



THE OHIO PROSECUTOR

January 2023

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From your President...



Jane Hanlin
OPAA President
Jefferson County

My Fellow Prosecutors,

I am humbled to serve as the President of the Ohio Prosecuting Attorneys Association this year. Over the years, I have had the honor to watch so many of our prosecutors lead the charge to keep the citizens of our state safe and I look forward to doing the same during my term.

I have long said that serving as a prosecutor is the most important role an attorney could ever hold. That has never been truer than it is today. Our state, along with all of the states in our great nation, continue to face the horrors that violent crime inflicts upon the members of our communities. We continue to face the ravages of dangerous drug trafficking, such as fentanyl dealers, who prey upon so many of our citizens.

We also face challenges from those who seek to weaken our criminal justice system and make it even more difficult to achieve justice for the victims of crime. We must stand united against those attacks and make clear to the public the vital roles of our prosecutors in fighting crime and protecting our communities.

I am excited about the opportunity to serve throughout this year and look forward to working with each and every one of you.

Jane

From your Executive Director...



Louis Tobin
OPAA Executive
Director

Prosecutors –

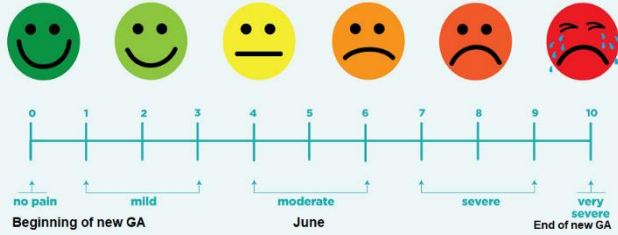
Recruitment and retention of assistant prosecutors has been a fairly regular topic of discussion at OPAA Executive Committee meetings over the past year. We have started to do some outreach to Ohio law schools and their career services, and have attended several law school career events where we've been able to promote the work that prosecutors do.

I want also to highlight the enactment of House Bill 150 during December's lame duck session. House Bill 150 (Rural Practice Incentive Program) establishes a loan forgiveness program for attorneys who have been admitted to practice in Ohio for less than eight years and who are employed by the prosecuting attorney of a county, the state public defender, a county public defender commission, or who serve as appointed counsel for a certain number of hours each year. The employment must be in an area designated as an underserved community that for the purposes of the program is any county with a ratio of attorneys to general population of no more than 1 to 700. While funding is limited and must be distributed equitably between prosecutors and defense counsel, applicants are eligible for up to \$30,000 of loan forgiveness for a three-year commitment and up to an additional \$10,000 per year for a fourth or fifth year of service.

The program will be managed by the Department of Higher Education and we will share more details when they become available. For now, know that this legislation was driven by a recognition of the recruitment and retention problems that many counties face in attracting young lawyers.

Lou

Pain Scale



At the Statehouse

Please contact Lou if you have any questions about a piece of legislation or the reason for our position. Also, if you have any questions about the work of the legislature or the status of any legislation, please let us know!

134th General Assembly – Lame Duck Enactments

Senate Bill 288 (Criminal Justice Omnibus) – *Effective April 4, 2023*

To modify various aspects of the law regarding crimes and corrections, trial procedures, correctional officers and employees, coroner records, inmate internet access, civil protection orders, delinquent child adjudications and case transfers, youthful offender parole review, OVI, texting while driving, and other traffic offenses, data collection requirements for distracted driving, engaging in prostitution with a person with a developmental disability, ethics violations, certificates of qualification for employment, licensing collateral sanctions, criminal record sealing and expungement, the chief justice of the court of appeals, sexual assault examination kits, a statewide electronic warrant system, the office of the Attorney General, the Elder Abuse Commission, funeral expenses to victims of crime, funds for electronic monitoring, and certain assisted reproduction matters.

House Bill 150 (Rural Practice Initiative – Prosecutor/Public Defender Loan Forgiveness) – *Effective April 3, 2023*

To establish the Rural Practice Incentive Program to create a loan forgiveness program for prosecutors and defense attorneys who agree to service in certain areas of the state for a period of 3 to 5 years, to establish a task force to study Ohio's indigent defense system, and to make an appropriation.

House Bill 343 (Marsy's Law) – *Effective April 6, 2023*

To make changes relative to the rights of crime victims.

Senate Bill 16 (EMS Responders – Civil Action) – *Effective April 4, 2023*

To make changes regarding assault or menacing committed or directed against, and targeting, an emergency service responder, family member, or co-worker; the offense of unlawfully impeding public passage of an emergency service responder; prohibiting certain sex offenders and child-victim offenders from engaging in a specified volunteer capacity involving direct work with, or supervision or disciplinary power over, minors; changes to the offense of voyeurism; firearms qualification for county correctional officers; the specification that there is no period of limitations for prosecution of a conspiracy or attempt to commit, or complicity in committing, aggravated murder or murder; a political subdivision's emergency powers when suppressing a riot, mob, or potential riot or mob; the preservation of rights regarding deadly weapons and firearms during an emergency; the penalties for the offense of importuning; additions to the Statewide Emergency Alert Program; the requirement that county prosecutors annually report all case resolutions to the board of county commissioners and all fire-related case resolutions to the State Fire Marshal; and the removal of ankle and leg restraints from those prohibited for use on a pregnant charged or convicted criminal offender or a pregnant charged or convicted delinquent child, and the lowering of the required threat level for this use of restraints.

