) of this section, upon receipt of 303
the report, the peace officer who receives the report shall 304
refer the report to the appropriate public children services 305
agency, unless an arrest is made at the time of the report that 306
results in the appropriate public children services agency being 307
contacted concerning the possible abuse or neglect of a child or 308
the possible threat of abuse or neglect of a child. 309

(2) When a public children services agency receives a 310
report pursuant to this division or division (A) or (B) of this 311
section, upon receipt of the report, the public children 312
services agency shall do both of the following: 313

(a) Comply with section 2151.422 of the Revised Code; 314

(b) If the county served by the agency is also served by a 315
children's advocacy center and the report alleges sexual abuse 316
of a child or another type of abuse of a child that is specified 317
in the memorandum of understanding that creates the center as 318

being within the center's jurisdiction, comply regarding the 319
report with the protocol and procedures for referrals and 320
investigations, with the coordinating activities, and with the 321
authority or responsibility for performing or providing 322
functions, activities, and services stipulated in the 323
interagency agreement entered into under section 2151.428 of the 324
Revised Code relative to that center. 325

(F) No peace officer shall remove a child about whom a 326
report is made pursuant to this section from the child's 327
parents, stepparents, or guardian or any other persons having 328
custody of the child without consultation with the public 329
children services agency, unless, in the judgment of the 330
officer, and, if the report was made by physician, the 331
physician, immediate removal is considered essential to protect 332
the child from further abuse or neglect. The agency that must be 333
consulted shall be the agency conducting the investigation of 334
the report as determined pursuant to section 2151.422 of the 335
Revised Code. 336

(G) (1) Except as provided in section 2151.422 of the 337
Revised Code or in an interagency agreement entered into under 338
section 2151.428 of the Revised Code that applies to the 339
particular report, the public children services agency shall 340
investigate, within twenty-four hours, each report of child 341
abuse or child neglect that is known or reasonably suspected or 342
believed to have occurred and of a threat of child abuse or 343
child neglect that is known or reasonably suspected or believed 344
to exist that is referred to it under this section to determine 345
the circumstances surrounding the injuries, abuse, or neglect or 346
the threat of injury, abuse, or neglect, the cause of the 347
injuries, abuse, neglect, or threat, and the person or persons 348
responsible. The investigation shall be made in cooperation with 349

the law enforcement agency and in accordance with the memorandum 350
of understanding prepared under division (K) of this section. A 351
representative of the public children services agency shall, at 352
the time of initial contact with the person subject to the 353
investigation, inform the person of the specific complaints or 354
allegations made against the person. The information shall be 355
given in a manner that is consistent with division (I)(1) of 356
this section and protects the rights of the person making the 357
report under this section. 358

A failure to make the investigation in accordance with the 359
memorandum is not grounds for, and shall not result in, the 360
dismissal of any charges or complaint arising from the report or 361
the suppression of any evidence obtained as a result of the 362
report and does not give, and shall not be construed as giving, 363
any rights or any grounds for appeal or post-conviction relief 364
to any person. The public children services agency shall report 365
each case to the uniform statewide automated child welfare 366
information system that the department of job and family 367
services shall maintain in accordance with section 5101.13 of 368
the Revised Code. The public children services agency shall 369
submit a report of its investigation, in writing, to the law 370
enforcement agency. 371

(2) The public children services agency shall make any 372
recommendations to the county prosecuting attorney or city 373
director of law that it considers necessary to protect any 374
children that are brought to its attention. 375

(H) (1) (a) Except as provided in divisions (H) (1) (b) and 376
(I) (3) of this section, any person, health care professional, 377
hospital, institution, school, health department, or agency 378
shall be immune from any civil or criminal liability for injury, 379

death, or loss to person or property that otherwise might be	380
incurred or imposed as a result of any of the following:	381
(i) Participating in the making of reports pursuant to	382
division (A) of this section or in the making of reports in good	383
faith, pursuant to division (B) of this section;	384
(ii) Participating in medical examinations, tests, or	385
procedures under division (D) of this section;	386
(iii) Providing information used in a report made pursuant	387
to division (A) of this section or providing information in good	388
faith used in a report made pursuant to division (B) of this	389
section;	390
(iv) Participating in a judicial proceeding resulting from	391
a report made pursuant to division (A) of this section or	392
participating in good faith in a proceeding resulting from a	393
report made pursuant to division (B) of this section.	394
(b) Immunity under division (H) (1) (a) (ii) of this section	395
shall not apply when a health care provider has deviated from	396
the standard of care applicable to the provider's profession.	397
(c) Notwithstanding section 4731.22 of the Revised Code,	398
the physician-patient privilege shall not be a ground for	399
excluding evidence regarding a child's injuries, abuse, or	400
neglect, or the cause of the injuries, abuse, or neglect in any	401
judicial proceeding resulting from a report submitted pursuant	402
to this section.	403
(2) In any civil or criminal action or proceeding in which	404
it is alleged and proved that participation in the making of a	405
report under this section was not in good faith or participation	406
in a judicial proceeding resulting from a report made under this	407
section was not in good faith, the court shall award the	408

prevailing party reasonable attorney's fees and costs and, if a 409
civil action or proceeding is voluntarily dismissed, may award 410
reasonable attorney's fees and costs to the party against whom 411
the civil action or proceeding is brought. 412

(I) (1) Except as provided in divisions (I) (4) and (O) of 413
this section, a report made under this section is confidential. 414
The information provided in a report made pursuant to this 415
section and the name of the person who made the report shall not 416
be released for use, and shall not be used, as evidence in any 417
civil action or proceeding brought against the person who made 418
the report. Nothing in this division shall preclude the use of 419
reports of other incidents of known or suspected abuse or 420
neglect in a civil action or proceeding brought pursuant to 421
division (N) of this section against a person who is alleged to 422
have violated division (A) (1) of this section, provided that any 423
information in a report that would identify the child who is the 424
subject of the report or the maker of the report, if the maker 425
of the report is not the defendant or an agent or employee of 426
the defendant, has been redacted. In a criminal proceeding, the 427
report is admissible in evidence in accordance with the Rules of 428
Evidence and is subject to discovery in accordance with the 429
Rules of Criminal Procedure. 430

(2) (a) Except as provided in division (I) (2) (b) of this 431
section, no person shall permit or encourage the unauthorized 432
dissemination of the contents of any report made under this 433
section. 434

(b) A health care professional that obtains the same 435
information contained in a report made under this section from a 436
source other than the report may disseminate the information, if 437
its dissemination is otherwise permitted by law. 438

(3) A person who knowingly makes or causes another person 439
to make a false report under division (B) of this section that 440
alleges that any person has committed an act or omission that 441
resulted in a child being an abused child or a neglected child 442
is guilty of a violation of section 2921.14 of the Revised Code. 443

(4) If a report is made pursuant to division (A) or (B) of 444
this section and the child who is the subject of the report dies 445
for any reason at any time after the report is made, but before 446
the child attains eighteen years of age, the public children 447
services agency or peace officer to which the report was made or 448
referred, on the request of the child fatality review board or 449
the director of health pursuant to guidelines established under 450
section 3701.70 of the Revised Code, shall submit a summary 451
sheet of information providing a summary of the report to the 452
review board of the county in which the deceased child resided 453
at the time of death or to the director. On the request of the 454
review board or director, the agency or peace officer may, at 455
its discretion, make the report available to the review board or 456
director. If the county served by the public children services 457
agency is also served by a children's advocacy center and the 458
report of alleged sexual abuse of a child or another type of 459
abuse of a child is specified in the memorandum of understanding 460
that creates the center as being within the center's 461
jurisdiction, the agency or center shall perform the duties and 462
functions specified in this division in accordance with the 463
interagency agreement entered into under section 2151.428 of the 464
Revised Code relative to that advocacy center. 465

