

As Introduced

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Representative Smith, T.

**Cosponsors: Representatives Plummer, Ghanbari, Seitz, Hambley, McClain,
Arndt, Becker**

A BILL

To amend section 2317.02 of the Revised Code to
provide privileged testimonial communications
between a peer recovery supporter and a fellow
first responder exhibiting signs of distress.

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

Section 1. That section 2317.02 of the Revised Code be
amended to read as follows:

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

(A) (1) An attorney, concerning a communication made to the
attorney by a client in that relation or concerning the
attorney's advice to a client, except that the attorney may
testify by express consent of the client or, if the client is
deceased, by the express consent of the surviving spouse or the
executor or administrator of the estate of the deceased client.
However, if the client voluntarily reveals the substance of
attorney-client communications in a nonprivileged context or is
deemed by section 2151.421 of the Revised Code to have waived

any testimonial privilege under this division, the attorney may 18
be compelled to testify on the same subject. 19

The testimonial privilege established under this division 20
does not apply concerning either of the following: 21

(a) A communication between a client in a capital case, as 22
defined in section 2901.02 of the Revised Code, and the client's 23
attorney if the communication is relevant to a subsequent 24
ineffective assistance of counsel claim by the client alleging 25
that the attorney did not effectively represent the client in 26
the case; 27

(b) A communication between a client who has since died 28
and the deceased client's attorney if the communication is 29
relevant to a dispute between parties who claim through that 30
deceased client, regardless of whether the claims are by testate 31
or intestate succession or by inter vivos transaction, and the 32
dispute addresses the competency of the deceased client when the 33
deceased client executed a document that is the basis of the 34
dispute or whether the deceased client was a victim of fraud, 35
undue influence, or duress when the deceased client executed a 36
document that is the basis of the dispute. 37

(2) An attorney, concerning a communication made to the 38
attorney by a client in that relationship or the attorney's 39
advice to a client, except that if the client is an insurance 40
company, the attorney may be compelled to testify, subject to an 41
in camera inspection by a court, about communications made by 42
the client to the attorney or by the attorney to the client that 43
are related to the attorney's aiding or furthering an ongoing or 44
future commission of bad faith by the client, if the party 45
seeking disclosure of the communications has made a prima-facie 46
showing of bad faith, fraud, or criminal misconduct by the 47

client. 48

(B) (1) A physician, advanced practice registered nurse, or 49
dentist concerning a communication made to the physician, 50
advanced practice registered nurse, or dentist by a patient in 51
that relation or the advice of a physician, advanced practice 52
registered nurse, or dentist given to a patient, except as 53
otherwise provided in this division, division (B) (2), and 54
division (B) (3) of this section, and except that, if the patient 55
is deemed by section 2151.421 of the Revised Code to have waived 56
any testimonial privilege under this division, the physician or 57
advanced practice registered nurse may be compelled to testify 58
on the same subject. 59

The testimonial privilege established under this division 60
does not apply, and a physician, advanced practice registered 61
nurse, or dentist may testify or may be compelled to testify, in 62
any of the following circumstances: 63

(a) In any civil action, in accordance with the discovery 64
provisions of the Rules of Civil Procedure in connection with a 65
civil action, or in connection with a claim under Chapter 4123. 66
of the Revised Code, under any of the following circumstances: 67

(i) If the patient or the guardian or other legal 68
representative of the patient gives express consent; 69

(ii) If the patient is deceased, the spouse of the patient 70
or the executor or administrator of the patient's estate gives 71
express consent; 72

(iii) If a medical claim, dental claim, chiropractic 73
claim, or optometric claim, as defined in section 2305.113 of 74
the Revised Code, an action for wrongful death, any other type 75
of civil action, or a claim under Chapter 4123. of the Revised 76

Code is filed by the patient, the personal representative of the 77
estate of the patient if deceased, or the patient's guardian or 78
other legal representative. 79

(b) In any civil action concerning court-ordered treatment 80
or services received by a patient, if the court-ordered 81
treatment or services were ordered as part of a case plan 82
journalized under section 2151.412 of the Revised Code or the 83
court-ordered treatment or services are necessary or relevant to 84
dependency, neglect, or abuse or temporary or permanent custody 85
proceedings under Chapter 2151. of the Revised Code. 86