House Bill 462 (Swatting) – *Effective April 3, 2023*

To amend sections 124.152, 2901.01, and 2929.18 and to enact sections 2917.321 and 5503.031 of the Revised Code to prohibit swatting, to add swatting to the definition of an offense of violence, and to make changes regarding exempt employee pay ranges and pay ranges for certain State Highway Patrol officers.

House Bill 545 (Peer Support Privilege) – *Effective April 6, 2023*

To amend section 4735.05 and to enact sections 2317.023 and 4113.42 of the Revised Code to generally allow for privileged testimonial communications between a peer support team member and an individual receiving peer support services or advice from the team member.

House Bill 254 (Domestic Violence Fatality Review Boards) – *Effective April 3, 2023*

To amend sections 121.22, 149.43, 307.629, 307.99, and 4731.22 and to enact sections 307.651, 307.652, 307.653, 307.654, 307.655, 307.656, 307.657, 307.658, 307.659, and

3701.0412 of the Revised Code to provide for the establishment of domestic violence fatality review boards.

Senate Bill 164 (Animal Cruelty) – Effective April 3, 2023

To amend sections 959.06, 959.131, 959.99, and 2901.01 of the Revised Code to revise the law and penalties associated with companion animal cruelty and to generally prohibit an animal shelter from destroying a domestic animal by the use of a gas chamber.

Senate Bill 202 (Prohibit Use of Disability to Deny Guardianship) – Effective April 3, 2023

To prohibit a person's disability from being the basis to deny or limit custody, parenting time, visitation, adoption, or service as a guardian or foster caregiver, regarding a minor. Includes amendments on prosecutor legal services, judicial qualifications, and the creation of a bail task force.

Recently Introduced Legislation

SB9 LAW CHANGES-MEDICAL MARIJUANA (HUFFMAN S, SCHURING K) To amend the law related to medical marijuana.

Current Status: 1/17/2023 - Referred to Committee

Position: Senate General Government

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-9>

SB21 APPEAL PROCESSES, LEGISLATIVE ACTION (MCCOLLEY R, REYNOLDS M) To generally change the venue in which appeal from an agency order is proper to the local court of common pleas, to revise the law governing claim preclusion in zoning appeals, to revise the law governing the referral of cases to the Hamilton County Drug Court, to transfer Perry Township in Wood County from the territorial jurisdiction of the Tiffin-Fostoria Municipal Court to the territorial jurisdiction of the Bowling Green Municipal Court, to allow the General Assembly to intervene in certain actions, and to allow the General Assembly and the Governor to retain special counsel.

Current Status: 1/17/2023 - Referred to Committee

Position: Senate Judiciary

Position: Monitor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-21>

SB25 REAL PROPERTY FORECLOSURES (HACKETT R) Relating to real property foreclosures.

Current Status: 1/23/2023 - Introduced

Position: Monitor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-25>

SB26 MARIJUANA-VEHICLE, WATERCRAFT USE (MANNING N) To change the laws pertaining to operating a vehicle or watercraft while under the influence of marijuana and the admissibility of evidence for purposes of OVI statutes.

Current Status: 1/23/2023 - Introduced

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-26>

actionTRACK - Hannah News Service, Inc.

New and Noteworthy



Steve Taylor

Merit Decisions of Interest Since 11/1/22

State v. Belville, ___ Ohio St.3d ___, 2022-Ohio-3879. The Court (7-0) affirmed the denial of the motion to dismiss on statutory speedy-trial grounds, with the six-justice majority concluding that the defense discovery request tolled the speedy-trial clock for 43 days while the State endeavored to provide a copy of a voluminous DVR drive to the defense.

(Decided 11-2-22; Lawrence County)

In re K.K., ___ Ohio St.3d ___, 2022-Ohio-3888. The Court (6-1) concluded that the mandatory 90-day time limit for holding dispositional hearings under former R.C. 2151.35(B)(1) in abuse-neglect-dependency cases was not jurisdictional and therefore the parents of the child were barred by res judicata from raising the issue in a challenge to an earlier temporary-custody order. (Decided 11-3-22; Agency appeal; Butler County)

State v. Bortree, ___ Ohio St.3d ___, 2022-Ohio-3890. The Court (7-0) concluded that the crimes of attempted aggravated murder and attempted murder are governed by

the general six-year statute of limitations for felonies. (Decided 11-3-22; Logan County)

State v. Hatton, ___ Ohio St.3d ___, 2022-Ohio-3991. The Court (7-0) concluded that res judicata did not bar the defendant's post-conviction petition and delayed motion for new trial as to a post-trial expert memo conceding an important point that had been unclear at trial. (Decided 11/10/22; Pickaway County)

State v. Blanton, ___ Ohio St.3d ___, 2022-Ohio-3985. The Court (7-0) declined to overrule its earlier decision in *State v. Cole*, 2 Ohio St.3d 112 (1982), that a claim of trial counsel ineffectiveness can be barred by res judicata on post-conviction review if the claim fairly could have been determined on the original trial-court record on direct appeal. (Decided 11/10/22; Adams County)

State v. Bond, ___ Ohio St.3d ___, 2022-Ohio-4144. The Court (7-0) concluded that plain-error reversal was inappropriate for the unobjected-to partial closure of the courtroom during trial. The Court split (4-3) on what significance the "structural error" nature of error might have on the outcome-determination prong of plain-error review. (Decided 11/23/22; State's appeal; Richland County)

State v. P.J.F., ___ Ohio St.3d ___, 2022-Ohio-4152. The Court (6-1) distinguished *State v. Aguirre*, 144 Ohio St.3d 179, 2014-Ohio-4603, and concluded that the termination of the community-control sanction also terminated the unpaid must-pay-arrearage condition of the sanction and therefore amounted to a "final discharge" for sealing-of-conviction purposes. (Decided 11/23/22; Franklin County)