(5) A public children services agency shall advise a 466
person alleged to have inflicted abuse or neglect on a child who 467
is the subject of a report made pursuant to this section, 468
including a report alleging sexual abuse of a child or another 469

type of abuse of a child referred to a children's advocacy 470
center pursuant to an interagency agreement entered into under 471
section 2151.428 of the Revised Code, in writing of the 472
disposition of the investigation. The agency shall not provide 473
to the person any information that identifies the person who 474
made the report, statements of witnesses, or police or other 475
investigative reports. 476

(J) Any report that is required by this section, other 477
than a report that is made to the state highway patrol as 478
described in section 5120.173 of the Revised Code, shall result 479
in protective services and emergency supportive services being 480
made available by the public children services agency on behalf 481
of the children about whom the report is made, in an effort to 482
prevent further neglect or abuse, to enhance their welfare, and, 483
whenever possible, to preserve the family unit intact. The 484
agency required to provide the services shall be the agency 485
conducting the investigation of the report pursuant to section 486
2151.422 of the Revised Code. 487

(K) (1) Each public children services agency shall prepare 488
a memorandum of understanding that is signed by all of the 489
following: 490

(a) If there is only one juvenile judge in the county, the 491
juvenile judge of the county or the juvenile judge's 492
representative; 493

(b) If there is more than one juvenile judge in the 494
county, a juvenile judge or the juvenile judges' representative 495
selected by the juvenile judges or, if they are unable to do so 496
for any reason, the juvenile judge who is senior in point of 497
service or the senior juvenile judge's representative; 498

(c) The county peace officer;	499
(d) All chief municipal peace officers within the county;	500
(e) Other law enforcement officers handling child abuse and neglect cases in the county;	501 502
(f) The prosecuting attorney of the county;	503
(g) If the public children services agency is not the county department of job and family services, the county department of job and family services;	504 505 506
(h) The county humane society;	507
(i) If the public children services agency participated in the execution of a memorandum of understanding under section 2151.426 of the Revised Code establishing a children's advocacy center, each participating member of the children's advocacy center established by the memorandum.	508 509 510 511 512
(2) A memorandum of understanding shall set forth the normal operating procedure to be employed by all concerned officials in the execution of their respective responsibilities under this section and division (C) of section 2919.21, division (B) (1) of section 2919.22, division (B) of section 2919.23, and section 2919.24 of the Revised Code and shall have as two of its primary goals the elimination of all unnecessary interviews of children who are the subject of reports made pursuant to division (A) or (B) of this section and, when feasible, providing for only one interview of a child who is the subject of any report made pursuant to division (A) or (B) of this section. A failure to follow the procedure set forth in the memorandum by the concerned officials is not grounds for, and shall not result in, the dismissal of any charges or complaint arising from any reported case of abuse or neglect or the	513 514 515 516 517 518 519 520 521 522 523 524 525 526 527

suppression of any evidence obtained as a result of any reported 528
child abuse or child neglect and does not give, and shall not be 529
construed as giving, any rights or any grounds for appeal or 530
post-conviction relief to any person. 531

(3) A memorandum of understanding shall include all of the 532
following: 533

(a) The roles and responsibilities for handling emergency 534
and nonemergency cases of abuse and neglect; 535

(b) Standards and procedures to be used in handling and 536
coordinating investigations of reported cases of child abuse and 537
reported cases of child neglect, methods to be used in 538
interviewing the child who is the subject of the report and who 539
allegedly was abused or neglected, and standards and procedures 540
addressing the categories of persons who may interview the child 541
who is the subject of the report and who allegedly was abused or 542
neglected. 543

(4) If a public children services agency participated in 544
the execution of a memorandum of understanding under section 545
2151.426 of the Revised Code establishing a children's advocacy 546
center, the agency shall incorporate the contents of that 547
memorandum in the memorandum prepared pursuant to this section. 548

(5) The clerk of the court of common pleas in the county 549
may sign the memorandum of understanding prepared under division 550
(K)(1) of this section. If the clerk signs the memorandum of 551
understanding, the clerk shall execute all relevant 552
responsibilities as required of officials specified in the 553
memorandum. 554

(L)(1) Except as provided in division (L)(4) or (5) of 555
this section, a person who is required to make a report pursuant 556

to division (A) of this section may make a reasonable number of 557
requests of the public children services agency that receives or 558
is referred the report, or of the children's advocacy center 559
that is referred the report if the report is referred to a 560
children's advocacy center pursuant to an interagency agreement 561
entered into under section 2151.428 of the Revised Code, to be 562
provided with the following information: 563

(a) Whether the agency or center has initiated an 564
investigation of the report; 565

(b) Whether the agency or center is continuing to 566
investigate the report; 567

(c) Whether the agency or center is otherwise involved 568
with the child who is the subject of the report; 569

(d) The general status of the health and safety of the 570
child who is the subject of the report; 571

(e) Whether the report has resulted in the filing of a 572
complaint in juvenile court or of criminal charges in another 573
court. 574

(2) A person may request the information specified in 575
division (L)(1) of this section only if, at the time the report 576
is made, the person's name, address, and telephone number are 577
provided to the person who receives the report. 578

When a peace officer or employee of a public children 579
services agency receives a report pursuant to division (A) or 580
(B) of this section the recipient of the report shall inform the 581
person of the right to request the information described in 582
division (L)(1) of this section. The recipient of the report 583
shall include in the initial child abuse or child neglect report 584
that the person making the report was so informed and, if 585

provided at the time of the making of the report, shall include 586
the person's name, address, and telephone number in the report. 587

Each request is subject to verification of the identity of 588
the person making the report. If that person's identity is 589
verified, the agency shall provide the person with the 590
information described in division (L)(1) of this section a 591
reasonable number of times, except that the agency shall not 592
disclose any confidential information regarding the child who is 593
the subject of the report other than the information described 594
in those divisions. 595

(3) A request made pursuant to division (L)(1) of this 596
section is not a substitute for any report required to be made 597
pursuant to division (A) of this section. 598

(4) If an agency other than the agency that received or 599
was referred the report is conducting the investigation of the 600
report pursuant to section 2151.422 of the Revised Code, the 601
agency conducting the investigation shall comply with the 602
requirements of division (L) of this section. 603

(5) A health care professional who made a report under 604
division (A) of this section, or on whose behalf such a report 605
was made as provided in division (A)(1)(c) of this section, may 606
authorize a person to obtain the information described in 607
division (L)(1) of this section if the person requesting the 608
information is associated with or acting on behalf of the health 609
care professional who provided health care services to the child 610
about whom the report was made. 611

(M) The director of job and family services shall adopt 612
rules in accordance with Chapter 119. of the Revised Code to 613
implement this section. The department of job and family 614

services may enter into a plan of cooperation with any other 615
governmental entity to aid in ensuring that children are 616
protected from abuse and neglect. The department shall make 617
recommendations to the attorney general that the department 618
determines are necessary to protect children from child abuse 619
and child neglect. 620

(N) Whoever violates division (A) of this section is 621
liable for compensatory and exemplary damages to the child who 622
would have been the subject of the report that was not made. A 623
person who brings a civil action or proceeding pursuant to this 624
division against a person who is alleged to have violated 625
division (A) (1) of this section may use in the action or 626
proceeding reports of other incidents of known or suspected 627
abuse or neglect, provided that any information in a report that 628
would identify the child who is the subject of the report or the 629
maker of the report, if the maker is not the defendant or an 630
agent or employee of the defendant, has been redacted. 631

