
GOVERNOR

- Allows a sworn employee to apply for legal protections when a use of force incident results in physical harm or death and allows the Governor or a designee, under certain circumstances, to approve of legal representation to the sworn employee to be paid by the appointing authority.
- Authorizes the Governor or former Governors of Ohio to solemnize marriages.

Representation for sworn employee in criminal complaints

(R.C. 109.872)

The bill creates a process for a “sworn employee” to apply for legal representation when that employee was involved in a use of force incident that resulted in death, serious physical harm to persons, or physical harm to persons in the scope of that employee’s official duties. “Physical harm to persons” and “serious physical harm to persons” have the same meanings as defined in continuing criminal law. All of the following are “sworn employees” under the bill:

- Enforcement agents appointed to enforce Ohio’s liquor laws and rules regulating the use of SNAP benefits;
- The Superintendent and troopers of the Ohio State Highway Patrol;
- Special police officers of the Ohio State Highway Patrol;
- Other employees of any Ohio department, agency, or board who are under the executive branch and ultimately report to the Governor and are authorized to investigate, execute Ohio laws, protect public safety, or enforce Ohio laws as part of their job duties.

Applying for representation

A sworn employee listed above may apply to the director of the sworn employee’s appointing authority and the Governor or the Governor’s designee for legal representation if the sworn employee (1) was involved in a use of force that resulted in death, serious physical harm to persons, or physical harm to persons, (2) was involved in the use of force within the scope and course of the sworn employee’s official duties, and (3) is under investigation by a prosecuting attorney, the Bureau of Criminal Identification and Investigation, or another investigating authority for possible criminal charges based on the sworn employee’s use of force.

Approval

If the Governor or the Governor’s designee determines that all of the conditions described in “**Applying for representation**,” above, apply and the Governor or the Governor’s designee considers the request for legal representation to be appropriate, the Governor or Governor’s designee, in the Governor’s or Governor’s designee’s sole discretion, may approve the request. If the request is approved, the Governor or the Governor’s designee must provide the sworn employee with a list of three attorneys who are admitted to the practice of law in Ohio and are experienced in the defense of criminal charges. The sworn employee may select one of

the attorneys to represent the sworn employee until the grand jury concludes its proceedings, a criminal complaint is filed, or the case is disposed of before the grand jury concludes its proceedings or a criminal complaint is filed.

Payment for representation

An attorney who represents a sworn employee in criminal proceedings outlined in “**Approval**,” above, must be paid at the usual rate for like services in the community in which the criminal proceedings occur or at the usual rate paid to special counsel under continuing law. The appointing authority is required to pay the attorney’s compensation and all reasonable expenses and court costs incurred in the defense of the sworn employee.

Representation after an indictment or criminal complaint

If a criminal investigation of a sworn employee results in an indictment or the filing of a criminal complaint based on the sworn employee’s involvement in the use of force, an attorney who represents the sworn employee under the provisions of the bill may continue to represent the sworn employee in the criminal proceeding on any terms to which the attorney and sworn employee mutually agree. Neither the Governor or the Governor’s designee nor the appointing authority is obligated to provide the sworn employee with legal representation or to pay attorney’s fees, expenses, or court costs incurred by the sworn employee following the indictment or criminal complaint charging the sworn employee with an offense, but the Governor or the Governor’s designee, in the Governor’s or the Governor’s designee’s sole discretion, may approve a request to pay attorney’s fees, expenses, or court costs incurred by the sworn employee following the indictment or criminal complaint.

Reimbursement

If a sworn employee is represented by an attorney as described above and if the sworn employee is subsequently convicted of or pleads guilty to a criminal offense based on the sworn employee’s involvement in the use of force, the Governor or the Governor’s designee or the appointing authority may direct the Attorney General to seek to recover, including by means of a civil action, from the sworn employee the costs of legal representation paid by the appointing authority under the bill.

Governor’s decision final

A decision of the Governor or the Governor’s designee on whether to furnish legal representation prior to indictment or complaint or whether to extend legal representation through criminal proceedings, is not subject to appeal or review in any court or other forum. A person does not have a right of action against the appointing authority, the Governor, or the Governor’s designee in the court of claims or any other court based on a decision of the Governor or the Governor’s designee made under these provisions.

Terms of indemnification

The indemnification of a sworn employee is to be accomplished only through the following procedure:

1. If the Governor or the Governor's designee determines that the actions or omissions of the employee that gave rise to the claim were within the scope of the employee's employment and that the costs of legal representation should be indemnified, the sworn employee's appointing authority must prepare an indemnity agreement. The indemnity agreement must specify that the appointing authority will indemnify the employee for the expenses of legal representation. The agreement is not effective until it is approved by the employee, the director or appointing authority, and the Governor or the Governor's designee.

2. The appointing authority must forward a copy of the indemnity agreement to the OBM Director.

3. The OBM Director must direct the appointing authority to pay the indemnification against available unencumbered money in the appropriations of the appointing authority. The OBM Director has sole discretion to determine whether unencumbered money in a particular appropriation is available for payment of the indemnification.

4. If sufficient money does not exist to pay the indemnification, the appointing authority must request the General Assembly to make an appropriation sufficient to pay the indemnification, and no payment can be made until the appropriation is made. The appointing authority must make the appropriation request during the current biennium and during each succeeding biennium until a sufficient appropriation is made.

Governor solemnizing marriages

(R.C. 3101.08)

The bill authorizes the Governor or former Governors of Ohio to solemnize marriages.⁷⁵ Continuing law authorizes the following persons to solemnize marriages:

- An ordained or licensed minister of any religious society or congregation within Ohio who is licensed to solemnize marriages;
- A judge of a county court;
- A judge of a municipal court;
- A probate judge;
- The mayor of a municipal corporation within Ohio;
- The Superintendent of Ohio deaf and blind education services;
- Any religious society in conformity with the rules of its church.

⁷⁵ R.C. 3101.08 states that marriage is allowed only between one man and one woman. However, this statute was struck down by the U.S. Supreme Court in *Obergefell v. Hodges*, 576 U.S. 644 (2015), under the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution and does not have any force or effect regarding the restrictions of same-sex marriage.