



# SUMMARY

## JUDICIAL GUIDE *to* Public Health

The Judicial Guide to Public Health is designed to inform judges on public-health legal issues and provide a resource to respond in a timely manner and with confident authority on the weighty legal issues such an emergency would present. This Summary is a companion piece to the Guide and offers a high-level overview of each of its chapters.

It is unlikely that public health emergencies, in the context of life-threatening communicable diseases that have the potential to become epidemic or pandemic in proportion, are in the forefront of judges' minds.

But on Oct., 30, 2014, the Hon. Charles C. LaVerdiere, chief judge (retired) of the Maine District Court, had his "normal day shattered" when a nurse from his community returned from West Africa having been exposed to the Ebola virus.

His small community became the epicenter of national attention as people were fearful that Ebola had come to our shores. He had to make legal decisions about her case "immediately."

Judge LaVerdiere's situation also illustrates that "emergencies" are not limited to community-wide matters. Public health issues can appear before a court from the perspective of an individual, a community, or the state. Simply, virus, bacteria, and other public health threats are not limited by borders, income, gender, race, or other human constructs. In short, threats to the public's health are usually inconvenient and often unexpected. The most important lesson Judge LaVerdiere said he learned was, "You need to be prepared for this type of matter before it hits!" That is the intent of these publications.

***For complete guidance regarding public health issues, refer to the full Judicial Guide to Public Health.***





## CHAPTER I. JURISDICTION OVER PUBLIC HEALTH ISSUES

*See Chapter I of the Judicial Guide to Public Health for complete guidelines.*

### Federal

The preamble's stated purpose of promoting the "general welfare" is the closest the federal constitution comes to addressing public health. The remainder of the constitution and the amendments are silent on the federal government's role in public health.

When read in conjunction with the Tenth Amendment, the U.S. Constitution's silence regarding public health indicates that matters of public health primarily are the responsibility of the states.

However, pursuant to certain itemized powers, the federal government has power to assume responsibility for public health emergencies caused by terrorism, acts of war, or pandemic.

### State

In all other cases, individual states bear primary responsibility for dealing with public health threats within their borders.

The Ohio Constitution explicitly provides the General Assembly with the ability to promulgate emergency laws necessary for the immediate preservation of the public's health.<sup>1</sup>

States derive their power to protect the public health from two sources of authority: the police power and the *parens patriae* power.

- The states' "police power" is defined as the power to promote public safety, health, and morals by restraining and regulating the use of liberty and property.<sup>2</sup>
- The "*parens patriae*" power is the authority held by a state to serve as guardians of those under legal disability.<sup>3</sup>

## Determining Venue in Public Health Matters

### Courts of Common Pleas

Ohio's courts of common pleas are courts of general jurisdiction and have original jurisdiction over all justiciable matters.<sup>4</sup>

- Any judge of a court of common pleas may temporarily hold court in any county.<sup>5</sup>

### Appellate Courts

The Ohio Constitution and the Revised Code provide for appellate review of final orders, adjudications, or decisions of any public health officer, board, or department, or other division by the common pleas court of the county in which the principal office of the political subdivision is located.<sup>6</sup>

The Ohio Court of Appeals has appellate jurisdiction as may be provided by law to review and affirm, modify, or reverse judgments or final orders of the local courts of record within their respective districts.<sup>7</sup>

The court of appeals is required to hear each appeal in the county in which the claim originated. Exceptions may be made for good cause shown, allowing the appeal to be heard in another county of the district.<sup>8</sup>

In matters involving public health, the Supreme Court of Ohio has appellate jurisdiction in cases involving:

- Questions arising under the U.S. or Ohio constitutions;<sup>9</sup>
- Revisions to administrative officers or agency proceedings as may be conferred by law,<sup>10</sup> and
- Matters of great general or public interest.<sup>11</sup>



## CHAPTER II. GOVERNMENT AUTHORITY TO ENSURE PUBLIC HEALTH

*See Chapter II of the Judicial Guide to Public Health for complete guidelines.*

Government constraints still exist when preventing or managing a public health crisis and the Fourth Amendment prevails in the consideration of warrants and their exceptions.

A “special needs” exception to the warrant requirement likely is the courts’ legal standard when ruling on government action in such an emergency. So, too, must courts balance the privacy interests of individuals against the government’s interest to protect the public.

The executive branch – in particular the Ohio Department of Health and local health districts – has considerable authority to impose civil restrictions on property to ensure public health and safety. Such restrictions may be imposed following the inspection and regulation of property.

When considering searches and seizures of persons involved in public health matters, various factors must be weighed to determine when the government can force individuals to submit to medical testing. The Ohio Department of Health constantly works with local health care providers to monitor the existence and possible outbreak of communicable diseases.

Case law on these subjects is relatively thin, while the power granted to the government is great. Most of the law is statutory, but there is some case law justifying strong governmental intervention. A good example of the difficulty in this area is the question of how to confine at-risk individuals, such as whether and how to apply a least-restrictive-means standard.

### Searches and Seizures

#### The Constitutions

**No Unreasonable Searches and Seizures.** The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches shall not be violated and no warrants shall issue without probable cause, supported by

oath or affirmation, and describing the place to be searched and the persons or things to be seized.<sup>12</sup>

- Ohio’s constitutional provisions addressing unreasonable searches and seizures are substantially the same as those of the U.S. Constitution.<sup>13</sup>
- Article I, Section 14 of the Ohio Constitution declares that the right of the people to be secure in their persons, houses, papers, and possessions against unreasonable searches and seizures shall not be violated and no warrants shall issue without probable cause, supported by oath or affirmation, and describing the place to be searched and the person and things to be seized.<sup>14</sup>
- These provisions constitute a guaranty to citizens against the invasion of their homes and the abridgement of their personal liberties.<sup>15</sup>

### Definitions

**Search.** A search occurs when government action infringes upon the expectation of privacy that society recognizes as reasonable.<sup>16</sup>

#### Seizure.

- **Of Individual.** A seizure of an individual occurs when government action interferes with an individual’s freedom of movement.<sup>17</sup> The duration of the interference is irrelevant, as any interference constitutes a seizure, “however brief.”<sup>18</sup> Under this definition, isolation or quarantine of an individual constitutes a seizure.
- **Of Property.** A property seizure occurs when government action interferes with an individual’s possessory interest in that property.<sup>19</sup>

The Fourth Amendment applies to the acts of all state officials, including both civil and criminal authorities.<sup>20</sup>

Note: Staff at state hospitals are considered government actors and are subject to Fourth Amendment requirements.<sup>21</sup>

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## Probable Cause

- Probable cause exists when circumstances present reasonable grounds for a belief of guilt that is particularized with respect to the person, place, or items to be seized.<sup>22</sup> The existence of probable cause must be determined by analyzing the totality of the circumstances surrounding the governmental intrusion, and involves a practical, common-sense review of the facts available to the government actor at the time of the search or seizure.<sup>23</sup> However, it is important to note public health is not a law enforcement agency and has no authority to conduct an independent criminal investigation.

