



Aida S. Montano

*Final Analysis*  
Legislative Service Commission

## **Sub. H.B. 316**

125th General Assembly  
(As Passed by the General Assembly)

**Reps. Wolpert, McGregor, Hughes, Reidelbach, Cirelli, Raussen, Kearns, Williams, Latta, Brinkman, Seitz, Willamowski, D. Evans, Widener, Aslanides, Buehrer, Calvert, Carmichael, Chandler, Collier, Daniels, Domenick, C. Evans, Faber, Flowers, Gibbs, Gilb, Hagan, Hollister, Niehaus, Olman, T. Patton, Reinhard, Schaffer, Schmidt, Schneider, Setzer, Sferra, G. Smith, J. Stewart, Walcher, Young**

**Sens. Austria, Harris, Spada**

**Effective date:** \*

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### **ACT SUMMARY**

- If all prisoners or adult offenders working on a work detail administered by a county correctional facility and outside the facility have volunteered for the work detail and are imprisoned or reside in the facility for an offense other than a felony of the first or second degree, grants a sheriff, deputy sheriff, or county correctional officer and the county in which the prisoners or offenders work on the work detail and that employs the sheriff, deputy sheriff, or officer qualified civil immunity for injury, death, or loss to person or property caused or suffered by a prisoner or adult offender working on the work detail.
- Specifies that a county correctional officer must provide prior notice of the act's immunity provisions to each prisoner or adult offender on a work detail in order to qualify for the immunity described in the preceding dot point.
- If all prisoners working on a work detail administered by a municipal correctional facility and outside the facility have volunteered for the work

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\* *The Legislative Service Commission had not received formal notification of the effective date at the time this analysis was prepared. Additionally, the analysis may not reflect action taken by the Governor.*

detail and are imprisoned in the facility for an offense other than a felony of the first or second degree, grants a member of the organized police department of the municipal corporation or municipal correctional officer, a municipal corporation in which the prisoners work on the work detail and that employs the member of the organized police department or the municipal correctional officer, and a township in which the prisoners work on the work detail qualified civil immunity for injury, death, or loss to person or property caused or suffered by a prisoner working on the work detail.

- Specifies that a municipal correctional officer must provide prior notice of the act's immunity provisions to each prisoner on a work detail in order to qualify for the immunity described in the preceding dot point.
- Grants the state immunity from liability in any civil action or proceeding involving the performance or nonperformance of a public duty unless a special relationship can be established between the state and an injured party, and specifies the elements for such a special relationship to exist.
- Provides that any radio broadcast station, television broadcast station, or cable television system participating in the statewide emergency alert program (i.e., the "AMBER Alert Program") or in any local or regional emergency alert program, and any director, officer, employee, or agent of any such station or system, is not liable to any person for damages for any loss allegedly caused by or resulting from the station's or system's broadcast or cablecast of, or failure to broadcast or cablecast, any information pursuant to the statewide emergency alert program or the local or regional emergency alert program.

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## CONTENT AND OPERATION

### Prisoner or adult offender work detail--county facilities

#### Qualified immunity

The act provides that, if all the prisoners or adult offenders working on a work detail administered by a county correctional facility<sup>1</sup> and outside the facility have volunteered for the work detail and are imprisoned or reside in that facility for an offense other than a felony of the first or second degree and if the applicable county correctional officer,<sup>2</sup> complies with the requirements described below in "Qualifications for immunity," both of the following apply (R.C. 341.27(B)):

(1) No sheriff, deputy sheriff, or county correctional officer is liable for civil damages for injury, death, or loss to person or property caused or suffered by a prisoner or adult offender working on the work detail *unless* the injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff, deputy sheriff, or county correctional officer.

(2) The county in which the prisoners or adult offenders work on the work detail and that employs the sheriff, deputy sheriff, or county correctional officer is not liable for civil damages for injury, death, or loss to person or property caused or suffered by a prisoner or adult offender working on the work detail *unless* the

<sup>1</sup> The act defines "county correctional facility" by reference to the definition of that term in R.C. 341.42(A)(4), not affected by the act, as a county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse (R.C. 341.27(A)(1)).