(c) In any criminal action concerning any test or the 87
results of any test that determines the presence or 88
concentration of alcohol, a drug of abuse, a combination of 89
them, a controlled substance, or a metabolite of a controlled 90
substance in the patient's whole blood, blood serum or plasma, 91
breath, urine, or other bodily substance at any time relevant to 92
the criminal offense in question. 93

(d) In any criminal action against a physician, advanced 94
practice registered nurse, or dentist. In such an action, the 95
testimonial privilege established under this division does not 96
prohibit the admission into evidence, in accordance with the 97
Rules of Evidence, of a patient's medical or dental records or 98
other communications between a patient and the physician, 99
advanced practice registered nurse, or dentist that are related 100
to the action and obtained by subpoena, search warrant, or other 101
lawful means. A court that permits or compels a physician, 102
advanced practice registered nurse, or dentist to testify in 103
such an action or permits the introduction into evidence of 104
patient records or other communications in such an action shall 105
require that appropriate measures be taken to ensure that the 106

confidentiality of any patient named or otherwise identified in 107
the records is maintained. Measures to ensure confidentiality 108
that may be taken by the court include sealing its records or 109
deleting specific information from its records. 110

(e) (i) If the communication was between a patient who has 111
since died and the deceased patient's physician, advanced 112
practice registered nurse, or dentist, the communication is 113
relevant to a dispute between parties who claim through that 114
deceased patient, regardless of whether the claims are by 115
testate or intestate succession or by inter vivos transaction, 116
and the dispute addresses the competency of the deceased patient 117
when the deceased patient executed a document that is the basis 118
of the dispute or whether the deceased patient was a victim of 119
fraud, undue influence, or duress when the deceased patient 120
executed a document that is the basis of the dispute. 121

(ii) If neither the spouse of a patient nor the executor 122
or administrator of that patient's estate gives consent under 123
division (B) (1) (a) (ii) of this section, testimony or the 124
disclosure of the patient's medical records by a physician, 125
advanced practice registered nurse, dentist, or other health 126
care provider under division (B) (1) (e) (i) of this section is a 127
permitted use or disclosure of protected health information, as 128
defined in 45 C.F.R. 160.103, and an authorization or 129
opportunity to be heard shall not be required. 130

(iii) Division (B) (1) (e) (i) of this section does not 131
require a mental health professional to disclose psychotherapy 132
notes, as defined in 45 C.F.R. 164.501. 133

(iv) An interested person who objects to testimony or 134
disclosure under division (B) (1) (e) (i) of this section may seek 135
a protective order pursuant to Civil Rule 26. 136

(v) A person to whom protected health information is 137
disclosed under division (B) (1) (e) (i) of this section shall not 138
use or disclose the protected health information for any purpose 139
other than the litigation or proceeding for which the 140
information was requested and shall return the protected health 141
information to the covered entity or destroy the protected 142
health information, including all copies made, at the conclusion 143
of the litigation or proceeding. 144

(2) (a) If any law enforcement officer submits a written 145
statement to a health care provider that states that an official 146
criminal investigation has begun regarding a specified person or 147
that a criminal action or proceeding has been commenced against 148
a specified person, that requests the provider to supply to the 149
officer copies of any records the provider possesses that 150
pertain to any test or the results of any test administered to 151
the specified person to determine the presence or concentration 152
of alcohol, a drug of abuse, a combination of them, a controlled 153
substance, or a metabolite of a controlled substance in the 154
person's whole blood, blood serum or plasma, breath, or urine at 155
any time relevant to the criminal offense in question, and that 156
conforms to section 2317.022 of the Revised Code, the provider, 157
except to the extent specifically prohibited by any law of this 158
state or of the United States, shall supply to the officer a 159
copy of any of the requested records the provider possesses. If 160
the health care provider does not possess any of the requested 161
records, the provider shall give the officer a written statement 162
that indicates that the provider does not possess any of the 163
requested records. 164

(b) If a health care provider possesses any records of the 165
type described in division (B) (2) (a) of this section regarding 166
the person in question at any time relevant to the criminal 167

offense in question, in lieu of personally testifying as to the 168
results of the test in question, the custodian of the records 169
may submit a certified copy of the records, and, upon its 170
submission, the certified copy is qualified as authentic 171
evidence and may be admitted as evidence in accordance with the 172
Rules of Evidence. Division (A) of section 2317.422 of the 173
Revised Code does not apply to any certified copy of records 174
submitted in accordance with this division. Nothing in this 175
division shall be construed to limit the right of any party to 176
call as a witness the person who administered the test to which 177
the records pertain, the person under whose supervision the test 178
was administered, the custodian of the records, the person who 179
made the records, or the person under whose supervision the 180
records were made. 181