## Property Searches and Inspections

Local health districts are vested with the authority to abate and remove all nuisances within their jurisdiction.

Ohio law expressly provides for the inspection of localities or premises by local health district commissioners upon reasonable belief that an unreported infectious or contagious disease is present.<sup>24</sup> Similarly, the Ohio director of health and any person the director authorizes may, without fee or hindrance, enter, examine, and survey all grounds, vehicles, apartments, buildings, and places in furtherance of any duty laid upon the director or department of health or where the director has reason to believe there exists a violation of any health law or rule.<sup>25</sup>

Statutes granting health officials the authority to enter, inspect, and take action to abate public health nuisances are silent as to any notice or warrant requirement to those found on the property entered.

The state health department and local health districts are authorized to refer persons who may neglect or refuse to obey their orders for prosecution.<sup>26</sup>

## Searches and Restraints of Persons

### Obtaining Physical Evidence from Persons

Fourth Amendment implicated by:

- **Seizure of an Individual.** Detaining an individual long enough to obtain the sample constitutes a seizure of the person.<sup>27</sup>
- **Seizure of a Physical Sample.** Human dignity and privacy interests forbid invasive procedures absent a clear indication the desired substance will be found. A “mere chance” of the desired substance being recovered from the body is insufficient.<sup>28</sup>
  - Seizures of blood, saliva, and urine clearly are protected by the Fourth Amendment.<sup>29</sup>
  - Physical characteristics that are somewhat exposed to the public, such as beneath fingernails, also are protected.<sup>30</sup>
  - Characteristics that constantly are exposed to the public, such as facial features, fingerprints, and voice samples, are not protected by the Fourth Amendment.<sup>31</sup>
- **Searching (Testing) the sample itself.** Testing of the human sample is considered a search under the Fourth Amendment.<sup>32</sup> Factors to consider are whether a reasonable testing method is chosen, the likelihood of success of the method (reliability), and whether the test is properly conducted.<sup>33</sup>

## Isolation and Quarantine

### Definitions

- **Isolation** is defined as “the separation of an infected individual from others during the period of disease communicability, in such a way that prevents, as far as possible, the direct or indirect conveyance of an infectious agent to those who are susceptible to infection or who may spread the agent to others.”<sup>34</sup>

- **Quarantine** is defined as “the restriction of the movements or activities of a well individual who has been exposed to a communicable disease during the period communicability, and in such manner that transmission of the disease may have occurred. The duration of the quarantine ordered shall be equivalent to the usual incubation period of the disease to which the susceptible person was exposed.”<sup>35</sup>

## History

Isolation and quarantine long have been recognized as permissible techniques useful for containing the spread of infectious diseases.<sup>36</sup>

- **State Power.** The federal government recognizes the power of the states to institute quarantine to protect their citizens from infectious diseases.
- **Isolation and Quarantine as Function of a State’s Police Power.** The preservation of the public health universally is conceded to be one of the duties devolving upon the state as a sovereignty. Whatever reasonably tends to preserve the public health is a subject upon which the legislature, within its police power, may take action.<sup>37</sup>
- **Broad Rights in Establishing and Enforcing Quarantine.** The right to establish and enforce quarantines is quite broad. To protect communities from epidemic diseases, the U.S. Supreme Court recognizes that states have the authority to “enact quarantine laws and health laws of every description.”<sup>38</sup>
- **Costs.** Expenses for disinfection, quarantine, and other items strictly for the public health are paid by the municipality. Expenses for food, fuel, medicine, and necessaries are to be paid by the quarantined person when able. If the quarantined person cannot make payments, the expenses are borne by the municipality in which the person is quarantined.<sup>41</sup> If the quarantined person is from another area, the municipality rendering services may deliver a sworn statement of expenses to the county or municipality of the person’s legal settlement.<sup>42</sup>
- **Least Restrictive Means.** There is no current Ohio law mandating that quarantined individuals be held in the manner least restrictive of their freedoms. This right is well-ingrained in involuntary commitment law, bolstering the likelihood that least restrictive means would be recognized in Ohio courts for public health restrictions.<sup>43</sup>

## Government Takings for Public Health Purposes

### Takings per Se

- Takings per se entitle the property owner to compensation without a case-specific inquiry. There are two types of takings per se:
  - Physical invasions that occur when the government physically takes possession of an individual’s private property for public purposes.<sup>44</sup>
  - When a government’s regulation results in permanent denial of all economically beneficial or productive uses of the property (a “regulatory taking”).<sup>45</sup>

## Care of Isolated or Quarantined Individuals

**Maintenance of Quarantined Individuals.** The local health district is required to provide food, fuel, and other necessities of life to all quarantined individuals.<sup>39</sup>

- **Medical Care.** The local health district also is required to provide medicine, nurses, and medical attendance for those quarantined.<sup>40</sup>



## CHAPTER III. QUARANTINE AND BALANCING INDIVIDUAL RIGHTS

*See Chapter III of the Judicial Guide to Public Health for complete guidelines.*

During times of disease outbreaks, the government must balance between protecting the public health and protecting individual civil liberties. The Ohio Revised Code entrusts local health officials with the power to issue orders to restrict movement through means of isolation and quarantine as ways to prevent the spread of infectious disease. However, the Code does not provide a means for individuals who wish to challenge confinement. Nor does it provide statutory procedures for release from quarantine or isolation.

Guidelines issued by the Ohio Department of Health state that a person should be released from quarantine when they no longer are a danger to the public, meaning when they no longer are sick or infectious.<sup>46</sup>

But what happens when public panic agitates for unnecessary quarantine? While there have been only three challenges to quarantine or isolation in Ohio's history, the state has not had a challenge to quarantine or isolation practices since 1945.

