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Sub. H. B. No. 316

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Kearns, Williams, Latta, Brinkman, Seitz, Willamowski, D. Evans, Widener,
Aslanides, Buehrer, Calvert, Carmichael, Chandler, Collier, Daniels,
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Olman, T. Patton, Reinhard, Schaffer, Schmidt, Schneider, Setzer, Sferra,
G. Smith, J. Stewart, Walcher, Young**

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A B I L L

To amend sections 9.87, 2743.01, 2743.02, and 5502.52 1
and to enact sections 341.27 and 753.06 of the 2
Revised Code to provide sheriffs, deputy sheriffs, 3
municipal police officers, and county and 4
municipal correctional officers with qualified 5
immunity from damages caused or suffered by county 6
or municipal prisoners or adult offenders 7
imprisoned for offenses other than felonies of the 8
first or second degree who are working on a work 9
detail and volunteered for the work detail; to 10
provide counties and municipal corporations in 11
which such prisoners or offenders work on a work 12
detail and that employ the sheriff, deputy 13
sheriff, or officer and townships in which such 14
prisoners work on a work detail with a similar 15
qualified immunity; to adopt the "public duty 16
rule" for lawsuits against the state in the Court 17
of Claims pursuant to which the state generally is 18
immune from liability in any civil action or 19

proceeding involving the performance or 20
nonperformance of a public duty; and to provide 21
radio stations, television systems, cable systems, 22
and their officials and employees with immunity 23
from damages related to the broadcast or 24
cablecast, or failure to broadcast or cablecast, 25
information under an Amber Alert program. 26

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 9.87, 2743.01, 2743.02, and 5502.52 27
be amended and sections 341.27 and 753.06 of the Revised Code be 28
enacted to read as follows: 29

Sec. 9.87. (A) The state, except as provided in division (B) 30
of this section, shall indemnify an officer or employee from 31
liability incurred in the performance of ~~his~~ official duties by 32
paying any judgment in, or amount negotiated in settlement of, any 33
civil action arising under federal law, the law of another state, 34
or the law of a foreign jurisdiction. The reasonableness of the 35
amount of any consent judgment or settlement is subject to the 36
review and approval of the attorney general and of the director, 37
administrative chief, or governing body of the employer of the 38
officer or employee who is to be indemnified. The maximum 39
aggregate amount of indemnification paid directly from state funds 40
to or on behalf of any officer or employee pursuant to this 41
division shall be one million dollars per occurrence, regardless 42
of the number of persons who suffer damage, injury, or death as a 43
result of the occurrence. 44

(B) The state shall not indemnify an officer or employee 45
under any of the following circumstances: 46

(1) To the extent the officer or employee is covered by a 47

policy of insurance for civil liability purchased by the state;	48
(2) When the officer or employee acts manifestly outside the scope of his <u>the officer's or employee's</u> employment or official responsibilities, with malicious purpose, in bad faith, or in a wanton or reckless manner, as determined by the employer of the officer or employee or by the attorney general.	49 50 51 52 53
(3) For any portion of a judgment that represents punitive or exemplary damages, except that this prohibition does not apply if the employer of the officer or employee and the attorney general determine that the acts or omissions of the officer or employee were not within the terms of division (B)(2) of this section;	54 55 56 57 58
(4) For any portion of a consent judgment or settlement that is unreasonable.	59 60
(C) The director of administrative services may purchase a policy or policies of insurance on behalf of officers and employees of the state from an insurer or insurers licensed to do business in this state providing coverage for amounts in excess of one million dollars per occurrence incurred in connection with any civil action, demand, or claim against the officer or employee by reason of an act or omission by the officer or employee occurring in the performance of his <u>the officer's or employee's</u> duties and not coming within the terms of division (B)(2) of this section.	61 62 63 64 65 66 67 68 69
(D) This section does not affect any of the following:	70
(1) The waiver arising under division (A)(<u>1</u>) of section 2743.02 of the Revised Code;	71 72
(2) Any defense that would otherwise be available in an action alleging personal liability of an officer or employee;	73 74
(3) The operation of section 9.83 of the Revised Code.	75
(E) The indemnification of officers or employees against judgments or settlements pursuant to this section shall be	76 77

accomplished only through the following procedure:

