



THE OHIO PROSECUTOR

April 2023

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From your President...



Jane Hanlin
OPAA President
Jefferson County

Hello and Happy Spring:

I hope this message finds you ready for some warmer weather! As you know, it has been a busy time trying to keep up with all of the anticipated changes from the legislature.

We continue to advocate for additional funding to support our obligations under Marsy's Law and hopefully we are making some progress on that front. We also continue to work on holding the line on issues such as bail reform and proposed changes to the medical marijuana laws. I appreciate all of your calls and letters to our legislators. It is so important that they understand our perspective on these issues. I remain convinced that prosecutors are absolutely essential to helping our elected representatives understand what life is like on the "front lines."

I hope to see all of you at the Summer Conference. The agenda looks fantastic!

All the best,

Jane

From your Executive Director...



Louis Tobin
OPAA Executive
Director

Prosecutors –

Other than August elections and constitutional amendments, most of the focus of the General Assembly in the first half of the year has been on the biennial budget bill – House Bill 33. The House passed the bill on April 26 and debate has started in the Senate. Once the Senate passes its version in mid-June, a conference committee that consists of House and Senate members will meet to reach a compromise on the different versions of the budget. OPAA has been working on several key issues as part of this process, including:

- Funding for Victim Advocates. The House added \$8 million per year for each year of the biennium for prosecutor victim programs that will provide grants to prosecutors to provide assistance to victims and promote victim rights implementation.
- Specific Investigatory Work Product and Attorney Work Product Records. The Governor's version of the bill included a definition of 'specific investigatory work product' within the CLEIR exception to the public records law. This was in response to the Supreme Court of Ohio decisions in *State ex rel. Myers v Meyers* and *Summers v. Fox*. The House strengthened this even more with an amendment to define and exclude from public records requests 'attorney work product records.'
- Good Samaritan Immunity. The Governor's version of the bill repeals the requirement in the 'good Samaritan' law that the person seek a screening and receive a referral for treatment and that limits the number of times a person can claim immunity to two. The House left these changes in the bill despite OPAA opposition.
- Public Defender Representation at Parole Hearings. The Governor's version of the bill would have required the public defender to provide representation to offenders at full parole board hearings. OPAA advocated to have this requirement removed or alternatively to provide victims with a right to counsel at public expense for these same proceedings. The House amended the bill to allow, rather than require, the public defender to provide this representation.
- Indigent Defense Reimbursement. The House added a last minute amendment to the bill at the request of the county commissioners and the state public defender that would reimburse counties that contract with the state public defender for indigent defense services at 100% while reimbursing other counties with a proportionate share of what is left after reimbursement to the contractual counties. There is concern that this undermines local control over the delivery model for indigent defense and undermines collaborative discussions that were already underway among all stakeholders regarding indigent defense funding.

If you have not already, please consider contacting your State Senator to ask for their support for funding for victim advocates. It is critical that they hear from you on this issue.



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! For a full list of legislation we are tracking [please visit our website](#).

135th General Assembly – Notable Legislation

- HB20 OHIO COMPUTER CRIMES ACT** (SWEARINGEN D) To enact the Ohio Computer Crimes Act.
- Current Status:** 3/28/2023 - **BILL AMENDED**, House Criminal Justice, (Fourth Hearing)
- Position:** Support
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-20>
- HB33 FY24-25 OPERATING BUDGET** (EDWARDS J) To make operating appropriations for the biennium beginning July 1, 2023, and ending June 30, 2025, to levy taxes, and to provide authorization and conditions for the operation of state programs.
- Current Status:** 5/4/2023 - Senate Workforce and Higher Education, (Fourth Hearing)
- Position:** Amend
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-33>
- HB34 JURY DUTY - BREAST-FEEDING EXCEPTION** (KLOPFENSTEIN R, KING A) To permit a prospective juror who is a mother who is breast-feeding to be excused from jury service.
- Current Status:** 3/14/2023 - **REPORTED OUT**, House Civil Justice, (Fourth Hearing)