(3) (a) If the testimonial privilege described in division 182
(B) (1) of this section does not apply as provided in division 183
(B) (1) (a) (iii) of this section, a physician, advanced practice 184
registered nurse, or dentist may be compelled to testify or to 185
submit to discovery under the Rules of Civil Procedure only as 186
to a communication made to the physician, advanced practice 187
registered nurse, or dentist by the patient in question in that 188
relation, or the advice of the physician, advanced practice 189
registered nurse, or dentist given to the patient in question, 190
that related causally or historically to physical or mental 191
injuries that are relevant to issues in the medical claim, 192
dental claim, chiropractic claim, or optometric claim, action 193
for wrongful death, other civil action, or claim under Chapter 194
4123. of the Revised Code. 195

(b) If the testimonial privilege described in division (B) 196
(1) of this section does not apply to a physician, advanced 197
practice registered nurse, or dentist as provided in division 198

(B) (1) (c) of this section, the physician, advanced practice
registered nurse, or dentist, in lieu of personally testifying
as to the results of the test in question, may submit a
certified copy of those results, and, upon its submission, the
certified copy is qualified as authentic evidence and may be
admitted as evidence in accordance with the Rules of Evidence.
Division (A) of section 2317.422 of the Revised Code does not
apply to any certified copy of results submitted in accordance
with this division. Nothing in this division shall be construed
to limit the right of any party to call as a witness the person
who administered the test in question, the person under whose
supervision the test was administered, the custodian of the
results of the test, the person who compiled the results, or the
person under whose supervision the results were compiled.

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

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

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

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

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

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

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

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

(v) "Long-term care facility" means a nursing home,
residential care facility, or home for the aging, as those terms
are defined in section 3721.01 of the Revised Code; a
residential facility licensed under section 5119.34 of the
Revised Code that provides accommodations, supervision, and
personal care services for three to sixteen unrelated adults; a

nursing facility, as defined in section 5165.01 of the Revised 258
Code; a skilled nursing facility, as defined in section 5165.01 259
of the Revised Code; and an intermediate care facility for 260
individuals with intellectual disabilities, as defined in 261
section 5124.01 of the Revised Code. 262

(vi) "Pharmacy" has the same meaning as in section 4729.01 263
of the Revised Code. 264

(d) As used in divisions (B) (1) and (2) of this section, 265
"drug of abuse" has the same meaning as in section 4506.01 of 266
the Revised Code. 267

(6) Divisions (B) (1), (2), (3), (4), and (5) of this 268
section apply to doctors of medicine, doctors of osteopathic 269
medicine, doctors of podiatry, advanced practice registered 270
nurses, and dentists. 271

(7) Nothing in divisions (B) (1) to (6) of this section 272
affects, or shall be construed as affecting, the immunity from 273
civil liability conferred by section 307.628 of the Revised Code 274
or the immunity from civil liability conferred by section 275
2305.33 of the Revised Code upon physicians or advanced practice 276
registered nurses who report an employee's use of a drug of 277
abuse, or a condition of an employee other than one involving 278
the use of a drug of abuse, to the employer of the employee in 279
accordance with division (B) of that section. As used in 280
division (B) (7) of this section, "employee," "employer," and 281
"physician" have the same meanings as in section 2305.33 of the 282
Revised Code and "advanced practice registered nurse" has the 283
same meaning as in section 4723.01 of the Revised Code. 284

(C) (1) A cleric, when the cleric remains accountable to 285
the authority of that cleric's church, denomination, or sect, 286

concerning a confession made, or any information confidentially 287
communicated, to the cleric for a religious counseling purpose 288
in the cleric's professional character. The cleric may testify 289
by express consent of the person making the communication, 290
except when the disclosure of the information is in violation of 291
a sacred trust and except that, if the person voluntarily 292
testifies or is deemed by division (A) (4) (c) of section 2151.421 293
of the Revised Code to have waived any testimonial privilege 294
under this division, the cleric may be compelled to testify on 295
the same subject except when disclosure of the information is in 296
violation of a sacred trust. 297