Quarantine became a major national issue in 2014 during an Ebola outbreak. While only a few cases were reported in the United States, three states called for mandatory quarantining of medical workers who returned to the country after treating Ebola patients in Africa. The quarantine was to last for the 21-day incubation period of the disease.<sup>47</sup>

Medical professionals, however, were divided on the necessity of the mandatory quarantine, given that Ebola spreads only through contact with the bodily fluids of an infected person.<sup>48</sup> Various government and non-governmental agencies trained volunteer medical personnel in the use of personal protective equipment, and provided such equipment for use in Ebola-afflicted areas.<sup>49</sup> Some argued that the mandatory 21-day quarantines were not supported by science, but resulted solely from fear of the disease. They also argued that the policy would not protect the public and would punish medical workers unreasonably.<sup>50</sup>

State quarantine laws are limited by the Due Process Clause of both the state and federal constitutions. Judges have the authority to protect civil liberties when they are infringed without cause.

Historically, in those few cases in which quarantine was challenged, relief was sought through habeas corpus. Nationally, habeas corpus relief is rare and usually based on either violations of procedural due process or a lack of evidence to justify quarantine.<sup>51</sup> Of the three Ohio cases that sought habeas corpus relief, only one petition was granted.<sup>52</sup>

### Legal and Equitable Relief from Allegedly Illegal Quarantine or Restraint on Liberty

- ***No Express Provision for Relief.*** The Ohio Revised Code chapters regarding public health and the permission of quarantine and isolation of persons suspected of having been exposed to or having a dangerous communicable disease do not expressly provide for any challenge to the allegedly illegal quarantine or restraints on liberty.<sup>53</sup>
  - The Ohio Department of Health has issued guidelines that allow local health departments to limit movement, through devices such as isolation and quarantine, for reason of containing disease.<sup>54</sup> These guidelines also state that limitations will be ended when “disease containment and control activities have been successful as determined by surveillance activities.”<sup>55</sup>
- ***Writ of Habeas Corpus.*** Persons restrained by allegedly illegal quarantines have successfully used habeas corpus to challenge continuing detention.<sup>56</sup>
  - ***In General.*** Ohio law permits that one who is unlawfully restrained of his or her liberty or who is entitled to the custody of another, and is unlawfully being deprived, may prosecute a writ of habeas corpus to inquire into the cause of such restraint.<sup>57</sup>

- **Unlawful Restraint.** “Unlawful restraint” includes restraint of liberty through imprisonment or detention by a public officer with or without color of law.<sup>58</sup>
- **Habeas Corpus Proceedings.** The habeas corpus proceeding transpires as follows:
  - **Original Jurisdiction.** Original habeas corpus jurisdiction is vested with several courts.
    - **Constitutional Authority.** Original jurisdiction is constitutionally vested with the Ohio Supreme Court, the court of appeals, and the common pleas courts.<sup>59</sup>
    - **Statutory Authority.** The Revised Code also grants original jurisdiction to the Supreme Court, the court of appeals, and the common pleas courts, as well as the probate courts.<sup>60</sup> Juvenile courts have concurrent original jurisdiction with the courts of appeals to hear and determine any habeas corpus applications involving child custody.<sup>61</sup>
    - **No Jurisdiction.** A state court cannot grant habeas relief to a person being held in the state by virtue of or under the color of federal authority.<sup>62</sup>
  - **Venue.** The venue statutes relating to the commencement of ordinary civil actions are inapplicable to habeas corpus proceedings because the habeas corpus statute provides the basic summary procedure for bringing such an action.<sup>63</sup>
    - **Courts of County of Confinement.** Only the courts of the county in which the petitioner is confined have jurisdiction over a habeas corpus proceeding.<sup>64</sup>
    - **Location of Institution of Confinement.** The court of the county in which the institution where the petitioner

is confined is the appropriate venue for a habeas corpus proceeding.<sup>65</sup>

### Injunctive Relief

- Injunctive relief is an equitable remedy designed to protect rights from irreparable injury by prohibiting or commanding certain acts.<sup>66</sup> Injunctive relief from the orders of health authorities may be available in certain limited circumstances.
  - **Generally.** As a general matter, Ohio courts may not restrain nor inquire into the motives of the legislative or executive branches of the government in exercising their discretion.<sup>67</sup>

### Administrative Relief

#### Administrative Agency Proceedings and Appeals from Agency Rulings

- **Consultation of Local Ordinances and Regulations Necessary.** The Revised Code and Administrative Code grant much of the public health power to local health districts. While administrative regulations provide a basic operating framework for local health districts, they do not provide for a set administrative review process for the decisions of these bodies. Local ordinances may contain differing provisions addressing processes for administrative hearings and appeals for public health-related orders and decisions.
- **Administrative Proceeding as Quasi-Judicial Proceeding.** Ohio law holds that an administrative agency acts in a quasi-judicial capacity when it provides notice of hearing and an opportunity to introduce evidence.<sup>68</sup>
- **Jurisdictional Issues in the Administrative Setting.** Because administrative agencies are tribunals of limited jurisdiction, an agency order cannot be valid unless the agency is specifically authorized by law to make it.<sup>69</sup>

- **Due Process Issues in the Administrative Setting.** Due process is required in the context of quasi-judicial hearings.<sup>70</sup> Persons challenging the order of the administrative agency must be given reasonable notice and a fair hearing, even in the absence of a statutory requirement.<sup>71</sup>
- **Administrative Proceedings; Generally.** Proceedings before administrative agencies are not like a trial, but rather are in the nature of an inquiry. They require an opportunity to introduce testimony and a finding or decision made in accordance with statutory authority.<sup>72</sup>
- **Final Agency Order.** After taking evidence, the agency issues a final order.
- **Judicial Review of Final Agency Order.** Final administrative orders may be appealed to the courts.<sup>73</sup>
  - **No Inherent Right to Appeal.** There is no general or inherent right granting judicial review of an administrative order.<sup>74</sup>
- **Appeal of an Administrative Order.** A constitutional or statutory provision must authorize such action.<sup>75</sup>



#### CHAPTER IV. FEDERAL, STATE & LOCAL AUTHORITY DURING STATE OF EMERGENCY

*See Chapter IV of the Judicial Guide to Public Health for complete guidelines.*

Ohio law recognizes the threat to public health and safety presented by both natural and man-made emergencies and disasters.

**Use of State Resources to Maximum Extent Practicable.** The governor is required to utilize the services, equipment, supplies, and facilities of existing state and local agencies to the maximum extent practicable to cope with an emergency.

- **Acceptance of Private Offers of Assistance.** The state is authorized to accept gifts,

grants, or loans of services, equipment, supplies, materials, or funds offered by private parties to assist in emergency management.