Position: Monitor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-34>

- HB35 ELIMINATE LIMITATIONS PERIOD - CHILD SEXUAL ABUSE** (SEITZ B, MIRANDA J) To enact the Scout's Honor Law to eliminate the limitations period for a civil action based on a claim of childhood sexual abuse only for purposes of filing claims against a bankruptcy estate of an organization chartered under federal law; to provide with respect to sex offenders and child victim offenders who committed their offense prior to January 1, 2008, mechanisms for reclassifying or classifying the offenders in specified circumstances under the SORN Law in effect prior to that date; and to subsequently amend section 2305.111 of the Revised Code five years after the effective date of that section to remove the described elimination of the limitations period.
- Current Status:** 4/19/2023 - Referred to Committee Senate Judiciary
- Position:** Support
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-35>
- HB44 RECORD PAROLE BOARD HEARINGS** (HUMPHREY L, STEWART B) To require electronic recordings to be made of all parole board hearings, excluding certain personal identifying information, and to make those electronic recordings "public records" under the Public Records Law.
- Current Status:** 5/2/2023 - House Criminal Justice, (Second Hearing)
- Position:** Support
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-44>
- HB50 HOUSING QUALIFICATION** (HUMPHREY L, SEITZ B) To create a mechanism by which an individual who is subject to a collateral sanction for housing may obtain a certificate of qualification for housing that may provide relief from certain bars on housing.
- Current Status:** 3/21/2023 - **REPORTED OUT AS AMENDED**, House Criminal Justice, (Fourth Hearing)
- Position:** Monitor
- State Bill Page:** <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-50>

HB51 SECOND AMENDMENT PRESERVATION (LOYCHIK M, SCHMIDT J) To enact the Second Amendment Preservation Act to add additional protections to the right to bear arms, to remove federal firearms law references from the state firearms control law, and to declare an emergency.
Current Status: 3/14/2023 - House Government Oversight, (Third Hearing)
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-51>

HB56 POLICE PURSUIT, FLEEING PENALTIES (PLUMMER P, WHITE A) To increase penalties for fleeing from law enforcement, to require law enforcement entities to have a policy governing the pursuit of a motor vehicle, and to prohibit hooning and being a spectator at a hooning event.
Current Status: 3/28/2023 - House Criminal Justice, (Second Hearing)
Position: Amend
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-56>

HB91 PROHIBIT TRACKING DEVICES WITHOUT CONSENT (PATTON T) To generally prohibit a person from knowingly installing a tracking device or application on another person's property without the other person's consent.
Current Status: 5/2/2023 - House Criminal Justice, (Second Hearing)
Position: Amend
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-91>

HB101 VILLAGE DISSOLUTION (BIRD A, SCHMIDT J) To modify the law regarding village dissolution.
Current Status: 5/2/2023 - House State and Local Government, (Third Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-101>

HB110 CATALYTIC CONVERTERS (YOUNG B, ROEMER B) Regarding the sale of used catalytic converters, and to make an appropriation.
Current Status: 5/2/2023 - House Criminal Justice, (Third Hearing)
Position: Support

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-110>

HB111 DOMESTIC VIOLENCE PENALTIES (LARE J, MILLER K) To increase the sentencing range for third degree felony domestic violence and to create a presumption in favor of a prison term for the offense.
Current Status: 5/2/2023 - House Criminal Justice, (First Hearing)
Position: Support
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-111>

HB161 ELIMINATE SPOUSAL EXCEPTION FOR SEXUAL ASSAULT (MIRANDA J, HILLYER B) To eliminate the spousal exceptions for the offenses of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, and importuning and to permit a person to testify against the person's spouse in a prosecution for any of those offenses.
Current Status: 4/26/2023 - Introduced
Position: Monitor
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-161>

SB9 LAW CHANGES-MEDICAL MARIJUANA (HUFFMAN S, SCHURING K) To amend the law related to medical marijuana.
Current Status: 4/18/2023 - **SUBSTITUTE BILL ACCEPTED**, Senate General Government, (Fifth Hearing)
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-9>

SB26 MARIJUANA-VEHICLE, WATERCRAFT USE (MANNING N) To change the laws pertaining to operating a vehicle or watercraft while under the influence of marihuana and the admissibility of evidence for purposes of OVI statutes.
Current Status: 2/22/2023 - Senate Judiciary, (Second Hearing)
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-26>

SB91 PUBLIC FUNDS ABUSE, WASTE (SCHAFER T) Regarding fraud, waste, and abuse of public funds.
Current Status: 4/19/2023 - Senate Government Oversight, (First Hearing)
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-91>

SB100 TRACKING DEVICE PROHIBITIONS (MANNING N, ANTONIO N) To generally prohibit a person from knowingly installing a tracking device or application on another person's property without the other person's consent or failing to remove or ensure removal of such a device or application from another person's property if the other person gave consent and subsequently revokes it.
Current Status: 4/25/2023 - Senate Financial Institutions and Technology, (Second Hearing)
Position: Amend
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-100>

SB101 DEATH PENALTY ABOLITION, JURY SELECTION (ANTONIO N, HUFFMAN S) To abolish the death penalty and to modify the number of jurors that may be challenged in cases where a defendant may be sentenced to life imprisonment.
Current Status: 4/19/2023 - Referred to Committee Senate Judiciary
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-101>

actionTRACK - Hannah News Service, Inc.