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(1) If the employer of the defendant officer or employee to be indemnified determines that the actions or omissions of its officer or employee giving rise to the claim were not within the terms of division (B)(2) of this section, an indemnity agreement shall be prepared by the attorney general, specifying that the employer will indemnify the officer or employee from a particular judgment that has been rendered or a particular settlement amount that has been negotiated. The agreement shall name the person or entity to whom payment by the state of the judgment or settlement amount will be made, and the agreement shall not be effective until it is approved by the officer or employee to be indemnified, the director, administrative chief, or other governing body of the employer, and by the attorney general. The attorney general shall approve the indemnity agreement, unless ~~he~~ the attorney general finds that division (B) of this section prohibits the state from indemnifying the officer or employee, or prohibits the state from indemnifying the officer or employee for a portion of a judgment or settlement and the indemnity agreement would indemnify the officer or employee for all or a part of that portion.

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(2) The attorney general shall forward a copy of the agreement to the director of budget and management.

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(3) Any indemnification paid shall be charged by the director of budget and management against available unencumbered moneys in the appropriations of the employer of the officer or employee to be indemnified. The director of budget and management shall have sole discretion to determine whether or not unencumbered moneys in a particular appropriation are available for payment of the indemnification.

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(4) The director of budget and management shall, upon receipt of the agreement from the attorney general pursuant to division

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(E)(2) of this section, provide for payment to the person or
entity named in the agreement, in the amount specified in the
agreement.

(5) If the director of budget and management determines that
sufficient unencumbered moneys do not exist in the particular
appropriations to pay the indemnification, ~~he~~ the director shall
make application for payment of the indemnification out of the
emergency purposes account or any other appropriation for
emergencies or contingencies, and payment out of this account or
other appropriation shall be authorized if there are sufficient
moneys greater than the sum total of then pending emergency
purposes account requests, or requests for releases from the other
appropriation.

(6) If sufficient moneys do not exist in the emergency
purposes account or any other appropriation for emergencies or
contingencies to pay the indemnification, the employer named in
the agreement shall request the general assembly to make an
appropriation sufficient to pay the indemnification, and no
payment shall be made until the appropriation has been made. The
employer shall make this appropriation request during the current
biennium and during each succeeding biennium until a sufficient
appropriation is made.

(7) If the indemnification is to be made by an employer whose
funds are not handled by the director of budget and management,
the employer shall pay the person or entity named in the
agreement.

If the employer determines that sufficient unencumbered
moneys do not exist to pay the indemnification, the employer shall
make application for payment of the indemnification out of the
emergency purposes account or any other appropriation for
emergencies or contingencies, and payment out of this account or

other appropriation shall be authorized if there are sufficient 140
moneys greater than the sum total of then pending emergency 141
purposes account requests, or requests for releases from the other 142
appropriation. 143

If sufficient moneys do not exist in the emergency purposes 144
account or any other appropriation for emergencies or 145
contingencies to pay the indemnification, the employer named in 146
the agreement shall request the general assembly to make an 147
appropriation sufficient to pay the indemnification, and no 148
payment shall be made until such an appropriation has been made. 149
The employer shall make this appropriation request during the 150
current biennium and during each succeeding biennium until a 151
sufficient appropriation is made. 152