In re T.A., ___ Ohio St.3d ___, 2022-Ohio-4173. The Court (5-2) concluded that, after the juvenile appealed his delinquency adjudication, he could not seek reopening of the appeal under App.R. 26(B) on grounds of ineffective appellate counsel, as the "reopening" procedure is limited to direct appeals of judgments of conviction and sentence. But the juvenile can seek "delayed reconsideration" under App.R. 26(A) and App.R. 14(B) pursuant to the analysis in *State v. Murnahan*, 63 Ohio St.3d 60 (1992). (Decided 11-29-22; Medina County)

State v. Martin, ___ Ohio St.3d ___, 2022-Ohio-4175. The Court (7-0) concluded that "manifest weight" review is inappropriate on appeal as to the juvenile court's probable-cause determination as part of a mandatory-bindover proceeding. The probable-cause standard sets a relatively low bar for bindover, and the juvenile court should *not* be

acting as the "ultimate trier of fact" in making the probable-cause determination. (Decided 11-29-22; Cuyahoga County)

State v. Garrett, ___ Ohio St.3d ___, 2022-Ohio-4218. In a double-homicide case in which the defendant stabbed to death his four-year-old daughter and her mother, and in which the defendant received the death penalty for killing the daughter, the Court (7-0) affirmed the convictions and (4-3) affirmed the death sentence. (Decided 11-30-22; Franklin County)

State v. Lloyd, ___ Ohio St.3d ___, 2022-Ohio-4259. The Court (4-3) rejected a claim of trial counsel ineffectiveness in regard to counsel's failure to request an instruction on a lesser-included offense, concluding that there can be a reasonable "all or nothing" strategy at work when counsel does not request a lesser, and further concluding that the evidence did not support the lesser instruction anyway. (Decided 12-1-22; Cuyahoga County)

State v. Nicholas, ___ Ohio St.3d ___, 2022-Ohio-4276. The Court (7-0) held that, for purposes of a discretionary bindover, the State has the burden of persuasion by a preponderance on the issue of whether the juvenile is not amenable to rehabilitation in the juvenile system. But the Court (4-3) also held that the juvenile court abused its discretion in finding that this juvenile was not amenable, despite evidence that the juvenile committed aggravated murder and had a split personality known as "Jeff the Killer". (Decided 12-2-22; Champaign County)

State v. Scott, ___ Ohio St.3d ___, 2022-Ohio-4277. For purposes of determining whether the trial court should grant an application for post-conviction DNA testing, the Court (7-0) concluded that the trial court need not consider and should not consider the possibility that DNA testing could lead to a positive DNA match in CODIS. However, the Court then split (4-3) on the issue of whether the defendant could otherwise meet the "outcome determination" test for ordering testing, with the majority concluding that the defendant's application met that standard. (Decided 12-2-22; Preble County)

State v. Brunson, ___ Ohio St.3d ___, 2022-Ohio-4299. The Court (7-0) affirmed the defendant's convictions, with three concurring in judgment only. The Court rejected the defendant's claims that he should have been allowed to cross-examine a State's witness on matter that was privileged under the witness' attorney-client privilege. The Court agreed that the sentencing court had erred in drawing a negative inference of lack of remorse from the defendant's silence at sentencing, but the Court concluded that this was insufficient

to warrant a resentencing. (Decided 12-5-22; Cuyahoga County)

State v. Yerkey, ___ Ohio St.3d ___, 2022-Ohio-4298. The Court (4-3) held that the sentencing court cannot order the defendant to pay restitution for the victim's lost wages in attending court hearings under the statutory restitution provision or under Marsy's Law. (Decided 12-5-22; State's appeal; Columbiana County)

State v. Bourn, ___ Ohio St.3d ___, 2022-Ohio-4321. In a splintered decision, the Court (4-3) reversed the Eighth District and ruled that the defendant failed to show "actual prejudice" for purposes of his preindictment-delay claim. (Decided 12-6-22; State's appeal; Cuyahoga County)

State v. Brown, ___ Ohio St.3d ___, 2022-Ohio-4347. The Court (5-2) rejected the defendant's argument claiming that the "litigation privilege" applied to her tampering-with-records charge under R.C. 2913.42(A)(1) for the filing of a wholly-bogus quiet-title action. The "litigation privilege" does not shield a person from criminal liability, and, instead, only applies to immunize the speaker from civil liability for defamation when the statements were made during judicial proceedings and were reasonably related to those proceedings. (Decided 12-7-22; State's appeal; Hamilton County)

State v. Jackson, ___ Ohio St.3d ___, 2022-Ohio-4365. The Court (5-2) held that the officer's order to the defendant to exit the vehicle was proper, and it made no difference that the officer opened the car door instead of the defendant. The majority also held that opening the door to obtain the driver's exit is not a "search", that a second officer's observation of a marijuana cigarette through the open door fell within the plain-view doctrine, and that the wider warrantless search was supported by probable cause under the automobile exception. (Decided 12-8-22; Hamilton County)

State v. Weaver, ___ Ohio St.3d ___, 2022-Ohio-4371. The Court (4-3) concluded, based on the record developed at the post-conviction proceedings, that trial counsel had been ineffective at the sentencing hearing in failing to introduce socio-psychological information related to a young woman's commission of "neonaticide". The majority also took aim at various comments that the trial court had made during the post-conviction proceedings as indicating bias on the part of the court, and, because of such bias, the majority ordered that the new sentencing hearing on remand must occur before a different judge. (Decided 12-8-22; Muskingum County)