Steve Taylor

The Ohio Supreme Court

Merit Decisions of Interest Since 2/1/23

State ex rel. Reynolds v. Kirby, ___ Ohio St.3d ___, 2023-Ohio-782. The Court (7-0) granted the writ of prohibition, concluding that the Warren County Probate-Juvenile Court lacked jurisdiction to grant the prosecutor's application for witness immunity under R.C. 2945.44 (even though juvenile courts in other counties might have such jurisdiction). The Court also emphasized the prosecutor's discretion in whether to apply for witness immunity. (Decided 3/16/23; Warren County)

Newly-Accepted Criminal Law Cases Since 2/1/23

23-156 *State v. Carter* Whether a defendant's right to due process is violated when a witness is permitted to testify by remote means utilizing a speech-to-text captioning program in the absence of any important state interest, public policy, or case necessity. (Logan County)

22-1049 *State v. Jones* A court of appeals violates an appellant's right to meaningful appellate review and its obligations pursuant to R.C. 2953.08(G)(2) when it fails to conduct the proper de novo review in determining whether the trial court made all required findings under R.C. 2929.14(C)(4) and whether the record contains an evidentiary basis sufficient to support each required finding. (Cuyahoga County)

22-1482 *State v. Wilson* Whether the defendant can receive a self-defense instruction as to charges of attempted murder and felonious assault when he claims to have fired only a warning shot (thereby denying that he shot at the victim with the purpose and knowledge required for the offenses). (Clark County)

Recent and Upcoming Oral Arguments

22-515 *State v. Tancak* Whether the court of appeals erred in failing to reverse the defendant's guilty pleas on all counts when the trial court had erred in failing to advise the defendant that one of the eight counts could result mandatory consecutive sentencing. (Lorain County) (Argument on 4-4-23)

22-779 *State v. Mills* (1) When an appellate court is considering whether the record on appeal contains "sufficient indicia of incompetence" to trigger a constitutional competency hearing, does the court review that record only for reasonable doubt, not for a preponderance of the evidence or clear and convincing evidence, of the defendant's incompetence in lower-court proceedings; (2) Whether a defendant can waive the issue of competency on a silent record. (Lucas County) (Argument on 4-5-23)

22-782 *State v. Schilling* (1) Whether the holding in *State v. Henderson*, 161 Ohio St.3d 285, 2020-Ohio-4784, now supersedes the holding in *State v. Williams*, 129 Ohio St.3d 344, 2011-Ohio-3374, in a case in which the convicted sex offender was classified as a Tier sex offender under S.B. 10 even though the offense occurred prior to the effective date of S.B. 10 on 1-1-08; (2) Whether a plain reading of R.C. 2950.07(E) precludes an Ohio sheriff from granting registration-time credit toward the offender's Ohio duty to register in regard to any time registering in any other jurisdiction related to the Ohio sex offense. (State's appeal; Hamilton County) (Argument on 4-5-23)

22-488 *State v. Johnson* Whether a defendant's due process rights are violated when the trial court denies a defendant's petition for postconviction relief based on newly-discovered evidence in contravention to the precedent established in *State v. Bethel*, 2022-Ohio-783. (Cuyahoga County) (Argument on 4-18-23)

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) (Argument on 4-19-23)

19-1323 *State v. Knuff* Death Penalty case (Cuyahoga County) (Argument on 5-2-23)

22-359 *In re T.D.S.* (1) When the police employ a deliberate two-step interrogation where they question first, and warn later, whether the child's post-warning statements should be presumed inadmissible; (2) Whether courts must assess the totality of the circumstances, including the child's age, experience, education, background, intelligence, and capacity to understand when determining whether a child knowingly, intelligently, and voluntarily waived their rights in a question-first, warn-later scenario. (Cuyahoga County) (Argument on 5-3-23)

22-736 *State v. Jordan* Whether the element of "significant impairment" to support a conviction for sexual imposition under R.C. 2907.06(A)(2) includes the defendant's knowledge that the victim is blind, given that blindness can limit a person's ability to defend against a sexual assault, particularly under circumstances indicating that the blind victim lacks the capacity to consent to sexual activity. (State's appeal; Hamilton County) (Argument on 5-3-23)

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) (Argument on 5-17-23)

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) (Argument on 5-17-23)

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) (Argument on 5-17-23)

Still Hanging Around

State v. Gwynne, ___ Ohio St.3d ___, 2022-Ohio-4607. This was decided on 12-23-23, with the Court (4-3) concluding 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. The State's timely motion for reconsideration remains pending, which creates hopeful signs that the original decision will be reconsidered. (Delaware 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 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)

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)

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)

Amicus Requests

Those seeking amicus support from the Association should reference the Amicus Committee guidelines which can be found on our website at <http://www.ohiopa.org/amicus.pdf>

Ohio Attorney General Opinions

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

2023-005

Requested by: Ashtabula County Prosecuting Attorney

A county official cannot perform maintenance or make repairs to county-owned buildings and offices and improvements over the objection of the board of county commissioners, and if funds are not being used in the manner for which they were appropriated, the board of county commissioners may stop the repairs and the expenditure of funds. Members of the board of county commissioners have the ability to access county-owned buildings and offices to oversee maintenance and repairs.