- **Specific State Emergency Management Procedures.** Ohio emergency management procedures include, but are not limited to:
  - **Establishment of Emergency Management Agency.** An emergency management agency is established within the Ohio Department of Public Safety and governed by the director of public safety.<sup>76</sup>
  - **Preparation of State Emergency Plan.** Ohio law calls for the development of statewide emergency planning in accord with all federal requirements.<sup>77</sup>

*Judicial Notice. By law, courts are required to take judicial notice of plans adopted for emergency management purposes, (e.g., “Ohio Emergency Operations Plan”).<sup>78</sup>*

- **Promulgation of Rules for Emergency Management.** The director of public safety is authorized by law to adopt, rescind, amend, and enforce rules with respect to the emergency management of the state for the purpose of protecting the citizens against any hazard.<sup>79</sup>
- **Availability of Rules for Public Inspection.** The rules must be available for public inspection at the emergency operations center and at other reasonable places and hours.<sup>80</sup>

*Judicial Notice. By law, courts must take judicial notice of ordinances, rules, resolutions, or orders adopted for emergency management purposes.<sup>81</sup>*
- **Enactment of Interstate Emergency Management Assistance Compact.** Ohio enacted the Emergency Management Assistance Compact for the provision of equipment, personnel, and services to and by other states in the event of an emergency.<sup>82</sup>



- ***Specific Local Emergency Management Powers.*** Ohio law provides for emergency management procedures for county- or municipal-level localities.
- ***Countywide Emergency Management Agencies.*** Boards of county commissioners and chief executives of all or a majority of political subdivisions within a county may establish countywide emergency management agencies.<sup>83</sup>
- ***Regional Emergency Management Authorities.*** Boards of county commissioners of two or more counties, with the consent of the chief executives of a majority of the participating political subdivisions of each county involved, may establish regional emergency management authorities.<sup>84</sup>
- ***Individual Political Subdivision Emergency Management Programs.*** For those political subdivisions not participating in emergency management activities at the county or regional level, Ohio law requires they establish an emergency management program.<sup>85</sup>
- ***Mutual Aid Arrangements.*** Political subdivisions may collaborate with private and public Ohio agencies to develop mutual-aid arrangements for reciprocal emergency management aid and assistance in case of hazard too great to be dealt with unassisted.<sup>86</sup>

### Federal Powers during State of Emergency

Federal powers during states of emergency are governed by the U.S. Constitution, the Posse Comitatus Act (PCA), and statutory exceptions to the PCA.

- ***Suspension of Habeas Corpus.*** Article I, Section 9, Clause 2 of the U.S. Constitution generally provides that the privilege of the writ of habeas corpus shall not be suspended.
  - **Constitutional Exceptions.** Habeas corpus may be suspended in cases of rebellion or invasion when public safety may require it.<sup>87</sup>

- The text of the Constitution would seem to establish a two-part requirement for suspending habeas corpus: a preliminary finding that a rebellion or an invasion is underway, and a secondary finding that public safety requires suspension of habeas corpus.<sup>88</sup>
- The Ohio Constitution contains a provision equivalent to its federal counterpart permitting suspension of habeas corpus.<sup>89</sup>

### The Stafford Act

The Stafford Act is the primary disaster relief statute authorizing the president to deploy the military for disaster relief upon the request of a state governor.<sup>90</sup>

- ***State Governor's Authority under Stafford Act.*** Declarations of major disasters or emergencies generally must be initiated by the governor.
  - **Exception.** If the president decides an emergency implicates interests exclusive to or within the preeminent responsibility of the United States, the president may initiate federal action under the Stafford Act. In such a case, an emergency may be declared, but not a major disaster.<sup>91</sup>
- ***Declaration of Emergency or Major Disaster by Governor.*** In most cases, the governor will initiate the process of declaring an emergency or major disaster.
- Emergency is defined as any event necessitating federal intervention to save lives, protect property and the public health, or to avert a catastrophe.<sup>92</sup>
- Major disasters are defined as natural catastrophes, or any catastrophe resulting in fire, flood, or explosion.<sup>93</sup>
- ***Prerequisites for Declaring Emergency or Major Disaster.*** Prior to seeking federal assistance under the Stafford Act, the state governor must:

- Describe and execute the state’s own emergency plan before seeking federal resources.<sup>94</sup>
- Find the state’s resources to be inadequate to deal with or avert the threat posed by the catastrophe.<sup>95</sup>

### The Insurrection Act

Under the Insurrection Act,<sup>96</sup> the president may command any branch of the armed forces to quell insurrections, uprisings, or civil disturbances threatening the operation of state or federal laws.

- **Recent Amendment.** A recent amendment to Section 333 of the Insurrection Act allows the president to employ the national guard in federal service to restore public order and enforce laws after an “epidemic or serious public health emergency.”<sup>97</sup>
- **Discretion Rests with President.** The president maintains the discretion to determine whether the state is capable of maintaining public order. If not, federal assistance may be employed without state invitation.<sup>98</sup>



## CHAPTER V. OHIO HEALTH AGENCIES

See Chapter V of the *Judicial Guide for Public Health* for complete guidelines.

Local health districts are independent political subdivisions of the state and the local health departments that serve the districts are not responsive to the state health department. The state health department does have some oversight authority in limited and specific circumstances.

### Ohio Department of Health

- **General Powers.** The powers of the Ohio Department of Health generally are supervisory in nature. Additionally, the department is the “ultimate authority” regarding quarantine and isolation matters
- **Special Duties and Powers of Director of Health.** The department’s director also is responsible for investigations of epidemic

and pandemic situations; reporting and investigation of animal-based diseases; and the direction of volunteer responders.