(F)(1) Subject to division (F)(2) of this section, if an 153
employer or the attorney general fails to approve indemnification 154
or limits indemnification of an officer or employee of the 155
employer, the officer or employee may commence an action against 156
the employer in the court of claims pursuant to sections 2743.01 157
to 2743.20 of the Revised Code to prove that ~~he~~ the officer or 158
employee is entitled to indemnification pursuant to division (A) 159
of this section and that division (B) of this section does not 160
prohibit or limit ~~his~~ the officer's or employee's indemnification 161
and seeking either a judgment against the employer for a sum of 162
money that the officer or employee has paid to satisfy a judgment 163
or settlement or an order directing the employer to pay a judgment 164
or settlement against the officer or employee that has not been 165
satisfied. Section 109.365 of the Revised Code does not prohibit 166
any information obtained by the attorney general in ~~his~~ the 167
attorney general's investigation conducted pursuant to division 168
(A) of section 109.362 of the Revised Code to determine whether to 169
defend the officer or employee from being admitted as evidence in 170
any action brought pursuant to this section. 171

An action brought pursuant to division (F)(1) of this section shall be commenced no later than two years after the cause of action arising under division (F)(1) of this section accrues. A cause of action arising under this section accrues upon the entry of a money judgment against the officer or employee if the time for filing an appeal in the action lapses without the filing of an appeal, upon the conclusion of the final appeal in any action in which a money judgment is entered against the officer or employee if an appeal is filed in the action, or upon execution of any settlement agreement requiring payment of money by the officer or employee.

(2) Notwithstanding division (F)(1) of this section, an officer or employee may not commence an action against the employer in the court of claims or in any other court regarding a refusal of the employer or the attorney general to indemnify punitive or exemplary damages pursuant to this section.

Sec. 341.27. (A) As used in this section:

(1) "County correctional facility" has the same meaning as in section 341.42 of the Revised Code.

(2) "County correctional officer" has the same meaning as in section 341.41 of the Revised Code.

(B) If all the prisoners or adult offenders working on a work detail administered by a county correctional facility and outside the facility have volunteered for the work detail and are imprisoned or reside in that facility for an offense other than a felony of the first or second degree and if the applicable county correctional officer complies with division (C) of this section, both of the following apply:

(1) No sheriff, deputy sheriff, or county correctional officer is liable for civil damages for injury, death, or loss to

person or property caused or suffered by a prisoner or adult offender working on the work detail unless the injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff, deputy sheriff, or county correctional officer. 202
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(2) The county in which the prisoners or adult offenders work on the work detail and that employs the sheriff, deputy sheriff, or county correctional officer is not liable for civil damages for injury, death, or loss to person or property caused or suffered by a prisoner or adult offender working on the work detail unless the injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff or any deputy sheriff or county correctional officer. 206
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(C) To qualify for the immunity described in division (B)(1) of this section regarding a work detail, a county correctional officer, prior to having the prisoners or adult offenders of the county correctional facility, work outside the facility on the work detail, shall inform each prisoner or adult offender on the work detail of the provisions of this section, including notifying the prisoner or adult offender that, by volunteering for the work detail, the prisoner or adult offender cannot hold the sheriff, deputy sheriff, or county correctional officer or the county liable for civil damages for injury, death, or loss to person or property unless the injury, death, or loss results from malice or wanton or reckless misconduct of the sheriff, deputy sheriff, or county correctional officer. 214
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Sec. 753.06. (A) As used in this section: 227

(1) "Municipal correctional facility" has the same meaning as in section 753.32 of the Revised Code. 228
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(2) "Municipal correctional officer" has the same meaning as in section 753.31 of the Revised Code. 230
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(B) If all the prisoners working on a work detail 232
administered by a municipal correctional facility and outside the 233
facility have volunteered for the work detail and are imprisoned 234
in that facility for an offense other than a felony of the first 235
or second degree and if the applicable municipal correctional 236
officer complies with division (C) of this section, both of the 237
following apply: 238

(1) No member of the organized police department of the 239
municipal corporation and no municipal correctional officer is 240
liable for civil damages for injury, death, or loss to person or 241
property caused or suffered by a prisoner working on the work 242
detail unless the injury, death, or loss results from malice or 243
wanton or reckless misconduct of the member of the organized 244
police department of the municipal corporation or the municipal 245
correctional officer. 246