(2) As used in division (C) of this section: 298

(a) "Cleric" means a member of the clergy, rabbi, priest, 299
Christian Science practitioner, or regularly ordained, 300
accredited, or licensed minister of an established and legally 301
cognizable church, denomination, or sect. 302

(b) "Sacred trust" means a confession or confidential 303
communication made to a cleric in the cleric's ecclesiastical 304
capacity in the course of discipline enjoined by the church to 305
which the cleric belongs, including, but not limited to, the 306
Catholic Church, if both of the following apply: 307

(i) The confession or confidential communication was made 308
directly to the cleric. 309

(ii) The confession or confidential communication was made 310
in the manner and context that places the cleric specifically 311
and strictly under a level of confidentiality that is considered 312
inviolable by canon law or church doctrine. 313

(D) Husband or wife, concerning any communication made by 314
one to the other, or an act done by either in the presence of 315

the other, during coverture, unless the communication was made, 316
or act done, in the known presence or hearing of a third person 317
competent to be a witness; and such rule is the same if the 318
marital relation has ceased to exist; 319

(E) A person who assigns a claim or interest, concerning 320
any matter in respect to which the person would not, if a party, 321
be permitted to testify; 322

(F) A person who, if a party, would be restricted under 323
section 2317.03 of the Revised Code, when the property or thing 324
is sold or transferred by an executor, administrator, guardian, 325
trustee, heir, devisee, or legatee, shall be restricted in the 326
same manner in any action or proceeding concerning the property 327
or thing. 328

(G) (1) A school guidance counselor who holds a valid 329
educator license from the state board of education as provided 330
for in section 3319.22 of the Revised Code, a person licensed 331
under Chapter 4757. of the Revised Code as a licensed 332
professional clinical counselor, licensed professional 333
counselor, social worker, independent social worker, marriage 334
and family therapist or independent marriage and family 335
therapist, or registered under Chapter 4757. of the Revised Code 336
as a social work assistant concerning a confidential 337
communication received from a client in that relation or the 338
person's advice to a client unless any of the following applies: 339

(a) The communication or advice indicates clear and 340
present danger to the client or other persons. For the purposes 341
of this division, cases in which there are indications of 342
present or past child abuse or neglect of the client constitute 343
a clear and present danger. 344

- (b) The client gives express consent to the testimony. 345
- (c) If the client is deceased, the surviving spouse or the 346
executor or administrator of the estate of the deceased client 347
gives express consent. 348
- (d) The client voluntarily testifies, in which case the 349
school guidance counselor or person licensed or registered under 350
Chapter 4757. of the Revised Code may be compelled to testify on 351
the same subject. 352
- (e) The court in camera determines that the information 353
communicated by the client is not germane to the counselor- 354
client, marriage and family therapist-client, or social worker- 355
client relationship. 356
- (f) A court, in an action brought against a school, its 357
administration, or any of its personnel by the client, rules 358
after an in-camera inspection that the testimony of the school 359
guidance counselor is relevant to that action. 360
- (g) The testimony is sought in a civil action and concerns 361
court-ordered treatment or services received by a patient as 362
part of a case plan journalized under section 2151.412 of the 363
Revised Code or the court-ordered treatment or services are 364
necessary or relevant to dependency, neglect, or abuse or 365
temporary or permanent custody proceedings under Chapter 2151. 366
of the Revised Code. 367
- (2) Nothing in division (G)(1) of this section shall 368
relieve a school guidance counselor or a person licensed or 369
registered under Chapter 4757. of the Revised Code from the 370
requirement to report information concerning child abuse or 371
neglect under section 2151.421 of the Revised Code. 372
- (H) A mediator acting under a mediation order issued under 373

division (A) of section 3109.052 of the Revised Code or 374
otherwise issued in any proceeding for divorce, dissolution, 375
legal separation, annulment, or the allocation of parental 376
rights and responsibilities for the care of children, in any 377
action or proceeding, other than a criminal, delinquency, child 378
abuse, child neglect, or dependent child action or proceeding, 379
that is brought by or against either parent who takes part in 380
mediation in accordance with the order and that pertains to the 381
mediation process, to any information discussed or presented in 382
the mediation process, to the allocation of parental rights and 383
responsibilities for the care of the parents' children, or to 384
the awarding of parenting time rights in relation to their 385
children; 386

