

IN THE SUPREME COURT OF OHIO

JANE DOE, INDIVIDUALLY AND AS	:	Supreme Court Case No. 2007-1304
NEXT FRIEND OF HOLLY ROE, A	:	
MINOR, et al.	:	
	:	
Appellants,	:	
	:	On Appeal from the Judgment
	:	Entered in the Stark County Court
v.	:	of Appeals, Fifth Appellate District
	:	
MARLINGTON SCHOOL DISTRICT,	:	Court of Appeals
et al.	:	Case No. 00102
	:	
Appellees.	:	

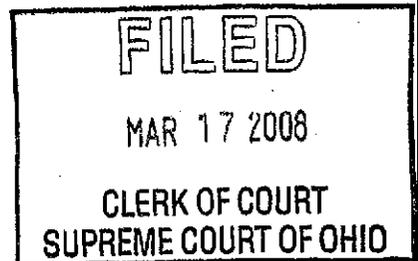
**MERIT BRIEF OF APPELLANTS JANE DOE,  
INDIVIDUALLY AND AS NEXT FRIEND OF HOLLY ROE, A MINOR, ET AL.**

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## STATEMENT OF FACTS

### A. Summary

Marlington Local School District assigned a ten year-old girl with mental disabilities to ride a school bus with three teenaged boys with mental disabilities. One of the boys was known for violent behavior.

Under Ohio law, the bus driver was unqualified to transport such "special needs" students, unless she was trained in "behavior management" for such students. She had never received the required training. Marlington's Transportation Director did not even know such training was required.

This recipe for disaster ended predictably. The driver failed to control the pupils on her bus. The troubled boy seized the opportunity to repeatedly sexually assault the ten year-old girl. The bus driver saw the misconduct but didn't stop it, because she thought the two students were just "playing."

The bus driver's conduct violated Ohio's transportation safety laws and regulations but Marlington claims immunity from liability under Ohio's Political Subdivision Tort Liability Act. But that act provides an exception to immunity for injury caused by "negligent operation" of a school bus. "Operating" a school bus--especially a special needs bus--includes managing and controlling student conduct. This was "negligent operation of a motor vehicle."

If it wasn't, Ohio's sovereign immunity statute neuters Ohio's student transportation safety laws and regulations. The General Assembly could not have intended such a result. And such a statute cannot comport with Ohio's constitution.

**B. The operation of a school bus.**

Operating a school bus means more than driving. Operation of the vehicle includes the essential, inherent and legally-imposed authority and obligation to supervise student behavior.

Ohio law requires school districts to enact transportation policies about “the school bus driver’s authority and/or responsibility to *maintain control of the pupils.*” Ohio Adm.Code 3301-83-08. It requires school districts to develop “*pupil management* and safety instruction policies.” School district policies must include rules for controlling student riders’ behavior (“Pupils must remain seated keeping aisles and exits clear;” “Pupils must observe classroom conduct and obey driver promptly and respectfully”). *Id.* Marlinton had such policies in place. (Supp. 145-150, Middleton depo at Exhibit 1 thereto).

Ohio school bus drivers must receive certain minimum training before being assigned to operate a school bus. That minimum training includes pre-service classroom instruction on “*pupil management.*” The mandated minimum training about “transportation of children with disabilities” provides “*basic rules*” for transporting such children, including: “\* \* \* prepare and use a seating chart;” and “keep the children with disabilities within your sight.” (Supp. 41, Wright depo at Exh. 3 thereto). The mandated minimal training about children who suffer from “mental retardation” requires that school bus drivers be trained (amongst other things) that such students may present “discipline problems;” that such students need “firm but fair discipline which is appropriate and immediate,” and that the driver should “be prepared to stop and handle discipline problems.” (Supp. 41, Wright depo at Exh. 3 thereto).

Ohio law further requires that school bus drivers who transport special needs students must receive “additional training” (above and beyond the minimal standard training) about such



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students. Ohio Adm.Code 3301-83-10(3)(a). This additional training includes “appropriate *behavior management*” for special needs students. *Id.*

Another Ohio statute specifically authorizes school bus drivers (along with teachers and other personnel) to use reasonable and necessary “force and restraint” “to quell a disturbance threatening physical injury to others \* \* \*.” R.C. 3319.41(G).

The facts of this case demonstrate serial disregard of these state laws and regulations, and constitute negligent operation of a school bus.

**C. Negligent operation of a school bus.**

**1. Repeated sexual assault of a ten year-old student**

During the 2004-2005 school year, Appellant, Holly Roe, was a ten year-old, fourth grade “special needs” student with learning, communication, and emotional disabilities attributable to mild mental retardation. Because Holly resided within the Marlinton Local School District, Marlinton transported Holly to and from her classes at Fairhope Elementary School, in Louisville. (Supp. 52-53, Behner depo at 9-11).

For the first twelve weeks of that school year, in the afternoons, Holly rode home from school on a school bus operated by Marlinton’s employee, Sabrina Wright. (Jane Doe depo at 15; Supp. 10, Wright depo at 35-37). Only four students (Holly, and three teenaged boys from Louisville Middle School) rode that bus. All were “special needs” students. (Supp. 11, Wright depo at 38-41; Supp. 115, Middleton depo at 42-32).

One of the boys on the bus was a fifteen year-old, eighth grade boy identified in this case as “Mr. Boe.”<sup>1</sup> Mr. Boe had demonstrated a serious history of misconduct, and Marlinton knew this history. During the immediately preceding year, he had twice faced criminal charges in

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<sup>1</sup> Upon a motion by this boy’s parents, the trial court ordered that he be identified only by this fictional name.

juvenile court for assaulting (punching) his father; had faced criminal charges after physically attacking his teacher at school and biting the classroom aide who attempted to intervene; had thrown chairs out of anger in school; and had been placed on criminal probation for these events.

Marlington's special education personnel knew Boe's history of behavioral problems required his close and careful supervision. (Supp. 55 and 56-60, Behner depo at 18, 22-40 and Exh. 1-5 thereto). Marlington's team meetings about Boe noted that he "requires close supervision;" that he "cannot be unsupervised in group activities;" that he was "physically and verbally aggressive;" that "his testosterone level may be a factor" and that Boe "must have adult supervision especially when around other youth." Id.

At one point in the Fall of 2004, Marlington had been asked to separate Mr. Boe and Holly Roe on the bus, but Marlington failed to act on the request. (Supp. 67, Behner depo at 68 and Exh. 6 thereto).<sup>2</sup>

Despite this volatile mix, Marlington's driver, Sabrina Wright, did not comply with the "basic rules" for transporting these children. She did not use a seating chart or assigned seats. Despite having only four children to supervise, she did not keep the children in her sight; she did not require classroom conduct; and she did not use firm or consistent discipline. Instead, Wright acknowledges, she did not firmly enforce the legal requirement that students remain seated while she drove the bus.

- A. My rules, I don't like them to switch seats when the bus is moving.
- Q. And is that something you were strict about enforcing or so-so?
- A. So-so. (Supp. 12, Wright depo at 42).

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<sup>2</sup> Mr. Boe's parents have claimed that, in October of 2004 (while the repeated abuse was ongoing), they asked the school's transportation department to prevent Holly Roe and Mr. Boe from sitting together on the bus (because they thought *she* was picking on *him*).

As a result, Mr. Boe and Holly Roe often left their seats to “play” on the bus, in violation of state safety regulations and district policies.

They liked to play tag, and she [Holly] would like try to crawl under the seat, and then she would want Mr. Boe or [another student] to tap her, and then they would like jump across the aisle from seat to seat. (Supp. 12, Wright depo at 44).

Unfortunately, the two students were not “playing.” Mr. Boe repeatedly sexually assaulted Holly “on the floor” and “under the seat” of the school bus. (Supp. 162, Sweitzer depo at 44). Mr. Boe inserted his fingers in her vagina and anus. (Supp. 162, Sweitzer depo at 42-44 and Exh. 1 thereto; Supp. 194, Bolyard depo at 43-45 and Exh. 1 thereto). He forced Holly to hold his penis and ejaculated into her hand. He attempted sexual intercourse. (Tener depo at 52-53 and Exh. B thereto). Boe threatened Holly that, if she told anyone about the assaults, he would harm her. (Myers Aff. and Exh. 1 thereto). For several months, she did not tell anyone.

## **2. Discovery of the sexual assaults**

In late November of 2004, Marlinton assigned Holly to a different afternoon bus. The change was not caused by discovery of Boe’s misconduct. It was a routine scheduling decision, designed to permit Holly to stay at school longer before boarding her bus home. (Supp. 157, Sweitzer depo at 23-25). But it stopped the sexual assaults for a while, because Holly no longer rode the afternoon bus with Mr. Boe.

However, on March 16, 2005, a family emergency caused Holly’s typical *morning* bus ride to be changed. That morning, she boarded an earlier “special education” bus than she usually rode. It was operated by Marlinton’s employee, JoAnn Sweitzer. (Supp. 160-161, Sweitzer depo at 34-39). It was also the bus that Mr. Boe rode to school in the morning.

Immediately upon Holly boarding the bus that morning, Mr. Boe asked the bus aide if he could sit with Holly. (Supp. 196, Bolyard depo at 50, and Exh. 1 thereto; Supp. 160, Sweitzer

depo at 36-37).<sup>3</sup> The aide refused him but told him he could sit in the seat across the aisle from Holly. Id. Minutes later, the aide looked back to see that Boe's head was not in sight. She went to the back of the bus where the children were seated, to discover Mr. Boe slumped down next to Holly "with his hand up her dress." (Supp. 196, Bolyard depo at 50, and Exh. 1 thereto).

After separating the two students, the aide and the bus driver spoke with Holly as they drove her to school that morning. At first, Holly was "dazed." After the other students were dropped off, Holly "started opening up and talking and telling" about what Boe had done to her earlier in the year. (Supp. 161-162, Sweitzer depo at 40-44). Distressed and "crying when she was telling [them]," Holly recounted in graphic detail the sexual assaults that had "*happened every day on Sabrina Wright's [afternoon] bus.*" Id. Holly later consistently reported the same things to law enforcement, to a social worker and to a psychologist who evaluated her for the Stark County Department of Jobs and Family Services. (Myers Aff. at Exh. A; Tener depo at 52-55 and Exh. B thereto; Weisburn depo at 35-42)

Boe later admitted some of his misconduct to school officials and others. (Supp. 66, Behner depo at 65 and Exh. 5 thereto). He pleaded "true" to gross sexual imposition, in juvenile court proceedings.<sup>4</sup>

## ARGUMENT

### Proposition of Law No. 1:

**A school bus driver's negligent failure to supervise and control obvious misbehavior by students on the school bus constitutes "negligent operation" of the school bus, for purposes of R.C. 2744.02(B)(1).**

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<sup>3</sup> For reasons never consistently explained, the morning special education bus had a bus aide, while Sabrina Wright's afternoon bus never did.

<sup>4</sup> See 4/20/2005 Judgment Entry at Exhibit B to Appellee's Brief in Opposition to Motion for Summary Judgment, previously filed with the trial court on 3/27/2006.

**A. Political Subdivision Liability Under Revised Code Chapter 2744.**

**1.) Statutory scheme of immunity**

Chapter 2744, the Political Subdivision Tort Liability Act (PSTLA) immunizes political subdivisions from liability for injuries caused in connection with either governmental or proprietary functions. R.C. 2744.02(A)(1).

There are five exceptions to the default rule of immunity. R.C. 2744.02(B)(1)-(5). If a claim falls within one of the five exceptions to immunity, the immunity can be reinstated if the political subdivision can establish that one of the affirmative defenses set forth in R.C. 2744.03 applies. *Cater v. City of Cleveland* (1998), 83 Ohio St.3d 24.

**2.) Exception for negligent operation of a motor vehicle**

Under R.C. 2744.02(B)(1), an exception to immunity exists for injury caused by the “negligent operation of any motor vehicle” by an employee of a political subdivision engaged within the scope of her employment and authority. This case concerns the proper definition of the term “operation,” in the context of a school bus.

The term “operation” is not defined in PSTLA. It should therefore be accorded its “plain, everyday meaning.” *Sharp v. Union Carbide* (1988), 38 Ohio St.3d 69, 70.

Dictionaries define the verb “operate” in countless contexts, including: “to manage or use;” “to work,” and “to perform a function.” *Hahn v. Village of Groveport*, 10<sup>th</sup> Dist. No. 07AP-27, 2007-Ohio-5559 at ¶16, citing Webster’s Encyclopedic Unabridged Dictionary (1996) 1009; *Perales v. City of Toledo* (Apr. 23, 1999), 6<sup>th</sup> Dist. No. L-98-1397, 1999 WL 234566, citing Merriam Webster’s Collegiate Dictionary (10 ed. 1996) 814-815.

The “plain, everyday meaning” of such a ubiquitous term cannot judicially be determined without factual context. Thus, “operation” of a motor vehicle must be defined in reference to the

type of vehicle and the essential duties of the operator. When properly defined, "operation" of a school bus can include performance (or omission) of any of the essential functions the bus driver is trained and authorized to perform while transporting students. That includes behavior management of special needs riders.

In three different PSTLA cases, Ohio's Second District Court of Appeals has properly defined "operation" of a school bus to encompass "more than simply driving a vehicle."

In *Groves v. Dayton Public Schools* (1999), 132 Ohio App.3d 566, a school bus driver's negligence in assisting a wheelchair-bound student disembarking from a school bus was found to be "negligent operation" of the bus under R.C. 2744.02(B)(1). The driver had failed to secure the child in her wheelchair before helping her off the bus, causing the child's hand to be injured. The Second District noted the existence of school district rules regarding the "safe boarding, transportation and disembarking of handicapped students." The existence of such rules inferred that properly disembarking the student "was part of the bus driver's duties and an integral part of his operation of the school bus." The court found the statutory term "operation of any motor vehicle" to be "capable of encompassing more than the mere act of driving the vehicle involved." *Id.*

Later that year, the same appellate court decided *Glover v. Dayton Public Schools* (Aug. 13, 1999), 2nd Dist. No. 17601, 1999 WL 958492. In *Glover*, a student disembarked from a school bus and "darted out" in front of an oncoming car, which hit and injured her. The case concerned the "alleged improper location of the bus stop and the negligence or recklessness \* \* \* in continuing to use a dangerous drop-off point." A majority of the court found that a school bus

driver's decision about where to drop off a student rider was not part of the "operation" of the school bus.<sup>5</sup>

The court's majority continued to "agree with our prior decision in *Groves* that 'operation' can encompass more than simply driving a vehicle," but felt its interpretation of the term needed to be "reasonably restricted" in light of PSTLA's purpose. In concluding the bus driver was not "operating" the school bus, the majority appeared to emphasize the fact that "the injury in the present case did not occur during [the student's] physical discharge from the bus, or even when the bus was present." *Glover v. Dayton Public Schools*, supra, 1999 WL 958492 at \*6.<sup>6</sup>

The Second District again revisited the question, in *Doe v. Dayton City School District* (1999), 137 Ohio App.3d 166. In *Doe*, a first grade student was sexually assaulted on a school bus, in the driver's presence. Her parents alleged that the driver negligently operated the school bus when he failed to protect the girl from assault.

The Second District again rejected a definition limiting "operation" of a motor vehicle to mere "manipulation of the vehicle's controls during its travel along a street or highway." *Id.* The court did not decide (but appeared to assume) that failure to prevent a sexual assault was part of "operation" of the motor vehicle. However, it held that the matter of proximate cause decided the case. It found the child's injury "was not directly traceable to the driver's operation of the bus" and that "reasonable minds could not find that the injuries which Jane Doe has alleged were

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<sup>5</sup> The dissent felt that the bus driver's decision was "negligent operation" of the vehicle but was immune from liability under other provisions of PSTLA.

<sup>6</sup> See also *Day v. Middletown-Monroe City School District* (Jul. 17, 2000), 12<sup>th</sup> Dist. No. CA99-11-186, 2000 WL 979141.

caused by the negligence of the board's employee in the operation of a motor vehicle." Id. at 171.<sup>7</sup>

These three cases demonstrate the difficulty of applying PSTLA's language to different factual scenarios. But they consistently reject the narrow definition of "operating" a school bus enunciated by the appellate court here.

Appellees claim that *Perales v. City of Toledo* (Apr. 23, 1999), 6<sup>th</sup> Dist. No. L-98-1397, 1999 WL 234566 set forth an exceptionally narrow definition of "operation" of a motor vehicle under PSTLA. In that case, police officers watching a crowd outside a nightclub decided to remain in their vehicles to assess the situation (rather than leave the vehicle to immediately disperse a gathering crowd). Their failure "to make their presence known to the crowd" was alleged to be "negligent operation of their motor vehicles." Id. The Sixth District Court of Appeals found that the decision to remain in the vehicles was not "operation" of the motor vehicle within the meaning of PSTLA.

In deciding the question, the Sixth District quoted the dictionary definition of the verb "operate" ("to work" and "to perform a function"). It then held, without further analysis, that PSTLA's use of the phrase "negligent operation of any motor vehicle" was restricted to "those cases where an employee of a political subdivision works or causes a power propelled vehicle to function without due care upon a public highway road or street." Id.

*Perales* offers little guidance beyond its own facts. Its definition of "operation" does not describe the parameters of causing a vehicle to "function without due care." It does not consider

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<sup>7</sup> In the case at bar, Marlinton did not raise the issue of proximate cause in the appellate court below. And the proximate cause analysis would be significantly different here than in *Doe v. Dayton City School Dist*, supra. This case, unlike *Doe v. Dayton City School Dist*, concerned repeated sexual assaults ignored by the driver and concerned allegations that the assailant had a known history which warranted close supervision. Because proximate cause turns on the matter of foreseeability, the relevant facts are drastically different.



or discuss the different “functions” that can entail “operation.” If it means to suggest that “operation” is only “driving” (as Appellees argued below) the opinion offers no explanation why the general dictionary definition of “operating” requires that “operating” a motor vehicle excludes non-driving functions.

Further, the facts in *Perales* do not fairly compare with those here. Unlike here, the police officers were not interacting with passengers of their vehicle but rather were simply watching people outside the vehicle. Unlike here, there was no evidence or claim that “crowd control” was an integral function of the police officer’s “operation” of the squad car. Unlike here, there was no evidence that training in “crowd control” was required before an officer was legally qualified to operate the vehicle. *Perales* could (and should) have been decided to the same result, without unnecessarily limiting the definition of “operating” a motor vehicle to merely “driving” it.

Significantly, the verb “operation” has been broadly defined, when it appears elsewhere in PSTLA, or in other Ohio statutes. In *Hahn v. Village of Groveport*, 10<sup>th</sup> Dist. No. 07AP-27, 2007-Ohio-5559, the court construed the phrase “operation...of a swimming pool,” for purposes of determining a political subdivision’s immunity under R.C. 2744.01(C)(2). The court noted that “Ohio courts have broadly defined the term “operation” in considering immunity issues related to swimming pools.” It found that “‘operation’ of a swimming pool *includes many activities.*” Id. at ¶19. Such a broad definition comports with the analysis in *Groves v. Dayton Public Schools*, *supra*.

Furthermore, this Court has broadly construed “operation” of a motor vehicle under a criminal statute using the term. In *State v. Cleary* (1986), 22 Ohio St.3d 198, this Court held that “operation of a motor vehicle within the meaning of R.C. 4511.19(A) is a broader term than



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driving.” *Id.* at 199. This Court explained that the terms “operating” a motor vehicle and “driving” a motor vehicle “are not synonymous \* \* \* [t]he term ‘operating’ encompasses a broader category of activities involving motor vehicles than does ‘driving.’” *Id.* There is no logical reason to apply a different definition here.

**B. Cases from other jurisdictions**

Other states with political subdivision immunity statutes that include a “negligent operation of a motor vehicle” exception have not directly addressed the factual scenario presented here. But they have almost always rejected the narrow definition of the phrase advanced by Appellees and adopted by the appellate court here.

Colorado’s Governmental Immunity Act (CGIA) generally immunizes “public entities” from liability for tort claims. C.R.S.A. 24-10-106. The statute waives the immunity for injuries resulting from “the operation of a motor vehicle owned or leased by a public entity.” *Id.*; See *Tidwell v. City and County of Denver* (Colo. 2003), 83 P.3d 75 and *Harris v. Regional Transportation District* (Colo. 2000), 15 P.3d 782. Like Ohio’s statute, Colorado’s does not define the term “operation” in this context. *Harris v. Regional Transportation District*, *supra*, 15 P.3d at 784-785.

Colorado courts have found the “common and ordinary” meaning of “operation” of a motor vehicle to be “a broad term which includes both the physical defects of a motor vehicle and its movement, as well as other actions fairly incidental to those defects or movements.” *Id.* See also *Johnson v. Regional Transportation District* (Colo. 1995), 916 P.2d 619, 621 (citing a motor vehicle treatise describing the term: “Probably no expression in our language possesses a more extended range of usefulness.”) Thus, actions such as negligently stopping to discharge a passenger at an improper place, or negligently assisting a passenger to

disembark the bus, have been found to be “operation” of the bus for which immunity does not apply. *Id.*

No Colorado case has addressed facts analogous to those involved here. One case concluded that a regional transportation district’s alleged failure to provide more security on public buses was not a part of “operating” the buses, within the meaning of the governmental immunity available to the district. *Stockwell v. Regional Transp. Dist. of Denver* (Colo. 1997), 946 P.2d 542. But that case did not involve school buses and, significantly, the “plaintiff did not allege that his injuries resulted from any act or omission of the bus driver.” *Id.* at 544. The case concerned the *district’s* operation of buses. It provides no guidance about whether a school bus driver who is trained to supervise and control student behavior is negligently operating a school bus when she fails that duty.

Missouri’s statutes provide limited exceptions to immunity for political subdivisions. One exception is for injuries resulting from negligence in “the operation of motor vehicles” by public employees. V.A.M.S. 537.600(1). Looking to other state statutes employing the term, Missouri courts have construed “operation of motor vehicles” to encompass “all acts necessary to be performed in the movement of a motor vehicle from one place to another.” *Johnson v. Carthell* (Mo. 1982), 631 S.W.2d 923, 925.<sup>8</sup>

Pennsylvania’s Sovereign Immunity Act and its Political Subdivision Tort Claims Act include exceptions to immunity for injuries caused by the negligent “operation of a motor vehicle.” 42 Pa. CSA §8528 and 42 Pa.CSA §8541. The state’s courts have decided numerous

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<sup>8</sup> In *Johnson*, a school bus driver intervened in an altercation between the plaintiff and another passenger. He physically restrained the plaintiff, allowing the other passenger an opportunity to punch the plaintiff. The appellate court determined that such acts by a driver “did not concern the bus in any way” and were not part of “operation” of the bus. Of course, such conduct is significantly different from this case.

cases interpreting the phrase. The results have been inconsistent and difficult to predict. But virtually all of the decisions have accepted the proposition that “operating” a vehicle goes beyond merely driving it, to include acts “normally related to the operation of the bus.” *Sonnenberg v. Erie Metropolitan Trans. Auth.* (1990), 137 Pa.Cmwlt. 533, 586 A.2d 1026, 1028. Thus, an injury caused when a bus driver negligently closed the bus doors on a passenger is considered negligent “operation” of the bus. *Id.* Negligent maintenance and repair of a vehicle can be “operation” of the vehicle. *Mickle v. City of Phila.* (1998), 550 Pa. 539, 707 A.2d 1124.

Pennsylvania’s Supreme Court has struggled to apply the term consistently in apparently indistinguishable factual scenarios. In *Vogel v. Langer* (1990), 131 Pa.Cmwlt. 236, 569 A.2d 1047, 1048, it held that stopping a bus and negligently waving another motorist into an intersection (causing a collision between two cars) is negligent “operation” of the bus, because making such signals is an act “normally related to the operation of a vehicle.” Yet, in *White v. School Dist. of Philadelphia* (1998), 553 Pa. 214, 718 A.2d 778, it held (in a 4-3 decision with vigorous dissent) that negligently signaling to a disembarking student passenger that she could safely cross the road (causing the student to be struck and injured by an oncoming vehicle) was not part of “operating” the vehicle. The dissent noted that “whether a signal is to a motorist as in *Vogel*, or a pedestrian as in this case, is a distinction without a difference. Both are integral to the operation of a motor vehicle.”

### C. Principles of statutory construction

Courts interpreting exceptions to statutory immunity have applied contradictory principles of statutory construction. Colorado’s Supreme Court has noted that the state’s Governmental Immunity Act derogates the common law, so “we construe the [act’s] provisions that withhold immunity broadly [and] we construe the exceptions to these waivers strictly.”

*Tidwell v. City and County of Denver* (Colo. 2003), 83 P.3d 75, 81, citing *Springer v. City and County of Denver* (Colo. 2000), 13 P.3d 794, 798. On the other hand, Pennsylvania and Missouri broadly construe immunity-granting provisions and strictly construe exceptions to immunity, in order to give effect to the presumed legislative intent. See *Love v. City of Phila.* (1988), 518 Pa. 370, 543 A.2d 531, 532 and *Johnson v. Carthell* (Mo. 1982), 631 S.W.2d 923, 925.

Fittingly, in this case, the appellate panel below did not agree about whether the “negligent operation” exception to immunity should narrowly or broadly be construed.