<sup>2</sup> The act defines "county correctional officer" by reference to R.C. 341.41(A)(3), not affected by the act, as a person who is employed by a county as an employee or officer of a county jail, county workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse (R.C. 341.27(A)(2)).

injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff or any deputy sheriff or county correctional officer.

**Qualifications for immunity**

The act provides that, to qualify for the above-described immunity regarding a work detail, a county correctional officer, prior to having the prisoners or adult offenders of the county correctional facility work outside the facility on the work detail, must inform each prisoner or adult offender on the work detail of these provisions of the act, including notifying the prisoner or adult offender that, by volunteering for the work detail, the prisoner or adult offender cannot hold the sheriff, deputy sheriff, or county correctional officer or the county liable for civil damages for injury, death, or loss to person or property unless the injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff, deputy sheriff, or county correctional officer (R.C. 341.27(C)).

**Prisoner work detail--municipal facilities**

**Qualified immunity**

The act provides that, if all the prisoners working on a work detail administered by a municipal correctional facility<sup>3</sup> and outside the facility have volunteered for the work detail and are imprisoned in that facility for an offense other than a felony of the first or second degree and if the applicable municipal correctional officer<sup>4</sup> complies with the requirements described below in "**Qualifications for immunity**," both of the following apply (R.C. 753.06(B)):

(1) No member of the organized police department of the municipal corporation and no municipal correctional officer is liable for civil damages for injury, death, or loss to person or property caused or suffered by a prisoner working on the work detail *unless* the injury, death, or loss results from malice or

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<sup>3</sup> *The act defines "municipal correctional facility" by reference to R.C. 753.32, not affected by the act, as a municipal jail, municipal workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse (R.C. 753.06(A)(1)).*

<sup>4</sup> *The act defines "municipal correctional officer" by reference to R.C. 753.31, not affected by the act, as a person who is employed by a municipal corporation as an employee or officer of a municipal jail, municipal workhouse, minimum security jail, joint city and county workhouse, municipal-county correctional center, multicounty-municipal correctional center, municipal-county jail or workhouse, or multicounty-municipal jail or workhouse (R.C. 753.06(A)(2)).*

wanton or reckless misconduct of the member of the organized police department of the municipal corporation or the municipal correctional officer.

(2) A municipal corporation in which the prisoners work on the work detail and that employs the member of the organized police department or the municipal correctional officer or a township in which the prisoners work on the work detail is not liable for civil damages for injury, death, or loss to person or property caused or suffered by a prisoner working on the work detail *unless* the injury results from malice or wanton or reckless misconduct of the member of the organized police department of the municipal corporation or a municipal correctional officer.

### **Qualifications for immunity**

The act provides that, to qualify for the above-described immunity regarding a work detail, a municipal correctional officer, prior to having the prisoners of the municipal correctional facility work outside the facility on the work detail, must inform each prisoner on the work detail of these provisions of the act, including notifying the prisoner that, by volunteering for the work detail, the prisoner cannot hold any member of the organized police department of the municipal corporation or any municipal correctional officer or the municipal corporation or township liable for civil damages for injury, death, or loss to person or property unless the injury, death, or loss results from malice or wanton or reckless misconduct of the member of the organized police department of the municipal corporation or the municipal correctional officer (R.C. 753.06(C)).

### **Background law--political subdivision general liability/nonliability; political subdivision and employee defenses and immunities**

For the purposes of R.C. Chapter 2744., the Political Subdivision Sovereign Immunity Law (not in the act), the functions of political subdivisions are classified as governmental functions and proprietary functions.

Generally, except as specifically provided in statute, a political subdivision is not liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by any act or omission of the political subdivision or an employee of the political subdivision in connection with a governmental or proprietary function. However, subject to specific statutory defenses and immunities (see **COMMENT 1**), and to specified limitations on the damages that may be awarded, a political subdivision is liable in damages in a civil action in specified circumstances (R.C. 2744.02(A) and (B) and 2744.05--not in the act).