(2) A municipal corporation in which the prisoners work on 247
the work detail and that employs the member of the organized 248
police department or the municipal correctional officer or a 249
township in which the prisoners work on the work detail is not 250
liable for civil damages for injury, death, or loss to person or 251
property caused or suffered by a prisoner working on the work 252
detail unless the injury, death, or loss results from malice or 253
wanton or reckless misconduct of the member of the organized 254
police department of the municipal corporation or a municipal 255
correctional officer. 256

(C) To qualify for the immunity described in division (B)(1) 257
of this section regarding a work detail, a municipal correctional 258
officer, prior to having the prisoners of the municipal 259
correctional facility work outside the facility on the work 260
detail, shall inform each prisoner on the work detail of the 261
provisions of this section, including notifying the prisoner that, 262
by volunteering for the work detail, the prisoner cannot hold any 263

member of the organized police department of the municipal 264
corporation or any municipal correctional officer or the municipal 265
corporation or township liable for civil damages for injury, 266
death, or loss to person or property unless the injury, death, or 267
loss results from malice or wanton or reckless misconduct of the 268
member of the organized police department of the municipal 269
corporation or the municipal correctional officer. 270

Sec. 2743.01. As used in this chapter: 271

(A) "State" means the state of Ohio, including, but not 272
limited to, the general assembly, the supreme court, the offices 273
of all elected state officers, and all departments, boards, 274
offices, commissions, agencies, institutions, and other 275
instrumentalities of the state ~~of Ohio~~. "State" does not include 276
political subdivisions. 277

(B) "Political subdivisions" means municipal corporations, 278
townships, counties, school districts, and all other bodies 279
corporate and politic responsible for governmental activities only 280
in geographic areas smaller than that of the state to which the 281
sovereign immunity of the state attaches. 282

(C) "Claim for an award of reparations" or "claim" means a 283
claim for an award of reparations made under sections 2743.51 to 284
2743.72 of the Revised Code. 285

(D) "Award of reparations" or "award" means an award made 286
under sections 2743.51 to 2743.72 of the Revised Code. 287

(E)(1) "Public duty" includes, but is not limited to, any 288
statutory, regulatory, or assumed duty concerning any action or 289
omission of the state involving any of the following: 290

(a) Permitting, certifying, licensing, inspecting, 291
investigating, supervising, regulating, auditing, monitoring, law 292
enforcement, or emergency response activity; 293

(b) Supervising, rehabilitating, or liquidating corporations 294
or other business entities. 295

(2) "Public duty" does not include any action of the state 296
under circumstances in which a special relationship can be 297
established between the state and an injured party as provided in 298
division (A)(3) of section 2743.02 of the Revised Code. 299

Sec. 2743.02. (A)(1) The state hereby waives its immunity 300
from liability, except as provided for the office of the state 301
fire marshal in division (G)(1) of section 9.60 and division (B) 302
of section 3737.221 of the Revised Code and subject to division 303
(H) of this section, and consents to be sued, and have its 304
liability determined, in the court of claims created in this 305
chapter in accordance with the same rules of law applicable to 306
suits between private parties, except that the determination of 307
liability is subject to the limitations set forth in this chapter 308
and, in the case of state universities or colleges, in section 309
3345.40 of the Revised Code, and except as provided in division 310
(A)(2) or (3) of this section. To the extent that the state has 311
previously consented to be sued, this chapter has no 312
applicability. 313

Except in the case of a civil action filed by the state, 314
filing a civil action in the court of claims results in a complete 315
waiver of any cause of action, based on the same act or omission, 316
which the filing party has against any officer or employee, as 317
defined in section 109.36 of the Revised Code. The waiver shall be 318
void if the court determines that the act or omission was 319
manifestly outside the scope of the officer's or employee's office 320
or employment or that the officer or employee acted with malicious 321
purpose, in bad faith, or in a wanton or reckless manner. 322

(2) If a claimant proves in the court of claims that an 323
officer or employee, as defined in section 109.36 of the Revised 324

Code, would have personal liability for the officer's or
employee's acts or omissions but for the fact that the officer or
employee has personal immunity under section 9.86 of the Revised
Code, the state shall be held liable in the court of claims in any
action that is timely filed pursuant to section 2743.16 of the
Revised Code and that is based upon the acts or omissions.

