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*Bill Analysis*  
*Legislative Service Commission*

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

125th General Assembly  
(As Passed by the House)

**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**

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### **BILL SUMMARY**

- Requires the officer having charge of a county correctional facility, community-based correctional facility, halfway house facility, or municipal correctional facility who intends to have prisoners or adult offenders work outside the facility on a work detail to give advance written notice or notice by electronic mail of certain information relating to the work detail to the chief executive officer of any municipal corporation and the township clerk of any township in which the prisoners or adult offenders will be working.
- If all prisoners or adult offenders working on a work detail administered by a county correctional facility, community-based correctional facility, or halfway house facility and outside the facility have volunteered for the work detail and are imprisoned or reside in the facility for an offense other than an offense of violence, grants a sheriff, deputy sheriff, county correctional officer, community-based correctional facility officer, or halfway house facility officer or the county in which the prisoners work on the work detail and that employs the sheriff, deputy sheriff, or any of those officers 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 the requirements that a county correctional officer, community-based correctional facility officer, or halfway house facility officer must

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

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## CONTENT AND OPERATION

### *Prisoner or adult offender work detail--county or halfway house facilities*

#### *Notice*

The bill requires the officer having charge of a county correctional facility,<sup>1</sup> a community-based correctional facility,<sup>2</sup> or a halfway house facility,<sup>3</sup> whenever the officer intends to have prisoners or adult offenders work outside the facility on a work detail, to give advance written notice or notice by electronic mail to the chief executive officer of any municipal corporation and the township clerk of any township in which the prisoners or adult offenders will be working on the work detail of the date or dates on which, and the approximate locations at which, the work will be performed, the nature of the work, and the approximate number of prisoners or adult offenders who will be working on the work detail (R.C. 341.27(B)).

#### *Qualified immunity*

The bill provides that if all the prisoners or adult offenders working on a work detail administered by a county correctional facility, a community-based correctional facility, or a halfway house facility and outside the facility have volunteered for the work detail and are imprisoned or reside in that facility for an offense other than an offense of violence and if the applicable county correctional officer,<sup>4</sup> community-based correctional officer,<sup>5</sup> or halfway house facility officer<sup>6</sup>

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<sup>1</sup> *The bill defines "county correctional facility" by reference to the definition of that term in R.C. 341.42(A)(4), not in the bill, 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 bill defines "community-based correctional facility" as a community-based correctional facility or a district community-based correctional facility established pursuant to R.C. 2301.51 to 2301.56 (R.C. 341.27(A)(3)).*

<sup>3</sup> *The bill defines "halfway house facility" as a facility, including a community residential facility, licensed as a suitable facility for the care and treatment of adult offenders by the Division of Parole and Community Services of the Department of Rehabilitation and Correction pursuant to R.C. 2967.14 (R.C. 341.27(A)(5)).*

<sup>4</sup> *The bill defines "county correctional officer" by reference to R.C. 341.41(A)(3), not in the bill, 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,*

complies with the requirements described below in "Qualifications for immunity," both of the following apply (R.C. 341.27(C)):

(1) No sheriff, deputy sheriff, county correctional officer, community-based correctional facility officer, or halfway house facility 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, county correctional officer, community-based correctional facility officer, or halfway house facility officer.

(2) The county in which the prisoners or adult offenders work on the work detail and that employs the sheriff, deputy sheriff, county correctional officer, community-based correctional facility officer, or halfway house facility 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 injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff or any deputy sheriff, county correctional officer, community-based correctional facility officer, or halfway house facility officer.

#### Qualifications for immunity

The bill provides that to qualify for the above-described immunity, a county correctional officer, a community-based correctional facility officer, or a halfway house facility officer must do all of the following for each prisoner or adult offender on a work detail prior to having the prisoners or adult offenders of the county correctional facility, the community-based correctional facility, or the halfway house facility work outside the facility on a work detail (R.C. 341.27(D)):

(1) Determine, in good faith, that the prisoner or adult offender is mentally capable of volunteering for the work detail and is not subject to duress or under undue influence;

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*municipal-county jail or workhouse, or multicounty-municipal jail or workhouse (R.C. 341.27(A)(2)).*

<sup>5</sup> *The bill defines "community-based correctional facility officer" as a person who is appointed by a judicial corrections board as the director or an employee of a community-based correctional facility pursuant to R.C. 2301.55 (R.C. 341.27(A)(4)).*