### Local Health Departments

#### Health Districts

- Each health district is a separate political subdivision of the state.
- Townships and villages in each county are combined into a single “general health district.”<sup>99</sup>
- Health districts may join together to form a single city or general health districts as set forth in R.C. 3709.051, 3709.07, 3709.071, and 3709.10.<sup>100</sup>
- Each health district shall be governed by a Board of Health.<sup>101</sup>

#### Boards of Health

- **Composition of City Health Board.** Each board shall have five members serving staggered terms unless varied by a city charter.<sup>102</sup> The board is appointed by the mayor and confirmed by the city’s legislative authority. If the health district has created a Health District Licensing Council, then the licensing council will appoint one of the five members.<sup>103</sup>
- **Composition of General Health Board.** Each Board shall have five members serving staggered terms,<sup>104</sup> and with at least one member being a physician.<sup>105</sup> Four board members are appointed by the District Advisory Council.<sup>106</sup> If the health district has created a Health District Licensing Council, then the licensing council will appoint one of the five members.
  - Boards shall study and record the prevalence of disease within the district and provide for the prompt diagnosis and control of communicable diseases and take necessary steps to protect the public health and prevent disease.<sup>107</sup>

## Authority of Local Health Departments

- **Orders and Regulations.** Local boards of health are granted broad authority for promulgating orders and regulations.<sup>108</sup>
  - **Emergency Powers.** In cases of public health emergencies or epidemics, local boards may adopt emergency orders and regulations without the prior advertisement, recordation, and certification procedures normally required by law.<sup>109</sup>
  - **Limitations on Authority.**<sup>110</sup> Local boards of health may not take certain actions without permission from the Department of Health. Specifically, local boards may not close or prohibit travel on public highways,<sup>111</sup> nor establish a quarantine of one municipal corporation or township against another.<sup>112</sup>

## Conflict between State and Local Orders and Regulations

- **Cooperation Where Possible.** Ohio law requires that the Department of Health work in cooperation with the local health districts “[w]henever possible.”<sup>113</sup>
- **Statutory Instruction.** Statutory language indicates that orders and regulations of the Department of Health trump those of the local health boards. The Department of Health is vested with “supervision of all matters relating to the preservation of life and health of the people.”<sup>114</sup>
  - The Department of Health “may make and enforce orders in local matters or reassign substantive authority for mandatory programs \*\*\* when an emergency exists, or when [the local department] has neglected or refused to act with sufficient promptness or efficiency \*\*\*.”<sup>115</sup>

- **State Retains Ultimate Control over Public Health Matters.** The Ohio Supreme Court determined that granting certain public health powers to a municipality is not a relinquishment of the state’s health control and authority within the municipality’s territorial limits.<sup>116</sup>
- **Public Health Matter of Statewide Concern.** Since the subject of public health is a matter of statewide concern, courts find that enactments of the General Assembly prevail over local enactments that are in conflict.<sup>117</sup>



## CHAPTER VI. JUDICIAL OPERATIONS DURING PUBLIC HEALTH EMERGENCIES

*See Chapter VI of the Judicial Guide to Public Health for complete guidelines.*

**It is the responsibility of the court to ensure it continues to operate during a public health crisis.**

Rule 14, “Declaration of Judicial Emergency,” in the Rules of Superintendence for the Courts of Ohio, vests ultimate authority to manage any aspect of the judiciary during an emergency in the chief justice. The chief justice can make new rules, intervene in local courts, etc., as the chief deems necessary, though consultation with the other justices and judges at the local level is encouraged.

At the local level, the administrative judge has its own power to manage items such as filling vacancies on the bench and temporarily relocating the court.

Despite the state of emergency, the court must ensure it has enough petit jurors, grand jurors, witnesses, and a functioning clerk of court to operate in such a situation. Specific laws govern these topics and allow for judicial discretion in some respects. Several government actors, such as administrative judges, directors of health, and sheriffs have the implied or explicit authority to close courthouses and move their operations elsewhere during an emergency.

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Court preparation for its continued operation in the event of a public health or other emergency or outage requires timely and concerted effort of judges and court personnel. Developing a communication plan and heavily investing in remote communication technology may be vital when the movement of people is widely restricted.

### Powers of the Chief Justice

- Sup.R. 14(A) grants to the chief justice the authority to do and direct to be done “all things necessary to ensure the orderly and efficient administration of justice for the duration of the emergency.”<sup>118</sup>
- The rule gives the chief justice those powers necessary to facilitate the administration of justice for the duration of any judicial emergency caused by disaster or civil disturbance.<sup>119</sup>
- Sup.R. 14 expressly authorizes the chief justice during a judicial emergency to:
  - Suspend the operation of any local court rule;<sup>120</sup>
  - Promulgate temporary rules of court;<sup>121</sup>
  - Assign and transfer emergency judicial duties to any judge within the state;<sup>122</sup> and
  - Reinstate retired judges where required.<sup>123</sup>
- The chief justice is to consult with and report to the other Ohio Supreme Court justices any actions contemplated or taken under Sup.R. 14.<sup>124</sup>

*Exception.* When circumstances do not permit consultation with the other justices or a report to them, the chief justice may act alone.<sup>125</sup>

When circumstances require, the chief justice may serve as the ultimate authority responsible for continued operations of Ohio courts during an emergency and may unilaterally act to this end with minimal oversight.<sup>126</sup>

- **Duration of Powers.** During the disaster or emergency, any temporary rules

promulgated under Sup.R. 14 govern the operation of the courts. The language of Sup.R. 14 suggests the chief justice’s authority to exercise these emergency powers lapses at the conclusion of the crisis and the normal rules of court are reinstated.<sup>127</sup>

*Judicial Notice.* All courts should take judicial notice of emergency rules, orders, amendments, or rescissions by the other branches of government.<sup>128</sup>

- **Inability of Chief Justice to Act.** In the event that the chief justice is absent or becomes disabled during a civil disturbance, disaster, or judicial emergency, the senior associate justice serves as the acting chief justice.<sup>129</sup>

### Disability of Judge

- **Disability during Trial.** If a judge is unable to proceed with a jury trial, for any reason, another judge may proceed with and finish the trial upon certifying in the record that he or she has familiarized himself or herself with the record.<sup>130</sup>
- **Disability after Return of Verdict or Findings.** If a judge is unable to dispense with his or her duties after a verdict is returned or findings of fact and conclusions of law are filed, then another judge may perform those duties.<sup>131</sup>

### Witness and Jury-Related Concerns

- **Failure or Refusal of Witness or Prospective Juror to Appear.** During a widespread pandemic outbreak, it is likely that persons called before a court may be reluctant to appear out of fear of infection. The law provides remedies for failure or refusal of a witness or juror to appear.
  - **Witnesses.** A subpoena to appear before a court and provide testimony requires the witness to attend.
  - **Arrest for Failure to Attend.** When a material witness is subpoenaed but refuses or neglects to attend in

conformity with the subpoena, the witness is subject to arrest to compel his attendance and punish his disobedience.<sup>132</sup>

- **Contempt.** Witnesses who fail to appear in accordance with the terms of a subpoena may be found guilty of contempt.<sup>133</sup>

### Prospective and Acting Jurors.

- **Arrest for Failure to Attend.** Ohio law provides for the arrest of persons drawn for jury service who do not attend and serve without excuse.<sup>134</sup>
- **Statutory Penalty for Non-Appearance.** Persons failing to appear for jury service may be fined not less than \$100.00, nor more than \$250.00, and may be punished for contempt of court.<sup>135</sup>
- **Postponement or Excuse from Jury Attendance.** Prospective jurors have the ability, by law, to request an excuse from or postponement of their service.