(O) (1) As used in this division: 632

(a) "Out-of-home care" includes a nonchartered nonpublic 633
school if the alleged child abuse or child neglect, or alleged 634
threat of child abuse or child neglect, described in a report 635
received by a public children services agency allegedly occurred 636
in or involved the nonchartered nonpublic school and the alleged 637
perpetrator named in the report holds a certificate, permit, or 638
license issued by the state board of education under section 639
3301.071 or Chapter 3319. of the Revised Code. 640

(b) "Administrator, director, or other chief 641
administrative officer" means the superintendent of the school 642
district if the out-of-home care entity subject to a report made 643
pursuant to this section is a school operated by the district. 644

(2) No later than the end of the day following the day on which a public children services agency receives a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall provide written notice of the allegations contained in and the person named as the alleged perpetrator in the report to the administrator, director, or other chief administrative officer of the out-of-home care entity that is the subject of the report unless the administrator, director, or other chief administrative officer is named as an alleged perpetrator in the report. If the administrator, director, or other chief administrative officer of an out-of-home care entity is named as an alleged perpetrator in a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved the out-of-home care entity, the agency shall provide the written notice to the owner or governing board of the out-of-home care entity that is the subject of the report. The agency shall not provide witness statements or police or other investigative reports.

(3) No later than three days after the day on which a public children services agency that conducted the investigation as determined pursuant to section 2151.422 of the Revised Code makes a disposition of an investigation involving a report of alleged child abuse or child neglect, or a report of an alleged threat of child abuse or child neglect, that allegedly occurred in or involved an out-of-home care entity, the agency shall send written notice of the disposition of the investigation to the administrator, director, or other chief administrative officer and the owner or governing board of the out-of-home care entity.

The agency shall not provide witness statements or police or 676
other investigative reports. 677

(P) As used in this section: 678

(1) "Children's advocacy center" and "sexual abuse of a 679
child" have the same meanings as in section 2151.425 of the 680
Revised Code. 681

(2) "Health care professional" means an individual who 682
provides health-related services including a physician, hospital 683
intern or resident, dentist, podiatrist, registered nurse, 684
licensed practical nurse, visiting nurse, licensed psychologist, 685
speech pathologist, audiologist, person engaged in social work 686
or the practice of professional counseling, and employee of a 687
home health agency. "Health care professional" does not include 688
a practitioner of a limited branch of medicine as specified in 689
section 4731.15 of the Revised Code, licensed school 690
psychologist, independent marriage and family therapist or 691
marriage and family therapist, or coroner. 692

(3) "Investigation" means the public children services 693
agency's response to an accepted report of child abuse or 694
neglect through either an alternative response or a traditional 695
response. 696

(4) "Peace officer" means a sheriff, deputy sheriff, 697
constable, police officer of a township or joint police 698
district, marshal, deputy marshal, municipal police officer, or 699
a state highway patrol trooper. 700

Sec. 2317.02. The following persons shall not testify in 701
certain respects: 702

(A) (1) An attorney, concerning a communication made to the 703
attorney by a client in that relation or concerning the 704

attorney's advice to a client, except that the attorney may 705
testify by express consent of the client or, if the client is 706
deceased, by the express consent of the surviving spouse or the 707
executor or administrator of the estate of the deceased client. 708
However, if the client voluntarily reveals the substance of 709
attorney-client communications in a nonprivileged context or is 710
deemed by section 2151.421 of the Revised Code to have waived 711
any testimonial privilege under this division, the attorney may 712
be compelled to testify on the same subject. 713

The testimonial privilege established under this division 714
does not apply concerning either of the following: 715

(a) A communication between a client in a capital case, as 716
defined in section 2901.02 of the Revised Code, and the client's 717
attorney if the communication is relevant to a subsequent 718
ineffective assistance of counsel claim by the client alleging 719
that the attorney did not effectively represent the client in 720
the case; 721

(b) A communication between a client who has since died 722
and the deceased client's attorney if the communication is 723
relevant to a dispute between parties who claim through that 724
deceased client, regardless of whether the claims are by testate 725
or intestate succession or by inter vivos transaction, and the 726
dispute addresses the competency of the deceased client when the 727
deceased client executed a document that is the basis of the 728
dispute or whether the deceased client was a victim of fraud, 729
undue influence, or duress when the deceased client executed a 730
document that is the basis of the dispute. 731

(2) An attorney, concerning a communication made to the 732
attorney by a client in that relationship or the attorney's 733
advice to a client, except that if the client is an insurance 734

company, the attorney may be compelled to testify, subject to an 735
in camera inspection by a court, about communications made by 736
the client to the attorney or by the attorney to the client that 737
are related to the attorney's aiding or furthering an ongoing or 738
future commission of bad faith by the client, if the party 739
seeking disclosure of the communications has made a prima-facie 740
showing of bad faith, fraud, or criminal misconduct by the 741
client. 742

(B) (1) A physician, advanced practice registered nurse, or 743
dentist concerning a communication made to the physician, 744
advanced practice registered nurse, or dentist by a patient in 745
that relation or the advice of a physician, advanced practice 746
registered nurse, or dentist given to a patient, except as 747
otherwise provided in this division, division (B) (2), and 748
division (B) (3) of this section, and except that, if the patient 749
is deemed by section 2151.421 of the Revised Code to have waived 750
any testimonial privilege under this division, the physician or 751
advanced practice registered nurse may be compelled to testify 752
on the same subject. 753

The testimonial privilege established under this division 754
does not apply, and a physician, advanced practice registered 755
nurse, or dentist may testify or may be compelled to testify, in 756
any of the following circumstances: 757

(a) In any civil action, in accordance with the discovery 758
provisions of the Rules of Civil Procedure in connection with a 759
civil action, or in connection with a claim under Chapter 4123. 760
of the Revised Code, under any of the following circumstances: 761

(i) If the patient or the guardian or other legal 762
representative of the patient gives express consent; 763

(ii) If the patient is deceased, the spouse of the patient 764
or the executor or administrator of the patient's estate gives 765
express consent; 766

(iii) If a medical claim, dental claim, chiropractic 767
claim, or optometric claim, as defined in section 2305.113 of 768
the Revised Code, an action for wrongful death, any other type 769
of civil action, or a claim under Chapter 4123. of the Revised 770
Code is filed by the patient, the personal representative of the 771
estate of the patient if deceased, or the patient's guardian or 772
other legal representative. 773

(b) In any civil action concerning court-ordered treatment 774
or services received by a patient, if the court-ordered 775
treatment or services were ordered as part of a case plan 776
journalized under section 2151.412 of the Revised Code or the 777
court-ordered treatment or services are necessary or relevant to 778
dependency, neglect, or abuse or temporary or permanent custody 779
proceedings under Chapter 2151. of the Revised Code. 780

(c) In any criminal action concerning any test or the 781
results of any test that determines the presence or 782
concentration of alcohol, a drug of abuse, a combination of 783
them, a controlled substance, or a metabolite of a controlled 784
substance in the patient's whole blood, blood serum or plasma, 785
breath, urine, or other bodily substance at any time relevant to 786
the criminal offense in question. 787