This Court should broadly construe the term “operation” of a motor vehicle under Ohio’s PSTLA. The type of sovereign immunity codified in PSTLA derogates the common law of Ohio. It should be narrowly construed and its exceptions should be broadly construed.

The doctrine of immunity for political subdivisions did not originally exist at common law in Ohio. It was judicially created in 1854. *Dayton v. Pease* (1854), 4 Ohio St. 80; See *Butler v. Jordan* (2001), 92 Ohio St.3d 354, 361. However, when this Court (like those in most other states) determined that continued application of the immunity caused confusion and unpredictability, leading to “absurd and unjust consequences,” it abolished the doctrine, in 1983. See *Haverlack v. Portage Homes, Inc.* (1982), 2 Ohio St.3d 26 and *Enghauser Mfg. Co. v. Eriksson Engineering, Ltd.* (1983), 6 Ohio St.3d 31.

Shortly thereafter, the legislature enacted PSTLA, using the same immunity scheme (centered on distinctions between so-called “governmental” and “proprietary” functions performed by political subdivisions of the state) that had been found to yield “absurd and unjust” results at common law. Clearly, PSTLA enacted a statutory immunity that was in derogation of Ohio’s common law. Such statutes are strictly construed under principles of Ohio law. *Sabol v.*

*Pekoc* (1947), 148 Ohio St. 545. The PSTLA immunity should therefore be strictly construed and its exceptions broadly construed.

In this case, the appellate court did the opposite. It announced that it was construing the “negligent operation” exception narrowly. *Doe v. Marlinton Local School Dist. Bd. of Ed.*, 5<sup>th</sup> Dist. No. 2006CA00102, 2007-Ohio-2815, at ¶18. The majority of the appellate court below cited *Doe v. Dayton* (1999), 137 Ohio App.3d 166, 169 for the proposition that exceptions to PSTLA immunity are “in derogation of a general [statutory] grant of immunity [and therefore] they must be construed narrowly if the balances which have been struck by the state’s policy choices are to be maintained.” *Doe v. Marlinton Local School Dist. Bd. of Ed.*, supra, 2007-Ohio-2815 at ¶18.<sup>9</sup> But neither the appellate court majority nor the *Doe v. Dayton* opinion cite any other applicable Ohio law for this erroneous proposition. Ohio’s law of statutory construction clearly requires the opposite construction and a broader definition of the term “operation.”

Further, even if this Court determines to “narrowly” construe the exceptions to PSTLA, the construction must be reasonable. The construction advanced by Appellees and the appellate court is unreasonably narrow.

The court of appeals essentially concluded that “operating” a motor vehicle encompasses driving but not any of the driver’s other duties. Such logic would suggest that the word “surgery” encompasses the act of cutting flesh but excludes all the other inherent acts or decisions made by a surgeon during surgery. That is an exceptionally narrow way to define the “plain and ordinary” meaning of words. And it contradicts the broad manner in

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<sup>9</sup> The dissent below properly argued that the exception should broadly be construed.

which the statutory term “operating” has been construed and defined in every other context under Ohio law.

**D. Conclusion to Proposition of Law I**

This Court should hold that the negligent “operation” of a school bus can include the negligent performance (or omission) of any of the essential and inherent functions the operator is trained and authorized to perform while transporting students on the bus. Because school bus drivers are authorized to “maintain control of the pupils” on the bus and are trained in “pupil management,” negligent performance of those essential duties is negligent operation of the vehicle. That is especially true in the context of transporting special needs students, as in this case.

A different, and unreasonably narrow, construction of the term in this context would have absurd consequences that the General Assembly could not have intended when it enacted PSTLA.

There is a reason school districts are required to train their drivers in “pupil management.” There is a reason school bus drivers are authorized to “control” their student passengers, even using physical force if necessary. The reason is that those functions are an essential and inherent part of operating a school bus. There is *no* reason to believe that, when the legislature decided to exclude from statutory immunity a bus driver’s “operation” of the bus, it meant that one essential part of the job (driving) was excluded from immunity but the other essential parts (such as pupil management) were not. There is no reason to believe that the legislature intended “operation” of a school bus to include helping a special needs student to alight from the bus in her wheelchair, but not helping a special needs student who is being raped on the bus floor in the driver’s presence.



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The practical effect of such an interpretation (beyond rendering an illogical meaning to the statute) would be grave. Transportation of students is a “governmental function” accorded immunity under PSTLA. If the exception for “negligent operation” of a school bus excludes pupil management, a school district disregarding Ohio’s student safety regulations will never be held accountable for breaking those laws. Are we to believe the legislature intends that the only people governed by these student safety regulations should be immune from suit if they ignore or violate them? Are we to believe that the General Assembly enacted such laws and regulations with one hand, only to render them meaningless with the other?

That would be an unreasonable and dangerous interpretation of the law. And our children--society’s most vulnerable members--will pay for it.

**Proposition of Law No. II:**

**In a civil action for damages that does not seek declaratory or injunctive relief, the service requirements in R.C. 2721.12(A) do not apply, even when the constitutionality of a statute is later challenged in motion practice during the pendency of the case.**

Appellants presented below constitutional challenges to the application of R.C. 2744.02(B)(1) to their case. The appellate court declined to substantively address the constitutional arguments, because Appellants had not strictly complied with the pleading and service requirements of R.C. 2721.12 (“Declaratory Relief; Parties”).<sup>10</sup> That decision was patently erroneous.

Appellants here pleaded a civil claim for damages, with no request for declaratory relief. Upon seeing and responding to legal theories in Marlinton’s motion for summary judgment in

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<sup>10</sup> After noting the failure to plead and serve under R.C. 2721.12, the appellate court summarily disposed of Appellants’ constitutional arguments in two sentences. The court merely cited, without discussion, to this court’s decisions in *Fabrey v. McDonald Village Police Dept.* (1994), 70 Ohio St.3d 35, and *Fahnbulleh v. Straham* (1995), 73 Ohio St.3d 666. However, it failed to address Appellants’ constitutional arguments that were not decided by those cases.

the trial court, Appellants alleged the unconstitutionality of the political subdivision immunity statutes, as applied to her case. At that point,--seeking both to prevent the error ultimately made by the appellate court and to provide the Attorney General with a timely courtesy opportunity to appear and assert its position on constitutional issues--Appellant served the Attorney General with notice. (Supp. 220, Plaintiff's Instructions to the Clerk). Notably, the Attorney General's office has declined to participate at any level of the case to date.

This courtesy notice, while not legally required, provided the State a timely and meaningful opportunity to participate, before any court addressed a constitutional question in the case. The State did nothing. In that light, the appellate court's decision on this point defies both law and principles of fairness.

The pleading and service obligations described in R.C. 2721.12 never applied to this case. That statute addresses service requirements for declaratory judgment actions. It only imposes a duty to serve the Attorney General *in those actions*.

This Court first addressed this issue in *Cicco v. Stockmaster* (2000), 89 Ohio St.3d 95, 97. In *Cicco*, the Court ruled that, in a declaratory judgment action challenging the constitutionality of a statute, the Attorney General must be served.

The issue before us is what constitutes proper service upon the Attorney General for purposes of former R.C. 2721.12 in a declaratory judgment action challenging the constitutionality of a statute, ordinance, or franchise. For the reasons more fully set forth below, we hold that a party who is challenging the constitutionality of a statute must assert the claim in the complaint (or other initial pleading) or an amendment thereto, and must serve the pleading upon the Attorney General in accordance with methods set forth in Civ.R. 4.1 in order to vest a trial court with jurisdiction under R.C. 2721.12. *Id.*

The syllabus from *Cicco*, however, is more broadly worded:

A party who is challenging the constitutionality of a statute must assert the claim in the complaint (or other initial pleading) or an amendment thereto, and must serve the pleading upon the Attorney General in accordance with methods set forth in Civ.R. 4.1 in order to vest a trial court with jurisdiction under former R.C. 2721.12. *Id.*

A year later, in *George Shima Buick, Inc. v. Ferencak* (2001), 91 Ohio St.3d 1211, 1214, this Court dismissed a case that was not a declaratory judgment, for failure to comply with R.C. 2721.12. Justice Stratton concurred to say that this “is the proper result under *Cicco*.” Id. The dissent asserted that R.C. 2721.12 did not apply, because the case was not a declaratory judgment action:

*Cicco* \* \* \* is wholly inapplicable to this case. The *Cicco* majority stated that “the issue before us is what constitutes proper service upon the Attorney General for purposes of former R.C. 2721.12 in a declaratory judgment action.” The syllabus of that opinion addresses the obligations that former R.C. 2721.12 imposed upon a party challenging the constitutionality of a statute. Former R.C. 2721.12 provided that it applied only “when declaratory relief is sought.” This language in former R.C. 2721.12 is essentially the same as that found in the current version of the statute.

This case is not a declaratory judgment action. Rather, this cause began as a small claims case initiated by George Shima Buick, Inc. to recover damages and interest after Ferencak stopped payment on a check she had written for automobile repairs. In a motion to dismiss, defendant raised the constitutionality of R.C. 1925.17. Perplexingly, the majority imports the special service requirement of the declaratory judgment statute to this non-declaratory judgment action. It does so without supporting statutory or decisional law.

This court's long-standing, consistent precedent interprets former R.C. 2721.12 as applicable only in declaratory judgment actions. \* \* \* We did not deviate from this pattern in *Cicco*.

The majority's decision nonetheless takes the special-service requirement from the declaratory judgment statute and demands that it be met in non-declaratory judgment actions. No sound legal reasoning is offered for doing so. Apparently, the majority thinks that it would be good public policy to have the Attorney General served any time a party challenges the constitutionality of a statute. *But such public-policy choices are the function of the General Assembly.* \* \* \* We can only imagine the reaction of the Attorney General to such a proposal if it were subjected to legislative hearings, as any such legislation ought to be. This court, on the other hand, did not even have the benefit of briefs on the issue of the statute's scope. Id. (Cook, J., dissenting) (Citations omitted).

Since then, this Court has settled the issue. In *Cleveland Bar Assn. v. Picklo*, 96 Ohio St.3d 195, 2002-Ohio-3995, this Court considered the constitutionality of two landlord-tenant statutes, despite that plaintiff did not serve the Attorney General with a copy of the complaint.



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The Court affirmed that the service duty imposed by R.C. 2721.12(A) applies only to those cases in which a party challenges the constitutionality of a statute in a declaratory judgment action. It found that:

In reaching this result, we must also contend with the implications of our decision in \* \* \* *Ferencak* \* \* \* wherein we sua sponte dismissed an appeal and certified conflict raising another separation-of-powers issue because we lacked jurisdiction. There, \*\*\* because no one had served the Ohio Attorney General with notice of the constitutional attack, we found a jurisdictional defect, based on *Cicco* \* \* \*. Today we find that we applied *Cicco* too zealously in dismissing *Ferencak*.

*Cicco* recognizes that R.C. 2721.12 imposes a notice requirement on parties contesting the constitutionality of a statute in a declaratory judgment action filed pursuant to R.C. Chapter 2721. That statute requires that the Attorney General be notified in every such action by service of the pleading in accordance with Civ.R. 4.1. Neither *Ferencak* nor this case is a declaratory judgment action filed pursuant to R.C. Chapter 2721. *Ferencak* began as a small claims action to recover damages stemming from a customer's decision to stop payment on a check for automobile repairs. And this case is an action to enforce our constitutional responsibility to oversee the practice of law in this state. *Cicco*, therefore, does not require service on the Attorney General as a prerequisite to invoking our jurisdiction. For this reason, *Ferencak* is overruled. Id. (citations omitted); See also, *Pinchot v. Charter One Bank, F.S.B.*, 99 Ohio St.3d 390, 2003-Ohio-4122, at ¶6, fn.1.

This view is consistent with the express language of R.C. 2721.12(A).

Here, the constitutional challenge to a statute occurred at the summary judgment stage in the trial court. R.C. 2721.12 does not apply to such motion practice. See *Grover v. Bartsch*, 170 Ohio App.3d 188, 2006-Ohio-6115, ¶29; *Ruble v. Ream*, 4<sup>th</sup> Dist. No. 03CA14, 2003-Ohio-5969, ¶11-15; *Tonti v. Tonti*, 10<sup>th</sup> Dist Nos. 03AP-494 and 03AP-728, 2004-Ohio-2529, ¶136; *In re Cameron*, 153 Ohio App.3d 687, 2003-Ohio-4304, ¶15-17.

The appellate court ruling contradicts the plain language of R.C. 2721.12. It contradicts the clear holding in *Picklo*. And, even setting aside those dispositive points, it offends principles of fairness and common sense. Applying R.C. 2721.12 as described by the appellate court would require parties, at the time of filing their claims, to anticipate all defenses and interpretations of a

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statute that might implicate constitutional issues, or have waived any constitutional arguments. The practical implications are obvious and unfair. No provision of law or fairness requires it.<sup>11</sup>

The General Assembly could some day decide whether litigation of every constitutional question raised by every interpretation of an Ohio statute requires the participation of the Ohio Attorney General. In that event, it could implement a fair and practical procedure for notice to the Attorney General. But it would not be that demanded by the appellate court's interpretation of R.C. 2721.12. And creating such a procedure with a judicial re-writing of R.C. 2721.12 is not the way to accomplish it.

**Proposition of Law No. III:**

**R.C. Chapter 2744 is unconstitutional under Ohio Constitution Article 1, Sections 1, 2, 5 and 16 and the 5<sup>th</sup>, 7<sup>th</sup> and 14<sup>th</sup> Amendments of the United States Constitution because it violates equal protection, due process, the right to trial by jury and the right to a remedy**

If this Court interprets and applies R.C. 2744.02(B)(1) to Appellants' claims as enunciated by the appellate court below, the statute is unconstitutional as applied, in several respects.

**A. Section 5, Article I - Right to Jury Trial**

The right to trial by jury is described in Ohio's Constitution, Section 5, Article I:

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

The right is appropriately described as "inviolate." The right to trial by jury derives from the Magna Carta, and was preserved in the Seventh Amendment to the United States Constitution. Even before the adoption of our state constitution, the first laws governing the

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<sup>11</sup> This Court's recent holding in *Todd Development Co., Inc. v. Morgan*, 116 Ohio St.3d 461, 2008-Ohio-87 expresses analogous principles.

territory of Ohio (Article 2, Ordinance of July 13, 1787) provided for the right to a trial by jury, stating:

No man shall be deprived of his liberty or property, *but by the judgment of his peers, or by the law of the land.*

“The law of the land” is synonymous with “due process of law” and was derived from the consuetudinary law, based on the customs and consents of the people. *State v. Balance* (1949), 229 N.C. 764, 51 S.E.2d 731, citing *Yancey v. Highway Commission* (1942), 222 N.C. 106, 22 S.E.2d 256; *Plott v. Ferguson*, 202 N.C. 446, 163 S.E. 688; *Yarborough v. Park Commission* (1928), 196 N.C. 284, 145 S.E. 563; *Gunter v. Town of Sanford* (1923), 186 N.C. 452, 120 S.E. 41; *Parish v. East Coast Cedar Co.*, 133 N.C. 478, 45 S.E. 768.

It is important to note that the federal and state constitutional amendments do not guarantee or create rights to a jury trial. They merely preserve the rights to jury trial that existed at common law. Article 39 of the Magna Carta provided that:

No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgment [sic] of his equals *or by the law of the land.*

Juries are an indispensable check against state power. In Joseph Story’s 1833 treatise *Commentaries on the Constitution of the United States*, he wrote:

“[The Seventh Amendment of the United States Constitution] is a most important and valuable amendment; and places upon the high ground of constitutional right the inestimable privilege of a trial by jury in civil cases, a privilege scarcely inferior to that in criminal cases, which is conceded by all to be essential to political and civil liberty.”

In *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, this Court reiterated that “[t]he right to jury trial does not involve merely a question of procedure. \* \* \* For centuries it has been held

that the right of trial by jury is a fundamental constitutional right, a substantial right, and not a procedural privilege.” Id. at 421.

“Inviolable” means “free from substantial impairment.” Black’s Law Dictionary (6 Ed. 1990) 826. This Court has held that the right “cannot be invaded or violated by either legislative act or judicial order or decree.” *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 422. But the right to a jury trial is invaded by each subpart of R.C. 2744.02(B), all of which completely eliminate an injured person’s right to have her negligence claims heard by a jury.

Section 5, Article I, of Ohio’s Constitution guarantees the right of trial by jury in those cases where it existed at the time of its adoption. See *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948 at ¶32 and ¶116; *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 421. Thus, if citizens had a constitutionally protected right to a trial by jury in actions for negligence against political subdivisions at the time the Ohio Constitution adopted this amendment, then any application of R.C. 2744.02(B) that abolishes or restricts that right would be constitutionally impermissible. It is clear that Ohioans had that right before the amendment was adopted.

“Negligence actions evolved from the common-law action of trespass on the case, and there is no question that the right to trial by jury existed in such actions at the time the Ohio Constitution was adopted.” *Gladon v. Greater Cleveland Regional Transit Authority*, 75 Ohio St.3d 312, 332, 1996-Ohio-137 (O’Donnell, J. dissenting, citing *Kneisley v. Lattimer-Stevens Co.* (1988), 40 Ohio St.3d 354, 356). Additionally, a right to trial by jury in a negligence action against a political subdivision also existed at the time the Ohio Constitution was adopted. Id., citing Note, *Municipal Immunity in Ohio – How Much Wrong Can a Municipality Do?* (1984), 15 U.Tol.L.Rev. 1559, 1566 and Comment, *The Ohio Political Subdivision Tort Liability Act: A Legislative Response to the Judicial Abolishment of Sovereign Immunity* (1986), 55



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U.Cin.L.Rev. 501, 502. In the early 1800s, Ohio courts did not share the view that local government units were immune from liability. In fact, Ohio courts considered municipal corporations responsible in tort just as individuals were responsible. *Id.*

It was not until 1854 (three years after the Constitution was adopted) that the common law doctrine of sovereign immunity was expanded to include political subdivisions (municipal corporations) of the state. Prior to that, negligence actions existed against political subdivisions. See e.g., *Goodloe v. Cincinnati* (1831), 4 Ohio 500; *Rhodes v. Cleveland* (1840), 10 Ohio 159; *McCombs v. Town Council of Akron* (1846), 15 Ohio 474 (each case was tried before a jury and involved an action sounding in negligence or an action for trespass on the case). See also Comment, Can Municipal Immunity in Ohio be Resurrected From the Sewers After *Haverlack v. Portage Homes, Inc.*? (1983), 13 Cap.U.L.Rev. 41, 42 and Celebreeze & Hull, The Rise and Fall of Sovereign Immunity in Ohio (1984), 32 Cleve.St.L.Rev. 367, 367-368. At the time the Constitution was adopted in 1851, Ohio courts expressly recognized no impediments to recovery against a corporate political subdivision of the state. *Hack v. Salem* (1963), 174 Ohio St. 383, 392 (Gibson, J., concurring).

It is clear that, in Ohio, there did exist a right to a jury trial against a political subdivision of the state in 1851 when Section 5, Article I, Ohio Constitution was adopted. It follows, then, that this right is constitutionally protected *in its entirety*. Any statute which abolishes the action in its entirety, must be unconstitutional. See *Sorrell v. Thevenir*, supra, 69 Ohio St.3d at 421 (Section 5, Article I guarantees the right to trial by jury "for those causes of actions where the right existed at common law at the time the Ohio Constitution was adopted.").

In recent years and cases, focus has changed from the indispensable and expansive importance of this right, to the "limitations" on the right. Those limitations should be few and

reed-thin. This Court--the ultimate authority on the matter--should resist trends to subjugate this "inviolable" and bedrock American principle to transitory legislative "public policy" concerns. No public policy trumps that embedded in our Constitution.

It has also been implied that the constitutional right is not invaded when the legislature eliminates an existing common law claim, as opposed to simply removing the role of the jury from the claim. But if the legislature invades the inviolable right when dissecting it from a cause of action, it also violates it by euthanizing the entire claim. Interpreting the right otherwise renders it a mere "question of procedure." *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415.

**B. Section 16, Article I**

This provision of the Ohio Constitution provides:

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

Application of R.C. 2744.02(B)(1) to Appellants' claims implicates and violates two provisions under Section 16, Article I: its general due process requirement, and its right to remedy provision.

**1.) Due process**

The "due course of law" provision of this section is the equivalent of the "due process of law" protections in the United States Constitution. *Arbino v. Johnson & Johnson*, 116 Ohio St.3d 468, 2007-Ohio-6948, at ¶48. The standard of review for a statute being examined on due process grounds depends on whether the statute restricts the exercise of fundamental constitutional rights.



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As argued above and below, R.C. 2744.02 restricts Appellants' fundamental and "inviolate" right to a trial by jury, and the constitutional right to a remedy under Section 16, Article I. Consequently, it violates due process unless "shown to be necessary to promote a compelling governmental interest." *Sorrell v. Thevenir* (1994), 69 Ohio St.3d 415, 423.

Even assuming, arguendo, that there are compelling governmental interests underlying political subdivision tort immunity, Marlinton can not show (for the reasons described below) that the immunity enacted is necessary to promote them at the expense of the fundamental and inviolate rights it tramples.

Moreover, even if this Court determines that R.C. 2744.02(B) restricts no fundamental rights, and thus, strict scrutiny review is inappropriate, the statute does not survive a rational-basis review.

A statute is valid under the rational-basis test "[1] if it bears a real and substantial relationship to the public health, safety, morals or general welfare of the public and [2] if it is not unreasonable or arbitrary." *Mominee v. Scherbarth* (1986), 28 Ohio St.3d 270, 274. This Court must examine the record for *evidence* that this test is satisfied. If there is no evidence demonstrating a rational connection between the statutory immunity and the public good to be achieved, the statute fails the test. See *Arbino v. Johnson & Johnson*, supra, 2007-Ohio-6948, at ¶48.

R.C. Chapter 2744 does not anywhere state its purpose. This Court has assumed that the statutory immunity serves the "dual purpose" of conserving the fiscal resources of political subdivisions by limiting their tort liability, and permitting certain injured persons "to recover for a tort committed by the political subdivision." *Menefee v. Queen City Metro* (1990), 49 Ohio St.3d 27, 29.

The General Assembly never provided or cited evidence that its scheme of political subdivision immunity is rationally related to “health, safety, moral or general welfare of the public.” Just as courts and commentators have *assumed* the statute’s purpose, they can only have *assumed* that the immunity bears some relation to that purpose. In that respect, this case and statute completely lack the type of “credible empirical evidence” relied on to find a statute constitutionally sound (as in *Arbino*, supra.); and instead equates to statutes found unconstitutional (as in *Sorrell*, supra).

There is no credible empirical evidence that this immunity scheme—pocked with exceptions for injuries caused by (some) motor vehicle injuries; injuries which occur on the grounds of (some) public buildings and numerous other labyrinthine circumstances—*rationally* relates to the purposes we must assume it was designed to serve.

In fact, the concept of such immunity may have served its assumed purpose one hundred years ago. But the world has changed. Political subdivisions can protect their resources and treasuries, just like large private corporations do, with insurance policies and other common risk management techniques. Most of them already do, despite the existence of immunity. There is absolutely no evidence (and certainly not in the record here) that the serpentine system of special rules comprising this immunity is rationally related to its assumed and outdated purpose.

The statutory immunity also fails the second prong of the rational-basis test. It is unreasonable and arbitrary in its efforts to meet its assumed purpose. The statute’s history pointedly demonstrates it.

Here again, the context in which Ohio enacted this statutory immunity affects critically the analysis before the Court. Statutory immunity for political subdivisions was judicially created in Ohio in the mid-nineteenth century. *Dayton v. Pease* (1854), 4 Ohio St.80. See also,

*Enghauser Mfg. Co. v. Eriksson Engineering, Ltd.* (1983), 6 Ohio St.3d at 33. As society changed over the course of a century, the reasons justifying the doctrine vanished, and it became an anachronism. Notably, the specific scheme of political subdivision immunity that Ohio's common law applied (wherein liability turned on whether a subdivision caused harm while performing a "governmental" function or a "proprietary" function) was "unanimously berated" by courts and commentators across the country. *Enghauser Mfg. Co. v. Eriksson Engineering, Ltd.*, supra, 6 Ohio St.3d at 32.

The United States Supreme Court referred to the scheme as a "quagmire that has long plagued the law of municipal corporations." It noted that:

[i]n actuality, the distinction between a municipality's governmental and proprietary functions is better characterized not as a line but as a succession of points. In efforts to avoid the often-harsh results occasioned by a literal application of the test, courts frequently created highly artificial and elusive distinctions of their own. The result was that the very same activity might be considered "governmental" in one jurisdiction, and "proprietary" in another. *Owen v. City of Independence, Mo.* (1980), 445 U.S. 622, 644, n. 26.

The U.S. Supreme Court noted that a review of decisions from states applying the theory disclosed "*the inevitable chaos when courts try to apply a rule of law that is inherently unsound.*" *Id.*, citing *Indian Towing Co. v. United States* (1955), 350 U.S. 61, 65 (emphasis supplied).