### Efforts to Remedy Inadequate Number of Available Prospective Jurors.

Ohio law provides that a judge may order an additional number of jurors to be drawn from the pool at any time for the full term, partial term, or for immediate service in a particular case.<sup>136</sup>

### Sickness Affecting Seated Jurors

In the event of a pandemic outbreak, jurors may be impacted during the course of a trial. Ohio law provides guidance.<sup>137</sup>

- **Sickness before Conclusion of Trial.** If a juror becomes sick before the conclusion of a trial, or is unable to perform his or her duty for other reasons, then the court may order the juror discharged.<sup>138</sup>
- **Replacement with Alternate Juror.** The discharged juror is replaced with an alternate juror.<sup>139</sup>
- **Exhaustion of Alternate Jurors.** If, after all alternate jurors are exhausted, a juror becomes sick and must be discharged, a

new juror may be sworn and the case tried anew, or the entire jury may be discharged and a new jury empaneled.<sup>140</sup>

- **Medical Attendance of Juror.** In the event a juror becomes ill before the conclusion of the trial, the court may order medical attendance for that juror.

### Grand Juries

- **Constitutional Right.** Article I, Section 10 of the Ohio Constitution guarantees the right to indictment by grand jury.

Exceptions. There are exceptions to the right to indictment by grand jury, certain of which are relevant to public health.<sup>141</sup>

- **Minor Crimes.** There is no right to a grand jury indictment when the case involves an offense for which the penalty is not imprisonment.<sup>142</sup>
- **Cases Arising in the Militia When in Actual Service during Time of Public Danger.** No right to grand jury indictment exists in cases arising with the active militia when called to service in times of public danger.<sup>143</sup>
- **Statutory Guarantee.** The right to a grand jury is guaranteed by R.C. Chapter 2939. This statute sets the number of persons to serve as grand jurors at 15 – 12 of whom must concur for an indictment.<sup>144</sup>
- **Discharge of Indicted Person When No Indictment Returned.** Generally, if a person held in jail charged with an indictable offense is not indicted at the term of court at which he is held to answer, then he shall be discharged.<sup>145</sup>

### Procedural Nature of Grand Jury Right Empowers Judiciary

- **Conflicting Authority.** Section 10, Article I of the Ohio Constitution leaves both the number of grand jurors to serve and the number required to concur for an indictment as a legislative task.

- However, the Ohio Supreme Court ruled that the number of grand jurors is a procedural rather than a substantive issue, permitting Crim.R. 6(A) of the Rules of Criminal Procedure to control the matters of the number of jurors required to return an indictment.<sup>146</sup>
  - *Reduction of Number by Judiciary.* The number of required grand jurors has been reduced from 15 to nine, seven of which are required to return a true bill.
  - *Further Reduction in Public Health Emergency.* The Supreme Court could act again to reduce the number of grand jurors required by law in case of an emergency or disaster.<sup>147</sup>
- *Sickness, Death, or Refusal of Grand Juror to Attend.* Current law directs the jury commission to seat the minimum number of persons required for grand jury service.<sup>148</sup>

### Closure of Courthouse and Roads during Public Emergency

#### Authority to Close Courthouses Is Implied by Ohio Law

- *Administrative Judge; Other Judges.* Under R.C. 2301.04, the administrative judge can move the court operations temporarily to a location outside or inside the territorial jurisdiction of the court.
  - The administrative judge’s authority under R.C. 2301.04 is independent of, and not dependent upon, the authority of the chief justice during a judicial emergency.
  - A 1965 attorney general opinion provides for the possible authority of judges to close the courthouse in the event of public emergency.<sup>149</sup>
- *Chief Justice.* Sup.R. 14 authorizes the chief justice to take all necessary measures to ensure the orderly administration of

justice, which implies the power to close a specific courthouse.

- *Director of Health during a Public Health Emergency.* The director of health is the ultimate authority on matters of isolation and quarantine, which implies the power to shut down a courthouse toward those ends.<sup>150</sup>
- *County Commissioners and the Sheriff, Potentially.* Pursuant to R.C. 311.07(A), “Under the direction and control of the board of county commissioners, [the] sheriff shall have charge of the courthouse.”

### Remote Appearance of Individuals and Telecommunication Preparedness of the Court

#### Appearance by Means Other than in Person

- *Right to a Hearing.* Due process of law affords individuals affected by quarantine or isolation the right to a hearing,<sup>151</sup> which places significant importance on telecommunications technology to allow for remote appearance.
- *Pre-Recorded Videotaped Testimony.* Civ.R.40 provides that all testimony and other evidence as may be appropriate may be presented at a trial by videotape, subject to the provisions of the Rules of Superintendence.<sup>152</sup> Videotaped depositions are permitted by Civ.R. 30(B) (3).
- *Use of Deposition Testimony in Criminal Matters.* If it appears probable that a prospective material witness will be unable to attend or will be prevented from attending a trial or hearing, then the court may order upon motion that the person’s testimony be taken by deposition.<sup>153</sup>

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## Telecommunications Preparedness of the Court

- **Prior Investment and Planning Is Critical.** Courts should invest in the necessary IT equipment, personnel, and training capacity to conduct judicial proceedings from a distance.
- The ability to communicate effectively during a pandemic is critical, but also potentially very difficult. Communication

plans should be developed in advance, which include identifying specific individuals (points-of-contact) within the court and across the entire judicial system who will be responsible for managing communications, and courts should develop appropriate communication procedures.