State v. Philpotts, ___ Ohio St.3d ___, 2022-Ohio-4362. In regard to the constitutionality of barring indictees from possessing firearms under the WUD statute, the Court (4-3) vacated the court of appeals decision and remanded the case to that court for further consideration in light of *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S.Ct. 2111 (2022). (Decided 12-9-22; Cuyahoga County)

State v. Bollar, ___ Ohio St.3d ___, 2022-Ohio-4370. The Court (4-3) concluded that R.C. 2929.14(B)(1)(g) applied to require the imposition of a second firearm term, even though the charge underlying that count had been merged for sentencing purposes. (Decided 12-9-22; Stark County)

State v. Grevious, ___ Ohio St.3d ___, 2022-Ohio-4361. A splintered set of opinions upheld under rational-basis review the provision in R.C. 2953.08(D)(3), which states that: "A sentence imposed for aggravated murder or murder pursuant to sections 2929.02 to 2929.06 of the Revised Code is not subject to review under this section." The Court affirmed in part, reversed in part, and remanded the case to the court of appeals, which must engage in the appellate review of any constitutional challenges that would be allowed under *State v. Patrick*, 164 Ohio St.3d 309, 2020-Ohio-6803. (Decided 12-9-22; Butler County)

State v. Hough, ___ Ohio St.3d ___, 2022-Ohio-4436. The Court (7-0) concluded that error occurred in failing to hold the mandatory pretrial competency hearing under R.C. 2945.37(B), and (5-2) concluded that the error was not harmless. (Decided 12-13-22; Franklin County)

State v. Fiske, ___ Ohio St.3d ___, 2022-Ohio-4435. The Court reversed the dismissal of the State's appeal of the trial court's failure to order restitution to the victim, but the Court appeared to recognize that the prosecutor would not be able to seek restitution for the victim in that appeal based on Marsy's Law because the appeal was filed in the name of the "State" and there was no indication that the victim had requested such action. (Decided 12-13-22; State's appeal; Montgomery County)

State v. Bailey, ___ Ohio St.3d ___, 2022-Ohio-4407. The Court (7-0) reversed the First District's conclusion that the defendant's kidnapping of the victim was subject to merger with the two counts of rape that the defendant had committed against that victim. Given that there was no defense objection to the trial court's decision not to merge the kidnapping count, the Court's majority applied the plain-error standard of review and concluded that the defendant's claim of merger failed under that standard. (Decided 12-14-22; State's appeal; Hamilton County)

State v. Haynes, ___ Ohio St.3d ___, 2022-Ohio-4473. The Court (5-2) concluded that open-file discovery does not satisfy the prosecutor’s duty to provide a bill of particulars and that the State had not shown that the error in failing to provide the bill of particulars was harmless. (Decided 12-15-22; Wood County; State’s motion for relief pending)

State v. Barnes, ___ Ohio St.3d ___, 2022-Ohio-4486. The Court (4-3) concluded that the trial court should have granted the defendant’s presentence motion to withdraw plea under Crim.R. 32.1 in light of his testimony that he had learned after his plea of new information corroborating his self-defense claim which would have materially changed his decision to plead. (Decided 12-15-22; Cuyahoga County)

State v. Jones, ___ Ohio St.3d ___, 2022-Ohio-4485. The Court (4-3) concluded that, when the defendant is being put on community control, the court’s notification of his possible prison sentence if he violates must also include some indication as to whether the prison sentence can be imposed consecutively. (Decided 12-15-22; Harrison County)

In re D.R., ___ Ohio St.3d ___, 2022-Ohio-4493. The Court (4-3) concluded that, based on “procedural due process”, it is a denial of “fundamental fairness” to deny the juvenile sex offender the ability to ask the juvenile court to exercise its discretion to eliminate his Tier I duty to register at the end-of-disposition stage. (Decided 12-16-22; State’s appeal; Hamilton County)

State v. Hill, ___ Ohio St.3d ___, 2022-Ohio-4544. The Court (5-2) concluded that the trial court abused its discretion in announcing that it would not accept a no contest plea in the case. While the majority concluded that the trial court was not applying a “blanket policy”, the court nevertheless abused its discretion in relying on considerations regarding whether the defendant should or should not appeal in concluding that it would not accept a no contest plea. (Decided 12-20-22; Stark County)

State v. Messenger, ___ Ohio St.3d ___, 2022-Ohio-4562. The Court (7-0) concluded that sufficiency-of-evidence review does not apply to self-defense, even though the State now has the burden of disproving self-defense beyond a reasonable doubt. (Decided 12-21-22; Franklin County)

State v. Schubert, ___ Ohio St.3d ___, 2022-Ohio-4604. The Court (4-3) concluded that the search warrant affidavit did not provide probable cause to search the cell phones found at the crash scene and that the good-faith exception did not apply because the affidavit was so lacking in indicia of

probable cause that no reasonable officer could rely on the issuance of the warrant. (Decided 12-22-22; Licking County)

State v. Morris, ___ Ohio St.3d ___, 2022-Ohio-4609. The Court (4-3) concluded that, despite the United States Supreme Court’s decision in *Jones v. Mississippi* in 2021, Ohio continues to have a requirement that a court must expressly consider the juvenile’s youth as a mitigating factor in exercising its discretion as to what life sentence to impose on a juvenile convicted for aggravated murder or complicity in aggravated murder. (Decided 12-23-22; Ashland County)

