Dennis M. Papp *Legislative Service Commission*

Sub. S.B. 222

127th General Assembly
(As Reported by S. Judiciary - Criminal Justice)

Sens. Cates, Padgett, Cafaro, Mumper, Goodman, Smith, Schaffer

BILL SUMMARY

- Requires the Ohio Peace Officer Training Commission to recommend rules to the Attorney General with respect to categories or classifications of advanced in-service training for peace officers in conducting law enforcement activities in a higher education setting.

- Provides that an officer or employee of an institution of higher education that holds a certificate of authorization issued under R.C. Chapter 1713. is not liable in damages for injury, death, or loss to person or property that arises from the officer's or employee's reporting a potential safety risk at the institution of higher education, specifies that this immunity does not apply to an officer or employee who acts with malicious purpose, in bad faith, or in a wanton or reckless manner, and specifies that the provisions described in this dot point do not affect any immunities from or defenses to tort liability to which the officer or employee may be entitled and that are established by another section of the Revised Code or available at common law.

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CONTENT AND OPERATION

Peace Officer Training Commission--recommendation for rules regarding advanced in-service training in law enforcement activities in a higher education setting

Existing law

Existing law creates in the Office of the Attorney General (the AG) the Ohio Peace Officer Training Commission (OPOTC). The OPOTC consists of nine members appointed by the Governor with the advice and consent of the Senate and selected as follows: one member representing the public; two members who are incumbent sheriffs; two members who are incumbent chiefs of police; one member from the Bureau of Criminal Identification and Investigation; one member from the State Highway Patrol; one member who is the special agent in charge of a Field Office of the Federal Bureau of Investigation in Ohio; and one member from the Department of Education, Trade and Industrial Education Services, Law Enforcement Training. (R.C. 109.71--not in the bill.)

The OPOTC is required to meet at least four times each year. Special meetings may be called by the Chairperson and must be called by the Chairperson at the request of the AG or upon the written request of five members. The OPOTC may establish its own requirements as to quorum and its own procedures with respect to the conduct of its meetings and other affairs, provided that all recommendations by the OPOTC to the AG pursuant to R.C. 109.74 (see **COMMENT** 1) require the affirmative vote of five members. (R.C. 109.72--not in the bill.)

Existing law prescribes specified duties for the OPOTC and authorizes it to perform specified functions. The duties include the OPOTC's recommendation to the AG of rules with respect to specified topics and subjects (R.C. 109.73(A)). Among the specified topics and subjects with respect to which the OPOTC must recommend rules to the AG are categories or classifications of advanced in-service training programs for "peace officers" (see **COMMENT** 2), including programs in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, and protection orders and consent agreements issued or approved under R.C. 2919.26 or 3113.31, in crisis intervention, and in the handling of missing children and child abuse and neglect cases, and minimum courses of study and attendance requirements with respect to such categories or classifications (R.C. 109.73(A)(6)). The other specified topics and subjects with respect to which the OPOTC must recommend rules to the AG are described in **COMMENT** 3.

Operation of the bill

The bill expands the provision that requires the OPOTC to recommend rules to the AG with respect to categories or classifications of advanced in-service training programs for peace officers and that identifies certain types of such programs so that the provision also identifies *programs in the conduct of law enforcement activities in a higher education setting*. Thus, the bill requires the OPOTC, in addition to those rules recommended under existing law, to recommend rules to the AG with respect to categories or classifications of advanced in-service training programs for peace officers *in the conduct of law enforcement activities in a higher education setting* and minimum courses of study and attendance requirements with respect to such categories or classifications. (R.C. 109.73(A)(6).)

Qualified immunity for officers and employees of institutions of higher education

Operation of the bill

The bill enacts a qualified immunity for officers and employees of an institution of higher education. Specifically, the bill provides that, except as otherwise described in this paragraph, an officer or employee of an "institution" of higher education that holds a certificate of authorization issued under R.C. Chapter 1713. (see "***Related existing law***," below) is not liable in damages for injury, death, or loss to person or property that arises from the officer's or employee's reporting a potential safety risk at the institution of higher education. The immunity described in the preceding sentence does not apply to an officer or employee who acts with malicious purpose, in bad faith, or in a wanton or reckless manner. The bill specifies that the provisions described in this paragraph do not affect any immunities from or defenses to tort liability to which the officer or employee may be entitled and that are established by another section of the Revised Code or available at common law. (R.C. 1713.65; see **COMMENT** 4.)