In a civil action brought against a political subdivision or a political subdivision employee to recover damages for injury, death, or loss to person or property allegedly caused by any act or omission in connection with a

governmental or proprietary function, certain defenses or immunities may be asserted to establish nonliability. (See **COMMENT 1**.) In addition to any immunity or defense referred to in paragraph (f) of **COMMENT 1** and in circumstances not covered by that provision or other specified provisions, *the employee is immune from liability unless one of the following applies: (1) the employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities, (2) the employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner, or (3) liability is expressly imposed upon the employee by a section of the Revised Code.* The immunities and defenses of an employee referred to above do not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in R.C. 2744.02, as described in the preceding paragraph. (R.C. 2744.03(A)(6) and (B).)

### **State sovereign immunity**

#### **Background**

The State Sovereign Immunity Law, contained in R.C. Chapter 2743., provides that, with certain exceptions and qualifications, the state waives its immunity from liability and consents to be sued, and have its liability determined, in the Court of Claims in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to the limitations set forth in the State Sovereign Immunity Law and, in the case of state universities or colleges, in R.C. 3345.40, and except as provided in R.C. 2743.02(A)(2) (see following paragraph). To the extent that the state has previously consented to be sued, the State Sovereign Immunity Law has no applicability. (R.C. 2743.02(A)(1).)

If a claimant proves in the Court of Claims that an officer or employee, as defined in R.C. 109.36, would have personal liability for the officer's or employee's acts or omissions, but for the fact that the officer or employee has personal immunity under R.C. 9.86, the state will be held liable in the Court of Claims in any action that is timely filed pursuant to R.C. 2743.16 and that is based upon the acts or omissions. (R.C. 2743.02(A)(2).)

#### **Operation of the act**

The act provides another exception to the state's waiver of immunity described in the second preceding paragraph. The new exception specifies that, except as described in the following paragraph with respect to a special relationship, the state is immune from liability in any civil action or proceeding involving the performance or nonperformance of a *public duty* (see definition in the second succeeding paragraph), including the performance or nonperformance

of a public duty that is owed by the state in relation to any action of an individual who is committed to the custody of the state. (R.C. 2743.02(A)(1) and (3)(a).) (See **COMMENT 2**.)

The state immunity described in the preceding paragraph does not apply to any action of the state under circumstances in which a special relationship can be established between the state and an injured party. A special relationship under this provision is demonstrated if all of the following elements exist: (1) an assumption by the state, by means of promises or actions, of an affirmative duty to act on behalf of the party who was allegedly injured, (2) knowledge on the part of the state's agents that inaction of the state could lead to harm, (3) some form of direct contact between the state's agents and the injured party, and (4) the injured party's justifiable reliance on the state's affirmative undertaking. (R.C. 2743.02(A)(3)(b).)

The act defines "public duty" in the State Sovereign Immunity Law to include, but not be limited to, any statutory, regulatory, or assumed duty concerning any action or omission of the state involving any of the following: (1) permitting, certifying, licensing, inspecting, investigating, supervising, regulating, auditing, monitoring, law enforcement, or emergency response activity, or (2) supervising, rehabilitating, or liquidating corporations or other business entities. "Public duty" does not include any action of the state under circumstances in which a special relationship can be established between the state and an injured party as described in the preceding paragraph. (R.C. 2743.01(E).)

The act makes a technical change in R.C. 9.87(D)(1) and "gender neutralizes" that section's provisions.

**Radio broadcast station, television broadcast station, and cable television system immunity--broadcast, cablecast, or failure to broadcast or cablecast information under statewide, local, or regional emergency alert program**

**Continuing law**

Continuing law creates the statewide emergency alert program, often referred to as the "AMBER Alert Program," to aid in the identification and location of children who are under 18 years of age, who are abducted, and whose abduction, as determined by a "law enforcement agency" (see below), poses a credible threat of immediate danger of serious bodily harm or death to a child. The program is required to be a coordinated effort among the Governor's office, the Department of Public Safety, the Attorney General, law enforcement agencies, the state's public and commercial television and radio broadcasters, and others as deemed necessary by the Governor (see **COMMENT 3**). The law specifies that the statewide emergency alert program cannot be implemented unless all of the

following activation criteria are met: (1) the local investigating law enforcement agency confirms that an abduction has occurred, (2) an "abducted child" (see below) is under 18 years of age, (3) the abduction poses a credible threat of immediate danger of serious bodily harm or death to a child, (4) a law enforcement agency determines that the child is not a runaway and has not been abducted as a result of a child custody dispute, unless the dispute poses a credible threat of immediate danger of serious bodily harm or death to the child, and (5) there is sufficient descriptive information about the child, the abductor, and the circumstances surrounding the abduction to indicate that activation of the alert will help locate the child.