State v. Ashcraft, ___ Ohio St.3d ___, 2022-Ohio-4611. The Court (5-2) held that the “in addition to” language in R.C. 2950.99(A)(2)(b) makes it plain that the three-year mandatory term for this F-3 repeat SORN violator is to be imposed over and above what punishment the trial court imposes from the range of prison terms provided for third-degree felonies generally. (Decided 12-23-22; Knox County)

State v. Burns, ___ Ohio St.3d ___, 2022-Ohio-4606. The Court (4-3) applied the decision from *State v. Smith*, 167 Ohio St.3d 423, 2022-Ohio-274, and concluded that the defendant’s plea-based conviction under Count 29 must be vacated because the juvenile court had failed to make a probable-cause finding as to the act alleged in the corresponding count in the juvenile complaint when it bound the case over. In other respects, the Court (7-0) affirmed the other convictions being challenged, recognizing that new charges could be brought in adult court under R.C. 2151.23(H): “a case transferred from a juvenile court may result in new indicted charges in the adult court when the new charges are rooted in the acts that were the subject of the juvenile complaint but were not specifically named in the individual acts transferred.” (Decided 12-23-22; Cuyahoga County; State’s motion for reconsideration pending)

State v. Gwynne, ___ Ohio St.3d ___, 2022-Ohio-4607. The Court (4-3) concluded that, in assessing the extent to which consecutive sentencing is “necessary” under R.C. 2929.14(C)(4), and in assessing whether consecutive sentencing is disproportionate thereunder, the trial court must consider the total length of the consecutive sentences that would be imposed. The majority also concluded that R.C. 2953.08(G)(2) calls for de novo review of the trial judge’s consecutive-sentence findings, but subject to the statute’s requirement that the appellant has the burden of clearly and convincingly showing that the trial court’s findings are not supported by the record. (Decided 12-23-22; Delaware County; State’s motion for reconsideration pending)

State v. Brasher, ___ Ohio St.3d ___, 2022-Ohio-4703. The Court (7-0) affirmed the appellate court’s reversal of the trial court’s restitution order, which had been entered almost 22 months after the defendant’s original judgment of conviction had failed to impose any restitution as a sanction. At least four of the justices agreed that the victims or prosecutor should have timely appealed from the original judgment of conviction and that, having failed to do so, the issue of restitution was barred by res judicata and/or double jeopardy. (Decided 12-28-22; State’s appeal & victims’ appeal; Butler County)

State v. Bunch, ___ Ohio St.3d ___, 2022-Ohio-4723. The Court (4-3) concluded that the trial court should have ordered an evidentiary hearing on the defense post-conviction claim that trial counsel had been ineffective in failing to call an expert on eyewitness identification. (Decided 12-29-22; Mahoning County; State’s motion for reconsideration pending)

Newly-Accepted Criminal Law Cases Since 11/1/22

22-1290 *State v. Beaty* Whether the additional firearm terms above the minimum of two firearm terms authorized by R.C. 2929.14(B)(1)(g) are “discretionary” terms that avoid the requirement in R.C. 2929.14(C)(1)(a) that all mandatory firearm terms must be served consecutively. (Clermont County)

22-632 *State v. Bond* (1) Whether, pursuant to *State v. Hanning*, a child is not subject to mandatory transfer to the adult court based solely on allegations of complicity to an offense committed by an adult; (2) Whether a child can be transferred to adult court without a finding that they are not amenable to treatment in juvenile court; (3) Whether a juvenile court must engage in a meaningful colloquy with the juvenile to ensure that they knowingly, intelligently, and voluntarily waive their right to a probable cause hearing. (Accepted and held 8-16-22; full briefing ordered 12-30-22) (Cuyahoga County)

22-1227 & -1238 *State v. Dunlap* and 22-1229 & -1237 *State v. Lewis* Whether the police officer can continue the detention of a vehicle and its occupants to ask the driver for identification when the officer conducts a valid vehicle stop due to the legal status of the registered owner but learns upon approaching the vehicle that the driver is not the registered owner. (State’s appeals; Geauga County)

22-1053 *State v. Williams* (1) Whether the holding in *State v. Smith*, 167 Ohio St.3d 423, 2022-Ohio-274, is limited to circumstances where a juvenile court explicitly found there was no probable cause for a charge filed therein;

(2) Whether the requirements of a bindover procedure are waivable, and, if so, whether they can still be considered “jurisdictional”. (Accepted and held 11-8-22; full briefing ordered 12-28-22) (State’s appeal; Hamilton County)

22-1069 *State v. Taylor* (1) Whether *State v. Smith*, 167 Ohio St.3d 423, 2022-Ohio-274, prohibits complicity-based mandatory bindovers on category-one offenses; (2) Whether R.C. 2151.23(H) authorizes an adult court to convict a defendant of any offense “rooted in” the offense that was the basis of the transfer, unless the conviction is for an offense that was charged in juvenile court and found to be unsupported by probable cause; (3) Whether the jurisdiction referenced in R.C. 2151.23(H) implicates jurisdiction over the case, not subject-matter jurisdiction; (4) Whether the right to counsel in juvenile proceedings under either the Sixth Amendment or the Due Process Clause attaches not upon the State’s approval of charges, but rather upon the actual filing of the complaint; (5) Whether the right to counsel under either the Sixth Amendment or the Due Process Clause may be anticipatorily asserted prior to the filing of the juvenile complaint and may be waived without the advice of counsel. (State’s appeal; Franklin County)

22-1257 *State v. Degabson* Whether the “Stand Your Ground” statutory amendment as to self-defense effective on 4-6-21, which removed the duty to retreat for most situations, applies to the post-effective-date trial of offenses that occurred before the amendment’s effective date. (Clark County)