In *Haverlack*, supra, and *Enghauser*, supra, this Court acknowledged and acted upon the problem, abolishing the doctrine from Ohio's common law. While *Enghauser* made it clear that some vestige of immunity would remain (for certain acts of a political subdivisions "which go to the essence of governing"), it clearly repudiated the governmental/proprietary immunity scheme and declared that, "so far as municipal governmental responsibility for torts is concerned, the

rule is liability-the exception is immunity.” *Enghauser Mfg. Co. v. Eriksson Engineering, Ltd.*, supra, 6 Ohio St.3d at 32.<sup>12</sup>

However, in 1985, the General Assembly enacted PSTLA. Its scheme of immunity focuses on the governmental/proprietary distinction—the same “quagmire” universally decried as an unjust and “inherently unsound rule of law.” And it has yielded the same kind of justice.

In this Court’s previous comments upon this subject, it has been suggested that the inherent soundness of the immunity scheme is insignificant to the matter of PSTLA’s constitutionality. See, e.g., *Butler v. Jordan* (2001), 92 Ohio St. 3d 354, 376 (Cook J., concurring in judgment). But even under a rational-basis review, whether the basic scheme of statutory immunity is “unreasonable” or “arbitrary” must carefully be explored. Rational-basis means a low level of review. But it does not mean *no* level of review. And where the legislature essentially codifies an immunity scheme that is universally known for “injustice and irrationality,” it seems implausible that the statutes could withstand a “rational-basis” test. *Schenkolewski v. Cleveland Metroparks System* (1981), 67 Ohio St. 2d 31, 38.

In *Fabrey v. McDonald Village Police Dept.* (1994), 70 Ohio St.3d 35, this Court held that R.C. 2744.02(B)(4) did not violate the due process provisions of the United States or Ohio Constitutions. *Fabrey* only briefly discussed Ohio’s due process standard and relied essentially on analogy to the United States Supreme Court decision in *Martinez v. California* (1980), 444 U.S. 277. But the California statute addressed in *Martinez* was drastically different than PSTLA. The statute at issue provided a narrow immunity to public employees, relating to their decisions whether to grant parole or release to prisoners. Unlike the statute at issue here, the California

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<sup>12</sup> This Court in *Enghauser* clearly indicated its future analysis of political subdivision immunity would focus not on the discredited governmental/proprietary distinction but rather on some form of the discretionary/ministerial distinction which had originally been enacted in *Dayton v. Pease*, supra.

statute had a specifically “stated purpose” against which the statute’s effect could be compared. *Id.* at note 6. And, most importantly, California had not therein codified a previously-acknowledged “unjust and irrational” scheme of immunity.

Furthermore, Ohio’s experience with PSTLA since the decision in *Fabrey* has firmly proved its statutory scheme of political subdivision immunity is both unreasonable and arbitrary. *Fabrey*’s conclusions are not dispositive here, but even if they were, they should be revisited in light of experience.

The arbitrariness, unfairness and lack of reason behind PSTLA’s serpentine scheme of immunity has increasingly been documented and discussed. See, e.g., *Butler*, supra at 367-371 (describing numerous decisions necessitating judicial interpretation of the statutory scheme and noting that “[a] precedent accomplishes nothing if it settles one dispute by raising another”). The statute’s unreasonable and arbitrary classifications (such as defining the operation of a swimming pool or golf course as a “governmental” function); its curiously-chosen exceptions to immunity and its failure to clearly define important terms within those exceptions, render it (and the results it yields) disturbingly arbitrary and unpredictable.

This case demonstrates yet another reason why the statute abjectly fails its assumed purpose. Because the term “operation” of a motor vehicle is neither defined nor easily definable, this Court faces yet another hotly litigated immunity dispute. In this case to date, four experienced judges (a trial court judge and an appellate panel) have attempted to interpret and apply the statutory phrase at issue. They have been evenly divided about what it means. As applied by the appellate court majority, the statute will permit liability for one essential part of a bus driver’s job (driving), yet the school district will be immune when drivers negligently perform other essential and equally important parts of their job (like supervising and controlling



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student passengers). And the Court and parties will essentially be reduced to reading tea leaves, while deciding this case and applying it in future cases.

In this and so many other contexts, PSTLA's statutory scheme is so inherently arbitrary that it lends no predictability, to either the political subdivisions it protects or those injured by political subdivisions. Just like the common law scheme it codified, it leads to confusion, injustice and "irrationality." *Schenkolewski v. Cleveland Metroparks System* (1981), 67 Ohio St. 2d 31, 38. An "irrational" system of immunity cannot relate rationally to any legitimate governmental purpose.

This is not a matter of overruling or usurping the General Assembly's public policy function. It is not a matter of second-guessing the legislature for its failure to choose the "best means" of serving a legitimate governmental interest. *Fabrey v. McDonald Village Police Dept.* (1994), 70 Ohio St.3d 351. It is a circumstance where history and experience shows the General Assembly chose the *worst* means. And it is for this Court to say so. While the Court is duty bound to reconcile legislation with the constitutional provisions whenever possible, "it is equally [the Court's] duty to strike down any act which clearly conflicts with provisions of the Constitution of the United States or the Constitution of this State." *Belden v. Union Central Life Ins. Co.* (1944), 143 Ohio St. 329, 340. It is time to do that with this fundamentally flawed law.

## 2. Open courts/right to remedy

Section 16, Article I of Ohio's constitution provides that Ohio citizens who are tortiously injured "shall have remedy by due course of law." The language used "is clear and leaves little room for maneuvering." *Hardy v. VerMuelen* (1987), 32 Ohio St.3d 45, 46.

Notably, “[t]he right-to-a-remedy provision of Section 16, Article I does not require the analysis of rational-basis that is used to decide due process or equal protection arguments against the constitutionality of legislation.” *Id.* at 48. The legislature may not enact a statute that denies legal remedy to someone who has suffered tortious bodily injury, “even if it acted with a rational basis.” *Id.*

Clearly, R.C. 2744.02(B), as applied to Appellants, completely deprives them of a remedy for bodily injury negligently caused by Marlinton. In that respect, it violates the constitution.

In *Fabrey*, *supra*, this Court held that R.C. 2744.02(B)(4) did not violate the constitution’s right-to-remedy provision, because its immunity “was not an infringement of a pre-existing right [but] rather, in accord with a traditional common law principle.” *Fabrey v. McDonald Village Police Dept.*, *supra*, 70 Ohio St.3d at 355. However, as described in detail above, the right to sue a political subdivision for negligence existed before Ohio’s constitution was enacted.<sup>13</sup> Thus, *Fabrey* seems to rely squarely on an inaccurate assumption about the history of Ohio’s common law of political subdivision immunity.

That may be attributable to the manner in which the Appellant in *Fabrey* misdirected his right-to-a-remedy argument. Mr. Fabrey apparently relied on the second sentence of Section 16 Article I (“Suits may be brought against the state, in such courts and in such manner, as may be provided by law.”). This language does not affect the right-to-remedy argument applicable to PSTLA, which grants immunity to political subdivisions--not the state. *Butler v. Jordan*, *supra*, 92 Ohio St.3d at 367. And, even if the constitution’s use of the term “state” did include political subdivisions here, this language would not support R.C. 2744.02 (B)(1)’s constitutionality.

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<sup>13</sup> See Proposition of Law I, Section C (page 15) and Proposition of Law III, Section B(1) (page 28).

The second sentence of Section 16, Article I (if it ever applied to political subdivisions at all) did not authorize the General Assembly to create laws depriving Ohio citizens of their rights to remedy described elsewhere in the section. It did not authorize the General Assembly to pass legislation preventing a citizen from suing her government for injury it tortiously inflicted on her. To the contrary, it “was intended to preempt the General Assembly’s authority to regulate the parameters of sovereign immunity.” *Garrett v. City of Sandusky* (1994), 68 Ohio St.3d 139, 143 (Pfeifer, J., concurring). It was intended “to abolish sovereign immunity in its entirety.” *Id.*

In *Fahnbulleh v. Straham* (1995), 73 Ohio St.3d 666, in the context of an equal protection rational-basis analysis of this statute, a majority of this Court stated that the second sentence of Section 16, Article I “can only mean that the legislature may enact statutes to limit suits if it does so in a rational manner calculated to advance a legitimate state interest.” *Id.* at 669. However, the *Fahnbulleh* majority gave no explanation why the language “can only mean” that. When reviewed in totality, Section 16, Article I appears plainly to indicate that citizens shall not be prohibited from suing the state, and that the “law” cannot prevent such suits—it can only determine “how and in what courts” suits against the state can be brought. *Id.* at 670 (Pfeifer, J., dissenting). That interpretation seems especially likely in the face of the expressed intent of constitutional delegates (described in detail in Justice Pfeifer’s concurring opinion in *Garrett*), which the majority in *Fahnbulleh* did not discuss.

Reliance on the 1912 amendment to Section 16, Article I is irrelevant to a determination of whether R.C. 2744.02(B)(1) violates Appellants’ rights to a remedy under the section’s original language. The 1912 amendment does not address political subdivisions, only the State. And it was never intended to permit a statute such as this. PSTLA completely deprives Appellants of a vested legal right to sue Marlington for its negligence—a right they had before

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Ohio's constitution was enacted, and a right they would have had the day before PSTLA was enacted. In that respect, the statute violates the plain language of Section 16, Article I.

### CONCLUSION

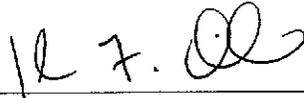
This Court can and should interpret R.C. 2744.02(B)(1) in a manner that serves the statute's presumed purpose; honors traditional and sensible principles of statutory construction and achieves justice. It can do those things by holding that "negligent operation" of a school bus can encompass performance (or omission) of any of the essential functions the bus driver is trained and authorized to perform while transporting students, including behavior management of special needs riders.

Absent such an interpretation, the statute cannot pass constitutional muster as applied. The statutory scheme of immunity is fatally flawed, in several constitutionally significant ways. In sum, it is an irrational scheme, which yields irrational results and cannot rationally relate to any assumed purpose. This Court is empowered and obligated to strike such laws. And the citizenry looks to the Court to do it.

In addition to the compelling legal arguments against the statute, practicality must be considered. This case shows the result of immunizing school districts from their own negligence under this scheme. Marlinton's Transportation Director did not even know all the state regulations the district was violating. In the end, this statute does not simply immunize negligent conduct—it breeds it.

Ohio's citizens, especially its children, are entitled to more.

Respectfully submitted,

By 

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#### CERTIFICATE OF SERVICE

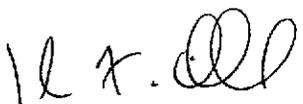
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## APPENDIX

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IN THE SUPREME COURT OF OHIO

JANE DOE, INDIVIDUALLY AND AS  
NEXT FRIEND OF HOLLY ROE, A  
MINOR, et al.

Appellant,

v.

MARLINGTON SCHOOL DISTRICT,  
et al.

Appellees.

Supreme Court Case No.

**07-1304**

On Appeal from the Judgment  
Entered in the Stark County Court  
of Appeals, Fifth Appellate District

Court of Appeals  
Case No. 00102

**NOTICE OF APPEAL OF APPELLANT JANE DOE,  
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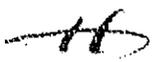
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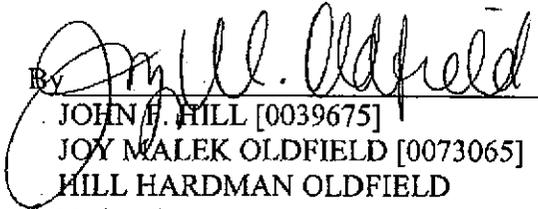
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Notice of Appeal of Appellant Jane Doe, Individually and as  
Next Friend of Holly Roe, A Minor, et al.

Appellant, Jane Doe, Individually and as Next Friend of Holly Roe, A Minor, et al.,  
hereby gives notice of appeal to the Supreme Court of Ohio from the judgment of the Stark  
County Court of Appeals, Fifth Appellate District, entered in the Court of Appeals Case No.  
00102 on June 4, 2007.

This case is one of public or great general interest and involves a substantial  
constitutional question.

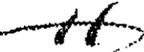
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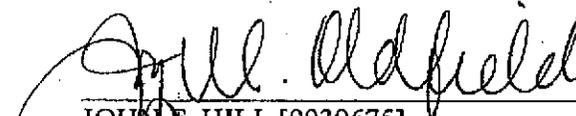
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STATE OF OHIO:  
SS:  
STARK COUNTY:

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

JANE DOE, ET AL

) CASE NO. 2005-CV-03180

) Plaintiff(s)

) JUDGE LEE SINCLAIR

**FILED**

-VS-

**MAR 31 2005**

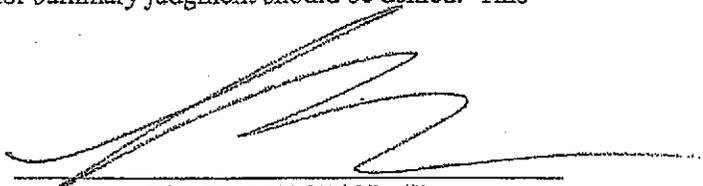
MARLINGTON LOCAL SCHOOL, ET AL

) JUDGMENT ENTRY

) Defendant(s)

PHIL G. GIAYASIS  
STARK COUNTY OHIO  
CLERK OF COURTS

The Court has reviewed the defendants' motion for summary judgment and the response of the plaintiff. The Court finds that the motion for summary judgment should be denied. This matter shall remain set for trial.

  
\_\_\_\_\_  
JUDGE LEE SINCLAIR

COPY TO: JOHN HILL, ESQ./JOY OLDFIELD, ESQ.  
DAVID SMITH, ESQ./JOS. BOATWRIGHT, ESQ.  
MARY JO SHANNON SLICK, ESQ.  
RODNEY BACA, ESQ.

IN THE COURT OF APPEALS FOR STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

P. H. G. GEARNS  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO  
07 JUN -4 PM 2:50

MARLINGTON LOCAL SCHOOL  
DISTRICT, et al.

Appellants

-vs-

JANE DOE, INDIVIDUALLY AND AS  
NEXT FRIEND OF HOLLY ROE, A  
MINOR, et al.

Appellees

JUDGMENT ENTRY

CASE NO. 2006CA00102

For the reasons stated in our accompanying Memorandum-Opinion on file, the judgment of the Stark County Court of Common Pleas is reversed. Costs assessed to appellee.

*John A. Edwards*

*[Signature]*

JUDGES

D

PAUL G. GALINSIS  
CLERK OF COURT OF APPEALS  
STARK COUNTY, OHIO

07 JUN -4 PM 2:50

COURT OF APPEALS  
STARK COUNTY, OHIO  
FIFTH APPELLATE DISTRICT

JANE DOE, INDIVIDUALLY AND AS  
NEXT FRIEND OF HOLLY ROE,  
A MINOR, et al.

Appellees

-vs-

MARLINGTON LOCAL SCHOOL  
DISTRICT BOARD OF EDUCATION,  
et al.

Appellants

JUDGES:

John W. Wise, P.J.  
William B. Hoffman, J.  
Julie A. Edwards, J.

Case No. 2006CA00102

OPINION

CHARACTER OF PROCEEDING:

Civil Appeal From Stark County Court Of  
Common Pleas Case No. 2005 CV 03180

JUDGMENT:

Reversed

(S)

DATE OF JUDGMENT ENTRY:

APPEARANCES:

For Appellants

For Appellees

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TESTED  
CHECK  
[Signature]

RECORDED BY IS

7

*Edwards, J.*

{¶1} Defendant-appellant Marlinton Local School District Board of Education appeals the judgment of the trial court that denied its motion for summary judgment. Plaintiffs-appellees are Jane and John Doe, the custodial parents of Holly Roe, a minor.

STATEMENT OF FACTS AND LAW

{¶2} Appellant provided transportation to and from school to Holly Roe, a ten (10) year old minor with special needs, and Billy Boe, a fifteen (15) year old minor with special needs.<sup>1</sup> For the first twelve (12) weeks of the 2004-2005 school year, Holly and Billy rode the same bus home from school. The bus that transported Holly and Billy home from school was driven by appellant's employee, Sabrina Wright. Only two other special needs students rode said bus.

{¶3} In late November of 2004, Holly was reassigned to another bus so that she could stay at school longer. Thereafter, she did not ride the bus with Billy. However, later in the school year Holly's morning bus routine changed for one day, and she rode a bus to school that was driven by JoAnn Sweitzer and on which Billy was a passenger. Billy was on the bus when Holly boarded, and Billy asked if he could sit with Holly. The aide refused to allow Billy to sit with Holly, but told him he could sit in the seat next to Holly. Minutes later, the aide looked back and noticed Billy's head was not in sight. When she went to investigate, she discovered Billy slumped down next to Holly with his hand up her dress.

{¶4} After separating Holly and Billy, both the aide and the bus driver spoke with Holly. Holly recounted in graphic detail things that had happened

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<sup>1</sup> The parties involved herein have been identified by fictional names.

"every day on Sabrina Wright's bus", which are as follows. During the time period during which Holly rode Wright's bus with Billy, Billy committed various sexual assaults on Holly. He inserted his fingers in her vagina and anus. He forced her to hold his penis and ejaculated into her hand. He attempted sexual intercourse. Holly reported that Billy assaulted her on the floor under the seat of the bus, and reported further that Billy threatened to harm her if she told anyone about the assaults. Ms. Wright, the bus driver, testified on deposition that she sometimes noticed the children crawling under the seats of the bus, but that she thought that the children were playing a game, such as tag.

{¶5} Plaintiffs-appellees filed a complaint against appellant on September 21, 2005.<sup>2</sup> Appellant moved for summary judgment on February 8, 2006, on the basis of political subdivision immunity pursuant to R.C. 2744. et seq. On March 27, 2006, appellees opposed appellant's motion for summary judgment, and on March 31, 2006, the trial court denied appellant's motion without opinion. The appellant appeals the denial of summary judgment based upon R.C. 2744.02(C), which provides that "an order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order," and sets forth the following assignment of error:

{¶6} "THE TRIAL COURT ERRED, AS A MATTER OF LAW, TO  
THE PREJUDICE OF THE MARLINGTON LOCAL SCHOOL DISTRICT BOARD

---

<sup>2</sup> Appellees later moved for, and were granted, leave to amend their complaint to assert claims against individual Marlinton employees. The causes of action against said individuals have been stayed pending the outcome of the within appeal.

OF EDUCATION, IN NOT DISMISSING ALL CLAIMS AGAINST IT ON THE GROUNDS OF OHIO REVISED CODE CHAPTER 2744, IMMUNITY."

{¶7} This matter reaches us upon a denial of summary judgment. Summary judgment proceedings present the appellate court with the unique opportunity of reviewing the evidence in the same manner as the trial court. *Smiddy v. The Wedding Party, Inc.* (1987), 30 Ohio St.3d 35, 36, 506 N.E.2d 212. As such we must refer to Civ.R. 56(C), which provides in pertinent part: "Summary judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, written admissions, affidavits, transcripts of evidence in the pending case and written stipulations of fact, if any, timely filed in the action, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. . . . A summary judgment shall not be rendered unless it appears from such evidence or stipulation, and only from the evidence or stipulation, that reasonable minds can come to but one conclusion and that conclusion is adverse to the party against whom the motion for summary judgment is made, such party being entitled to have the evidence or stipulation construed most strongly in the party's favor."

{¶8} Pursuant to the above rule, a trial court may not enter summary judgment if it appears a material fact is genuinely disputed. Further, trial courts should award summary judgment with caution. "Doubts must be resolved in favor of the non-moving party." *Murphy v. Reynoldsburg*, 65 Ohio St.3d 356, 359, 604 N.E.2d 138, 1992-Ohio-95.

{¶9} It is pursuant to this standard that we review appellant's assignment of error.

I

{¶10} Appellant, in its sole assignment of error, argues that the trial court erred in denying its motion for summary judgment. We agree.

{¶11} At issue in the case sub judice is whether appellant Marlington Local School District is entitled to statutory immunity under R.C. Chapter 2744. The Political Subdivision Tort Liability Act, as codified in R.C. Chapter 2744, sets forth a three-tiered analysis for determining whether a political subdivision is immune from liability. *Cater v. City of Cleveland*, 83 Ohio St.3d 24, 28, 697 N.E.2d 610, 1998-Ohio-421.

{¶12} The first tier of the analysis involves the application of R.C. 2744.02(A)(1), which states in pertinent part: "Except as provided in division (B) of this section, 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." The parties do not dispute that appellant Marlington Local School District is a political subdivision. Further, the transportation of children is a governmental function for purposes of analysis under R.C. 2744. See, *Day v. Middletown-Monroe City School District* (July 17, 2000), Butler App. No. CA99-11-186, 2000 WL 979141, at 4-5.

{¶13} However, the immunity afforded by R.C. 2744.02(A)(1) to a political subdivision such as appellant is not absolute, but is, by its express

terms, subject to five exceptions as set forth in R.C. 2744.02(B). See, *Hill v. Urbana*, 79 Ohio St.3d 130, 679 N.E.2d 1109, 1997-Ohio-400. Thus, the second tier of the immunity analysis involves the application of R.C. 2744.02(B), which states, in pertinent part, as follows:

{¶14} "(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

{¶15} "(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. . . ." (Emphasis added).

{¶16} The third tier of the immunity analysis involves reinstatement of the immunity if the political subdivision can successfully argue that one of the defenses contained in R.C. 2744.03 applies. *Cater, supra*, at 28.

{¶17} As noted by the court in *Doe v. Dayton* (1999), 137 Ohio App.3d 166, 738 N.E.2d 390:

{¶18} "The General Assembly's enactment of R.C. 2744.02(A)(1) reflects a policy choice on the part of the state of Ohio to extend to its political subdivisions the full benefits of sovereign immunity from tort claims. Likewise, the exceptions to immunity in R.C. 2744.02(B) and the exceptions and defenses in

R.C. 2744.03 reflect policy choices on the state's part to submit itself to judicial relief on tort claims only with respect to the particular circumstances identified therein. Because those exceptions and defenses are in derogation of a general grant of immunity, they must be construed narrowly if the balances which have been struck by the state's policy choices are to be maintained." *Id.* at 169.

{¶19} Appellees argue that the trial court correctly denied appellant's motion for summary judgment because the supervision and control of student passengers is an integral part of the operation of the school bus. According to appellees, Ms. Wright was negligent in her supervision and control of the student passengers, therefore she was negligent in her operation of the bus. Appellant argues that the supervision and control of student passengers falls outside the scope of "operation of a motor vehicle" as that term is used in R.C. 2744.02(B)(1). We note that since the term "operation" is not defined in R.C. Chapter 2744, it must be given its plain and ordinary meaning unless the legislative intent indicates otherwise. See *Howard v. Miami Twp. Fire Dept.*, Montgomery App. No. 21478, 2007-Ohio-1508.

{¶20} Appellees cite the case of *Groves v. Dayton Public Schools*, et al. (1999), 132 Ohio App.3d 566, 725 N.E.2d 734, for the proposition that the term "operation of a motor vehicle" encompasses more than the mere act of driving the vehicle. In *Groves*, the school district's bus driver negligently assisted a disabled, wheelchair bound student to disembark from the school bus. The driver failed to secure the child properly before disembarking. The student's

hand became wedged in the wheel of her wheelchair and she suffered injuries. The *Groves* court stated:

{¶21} "R.C. Chapter 2744 contains no definition of the term 'operation of any motor vehicle.' We find the term capable of encompassing more than the mere act of driving the vehicle involved. Neither of the parties to this appeal refers us to any authority construing the term in question with regard to a driver's assisting a disabled passenger and our research in Ohio law has failed to reveal any cases on point. . . .

{¶22} "Here, *Groves* was a passenger on a school bus equipped to transport children confined to wheelchairs, which suggests to us that it was equipped with a ramp with which to lift and lower the students in their wheelchairs as they boarded and disembarked from the bus. In addition, Dayton Public Schools had established rules and regulations pertaining to the safe boarding, transportation, and disembarking of handicapped students that required bus drivers to, *inter alia*, secure passengers in their wheelchairs when assisting them on or off the school bus. Thus, it can reasonably be inferred that doing so was part of the bus driver's duties and an integral part of his operation of the school bus. Furthermore, we do not exclude the possibility that the driver's operation of the ramp itself would be considered operation of the motor vehicle under the circumstances of this case." *Id.* at 569–570.

{¶23} Whether or not we agree with the *Groves* court that the operation of a motor vehicle entails more than simply the act of driving, we find the *Groves* case to be distinguishable from the within case. In *Groves*, the bus

driver was assisting the disabled student in disembarking from the bus. Thus, according to *Groves*, the affirmative act of stopping the bus and assisting the student in disembarking from the bus constituted operation of the motor vehicle for purposes of the tort immunity exception. The *Groves* court relied on California and Michigan case law for the proposition that stopping a school bus for the purposes of discharging passengers along with the bus drivers' duties attendant to the stopping of the bus unquestionably constitutes operation of a motor vehicle. *Id.* at 569 – 570.

{¶24} The case sub judice is, however, distinguishable from the *Groves* case. In the within case, the act or omission in question involves supervision of the children while passengers on the bus. This act is distinctly different from the act of assisting students in getting on and off a bus. While supervision of students who are passengers on a bus may very well be one of the bus driver's responsibilities, it is a responsibility that is separate and distinct from that of the operation of the motor vehicle. We therefore hold that the alleged failure of the bus driver to supervise the students herein does not fall within the plain and ordinary meaning of "operation of a motor vehicle" for purposes of the tort immunity exception.

