



# THE OHIO PROSECUTOR

October 2022

## In This Issue

### At the Statehouse

- Top Ten Bills to Watch
- Priority Legislation

### New and Noteworthy

- OSC Merit Decisions of Interest
- OAG Opinions

### Training

- Fall Training Recap
- 2022 Training Dates
- 2023 Training Dates

### Community Outreach

- Summit County – Women in Law

### A Career Well Done!

### OPAA Officers

- Legislative and Executive Committee Meeting Dates

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## From your Director...



Louis Tobin  
OPAA Executive  
Director

### Prosecutors –

The long lull in legislative activity is almost over and the frenzy of lame duck is fast approaching. Here's the good, the bad, and the ugly to be aware of:

**The Good.** The good news is that there are only 5 session days left for both chambers on the legislative calendar. While that still presents plenty of opportunity for them to pass last minute legislation, I have been through lame duck sessions, including the last one in 2020, where there were multiple session days every week through Christmas. Limited session days will make it much harder, but not impossible, to pass legislation that hasn't already been voted out of one chamber or the other. Most polling shows that crime is one of the top voter concerns heading into the election. Hopefully this will reduce the legislative appetite for the types of criminal justice reforms that are most concerning for public safety – like the criminal justice omnibus bills and bail reform bills.

**The Bad.** The criminal justice omnibus bills, Senate Bill 288 and House Bill 699, and bail reform bills, House Bill 315 and Senate Bill 182, are still being debated and the sponsors are still pushing for them to be enacted before the end of the year. While we were successful in having the Recodification Committee recommendations pulled out of the criminal justice omnibus bills, removing the most dangerous parts of the bill, the bill still repeals the veto over transitional control, creates judicial release mechanisms that allow ODRC to dictate the release and authorizes thousands of inmates to seek judicial release during a state of emergency, allows for the expungement of any record that can be sealed, and expands "earned credit" from 8% to 15%.

**The Ugly.** The ugly in lame duck is the unknown. Probably the most dangerous thing about the criminal justice omnibus bills is the opportunity for them to become Christmas trees for other criminal justice policies that either haven't been properly vetted or that could not pass on their own after debate. These are things that keep me up at night this time of year.

Please keep on the lookout for action alerts asking you to contact your legislators. In other good news, registration is open for the OPAA Annual Meeting December 8 – 9 at the Hilton Columbus at Easton. We have a great program planned for everyone and Easton will be in full holiday spirit. Hope to see you there.



## At the Statehouse

Below is a current list of priority legislation along with the OPAA's position. For a full list of bills that we are tracking visit [www.ohioopa.org](http://www.ohioopa.org). **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!

### Legislative Top 10 Bills to Watch

- 1) Senate Bill 288/House Bill 699 – Criminal Justice Omnibus. The bill includes some recommendations from the Criminal Justice Recodification Committee, expanded judicial release, expanded record expungement, expanded earned credit, and elimination of the judicial veto of transitional control. It also includes OPAA supported proposals on speedy trial times, OVI sentencing, and the release of certain information in a preliminary autopsy. *OPAA Position – Oppose.*
- 2) House Bill 343 – Marsy's Law Implementation. The bill implements the Marsy's Law constitutional amendment. It underwent substantial revisions before passing out of the House in May. The most substantial remaining issue is lack of funding for implementation. The bill places significant new burdens on prosecutors in terms of victim notification and participation without any new resources to help meet the obligations. *OPAA Position – Oppose as Written/ Amend.*
- 3) House Bill 315/Senate Bill 182 – Bail Reform. These bills create a presumption of release on recognizance, set strict timelines for making release determinations and cap secured bond based on a defendant's ability to pay. They also expand pretrial detention. The bills are impractical, unsafe, unfunded. *OPAA Position – Oppose.*
- 4) House Bill 183/Senate Bill 103 – Death Penalty Repeal. These bills repeal the death penalty. *OPAA Position – Oppose.*