(I) A communications assistant, acting within the scope of 387
the communication assistant's authority, when providing 388
telecommunications relay service pursuant to section 4931.06 of 389
the Revised Code or Title II of the "Communications Act of 390
1934," 104 Stat. 366 (1990), 47 U.S.C. 225, concerning a 391
communication made through a telecommunications relay service. 392
Nothing in this section shall limit the obligation of a 393
communications assistant to divulge information or testify when 394
mandated by federal law or regulation or pursuant to subpoena in 395
a criminal proceeding. 396

Nothing in this section shall limit any immunity or 397
privilege granted under federal law or regulation. 398

(J) (1) A chiropractor in a civil proceeding concerning a 399
communication made to the chiropractor by a patient in that 400
relation or the chiropractor's advice to a patient, except as 401
otherwise provided in this division. The testimonial privilege 402
established under this division does not apply, and a 403

chiropractor may testify or may be compelled to testify, in any 404
civil action, in accordance with the discovery provisions of the 405
Rules of Civil Procedure in connection with a civil action, or 406
in connection with a claim under Chapter 4123. of the Revised 407
Code, under any of the following circumstances: 408

(a) If the patient or the guardian or other legal 409
representative of the patient gives express consent. 410

(b) If the patient is deceased, the spouse of the patient 411
or the executor or administrator of the patient's estate gives 412
express consent. 413

(c) If a medical claim, dental claim, chiropractic claim, 414
or optometric claim, as defined in section 2305.113 of the 415
Revised Code, an action for wrongful death, any other type of 416
civil action, or a claim under Chapter 4123. of the Revised Code 417
is filed by the patient, the personal representative of the 418
estate of the patient if deceased, or the patient's guardian or 419
other legal representative. 420

(2) If the testimonial privilege described in division (J) 421
(1) of this section does not apply as provided in division (J) 422
(1)(c) of this section, a chiropractor may be compelled to 423
testify or to submit to discovery under the Rules of Civil 424
Procedure only as to a communication made to the chiropractor by 425
the patient in question in that relation, or the chiropractor's 426
advice to the patient in question, that related causally or 427
historically to physical or mental injuries that are relevant to 428
issues in the medical claim, dental claim, chiropractic claim, 429
or optometric claim, action for wrongful death, other civil 430
action, or claim under Chapter 4123. of the Revised Code. 431

(3) The testimonial privilege established under this 432

division does not apply, and a chiropractor may testify or be 433
compelled to testify, in any criminal action or administrative 434
proceeding. 435

(4) As used in this division, "communication" means 436
acquiring, recording, or transmitting any information, in any 437
manner, concerning any facts, opinions, or statements necessary 438
to enable a chiropractor to diagnose, treat, or act for a 439
patient. A communication may include, but is not limited to, any 440
chiropractic, office, or hospital communication such as a 441
record, chart, letter, memorandum, laboratory test and results, 442
x-ray, photograph, financial statement, diagnosis, or prognosis. 443

(K) (1) Except as provided under division (K) (2) of this 444
section, a critical incident stress management team member 445
concerning a communication received from an individual who 446
receives crisis response services from the team member, or the 447
team member's advice to the individual, during a debriefing 448
session. 449

(2) The testimonial privilege established under division 450
(K) (1) of this section does not apply if any of the following 451
are true: 452

(a) The communication or advice indicates clear and 453
present danger to the individual who receives crisis response 454
services or to other persons. For purposes of this division, 455
cases in which there are indications of present or past child 456
abuse or neglect of the individual constitute a clear and 457
present danger. 458

(b) The individual who received crisis response services 459
gives express consent to the testimony. 460

(c) If the individual who received crisis response 461

services is deceased, the surviving spouse or the executor or 462
administrator of the estate of the deceased individual gives 463
express consent. 464

(d) The individual who received crisis response services 465
voluntarily testifies, in which case the team member may be 466
compelled to testify on the same subject. 467

(e) The court in camera determines that the information 468
communicated by the individual who received crisis response 469
services is not germane to the relationship between the 470
individual and the team member. 471

(f) The communication or advice pertains or is related to 472
any criminal act. 473

(3) As used in division (K) of this section: 474

(a) "Crisis response services" means consultation, risk 475
assessment, referral, and on-site crisis intervention services 476
provided by a critical incident stress management team to 477
individuals affected by crisis or disaster. 478