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(3)(a) Except as provided in division (A)(3)(b) of this
section, the state is immune from liability in any civil action or
proceeding involving the performance or nonperformance of a public
duty, including the performance or nonperformance of a public duty
that is owed by the state in relation to any action of an
individual who is committed to the custody of the state.

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(b) The state immunity provided in division (A)(3)(a) of this
section does not apply to any action of the state under
circumstances in which a special relationship can be established
between the state and an injured party. A special relationship
under this division is demonstrated if all of the following
elements exist:

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(i) An assumption by the state, by means of promises or
actions, of an affirmative duty to act on behalf of the party who
was allegedly injured;

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(ii) Knowledge on the part of the state's agents that
inaction of the state could lead to harm;

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(iii) Some form of direct contact between the state's agents
and the injured party;

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

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(B) The state hereby waives the immunity from liability of
all hospitals owned or operated by one or more political
subdivisions and consents for them to be sued, and to have their

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liability determined, in the court of common pleas, in accordance 355
with the same rules of law applicable to suits between private 356
parties, subject to the limitations set forth in this chapter. 357
This division is also applicable to hospitals owned or operated by 358
political subdivisions which have been determined by the supreme 359
court to be subject to suit prior to July 28, 1975. 360

(C) Any hospital, as defined in section 2305.113 of the 361
Revised Code, may purchase liability insurance covering its 362
operations and activities and its agents, employees, nurses, 363
interns, residents, staff, and members of the governing board and 364
committees, and, whether or not such insurance is purchased, may, 365
to such extent as its governing board considers appropriate, 366
indemnify or agree to indemnify and hold harmless any such person 367
against expense, including attorney's fees, damage, loss, or other 368
liability arising out of, or claimed to have arisen out of, the 369
death, disease, or injury of any person as a result of the 370
negligence, malpractice, or other action or inaction of the 371
indemnified person while acting within the scope of the 372
indemnified person's duties or engaged in activities at the 373
request or direction, or for the benefit, of the hospital. Any 374
hospital electing to indemnify such persons, or to agree to so 375
indemnify, shall reserve such funds as are necessary, in the 376
exercise of sound and prudent actuarial judgment, to cover the 377
potential expense, fees, damage, loss, or other liability. The 378
superintendent of insurance may recommend, or, if such hospital 379
requests the superintendent to do so, the superintendent shall 380
recommend, a specific amount for any period that, in the 381
superintendent's opinion, represents such a judgment. This 382
authority is in addition to any authorization otherwise provided 383
or permitted by law. 384

(D) Recoveries against the state shall be reduced by the 385
aggregate of insurance proceeds, disability award, or other 386

collateral recovery received by the claimant. This division does
not apply to civil actions in the court of claims against a state
university or college under the circumstances described in section
3345.40 of the Revised Code. The collateral benefits provisions of
division (B)(2) of that section apply under those circumstances.

(E) The only defendant in original actions in the court of
claims is the state. The state may file a third-party complaint or
counterclaim in any civil action, except a civil action for two
thousand five hundred dollars or less, that is filed in the court
of claims.

(F) A civil action against an officer or employee, as defined
in section 109.36 of the Revised Code, that alleges that the
officer's or employee's conduct was manifestly outside the scope
of the officer's or employee's employment or official
responsibilities, or that the officer or employee acted with
malicious purpose, in bad faith, or in a wanton or reckless manner
shall first be filed against the state in the court of claims,
which has exclusive, original jurisdiction to determine,
initially, whether the officer or employee is entitled to personal
immunity under section 9.86 of the Revised Code and whether the
courts of common pleas have jurisdiction over the civil action.

The filing of a claim against an officer or employee under
this division tolls the running of the applicable statute of
limitations until the court of claims determines whether the
officer or employee is entitled to personal immunity under section
9.86 of the Revised Code.