{¶25} Our holding is supported by the policies underlying R.C. 2744. As set forth by the Ohio Supreme Court in *Wilson v. Stark County Department of Human Services*, 70 Ohio St.3d 450, 639 N.E.2d 105, 1994-Ohio-394, "The policies underlying R.C. Chapter 2744 support this interpretation. R.C. Chapter 2744 was the General Assembly's response to the judicial abrogation of

common-law sovereign immunity. *Franks v. Lopez* (1994), 69 Ohio St.3d 345, 347, 632 N.E.2d 502, 504. The manifest statutory purpose of R.C. Chapter 2744 is the preservation of the fiscal integrity of political subdivisions. *Menefee v. Queen City Metro* (1990), 49 Ohio St.3d 27, 550 N.E.2d 181." *Wilson* at 453.

{¶26} Because we find that none of the exceptions to immunity set forth in R.C. 2944.02(B) apply, we need not address whether any of the defenses contained in R.C. 2744.03 applies.

{¶27} We note that appellees raised the issue of the constitutionality of the sovereign immunity statute in their brief in opposition to appellant's motion for summary judgment.<sup>3</sup> In addition, the appellees raised the constitutionality issue in their appellate brief. This argument is not well taken, as the appellees failed to comply with the procedures set forth by R.C. 2721.12 necessary to attack the constitutionality of a statute. First, appellees did not assert that R.C. 2744 was unconstitutional in their complaint or their amended complaint as required by the statute. Second, appellees did not serve the attorney general with a copy of the complaint as required by the statute. Even if these procedural requirements had been met, the appellees' constitutional argument still must fail. As set forth by this Court in *Eischen v. Stark County Board of Commissioners*, Stark App. No. 2002CA00090, 2002-Ohio-7005, appeal not allowed by 98 Ohio St.3d 1539, 2003-Ohio-1946, 786 N.E.2d 901: "[d]espite the provocative language used by Justice Douglas in *Butler v. Jordan*, 92 Ohio St.3d 354], the law of Ohio remains that R.C. Chapter 2744 is constitutional. The Supreme Court of Ohio addressed this issue in *Fabrey v. McDonald Police Department*, 70

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<sup>3</sup> The trial court did not address the constitutionality issue in its March 31, 2006, judgment entry.

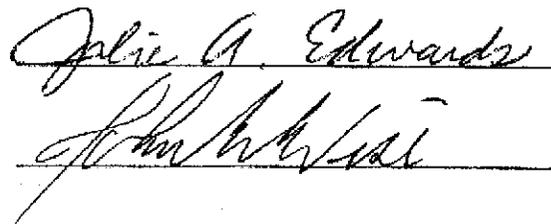
Ohio St.3d 351, 639 N.E.2d 31, 1994-Ohio-368, and *Fahnbulleh v. Straham*, 73 Ohio St.3d 666, 653 N.E.2d 1186, 1995-Ohio-295." *Eischen* ¶ 20.

{¶28} The appellant's sole assignment of error is sustained, and the judgment of the trial court is hereby reversed.

By: Edwards, J.

Wise, P.J. concur

Hoffman, J. dissents



Handwritten signatures of Julie A. Edwards and P.J. Wise, each on a horizontal line.

JUDGES

JAE/0122

*Hoffman, J., dissenting*

{¶29} I respectfully dissent. Because the exceptions found in R.C. 2744.02(B) are remedial in nature; therefore, to be liberally construed, I would find the alleged failure of the bus driver to supervise student passengers with special needs does fall within the plain and ordinary meaning of "operation of a motor vehicle" for purpose of the tort immunity exception. Accordingly, I would affirm the judgment of the trial court.

  
HON. WILLIAM B. HOFFMAN

STATE OF OHIO:  
SS:  
STARK COUNTY:

IN THE COURT OF COMMON PLEAS  
STARK COUNTY, OHIO

JANE DOE, ET AL

) CASE NO. 2005-CV-03180

Plaintiff(s) ) JUDGE LEE SINCLAIR

-VS-

MARLINGTON LOCAL SCHOOL, ET AL

) JUDGMENT ENTRY

Defendant(s) )

**FILED**

**MAR 31 2006**

PHIL G. GIAVASIS  
STARK COUNTY OHIO  
CLERK OF COURTS

The Court has reviewed the defendants' motion for summary judgment and the response of the plaintiff. The Court finds that the motion for summary judgment should be denied. This matter shall remain set for trial.



JUDGE LEE SINCLAIR

COPY TO: JOHN HILL, ESQ./JOY OLDFIELD, ESQ.  
DAVID SMITH, ESQ./JOS. BOATWRIGHT, ESQ.  
MARY JO SHANNON SLICK, ESQ.  
RODNEY BACA, ESQ.

**C**United States Code Annotated Currentness

Constitution of the United States

▣ Annotated▣ Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property (Refs & Amos)**→Amendment V. Grand Jury Indictment for Capital Crimes; Double Jeopardy; Self-Incrimination; Due Process of Law; Just Compensation for Property**

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

<This amendment is further displayed in five separate documents according to subject matter,>

<see USCA Const Amend. V-Capital Crimes>

<see USCA Const Amend. V-Double Jeopardy>

<see USCA Const Amend. V-Self Incrimination>

<see USCA Const Amend. V-Due Process>

<see USCA Const Amend. V-Just Compensation>

Current through P.L. 110-195 (excluding P.L. 110-181) approved 3-12-08

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**C**

United States Code Annotated Currentness

Constitution of the United States

Annotations

Amendment VII. Civil Trials

→ **Amendment VII. Civil Trials**

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law.

Current through P.L. 110-195 (excluding P.L. 110-181) approved 3-12-08

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**C**

United States Code Annotated Currentness  
 Constitution of the United States

Annotations

Amendment XIV. Citizenship; Privileges and Immunities; Due Process; Equal Protection; Apportionment of Representation; Disqualification of Officers; Public Debt; Enforcement (Refs & Annos)

**→ AMENDMENT XIV. CITIZENSHIP; PRIVILEGES AND IMMUNITIES; DUE PROCESS; EQUAL PROTECTION; APPOINTMENT OF REPRESENTATION; DISQUALIFICATION OF OFFICERS; PUBLIC DEBT; ENFORCEMENT**

**Section 1.** All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

**Section 2.** Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

**Section 3.** No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

**Section 4.** The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

**Section 5.** The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

<Section 1 of this amendment is further displayed in separate documents according to subject matter,>

<see USCA Const Amend. XIV, § 1-Citizens>

<see USCA Const Amend. XIV, § 1-Privileges>

<see USCA Const Amend. XIV, § 1-Due Proc>

<see USCA Const Amend. XIV, § 1-Equal Protect>

<sections 2 to 5 of this amendment are displayed as separate documents,>

<see USCA Const Amend. XIV, § 2,>

<see USCA Const Amend. XIV, § 3,>

<see USCA Const Amend. XIV, § 4,>

<see USCA Const Amend. XIV, § 5,>

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OH Const. Art. I, § 1

**C**BALDWIN'S OHIO REVISED CODE ANNOTATED  
CONSTITUTION OF THE STATE OF OHIO  
ARTICLE I. BILL OF RIGHTS

**→O Const I Sec. 1 Inalienable rights**

All men are, by nature, free and independent, and have certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

Current through 2008 File 51 of the 127th GA (2007-2008),  
apv. by 3/11/08, and filed with the Secretary of State by 3/11/08.

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**OH Const. Art. I, § 2**

**CBALDWIN'S OHIO REVISED CODE ANNOTATED  
CONSTITUTION OF THE STATE OF OHIO  
ARTICLE I. BILL OF RIGHTS**

**→ O Const I Sec. 2 Equal protection and benefit**

All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.

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**OH Const. Art. I, § 5**

**CBALDWIN'S OHIO REVISED CODE ANNOTATED  
CONSTITUTION OF THE STATE OF OHIO  
ARTICLE I. BILL OF RIGHTS**

**→ O Const I Sec. 5 Right of trial by jury**

The right of trial by jury shall be inviolate, except that, in civil cases, laws may be passed to authorize the rendering of a verdict by the concurrence of not less than three-fourths of the jury.

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apv. by 3/11/08, and filed with the Secretary of State by 3/11/08.

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**OH Const. Art. I, § 16**

**CBALDWIN'S OHIO REVISED CODE ANNOTATED  
CONSTITUTION OF THE STATE OF OHIO  
ARTICLE I. BILL OF RIGHTS**

**→ O Const I Sec. 16 Redress for injury; due process**

All courts shall be open, and every person, for an injury done him in his land, goods, person, or reputation, shall have remedy by due course of law, and shall have justice administered without denial or delay. Suits may be brought against the state, in such courts and in such manner, as may be provided by law.

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## R.C. § 2721.12

▷ BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXVII. COURTS--GENERAL PROVISIONS--SPECIAL REMEDIES  
CHAPTER 2721. DECLARATORY JUDGMENTS  
PRACTICE AND PROCEDURE

## → 2721.12 Declaratory relief; parties

(A) Subject to division (B) of this section, when declaratory relief is sought under this chapter in an action or proceeding, all persons who have or claim any interest that would be affected by the declaration shall be made parties to the action or proceeding. Except as provided in division (B) of this section, a declaration shall not prejudice the rights of persons who are not made parties to the action or proceeding. In any action or proceeding that involves the validity of a municipal ordinance or franchise, the municipal corporation shall be made a party and shall be heard, and, if any statute or the ordinance or franchise is alleged to be unconstitutional, the attorney general also shall be served with a copy of the complaint in the action or proceeding and shall be heard. In any action or proceeding that involves the validity of a township resolution, the township shall be made a party and shall be heard.

(B) A declaratory judgment or decree that a court of record enters in an action or proceeding under this chapter between an insurer and a holder of a policy of liability insurance issued by the insurer and that resolves an issue as to whether the policy's coverage provisions extend to an injury, death, or loss to person or property that an insured under the policy allegedly tortiously caused shall be deemed to have the binding legal effect described in division (C)(2) of section 3929.06 of the Revised Code and to also have binding legal effect upon any person who seeks coverage as an assignee of the insured's rights under the policy in relation to the injury, death, or loss involved. This division applies whether or not an assignee is made a party to the action or proceeding for declaratory relief and notwithstanding any contrary common law principles of res judicata or adjunct principles of collateral estoppel.

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apv. by 3/11/08, and filed with the Secretary of State by 3/11/08.

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## R.C. § 2744.01

▷ BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXVII. COURTS--GENERAL PROVISIONS--SPECIAL REMEDIES  
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY

## → 2744.01 Definitions

As used in this chapter:

(A) "Emergency call" means a call to duty, including, but not limited to, communications from citizens, police dispatches, and personal observations by peace officers of inherently dangerous situations that demand an immediate response on the part of a peace officer.

(B) "Employee" means an officer, agent, employee, or servant, whether or not compensated or full-time or part-time, who is authorized to act and is acting within the scope of the officer's, agent's, employee's, or servant's employment for a political subdivision. "Employee" does not include an independent contractor and does not include any individual engaged by a school district pursuant to section 3319.301 of the Revised Code. "Employee" includes any elected or appointed official of a political subdivision. "Employee" also includes a person who has been convicted of or pleaded guilty to a criminal offense and who has been sentenced to perform community service work in a political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, and a child who is found to be a delinquent child and who is ordered by a juvenile court pursuant to section 2152.19 or 2152.20 of the Revised Code to perform community service or community work in a political subdivision.

(C)(1) "Governmental function" means a function of a political subdivision that is specified in division (C)(2) of this section or that satisfies any of the following:

(a) A function that is imposed upon the state as an obligation of sovereignty and that is performed by a political subdivision voluntarily or pursuant to legislative requirement;

(b) A function that is for the common good of all citizens of the state;

(c) A function that promotes or preserves the public peace, health, safety, or welfare; that involves activities that are not engaged in or not customarily engaged in by nongovernmental persons; and that is not specified in division (G)(2) of this section as a proprietary function.

(2) A "governmental function" includes, but is not limited to, the following:

(a) The provision or nonprovision of police, fire, emergency medical, ambulance, and rescue services or protection;

(b) The power to preserve the peace; to prevent and suppress riots, disturbances, and disorderly assemblages; to prevent, mitigate, and clean up releases of oil and hazardous and extremely hazardous substances as defined in section 3750.01 of the Revised Code; and to protect persons and property;

(c) The provision of a system of public education;

(d) The provision of a free public library system;

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- (e) The regulation of the use of, and the maintenance and repair of, roads, highways, streets, avenues, alleys, sidewalks, bridges, aqueducts, viaducts, and public grounds;
- (f) Judicial, quasi-judicial, prosecutorial, legislative, and quasi-legislative functions;
- (g) The construction, reconstruction, repair, renovation, maintenance, and operation of buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses;
- (h) The design, construction, reconstruction, renovation, repair, maintenance, and operation of jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code;
- (i) The enforcement or nonperformance of any law;
- (j) The regulation of traffic, and the erection or nonerection of traffic signs, signals, or control devices;
- (k) The collection and disposal of solid wastes, as defined in section 3734.01 of the Revised Code, including, but not limited to, the operation of solid waste disposal facilities, as "facilities" is defined in that section, and the collection and management of hazardous waste generated by households. As used in division (C)(2)(k) of this section, "hazardous waste generated by households" means solid waste originally generated by individual households that is listed specifically as hazardous waste in or exhibits one or more characteristics of hazardous waste as defined by rules adopted under section 3734.12 of the Revised Code, but that is excluded from regulation as a hazardous waste by those rules.
- (l) The provision or nonprovision, planning or design, construction, or reconstruction of a public improvement, including, but not limited to, a sewer system;
- (m) The operation of a job and family services department or agency, including, but not limited to, the provision of assistance to aged and infirm persons and to persons who are indigent;
- (n) The operation of a health board, department, or agency, including, but not limited to, any statutorily required or permissive program for the provision of immunizations or other inoculations to all or some members of the public, provided that a "governmental function" does not include the supply, manufacture, distribution, or development of any drug or vaccine employed in any such immunization or inoculation program by any supplier, manufacturer, distributor, or developer of the drug or vaccine;
- (o) The operation of mental health facilities, mental retardation or developmental disabilities facilities, alcohol treatment and control centers, and children's homes or agencies;
- (p) The provision or nonprovision of inspection services of all types, including, but not limited to, inspections in connection with building, zoning, sanitation, fire, plumbing, and electrical codes, and the taking of actions in connection with those types of codes, including, but not limited to, the approval of plans for the construction of buildings or structures and the issuance or revocation of building permits or stop work orders in connection with buildings or structures;
- (q) Urban renewal projects and the elimination of slum conditions;
- (r) Flood control measures;

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(s) The design, construction, reconstruction, renovation, operation, care, repair, and maintenance of a township cemetery;

(t) The issuance of revenue obligations under section 140.06 of the Revised Code;

(u) The design, construction, reconstruction, renovation, repair, maintenance, and operation of any school athletic facility, school auditorium, or gymnasium or any recreational area or facility, including, but not limited to, any of the following:

(i) A park, playground, or playfield;

(ii) An indoor recreational facility;

(iii) A zoo or zoological park;

(iv) A bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility;

(v) A golf course;

(vi) A bicycle motocross facility or other type of recreational area or facility in which bicycling, skating, skate boarding, or scooter riding is engaged;

(vii) A rope course or climbing walls;

(viii) An all-purpose vehicle facility in which all-purpose vehicles, as defined in section 4519.01 of the Revised Code, are contained, maintained, or operated for recreational activities.

(v) The provision of public defender services by a county or joint county public defender's office pursuant to Chapter 120. of the Revised Code;

(w)(i) At any time before regulations prescribed pursuant to 49 U.S.C.A 20153 become effective, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in a zone within a municipal corporation in which, by ordinance, the legislative authority of the municipal corporation regulates the sounding of locomotive horns, whistles, or bells;

(ii) On and after the effective date of regulations prescribed pursuant to 49 U.S.C.A. 20153, the designation, establishment, design, construction, implementation, operation, repair, or maintenance of a public road rail crossing in such a zone or of a supplementary safety measure, as defined in 49 U.S.C.A 20153, at or for a public road rail crossing, if and to the extent that the public road rail crossing is excepted, pursuant to subsection (c) of that section, from the requirement of the regulations prescribed under subsection (b) of that section.

(x) A function that the general assembly mandates a political subdivision to perform.

(D) "Law" means any provision of the constitution, statutes, or rules of the United States or of this state; provisions of charters, ordinances, resolutions, and rules of political subdivisions; and written policies adopted by boards of education. When used in connection with the "common law," this definition does not apply.

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(E) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(F) "Political subdivision" or "subdivision" means a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. "Political subdivision" includes, but is not limited to, a county hospital commission appointed under section 339.14 of the Revised Code, board of hospital commissioners appointed for a municipal hospital under section 749.04 of the Revised Code, board of hospital trustees appointed for a municipal hospital under section 749.22 of the Revised Code, regional planning commission created pursuant to section 713.21 of the Revised Code, county planning commission created pursuant to section 713.22 of the Revised Code, joint planning council created pursuant to section 713.231 of the Revised Code, interstate regional planning commission created pursuant to section 713.30 of the Revised Code, port authority created pursuant to section 4582.02 or 4582.26 of the Revised Code or in existence on December 16, 1964, regional council established by political subdivisions pursuant to Chapter 167. of the Revised Code, emergency planning district and joint emergency planning district designated under section 3750.03 of the Revised Code, joint emergency medical services district created pursuant to section 307.052 of the Revised Code, fire and ambulance district created pursuant to section 505.375 of the Revised Code, joint interstate emergency planning district established by an agreement entered into under that section, county solid waste management district and joint solid waste management district established under section 343.01 or 343.012 of the Revised Code, community school established under Chapter 3314. of the Revised Code, the county or counties served by a community-based correctional facility and program or district community-based correctional facility and program established and operated under sections 2301.51 to 2301. 58 of the Revised Code, a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated, and the facility governing board of a community-based correctional facility and program or district community-based correctional facility and program that is so established and operated.

(G)(1) "Proprietary function" means a function of a political subdivision that is specified in division (G)(2) of this section or that satisfies both of the following:

(a) The function is not one described in division (C)(1)(a) or (b) of this section and is not one specified in division (C)(2) of this section;

(b) The function is one that promotes or preserves the public peace, health, safety, or welfare and that involves activities that are customarily engaged in by nongovernmental persons.

(2) A "proprietary function" includes, but is not limited to, the following:

(a) The operation of a hospital by one or more political subdivisions;

(b) The design, construction, reconstruction, renovation, repair, maintenance, and operation of a public cemetery other than a township cemetery;

(c) The establishment, maintenance, and operation of a utility, including, but not limited to, a light, gas, power, or heat plant, a railroad, a busline or other transit company, an airport, and a municipal corporation water supply system;

(d) The maintenance, destruction, operation, and upkeep of a sewer system;

(e) The operation and control of a public stadium, auditorium, civic or social center, exhibition hall, arts and crafts center, band or orchestra, or off-street parking facility.

(H) "Public roads" means public roads, highways, streets, avenues, alleys, and bridges within a political subdivision.

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"Public roads" does not include berms, shoulders, rights-of-way, or traffic control devices unless the traffic control devices are mandated by the Ohio manual of uniform traffic control devices.

(1) "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, colleges and universities, institutions, and other instrumentalities of the state of Ohio. "State" does not include political subdivisions.

[FN1] See Notes of Decisions, State ex rel. Ohio Academy of Trial Lawyers v. Sheward (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

**CONSTITUTIONALITY**

"Ohio Revised Code § 2744" was held on 12-16-2003 to violate the right to trial by jury, under Ohio Constitution Article 1, § 5, and the right to a remedy, under Ohio Constitution Article 1, § 16. The ruling was by the U.S. District Court for the Southern District of Ohio, deciding as it believes the Supreme Court of Ohio would have, in the case of Kammeyer v City of Sharonville, 311 F.Supp.2d 653 (SD Ohio 2003). The Court also observed that the state is sovereign but political subdivisions are not.

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R.C. § 2744.02

▶ BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXVII. COURTS--GENERAL PROVISIONS--SPECIAL REMEDIES  
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY  
→ 2744.02 Political subdivision not liable for injury, death, or loss; exceptions

(A)(1) For the purposes of this chapter, the functions of political subdivisions are hereby classified as governmental functions and proprietary functions. Except as provided in division (B) of this section, 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.

(2) The defenses and immunities conferred under this chapter apply in connection with all governmental and proprietary functions performed by a political subdivision and its employees, whether performed on behalf of that political subdivision or on behalf of another political subdivision.

(3) Subject to statutory limitations upon their monetary jurisdiction, the courts of common pleas, the municipal courts, and the county courts have jurisdiction to hear and determine civil actions governed by or brought pursuant to this chapter.

(B) Subject to sections 2744.03 and 2744.05 of the Revised Code, a political subdivision is liable in damages in a civil action for injury, death, or loss to person or property allegedly caused by an act or omission of the political subdivision or of any of its employees in connection with a governmental or proprietary function, as follows:

(1) Except as otherwise provided in this division, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent operation of any motor vehicle by their employees when the employees are engaged within the scope of their employment and authority. The following are full defenses to that liability:

(a) A member of a municipal corporation police department or any other police agency was operating a motor vehicle while responding to an emergency call and the operation of the vehicle did not constitute willful or wanton misconduct;

(b) A member of a municipal corporation fire department or any other firefighting agency was operating a motor vehicle while engaged in duty at a fire, proceeding toward a place where a fire is in progress or is believed to be in progress, or answering any other emergency alarm and the operation of the vehicle did not constitute willful or wanton misconduct;

(c) A member of an emergency medical service owned or operated by a political subdivision was operating a motor vehicle while responding to or completing a call for emergency medical care or treatment, the member was holding a valid commercial driver's license issued pursuant to Chapter 4506. or a driver's license issued pursuant to Chapter 4507. of the Revised Code, the operation of the vehicle did not constitute willful or wanton misconduct, and the operation complies with the precautions of section 4511.03 of the Revised Code.

(2) Except as otherwise provided in sections 3314.07 and 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by the negligent performance of acts by their employees with respect to proprietary functions of the political subdivisions.

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(3) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property caused by their negligent failure to keep public roads in repair and other negligent failure to remove obstructions from public roads, except that it is a full defense to that liability, when a bridge within a municipal corporation is involved, that the municipal corporation does not have the responsibility for maintaining or inspecting the bridge.

(4) Except as otherwise provided in section 3746.24 of the Revised Code, political subdivisions are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function, including, but not limited to, office buildings and courthouses, but not including jails, places of juvenile detention, workhouses, or any other detention facility, as defined in section 2921.01 of the Revised Code.

(5) In addition to the circumstances described in divisions (B)(1) to (4) of this section, a political subdivision is liable for injury, death, or loss to person or property when civil liability is expressly imposed upon the political subdivision by a section of the Revised Code, including, but not limited to, sections 2743.02 and 5591.37 of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon a political subdivision, because that section provides for a criminal penalty, because of a general authorization in that section that a political subdivision may sue and be sued, or because that section uses the term "shall" in a provision pertaining to a political subdivision.

(C) An order that denies a political subdivision or an employee of a political subdivision the benefit of an alleged immunity from liability as provided in this chapter or any other provision of the law is a final order.

[FN1] See Notes of Decisions, State ex rel. Ohio Academy of Trial Lawyers v. Sheward (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

#### CONSTITUTIONALITY

"Ohio Revised Code § 2744" was held on 12-16-2003 to violate the right to trial by jury, under Ohio Constitution Article 1, § 5, and the right to a remedy, under Ohio Constitution Article 1, § 16. The ruling was by the U.S. District Court for the Southern District of Ohio, deciding as it believes the Supreme Court of Ohio would have, in the case of Kammeyer v City of Sharonville, 311 F.Supp.2d 653 (SD Ohio 2003). The Court also observed that the state is sovereign but political subdivisions are not.

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▷ BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXVII. COURTS--GENERAL PROVISIONS--SPECIAL REMEDIES  
CHAPTER 2744. POLITICAL SUBDIVISION TORT LIABILITY  
→ 2744.03 Defenses and immunities

(A) In a civil action brought against a political subdivision or an employee of a political subdivision 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, the following defenses or immunities may be asserted to establish nonliability:

(1) 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.

(2) The political subdivision is immune from liability if the conduct of the employee involved, other than negligent conduct, that gave rise to the claim of liability was required by law or authorized by law, or if the conduct of the employee involved that gave rise to the claim of liability was necessary or essential to the exercise of powers of the political subdivision or employee.

(3) 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 discretion of the employee with respect to policy-making, planning, or enforcement powers by virtue of the duties and responsibilities of the office or position of the employee.

(4) 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 and who, at the time of the injury or death, was serving any portion of the person's sentence by performing community service work for or in the political subdivision whether pursuant to section 2951.02 of the Revised Code or otherwise, or resulted in injury or death to a child who was found to be a delinquent child and who, at the time of the injury or death, was performing community service or community work for or in a political subdivision in accordance with the order of a juvenile court entered pursuant to section 2152.19 or 2152.20 of the Revised Code, and if, at the time of the person's or child's injury or death, the person or child was covered for purposes of Chapter 4123. of the Revised Code in connection with the community service or community work for or in the political subdivision.

(5) 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.