22-1082 *State v. Randolph* (1) Whether a rental property owner, or the owner’s agent (landlord or agent), can prohibit a person from entering onto the property such that a tenant of that property is prohibited from inviting that person to the tenant’s residence or apartment; (2) Whether a rental property owner, or an owner’s agent (landlord or agent), necessarily must sacrifice possessory interests in the property to a tenant so the tenant can invite a banned or “trespassed” person to the tenant’s residence or apartment. (City of Toledo)

22-1182 *State v. Brown* (1) Whether an individual is a victim of robbery under R.C. 2911.02(A)(2) when that individual is the owner of what is stolen, is the offender’s intended target, and is also in close proximity to the gun brandished by the offender as the property is taken; (2) Whether a *Brady* violation occurs when a witness confirms the suspect’s identification via social media and such evidence is available at trial. (State’s appeal; Hamilton County)

22-1203 *State v. Toran* (1) Whether the inventory search of the lawfully impounded vehicle was rendered constitutionally unreasonable by the State’s failure to introduce the actual

written policy into evidence or by the deputy's failure to testify as to specific details of the policy at the suppression hearing; (2) Whether application of the exclusionary rule is barred by the good faith and lawful conduct of the deputy. (State's appeal; Hamilton County)

22-1037 *State v. Hurt* (1) Whether S.B. 175's elimination of the duty to retreat for self-defense applies to all trials held after the effective date of the act regardless of the date of offense; (2) Whether the right to be acquitted of a criminal offense based on self-defense extends to offenses charged where the indicted conduct is a result of transferred intent of an individual acting in self-defense; (3) when a defendant proves mitigating elements to a jury at trial leading to a conviction of an inferior offense, whether double jeopardy and collateral estoppel require that the mitigating element finding be effective at a retrial precluding the defendant from having to prove the elements again. (Cuyahoga County)

22-987 *State v. Palmer* Whether the "tends to support" standard for shifting the burden of proof on self-defense and for instructing on that defense allows the trial court to invade the province of the jury by weighing conflicting evidence. (Clermont County)

22-1020 *In re C.C.* (1) For purposes of a juvenile charged as a SYO offender, whether the juvenile court's indefinite continuance order during the COVID pandemic based on administrative orders was a reasonable continuance that tolled the speedy-trial clock; (2) Whether the State's delay in seeking the indictment after the juvenile was arrested on a SYO complaint is counted against the State for speedy-trial purposes. (Cuyahoga County)

22-1047 *State v. Bertram* For purposes of proving burglary by stealth or deception, whether the State must show that the trespasser actively avoided discovery or used deceptive conduct to gain entrance to the structure. (Scioto County)

Upcoming Oral Arguments

22-121 *State v. Williams* Whether an incarcerated individual satisfies the "causes to be delivered" obligation in R.C. 2941.401 by making a written demand to the warden of the incarcerating institution. (Lorain County) (Argument on 2-7-23)

21-1421 *State v. Walker* Whether sufficiency-of-evidence review applies to self-defense. (Lucas County) (Argument on 2-8-23)

22-99 *State v. Ali* Whether the admission of other-acts evidence was harmless. (Summit County) (Argument on 2-8-23)

22-262 *Olmsted Twp. v. Ritchie* Whether R.C. 2929.25(D)(4) authorizes a trial court to impose a jail term for a violation of a condition of a community-control sanction when the original sentence was directly imposed under R.C. 2929.25(A)(1)(a) and no suspended jail time was reserved as contemplated under R.C. 2929.25(A)(1)(b), regardless of notice having been provided under R.C. 2929.25(A)(3)(c). (Olmsted Twp. appeal on certified conflict; Cuyahoga County) (Argument on 2-28-23)

22-321 *State v. Miller* (1) In light of *State v. Bethel*, whether the court of appeals erred in concluding that a delayed motion for new trial must be filed within a reasonable time after discovering the evidence; (2) Whether the lone witness' recantation of trial testimony provides substantive and/or constitutional grounds for post-conviction relief when there is no physical or other substantive evidence linking the defendant to the crime; (3) Whether actual innocence in light of new evidence provides a constitutional basis for relief. (Cuyahoga County) (Argument on 3-1-23)

22-603 *State v. Daniel* Whether R.C. 2909.15(D)(2)(b) violates the separation of powers by allowing the trial court to reduce the defendant's lifetime arson-registration duty to 10 years only upon the recommendation of the prosecutor and law enforcement agency. (Lucas County) (Argument on 3-21-23)

22-707 *State v. Stalder* (1) To establish a prima facie case of gender discrimination concerning the exercise of a peremptory challenge, whether there must be facts and relevant circumstances presented by the objecting party to raise an inference of intentional discrimination by a striking party; (2) When the error involved the trial court stopping at the initial prima facie stage and failing to proceed to the next steps in the *Batson* analysis, whether the proper remedy is to remand for the limited purpose of conducting a full hearing on the challenging party's *Batson* objection, instead of remanding for a new trial. (City of Lancaster appeal; Fairfield County) (Argument on 3-21-23)

22-382 *State v. Swazey* (1) Whether a motion to dismiss an indictment may only be decided in a defendant's favor if it can be determined from the face of the indictment that the indictment is legally defective; (2) Whether a guilty plea bars a defendant from appealing a trial court's denial of a motion to dismiss the indictment when the issue raised by the motion is whether a statute is retroactive, which is an issue of statutory

interpretation. (State's appeal; Medina County) (Argument on 3-22-23)