(d) In any criminal action against a physician, advanced 788
practice registered nurse, or dentist. In such an action, the 789
testimonial privilege established under this division does not 790
prohibit the admission into evidence, in accordance with the 791
Rules of Evidence, of a patient's medical or dental records or 792
other communications between a patient and the physician, 793

advanced practice registered nurse, or dentist that are related 794
to the action and obtained by subpoena, search warrant, or other 795
lawful means. A court that permits or compels a physician, 796
advanced practice registered nurse, or dentist to testify in 797
such an action or permits the introduction into evidence of 798
patient records or other communications in such an action shall 799
require that appropriate measures be taken to ensure that the 800
confidentiality of any patient named or otherwise identified in 801
the records is maintained. Measures to ensure confidentiality 802
that may be taken by the court include sealing its records or 803
deleting specific information from its records. 804

(e) (i) If the communication was between a patient who has 805
since died and the deceased patient's physician, advanced 806
practice registered nurse, or dentist, the communication is 807
relevant to a dispute between parties who claim through that 808
deceased patient, regardless of whether the claims are by 809
testate or intestate succession or by inter vivos transaction, 810
and the dispute addresses the competency of the deceased patient 811
when the deceased patient executed a document that is the basis 812
of the dispute or whether the deceased patient was a victim of 813
fraud, undue influence, or duress when the deceased patient 814
executed a document that is the basis of the dispute. 815

(ii) If neither the spouse of a patient nor the executor 816
or administrator of that patient's estate gives consent under 817
division (B) (1) (a) (ii) of this section, testimony or the 818
disclosure of the patient's medical records by a physician, 819
advanced practice registered nurse, dentist, or other health 820
care provider under division (B) (1) (e) (i) of this section is a 821
permitted use or disclosure of protected health information, as 822
defined in 45 C.F.R. 160.103, and an authorization or 823
opportunity to be heard shall not be required. 824

(iii) Division (B) (1) (e) (i) of this section does not 825
require a mental health professional to disclose psychotherapy 826
notes, as defined in 45 C.F.R. 164.501. 827

(iv) An interested person who objects to testimony or 828
disclosure under division (B) (1) (e) (i) of this section may seek 829
a protective order pursuant to Civil Rule 26. 830

(v) A person to whom protected health information is 831
disclosed under division (B) (1) (e) (i) of this section shall not 832
use or disclose the protected health information for any purpose 833
other than the litigation or proceeding for which the 834
information was requested and shall return the protected health 835
information to the covered entity or destroy the protected 836
health information, including all copies made, at the conclusion 837
of the litigation or proceeding. 838

(2) (a) If any law enforcement officer submits a written 839
statement to a health care provider that states that an official 840
criminal investigation has begun regarding a specified person or 841
that a criminal action or proceeding has been commenced against 842
a specified person, that requests the provider to supply to the 843
officer copies of any records the provider possesses that 844
pertain to any test or the results of any test administered to 845
the specified person to determine the presence or concentration 846
of alcohol, a drug of abuse, a combination of them, a controlled 847
substance, or a metabolite of a controlled substance in the 848
person's whole blood, blood serum or plasma, breath, or urine at 849
any time relevant to the criminal offense in question, and that 850
conforms to section 2317.022 of the Revised Code, the provider, 851
except to the extent specifically prohibited by any law of this 852
state or of the United States, shall supply to the officer a 853
copy of any of the requested records the provider possesses. If 854

the health care provider does not possess any of the requested 855
records, the provider shall give the officer a written statement 856
that indicates that the provider does not possess any of the 857
requested records. 858

(b) If a health care provider possesses any records of the 859
type described in division (B) (2) (a) of this section regarding 860
the person in question at any time relevant to the criminal 861
offense in question, in lieu of personally testifying as to the 862
results of the test in question, the custodian of the records 863
may submit a certified copy of the records, and, upon its 864
submission, the certified copy is qualified as authentic 865
evidence and may be admitted as evidence in accordance with the 866
Rules of Evidence. Division (A) of section 2317.422 of the 867
Revised Code does not apply to any certified copy of records 868
submitted in accordance with this division. Nothing in this 869
division shall be construed to limit the right of any party to 870
call as a witness the person who administered the test to which 871
the records pertain, the person under whose supervision the test 872
was administered, the custodian of the records, the person who 873
made the records, or the person under whose supervision the 874
records were made. 875

(3) (a) If the testimonial privilege described in division 876
(B) (1) of this section does not apply as provided in division 877
(B) (1) (a) (iii) of this section, a physician, advanced practice 878
registered nurse, or dentist may be compelled to testify or to 879
submit to discovery under the Rules of Civil Procedure only as 880
to a communication made to the physician, advanced practice 881
registered nurse, or dentist by the patient in question in that 882
relation, or the advice of the physician, advanced practice 883
registered nurse, or dentist given to the patient in question, 884
that related causally or historically to physical or mental 885

injuries that are relevant to issues in the medical claim, 886
dental claim, chiropractic claim, or optometric claim, action 887
for wrongful death, other civil action, or claim under Chapter 888
4123. of the Revised Code. 889

(b) If the testimonial privilege described in division (B) 890
(1) of this section does not apply to a physician, advanced 891
practice registered nurse, or dentist as provided in division 892
(B) (1) (c) of this section, the physician, advanced practice 893
registered nurse, or dentist, in lieu of personally testifying 894
as to the results of the test in question, may submit a 895
certified copy of those results, and, upon its submission, the 896
certified copy is qualified as authentic evidence and may be 897
admitted as evidence in accordance with the Rules of Evidence. 898
Division (A) of section 2317.422 of the Revised Code does not 899
apply to any certified copy of results submitted in accordance 900
with this division. Nothing in this division shall be construed 901
to limit the right of any party to call as a witness the person 902
who administered the test in question, the person under whose 903
supervision the test was administered, the custodian of the 904
results of the test, the person who compiled the results, or the 905
person under whose supervision the results were compiled. 906

(4) The testimonial privilege described in division (B) (1) 907
of this section is not waived when a communication is made by a 908
physician or advanced practice registered nurse to a pharmacist 909
or when there is communication between a patient and a 910
pharmacist in furtherance of the physician-patient or advanced 911
practice registered nurse-patient relation. 912

(5) (a) As used in divisions (B) (1) to (4) of this section, 913
"communication" means acquiring, recording, or transmitting any 914
information, in any manner, concerning any facts, opinions, or 915

statements necessary to enable a physician, advanced practice 916
registered nurse, or dentist to diagnose, treat, prescribe, or 917
act for a patient. A "communication" may include, but is not 918
limited to, any medical or dental, office, or hospital 919
communication such as a record, chart, letter, memorandum, 920
laboratory test and results, x-ray, photograph, financial 921
statement, diagnosis, or prognosis. 922

(b) As used in division (B) (2) of this section, "health 923
care provider" means a hospital, ambulatory care facility, long- 924
term care facility, pharmacy, emergency facility, or health care 925
practitioner. 926

(c) As used in division (B) (5) (b) of this section: 927

(i) "Ambulatory care facility" means a facility that 928
provides medical, diagnostic, or surgical treatment to patients 929
who do not require hospitalization, including a dialysis center, 930
ambulatory surgical facility, cardiac catheterization facility, 931
diagnostic imaging center, extracorporeal shock wave lithotripsy 932
center, home health agency, inpatient hospice, birthing center, 933
radiation therapy center, emergency facility, and an urgent care 934
center. "Ambulatory health care facility" does not include the 935
private office of a physician, advanced practice registered 936
nurse, or dentist, whether the office is for an individual or 937
group practice. 938

(ii) "Emergency facility" means a hospital emergency 939
department or any other facility that provides emergency medical 940
services. 941