(6) In addition to any immunity or defense referred to in division (A)(7) of this section and in circumstances not covered by that division or sections 3314.07 and 3746.24 of the Revised Code, the employee is immune from liability unless one of the following applies:

(a) The employee's acts or omissions were manifestly outside the scope of the employee's employment or official responsibilities;

(b) The employee's acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner;

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(c) Civil liability is expressly imposed upon the employee by a section of the Revised Code. Civil liability shall not be construed to exist under another section of the Revised Code merely because that section imposes a responsibility or mandatory duty upon an employee, because that section provides for a criminal penalty, because of a general authorization in that section that an employee may sue and be sued, or because the section uses the term "shall" in a provision pertaining to an employee.

(7) The political subdivision, and an employee who is 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 a court of this state is entitled to any defense or immunity available at common law or established by the Revised Code.

(B) Any immunity or defense conferred upon, or referred to in connection with, an employee by division (A)(6) or (7) of this section does not affect or limit any liability of a political subdivision for an act or omission of the employee as provided in section 2744.02 of the Revised Code.

[FN1] See Notes of Decisions, State ex rel. Ohio Academy of Trial Lawyers v. Sheward (Ohio 1999), 86 Ohio St.3d 451, 715 N.E.2d 1062.

#### CONSTITUTIONALITY

"Ohio Revised Code § 2744" was held on 12-16-2003 to violate the right to trial by jury, under Ohio Constitution Article 1, § 5, and the right to a remedy, under Ohio Constitution Article 1, § 16. The ruling was by the U.S. District Court for the Southern District of Ohio, deciding as it believes the Supreme Court of Ohio would have, in the case of Kammeyer v City of Sharonville, 311 F.Supp.2d 653 (SD Ohio 2003). The Court also observed that the state is sovereign but political subdivisions are not.

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## R.C. § 3319.41

BAIRDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XXXIII. EDUCATION--LIBRARIES  
CHAPTER 3319. SCHOOLS--SUPERINTENDENT; TEACHERS; EMPLOYEES  
CORPORAL PUNISHMENT

→ 3319.41 Corporal punishment; local discipline task forces; reasonable force and restraint

(A)(1) Beginning September 1, 1994, and except as provided in division (C) of this section, no person employed or engaged as a teacher, principal, administrator, nonlicensed school employee, or bus driver in a public school may inflict or cause to be inflicted corporal punishment as a means of discipline upon a pupil attending such school, unless the board of education of the school district in which the school is located adopts a resolution no later than September 1, 1994, to permit corporal punishment as a means of discipline and does not adopt a resolution prohibiting corporal punishment pursuant to division (B) of this section. No board shall adopt a resolution permitting corporal punishment before receiving and studying the report of the local discipline task force appointed under division (A)(2) of this section.

(2) The board of education of each city, local, exempted village, and joint vocational school district that has not adopted a rule prohibiting corporal punishment under section 3313.20 of the Revised Code prior to the effective date of this amendment shall appoint, and any board that has adopted a rule under that section prior to the effective date of this amendment may appoint, no later than April 1, 1994, a local discipline task force to conduct a study of effective discipline measures that are appropriate for that school district. Members of the task force shall include teachers, administrators, nonlicensed school employees, school psychologists, members of the medical profession, pediatricians when available, and representatives of parents' organizations.

The task force shall hold meetings regularly. All meetings of the task force shall be open to the public and at least one of the meetings shall be for the purpose of inviting public participation. The board of education shall provide public notice of any public meeting of the task force in newspapers or other periodicals of general circulation in the school district. The task force shall report its findings and recommendations in writing to the board of education no later than July 15, 1994. The task force's written report must be available for inspection by the public at the board's offices for at least five years after being submitted to the board.

(B)(1) At any time after September 1, 1996, the board of education of any city, local, exempted village, or joint vocational school district in which corporal punishment is permitted may adopt a resolution to prohibit corporal punishment. After the adoption of a resolution prohibiting corporal punishment pursuant to division (B)(1) of this section, the board of education of any city, local, exempted village, or joint vocational school district may adopt a resolution permitting corporal punishment after complying with division (B)(3) of this section.

(2) At any time after September 1, 1998, the board of education of any city, local, exempted village, or joint vocational school district that did not adopt a resolution permitting corporal punishment as a means of discipline pursuant to division (A)(1) of this section may adopt a resolution permitting corporal punishment after complying with division (B)(3) of this section.

(3)(a) The board of education of each city, local, exempted village, and joint vocational school district that intends to adopt a resolution permitting corporal punishment as a means of discipline pursuant to division (B)(1) or (2) of this section may adopt that resolution permitting corporal punishment as a means of discipline only after receiving and studying the report of the secondary local discipline task force appointed under division (B)(3)(b) of this section.

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(b) Any board of education described in division (B)(1) or (2) of this section that intends to adopt a resolution permitting corporal punishment as a means of discipline shall appoint a secondary local discipline task force to conduct a study of effective discipline measures that are appropriate for that school district. Membership on the secondary local discipline task force shall consist of the same types of persons that are required to be included as members of the local discipline task force pursuant to division (A)(2) of this section. The secondary local discipline task force shall follow the same procedures with respect to holding meetings, the provision of public notice, and the production and inspection of a written report of findings and recommendations that are applicable to the local discipline task force pursuant to division (A)(2) of this section, except that the secondary local discipline task force is not required to present its written report to the board of education on a date that is no later than July 15, 1994.

(C) The prohibition of corporal punishment by division (A) of this section or by a resolution adopted under division (B) of this section does not prohibit the use of reasonable force or restraint in accordance with division (G) of this section.

(D) If the board of education of any city, local, exempted village, or joint vocational school district does not prohibit corporal punishment on the effective date of this amendment but at any time after that date corporal punishment will be prohibited in the district pursuant to division (A)(1) or (B) of this section, the board shall do both of the following prior to the date on which the prohibition takes effect:

(1) Adopt a disciplinary policy for the district that includes alternative disciplinary measures;

(2) Consider what in-service training, if any, school district employees might need as part of implementing the policy adopted under division (D)(1) of this section.

(E) A person employed or otherwise engaged as a teacher, principal, or administrator by a board of education permitting corporal punishment pursuant to division (A)(1) of this section or by a nonpublic school, except as otherwise provided by the governing authority of the nonpublic school, may inflict or cause to be inflicted reasonable corporal punishment upon a pupil attending the school to which the person is assigned whenever such punishment is reasonably necessary in order to preserve discipline while the student is subject to school authority.

(F) A board of education of a school district that permits the use of corporal punishment as a means of discipline pursuant to a resolution adopted by the board pursuant to division (A)(1) of this section shall permit as part of its discipline policy the parents, guardian, or custodian of a child that is attending any school within the school district to request that corporal punishment not be used as a means of discipline on that child; upon the receipt of a request of that nature, shall ensure that an alternative disciplinary measure is applied with respect to that child; and shall include a procedure for the exercise of that option in the resolution adopted pursuant to division (A)(1) of this section.

(G) Persons employed or engaged as teachers, principals, or administrators in a school, whether public or private, and nonlicensed school employees and school bus drivers may, within the scope of their employment, use and apply such amount of force and restraint as is reasonable and necessary to quell a disturbance threatening physical injury to others, to obtain possession of weapons or other dangerous objects upon the person or within the control of the pupil, for the purpose of self-defense, or for the protection of persons or property.

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## R.C. § 4511.19

► BALDWIN'S OHIO REVISED CODE ANNOTATED  
TITLE XLV. MOTOR VEHICLES--AERONAUTICS--WATERCRAFT  
CHAPTER 4511. TRAFFIC LAWS--OPERATION OF MOTOR VEHICLES  
OPERATION OF MOTOR VEHICLE WHILE INTOXICATED

→ 4511.19 Driving while under the influence of alcohol or drugs; tests; presumptions; penalties; immunity for those withdrawing blood

(A)(1) No person shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

- (a) The person is under the influence of alcohol, a drug of abuse, or a combination of them.
- (b) The person has a concentration of eight-hundredths of one per cent or more but less than seventeen-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.
- (c) The person has a concentration of ninety-six-thousandths of one per cent or more but less than two hundred four-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.
- (d) The person has a concentration of eight-hundredths of one gram or more but less than seventeen-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.
- (e) The person has a concentration of eleven-hundredths of one gram or more but less than two hundred thirty-eight-thousandths of one gram by weight of alcohol per one hundred milliliters of the person's urine.
- (f) The person has a concentration of seventeen-hundredths of one per cent or more by weight per unit volume of alcohol in the person's whole blood.
- (g) The person has a concentration of two hundred four-thousandths of one per cent or more by weight per unit volume of alcohol in the person's blood serum or plasma.
- (h) The person has a concentration of seventeen-hundredths of one gram or more by weight of alcohol per two hundred ten liters of the person's breath.
- (i) The person has a concentration of two hundred thirty-eight-thousandths of one gram or more by weight of alcohol per one hundred milliliters of the person's urine.
- (j) Except as provided in division (K) of this section, the person has a concentration of any of the following controlled substances or metabolites of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds any of the following:
  - (i) The person has a concentration of amphetamine in the person's urine of at least five hundred nanograms of amphetamine per milliliter of the person's urine or has a concentration of amphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of amphetamine per milliliter of the person's whole blood or blood serum or plasma.

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- (ii) The person has a concentration of cocaine in the person's urine of at least one hundred fifty nanograms of cocaine per milliliter of the person's urine or has a concentration of cocaine in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine per milliliter of the person's whole blood or blood serum or plasma.
- (iii) The person has a concentration of cocaine metabolite in the person's urine of at least one hundred fifty nanograms of cocaine metabolite per milliliter of the person's urine or has a concentration of cocaine metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of cocaine metabolite per milliliter of the person's whole blood or blood serum or plasma.
- (iv) The person has a concentration of heroin in the person's urine of at least two thousand nanograms of heroin per milliliter of the person's urine or has a concentration of heroin in the person's whole blood or blood serum or plasma of at least fifty nanograms of heroin per milliliter of the person's whole blood or blood serum or plasma.
- (v) The person has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's urine of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's urine or has a concentration of heroin metabolite (6-monoacetyl morphine) in the person's whole blood or blood serum or plasma of at least ten nanograms of heroin metabolite (6-monoacetyl morphine) per milliliter of the person's whole blood or blood serum or plasma.
- (vi) The person has a concentration of L.S.D. in the person's urine of at least twenty-five nanograms of L.S.D. per milliliter of the person's urine or a concentration of L.S.D. in the person's whole blood or blood serum or plasma of at least ten nanograms of L.S.D. per milliliter of the person's whole blood or blood serum or plasma.
- (vii) The person has a concentration of marihuana in the person's urine of at least ten nanograms of marihuana per milliliter of the person's urine or has a concentration of marihuana in the person's whole blood or blood serum or plasma of at least two nanograms of marihuana per milliliter of the person's whole blood or blood serum or plasma.
- (viii) Either of the following applies:
- (I) The person is under the influence of alcohol, a drug of abuse, or a combination of them, and, as measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least fifteen nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least five nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.
- (II) As measured by gas chromatography mass spectrometry, the person has a concentration of marihuana metabolite in the person's urine of at least thirty-five nanograms of marihuana metabolite per milliliter of the person's urine or has a concentration of marihuana metabolite in the person's whole blood or blood serum or plasma of at least fifty nanograms of marihuana metabolite per milliliter of the person's whole blood or blood serum or plasma.
- (ix) The person has a concentration of methamphetamine in the person's urine of at least five hundred nanograms of methamphetamine per milliliter of the person's urine or has a concentration of methamphetamine in the person's whole blood or blood serum or plasma of at least one hundred nanograms of methamphetamine per milliliter of the person's whole blood or blood serum or plasma.
- (x) The person has a concentration of phencyclidine in the person's urine of at least twenty-five nanograms of phencyclidine per milliliter of the person's urine or has a concentration of phencyclidine in the person's whole blood or blood serum or plasma of at least ten nanograms of phencyclidine per milliliter of the person's whole blood or

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blood serum or plasma.

(2) No person who, within twenty years of the conduct described in division (A)(2)(a) of this section, previously has been convicted of or pleaded guilty to a violation of this division, division (A)(1) or (B) of this section, or a municipal OVI offense shall do both of the following:

(a) Operate any vehicle, streetcar, or trackless trolley within this state while under the influence of alcohol, a drug of abuse, or a combination of them;

(b) Subsequent to being arrested for operating the vehicle, streetcar, or trackless trolley as described in division (A)(2)(a) of this section, being asked by a law enforcement officer to submit to a chemical test or tests under section 4511.191 of the Revised Code, and being advised by the officer in accordance with section 4511.192 of the Revised Code of the consequences of the person's refusal or submission to the test or tests, refuse to submit to the test or tests.

(B) No person under twenty-one years of age shall operate any vehicle, streetcar, or trackless trolley within this state, if, at the time of the operation, any of the following apply:

(1) The person has a concentration of at least two-hundredths of one per cent but less than eight-hundredths of one per cent by weight per unit volume of alcohol in the person's whole blood.

(2) The person has a concentration of at least three-hundredths of one per cent but less than ninety-six-thousandths of one per cent by weight per unit volume of alcohol in the person's blood serum or plasma.

(3) The person has a concentration of at least two-hundredths of one gram but less than eight-hundredths of one gram by weight of alcohol per two hundred ten liters of the person's breath.

(4) The person has a concentration of at least twenty-eight one-thousandths of one gram but less than eleven-hundredths of one gram by weight of alcohol per one hundred milliliters of the person's urine.

(C) In any proceeding arising out of one incident, a person may be charged with a violation of division (A)(1)(a) or (A)(2) and a violation of division (B)(1), (2), or (3) of this section, but the person may not be convicted of more than one violation of these divisions.

(D)(1)(a) In any criminal prosecution or juvenile court proceeding for a violation of division (A)(1)(a) of this section or for an equivalent offense, the result of any test of any blood or urine withdrawn and analyzed at any health care provider, as defined in section 2317.02 of the Revised Code, may be admitted with expert testimony to be considered with any other relevant and competent evidence in determining the guilt or innocence of the defendant.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section or for an equivalent offense, the court may admit evidence on the concentration of alcohol, drugs of abuse, controlled substances, metabolites of a controlled substance, or a combination of them in the defendant's whole blood, blood serum or plasma, breath, urine, or other bodily substance at the time of the alleged violation as shown by chemical analysis of the substance withdrawn within three hours of the time of the alleged violation. The three-hour time limit specified in this division regarding the admission of evidence does not extend or affect the two-hour time limit specified in division (A) of section 4511.192 of the Revised Code as the maximum period of time during which a person may consent to a chemical test or tests as described in that section. The court may admit evidence on the concentration of alcohol, drugs of abuse, or a combination of them as described in this division when a person submits to a blood, breath, urine, or other bodily substance test at the request of a law enforcement officer under section 4511.191 of the Revised Code or a blood or urine sample is obtained pursuant to a search warrant. Only a

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physician, a registered nurse, or a qualified technician, chemist, or phlebotomist shall withdraw a blood sample for the purpose of determining the alcohol, drug, controlled substance, metabolite of a controlled substance, or combination content of the whole blood, blood serum, or blood plasma. This limitation does not apply to the taking of breath or urine specimens. A person authorized to withdraw blood under this division may refuse to withdraw blood under this division, if in that person's opinion, the physical welfare of the person would be endangered by the withdrawing of blood.

The bodily substance withdrawn under division (D)(1)(b) of this section shall be analyzed in accordance with methods approved by the director of health by an individual possessing a valid permit issued by the director pursuant to section 3701.143 of the Revised Code.

(2) In a criminal prosecution or juvenile court proceeding for a violation of division (A) of this section or for an equivalent offense, if there was at the time the bodily substance was withdrawn a concentration of less than the applicable concentration of alcohol specified in divisions (A)(1)(b), (c), (d), and (e) of this section or less than the applicable concentration of a listed controlled substance or a listed metabolite of a controlled substance specified for a violation of division (A)(1)(j) of this section, that fact may be considered with other competent evidence in determining the guilt or innocence of the defendant. This division does not limit or affect a criminal prosecution or juvenile court proceeding for a violation of division (B) of this section or for an equivalent offense that is substantially equivalent to that division.

(3) Upon the request of the person who was tested, the results of the chemical test shall be made available to the person or the person's attorney, immediately upon the completion of the chemical test analysis.

If the chemical test was obtained pursuant to division (D)(1)(b) of this section, the person tested may have a physician, a registered nurse, or a qualified technician, chemist, or phlebotomist of the person's own choosing administer a chemical test or tests, at the person's expense, in addition to any administered at the request of a law enforcement officer. The form to be read to the person to be tested, as required under section 4511.192 of the Revised Code, shall state that the person may have an independent test performed at the person's expense. The failure or inability to obtain an additional chemical test by a person shall not preclude the admission of evidence relating to the chemical test or tests taken at the request of a law enforcement officer.

(4)(a) As used in divisions (D)(4)(b) and (c) of this section, "national highway traffic safety administration" means the national highway traffic safety administration established as an administration of the United States department of transportation under 96 Stat. 2415 (1983), 49 U.S.C.A. 105.

(b) In any criminal prosecution or juvenile court proceeding for a violation of division (A) or (B) of this section, of a municipal ordinance relating to operating a vehicle while under the influence of alcohol, a drug of abuse, or alcohol and a drug of abuse, or of a municipal ordinance relating to operating a vehicle with a prohibited concentration of alcohol, a controlled substance, or a metabolite of a controlled substance in the blood, breath, or urine, if a law enforcement officer has administered a field sobriety test to the operator of the vehicle involved in the violation and if it is shown by clear and convincing evidence that the officer administered the test in substantial compliance with the testing standards for any reliable, credible, and generally accepted field sobriety tests that were in effect at the time the tests were administered, including, but not limited to, any testing standards then in effect that were set by the national highway traffic safety administration, all of the following apply:

(i) The officer may testify concerning the results of the field sobriety test so administered.

(ii) The prosecution may introduce the results of the field sobriety test so administered as evidence in any proceedings in the criminal prosecution or juvenile court proceeding.

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(iii) If testimony is presented or evidence is introduced under division (D)(4)(b)(i) or (ii) of this section and if the testimony or evidence is admissible under the Rules of Evidence, the court shall admit the testimony or evidence and the trier of fact shall give it whatever weight the trier of fact considers to be appropriate.

(c) Division (D)(4)(b) of this section does not limit or preclude a court, in its determination of whether the arrest of a person was supported by probable cause or its determination of any other matter in a criminal prosecution or juvenile court proceeding of a type described in that division, from considering evidence or testimony that is not otherwise disallowed by division (D)(4)(b) of this section.

(E)(1) Subject to division (E)(3) of this section, in any criminal prosecution or juvenile court proceeding for a violation of division (A)(1)(b), (c), (d), (e), (f), (g), (h), (i), or (j) or (B)(1), (2), (3), or (4) of this section or for an equivalent offense that is substantially equivalent to any of those divisions, a laboratory report from any laboratory personnel issued a permit by the department of health authorizing an analysis as described in this division that contains an analysis of the whole blood, blood serum or plasma, breath, urine, or other bodily substance tested and that contains all of the information specified in this division shall be admitted as prima-facie evidence of the information and statements that the report contains. The laboratory report shall contain all of the following:

- (a) The signature, under oath, of any person who performed the analysis;
- (b) Any findings as to the identity and quantity of alcohol, a drug of abuse, a controlled substance, a metabolite of a controlled substance, or a combination of them that was found;
- (c) A copy of a notarized statement by the laboratory director or a designee of the director that contains the name of each certified analyst or test performer involved with the report, the analyst's or test performer's employment relationship with the laboratory that issued the report, and a notation that performing an analysis of the type involved is part of the analyst's or test performer's regular duties;
- (d) An outline of the analyst's or test performer's education, training, and experience in performing the type of analysis involved and a certification that the laboratory satisfies appropriate quality control standards in general and, in this particular analysis, under rules of the department of health.

(2) Notwithstanding any other provision of law regarding the admission of evidence, a report of the type described in division (E)(1) of this section is not admissible against the defendant to whom it pertains in any proceeding, other than a preliminary hearing or a grand jury proceeding, unless the prosecutor has served a copy of the report on the defendant's attorney or, if the defendant has no attorney, on the defendant.

(3) A report of the type described in division (E)(1) of this section shall not be prima-facie evidence of the contents, identity, or amount of any substance if, within seven days after the defendant to whom the report pertains or the defendant's attorney receives a copy of the report, the defendant or the defendant's attorney demands the testimony of the person who signed the report. The judge in the case may extend the seven-day time limit in the interest of justice.

(F) Except as otherwise provided in this division, any physician, registered nurse, or qualified technician, chemist, or phlebotomist who withdraws blood from a person pursuant to this section, and any hospital, first-aid station, or clinic at which blood is withdrawn from a person pursuant to this section, is immune from criminal liability and civil liability based upon a claim of assault and battery or any other claim that is not a claim of malpractice, for any act performed in withdrawing blood from the person. The immunity provided in this division is not available to a person who withdraws blood if the person engages in willful or wanton misconduct.

(G)(1) Whoever violates any provision of divisions (A)(1)(a) to (i) or (A)(2) of this section is guilty of operating a

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vehicle under the influence of alcohol, a drug of abuse, or a combination of them. Whoever violates division (A)(1)(j) of this section is guilty of operating a vehicle while under the influence of a listed controlled substance or a listed metabolite of a controlled substance. The court shall sentence the offender for either offense under Chapter 2929. of the Revised Code, except as otherwise authorized or required by divisions (G)(1)(a) to (e) of this section:

(a) Except as otherwise provided in division (G)(1)(b), (c), (d), or (e) of this section, the offender is guilty of a misdemeanor of the first degree, and the court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory jail term of three consecutive days. As used in this division, three consecutive days means seventy-two consecutive hours. The court may sentence an offender to both an intervention program and a jail term. The court may impose a jail term in addition to the three-day mandatory jail term or intervention program. However, in no case shall the cumulative jail term imposed for the offense exceed six months.

The court may suspend the execution of the three-day jail term under this division if the court, in lieu of that suspended term, places the offender under a community control sanction pursuant to section 2929.25 of the Revised Code and requires the offender to attend, for three consecutive days, a drivers' intervention program certified under section 3793.10 of the Revised Code. The court also may suspend the execution of any part of the three-day jail term under this division if it places the offender under a community control sanction pursuant to section 2929.25 of the Revised Code for part of the three days, requires the offender to attend for the suspended part of the term a drivers' intervention program so certified, and sentences the offender to a jail term equal to the remainder of the three consecutive days that the offender does not spend attending the program. The court may require the offender, as a condition of community control and in addition to the required attendance at a drivers' intervention program, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to Chapter 3793. of the Revised Code by the director of alcohol and drug addiction services that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose on the offender any other conditions of community control that it considers necessary.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, except as otherwise provided in this division, a mandatory jail term of at least three consecutive days and a requirement that the offender attend, for three consecutive days, a drivers' intervention program that is certified pursuant to section 3793.10 of the Revised Code. As used in this division, three consecutive days means seventy-two consecutive hours. If the court determines that the offender is not conducive to treatment in a drivers' intervention program, if the offender refuses to attend a drivers' intervention program, or if the jail at which the offender is to serve the jail term imposed can provide a driver's intervention program, the court shall sentence the offender to a mandatory jail term of at least six consecutive days.

The court may require the offender, under a community control sanction imposed under section 2929.25 of the Revised Code, to attend and satisfactorily complete any treatment or education programs that comply with the minimum standards adopted pursuant to Chapter 3793. of the Revised Code by the director of alcohol and drug addiction services, in addition to the required attendance at drivers' intervention program, that the operators of the drivers' intervention program determine that the offender should attend and to report periodically to the court on the offender's progress in the programs. The court also may impose any other conditions of community control on the offender that it considers necessary.

(iii) In all cases, a fine of not less than two hundred fifty and not more than one thousand dollars;

(iv) In all cases, a class five license suspension of the offender's driver's or commercial driver's license or permit or nonresident operating privilege from the range specified in division (A)(5) of section 4510.02 of the Revised Code.

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The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(b) Except as otherwise provided in division (G)(1)(e) of this section, an offender who, within six years of the offense, previously has been convicted of or pleaded guilty to one violation of division (A) or (B) of this section or one other equivalent offense is guilty of a misdemeanor of the first degree. The court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory jail term of ten consecutive days. The court shall impose the ten-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the ten-day mandatory jail term. The cumulative jail term imposed for the offense shall not exceed six months.

In addition to the jail term or the term of house arrest with electronic monitoring or continuous alcohol monitoring or both types of monitoring and jail term, the court may require the offender to attend a drivers' intervention program that is certified pursuant to section 3793.10 of the Revised Code. If the operator of the program determines that the offender is alcohol dependent, the program shall notify the court, and, subject to division (I) of this section, the court shall order the offender to obtain treatment through an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, except as otherwise provided in this division, a mandatory jail term of twenty consecutive days. The court shall impose the twenty-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the twenty-day mandatory jail term. The cumulative jail term imposed for the offense shall not exceed six months.

In addition to the jail term or the term of house arrest with electronic monitoring or continuous alcohol monitoring or both types of monitoring and jail term, the court may require the offender to attend a driver's intervention program that is certified pursuant to section 3793.10 of the Revised Code. If the operator of the program determines that the offender is alcohol dependent, the program shall notify the court, and, subject to division (I) of this section, the court shall order the offender to obtain treatment through an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code.

(iii) In all cases, notwithstanding the fines set forth in Chapter 2929. of the Revised Code, a fine of not less than three hundred fifty and not more than one thousand five hundred dollars;

(iv) In all cases, a class four license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, immobilization of the vehicle involved in the offense for ninety days in accordance with section 4503.233 of the Revised Code and impoundment of the license plates of that vehicle for ninety days.