Related existing law

Existing R.C. 1713.02, not in the bill, provides that any institution described in R.C. 1713.01(A), as set forth below, may become incorporated under the state's Nonprofit Corporation Law. R.C. 1713.02 also provides that, except as described in the next paragraph: (1) no nonprofit institution or corporation of the type described in R.C. 1713.01(A) that is established after October 13, 1967, may confer degrees, diplomas, or other written evidences of proficiency or achievement, until it has received a certificate of authorization issued by the Ohio Board of Regents, nor may any such institution or corporation identify itself as a "college" or "university" unless it has received a certificate of authorization from

the Board, and (2) no institution of the type described in R.C. 1713.01(A)(3) or (B), as set forth below, that intends to offer or offers a course or courses within Ohio, but that did not offer a course or courses within Ohio on or before October 13, 1967, may confer degrees, diplomas, or other written evidences of proficiency or achievement or offer any course or courses within Ohio until it has received a certificate of authorization from the Ohio Board of Regents, nor may the institution identify itself as a "college" or "university" unless it has received such a certificate from the Board. Each certificate of authorization must specify the diplomas or degrees authorized to be given, courses authorized to be offered, and the sites at which courses are to be conducted. A copy of such certificate must be filed with the Secretary of State if the institution is incorporated. Any institution or corporation established or that offered a course or courses of instruction in Ohio prior to October 13, 1967, may apply to the Board for a certificate of authorization, and the Board must issue a certificate if it finds that the institution or corporation meets the requirements established pursuant to R.C. 1713.01. 1713.02, 1713.03, 1713.04, 1713.06, 1713.09, and 1713.25.

Existing R.C. 1713.02 specifies that an institution that clearly identifies itself in its name with the phrase "Bible College" or "Bible Institute" and has not received a certificate of authorization may confer diplomas and other written evidences of proficiency or achievement other than associate, baccalaureate, master's, and doctoral degrees or any other type of degree and may identify itself as a "bible college" if such institution: (1) prominently discloses on any transcripts, diplomas, or other written evidences of proficiency or achievement, and includes with any promotional material or other literature intended for the public, the statement: "this institution is not certified by the board of regents or the state of Ohio," (2) limits its course of instruction to religion, theology, or preparation for a religious vocation, or is operated by a church or religious organization and limits its instruction to preparation for service to churches or other religious organizations, and (3) confers only diplomas and other written evidences of proficiency or achievement that bear titles clearly signifying the religious nature of the instruction offered by the institution. Except as otherwise provided in R.C. 3333.046, no school of the type described in this paragraph that intends to offer or offers a degree program within Ohio or solicits students within Ohio may confer a baccalaureate, master's, or doctoral degree or solicit students for such degree programs until it has received both a certificate of authorization from the Board of Regents under R.C. Chapter 1713. and program authorization from the State Board of Career Colleges and Schools for such degree program under R.C. 3332.05.

Existing R.C. 1713.01, not in the bill, provides that, as used in R.C. 1713.01 to 1713.06, "institution" includes:

(1) Any nonprofit university, college, academy, school, or other institution, incorporated or unincorporated, that does any of the following: (a) awards or intends to award diplomas for the completion of a course designed to prepare students to be eligible for certification as registered nurses (R.C. 1713.01(A)(1)), (b) offers or intends to offer instruction in the arts and sciences, teacher education, business administration, engineering, philosophy, literature, fine arts, law, medicine, nursing, social work, theology and other recognized academic and professional fields of study, and awards or intends to award degrees for fulfilling requirements of academic work beyond high school (R.C. 1713.01(A)(2)), or (c) offers or intends to offer a course or courses in any of the areas described in clause (a) or (b) of this paragraph that are applicable to requirements for a diploma or degree named in either such clause (R.C. 1713.01(A)(3));

(2) Any college, university, or school that offers or intends to offer one or more courses in this state of the type described in paragraph (1), above, under this definition and that is operated by another state or a subdivision or other governmental entity of another state (R.C. 1713.01(B)).

COMMENT

1. Existing R.C. 109.74, not in the bill, specifies that the AG, in accordance with the Administrative Procedure Act, has discretion to adopt and promulgate any or all of the rules and regulations recommended by the OPOTC pursuant to R.C. 109.73. R.C. 109.73, in relevant part, requires the OPOTC to recommend rules to the AG that cover specified topics and subjects, which are summarized in **COMMENT** 2 and in the portion of the **CONTENT AND OPERATION** part of this analysis entitled "***Peace Officer Training Commission--recommendation for rules regarding advanced in-service training in law enforcement activities in a higher education setting***."