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## ENDNOTES

- 1 Ohio Constitution, Article II, Section 1d.
- 2 *Medtronic, Inc. v. Lohr* (1996), 518 U.S. 470.
- 3 See e.g., *Heller v. Doe* (1993), 509 U.S. 312.
- 4 Ohio Constitution, Article IV, Section 4(B).
- 5 Ohio Constitution, Article IV, Section 4(A).
- 6 Ohio Constitution, Article IV, Section 4(B); R.C. 2506.01.
- 7 Ohio Constitution, Article IV, Section 3(B) (2).
- 8 R.C. 2501.05.
- 9 Ohio Constitution, Article IV, Section 2(B) (2) (a) (ii).
- 10 Ohio Constitution, Article IV, Section 2(B) (2) (d).
- 11 Ohio Constitution, Article IV, Section 2(B) (2) (e).
- 12 U.S. Constitution, Amend. IV.
- 13 *Cochran v. State* (1922), 105 Ohio St. 541.
- 14 Ohio Constitution, Article I, Section 14.
- 15 See, e.g., *State v. Vuin* (C.P. 1962), 89 Ohio L Abs. 193.
- 16 See, e.g. *United States v. Jacobson* (1984), 466 U.S. 109; *City of Athens v. Wolf* (1974), 38 Ohio St.2d 267.
- 17 See, e.g., *Michigan v. Summers* (1981), 452 U.S. 692.
- 18 *Id.*
- 19 See *Jacobson, supra*; *Bridges v. Butch* (1997), 122 Ohio App.3d 572.
- 20 See, e.g., *New Jersey v. T.L.O.* (1985), 469 U.S. 325.
- 21 *Ferguson v. City of Charleston* (2001), 532 U.S. 67.
- 22 See, e.g., *Maryland v. Pringle* (2003), 540 U.S. 366.
- 23 See, e.g., *U.S. v. Padro* (6th Cir. 1995), 52 F.3d 120.
- 24 R.C. 3707.07.
- 25 R.C. 3701.06.
- 26 R.C. 3707.01.
- 27 *Cupp v. Murphy* (1973), 412 U.S. 291.
- 28 *Schmerber v. California*, 384 U.S. 757 (1966).
- 29 *Nat'l Treasury Emps. Union v. Von Raab*, 489 U.S. 656 (1989).
- 30 See *Cupp, supra*.
- 31 See *United States v. Dionisio*, 410 U.S. 1 (1973).
- 32 See *Schmerber, supra*.
- 33 *Id.*

- 34 Ohio Adm.Code Ann. 3701-3-01.
- 35 *Id.*
- 36 *Compagnie Francaise de Navigaton a Vapeur v. State Bd. of Health* (1902), 186 U.S. 380.
- 37 See e.g., *Kropkin v Truax* (1929), 119 Ohio St. 610, 165 N.E. 498 and *Ex parte Company* (1922), 106 Ohio St.50, 139 N.E. 204.
- 38 *Jacobson v. Massachusetts* (1905), 197 U.S. 11.
- 39 R.C. 3707.14
- 40 *Id.*
- 41 *Id.*
- 42 R.C. 3707.17.
- 43 Cf. section on Involuntary Commitment, *infra*. However, statutory law grants final authority on quarantine decisions to the Department of Health without mentioning least restrictive means, (R.C. 3701.13) suggesting the manner of confinement would be at the discretion of the director of health; the U.S. Supreme Court affirmed the authority of the state to quarantine in *Compagnie Francaise de Navigation a Vapeur v. State Bd. of Health* (1902), 186 U.S. 380.
- 44 *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1018 (1992).
- 45 *Penn. Cent. Transp. Co.*, 438 U.S. at 136; *Penn Coal v. Mahon*, 260 U.S. 393, 415 (1922)
- 46 Ohio Department of Health, *Limitations on Movement and Infection Control Practices*, Version 3.0, Section III(VII) (a) (iii) (2011) < <http://www.odh.ohio.gov/PDF/IDCM/sect5.pdf>> (Visited on Nov. 3, 2017).
- 47 Holly Yan and Greg Botelho, *Ebola: Some U.S. states announced mandatory quarantines – now what?*, CNN, Oct 27, 2014. <<http://www.cnn.com/2014/10/27/health/Ebola-us-quarantine-controversy/index.html>>.
- 48 Karen Weintraub, *When it Comes to Ebola, What Does Quarantine Really Mean?*, National Geographic, Oct. 28, 2014.
- 49 The White House, Office of the Press Secretary, *Fact Sheet: U.S. Response to the Ebola Epidemic in West Africa*, Sept. 16, 2014. <<https://obamawhitehouse.archives.gov/the-press-office/2014/09/16/fact-sheet-usresponse-Ebola-epidemic-west-africa>> (Visited Nov. 6, 2017); Jeffrey C. Hageman et. al. *Infection Prevention and Control for Ebola in Health Settings – West African and United States*, Centers for Disease Control and Prevention, July 8, 2016. <<https://cdc.gov/mmwr/volumes/65/su/su6503a8.htm>> (Visited Nov. 6, 2017).
- 50 Jeffrey Drazen et. al. *Ebola and Quarantine*, New England Journal of Medicine, Nov. 20, 2014. <<http://nejm.org/doi/full/10.1056/NEJMe1413139#t=article>>.
- 51 Christopher Ogollo, *Non-Criminal Habeas Corpus for Quarantine and Isolation Detainees; Serving the Private Right or Violating Public Policy*, DePaul Journal of Health Care Law, Vol. 14 Issue 1 Fall 2011 (P. 154). <<http://via.library.depaul.edu/cgi/viewcontent.cgi?article=1022&context=hjcl>>.
- 52 *Ex Parte Company* (1922), 106 Ohio St. 50, 139 N.E. 204; *In the Matter of Mossie Jarrell* (C.P. 1930) 28 Ohio N.P. (n.s.) 473; and *Ex Parte Kilbane* (C.P. 1945), 32 O.O. 530, 67 N.E.2d 22.
- 53 See R.C. 3707.04 – .28.
- 54 Ohio Department of Health, *Limitations on Movement and Infection Control Practices*, Version 3.0, Section III.
- 55 Ohio Department of Health, *Limitations on Movement and Infection Control Practices*, Version 3.0, Section III, VII.
- 56 While some states have mandated time limits on quarantine that require an order be renewed to continue quarantine or that allow for an official hearing on the matter when the time limit expires, Ohio’s laws do not have such a limit. *State Quarantine and Isolation Statutes*, National Conference of State Legislators, Oct. 29, 2014. Accessed Nov. 13, 2017. <<http://www.ncsl.org/research/health/state-quarantine-and-isolation-statute.aspx>>.
- 57 R.C. 2725.01.
- 58 See, e.g., *State ex rel. Smirnoff v. Greene* (1998), 84 Ohio St.3d 165, 702 N.E.2d 423.