(iii) "Health care practitioner" has the same meaning as 942
in section 4769.01 of the Revised Code. 943

(iv) "Hospital" has the same meaning as in section 3727.01 944

of the Revised Code. 945

(v) "Long-term care facility" means a nursing home, 946
residential care facility, or home for the aging, as those terms 947
are defined in section 3721.01 of the Revised Code; a 948
residential facility licensed under section 5119.34 of the 949
Revised Code that provides accommodations, supervision, and 950
personal care services for three to sixteen unrelated adults; a 951
nursing facility, as defined in section 5165.01 of the Revised 952
Code; a skilled nursing facility, as defined in section 5165.01 953
of the Revised Code; and an intermediate care facility for 954
individuals with intellectual disabilities, as defined in 955
section 5124.01 of the Revised Code. 956

(vi) "Pharmacy" has the same meaning as in section 4729.01 957
of the Revised Code. 958

(d) As used in divisions (B) (1) and (2) of this section, 959
"drug of abuse" has the same meaning as in section 4506.01 of 960
the Revised Code. 961

(6) Divisions (B) (1), (2), (3), (4), and (5) of this 962
section apply to doctors of medicine, doctors of osteopathic 963
medicine, doctors of podiatry, advanced practice registered 964
nurses, and dentists. 965

(7) Nothing in divisions (B) (1) to (6) of this section 966
affects, or shall be construed as affecting, the immunity from 967
civil liability conferred by section 307.628 of the Revised Code 968
or the immunity from civil liability conferred by section 969
2305.33 of the Revised Code upon physicians or advanced practice 970
registered nurses who report an employee's use of a drug of 971
abuse, or a condition of an employee other than one involving 972
the use of a drug of abuse, to the employer of the employee in 973

accordance with division (B) of that section. As used in 974
division (B) (7) of this section, "employee," "employer," and 975
"physician" have the same meanings as in section 2305.33 of the 976
Revised Code and "advanced practice registered nurse" has the 977
same meaning as in section 4723.01 of the Revised Code. 978

(C) (1) A cleric, when the cleric remains accountable to 979
the authority of that cleric's church, denomination, or sect, 980
concerning a confession made, or any information confidentially 981
communicated, to the cleric for a religious counseling purpose 982
in the cleric's professional character. The cleric may testify 983
by express consent of the person making the communication, 984
except when the disclosure of the information is in violation of 985
a sacred trust and except that, if the person voluntarily 986
testifies or is deemed by division (A) (4) (c) of section 2151.421 987
of the Revised Code to have waived any testimonial privilege 988
under this division, the cleric may be compelled to testify on 989
the same subject except when disclosure of the information is in 990
violation of a sacred trust. 991

(2) As used in division (C) of this section: 992

(a) "Cleric" means a member of the clergy, rabbi, priest, 993
Christian Science practitioner, or regularly ordained, 994
accredited, or licensed minister of an established and legally 995
cognizable church, denomination, or sect. 996

(b) "Sacred trust" means a confession or confidential 997
communication made to a cleric in the cleric's ecclesiastical 998
capacity in the course of discipline enjoined by the church to 999
which the cleric belongs, including, but not limited to, the 1000
Catholic Church, if both of the following apply: 1001

(i) The confession or confidential communication was made 1002

directly to the cleric. 1003

(ii) The confession or confidential communication was made 1004
in the manner and context that places the cleric specifically 1005
and strictly under a level of confidentiality that is considered 1006
inviolable by canon law or church doctrine. 1007

(D) Husband or wife, concerning any communication made by 1008
one to the other, or an act done by either in the presence of 1009
the other, during coverture, unless the communication was made, 1010
or act done, in the known presence or hearing of a third person 1011
competent to be a witness; and such rule is the same if the 1012
marital relation has ceased to exist; 1013

(E) A person who assigns a claim or interest, concerning 1014
any matter in respect to which the person would not, if a party, 1015
be permitted to testify; 1016

(F) A person who, if a party, would be restricted under 1017
section 2317.03 of the Revised Code, when the property or thing 1018
is sold or transferred by an executor, administrator, guardian, 1019
trustee, heir, devisee, or legatee, shall be restricted in the 1020
same manner in any action or proceeding concerning the property 1021
or thing. 1022

(G) (1) A school guidance counselor who holds a valid 1023
educator license from the state board of education as provided 1024
for in section 3319.22 of the Revised Code, a person licensed 1025
under Chapter 4757. of the Revised Code as a licensed 1026
professional clinical counselor, licensed professional 1027
counselor, social worker, independent social worker, marriage 1028
and family therapist or independent marriage and family 1029
therapist, or registered under Chapter 4757. of the Revised Code 1030
as a social work assistant concerning a confidential 1031

communication received from a client in that relation or the 1032
person's advice to a client unless any of the following applies: 1033

(a) The communication or advice indicates clear and 1034
present danger to the client or other persons. For the purposes 1035
of this division, cases in which there are indications of 1036
present or past child abuse or neglect of the client constitute 1037
a clear and present danger. 1038

(b) The client gives express consent to the testimony. 1039

(c) If the client is deceased, the surviving spouse or the 1040
executor or administrator of the estate of the deceased client 1041
gives express consent. 1042

(d) The client voluntarily testifies, in which case the 1043
school guidance counselor or person licensed or registered under 1044
Chapter 4757. of the Revised Code may be compelled to testify on 1045
the same subject. 1046

(e) The court in camera determines that the information 1047
communicated by the client is not germane to the counselor- 1048
client, marriage and family therapist-client, or social worker- 1049
client relationship. 1050

(f) A court, in an action brought against a school, its 1051
administration, or any of its personnel by the client, rules 1052
after an in-camera inspection that the testimony of the school 1053
guidance counselor is relevant to that action. 1054

(g) The testimony is sought in a civil action and concerns 1055
court-ordered treatment or services received by a patient as 1056
part of a case plan journalized under section 2151.412 of the 1057
Revised Code or the court-ordered treatment or services are 1058
necessary or relevant to dependency, neglect, or abuse or 1059
temporary or permanent custody proceedings under Chapter 2151. 1060

of the Revised Code. 1061

(2) Nothing in division (G) (1) of this section shall 1062
relieve a school guidance counselor or a person licensed or 1063
registered under Chapter 4757. of the Revised Code from the 1064
requirement to report information concerning child abuse or 1065
neglect under section 2151.421 of the Revised Code. 1066

(H) A mediator acting under a mediation order issued under 1067
division (A) of section 3109.052 of the Revised Code or 1068
otherwise issued in any proceeding for divorce, dissolution, 1069
legal separation, annulment, or the allocation of parental 1070
rights and responsibilities for the care of children, in any 1071
action or proceeding, other than a criminal, delinquency, child 1072
abuse, child neglect, or dependent child action or proceeding, 1073
that is brought by or against either parent who takes part in 1074
mediation in accordance with the order and that pertains to the 1075
mediation process, to any information discussed or presented in 1076
the mediation process, to the allocation of parental rights and 1077
responsibilities for the care of the parents' children, or to 1078
the awarding of parenting time rights in relation to their 1079
children; 1080

(I) A communications assistant, acting within the scope of 1081
the communication assistant's authority, when providing 1082
telecommunications relay service pursuant to section 4931.06 of 1083
the Revised Code or Title II of the "Communications Act of 1084
1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a 1085
communication made through a telecommunications relay service. 1086
Nothing in this section shall limit the obligation of a 1087
communications assistant to divulge information or testify when 1088
mandated by federal law or regulation or pursuant to subpoena in 1089
a criminal proceeding. 1090