2. R.C. 109.71 specifies that, as used in R.C. 109.71 to 109.801, "peace officer" means:

(a) A deputy sheriff, marshal, deputy marshal, member of the organized police department of a township or municipal corporation, member of a township police district or joint township police district police force, member of a police force employed by a metropolitan housing authority, or township constable, who is commissioned and employed as a peace officer by an Ohio political subdivision or by a metropolitan housing authority, and whose primary duties are to preserve the peace, to protect life and property, and to enforce Ohio's laws, ordinances of a municipal corporation, resolutions of a township, or regulations of a board of county commissioners or board of township trustees, or any of those laws, ordinances, resolutions, or regulations;

(b) A police officer employed by a railroad company and appointed and commissioned by the Secretary of State;

(c) Employees of the Department of Taxation engaged in the enforcement of R.C. Chapter 5743. and designated by the Tax Commissioner for peace officer training for purposes of the delegation of investigation powers;

(d) An undercover drug agent;

(e) Enforcement agents of the Department of Public Safety whom the Director of Public Safety designates;

(f) An employee of the Department of Natural Resources who is a natural resources law enforcement staff officer, a park officer, a forest officer, a preserve officer, a wildlife officer, or a state watercraft officer;

(g) An employee of a park district designated pursuant to R.C. 511.232 or 1545.13;

(h) An employee of a conservancy district designated pursuant to R.C. 6101.75;

(i) A police officer employed by a hospital that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by the Secretary of State;

(j) Veterans' homes police officers designated under R.C. 5907.02;

(k) A police officer employed by a qualified nonprofit corporation police department;

(l) A state university law enforcement officer;

(m) A special police officer employed by the Department of Mental Health or the Department of Mental Retardation and Developmental Disabilities;

(n) A member of a campus police department appointed under R.C. 1713.50;

(o) A member of a police force employed by a regional transit authority;

(p) Investigators appointed by the Auditor of State and engaged in the enforcement of R.C. Chapter 117.;

(q) A special police officer designated by the Superintendent of the State Highway Patrol;

(r) A special police officer employed by a port authority;

(s) A special police officer employed by a municipal corporation at a municipal airport, or other municipal air navigation facility, that has scheduled operations, as defined in federal law, and that is required to be under a security program and is governed by aviation security rules of federal law;

(t) A police officer employed by an owner or operator of an amusement park that has an average yearly attendance in excess of 600,000 guests and that employs and maintains its own proprietary police department or security department, and who is appointed and commissioned by a judge of the appropriate municipal court or county court;

(u) A police officer employed by a bank, savings and loan association, savings bank, credit union, or association of banks, savings and loan associations, savings banks, or credit unions, and who has been appointed and commissioned by the Secretary of State;

(v) An investigator of the Bureau of Criminal Identification and Investigation who is commissioned by the Superintendent of the Bureau as a special agent for the purpose of assisting law enforcement officers or providing emergency assistance to peace officers.

3. In addition to the provision regarding recommendations with respect to advanced in-service training programs for peace officers that is described in the portion of the **CONTENT AND OPERATION** part of this analysis entitled "***Peace Officer Training Commission--recommendation for rules regarding advanced in-service training in law enforcement activities in a higher education setting***," existing law requires the OPOTC to recommend rules to the AG with respect to all of the following (R.C. 109.73(A)):

(a) The approval, or revocation of approval, of peace officer training schools administered by the state, counties, municipal corporations, public school districts, technical college districts, and the Department of Natural Resources (including the Ohio Peace Officer Training Academy, as required under R.C. 109.79, not in the bill);

(b) Minimum courses of study, attendance requirements, and equipment and facilities to be required at approved state, county, municipal, and Department of Natural Resources peace officer training schools;

(c) Minimum qualifications for instructors at approved state, county, municipal, and Department of Natural Resources peace officer training schools;

(d) The requirements of minimum basic training that peace officers appointed to probationary terms must complete before being eligible for permanent appointment, which requirements must include a minimum of 15 hours of training in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, and protection orders and consent agreements issued or approved under R.C. 2919.26 or 3113.31; a minimum of six hours of crisis intervention training; and a specified amount of training in the handling of missing children and child abuse and neglect cases; and the time within which such basic training must be completed following appointment to a probationary term;

(e) The requirements of minimum basic training that peace officers not appointed for probationary terms but appointed on other than a permanent basis must complete in order to be eligible for continued employment or permanent appointment, which requirements must include a minimum of 15 hours of training in the handling of the offense of domestic violence, other types of domestic violence-related offenses and incidents, and protection orders and consent agreements issued or approved under R.C. 2919.26 or 3113.31, a minimum of six hours of crisis intervention training, and a specified amount of training in the handling of missing children and child abuse and neglect cases, and the time within which such basic training must be completed following appointment on other than a permanent basis;