- 59 Ohio Constitution, Article IV, Section 2(B) (1)(c); Ohio Constitution, Article IV, Section 3(B) (1)(c); Ohio Constitution, Article IV, Section 4(B).
- 60 R.C. 2725.02; R.C. 2101.24(B) (1)(b).
- 61 R.C. 2151.23(A) (3); *In re Black* (1973), 36 OhioSt.2d 124, 304 N.E.2d 394.
- 62 See, e.g., *Ableman v. Booth* (1858), 62 U.S. 506; *In re Disinger* (1861), 12 Ohio St. 256.
- 63 *Pegan v. Crawmer* (1995), 73 Ohio St.3d 607, 653 N.E.2d 659.
- 64 R.C. 2725.03.
- 65 *Id.*
- 66 56 Ohio Jurisprudence 3d (2006) 95, Injunctions, Section 1.
- 67 See *Miller v. Directors of Longview Asylum* (C.P. 1879), 7 Ohio Dec. Rep. 650.
- 68 *State ex rel Kilgore v. Indus. Comm. of Ohio* (1930), 123 Ohio St. 164, 174 N.E. 345.
- 69 See R.C. 119.06 and *City of Washington v. Public Util. Comm.* (1918), 99 Ohio St. 70, 124 N.E. 46.
- 70 *Ward v. Village of Monroeville, Ohio* (1972), 409 U.S. 57.
- 71 *State ex rel. Ormet Corp. v. Industrial Comm. of Ohio* (1990), 54 Ohio St.3d 102, 561 N.E.2d 920.
- 72 See *Christian Care Home of Cincinnati, Inc. v. State Certificate of Need Review Bd.* (1988) 48 Ohio App.3d 158, 548 N.E.2d 981.
- 73 In some instances, final orders may be subject to examination by an agency review board or a similar body. Consultation of specific agency rules and administrative regulations is required.
- 74 See, e.g., *Collyer v. Broadview Developmental Ctr.* (1991), 74 Ohio App.3d 99, 598 N.E.2 75; *McAtee v. Ottawa Cty. Dept. of Human Serv.* (1996), 111 Ohio App.3d 812, 677 N.E.2d 395.
- 75 *Id.*
- 76 R.C. 5502.22(A).
- 77 *Id.*
- 78 R.C. 5502.36.
- 79 R.C. 5502.25.
- 80 *Id.*
- 81 R.C. 5502.36.
- 82 R.C. 5502.40.
- 83 R.C. 5502.26.
- 84 R.C. 5502.27.
- 85 R.C. 5502.271.
- 86 R.C. 5502.29.
- 87 U.S. Constitution, Article I, Section 9, Cl. 2.
- 88 *Id.*
- 89 Ohio Constitution, Article I, Section 8.
- 90 42 U.S.C. 5170 (declaring major disaster) and 5191 (declaring emergency).
- 91 42 U.S.C. 5191(b).
- 92 44 C.F.R. 206.2(17).
- 93 *Id.*
- 94 42 U.S.C. 5170 and 5191(a).
- 95 *Id.*
- 96 10 U.S.C. 331-35.
- 97 10 U.S.C. 333(a) (1)(A), as amended by Pub.L.8109-364, 1076(a) (1) (Oct. 17, 2006).
- 98 *Id.*
- 99 R.C. 3709.01.
- 100 *Id.*
- 101 R.C. 3709.02 (general health districts) and R.C. 3709.05 (city health districts).
- 102 R.C. 3709.05(A).
- 103 *Id.*
- 104 R.C. 3709.03(B).
- 105 *Id.*
- 106 *Id.*
- 107 R.C. 3709.22.

- 108 There is no express grant of power in R.C. 3709.21, or elsewhere, allowing local boards of health unfettered authority to promulgate any health regulations deemed necessary. *D.A.B.E., Inc. v. Toledo-Lucas Cty. Bd. of Health*, (2002) 96 Ohio St.3d 250, 2002-Ohio-4172. This statute merely confers rule-making authority. Local boards of health need both rule-making authority and subject-matter authority. *Id.*
- 109 *Id.* See R.C. Chapter 3707; see also, Chapter III, *infra*.
- 110 See footnote 101, *supra*.
- 111 R.C. 3707.05.
- 112 *Id.*
- 113 R.C. 3701.13
- 114 *Id.* (emphasis added).
- 115 R.C. 3701.13 (emphasis added). “In such cases, the necessary expense incurred shall be paid by the general health district or city for which the services are rendered.”
- 116 *State Bd. of Health v. City of Greenville* (1912), 86 Ohio St.1, 98 N.E. 1019.
- 117 *Kraus v. City of Cleveland* (C.P. 1953), 55 Ohio Op. 6, 116 N.E.2d 779, judgment aff’d, (1955) 163 Ohio St. 559, 127 N.E.2d 60.
- 118 Sup.R. 14(A).
- 119 See Commentary to Sup.R. 14.
- 120 *Id.*
- 121 *Id.*
- 122 Sup.R. 14(B).
- 123 *Id.*
- 124 Sup.R. 14(C)
- 125 *Id.*
- 126 See generally Sup.R. 14.
- 127 See Commentary to Sup.R. 14.
- 128 E.g., R.C. 5502.36 expressly requires judicial notice of emergency rules by the director of public safety; cf. R.C. 119.03 (outlining emergency rulemaking process), R.C. 3701.13 (emergency authority of director of health).
- 129 Sup.R. 14(A).
- 130 Civ.R. 63(A).
- 131 Civ.R. 63(B).
- 132 R.C. 190737; R.C. 2317.21.
- 133 R.C. 2705.02(A) and (C).
- 134 R.C. 2313.30.
- 135 R.C. 2313.99; see also R.C. 2705.02(A).
- 136 R.C. 2313.16.
- 137 See R.C. 2945.29.
- 138 *Id.*
- 139 *Id.*
- 140 *Id.*
- 141 See Ohio Constitution, Article I, Section 10.
- 142 *Id.*
- 143 *Id.*
- 144 See R.C. 2939.02 and R.C. 2939.20.
- 145 R.C. 2939.24.
- 146 *State v. Brown* (1988) 38 Ohio St.3d 305, 528 N.E.2d 523.
- 147 See *Brown, supra* at note 21.
- 148 See R.C. Chapter 2939.
- 149 1965 Ohio Atty. Gen. Op. No. 65-106.
- 150 R.C. 3701.13, R.C. 3701.14(A), and R.C. 3701.28.
- 151 See, e.g., U.S. Constitution, Amend. V (“No person shall...be deprived of life, liberty, or property without due process of law[.]”).
- 152 Civ.R. 40.
- 153 Crim.R. 15(A).

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