(c) Except as otherwise provided in division (G)(1)(e) of this section, an offender who, within six years of the

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offense, previously has been convicted of or pleaded guilty to two violations of division (A) or (B) of this section or other equivalent offenses is guilty of a misdemeanor. The court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory jail term of thirty consecutive days. The court shall impose the thirty-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the thirty-day mandatory jail term. Notwithstanding the jail terms set forth in sections 2929.21 to 2929.28 of the Revised Code, the additional jail term shall not exceed one year, and the cumulative jail term imposed for the offense shall not exceed one year.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, a mandatory jail term of sixty consecutive days. The court shall impose the sixty-day mandatory jail term under this division unless, subject to division (G)(3) of this section, it instead imposes a sentence under that division consisting of both a jail term and a term of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The court may impose a jail term in addition to the sixty-day mandatory jail term. Notwithstanding the jail terms set forth in sections 2929.21 to 2929.28 of the Revised Code, the additional jail term shall not exceed one year, and the cumulative jail term imposed for the offense shall not exceed one year.

(iii) In all cases, notwithstanding the fines set forth in Chapter 2929. of the Revised Code, a fine of not less than five hundred fifty and not more than two thousand five hundred dollars;

(iv) In all cases, a class three license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(3) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with section 4503.234 of the Revised Code. Division (G)(6) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this division.

(vi) In all cases, participation in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code, subject to division (I) of this section.

(d) Except as otherwise provided in division (G)(1)(e) of this section, an offender who, within six years of the offense, previously has been convicted of or pleaded guilty to three or four violations of division (A) or (B) of this section or other equivalent offenses or an offender who, within twenty years of the offense, previously has been convicted of or pleaded guilty to five or more violations of that nature is guilty of a felony of the fourth degree. The court shall sentence the offender to all of the following:

(i) If the sentence is being imposed for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or, in the discretion of the court, either a mandatory term of local incarceration of sixty consecutive days in accordance with division (G)(1) of section 2929.13 of the Revised Code or a mandatory prison term of sixty consecutive days in accordance with division (G)(2) of that section if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the sixty-day mandatory

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term, the cumulative total of the mandatory term and the jail term for the offense shall not exceed one year, and, except as provided in division (A)(1) of section 2929.13 of the Revised Code, no prison term is authorized for the offense. If the court imposes a mandatory prison term, notwithstanding division (A)(4) of section 2929.14 of the Revised Code, it also may sentence the offender to a definite prison term that shall be not less than six months and not more than thirty months and the prison terms shall be imposed as described in division (G)(2) of section 2929.13 of the Revised Code. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or, in the discretion of the court, either a mandatory term of local incarceration of one hundred twenty consecutive days in accordance with division (G)(1) of section 2929.13 of the Revised Code or a mandatory prison term of one hundred twenty consecutive days in accordance with division (G)(2) of that section if the offender is not convicted of and does not plead guilty to a specification of that type. If the court imposes a mandatory term of local incarceration, it may impose a jail term in addition to the one hundred twenty-day mandatory term, the cumulative total of the mandatory term and the jail term for the offense shall not exceed one year, and, except as provided in division (A)(1) of section 2929.13 of the Revised Code, no prison term is authorized for the offense. If the court imposes a mandatory prison term, notwithstanding division (A)(4) of section 2929.14 of the Revised Code, it also may sentence the offender to a definite prison term that shall be not less than six months and not more than thirty months and the prison terms shall be imposed as described in division (G)(2) of section 2929.13 of the Revised Code. If the court imposes a mandatory prison term or mandatory prison term and additional prison term, in addition to the term or terms so imposed, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(iii) In all cases, notwithstanding section 2929.18 of the Revised Code, a fine of not less than eight hundred nor more than ten thousand dollars;

(iv) In all cases, a class two license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with section 4503.234 of the Revised Code. Division (G)(6) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this division.

(vi) In all cases, participation in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code, subject to division (I) of this section.

(vii) In all cases, if the court sentences the offender to a mandatory term of local incarceration, in addition to the mandatory term, the court, pursuant to section 2929.17 of the Revised Code, may impose a term of house arrest with electronic monitoring. The term shall not commence until after the offender has served the mandatory term of local incarceration.

(e) An offender who previously has been convicted of or pleaded guilty to a violation of division (A) of this section that was a felony, regardless of when the violation and the conviction or guilty plea occurred, is guilty of a felony of

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the third degree. The court shall sentence the offender to all of the following:

(j) If the offender is being sentenced for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or a mandatory prison term of sixty consecutive days in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term. The cumulative total of a sixty-day mandatory prison term and the additional prison term for the offense shall not exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(ii) If the sentence is being imposed for a violation of division (A)(1)(f), (g), (h), or (i) or division (A)(2) of this section, a mandatory prison term of one, two, three, four, or five years as required by and in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1413 of the Revised Code or a mandatory prison term of one hundred twenty consecutive days in accordance with division (G)(2) of section 2929.13 of the Revised Code if the offender is not convicted of and does not plead guilty to a specification of that type. The court may impose a prison term in addition to the mandatory prison term. The cumulative total of a one hundred twenty-day mandatory prison term and the additional prison term for the offense shall not exceed five years. In addition to the mandatory prison term or mandatory prison term and additional prison term the court imposes, the court also may sentence the offender to a community control sanction for the offense, but the offender shall serve all of the prison terms so imposed prior to serving the community control sanction.

(iii) In all cases, notwithstanding section 2929.18 of the Revised Code, a fine of not less than eight hundred nor more than ten thousand dollars;

(iv) In all cases, a class two license suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(2) of section 4510.02 of the Revised Code. The court may grant limited driving privileges relative to the suspension under sections 4510.021 and 4510.13 of the Revised Code.

(v) In all cases, if the vehicle is registered in the offender's name, criminal forfeiture of the vehicle involved in the offense in accordance with section 4503.234 of the Revised Code. Division (G)(6) of this section applies regarding any vehicle that is subject to an order of criminal forfeiture under this division.

(vi) In all cases, participation in an alcohol and drug addiction program authorized by section 3793.02 of the Revised Code, subject to division (I) of this section.

(2) An offender who is convicted of or pleads guilty to a violation of division (A) of this section and who subsequently seeks reinstatement of the driver's or occupational driver's license or permit or nonresident operating privilege suspended under this section as a result of the conviction or guilty plea shall pay a reinstatement fee as provided in division (F)(2) of section 4511.191 of the Revised Code.

(3) If an offender is sentenced to a jail term under division (G)(1)(b)(i) or (ii) or (G)(1)(c)(i) or (ii) of this section and if, within sixty days of sentencing of the offender, the court issues a written finding on the record that, due to the unavailability of space at the jail where the offender is required to serve the term, the offender will not be able to begin serving that term within the sixty-day period following the date of sentencing, the court may impose an alternative sentence under this division that includes a term of house arrest with electronic monitoring, with

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continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring.

As an alternative to a mandatory jail term of ten consecutive days required by division (G)(1)(b)(i) of this section, the court, under this division, may sentence the offender to five consecutive days in jail and not less than eighteen consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the five consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed six months. The five consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to the mandatory jail term of twenty consecutive days required by division (G)(1)(b)(ii) of this section, the court, under this division, may sentence the offender to ten consecutive days in jail and not less than thirty-six consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the ten consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed six months. The ten consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to a mandatory jail term of thirty consecutive days required by division (G)(1)(c)(i) of this section, the court, under this division, may sentence the offender to fifteen consecutive days in jail and not less than fifty-five consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the fifteen consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed one year. The fifteen consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

As an alternative to the mandatory jail term of sixty consecutive days required by division (G)(1)(c)(ii) of this section, the court, under this division, may sentence the offender to thirty consecutive days in jail and not less than one hundred ten consecutive days of house arrest with electronic monitoring, with continuous alcohol monitoring, or with both electronic monitoring and continuous alcohol monitoring. The cumulative total of the thirty consecutive days in jail and the period of house arrest with electronic monitoring, continuous alcohol monitoring, or both types of monitoring shall not exceed one year. The thirty consecutive days in jail do not have to be served prior to or consecutively to the period of house arrest.

(4) If an offender's driver's or occupational driver's license or permit or nonresident operating privilege is suspended under division (G) of this section and if section 4510.13 of the Revised Code permits the court to grant limited driving privileges, the court may grant the limited driving privileges in accordance with that section. If division (A)(7) of that section requires that the court impose as a condition of the privileges that the offender must display on the vehicle that is driven subject to the privileges restricted license plates that are issued under section 4503.231 of the Revised Code, except as provided in division (B) of that section, the court shall impose that condition as one of the conditions of the limited driving privileges granted to the offender, except as provided in division (B) of section 4503.231 of the Revised Code.

(5) Fines imposed under this section for a violation of division (A) of this section shall be distributed as follows:

(a) Twenty-five dollars of the fine imposed under division (G)(1)(a)(iii), thirty-five dollars of the fine imposed under division (G)(1)(b)(iii), one hundred twenty-three dollars of the fine imposed under division (G)(1)(c)(iii), and two hundred ten dollars of the fine imposed under division (G)(1)(d)(iii) or (e)(iii) of this section shall be paid to an enforcement and education fund established by the legislative authority of the law enforcement agency in this state that primarily was responsible for the arrest of the offender, as determined by the court that imposes the fine. The

## R.C. § 4511.19

agency shall use this share to pay only those costs it incurs in enforcing this section or a municipal OVI ordinance and in informing the public of the laws governing the operation of a vehicle while under the influence of alcohol, the dangers of the operation of a vehicle under the influence of alcohol, and other information relating to the operation of a vehicle under the influence of alcohol and the consumption of alcoholic beverages.

(b) Fifty dollars of the fine imposed under division (G)(1)(a)(iii) of this section shall be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. If the offender is being sentenced for a violation of division (A)(1)(a), (b), (c), (d), (e), or (j) of this section and was confined as a result of the offense prior to being sentenced for the offense but is not sentenced to a term of incarceration, the fifty dollars shall be paid to the political subdivision that paid the cost of housing the offender during that period of confinement. The political subdivision shall use the share under this division to pay or reimburse incarceration or treatment costs it incurs in housing or providing drug and alcohol treatment to persons who violate this section or a municipal OVI ordinance, costs of any immobilizing or disabling device used on the offender's vehicle, and costs of electronic house arrest equipment needed for persons who violate this section.

(c) Twenty-five dollars of the fine imposed under division (G)(1)(a)(iii) and fifty dollars of the fine imposed under division (G)(1)(b)(iii) of this section shall be deposited into the county or municipal indigent drivers' alcohol treatment fund under the control of that court, as created by the county or municipal corporation under division (N) of section 4511.191 of the Revised Code.

(d) One hundred fifteen dollars of the fine imposed under division (G)(1)(b)(iii), two hundred seventy-seven dollars of the fine imposed under division (G)(1)(c)(iii), and four hundred forty dollars of the fine imposed under division (G)(1)(d)(iii) or (e)(iii) of this section shall be paid to the political subdivision that pays the cost of housing the offender during the offender's term of incarceration. The political subdivision shall use this share to pay or reimburse incarceration or treatment costs it incurs in housing or providing drug and alcohol treatment to persons who violate this section or a municipal OVI ordinance, costs for any immobilizing or disabling device used on the offender's vehicle, and costs of electronic house arrest equipment needed for persons who violate this section.

(e) The balance of the fine imposed under division (G)(1)(a)(iii), (b)(iii), (c)(iii), (d)(iii), or (e)(iii) of this section shall be disbursed as otherwise provided by law.

(6) If title to a motor vehicle that is subject to an order of criminal forfeiture under division (G)(1)(c), (d), or (e) of this section is assigned or transferred and division (B)(2) or (3) of section 4503.234 of the Revised Code applies, in addition to or independent of any other penalty established by law, the court may fine the offender the value of the vehicle as determined by publications of the national auto dealers association. The proceeds of any fine so imposed shall be distributed in accordance with division (C)(2) of that section.

(7) As used in division (G) of this section, "electronic monitoring," "mandatory prison term," and "mandatory term of local incarceration" have the same meanings as in section 2929.01 of the Revised Code.

(H) Whoever violates division (B) of this section is guilty of operating a vehicle after underage alcohol consumption and shall be punished as follows:

(1) Except as otherwise provided in division (H)(2) of this section, the offender is guilty of a misdemeanor of the fourth degree. In addition to any other sanction imposed for the offense, the court shall impose a class six suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(6) of section 4510.02 of the Revised Code.

(2) If, within one year of the offense, the offender previously has been convicted of or pleaded guilty to one or more violations of division (A) or (B) of this section or other equivalent offenses, the offender is guilty of a misdemeanor

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of the third degree. In addition to any other sanction imposed for the offense, the court shall impose a class four suspension of the offender's driver's license, commercial driver's license, temporary instruction permit, probationary license, or nonresident operating privilege from the range specified in division (A)(4) of section 4510.02 of the Revised Code.

(3) If the offender also is convicted of or also pleads guilty to a specification of the type described in section 2941.1416 of the Revised Code and if the court imposes a jail term for the violation of division (B) of this section, the court shall impose upon the offender an additional definite jail term pursuant to division (E) of section 2929.24 of the Revised Code.

(I)(1) No court shall sentence an offender to an alcohol treatment program under this section unless the treatment program complies with the minimum standards for alcohol treatment programs adopted under Chapter 3793, of the Revised Code by the director of alcohol and drug addiction services.

(2) An offender who stays in a drivers' intervention program or in an alcohol treatment program under an order issued under this section shall pay the cost of the stay in the program. However, if the court determines that an offender who stays in an alcohol treatment program under an order issued under this section is unable to pay the cost of the stay in the program, the court may order that the cost be paid from the court's indigent drivers' alcohol treatment fund.

(J) If a person whose driver's or commercial driver's license or permit or nonresident operating privilege is suspended under this section files an appeal regarding any aspect of the person's trial or sentence, the appeal itself does not stay the operation of the suspension.

(K) Division (A)(1)(j) of this section does not apply to a person who operates a vehicle, streetcar, or trackless trolley while the person has a concentration of a listed controlled substance or a listed metabolite of a controlled substance in the person's whole blood, blood serum or plasma, or urine that equals or exceeds the amount specified in that division, if both of the following apply:

(1) The person obtained the controlled substance pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs.

(2) The person injected, ingested, or inhaled the controlled substance in accordance with the health professional's directions.

(L) The prohibited concentrations of a controlled substance or a metabolite of a controlled substance listed in division (A)(1)(j) of this section also apply in a prosecution of a violation of division (D) of section 2923.16 of the Revised Code in the same manner as if the offender is being prosecuted for a prohibited concentration of alcohol.

(M) All terms defined in section 4510.01 of the Revised Code apply to this section. If the meaning of a term defined in section 4510.01 of the Revised Code conflicts with the meaning of the same term as defined in section 4501.01 or 4511.01 of the Revised Code, the term as defined in section 4510.01 of the Revised Code applies to this section.

(N)(1) The Ohio Traffic Rules in effect on January 1, 2004, as adopted by the supreme court under authority of section 2937.46 of the Revised Code, do not apply to felony violations of this section. Subject to division (N)(2) of this section, the Rules of Criminal Procedure apply to felony violations of this section.

(2) If, on or after January 1, 2004, the supreme court modifies the Ohio Traffic Rules to provide procedures to govern felony violations of this section, the modified rules shall apply to felony violations of this section.

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Current through 2008 File 51 of the 127th GA (2007-2008),  
apv. by 3/11/08, and filed with the Secretary of State by 3/11/08.

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C.R.S.A. § 24-10-106

WEST'S COLORADO REVISED STATUTES ANNOTATED  
TITLE 24. GOVERNMENT--STATE  
ADMINISTRATION  
ARTICLE 10. GOVERNMENTAL IMMUNITY  
→ § 24-10-106. Immunity and partial waiver

(1) A public entity shall be immune from liability in all claims for injury which lie in tort or could lie in tort regardless of whether that may be the type of action or the form of relief chosen by the claimant except as provided otherwise in this section. Sovereign immunity is waived by a public entity in an action for injuries resulting from:

(a) The operation of a motor vehicle, owned or leased by such public entity, by a public employee while in the course of employment, except emergency vehicles operating within the provisions of section 42-4-108(2) and (3), C.R.S.;

(b) The operation of any public hospital, correctional facility, as defined in section 17-1-102, C.R.S., or jail by such public entity;

(c) A dangerous condition of any public building;

(d)(I) A dangerous condition of a public highway, road, or street which physically interferes with the movement of traffic on the paved portion, if paved, or on the portion customarily used for travel by motor vehicles, if unpaved, of any public highway, road, street, or sidewalk within the corporate limits of any municipality, or of any highway which is a part of the federal interstate highway system or the federal primary highway system, or of any highway which is a part of the federal secondary highway system, or of any highway which is a part of the state highway system on that portion of such highway, road, street, or sidewalk which was designed and intended for public travel or parking thereon. As used in this section, the phrase "physically interferes with the movement of traffic" shall not include traffic signs, signals, or markings, or the lack thereof. Nothing in this subparagraph (I) shall preclude a particular dangerous accumulation of snow, ice, sand, or gravel from being found to constitute a dangerous condition in the surface of a public roadway when the entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice through the proper public official responsible for the roadway and had a reasonable time to act.

(II) A dangerous condition caused by the failure to realign a stop sign or yield sign which was turned, without authorization of the public entity, in a manner which reassigned the right-of-way upon intersecting public highways, roads, or streets, or the failure to repair a traffic control signal on which conflicting directions are displayed;

(III) A dangerous condition caused by an accumulation of snow and ice which physically interferes with public access on walks leading to a public building open for public business when a public entity fails to use existing means available to it for removal or mitigation of such accumulation and when the public entity had actual notice of such condition and a reasonable time to act.

(e) A dangerous condition of any public hospital, jail, public facility located in any park or recreation area maintained by a public entity, or public water, gas, sanitation, electrical, power, or swimming facility. Nothing in this paragraph (e) or in paragraph (d) of this subsection (1) shall be construed to prevent a public entity from asserting sovereign immunity for an injury caused by the natural condition of any unimproved property, whether or

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not such property is located in a park or recreation area or on a highway, road, or street right-of-way.

(f) The operation and maintenance of any public water facility, gas facility, sanitation facility, electrical facility, power facility, or swimming facility by such public entity.

(g) The operation and maintenance of a qualified state capital asset that is the subject of a leveraged leasing agreement pursuant to the provisions of part 10 of article 82 of this title.

(1.5)(a) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does not apply to claimants who have been convicted of a crime and incarcerated in a correctional facility or jail pursuant to such conviction, and such correctional facility or jail shall be immune from liability as set forth in subsection (1) of this section.

(b) The waiver of sovereign immunity created in paragraphs (b) and (e) of subsection (1) of this section does apply to claimants who are incarcerated but not yet convicted of the crime for which such claimants are being incarcerated if such claimants can show injury due to negligence.

(c) The waiver of sovereign immunity created in paragraph (e) of subsection (1) of this section does not apply to any backcountry landing facility located in whole or in part within any park or recreation area maintained by a public entity. For purposes of this paragraph (c), "backcountry landing facility" means any area of land or water that is unpaved, unlighted, and in a primitive condition and is used or intended for the landing and takeoff of aircraft, and includes any land or water appurtenant to such area.

(2) Nothing in this section or in section 24-10-104 shall be construed to constitute a waiver of sovereign immunity where the injury arises from the act, or failure to act, of a public employee where the act is the type of act for which the public employee would be or heretofore has been personally immune from liability.

(3) In addition to the immunity provided in subsection (1) of this section, a public entity shall also have the same immunity as a public employee for any act or failure to act for which a public employee would be or heretofore has been personally immune from liability.

(4) No rule of law imposing absolute or strict liability shall be applied in any action against a public entity or a public employee for an injury resulting from a dangerous condition of, or the operation and maintenance of, a public water facility or public sanitation facility. No liability shall be imposed in any such action unless negligence is proven.

Current through laws effective February 14, 2008, including Chapters 2,4 and 500.

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V.A.M.S. 537.600

VERNON'S ANNOTATED MISSOURI STATUTES  
TITLE XXXVI. STATUTORY ACTIONS AND TORTS  
CHAPTER 537. TORTS AND ACTIONS FOR DAMAGES  
SOVEREIGN IMMUNITY

→ 537.600. Sovereign immunity in effect--exceptions--waiver of

1. Such sovereign or governmental tort immunity as existed at common law in this state prior to September 12, 1977, except to the extent waived, abrogated or modified by statutes in effect prior to that date, shall remain in full force and effect; except that, the immunity of the public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances:

(1) Injuries directly resulting from the negligent acts or omissions by public employees arising out of the operation of motor vehicles or motorized vehicles within the course of their employment;

(2) Injuries caused by the condition of a public entity's property if the plaintiff establishes that the property was in dangerous condition at the time of the injury, that the injury directly resulted from the dangerous condition, that the dangerous condition created a reasonably foreseeable risk of harm of the kind of injury which was incurred, and that either a negligent or wrongful act or omission of an employee of the public entity within the course of his employment created the dangerous condition or a public entity had actual or constructive notice of the dangerous condition in sufficient time prior to the injury to have taken measures to protect against the dangerous condition. In any action under this subdivision wherein a plaintiff alleges that he was damaged by the negligent, defective or dangerous design of a highway or road, which was designed and constructed prior to September 12, 1977, the public entity shall be entitled to a defense which shall be a complete bar to recovery whenever the public entity can prove by a preponderance of the evidence that the alleged negligent, defective, or dangerous design reasonably complied with highway and road design standards generally accepted at the time the road or highway was designed and constructed.

2. The express waiver of sovereign immunity in the instances specified in subdivisions (1) and (2) of subsection 1 of this section are absolute waivers of sovereign immunity in all cases within such situations whether or not the public entity was functioning in a governmental or proprietary capacity and whether or not the public entity is covered by a liability insurance for tort.

3. The term "public entity" as used in this section shall include any multistate compact agency created by a compact formed between this state and any other state which has been approved by the Congress of the United States.

Statutes and Constitution are current through the end of the 2007  
First Extraordinary Session of the 94th General Assembly.

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42 Pa.C.S.A. § 8528

**C**Effective: [See Text Amendments]

PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES  
TITLE 42 PA.C.S.A. JUDICIARY AND JUDICIAL PROCEDURE  
PART VII. CIVIL ACTIONS AND PROCEEDINGS  
CHAPTER 85. MATTERS AFFECTING GOVERNMENT UNITS  
SUBCHAPTER B. ACTIONS AGAINST COMMONWEALTH PARTIES  
LIMITATIONS ON DAMAGES

→ § 8528. Limitations on damages

(a) **General rule.**--Actions for which damages are limited by reference to this subchapter shall be limited as set forth in this section.

(b) **Amount recoverable.**--Damages arising from the same cause of action or transaction or occurrence or series of causes of action or transactions or occurrences shall not exceed \$250,000 in favor of any plaintiff or \$1,000,000 in the aggregate.

(c) **Types of damages recoverable.**--Damages shall be recoverable only for:

(1) Past and future loss of earnings and earning capacity.

(2) Pain and suffering.

(3) Medical and dental expenses including the reasonable value of reasonable and necessary medical and dental services, prosthetic devices and necessary ambulance, hospital, professional nursing, and physical therapy expenses accrued and anticipated in the diagnosis, care and recovery of the claimant.

(4) Loss of consortium.

(5) Property losses, except that property losses shall not be recoverable in claims brought pursuant to section 8522(b)(5) (relating to potholes and other dangerous conditions).

Current through Act 2007-77 (End)

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42 Pa.C.S.A. § 8541

**Effective: [See Text Amendments]**

PURDON'S PENNSYLVANIA STATUTES AND CONSOLIDATED STATUTES  
TITLE 42 PA.C.S.A. JUDICIARY AND JUDICIAL PROCEDURE  
PART VII. CIVIL ACTIONS AND PROCEEDINGS  
CHAPTER 85. MATTERS AFFECTING GOVERNMENT UNITS  
SUBCHAPTER C. ACTIONS AGAINST LOCAL PARTIES  
GOVERNMENTAL IMMUNITY

→ § 8541. Governmental immunity generally

Except as otherwise provided in this subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

Current through Act 2007-77 (End)

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Ohio Admin. Code § 3301-83-08

**CBALDWIN'S OHIO ADMINISTRATIVE CODE ANNOTATED**  
**3301 EDUCATION DEPARTMENT**  
**CHAPTER 3301-83. PUPIL TRANSPORTATION OPERATION AND SAFETY**

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Rules are current to March 2, 2008;  
Appendices are current to January 7, 2008

3301-83-08 Pupil transportation management policies

Pupil transportation management policies should be developed cooperatively by administrators and transportation personnel. Policies should be designed to ensure the safety and welfare of all school bus passengers and shall include:

- (A) The school bus driver's authority and/or responsibility to maintain control of the pupils.
- (B) The pupil's right to "due process" as provided for by the policies and procedures of the educating agency.
- (C) Pupil management and safety instruction policies shall include the following:
  - (1) Pupils shall arrive at the bus stop before the bus is scheduled to arrive.
  - (2) Pupils must wait in a location clear of traffic and away from the bus stops.
  - (3) Behavior at the school bus stop must not threaten life, limb or property of any individual.
  - (4) Pupils must go directly to an available or assigned seat so the bus may safely resume motion.
  - (5) Pupils must remain seated keeping aisles and exits clear.
  - (6) Pupils must observe classroom conduct and obey the driver promptly and respectfully.
  - (7) Pupils must not use profane language.
  - (8) Pupils must refrain from eating and drinking on the bus except as required for medical reasons.
  - (9) Pupils must not use tobacco on the bus.
  - (10) Pupils must not have alcohol or drugs in their possession on the bus except for prescription medication required for a student.
  - (11) Pupils must not throw or pass objects on, from or into the bus.
  - (12) Pupils may carry on the bus only objects that can be held in their laps (see paragraph (J) of rule 3301-83-20 of the Administrative Code).