(f) Permitting persons, who are employed as members of a campus police department appointed under R.C. 1713.50; who are employed as police officers by a qualified nonprofit corporation police department pursuant to R.C. 1702.80; who are appointed and commissioned as bank, savings and loan association, savings bank, credit union, or association of banks, savings and loan associations, savings banks, or credit unions police officers, as railroad police officers, or as hospital police officers pursuant to R.C. 4973.17 to 4973.22; or who are appointed and commissioned as amusement park police officers pursuant to R.C. 4973.17, to attend approved peace officer training schools, including the Ohio Peace Officer Training Academy, and to receive certificates of satisfactory completion of basic training programs, if the private college or university that established the campus police department; qualified nonprofit corporation police department; bank, savings and loan association, savings bank, credit union, or association of banks, savings and loan associations, savings banks, or credit unions; railroad company; hospital; or amusement park sponsoring the police officers pays the entire cost of the training and certification and if trainee vacancies are available;

(g) Permitting undercover drug agents to attend approved peace officer training schools, other than the Ohio Peace Officer Training Academy, and to receive certificates of satisfactory completion of basic training programs, if, for

each undercover drug agent, the county, township, or municipal corporation that employs that undercover drug agent pays the entire cost of the training and certification;

(h) The requirements for basic training programs for bailiffs and deputy bailiffs of Ohio courts of record and for criminal investigators employed by the State Public Defender that those persons must complete before they may carry a firearm while on duty, and the requirements for any training received by a bailiff or deputy bailiff of an Ohio court of record or by a criminal investigator employed by the State Public Defender prior to June 6, 1986, that is to be considered equivalent to the training described in the first clause of this sentence;

(i) Establishing minimum qualifications and requirements for certification for dogs utilized by law enforcement agencies;

(j) Establishing minimum requirements for certification of persons who are employed as correction officers in a full-service jail, five-day facility, or eight-hour holding facility or who provide correction services in such a jail or facility;

(k) Establishing requirements for the training of agents of a county humane society under R.C. 1717.06, including, without limitation, a requirement that the agents receive instruction on traditional animal husbandry methods and training techniques, including customary owner-performed practices.

Existing R.C. 109.80, not in the bill, requires the OPOTC to develop and conduct a basic training course for sheriffs and establish criteria for what constitutes successful completion of the course.

4. Existing law contains several provisions that pertain to the liability of persons affiliated with a state college or university:

(a) Existing R.C. 3345.122, not in the bill, provides that, notwithstanding any other provision of law, a member of a board of trustees of an "institution of higher education" (see below) is not liable in damages in a civil action for injury, death, or loss to person or property that allegedly is caused by an expenditure made or a contract entered into by the institution of higher education unless the trustee acted with malicious purpose, in bad faith, or in a wanton or reckless manner with respect to the expenditure or contract. Existing R.C. 3345.12, not in the bill, defines an "institution of higher education" as meaning a "state university or college," or a community college district, technical college district, university branch district, or state community college, and includes the applicable board of trustees or, in the case of a university branch district, any other managing authority, and defines "state university or college" as meaning each of the state

universities identified in R.C. 3345.011 and the Northeastern Ohio Universities College of Medicine and includes its board of trustees.

(b) Existing R.C. 3345.40, not in the bill, provides that, notwithstanding any other provision of the Revised Code or rules of a court to the contrary, in an action against a "state university or college" (see the preceding paragraph for the applicable definition) to recover damages for injury, death, or loss to persons or property caused by an act or omission of the state university or college itself, by an act or omission of any trustee, officer, or employee of the state university or college while acting within the scope of his or her employment or official responsibilities, or by an act or omission of any other person authorized to act on behalf of the state university or college that occurred while he or she was engaged in activities at the request or direction, or for the benefit, of the state university or college, the following rules apply: (i) punitive or exemplary damages cannot be awarded, (ii) if a plaintiff receives or is entitled to receive benefits for injuries or loss allegedly incurred from a policy or policies of insurance or any other source, the benefits must be disclosed to the court, and the amount of the benefits must be deducted from any award against the state university or college recovered by the plaintiff (no insurer or other person is entitled to bring a civil action under a subrogation provision in an insurance or other contract against a state university or college with respect to such benefits; nothing described in this clause affects or may be construed to limit the rights of a beneficiary under a life insurance policy or the rights of sureties under fidelity or surety bonds), and (iii) there generally is no limitation on compensatory damages that represent the "actual loss of the person who is awarded the damages" (as defined in the section). However, regarding clause (iii) of the preceding sentence, except in wrongful death actions brought pursuant to R.C. Chapter 2125., damages that arise from the same cause of action, transaction or occurrence, or series of transactions or occurrences and that do not represent the actual loss of the person who is awarded the damages cannot exceed $250,000 in favor of any one person; the limitation on damages that do not represent the actual loss of the person who is awarded the damages provided in this paragraph does not apply to court costs awarded to a plaintiff, or to interest on a judgment rendered in favor of a plaintiff, in an action against a state university or college.