2023-004

Requested by: Muskingum County Prosecuting Attorney

Because R.C. 3335.37 specifically mandates that money obtained from a tax levy or from the general fund of the county be paid into the Ohio State University Extension fund, a county cannot directly distribute the funds to the Ohio State University Extension office in the county, and a board of county commissioners has no authority to charge the Ohio State University Extension rent or utilities for the county office space provided to it pursuant to R.C. 3335.36.

2023-003

Requested by: Highland County Prosecuting Attorney

Neither landowners nor fence-builders can demand the removal of most trees situated within four feet of a partition fence pursuant to R.C. 971.33. The term "trees for use" in R.C. 971.33 refers to trees that are planted for a particular purpose, and whether a particular tree is "for use" is a question of fact for the courts.

2023-002

Requested by: Butler County Prosecuting Attorney

No statute directly mandates or authorizes the recording of a memorandum of contract between a real-estate broker and homeowner in which the homeowner agrees that the broker will be the listing agent if the homeowner sells his home within the next forty years. Therefore, it is within the county recorder's discretion to determine if the memorandum of contract is a type of instrument required or authorized by the Revised Code to be recorded and/or whether the submitted memorandum of contract is materially false or fraudulent. See R.C. 317.13(B).

OPAA/OPAIA Spring Meeting

The 2023 OPAA/OPAIA Spring Meeting was held April 20th and 21st at the Sheraton Columbus at Capitol Square. We hosted 212 attendees from 60 counties, the OAG, and the AOS. The Investigator's Association had 18 attendees from 11 counties present. Reviews were very good! Thanks to all who attended and presented. All CLE credits for this event have been entered this week and should be included on your 2023 transcript. Any issues contact diana@ohiopa.org

OPAA On the Road at UC Law

OPAA appreciated the opportunity to talk with University of Cincinnati Law students as part of our effort to promote careers in the County Prosecutors office. OPAA members present were (L to R) Chip McConville (Knox County), Paul Dobson (Wood County), Dave Fornshell (Warren County), Kristen Sobieski (Cuyahoga County), Jane Hanlin (Jefferson County), Jess Weade (Fayette County), and Kathleen (K.C.) Fischer (Hamilton County) Thanks to all who made the trip!



OPAA at the Statehouse for the OCCO Reception

On April 19th OPAA members joined with other county officials at the Statehouse Atrium for the annual Ohio Council of County Officials (OCCO) legislative reception. Those present (L to R) are Steve Hall (OPAA), Ryan Styer (Tuscarawas County), Steve Barnett (Carroll County), Lou Tobin (OPAA), Dave Fornshell (Warren County), David Phillips (Union County), Jane Hanlin (Jefferson County), Kevin Talebi (Champaign County), Chris Tunnell (Ashland County), Jason Holdren (Gallia County), Forrest Thompson (Medina County), and Jeremy Fisher (Gallia County).



OPAA Office Updates

The OPAA home office “common areas” went through a refresh the last couple of months. We replaced the 15 year old carpeting (and anything living in it) with wood/LVP planking and gave the walls/ceiling a new coat of paint, plus replaced a couple of hidden items that showed up during the process! Here are some before and after’s:



Lower level hallway



Second floor hallway

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

2023 Legislative and Executive Committee Meeting Dates

May – Thursday, May 25th - Delaware Golf Club. Legislative 10:30, lunch 12:00, Executive 1:00.

June – Thursday, June 22nd, Breakers East Conference Center (prior to Summer Workshop)

July – No Meeting

August – Thursday, August 24th

September – Wednesday, 27th, Crowne Plaza Cleveland at Playhouse Square (prior to Fall Training)

October – Thursday, October 26th

December – Wednesday, December 13th, Hilton Columbus at Easton (prior Annual Meeting)

2023 Training Dates

2023 Bricker Graydon Procurement Seminar - May 11 at the OCLC in Dublin, and online via Zoom

ONIC Law Enforcement Drug Summit - June 21-22, 2023, Columbus

Summer Workshop - June 23rd and 24th, Breakers Hotel, Cedar Point

Fall Training - September 28th and 29th, Crowne Plaza Cleveland at Playhouse Square

Juvenile Prosecutor Training - October TBD

Annual Meeting - December 14th and 15th, Hilton Columbus at Easton