Nothing in this section shall limit any immunity or 1091
privilege granted under federal law or regulation. 1092

(J) (1) A chiropractor in a civil proceeding concerning a 1093
communication made to the chiropractor by a patient in that 1094
relation or the chiropractor's advice to a patient, except as 1095
otherwise provided in this division. The testimonial privilege 1096
established under this division does not apply, and a 1097
chiropractor may testify or may be compelled to testify, in any 1098
civil action, in accordance with the discovery provisions of the 1099
Rules of Civil Procedure in connection with a civil action, or 1100
in connection with a claim under Chapter 4123. of the Revised 1101
Code, under any of the following circumstances: 1102

(a) If the patient or the guardian or other legal 1103
representative of the patient gives express consent. 1104

(b) If the patient is deceased, the spouse of the patient 1105
or the executor or administrator of the patient's estate gives 1106
express consent. 1107

(c) If a medical claim, dental claim, chiropractic claim, 1108
or optometric claim, as defined in section 2305.113 of the 1109
Revised Code, an action for wrongful death, any other type of 1110
civil action, or a claim under Chapter 4123. of the Revised Code 1111
is filed by the patient, the personal representative of the 1112
estate of the patient if deceased, or the patient's guardian or 1113
other legal representative. 1114

(2) If the testimonial privilege described in division (J) 1115
(1) of this section does not apply as provided in division (J) 1116
(1)(c) of this section, a chiropractor may be compelled to 1117
testify or to submit to discovery under the Rules of Civil 1118
Procedure only as to a communication made to the chiropractor by 1119

the patient in question in that relation, or the chiropractor's 1120
advice to the patient in question, that related causally or 1121
historically to physical or mental injuries that are relevant to 1122
issues in the medical claim, dental claim, chiropractic claim, 1123
or optometric claim, action for wrongful death, other civil 1124
action, or claim under Chapter 4123. of the Revised Code. 1125

(3) The testimonial privilege established under this 1126
division does not apply, and a chiropractor may testify or be 1127
compelled to testify, in any criminal action or administrative 1128
proceeding. 1129

(4) As used in this division, "communication" means 1130
acquiring, recording, or transmitting any information, in any 1131
manner, concerning any facts, opinions, or statements necessary 1132
to enable a chiropractor to diagnose, treat, or act for a 1133
patient. A communication may include, but is not limited to, any 1134
chiropractic, office, or hospital communication such as a 1135
record, chart, letter, memorandum, laboratory test and results, 1136
x-ray, photograph, financial statement, diagnosis, or prognosis. 1137

(K) (1) Except as provided under division (K) (2) of this 1138
section, a critical incident stress management team member 1139
concerning a communication received from an individual who 1140
receives crisis response services from the team member, or the 1141
team member's advice to the individual, during a debriefing 1142
session. 1143

(2) The testimonial privilege established under division 1144
(K) (1) of this section does not apply if any of the following 1145
are true: 1146

(a) The communication or advice indicates clear and 1147
present danger to the individual who receives crisis response 1148

services or to other persons. For purposes of this division, 1149
cases in which there are indications of present or past child 1150
abuse or neglect of the individual constitute a clear and 1151
present danger. 1152

(b) The individual who received crisis response services 1153
gives express consent to the testimony. 1154

(c) If the individual who received crisis response 1155
services is deceased, the surviving spouse or the executor or 1156
administrator of the estate of the deceased individual gives 1157
express consent. 1158

(d) The individual who received crisis response services 1159
voluntarily testifies, in which case the team member may be 1160
compelled to testify on the same subject. 1161

(e) The court in camera determines that the information 1162
communicated by the individual who received crisis response 1163
services is not germane to the relationship between the 1164
individual and the team member. 1165

(f) The communication or advice pertains or is related to 1166
any criminal act. 1167

(3) As used in division (K) of this section: 1168

(a) "Crisis response services" means consultation, risk 1169
assessment, referral, and on-site crisis intervention services 1170
provided by a critical incident stress management team to 1171
individuals affected by crisis or disaster. 1172

(b) "Critical incident stress management team member" or 1173
"team member" means an individual specially trained to provide 1174
crisis response services as a member of an organized community 1175
or local crisis response team that holds membership in the Ohio 1176

critical incident stress management network. 1177

(c) "Debriefing session" means a session at which crisis 1178
response services are rendered by a critical incident stress 1179
management team member during or after a crisis or disaster. 1180

(L) (1) Subject to division (L) (2) of this section and 1181
except as provided in division (L) (3) of this section, an 1182
employee assistance professional, concerning a communication 1183
made to the employee assistance professional by a client in the 1184
employee assistance professional's official capacity as an 1185
employee assistance professional. 1186

(2) Division (L) (1) of this section applies to an employee 1187
assistance professional who meets either or both of the 1188
following requirements: 1189

(a) Is certified by the employee assistance certification 1190
commission to engage in the employee assistance profession; 1191

(b) Has education, training, and experience in all of the 1192
following: 1193

(i) Providing workplace-based services designed to address 1194
employer and employee productivity issues; 1195

(ii) Providing assistance to employees and employees' 1196
dependents in identifying and finding the means to resolve 1197
personal problems that affect the employees or the employees' 1198
performance; 1199

(iii) Identifying and resolving productivity problems 1200
associated with an employee's concerns about any of the 1201
following matters: health, marriage, family, finances, substance 1202
abuse or other addiction, workplace, law, and emotional issues; 1203

(iv) Selecting and evaluating available community 1204

resources;	1205
(v) Making appropriate referrals;	1206
(vi) Local and national employee assistance agreements;	1207
(vii) Client confidentiality.	1208
(3) Division (L)(1) of this section does not apply to any of the following:	1209 1210
(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;	1211 1212 1213 1214 1215
(b) A communication made by a client to an employee assistance professional that reveals the contemplation or commission of a crime or serious, harmful act;	1216 1217 1218
(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;	1219 1220 1221 1222
(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;	1223 1224 1225
(e) A civil or criminal malpractice action brought against the employee assistance professional;	1226 1227
(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;	1228 1229 1230
(g) When the testimonial privilege otherwise provided by	1231

division (L) (1) of this section is abrogated under law. 1232

(M) (1) Subject to division (M) (2) of this section and 1233
except as provided in division (M) (3) of this section, a 1234
qualified advocate, in any civil, criminal, administrative, or 1235
education discipline proceeding, concerning either of the 1236
following: 1237

(a) A confidential communication made by a victim to a 1238
qualified advocate or by a qualified advocate to a victim in the 1239
course of safety planning, counseling, support, or advocacy 1240
services provided by the qualified advocate to the victim and 1241
related to the domestic violence, human trafficking, menacing by 1242
stalking, or sexual violence for which the victim sought those 1243
services; 1244

(b) A record created or maintained in the course of the 1245
qualified advocate providing safety planning, counseling, 1246
support, or advocacy services regarding the victim and related 1247
to the domestic violence, human trafficking, menacing by 1248
stalking, or sexual violence for which the victim sought those 1249
services. 1250

(2) If the victim voluntarily reveals the substance of any 1251
qualified advocate-victim communication in a nonprivileged 1252
context or is considered by division (A) (5) (b) of section 1253
2151.421 of the Revised Code to have waived any testimonial 1254
privilege under division (M) (1) of this section, the qualified 1255
advocate may be compelled to testify on the same subject in any 1256
proceeding described in division (M) (1) of this section. 1257

(3) The testimonial privilege established under division 1258
(M) (1) of this section does not apply concerning any of the 1259
following: 1260