Ohio Admin. Code § 3301-83-08

(13) Pupils must leave or board the bus at locations to which they have been assigned unless they have parental and administrative authorization to do otherwise.

(14) Pupils must not put head or arms out of the bus windows.

(15) Guidelines will be formulated for the use and storage of equipment and other means of assistance required by preschool and special needs children.

(16) Drivers and bus aides must have access to appropriate information about the child to the degree that such information might affect safe transportation and medical well-being. This information must be available in the vehicle or readily accessible in the transportation office. All such information is strictly confidential.

(D) Suspension, expulsion or immediate removal from bus

(1) The superintendent or superintendent designees, or principals are authorized to suspend or remove pupils from school bus riding privileges.

(2) Immediate removal of a pupil from transportation is authorized. A pupil immediately removed from transportation must be given notice as soon as practicable of a hearing which must be held within seventy-two hours of the removal. The notice shall also include the reason for removal. Immediate removal is authorized when the pupil's presence poses a danger to persons or property or a threat to the safe operation of the school bus. Length of time removed from ridership shall be in accordance with policies of the school bus owner.

(3) School bus drivers shall report in writing to the appropriate administrator all rule violations or conduct that justify immediate removal, suspension or expulsion.

(4) Suspension or immediate removal of preschool and special needs children may require a modification of the above procedures and shall be accomplished in accordance with the law.

HISTORY: 2007-08 OMR pam. #3 (RRD); 2004-05 OMR pam. #3 (A), eff. 10-1-04; 1998-99 OMR 503 (A), eff. 10-5-98; 1997-98 OMR 773 (RRD); 1990-91 OMR 1504 (A), eff. 7-1-91; 1984-85 OMR 383 (E), eff. 10-22-84; 1984-85 OMR 383 (R), eff. 10-22-84; prior EDb-919-07

RC 119.032 rule review date(s): 9-21-12; 10-1-09; 9-21-07; 6-7-04; 9- 21-01; 10-20-00

<General Materials (GM) - References, Annotations, or Tables>

CROSS REFERENCES

RC 3301.07, Powers of state board

RC 4511.76, School bus regulation by education and public safety departments  
Text 22.24, 22.25, 25.9, 25.33

LIBRARY REFERENCES

Hastings, Manoloff, Sheeran, and Stype, Baldwin's Ohio School Law § 22:25,

OH ADC 3301-83-08  
OAC 3301-83-08

Page 3

Ohio Admin. Code § 3301-83-08

22:26, 25:9, 25:33

OAC 3301-83-08, **OH ADC 3301-83-08**

**OH ADC 3301-83-08**  
END OF DOCUMENT

Ohio Admin. Code § 3301-83-10

**CBALDWIN'S OHIO ADMINISTRATIVE CODE ANNOTATED**  
**3301 EDUCATION DEPARTMENT**  
**CHAPTER 3301-83. PUPIL TRANSPORTATION OPERATION AND SAFETY**  
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Rules are current to March 2, 2008;  
Appendices are current to January 7, 2008

3301-83-10 Personnel training program

(A) Minimum school bus driver training requirements

The Ohio pre-service school bus driver training program, as instituted by the Ohio department of education shall be successfully completed by each beginning driver in compliance with the following:

(1) On-the-bus instruction of twelve hours, or more as required to achieve an acceptable level of competence, shall be completed prior to a driver being assigned to operate a school bus with pupils on board. This instruction shall consist of:

- (a) Pre-trip inspection and mirror adjustment;
- (b) Identification of acceptable driving techniques;
- (c) Starting the engine;
- (d) Position of hands for steering;
- (e) Shifting standard transmissions;
- (f) Shifting automatic transmissions;
- (g) Off road CDL maneuvers
- (h) Starting into traffic and pulling to the curb;
- (i) Entering and leaving the freeway
- (j) Stopping for emergencies
- (k) Speed control;
- (l) Changing lanes;
- (m) Passing;

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- (n) Intersections - stop and through;
- (o) Left and right turns;
- (p) Turn-arounds;
- (q) Loading and unloading pupils;
- (r) Railroad crossings;
- (s) Practice driving utilizing a detailed route sheet;
- (t) Miscellaneous items:
  - (i) Special driving situations;
  - (ii) Special trips;
  - (iii) Regular trip restrictions;
  - (iv) Route observation with an experienced driver.

(2) Fifteen hours minimum of pre-service classroom instruction shall be completed prior to operating a school bus with pupils on board. This instruction shall consist of the following:

- (a) School bus and commercial driver license requirements;
- (b) Public relations;
- (c) Pre-driving instructions;
- (d) Driving the bus;
- (e) Defensive driving;
- (f) Pupil management;
- (g) Safety and emergency procedures;
- (h) Use of first aid and blood borne pathogens equipment;
  - (i) Transporting the preschool and special needs children, including a practical overview of the characteristics and needs of those individuals;
  - (j) Fuel conservation;

Ohio Admin. Code § 3301-83-10

- (k) Radio/cellular phone communication;
- (l) Motor vehicle laws and Ohio pupil transportation operation and safety rules;
- (m) School district policies
- (n) Drug and alcohol requirements

(3) Each school bus owner shall provide and require additional training for drivers and bus aides who transport pre-school and special needs students. Such training shall be completed prior to operating a bus with pre-school and special needs children on board and shall include:

- (a) Appropriate behavior management
- (b) Physical handling
- (c) Effective communication
- (d) Use and operation of adaptive equipment
- (e) An understanding of related behaviors and/or the particular disabling conditions
- (f) Administer health care according to their qualifications and the needs of the student.

(4) In unusual circumstances, with the exception of safety and emergency procedures, pupil management and school bus owner policies, the fifteen hours of classroom instruction may be completed within the first three months of employment. A temporary certificate shall be issued for operation of a school bus during the training period.

Upon completion of the Ohio pre-service school bus driver training program, each school bus driver shall have an Ohio pre-service school bus driver training certificate which will be valid for a period of six years.

(B) Annual inservice training

The board of education or governing board/administrator shall require all regular and substitute school bus drivers, all drivers of vehicles other than school buses, and bus aides to attend an annual inservice training program. This training may be offered in one session, or multiple sessions as determined by each employer. The employer may also recognize, but is not required to accept training offered by other sources in lieu of their own program. School bus drivers and aides must participate in a minimum of four hours. The training shall be based on a needs assessment that must include one or more of the following:

- (1) School bus and commercial driver license requirements;
- (2) Public and staff relations;
- (3) Equipment and care, including the operation of all adaptive equipment needed to safely transport pre-school and special needs students;
- (4) Driving the bus;

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- (5) Defensive driving;
- (6) Highway/railroad grade crossing safety;
- (7) Pupil management;
- (8) Safety and emergency procedures;
- (9) Use of first aid and blood borne pathogens equipment;
- (10) Transporting the preschool and special needs children;
- (11) Motor vehicle laws and Ohio pupil transportation operation and safety rules;
- (12) Signs, signals and pavement markings;
- (13) Fuel conservation;
- (14) Radio/cellular phone communications;
- (15) Detailed route sheets.

(C) Pupil transportation director/supervisor training

School bus owners should encourage and support directors/supervisors of pupil transportation to attend local, regional, state and national workshops and conferences devoted to the management, supervision, organization and technical components of pupil transportation.

(D) School bus mechanic training

Each school bus owner shall provide the opportunity for school bus maintenance personnel to participate in an annual workshop or training seminar, with a minimum of four hours of instruction, in one or more of the following areas:

- (1) Preventive maintenance procedures;
- (2) Repair procedures for each type of vehicle in the fleet and its special equipment;
- (3) Servicing procedures for equipment;
- (4) Inspection of the vehicle and its equipment;
- (5) Recovery procedures for vehicles involved in an accident or breakdown;
- (6) Preparation of maintenance records;
- (7) Parts and equipment purchasing and storage;

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(8) Establishment of parts inventory control procedures.

(E) On-the-bus instructor training

(1) All school bus owners shall select a person(s) to be trained as on-the-bus instructor(s). The number of on-the-bus instructors should not exceed one per twenty drivers.

(2) On-the-bus instructor(s) shall be trained and certified by an Ohio pre-service school bus driver training instructor.

(3) For certification purposes, certified on-the-bus instructor(s) shall attend an annual inservice training as scheduled and provided by the Ohio pre-service school bus driver training instructor. Certificates will be valid unless:

(a) On-the-bus instructor(s) does not attend annual inservice conducted by the Ohio pre-service school bus driver training instructor or does not receive individual evaluation by the Ohio pre-service school bus driver training instructor.

(b) School bus owner requests certificate be suspended or revoked.

(c) The Ohio pre-service school bus driver training instructor suspends or revokes an on-the-bus instructor certificate.

(4) When appropriate, the Ohio pre-service school bus driver training instructor or other certified on-the-bus instructor may provide all or part of on-the-bus instruction in lieu of the assigned on-the-bus instructor.

(5) Records of time, test scores, names, districts and other required documentation of on-the-bus instruction shall be maintained and filed with the Ohio pre-service school bus driver training instructor regional office before a certificate of successful completion is issued. Copies of original records will be maintained by the school bus owner.

(F) Certification of school bus drivers

A school bus driver shall be certified by an Ohio pre-service school bus driver training instructor and issued a new certificate upon successful completion of the requirements every six years. Application for a new certificate shall be made no later than sixty days prior to the expiration of the current certificate. The completion of certification requirements may occur anytime in the ten months prior to application. No school bus driver shall transport pupils without a current certificate.

(1) Nine hours minimum of the Ohio pre-service school bus driver training classroom instruction shall be completed prior to applying for certification. That instruction shall consist of the following:

(a) Public relations

(b) Pupil management

(c) Pre-trip inspection

(d) Driving the bus

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- (e) Defensive driving
- (f) Fuel conservation
- (g) Transporting preschool and special needs children
- (h) Safety and emergency procedures
  - (i) Radio/cellular phone communications
  - (j) Motor vehicle laws and Ohio pupil transportation operation and safety rules

(2) The driver will demonstrate their familiarity with the topics covered at the completion of the class.

(3) A driving performance evaluation and review shall be completed prior to applying for certification. The evaluation and review shall consist of the following:

- (a) Identification of acceptable driving techniques, including the following:
  - (i) Position of hands for steering
  - (ii) Braking
  - (iii) Following distance
  - (iv) Speed control
  - (v) Observing traffic conditions ahead
- (b) Intersections - stop and through
- (c) Left and right turns
- (d) Curves
- (e) Changing lanes
- (f) Passing
- (g) Railroad crossings
- (h) Loading and unloading pupils
  - (i) Turn-arounds
  - (j) Entering and leaving the freeway

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- (k) Starting into traffic and pulling to the curb
- (l) Stopping for emergencies
- (m) Pre-trip inspection
- (n) Mirror adjustment

(4) The driver shall have four opportunities to successfully demonstrate the driving skills as follows:

(a) A certified on-the-bus instructor designated by the school district or private operator shall administer the first three opportunities.

(b) A fourth opportunity to demonstrate driving skills, if necessary, shall be administered by an Ohio pre-service instructor. The driver must be offered appropriate driving instruction prior to this fourth opportunity.

(5) The certification requirements for classroom instruction, pursuant to paragraphs (F)(1) and (F)(2) of this rule, may be substituted with successful completion of the Ohio pre-service advanced school bus driver training course within twenty-four months prior to the expiration of the current certificate.

(6) The certification requirements for driving skills, pursuant to paragraphs (F)(3) and (F)(4) of this rule, may be substituted with participation in a state and/or regional school bus driver safety road-e-o, and achieving a minimum of eighty percent of the possible points, within twenty-four months prior to the expiration of the current certificate.

(7) The certificate of any person whose employment as a school bus driver has been interrupted for a period of two or more years shall be revoked. That person must then successfully satisfy the certification requirements of this rule prior to resuming transportation of pupils.

(8) The certification of Ohio school bus drivers will be phased in over a five year period based upon the following schedule:

Drivers must complete their recertification in the following calendar year:

2000: Drivers with certificates dated 1975 or older, or with no certificate.

2001: Drivers with certificates dated 1976-1980 inclusive.

Drivers with undated basic certificates.

2002: Drivers with certificates dated 1981-1985 inclusive.

2003: Drivers with certificates dated 1986-1990 inclusive.

2004: Drivers with certificates dated 1991-1995 inclusive.

2005: Drivers with certificates dated 1996-1999 inclusive.

(9) Phase-in of the certification cycle shall begin January 1, 2000. For the duration of the phase-in period, drivers

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may complete the requirements identified in paragraphs (F)(1) to (F)(4) of this rule, or the alternatives identified in paragraphs (F)(5) and (F)(6) of this rule, anytime between July 1, 1998 and the end of the year their certification is due. At the end of the phase-in period (January 1, 2005), the certification requirements must be completed within the time frames identified in paragraphs (F)(5) and (F)(6) of this rule.

HISTORY: 2007-08 OMR pam. #8 (RRD); 2004-05 OMR pam. #3 (A), eff. 10-1-04; 1998-99 OMR 504 (A), eff. 10-5-98; 1997-98 OMR 773 (RRD); 1990-91 OMR 1505 (A), eff. 7-1-91; 1984-85 OMR 384 (R), eff. 10-22-84; 1984-85 OMR 384 (E), eff. 10-22-84; prior EDb-919-09

RC 119.032 rule review date(s): 2-7-13; 10-1-09; 2-7-08; 6-7-04; 10-20-00

<General Materials (GM) - References, Annotations, or Tables>

#### CROSS REFERENCES

RC 3301.07, Powers of state board

RC 4511.76, School bus regulation by education and public safety departments  
Text 22.21

#### LIBRARY REFERENCES

Hastings, Manoloff, Sheeran, and Stype, Baldwin's Ohio School Law § 22:22  
NOTES OF DECISIONS

Driver education 3

Loading and unloading pupils

Loading and unloading pupils - Liability for negligence 2

Passing

Passing - Liability for negligence 1

1. ---- Liability for negligence, passing

In an action to recover damages for personal injury sustained in a bicycle collision with a school bus, issues of inadequate damages and jury instruction regarding assured clear distance and duty to look are relevant where (1) judgment for the plaintiff of \$150,000 is inadequate and contrary to law in that no amount for non-economic damages was awarded despite a seventy-eight per cent impairment of function which translates to an eleven per cent impairment of the whole patient, (2) the bike rider was discernable in the bus driver's directional line of travel so that there is evidence to support an instruction on assured clear-distance, and (3) where the driver acknowledges that had she used the "cross-over mirror" on the bus, she could have kept the bicyclist in view the entire time that she tried to pass him, there is evidence to support an instruction on a duty to continue to look. (Annotation from former OAC 4501-3-08.) Siders v. Reynoldsburg School Dist., 1994, 650 N.E.2d 150, 99 Ohio App.3d 173.

2. ---- Liability for negligence, loading and unloading pupils

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Where a bus driver discharges a student before an oncoming car has stopped and the car hits the student, the driver's violation of OAC 3301-83-06(G) constitutes negligence per se, but a question of fact remains as to whether such negligence was a proximate cause of the accident. Merchants Mut. Ins. Co. v. Baker (Ohio, 12-31-1984) 15 Ohio St.3d 316, 473 N.E.2d 827, 15 O.B.R. 444.

3. Driver education

Substantial evidence supported finding that county employee's attendance at the particular in-service was not sufficient to satisfy the requirements needed to certify herself as licensed commercial bus driver, and thus, county's decision to terminate employee for failing to have proper credentials required for a commercial bus driver was supported by reliable, probative, and substantial evidence; only one topic that was discussed at particular in-service was listed in employee's requirement's for certification. Seneca Cty. Bd. of Mental Retardation & Dev. Disabilities v. Siesel, 2002, 2002-Ohio-4235, 2002 WL 1900071, Unreported, Counties ↪ 67

OAC 3301-83-10, OH ADC 3301-83-10

**OH ADC 3301-83-10**  
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Civ. R. Rule 4.1

**CBALDWIN'S OHIO REVISED CODE ANNOTATED**  
**RULES OF CIVIL PROCEDURE**

**TITLE II. COMMENCEMENT OF ACTION AND VENUE; SERVICE OF PROCESS; SERVICE AND FILING OF PLEADINGS AND OTHER PAPERS SUBSEQUENT TO THE ORIGINAL COMPLAINT; TIME**

**→ Civ R 4.1 Process: methods of service**

All methods of service within this state, except service by publication as provided in Civ. R. 4.4(A), are described in this rule. Methods of out-of-state service and for service in a foreign country are described in Civ. R. 4.3 and 4.5.

**(A) Service by certified or express mail**

Evidenced by return receipt signed by any person, service of any process shall be by certified or express mail unless otherwise permitted by these rules. The clerk shall place a copy of the process and complaint or other document to be served in an envelope. The clerk shall address the envelope to the person to be served at the address set forth in the caption or at the address set forth in written instructions furnished to the clerk with instructions to forward. The clerk shall affix adequate postage and place the sealed envelope in the United States mail as certified or express mail return receipt requested with instructions to the delivering postal employee to show to whom delivered, date of delivery, and address where delivered.

The clerk shall forthwith enter the fact of mailing on the appearance docket and make a similar entry when the return receipt is received. If the envelope is returned with an endorsement showing failure of delivery, the clerk shall forthwith notify, by mail, the attorney of record or, if there is no attorney of record, the party at whose instance process was issued and enter the fact of notification on the appearance docket. The clerk shall file the return receipt or returned envelope in the records of the action.

All postage shall be charged to costs. If the parties to be served by certified or express mail are numerous and the clerk determines there is insufficient security for costs, the clerk may require the party requesting service to advance an amount estimated by the clerk to be sufficient to pay the postage.

**(B) Personal service**

When the plaintiff files a written request with the clerk for personal service, service of process shall be made by that method.

When process issued from the Supreme Court, a court of appeals, a court of common pleas, or a county court is to be served personally, the clerk of the court shall deliver the process and sufficient copies of the process and complaint, or other document to be served, to the sheriff of the county in which the party to be served resides or may be found. When process issues from the municipal court, delivery shall be to the bailiff of the court for service on all defendants who reside or may be found within the county or counties in which that court has territorial jurisdiction and to the sheriff of any other county in this state for service upon a defendant who resides in or may be found in that other county. In the alternative, process issuing from any of these courts may be delivered by the clerk to any person not less than eighteen years of age, who is not a party and who has been designated by order of the court to make service of process. The person serving process shall locate the person to be served and shall tender a copy of the process and accompanying documents to the person to be served. When the copy of the process has been served, the person serving process shall endorse that fact on the process and return it to the clerk, who shall make the

Civ. R. Rule 4.1

appropriate entry on the appearance docket.

When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefor on the process and return the process and copies to the clerk who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A) of this rule. Failure to make service within the twenty-eight day period and failure to make proof of service do not affect the validity of the service.

**(C) Residence service**

When the plaintiff files a written request with the clerk for residence service, service of process shall be made by that method.

Residence service shall be effected by leaving a copy of the process and the complaint, or other document to be served, at the usual place of residence of the person to be served with some person of suitable age and discretion then residing therein. The clerk of the court shall issue the process, and the process server shall return it, in the same manner as prescribed in division (B) of this rule. When the person serving process is unable to serve a copy of the process within twenty-eight days, the person shall endorse that fact and the reasons therefor on the process, and return the process and copies to the clerk, who shall make the appropriate entry on the appearance docket. In the event of failure of service, the clerk shall follow the notification procedure set forth in division (A) of this rule. Failure to make service within the twenty-eight-day period and failure to make proof of service do not affect the validity of service.

Current with amendments received through 1/15/08

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## *Northwest Ordinance; July 13, 1787*

### *An Ordinance for the government of the Territory of the United States northwest of the River Ohio.*

**Section 1.** *Be it ordained by the United States in Congress assembled,* That the said territory, for the purposes of temporary government, be one district, subject, however, to be divided into two districts, as future circumstances may, in the opinion of Congress, make it expedient.

**Sec 2.** *Be it ordained by the authority aforesaid,* That the estates, both of resident and nonresident proprietors in the said territory, dying intestate, shall descent to, and be distributed among their children, and the descendants of a deceased child, in equal parts; the descendants of a deceased child or grandchild to take the share of their deceased parent in equal parts among them: And where there shall be no children or descendants, then in equal parts to the next of kin in equal degree; and among collaterals, the children of a deceased brother or sister of the intestate shall have, in equal parts among them, their deceased parents' share; and there shall in no case be a distinction between kindred of the whole and half blood; saving, in all cases, to the widow of the intestate her third part of the real estate for life, and one third part of the personal estate; and this law relative to descents and dower, shall remain in full force until altered by the legislature of the district. And until the governor and judges shall adopt laws as hereinafter mentioned, estates in the said territory may be devised or bequeathed by wills in writing, signed and sealed by him or her in whom the estate may be (being of full age), and attested by three witnesses; and real estates may be conveyed by lease and release, or bargain and sale, signed, sealed and delivered by the person being of full age, in whom the estate may be, and attested by two witnesses, provided such wills be duly proved, and such conveyances be acknowledged, or the execution thereof duly proved, and be recorded within one year after proper magistrates, courts, and registers shall be appointed for that purpose; and personal property may be transferred by delivery; saving, however to the French and Canadian inhabitants, and other settlers of the Kaskaskies, St. Vincents and the neighboring villages who have heretofore professed themselves citizens of

Virginia, their laws and customs now in force among them, relative to the descent and conveyance, of property.

**Sec. 3.** *Be it ordained by the authority aforesaid,* That there shall be appointed from time to time by Congress, a governor, whose commission shall continue in force for the term of three years, unless sooner revoked by Congress; he shall reside in the district, and have a freehold estate therein in 1,000 acres of land, while in the exercise of his office.

**Sec. 4.** There shall be appointed from time to time by Congress, a secretary, whose commission shall continue in force for four years unless sooner revoked; he shall reside in the district, and have a freehold estate therein in 500 acres of land, while in the exercise of his office. It shall be his duty to keep and preserve the acts and laws passed by the legislature, and the public records of the district, and the proceedings of the governor in his executive department, and transmit authentic copies of such acts and proceedings, every six months, to the Secretary of Congress: There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a common law jurisdiction, and reside in the district, and have each therein a freehold estate in 500 acres of land while in the exercise of their offices; and their commissions shall continue in force during good behavior.

**Sec. 5.** The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best suited to the circumstances of the district, and report them to Congress from time to time: which laws shall be in force in the district until the organization of the General Assembly therein, unless disapproved of by Congress; but afterwards the Legislature shall have authority to alter them as they shall think fit.

**Sec. 6.** The governor, for the time being, shall be commander in chief of the militia, appoint and commission all officers in the same below the rank of general officers; all general officers shall be appointed and commissioned by Congress.

**Sec. 7.** Previous to the organization of the general assembly, the governor shall appoint such magistrates and other civil officers in each county or township, as he shall find necessary for the preservation of the peace and good order in the same: After the general assembly shall be organized, the powers and duties of the magistrates and other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers not herein otherwise directed, shall during the continuance of this temporary government, be appointed by the governor.

**Sec. 8.** For the prevention of crimes and injuries, the laws to be adopted or made shall have force in all parts of the district, and for the execution of process, criminal and civil, the governor shall make proper divisions thereof; and he shall proceed from time to time as circumstances may require, to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships, subject, however, to such alterations as may thereafter be made by the legislature.

**Sec. 9.** So soon as there shall be five thousand free male inhabitants of full age in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect a representative from their counties or townships to represent them in the general assembly: Provided, That, for every five hundred free male inhabitants, there shall be one representative, and so on progressively with the number of free male inhabitants shall the right of representation increase, until the number of representatives shall amount to twenty five; after which, the number and proportion of representatives shall be regulated by the legislature: Provided, That no person be eligible or qualified to act as a representative unless he shall have been a citizen of one of the United States three years, and be a resident in the district, or unless he shall have resided in the district three years; and, in either case, shall likewise hold in his own right, in fee simple, two hundred acres of land within the same; Provided, also, That a freehold in fifty acres of land in the district, having been a citizen of one of the states, and being resident in the district, or the like freehold and two years residence in the district, shall be necessary to qualify a man as an elector of a representative.

**Sec. 10.** The representatives thus elected, shall serve for the term of two years; and, in case of the death of a representative, or removal from office, the governor shall issue a writ to the county or township for which he was a member, to elect another in his stead, to serve for the residue of the term.