<sup>6</sup> *The bill defines "halfway house facility officer" as a person who is employed as the director or an employee of a halfway house facility (R.C. 341.27(A)(6)).*



(2) Inform the prisoner or adult offender of these provisions of the bill, 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, county correctional officer, community-based correctional facility officer, or halfway house facility officer or 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, county correctional officer, community-based correctional facility officer, or halfway house facility officer;

(3) Obtain a written waiver, signed by the prisoner or adult offender, that states that the prisoner or adult offender is mentally competent to volunteer for the work detail and is not subject to duress or under undue influence. Such a written waiver must state clearly and in conspicuous type that the prisoner or adult offender who signs the waiver is signing it with full knowledge that, by volunteering for the work detail, the prisoner or adult offender cannot hold the sheriff, deputy sheriff, county correctional officer, community-based correctional facility officer, or halfway house facility 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, county correctional officer, community-based correctional facility officer, or halfway house facility officer.

### **Prisoner work detail--municipal facilities**

#### **Notice**

The bill requires the officer having charge of a municipal correctional facility,<sup>7</sup> whenever the officer intends to have prisoners work outside the facility on a work detail, to give advance written notice or notice by electronic mail to the chief executive officer of any municipal corporation and the township clerk of any township in which the prisoners will be working on the work detail of the date or dates on which, and the approximate locations at which, the work will be performed, the nature of the work, and the approximate number of prisoners who will be working on the work detail (R.C. 753.06(B)).

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<sup>7</sup> The bill defines "municipal correctional facility" by reference to R.C. 753.32, not in the bill, 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)).

### **Qualified immunity**

The bill provides that if all the prisoners working on a work detail administered by a municipal correctional facility and outside the facility have volunteered for the work detail and are imprisoned in that facility for an offense other than an offense of violence and if the applicable municipal correctional officer<sup>8</sup> complies with the requirements described below in "**Qualifications for immunity**," both of the following apply (R.C. 753.06(C)):

(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 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 or township in which the prisoners work on the work detail and that employs the member of the organized police department or the municipal corrections officer 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 bill provides that to qualify for the above-described immunity, a municipal correctional officer must do all of the following for each prisoner on a work detail prior to having the prisoners of the municipal correctional facility work outside the facility on a work detail:

(1) Determine, in good faith, that the prisoner is mentally capable of volunteering for the work detail and is not subject to duress or under undue influence;

(2) Inform the prisoner of these provisions of the bill, including notifying the prisoner that, by volunteering for the work detail, the prisoner cannot hold any

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<sup>8</sup> *The bill defines "municipal correctional officer" by reference to R.C. 753.31, not in the bill, 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)).*

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;

(3) Obtain a written waiver, signed by the prisoner, that states that the prisoner is mentally competent to volunteer for the work detail and is not subject to duress or under undue influence. Such a written waiver must state clearly and in conspicuous type that the prisoner who signs the waiver is signing it with full knowledge that, by volunteering for the work detail, the prisoner cannot hold any member of the organized police department of a municipal corporation or a 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.

**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, the functions of political subdivisions are classified as governmental functions and proprietary functions. (See **COMMENT 1**.)

In a civil action brought against a political subdivision or a political subdivision employee to recover damages for injury, death, or loss to persons 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 2**.) In addition to any immunity or defense referred to in paragraph (f) of **COMMENT 2** 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 **COMMENT 1**. (R.C. 2744.03(A)(6) and (B).)

## State sovereign immunity

### Existing law

The State Sovereign Immunity Law 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 bill

The bill provides another exception to the state's waiver of immunity described in the second preceding paragraph. It 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 following 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)(3)(a).) (See **COMMENT 3**.)

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 is demonstrated if all of the following elements exist (R.C. 2743.02(A)(3)(b)):

- (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;

(4) The injured party's justifiable reliance on the state's affirmative undertaking.

The bill 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 (R.C. 2743.01(E)):

(1) Permitting, certifying, licensing, inspecting, investigating, supervising, regulating, auditing, monitoring, law enforcement, or emergency response activity;

(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 above.

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

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## COMMENT

1. 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 2**, below, and "*Background law . . .*" above), 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 bill).

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

(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 persons 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.

3. 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.)

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## HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-28-03	p. 1149
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