(a) A confidential communication between a qualified advocate and a victim in a civil, criminal, administrative, or education discipline action or proceeding brought against the qualified advocate or the qualified victim services program of which the qualified advocate is an employee or volunteer by the victim or by any other person in relation to the safety planning, counseling, support, or advocacy services provided to the victim, if the confidential communication is relevant to the defense of the qualified advocate or qualified victim services program; 1261
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(b) A disclosure of aggregate, nonpersonally identifiable data. 1271
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(4) As used in division (M) of this section: 1273

(a) "Aggregate, nonpersonally identifiable data" means all data from or through which the person to whom the data pertains cannot be identified. 1274
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(b) "Confidential communication" means any written or oral communication that is intended for the purpose of furthering the interest of the victim in the course of safety planning, counseling, support, or advocacy services and is not intended for further disclosure to another person except any of the following: 1277
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(i) Any person who is present at the time the communication is made and is present in order to further the interest of the victim in the course of seeking safety planning, counseling, support, or advocacy services; 1283
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(ii) Any person who is reasonably necessary for the transmission of the communication; 1287
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(iii) Any other persons in the context of group 1289

<u>counseling;</u>	1290
<u>(iv) Any person to whom disclosure is reasonably necessary</u>	1291
<u>to accomplish a purpose for which the victim consulted the</u>	1292
<u>qualified advocate and to whom information is disclosed pursuant</u>	1293
<u>to a voluntary and knowing written informed consent given by the</u>	1294
<u>victim to the qualified advocate.</u>	1295
<u>(c) "Domestic violence" means any of the following:</u>	1296
<u>(i) Any conduct that is described in division (A)(1)(a) of</u>	1297
<u>section 3113.31 of the Revised Code;</u>	1298
<u>(ii) Any conduct that is prohibited in an existing or</u>	1299
<u>former municipal ordinance or law of this state, any other</u>	1300
<u>state, or the United States and that is or was substantially</u>	1301
<u>equivalent to any conduct described in division (M)(4)(c)(i) of</u>	1302
<u>this section.</u>	1303
<u>(d) "Human trafficking" means any of the following:</u>	1304
<u>(i) Any conduct that is described in division (A) of</u>	1305
<u>section 2905.32 of the Revised Code;</u>	1306
<u>(ii) Any conduct that is prohibited in an existing or</u>	1307
<u>former municipal ordinance or law of this state, any other</u>	1308
<u>state, or the United States and that is or was substantially</u>	1309
<u>equivalent to any conduct described in division (M)(4)(d)(i) of</u>	1310
<u>this section.</u>	1311
<u>(e) "Menacing by stalking" means any of the following:</u>	1312
<u>(i) Any conduct that is described in division (A) of</u>	1313
<u>section 2903.211 of the Revised Code;</u>	1314
<u>(ii) Any conduct that is described in division (A) of</u>	1315
<u>section 2903.22 of the Revised Code;</u>	1316

(iii) Any conduct that is prohibited in an existing or former municipal ordinance or law of this state, any other state, or the United States and that is or was substantially equivalent to any conduct described in division (M) (4) (e) (i) or (ii) of this section. 1317
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(f) (i) "Qualified advocate" means any person who has completed at least forty hours of training in advocacy for victims of domestic violence, human trafficking, menacing by stalking, or sexual violence, or has registered for such a training program and is under the supervision of a qualified advocate and who is an employee or volunteer of a qualified victim services program. 1322
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(ii) The term "qualified," as used in division (M) (4) (f) (i) of this section, pertains exclusively to the advocacy requirements of this section, and does not apply to the definitions of "victim advocate" in any other section of the Revised Code. 1329
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(g) "Qualified victim services program" means either of the following: 1334
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(i) A nongovernmental, nonprofit, community-based program that receives moneys administered by a local, state, or federal government agency; offers safety planning, counseling, support, or advocacy services to victims of domestic violence, human trafficking, menacing by stalking, or sexual violence; and adheres to the standards set forth by the federally recognized state sexual violence or state domestic violence coalitions; 1336
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(ii) A rape crisis program. 1343

(h) "Rape crisis program" has the same meaning as in division (A) (1) (a) or (c) of section 109.921 of the Revised 1344
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<u>Code.</u>	1346
<u>(i) "Sexual violence" means any of the following:</u>	1347
<u>(i) Any conduct that would be a violation of any</u>	1348
<u>prohibition in Chapter 2907. of the Revised Code;</u>	1349
<u>(ii) Any conduct that would constitute a sexually oriented</u>	1350
<u>offense as defined in section 2950.01 of the Revised Code;</u>	1351
<u>(iii) Any conduct that is prohibited in an existing or</u>	1352
<u>former municipal ordinance or law of this state, any other</u>	1353
<u>state, or the United States and that is or was substantially</u>	1354
<u>equivalent to any conduct described in division (M) (4) (i) or</u>	1355
<u>(ii) of this section.</u>	1356
<u>(j) "Victim" means a person who seeks safety planning,</u>	1357
<u>counseling, support, or advocacy services at a qualified victim</u>	1358
<u>services program if those services are related to domestic</u>	1359
<u>violence, human trafficking, menacing by stalking, or sexual</u>	1360
<u>violence against the person.</u>	1361
Sec. 2921.22. (A) (1) Except as provided in division (A) (2)	1362
of this section, no person, knowing that a felony has been or is	1363
being committed, shall knowingly fail to report such information	1364
to law enforcement authorities.	1365
(2) No person, knowing that a violation of division (B) of	1366
section 2913.04 of the Revised Code has been, or is being	1367
committed or that the person has received information derived	1368
from such a violation, shall knowingly fail to report the	1369
violation to law enforcement authorities.	1370
(B) Except for conditions that are within the scope of	1371
division (E) of this section, no person giving aid to a sick or	1372
injured person shall negligently fail to report to law	1373

enforcement authorities any gunshot or stab wound treated or 1374
observed by the person, or any serious physical harm to persons 1375
that the person knows or has reasonable cause to believe 1376
resulted from an offense of violence. 1377

(C) No person who discovers the body or acquires the first 1378
knowledge of the death of a person shall fail to report the 1379
death immediately to a physician or advanced practice registered 1380
nurse whom the person knows to be treating the deceased for a 1381
condition from which death at such time would not be unexpected, 1382
or to a law enforcement officer, an ambulance service, an 1383
emergency squad, or the coroner in a political subdivision in 1384
which the body is discovered, the death is believed to have 1385
occurred, or knowledge concerning the death is obtained. For 1386
purposes of this division, "advanced practice registered nurse" 1387
does not include a certified registered nurse anesthetist. 1388

(D) No person shall fail to provide upon request of the 1389
person to whom a report required by division (C) of this section 1390
was made, or to any law enforcement officer who has reasonable 1391
cause to assert the authority to investigate the circumstances 1392
surrounding the death, any facts within the person's knowledge 1393
that may have a bearing on the investigation of the death. 1394

(E) (1) As used in this division, "burn injury" means any 1395
of the following: 1396

(a) Second or third degree burns; 1397

(b) Any burns to the upper respiratory tract or laryngeal 1398
edema due to the inhalation of superheated air; 1399

(c) Any burn injury or wound that may result in death; 1400

(d) Any physical harm to persons caused by or as the 1401
result of the use of fireworks, novelties and trick noisemakers, 1402

and wire sparklers, as each is defined by section 3743.01 of the Revised Code.