The law specifies that nothing in the provisions described in the preceding paragraph prevents the activation of a local or regional emergency alert program that may impose different criteria for the activation of a local or regional plan.

As used in the provisions regarding the statewide emergency alert program: (1) "abducted child" means a child for whom there is credible evidence to believe that the child has been abducted in violation of R.C. 2905.01 (the offense of kidnapping), 2905.02 (abduction), 2905.03 (unlawful restraint), or 2905.05 (criminal child enticement), and (2) "law enforcement agency" includes, but is not limited to, a county sheriff's office, the office of a village marshal, a police department of a municipal corporation, a police force of a regional transit authority, a police force of a metropolitan housing authority, the State Highway Patrol, a state university law enforcement agency, the office of a township police constable, and the police department of a township or joint township police district. (R.C. 5502.52.)

### **Operation of the act**

The act provides that any radio broadcast station, television broadcast station, or "cable television system" (see below) participating in the statewide emergency alert program or in any local or regional emergency alert program, and any director, officer, employee, or agent of any such station or system, is not liable to any person for damages for any loss allegedly caused by or resulting from the station's or system's broadcast or cablecast of, or failure to broadcast or cablecast, any information pursuant to the statewide emergency alert program or the local or regional emergency alert program (R.C. 5502.52(D)).

As used in this provision, "cable television system" means a "cable system," which is defined as any facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide "cable service" (see **COMMENT 4**) that includes video programming and that is provided to multiple subscribers within a community. "Cable system" does not include any facility that serves only to retransmit the

television signals of one or more television broadcast stations, any facility that serves subscribers without using any public right-of-way, any facility of a common carrier that, under 47 U.S.C.A. 522(7)(c), is excluded from the term "cable system" as defined in 47 U.S.C.A. 522(7), any open video system that complies with 47 U.S.C.A. 573, or any facility of any electric utility used solely for operating its electric utility system. (R.C. 5502.52(E)(2), by reference to existing R.C. 2913.04--not affected by the act.)

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## COMMENT

1. These defenses or immunities include the following (R.C. 2744.03(A)(1) to (5) and (A)(7)--not in the act):

(a) The political subdivision is immune from liability if the employee involved was engaged in the performance of a judicial, quasi-judicial, prosecutorial, legislative, or quasi-legislative function.

(b) The political subdivision is immune from liability if the conduct of the employee involved that gave rise to the claim of liability: (i) was not negligent conduct and was required or authorized by law, or (ii) was necessary or essential to the exercise of powers of the political subdivision or employee.

(c) The political subdivision is immune from liability if the action or failure to act by the employee involved that gave rise to the claim of liability was within the employee's discretion with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the employee's office or position.

(d) The political subdivision is immune from liability if the action or failure to act by the political subdivision or employee involved that gave rise to the claim of liability resulted in injury or death to a person who had been convicted of or pleaded guilty to a criminal offense or was found to be a delinquent child and who, at the time of the injury or death, was performing, in specified circumstances, community service work.

(e) The political subdivision is immune from liability if the injury, death, or loss to person or property resulted from the exercise of judgment or discretion in determining whether to acquire, or how to use, equipment, supplies, materials, personnel, facilities, and other resources unless the judgment or discretion was exercised with malicious purpose, in bad faith, or in a wanton or reckless manner.

(f) The political subdivision, and a county prosecuting attorney, city director of law, village solicitor, or similar chief legal officer of a political subdivision, an assistant of any such person, or a judge of an Ohio court is entitled



to any defense or immunity available at common law or established by the Revised Code.