(c) Existing R.C. 9.86, not in the bill, provides that, except for civil actions that arise out of the operation of a "motor vehicle" (see below) and civil actions in which the state is the plaintiff, no "officer or employee" (see below) is liable in any civil action that arises under Ohio law for damage or injury caused in the performance of his or her duties, unless the officer's or employee's actions were manifestly outside the scope of his or her employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner. This provision does not eliminate, limit, or reduce

any immunity from civil liability conferred upon an officer or employee by any other provision of the Revised Code or by case law, and it does not affect the liability of the state in an action filed against the state in the Court of Claims pursuant to R.C. Chapter 2743. Existing R.C. 9.85, not in the bill, provides that, as used in the R.C. 9.86 immunity provision:

(i) "Officer or employee" means any of the following: a person who, at the time a cause of action against the person arises, is serving in an elected or appointed office or position with the state or is employed by the "state" (see below); a person that, at the time a cause of action against the person, partnership, or corporation arises, is rendering medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services pursuant to a personal services contract or purchased service contract with a department, agency, or institution of the "state;" a person that, at the time a cause of action against the person, partnership, or corporation arises, is rendering peer review, utilization review, or drug utilization review services in relation to medical, nursing, dental, podiatric, optometric, physical therapeutic, psychiatric, or psychological services pursuant to a personal services contract or purchased service contract with a department, agency, or institution of the "state;" or a person who, at the time a cause of action against the person arises, is rendering medical services to patients in a state institution operated by the Department of Mental Health, is a member of the institution's staff, and is performing the services pursuant to an agreement between the state institution and a board of alcohol, drug addiction, and mental health services described in R.C. 340.021. "Officer or employee" does not include any person elected, appointed, or employed by any Ohio "political subdivision" (see below).

(ii) "State" means the state of Ohio, including, but not limited to, the General Assembly, the Supreme Court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state of Ohio. "State" does not include "political subdivisions" (see below).

(iii) "Political subdivisions" of Ohio means municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographical areas smaller than that of the state.

(iv) "Motor vehicle" includes automobiles, trucks, motor vehicles with auxiliary equipment, self-propelling equipment or trailers, aircraft, or watercraft.

(d) Existing R.C. 2743.02, not in the bill, provides that the state waives its immunity from liability, except in limited specified circumstances, and consents to be sued, and have its liability determined, in the Court of Claims created in R.C.

2743.03 in accordance with the same rules of law applicable to suits between private parties, except that the determination of liability is subject to limitations set forth in R.C Chapter 2743. and, in the case of state universities or colleges, in R.C. 3345.40, as described above in **COMMENT** 6(b). To the extent that the state has previously consented to be sued, R.C. Chapter 2743. has no applicability. Except in the case of a civil action filed by the state, filing a civil action in the Court of Claims results in a complete waiver of any cause of action, based on the same act or omission, that the filing party has against any officer or employee, as defined above in **COMMENT** 6(c). The waiver is void if the court determines that the act or omission was manifestly outside the scope of the officer's or employee's office or employment or that the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner.

If a claimant proves in the Court of Claims that an officer or employee 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, as described above in **COMMENT** 6(c), the state is to be held liable in the Court of Claims in any action that is timely filed and that is based upon the acts or omissions.

Existing R.C. 2743.01, not in the bill, provides that, as used in the R.C. 2743.02 provisions: (i) "state" means the state of Ohio, including, but not limited to, the General Assembly, the Supreme Court, the offices of all elected state officers, and all departments, boards, offices, commissions, agencies, institutions, and other instrumentalities of the state ("state" does not include "political subdivisions"), and (ii) "political subdivisions" means municipal corporations, townships, counties, school districts, and all other bodies corporate and politic responsible for governmental activities only in geographic areas smaller than that of the state to which the sovereign immunity of the state attaches.

HISTORY

ACTION	DATE
Introduced	09-25-07
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