(b) "Critical incident stress management team member" or 479
"team member" means an individual specially trained to provide 480
crisis response services as a member of an organized community 481
or local crisis response team that holds membership in the Ohio 482
critical incident stress management network. 483

(c) "Debriefing session" means a session at which crisis 484
response services are rendered by a critical incident stress 485
management team member during or after a crisis or disaster. 486

(L) (1) Subject to division (L) (2) of this section and 487
except as provided in division (L) (3) of this section, an 488
employee assistance professional, concerning a communication 489

made to the employee assistance professional by a client in the 490
employee assistance professional's official capacity as an 491
employee assistance professional. 492

(2) Division (L)(1) of this section applies to an employee 493
assistance professional who meets either or both of the 494
following requirements: 495

(a) Is certified by the employee assistance certification 496
commission to engage in the employee assistance profession; 497

(b) Has education, training, and experience in all of the 498
following: 499

(i) Providing workplace-based services designed to address 500
employer and employee productivity issues; 501

(ii) Providing assistance to employees and employees' 502
dependents in identifying and finding the means to resolve 503
personal problems that affect the employees or the employees' 504
performance; 505

(iii) Identifying and resolving productivity problems 506
associated with an employee's concerns about any of the 507
following matters: health, marriage, family, finances, substance 508
abuse or other addiction, workplace, law, and emotional issues; 509

(iv) Selecting and evaluating available community 510
resources; 511

(v) Making appropriate referrals; 512

(vi) Local and national employee assistance agreements; 513

(vii) Client confidentiality. 514

(3) Division (L)(1) of this section does not apply to any 515
of the following: 516

(a) A criminal action or proceeding involving an offense 517
under sections 2903.01 to 2903.06 of the Revised Code if the 518
employee assistance professional's disclosure or testimony 519
relates directly to the facts or immediate circumstances of the 520
offense; 521

(b) A communication made by a client to an employee 522
assistance professional that reveals the contemplation or 523
commission of a crime or serious, harmful act; 524

(c) A communication that is made by a client who is an 525
unemancipated minor or an adult adjudicated to be incompetent 526
and indicates that the client was the victim of a crime or 527
abuse; 528

(d) A civil proceeding to determine an individual's mental 529
competency or a criminal action in which a plea of not guilty by 530
reason of insanity is entered; 531

(e) A civil or criminal malpractice action brought against 532
the employee assistance professional; 533

(f) When the employee assistance professional has the 534
express consent of the client or, if the client is deceased or 535
disabled, the client's legal representative; 536

(g) When the testimonial privilege otherwise provided by 537
division (L) (1) of this section is abrogated under law. 538

(M) (1) Except as provided under division (M) (2) of this 539
section, a peer recovery supporter concerning a communication 540
received from a first responder who receives peer recovery 541
services from the peer recovery supporter, or the peer recovery 542
supporter's advice to the first responder. 543

(2) The testimonial privilege established under division 544

(M) (1) of this section does not apply if any of the following 545
are true: 546

(a) The communication or advice indicates clear and 547
present danger to the first responder who receives peer recovery 548
services or to other persons. 549

(b) The first responder who received peer recovery 550
services gives express consent to the testimony. 551

(c) If the first responder who received peer recovery 552
services is deceased, the surviving spouse or the executor or 553
administrator of the estate of the deceased first responder 554
gives express consent. 555

(d) The first responder who received peer recovery 556
services voluntarily testifies, in which case the peer recovery 557
supporter may be compelled to testify on the same subject. 558

(e) The court in camera determines that the information 559
communicated by the first responder who received peer recovery 560
services is not germane to the relationship between the first 561
responder and the peer recovery supporter. 562

(f) The communication or advice pertains or is related to 563
any criminal act. 564

(3) As used in division (M) of this section: 565

(a) "First responder" has the same meaning as in section 566
4765.01 of the Revised Code. 567

(b) "Peer recovery supporter" means a first responder who 568
is further certified as a peer recovery supporter by the 569
department of mental health and addiction services pursuant to 570
rules adopted by the department. 571

(c) "Peer recovery services" means services provided by a 572
peer recovery supporter to another first responder, upon the 573
peer recovery supporter's recognition of signs of distress or 574
trauma in the other first responder, in order to promote the 575
recovery and well-being of the other first responder and to 576
assist that first responder in receiving additional support 577
resources if necessary. 578

Section 2. That existing section 2317.02 of the Revised 579
Code is hereby repealed. 580