22-392 *State v. Hawkins* Whether the rule announced in *State v. Patrick* (on the need to consider the defendant's youth in sentencing) is substantive and must be given retroactive effect in a delayed application for reconsideration filed over six years after the court of appeals affirmed the defendant's convictions. (Clark County) (Argument on 3-22-23)

22-733 *State v. Jordan* & 22-734 *State v. Johnson* Whether conflicts of interest in multiple representation cases should be judged by a clear and understandable standard or test. (Scioto County)

Keep an Eye Out for These Cases Awaiting Decision

19-1787 *State v. Nicholson* Death penalty case, which includes the issue of whether the concepts of sudden passion/rage and self-defense are mutually exclusive so that a jury instruction on both concepts is precluded. (Cuyahoga County) (Argument on 1-11-23)

20-1496 *State v. Hacker* Whether the Reagan Tokes Act is unconstitutional under the United States and Ohio Constitutions. (Logan County) (Argument on 1-11-23)

21-532 *State v. Simmons* (1) Whether the Reagan Tokes Act violates the Sixth Amendment as it permits the imposition of additional punishment for conduct not admitted by the defendant or found by a jury; (2) Whether the Reagan Tokes Act violates the doctrine of separation of powers because, as with bad time, it conferred judicial power to the executive branch; (3) Whether the Reagan Tokes Act violates due process by failing to provide adequate notice, by inadequately confining executive branch discretion, and by lacking adequate guarantees for a fair hearing. (Cuyahoga County) (Argument on 1-11-23)

Amicus Requests

Earlier this month the Amicus Committee presented their suggested amicus request guidelines which were in turn adopted by the Executive Committee. Those guidelines can be found on our website at

<http://www.ohioa.org/amicus.pdf>

Ohio Attorney General Opinions

provided by the Ohio Attorney General's website at <https://www.ohioattorneygeneral.gov/Files/Legal/Opinions>

2023-001

Requested by: Hardin County Prosecuting Attorney

Compatibility: a person cannot simultaneously serve as a

secret-service officer and either a township constable or a municipal-police officer with a special commission within the same county when the person lacks an ability to abstain. The warrantless-arrest authority of township constables is limited, and is not the same as their warrant-arrest authority. A township constable may execute an arrest warrant throughout the county in which the served township sits. Any arrest conducted by an individual serving as a secret-service officer and township constable must occur while the person is acting as a constable. A county prosecutor cannot provide that a township incurs no liability for any unlawful acts done by a person who serves as both, and the ultimate determination as to the prosecutor's liability is left to the courts. Additionally, a board of county commissioners has no authority to use the general fund to pay for the liability insurance for a person who serves as both. The entity that assumes liability for any unlawful acts is the entity for which the person is working at the moment when the unlawful act occurs.

2022-018

Requested by: Lucas County Prosecuting Attorney

Pursuant to R.C. 2301.24, the cost for copies of court transcripts is subject to the fee schedule in R.C. 149.43 and is not set by the Court of Common Pleas, and the Court of Common Pleas does not have discretion to limit free electronic copies of transcripts to only those copies of transcripts filed in delinquency or criminal cases.

2022-017

Requested by: Geauga County Prosecuting Attorney

A park-district board is not authorized to create a reserve fund, only a replacement fund pursuant to R.C. 1545.28. It derives authority to levy or replace taxes under R.C. 1545.20-.21. It is authorized to modify the language of a replacement, or replacement and additional tax levy, under R.C. 1545.21. Commissioners of a park-district board established under R.C. Chapter 1545 are not required to reside in the territory of the park district.

2022-016

Requested by: Lorain County Prosecuting Attorney

If a municipal corporation annexes township territory pursuant to R.C. 709.16, R.C. 709.16(H) prevents the later use of R.C. 503.07 to make the boundary lines of the township and municipal corporation identical.

2022-015

Requested by: Union County Prosecuting Attorney

Law enforcement officers may not disseminate identification information contained in LEADS and OHLEG to the coroner or the coroner's investigators for the sole purpose of

identifying a deceased person, and a coroner may not compel such dissemination through the subpoenaing power set forth in R.C. 313.17. Deputy sheriffs who also serve as coroner investigators may not access and disseminate identification information contained in LEADS and OHLEG when serving as a coroner investigator.

2022-014

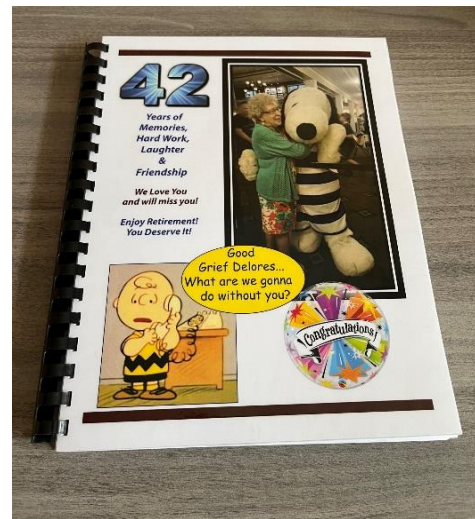
Requested by: Hamilton County Prosecuting Attorney

The exemption to the federal minimum-wage requirements for minor-league baseball players found in 29 U.S.C. 213(a)(19) is incorporated into both the minimum-wage and overtime sections in R.C. 4111 et seq. and Article II, Section 34a of the Ohio Constitution. Because of that, minor-league baseball players are exempt from the minimum-wage and overtime protections in Ohio law, provided that the players' contracts meet the requirements of 29 U.S.C. 213(a)(19).