(G) Whenever a claim lies against an officer or employee who
is a member of the Ohio national guard, and the officer or
employee was, at the time of the act or omission complained of,
subject to the "Federal Tort Claims Act," 60 Stat. 842 (1946), 28
U.S.C. 2671, et seq., then the Federal Tort Claims Act is the

exclusive remedy of the claimant and the state has no liability
under this section.

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(H) If an inmate of a state correctional institution has a
claim against the state for the loss of or damage to property and
the amount claimed does not exceed three hundred dollars, before
commencing an action against the state in the court of claims, the
inmate shall file a claim for the loss or damage under the rules
adopted by the director of rehabilitation and correction pursuant
to this division. The inmate shall file the claim within the time
allowed for commencement of a civil action under section 2743.16
of the Revised Code. If the state admits or compromises the claim,
the director shall make payment from a fund designated by the
director for that purpose. If the state denies the claim or does
not compromise the claim at least sixty days prior to expiration
of the time allowed for commencement of a civil action based upon
the loss or damage under section 2743.16 of the Revised Code, the
inmate may commence an action in the court of claims under this
chapter to recover damages for the loss or damage.

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The director of rehabilitation and correction shall adopt
rules pursuant to Chapter 119. of the Revised Code to implement
this division.

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Sec. 5502.52. (A) There is hereby created the statewide
emergency alert program to aid in the identification and location
of children who are under eighteen years of age, who are abducted,
and whose abduction, as determined by a law enforcement agency,
poses a credible threat of immediate danger of serious bodily harm
or death to a child. The program shall be a coordinated effort
among the governor's office, the department of public safety, the
attorney general, law enforcement agencies, the state's public and
commercial television and radio broadcasters, and others as deemed
necessary by the governor.

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(B) The statewide emergency alert program shall not be 449
implemented unless all of the following activation criteria are 450
met: 451

(1) The local investigating law enforcement agency confirms 452
that an abduction has occurred. 453

(2) An abducted child is under eighteen years of age. 454

(3) The abduction poses a credible threat of immediate danger 455
of serious bodily harm or death to a child. 456

(4) A law enforcement agency determines that the child is not 457
a runaway and has not been abducted as a result of a child custody 458
dispute, unless the dispute poses a credible threat of immediate 459
danger of serious bodily harm or death to the child. 460

(5) There is sufficient descriptive information about the 461
child, the abductor, and the circumstances surrounding the 462
abduction to indicate that activation of the alert will help 463
locate the child. 464

(C) Nothing in division (B) of this section prevents the 465
activation of a local or regional emergency alert program that may 466
impose different criteria for the activation of a local or 467
regional plan. 468

(D) Any radio broadcast station, television broadcast 469
station, or cable television system participating in the statewide 470
emergency alert program or in any local or regional emergency 471
alert program, and any director, officer, employee, or agent of 472
any such station or system, shall not be liable to any person for 473
damages for any loss allegedly caused by or resulting from the 474
station's or system's broadcast or cablecast of, or failure to 475
broadcast or cablecast, any information pursuant to the statewide 476
emergency alert program or the local or regional emergency alert 477
program. 478

<u>(E)</u> As used in this section:	479
(1) "Abducted child" means a child for whom there is credible evidence to believe that the child has been abducted in violation of section 2905.01, 2905.02, 2905.03, or 2905.05 of the Revised Code.	480 481 482 483
(2) <u>"Cable television system" means a cable system, as defined in section 2913.04 of the Revised Code.</u>	484 485
<u>(3)</u> "Law enforcement agency" includes, but is not limited to, a county sheriff's office, the office of a village marshal, a police department of a municipal corporation, a police force of a regional transit authority, a police force of a metropolitan housing authority, the state highway patrol, a state university law enforcement agency, the office of a township police constable, and the police department of a township or joint township police district.	486 487 488 489 490 491 492 493
Section 2. That existing sections 9.87, 2743.01, 2743.02, and 5502.52 of the Revised Code are hereby repealed.	494 495