



# ENACTMENT NEWS

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## House Bill 663 Lethal Injection Confidentiality Effective March 23, 2015

### Enactment News HB 663

HB 663 was signed by the Governor on December 19, 2014 and will become effective on March 23, 2015. The original bill addressed the confidentiality and immunity of manufacturers and users of lethal injection drugs, but several last-minute amendments that were added to the bill were based on recommendations made by the Death Penalty Task Force (the Task Force convened from 2011 until 2014 and published a report with recommendations, as well as a dissenting report, in April of 2014).

The amendments to 130 HB 663 affect four aspects of capital cases: (1) rate schedules to be set by the Supreme Court, (2) attorney-client privilege, (3) jury instructions, and (4) time to file a petition for post-conviction relief:

- The new law requires the Supreme Court to set a rate schedule for fees paid to appointed or selected counsel (R.C. 120.33(D)). The pre-existing procedures for indigent counsel (through a local public defender office or counsel picked by the indigent defendant or appointed by the court) remain unchanged except that, with respect to capital cases, the fees paid to counsel are determined by the schedule set by the Supreme Court (where the schedule is currently subject to review and approval by the board of county commissioners, the board *must* approve the Supreme Court amount or rate in capital cases – R.C. 120.33(A)(3)).

*(The Chief Justice and the Ohio Judicial Conference are fully aware of this requirement and are engaged in discussions with representatives of the county commissions in order to assess the best approach for meeting the requirements of the legislation. Given the complex nature of this issue and the diversity of the state, the Court is interested in having multiple perspectives on a process in developing a standard schedule. Additional information will be forthcoming after we have had the opportunity to conduct a full assessment of the issues involved.)*

- The new law provides that the attorney-client privilege is not applicable if ineffective assistance of counsel is asserted after a capital case (R.C. 2317.02(A)(1)). Before enactment of the act, there were three exceptions to attorney-client privilege (1. Client voluntarily reveals substance of communications or is deemed to have waived the privilege; 2. Client dies and the communication is relevant to a dispute between two parties who claim through the deceased client; 3. Client is an insurance company). The new law adds a fourth exception

regarding capital cases, but it does not define “capital case” (“capital offense” is defined under R.C. 2901.02).

- The new law also changes the procedure involved in jury instructions. After the evidence is concluded in a capital case being heard by a jury, the court must provide copies of the written instructions to the jury before orally instructing the jury, and must permit the jury to retain and consult the instructions during the court’s presentation of the oral instructions and during the jury’s deliberations (R.C. 2945.10(E)).
- Lastly, the new law increases the period of time for filing a post-conviction relief petition from 180 days to 365 days (R.C. 2953.21(A)(2)).

A Legislative Study Committee was created, to be composed of 6 members of the legislature, with a goal of studying how families of homicide victims can be better served, and the manner by which a sentence of death is performed in Ohio.

The new law requires that any information or record in the possession of a “public office” (and therefore potentially subject to public records rules) that can lead to the identification of a “person” (an individual, corporation, trust, partnership, association) who is involved in the administration of a death sentence by lethal injection be treated as follows:

- The information must be classified as confidential, is considered privileged, and is not subject to disclosure as a public record.
- Whenever a record that identifies a current or former DRC employee that may have been involved in the administration of the death penalty comes into the possession of the court, the court is required to order the immediate sealing of those records (R.C. 2949.222(A) and (B)).
- The information is not subject to disclosure during any judicial proceeding, except DRC is required to provide a record pursuant to a subpoena or court order (R.C. 2949.222(C)).
- Information pertaining to the manufacture, compounding, distribution, or supplying of lethal injection drugs must be disclosed to the Ohio Ethics Commission.

The new law establishes a civil action for the knowing disclosure of information protected under the new bill (R.C. 2949.221(C)).

Licensing authorities (entities, boards, departments, commissions, or associations that issue licenses) are not permitted to take disciplinary action against a licensee for participating in the manufacture, testing, distribution, or use of lethal injection drugs; further, licensing authorities are not permitted to provide expert testimony regarding execution by lethal injection (R.C. 2949.221(E)).