(2) No physician, nurse, physician assistant, or limited practitioner who, outside a hospital, sanitarium, or other medical facility, attends or treats a person who has sustained a burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(3) No manager, superintendent, or other person in charge of a hospital, sanitarium, or other medical facility in which a person is attended or treated for any burn injury that is inflicted by an explosion or other incendiary device or that shows evidence of having been inflicted in a violent, malicious, or criminal manner shall fail to report the burn injury immediately to the local arson, or fire and explosion investigation, bureau, if there is a bureau of this type in the jurisdiction in which the person is attended or treated, or otherwise to local law enforcement authorities.

(4) No person who is required to report any burn injury under division (E) (2) or (3) of this section shall fail to file, within three working days after attending or treating the victim, a written report of the burn injury with the office of the state fire marshal. The report shall comply with the uniform standard developed by the state fire marshal pursuant to division (A) (15) of section 3737.22 of the Revised Code.

(5) Anyone participating in the making of reports under

division (E) of this section or anyone participating in a 1433
judicial proceeding resulting from the reports is immune from 1434
any civil or criminal liability that otherwise might be incurred 1435
or imposed as a result of such actions. Notwithstanding section 1436
4731.22 of the Revised Code, the physician-patient relationship 1437
or advanced practice registered nurse-patient relationship is 1438
not a ground for excluding evidence regarding a person's burn 1439
injury or the cause of the burn injury in any judicial 1440
proceeding resulting from a report submitted under division (E) 1441
of this section. 1442

(F) (1) Any doctor of medicine or osteopathic medicine, 1443
hospital intern or resident, nurse, psychologist, social worker, 1444
independent social worker, social work assistant, licensed 1445
professional clinical counselor, licensed professional 1446
counselor, independent marriage and family therapist, or 1447
marriage and family therapist who knows or has reasonable cause 1448
to believe that a patient or client has been the victim of 1449
domestic violence, as defined in section 3113.31 of the Revised 1450
Code, shall note that knowledge or belief and the basis for it 1451
in the patient's or client's records. 1452

(2) Notwithstanding section 4731.22 of the Revised Code, 1453
the physician-patient privilege or advanced practice registered 1454
nurse-patient privilege shall not be a ground for excluding any 1455
information regarding the report containing the knowledge or 1456
belief noted under division (F) (1) of this section, and the 1457
information may be admitted as evidence in accordance with the 1458
Rules of Evidence. 1459

(G) Divisions (A) and (D) of this section do not require 1460
disclosure of information, when any of the following applies: 1461

(1) The information is privileged by reason of the 1462

relationship between attorney and client; physician and patient; 1463
advanced practice registered nurse and patient; licensed 1464
psychologist or licensed school psychologist and client; 1465
licensed professional clinical counselor, licensed professional 1466
counselor, independent social worker, social worker, independent 1467
marriage and family therapist, or marriage and family therapist 1468
and client; member of the clergy, rabbi, minister, or priest and 1469
any person communicating information confidentially to the 1470
member of the clergy, rabbi, minister, or priest for a religious 1471
counseling purpose of a professional character; husband and 1472
wife; ~~or~~ a communications assistant and those who are a party to 1473
a telecommunications relay service call; or a qualified advocate 1474
and a victim of domestic violence, human trafficking, menacing 1475
by stalking, or sexual violence. 1476

(2) The information would tend to incriminate a member of 1477
the actor's immediate family. 1478

(3) Disclosure of the information would amount to 1479
revealing a news source, privileged under section 2739.04 or 1480
2739.12 of the Revised Code. 1481

(4) Disclosure of the information would amount to 1482
disclosure by a member of the ordained clergy of an organized 1483
religious body of a confidential communication made to that 1484
member of the clergy in that member's capacity as a member of 1485
the clergy by a person seeking the aid or counsel of that member 1486
of the clergy. 1487

(5) Disclosure would amount to revealing information 1488
acquired by the actor in the course of the actor's duties in 1489
connection with a bona fide program of treatment or services for 1490
drug dependent persons or persons in danger of drug dependence, 1491
which program is maintained or conducted by a hospital, clinic, 1492

person, agency, or community addiction services provider whose 1493
alcohol and drug addiction services are certified pursuant to 1494
section 5119.36 of the Revised Code. 1495

(6) Disclosure would amount to revealing information 1496
acquired by the actor in the course of the actor's duties in 1497
connection with a bona fide program for providing counseling 1498
services to victims of crimes that are violations of section 1499
2907.02 or 2907.05 of the Revised Code or to victims of 1500
felonious sexual penetration in violation of former section 1501
2907.12 of the Revised Code. As used in this division, 1502
"counseling services" include services provided in an informal 1503
setting by a person who, by education or experience, is 1504
competent to provide those services. 1505

(7) (a) Disclosure would amount to revealing information 1506
acquired by the actor in the course of the actor's duties in a 1507
designated victim advocacy office, women's center, health 1508
center, or other program to which all of the following apply: 1509

(i) The office, center, or program provides safety 1510
planning, counseling, support, or advocacy services to victims 1511
of domestic violence, human trafficking, menacing by stalking, 1512
or sexual violence. 1513

(ii) The office, center, or program employs or otherwise 1514
engages one or more qualified advocates. 1515

(iii) The office, center, or program has a memorandum of 1516
understanding with a qualified victim services program. 1517

(b) As used in divisions (G) (1) and (7) of this section: 1518

(i) "Domestic violence," "human trafficking," "menacing by 1519
stalking," "qualified victim services program," "sexual 1520
violence," and "victim" have the same meanings as in division 1521

<u>(M) of section 2317.02 of the Revised Code.</u>	1522
<u>(ii) "Qualified advocate" means any person who has</u>	1523
<u>completed at least forty hours of training in advocacy for</u>	1524
<u>victims of domestic violence, human trafficking, menacing by</u>	1525
<u>stalking, or sexual violence, and who is an employee or</u>	1526
<u>volunteer of a designated victim advocacy office, women's</u>	1527
<u>center, health center, or other program described in division</u>	1528
<u>(G) (7) (a) of this section.</u>	1529
(H) No disclosure of information pursuant to this section	1530
gives rise to any liability or recrimination for a breach of	1531
privilege or confidence.	1532
(I) Whoever violates division (A) or (B) of this section	1533
is guilty of failure to report a crime. Violation of division	1534
(A) (1) of this section is a misdemeanor of the fourth degree.	1535
Violation of division (A) (2) or (B) of this section is a	1536
misdemeanor of the second degree.	1537
(J) Whoever violates division (C) or (D) of this section	1538
is guilty of failure to report knowledge of a death, a	1539
misdemeanor of the fourth degree.	1540
(K) (1) Whoever negligently violates division (E) of this	1541
section is guilty of a minor misdemeanor.	1542
(2) Whoever knowingly violates division (E) of this	1543
section is guilty of a misdemeanor of the second degree.	1544
(L) As used in this section, "nurse" includes an advanced	1545
practice registered nurse, registered nurse, and licensed	1546
practical nurse.	1547
Section 2. That existing sections 2151.421, 2317.02, and	1548
2921.22 of the Revised Code are hereby repealed.	1549

Section 3. Section 2921.22 of the Revised Code is 1550
presented in this act as a composite of the section as amended 1551
by both Sub. H.B. 216 and Sub. S.B. 319 of the 131st General 1552
Assembly. The General Assembly, applying the principle stated in 1553
division (B) of section 1.52 of the Revised Code that amendments 1554
are to be harmonized if reasonably capable of simultaneous 1555
operation, finds that the composite is the resulting version of 1556
the section in effect prior to the effective date of the section 1557
as presented in this act. 1558