*Sec. 11.* The general assembly or legislature shall consist of the governor, legislative council, and a house of representatives. The Legislative Council shall consist of five members, to continue in office five years, unless sooner removed by Congress; any three of whom to be a quorum: and the members of the Council shall be nominated and appointed in the following manner, to wit: As soon as representatives shall be elected, the Governor shall appoint a time and place for them to meet together; and, when met, they shall nominate ten persons, residents in the district, and each possessed of a freehold in five hundred acres of land, and return their names to Congress; five of whom Congress shall appoint and commission to serve as aforesaid; and, whenever a vacancy shall happen in the council, by death or removal from office, the house of representatives shall nominate two persons, qualified as aforesaid, for each vacancy, and return their names to Congress; one of whom congress shall appoint and commission for the residue of the term. And every five years, four months at least before the expiration of the time of service of the members of council, the said house shall nominate ten persons, qualified as aforesaid, and return their names to Congress; five of whom Congress shall appoint and commission to serve as members of the council five years, unless sooner removed. And the governor, legislative council, and house of representatives, shall have authority to make laws in all cases, for the good government of the district, not repugnant to the principles and articles in this ordinance established and declared. And all bills, having passed by a majority in the house, and by a majority in the council, shall be referred to the governor for his assent; but no bill, or legislative act whatever, shall be of any force without his assent. The governor shall have power to convene, prorogue, and dissolve the general assembly, when, in his opinion, it shall be expedient.

**Sec. 12.** The governor, judges, legislative council, secretary, and such other officers as Congress shall appoint in the district, shall take an oath or affirmation of fidelity and of office; the governor before the president of

congress, and all other officers before the Governor. As soon as a legislature shall be formed in the district, the council and house assembled in one room, shall have authority, by joint ballot, to elect a delegate to Congress, who shall have a seat in Congress, with a right of debating but not voting during this temporary government.

**Sec. 13.** And, for extending the fundamental principles of civil and religious liberty, which form the basis whereon these republics, their laws and constitutions are erected; to fix and establish those principles as the basis of all laws, constitutions, and governments, which forever hereafter shall be formed in the said territory: to provide also for the establishment of States, and permanent government therein, and for their admission to a share in the federal councils on an equal footing with the original States, at as early periods as may be consistent with the general interest;

**Sec. 14.** It is hereby ordained and declared by the authority aforesaid, That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit:

**Art. 1.** No person, demeaning himself in a peaceable and orderly manner, shall ever be molested on account of his mode of worship or religious sentiments, in the said territory.

**Art. 2.** The inhabitants of the said territory shall always be entitled to the benefits of the writ of *habeas corpus*, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall beailable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel or unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular services, full compensation shall be made for the same. And, in the just preservation of rights and property, it is understood and

declared, that no law ought ever to be made, or have force in the said territory, that shall, in any manner whatever, interfere with or affect private contracts or engagements, *bona fide*, and without fraud, previously formed.

**Art. 3.** Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged. The utmost good faith shall always be observed towards the Indians; their lands and property shall never be taken from them without their consent; and, in their property, rights, and liberty, they shall never be invaded or disturbed, unless in just and lawful wars authorized by Congress; but laws founded in justice and humanity, shall from time to time be made for preventing wrongs being done to them, and for preserving peace and friendship with them.

**Art. 4.** The said territory, and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the **Articles of Confederation**, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government, to be apportioned on them by Congress according to the same common rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of the legislatures of the district or districts, or new States, as in the original States, within the time agreed upon by the United States in Congress assembled. The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the *bona fide* purchasers. No tax shall be imposed on lands the property of the United States; and, in no case, shall nonresident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those

of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor.

**Art. 5.** There shall be formed in the said territory, not less than three nor more than five States; and the boundaries of the States, as soon as Virginia shall alter her act of cession, and consent to the same, shall become fixed and established as follows, to wit: The western State in the said territory, shall be bounded by the Mississippi, the Ohio, and Wabash Rivers; a direct line drawn from the Wabash and Post Vincents, due North, to the territorial line between the United States and Canada; and, by the said territorial line, to the Lake of the Woods and Mississippi. The middle State shall be bounded by the said direct line, the Wabash from Post Vincents to the Ohio, by the Ohio, by a direct line, drawn due north from the mouth of the Great Miami, to the said territorial line, and by the said territorial line. The eastern State shall be bounded by the last mentioned direct line, the Ohio, Pennsylvania, and the said territorial line: *Provided, however,* and it is further understood and declared, that the boundaries of these three States shall be subject so far to be altered, that, if Congress shall hereafter find it expedient, they shall have authority to form one or two States in that part of the said territory which lies north of an east and west line drawn through the southerly bend or extreme of Lake Michigan. And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: *Provided,* the constitution and government so to be formed, shall be republican, and in conformity to the principles contained in these articles; and, so far as it can be consistent with the general interest of the confederacy, such admission shall be allowed at an earlier period, and when there may be a less number of free inhabitants in the State than sixty thousand.

**Art. 6.** There shall be neither slavery nor involuntary servitude in the said territory, otherwise than in the punishment of crimes whereof the party shall have been duly convicted: *Provided, always,* That any person escaping into the same, from whom labor or service is lawfully claimed in any one of the original

States, such fugitive may be lawfully reclaimed and conveyed to the person claiming his or her labor or service as aforesaid.

*Be it ordained by the authority aforesaid,* That the resolutions of the 23rd of April, 1784, relative to the subject of this ordinance, be, and the same are hereby repealed and declared null and void.

Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord 1787, and of their sovereignty and independence the twelfth.

**Source:**  
**Documents Illustrative of the Formation of the Union of the American States.**  
**Government Printing Office, 1927.**  
**House Document No. 398.**  
**Selected, Arranged and Indexed by Charles C. Tansill**

# The Text of Magna Carta

## Translation

(Clauses marked (+) are still valid under the charter of 1225, but with a few minor amendments. Clauses marked (\*) were omitted in all later reissues of the charter. In the charter itself the clauses are not numbered, and the text reads continuously. The translation sets out to convey the sense rather than the precise wording of the original Latin.)

JOHN, by the grace of God King of England, Lord of Ireland, Duke of Normandy and Aquitaine, and Count of Anjou, to his archbishops, bishops, abbots, earls, barons, justices, foresters, sheriffs, stewards, servants, and to all his officials and loyal subjects, Greeting.

KNOW THAT BEFORE GOD, for the health of our soul and those of our ancestors and heirs, to the honour of God, the exaltation of the holy Church, and the better ordering of our kingdom, at the advice of our reverend fathers Stephen, archbishop of Canterbury, primate of all England, and cardinal of the holy Roman Church, Henry archbishop of Dublin, William bishop of London, Peter bishop of Winchester, Jocelin bishop of Bath and Glastonbury, Hugh bishop of Lincoln, Walter Bishop of Worcester, William bishop of Coventry, Benedict bishop of Rochester, Master Pandulf subdeacon and member of the papal household, Brother Aymeric master of the knighthood of the Temple in England, William Marshal earl of Pembroke, William earl of Salisbury, William earl of Warren, William earl of Arundel, Alan de Galloway constable of Scotland, Warin Fitz Gerald, Peter Fitz Herbert, Hubert de Burgh seneschal of Poitou, Hugh de Neville, Matthew Fitz Herbert, Thomas Basset, Alan Basset, Philip Daubeny, Robert de Roppeley, John Marshal, John Fitz Hugh, and other loyal subjects:

+ (1) FIRST, THAT WE HAVE GRANTED TO GOD, and by this present charter have confirmed for us and our heirs in perpetuity, that the English Church shall be free, and shall have its rights undiminished, and its liberties unimpaired. That we wish this so to be observed, appears from the fact that of our own free will, before the outbreak of the present dispute between us and our barons, we granted and confirmed by charter the freedom of the Church's elections - a right reckoned to be of the greatest necessity and importance to it - and caused this to be confirmed by Pope Innocent III. This freedom we shall observe ourselves, and desire to be observed in good faith by our heirs in perpetuity.

TO ALL FREE MEN OF OUR KINGDOM we have also granted, for us and our heirs for ever, all the liberties written out below, to have and to keep for them and their heirs, of us and our heirs:

(2) If any earl, baron, or other person that holds lands directly of the Crown, for military service, shall die, and at his death his heir shall be of full age and owe a 'relief', the heir shall have his inheritance on payment of the ancient scale of 'relief'. That is to say, the

heir or heirs of an earl shall pay £100 for the entire earl's barony, the heir or heirs of a knight 100s. at most for the entire knight's 'fee', and any man that owes less shall pay less, in accordance with the ancient usage of 'fees'

(3) But if the heir of such a person is under age and a ward, when he comes of age he shall have his inheritance without 'relief' or fine.

(4) The guardian of the land of an heir who is under age shall take from it only reasonable revenues, customary dues, and feudal services. He shall do this without destruction or damage to men or property. If we have given the guardianship of the land to a sheriff, or to any person answerable to us for the revenues, and he commits destruction or damage, we will exact compensation from him, and the land shall be entrusted to two worthy and prudent men of the same 'fee', who shall be answerable to us for the revenues, or to the person to whom we have assigned them. If we have given or sold to anyone the guardianship of such land, and he causes destruction or damage, he shall lose the guardianship of it, and it shall be handed over to two worthy and prudent men of the same 'fee', who shall be similarly answerable to us.

(5) For so long as a guardian has guardianship of such land, he shall maintain the houses, parks, fish preserves, ponds, mills, and everything else pertaining to it, from the revenues of the land itself. When the heir comes of age, he shall restore the whole land to him, stocked with plough teams and such implements of husbandry as the season demands and the revenues from the land can reasonably bear.

(6) Heirs may be given in marriage, but not to someone of lower social standing. Before a marriage takes place, it shall be made known to the heir's next-of-kin.

(7) At her husband's death, a widow may have her marriage portion and inheritance at once and without trouble. She shall pay nothing for her dower, marriage portion, or any inheritance that she and her husband held jointly on the day of his death. She may remain in her husband's house for forty days after his death, and within this period her dower shall be assigned to her.

(8) No widow shall be compelled to marry, so long as she wishes to remain without a husband. But she must give security that she will not marry without royal consent, if she holds her lands of the Crown, or without the consent of whatever other lord she may hold them of.

(9) Neither we nor our officials will seize any land or rent in payment of a debt, so long as the debtor has movable goods sufficient to discharge the debt. A debtor's sureties shall not be distrained upon so long as the debtor himself can discharge his debt. If, for lack of means, the debtor is unable to discharge his debt, his sureties shall be answerable for it. If they so desire, they may have the debtor's lands and rents until they have received satisfaction for the debt that they paid for him, unless the debtor can show that he has settled his obligations to them.

\* (10) If anyone who has borrowed a sum of money from Jews dies before the debt has been repaid, his heir shall pay no interest on the debt for so long as he remains under age, irrespective of whom he holds his lands. If such a debt falls into the hands of the Crown, it will take nothing except the principal sum specified in the bond.

\* (11) If a man dies owing money to Jews, his wife may have her dower and pay nothing towards the debt from it. If he leaves children that are under age, their needs may also be provided for on a scale appropriate to the size of his holding of lands. The debt is to be paid out of the residue, reserving the service due to his feudal lords. Debts owed to persons other than Jews are to be dealt with similarly.

\* (12) No 'scutage' or 'aid' may be levied in our kingdom without its general consent, unless it is for the ransom of our person, to make our eldest son a knight, and (once) to marry our eldest daughter. For these purposes only a reasonable 'aid' may be levied. 'Aids' from the city of London are to be treated similarly.

+ (13) The city of London shall enjoy all its ancient liberties and free customs, both by land and by water. We also will and grant that all other cities, boroughs, towns, and ports shall enjoy all their liberties and free customs.

\* (14) To obtain the general consent of the realm for the assessment of an 'aid' - except in the three cases specified above - or a 'scutage', we will cause the archbishops, bishops, abbots, earls, and greater barons to be summoned individually by letter. To those who hold lands directly of us we will cause a general summons to be issued, through the sheriffs and other officials, to come together on a fixed day (of which at least forty days notice shall be given) and at a fixed place. In all letters of summons, the cause of the summons will be stated. When a summons has been issued, the business appointed for the day shall go forward in accordance with the resolution of those present, even if not all those who were summoned have appeared.

\* (15) In future we will allow no one to levy an 'aid' from his free men, except to ransom his person, to make his eldest son a knight, and (once) to marry his eldest daughter. For these purposes only a reasonable 'aid' may be levied.

(16) No man shall be forced to perform more service for a knight's 'fee', or other free holding of land, than is due from it.

(17) Ordinary lawsuits shall not follow the royal court around, but shall be held in a fixed place.

(18) Inquests of *novel disseisin*, *mort d'ancestor*, and *darrein presentment* shall be taken only in their proper county court. We ourselves, or in our absence abroad our chief justice, will send two justices to each county four times a year, and these justices, with four knights of the county elected by the county itself, shall hold the assizes in the county court, on the day and in the place where the court meets.

(19) If any assizes cannot be taken on the day of the county court, as many knights and freeholders shall afterwards remain behind, of those who have attended the court, as will suffice for the administration of justice, having regard to the volume of business to be done.

(20) For a trivial offence, a free man shall be fined only in proportion to the degree of his offence, and for a serious offence correspondingly, but not so heavily as to deprive him of his livelihood. In the same way, a merchant shall be spared his merchandise, and a husbandman the implements of his husbandry, if they fall upon the mercy of a royal court. None of these fines shall be imposed except by the assessment on oath of reputable men of the neighbourhood.

(21) Earls and barons shall be fined only by their equals, and in proportion to the gravity of their offence.

(22) A fine imposed upon the lay property of a clerk in holy orders shall be assessed upon the same principles, without reference to the value of his ecclesiastical benefice.

(23) No town or person shall be forced to build bridges over rivers except those with an ancient obligation to do so.

(24) No sheriff, constable, coroners, or other royal officials are to hold lawsuits that should be held by the royal justices.

\* (25) Every county, hundred, wapentake, and tithing shall remain at its ancient rent, without increase, except the royal demesne manors.

(26) If at the death of a man who holds a lay 'fee' of the Crown, a sheriff or royal official produces royal letters patent of summons for a debt due to the Crown, it shall be lawful for them to seize and list movable goods found in the lay 'fee' of the dead man to the value of the debt, as assessed by worthy men. Nothing shall be removed until the whole debt is paid, when the residue shall be given over to the executors to carry out the dead man's will. If no debt is due to the Crown, all the movable goods shall be regarded as the property of the dead man, except the reasonable shares of his wife and children.

\* (27) If a free man dies intestate, his movable goods are to be distributed by his next-of-kin and friends, under the supervision of the Church. The rights of his debtors are to be preserved.

(28) No constable or other royal official shall take corn or other movable goods from any man without immediate payment, unless the seller voluntarily offers postponement of this.

(29) No constable may compel a knight to pay money for castle-guard if the knight is willing to undertake the guard in person, or with reasonable excuse to supply some other

fit man to do it. A knight taken or sent on military service shall be excused from castle-guard for the period of this service.

(30) No sheriff, royal official, or other person shall take horses or carts for transport from any free man, without his consent.

(31) Neither we nor any royal official will take wood for our castle, or for any other purpose, without the consent of the owner.

(32) We will not keep the lands of people convicted of felony in our hand for longer than a year and a day, after which they shall be returned to the lords of the 'fees' concerned.

(33) All fish-weirs shall be removed from the Thames, the Medway, and throughout the whole of England, except on the sea coast.

(34) The writ called *precipe* shall not in future be issued to anyone in respect of any holding of land, if a free man could thereby be deprived of the right of trial in his own lord's court.

(35) There shall be standard measures of wine, ale, and corn (the London quarter), throughout the kingdom. There shall also be a standard width of dyed cloth, russett, and haberject, namely two ells within the selvedges. Weights are to be standardised similarly.

(36) In future nothing shall be paid or accepted for the issue of a writ of inquisition of life or limbs. It shall be given gratis, and not refused.

(37) If a man holds land of the Crown by 'fee-farm', 'socage', or 'burgage', and also holds land of someone else for knight's service, we will not have guardianship of his heir, nor of the land that belongs to the other person's 'fee', by virtue of the 'fee-farm', 'socage', or 'burgage', unless the 'fee-farm' owes knight's service. We will not have the guardianship of a man's heir, or of land that he holds of someone else, by reason of any small property that he may hold of the Crown for a service of knives, arrows, or the like.

(38) In future no official shall place a man on trial upon his own unsupported statement, without producing credible witnesses to the truth of it.

+ (39) No free man shall be seized or imprisoned, or stripped of his rights or possessions, or outlawed or exiled, or deprived of his standing in any other way, nor will we proceed with force against him, or send others to do so, except by the lawful judgement of his equals or by the law of the land.

+ (40) To no one will we sell, to no one deny or delay right or justice.

(41) All merchants may enter or leave England unharmed and without fear, and may stay or travel within it, by land or water, for purposes of trade, free from all illegal exactions, in accordance with ancient and lawful customs. This, however, does not apply in time of

war to merchants from a country that is at war with us. Any such merchants found in our country at the outbreak of war shall be detained without injury to their persons or property, until we or our chief justice have discovered how our own merchants are being treated in the country at war with us. If our own merchants are safe they shall be safe too.

\* (42) In future it shall be lawful for any man to leave and return to our kingdom unharmed and without fear, by land or water, preserving his allegiance to us, except in time of war, for some short period, for the common benefit of the realm. People that have been imprisoned or outlawed in accordance with the law of the land, people from a country that is at war with us, and merchants - who shall be dealt with as stated above - are excepted from this provision.

(43) If a man holds lands of any 'escheat' such as the 'honour' of Wallingford, Nottingham, Boulogne, Lancaster, or of other 'escheats' in our hand that are baronies, at his death his heir shall give us only the 'relief' and service that he would have made to the baron, had the barony been in the baron's hand. We will hold the 'escheat' in the same manner as the baron held it.

(44) People who live outside the forest need not in future appear before the royal justices of the forest in answer to general summonses, unless they are actually involved in proceedings or are sureties for someone who has been seized for a forest offence.

\* (45) We will appoint as justices, constables, sheriffs, or other officials, only men that know the law of the realm and are minded to keep it well.

(46) All barons who have founded abbeys, and have charters of English kings or ancient tenure as evidence of this, may have guardianship of them when there is no abbot, as is their due.

(47) All forests that have been created in our reign shall at once be disafforested. River-banks that have been enclosed in our reign shall be treated similarly.

\* (48) All evil customs relating to forests and warrens, foresters, warreners, sheriffs and their servants, or river-banks and their wardens, are at once to be investigated in every county by twelve sworn knights of the county, and within forty days of their enquiry the evil customs are to be abolished completely and irrevocably. But we, or our chief justice if we are not in England, are first to be informed.

\* (49) We will at once return all hostages and charters delivered up to us by Englishmen as security for peace or for loyal service.

\* (50) We will remove completely from their offices the kinsmen of Gerard de Athée, and in future they shall hold no offices in England. The people in question are Engelard de Cigogné, Peter, Guy, and Andrew de Chanceaux, Guy de Cigogné, Geoffrey de Martigny and his brothers, Philip Marc and his brothers, with Geoffrey his nephew, and all their followers.

\* (51) As soon as peace is restored, we will remove from the kingdom all the foreign knights, bowmen, their attendants, and the mercenaries that have come to it, to its harm, with horses and arms.

\* (52) To any man whom we have deprived or dispossessed of lands, castles, liberties, or rights, without the lawful judgement of his equals, we will at once restore these. In cases of dispute the matter shall be resolved by the judgement of the twenty-five barons referred to below in the clause for securing the peace (§ 61). In cases, however, where a man was deprived or dispossessed of something without the lawful judgement of his equals by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. On our return from the Crusade, or if we abandon it, we will at once render justice in full.

\* (53) We shall have similar respite in rendering justice in connexion with forests that are to be disafforested, or to remain forests, when these were first a-orested by our father Henry or our brother Richard; with the guardianship of lands in another person's 'fee', when we have hitherto had this by virtue of a 'fee' held of us for knight's service by a third party; and with abbeys founded in another person's 'fee', in which the lord of the 'fee' claims to own a right. On our return from the Crusade, or if we abandon it, we will at once do full justice to complaints about these matters.

(54) No one shall be arrested or imprisoned on the appeal of a woman for the death of any person except her husband.

\* (55) All fines that have been given to us unjustly and against the law of the land, and all fines that we have exacted unjustly, shall be entirely remitted or the matter decided by a majority judgement of the twenty-five barons referred to below in the clause for securing the peace (§ 61) together with Stephen, archbishop of Canterbury, if he can be present, and such others as he wishes to bring with him. If the archbishop cannot be present, proceedings shall continue without him, provided that if any of the twenty-five barons has been involved in a similar suit himself, his judgement shall be set aside, and someone else chosen and sworn in his place, as a substitute for the single occasion, by the rest of the twenty-five.

(56) If we have deprived or dispossessed any Welshmen of lands, liberties, or anything else in England or in Wales, without the lawful judgement of their equals, these are at once to be returned to them. A dispute on this point shall be determined in the Marches by the judgement of equals. English law shall apply to holdings of land in England, Welsh law to those in Wales, and the law of the Marches to those in the Marches. The Welsh shall treat us and ours in the same way.

\* (57) In cases where a Welshman was deprived or dispossessed of anything, without the lawful judgement of his equals, by our father King Henry or our brother King Richard, and it remains in our hands or is held by others under our warranty, we shall have respite

for the period commonly allowed to Crusaders, unless a lawsuit had been begun, or an enquiry had been made at our order, before we took the Cross as a Crusader. But on our return from the Crusade, or if we abandon it, we will at once do full justice according to the laws of Wales and the said regions.

\* (58) We will at once return the son of Llywelyn, all Welsh hostages, and the charters delivered to us as security for the peace.

\* (59) With regard to the return of the sisters and hostages of Alexander, king of Scotland, his liberties and his rights, we will treat him in the same way as our other barons of England, unless it appears from the charters that we hold from his father William, formerly king of Scotland, that he should be treated otherwise. This matter shall be resolved by the judgement of his equals in our court.

(60) All these customs and liberties that we have granted shall be observed in our kingdom in so far as concerns our own relations with our subjects. Let all men of our kingdom, whether clergy or laymen, observe them similarly in their relations with their own men.

\* (61) SINCE WE HAVE GRANTED ALL THESE THINGS for God, for the better ordering of our kingdom, and to allay the discord that has arisen between us and our barons, and since we desire that they shall be enjoyed in their entirety, with lasting strength, for ever, we give and grant to the barons the following security:

The barons shall elect twenty-five of their number to keep, and cause to be observed with all their might, the peace and liberties granted and confirmed to them by this charter.

If we, our chief justice, our officials, or any of our servants offend in any respect against any man, or transgress any of the articles of the peace or of this security, and the offence is made known to four of the said twenty-five barons, they shall come to us - or in our absence from the kingdom to the chief justice - to declare it and claim immediate redress. If we, or in our absence abroad the chief justice, make no redress within forty days, reckoning from the day on which the offence was declared to us or to him, the four barons shall refer the matter to the rest of the twenty-five barons, who may distrain upon and assail us in every way possible, with the support of the whole community of the land, by seizing our castles, lands, possessions, or anything else saving only our own person and those of the queen and our children, until they have secured such redress as they have determined upon. Having secured the redress, they may then resume their normal obedience to us.

Any man who so desires may take an oath to obey the commands of the twenty-five barons for the achievement of these ends, and to join with them in assailing us to the utmost of his power. We give public and free permission to take this oath to any man who so desires, and at no time will we prohibit any man from taking it. Indeed, we will compel any of our subjects who are unwilling to take it to swear it at our command.

If one of the twenty-five barons dies or leaves the country, or is prevented in any other way from discharging his duties, the rest of them shall choose another baron in his place, at their discretion, who shall be duly sworn in as they were.

In the event of disagreement among the twenty-five barons on any matter referred to them for decision, the verdict of the majority present shall have the same validity as a unanimous verdict of the whole twenty-five, whether these were all present or some of those summoned were unwilling or unable to appear.

The twenty-five barons shall swear to obey all the above articles faithfully, and shall cause them to be obeyed by others to the best of their power.

We will not seek to procure from anyone, either by our own efforts or those of a third party, anything by which any part of these concessions or liberties might be revoked or diminished. Should such a thing be procured, it shall be null and void and we will at no time make use of it, either ourselves or through a third party.

\* (62) We have remitted and pardoned fully to all men any ill-will, hurt, or grudges that have arisen between us and our subjects, whether clergy or laymen, since the beginning of the dispute. We have in addition remitted fully, and for our own part have also pardoned, to all clergy and laymen any offences committed as a result of the said dispute between Easter in the sixteenth year of our reign (i.e. 1215) and the restoration of peace.

In addition we have caused letters patent to be made for the barons, bearing witness to this security and to the concessions set out above, over the seals of Stephen archbishop of Canterbury, Henry archbishop of Dublin, the other bishops named above, and Master Pandulf.

\* (63) IT IS ACCORDINGLY OUR WISH AND COMMAND that the English Church shall be free, and that men in our kingdom shall have and keep all these liberties, rights, and concessions, well and peaceably in their fulness and entirety for them and their heirs, of us and our heirs, in all things and all places for ever.

Both we and the barons have sworn that all this shall be observed in good faith and without deceit. Witness the abovementioned people and many others.

Given by our hand in the meadow that is called Runnymede, between Windsor and Staines, on the fifteenth day of June in the seventeenth year of our reign (i.e. 1215: the new regnal year began on 28 May).

## **Source and Further Information**

G. R. C. Davis, *Magna Carta*, Revised Edition, British Library, 1989.

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