2. In *Wallace v. Ohio Dept. of Commerce* (2002), 96 Ohio St.3d 266, the Ohio Supreme Court held the following in its Syllabus:

1. The public-duty rule is incompatible with R.C. 2743.02(A)(1)'s express language requiring that the state's liability in the Court of Claims be determined "in accordance with the same rules of law applicable to suits between private parties." In negligence suits against the state, the Court of Claims must determine the existence of a legal duty using conventional tort principles that would be applicable if the defendant were a private individual or entity. (*Hurst v. Ohio Dept. of Rehab. & Corr.* [1995], 72 Ohio St.3d 325 . . . and *Anderson v. Ohio Dept. of Ins.* [1991], 58 Ohio St.3d 215 . . ., overruled to the extent inconsistent herewith; *Sawicki v. Ottawa Hills* [1988], 37 Ohio St.3d 222 . . ., distinguished.)

2. The language in R.C. 2743.02 that the state shall "have its liability determined \* \* \* in accordance with the same rules of law applicable to suits between private parties" means that the state cannot be sued for its legislative or judicial functions or the exercise of an executive or planning function involving the making of a basic policy decision which is characterized by the exercise of a high degree of official judgment or discretion. However, once the decision has been made to engage in a certain activity or function, the state may be held liable, in the same manner as private parties, for the negligence of the actions of its employees and agents in the performance of that activity or function. (*Reynolds v. State* [1984], 14 Ohio St.3d 68 . . ., paragraph one of the syllabus, approved.) (Other citations omitted.)

Justice Cook, who wrote the majority opinion in *Wallace*, extensively discussed the public duty rule and stated the following:

First, no matter what considerations of policy support the *judicial* application of the public-duty rule, we must remember that R.C. Chapter 2743 has

*legislatively* set forth the public policy of this state. That policy, expressed in R.C. 2743.02(A)(1), is to allow suits against the state according to the same rules as between private parties, "except that the determination of liability is subject to the *limitations set forth in this chapter.*" (Emphasis added.) As we have stated previously, the public-duty rule is neither "set forth" in R.C. Chapter 2743 nor a rule of law applicable to suits between private parties. It is inappropriate for the court to engraft the public-duty rule as an additional limitation on liability that the General Assembly has not provided. If the public-duty rule is to become a rule of substantive law applicable to suits in the Court of Claims, it is the General Assembly--the ultimate arbiter of public policy--that should make it so by way of legislation. It is not this court's role to apply a judicially created doctrine when faced with statutory language that cuts *against* its applicability. (Footnote omitted.) (At p. 278.)

3. R.C. 5502.521, not affected by the act, creates the AMBER Alert Advisory Committee, consisting of members appointed by the Governor, to advise the Governor, the Attorney General, the Department of Public Safety, and law enforcement agencies on an ongoing basis on the implementation, operation, improvement, and evaluation of the statewide emergency alert program created by R.C. 5502.52. The Committee includes, but is not limited to, the following: (a) the Governor's designee, (b) a representative from the Department of Public Safety, representing the Emergency Management Agency, (c) a representative from the Department of Public Safety, representing the State Highway Patrol, (d) a representative from the Attorney General's Office--Missing Children Clearing House, (e) a representative from the State Emergency Communications Committee, (f) a representative from the FBI, (g) a representative from the Buckeye State Sheriffs Association, (h) a representative from the Ohio Association of Chiefs of Police, (i) a broadcast industry designee, (j) a victim or a victim's advocate, (k) a representative from a local or regional AMBER plan, and (l) a representative of any other agency or organization as deemed appropriate by the Governor. The Committee is authorized to meet periodically to review and evaluate the operation and effectiveness of the statewide emergency alert program, develop recommendations for procedures to improve the efficiency and effectiveness of the program, and work in a coordinated effort to make recommendations for needed legislative change.

4. R.C. 2913.04, not affected by the act, specifies that, as used in that section (including its definition of the term "cable system" that applies under the act), "cable service" means any of the following: (a) the one-way transmission to subscribers of video programming or of information that a cable operator makes available to all subscribers generally, (b) subscriber interaction, if any, that is required for the selection or use of video programming or of information that a cable operator makes available to all subscribers generally, or (c) any cable television service.

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-28-03	p. 1149
Reported, H. Civil & Commercial Law	03-10-04	p. 1674
Passed House (84-13)	03-23-04	pp. 1726-1728
Reported, S. Judiciary	11-17-04	p. 2280
Passed Senate (28-2)	11-17-04	pp. 2293-2294
House concurred in Senate amendments (79-11)	11-30-04	pp. 2302-2304

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