OPAA Annual Meeting

The 2022 OPAA Annual Meeting was held December 8th and 9th at the Hilton Columbus at Easton and had a crowd of over 400 prosecutors and assistant prosecutors from 82 counties, the AG's office, and AOS office. The event was a great success! Thanks to all who attended. All CLE credits have been reported for this event and should be included on your 2022 transcript.

OPAA Office Manager Delores Wilson retired following the Annual Meeting. The membership all contributed pictures and written well-wishes for a memory book created by Ed and Kim Pierce in Auglaize County. Rather than the traditional gold watch from the office, she received a collectable Snoopy Swatch watch! She also received many other items including beverages, honey produced by both Fayette and Butler County bees, and other items to help her remember her 43 years with the OPAA and the folks she touched!





Above, right and below: Auglaize County Prosecutor Ed Pierce honors Delores.

Left: Trumbull County Prosecutor Dennis Watkins shares his 30 plus years of memories of Delores.

OPAA 2022 Award Winners

Award winners for this year included Paul Gains (Mahoning County) for Prosecutor of the Year, Angela Wypasek (Wayne County) for Outstanding Assistant Prosecutor, Jennifer Schlemmer (Carroll County) for Outstanding Staff Person, and Lt. Richard Munsy (Summit County) for Outstanding Law Enforcement Officer.



Mahoning County Prosecutor (Ret) Paul Gains accepting the OPAA Prosecutor of the Year award



Outstanding Assistant Prosecutor Angela Wypasek from Wayne County accepts her award with Wayne County Prosecutor Dan Lutz and OPAA Awards Chair and Pickaway County Prosecutor Judy Wolford looking on.



Outstanding Staff Person Jennifer Schlemmer, Carroll County. With Carroll County Prosecutor Steve Barnett.



Outstanding Law Enforcement Officer Lt. Richard Munsey, Summit County. Also pictured are Summit County Prosecutor Sheri Bevan-Walsh and Pickaway County Prosecutor and OPAA Awards Committee Chair Judy Wolford.



Left to right: prosecutors Junk, Canepa, and Wilson

OPAA presented a special plaque to the prosecution team of Rob Junk, Angela Canepa, and Andy Wilson for their commitment to the 6 plus years invested in the Pike County case involving the murders of 8 members of the Rhoden family.

(Additional Annual Meeting photos are available on our Twitter feed)

Several outgoing prosecutors were also honored with the Association's *Milestone of Justice* award for their commitment to the office and the Association. We wish them well!

Juergen A. Waldick, Allen County (going to 3rd District Court of Appeals)

Scott A. Haselman, Fulton County (going to Fulton County Court of Common Pleas)

William C. Hayes, Licking County (Retiring)

Paul J. Gains, Mahoning County (Retiring)

Mathew K. Fox, Mercer County (going to Mercer County Court of Common Pleas)

Robert Junk, Pike County (going to Pike County Court of Common Pleas)

Daniel R. Lutz, Wayne County (Retiring)

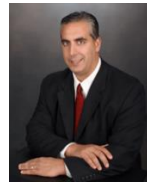
Douglas Rowland, Wyandot County (going to Wyandot Court of Common Pleas)



Your 2023 OPAA Officers



Jane Hanlin
Jefferson County
President



Kevin S. Talebi
Champaign County
President-Elect



Keller J. Blackburn
Athens County
Vice President



David P. Fornshell
Warren County
Treasurer



Gwen Howe-Gebers
Henry County
Secretary

The new President has assigned committee appointments for 2023. These have been emailed to the elected prosecutor, and can also be viewed on our website at

<http://www.ohiopa.org/committees23.html>

New OPAA officer



We welcome Henry County prosecutor Gwen Howe-Gebers to the secretary position of the 2023 OPAA Officer's roster. Gwen has been actively involved in the Association's Executive, Legislative, Awards, Building, Ethics and Training, Membership and Outreach committees, and is currently Chair of the Victims/Witness committee. Gwen's resume includes an Ohio University BS degree in

communications (cum laude) as well as a Juris Doctorate from University of Toledo College of Law.

She began her prosecutorial career at the Wood County Prosecutors office as a third year law student before being hired as full time prosecutor after law school. Gwen started in the juvenile division, then moved on to preliminary hearings, adult felonies, served as chief of the criminal division, and also specialized in drug investigations and RICO cases. She has prosecuted numerous homicide cases including one with a defendant currently on death row. All totaled she spent 28 years in Wood County, then was elected to her current role in 2016.

Gwen is a past member of the St. Augustine School Advisory Council, Napoleon High School Athletic Boosters, and the Wood County Bar Association. She serves on the Lutheran Home Ministry Board, is an assistant coach with the Napoleon High School Speech Team, and is an instructor for OPOTA.

She can be found on fall Saturdays cheering for her beloved Fighting Irish!

2022 Executive Committee Meeting Dates

February – Thursday, February 23rd
March – Thursday, March 30th
April – Wednesday, April 19th (prior to Spring Training)
May – Thursday, May 25th
June – Thursday, June 22nd (prior to Summer Workshop)
July – No Meeting
August – Thursday, August 24th
September – TBD (prior to Fall Training)
October – Thursday, October 26th
December – Wednesday, December 13th (prior Annual Meeting)

Dates are tentative. Times will be posted when determined.

OPAA On The Road



Assistant Director Hall was in Gallia County to visit the 13 new arrivals at Gallia County Prosecutor Jason Holdren's farm.

Thanks to the Holdren family for opening their home to Carla and I, the berry jam and the fresh eggs!