- 5) Senate Bill 90/House Bill 3 – Felony Strangulation/Domestic Violence. Both bills make strangulation a felony offense in a domestic violence context. Ohio is one of only two states without a stand-alone strangulation statute. House Bill 3 also contains other items related to domestic violence prevention and prosecution. *OPAA Position – Support.*
- 6) House Bill 500 – Mandatory Bindover Repeal. The bill replaces all mandatory bindovers with discretionary bindovers and provides that a discretionary bindover order is a final appealable order that may be immediately appealed. Mandatory bindovers are the result of only the ten worst offenses in the Revised Code. They are offenses for which public safety and securing justice for the victim should be the first priority. *OPAA Position – Oppose.*
- 7) House Bill 498 – Adult Use Marijuana. Authorizes individuals who are 21 or older to buy and possess up to 2.5 ounces of marijuana and to grow a limited number of plants. *OPAA Position – Oppose.*
- 8) Senate Bill 261 – Medical Marijuana Expansion. Expands the medical marijuana program to authorize doctors to recommend marijuana for any condition and removes oversight authority from the Board of Pharmacy. *OPAA Position – Oppose.*
- 9) House Bill 150 – Public Defender Loan Forgiveness Program. Creates a loan forgiveness program for lawyers who agree to serve for a number of years as a public defender or as appointed counsel. There are issues in the bill with how a county is designated a public defender "shortage" area and with the fact that assistant prosecutors are not offered the same loan forgiveness. *OPAA Position – Oppose as Written/ Amend.*
- 10) House Bill 488 (Judicial Legal Counsel). The biggest portion of this bill updates Ohio guardianship law. A separate segment, however, authorizes the court of common pleas to employ its own legal counsel in matters where the prosecuting attorney, the board of county commissioners, or both, have a conflict of interest and fail within a reasonable time, or refuse, to make an application for the judge to have counsel. *OPAA Position – Opposed to provision on legal counsel.*

### Priority Legislation for Ohio Prosecutors

HB3 AISHA'S LAW REGARDING DOMESTIC VIOLENCE (BOYD J, CARRUTHERS S) To make changes to civil and criminal law regarding domestic violence, to address State Highway Patrol arrest authority, to name the act Aisha's Law, and to make an appropriation. Current Status: 12/7/2021 - Senate Judiciary, (First Hearing)  
 Comments: The bill expands the offense of aggravated murder to include certain domestic violence circumstances, enacts a felony

strangulation law under domestic violence circumstances, requires the use of lethality assessment tools to screen for high risk, expands the definition of "family or household member" for the purpose of existing protection orders to include a child whose guardian or custodian is a spouse, person living as a spouse, or former spouse of the respondent and who is residing with or has resided with the respondent, establishes a new emergency protection order, creates a domestic violence prosecution study committee, and enacts a provision in uncodified law that encourages prosecuting attorneys, in domestic violence cases, to consider the totality of the circumstances, review all of the evidence in the case, and resist seeking voluntary dismissal or no contest based solely on the victim's wishes, unless justice demands otherwise.

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-3>

**HB22 EXPAND OFFENSE OF OBSTRUCTING JUSTICE (LARE J, WILKIN S)** To expand the offense of obstructing justice to include failure to follow a lawful order from a law enforcement officer, diverting a law enforcement officer's attention, and throwing an object at a law enforcement officer. Current Status: 9/8/2021 - Referred to Committee Senate Judiciary

Comments: Bill amended 3/4/21 to replace "taunting or striking" a police officer with using force or threatening the immediate use of force and to provide penalties for new subsections of obstructing justice. OPAA support 3/25/21.

Amended 4/22/21 to expressly allow the recording of law enforcement in the performance of their duties. Still a possible issue with vagueness in provision that prohibits entering an area "large enough" for the officer to reach.

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-22>

**HB44 INCREASE PENALTIES - ASSAULT (ROEMER B, MILLER J)** To increase the penalties for assault if the victim is acting as a sports official or the assault is committed in retaliation for the victim's actions as a sports official.

Current Status: 4/5/2022 - Senate Judiciary, (Second Hearing)

Comments: Opposed due to bill creating a special class of victim

Position: Oppose

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-44>

**HB64 CREATE CRIME - FRAUDULENT ASSISTED REPRODUCTION (POWELL J)** To create the crime of fraudulent assisted reproduction and civil actions for an assisted reproduction procedure without consent.

Current Status: 4/6/2022 - REPORTED OUT AS AMENDED, House Criminal Justice, (Fourth Hearing)

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-64>

**HB109 INCREASE PENALTIES - RIOT OFFENSES (ABRAMS C, CARRUTHERS S)** To increase penalties for certain assault, vandalism, and riot offenses, to allow peace officers to bring civil suits against persons participating in a riot, and to prohibit bias motivated intimidation of first responders.

Current Status: 4/5/2022 - Senate Judiciary, (First Hearing)

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-109>

**HB116 OHIO COMPUTER CRIMES ACT (BALDRIDGE B)** To enact the Ohio Computer Crimes Act and to amend the version of section 109.572 of the Revised Code that is scheduled to take effect October 9, 2021, to continue the provisions of this act on and after that date.

Current Status: 5/24/2022 - BILL AMENDED, Senate Judiciary, (Second Hearing)

Comments: 5/24/22 Amendment removed language that provided for higher penalty for computer trespass for elderly and disabled victims when the trespass resulted in a certain amount of financial loss. Amendment also lowered the penalties for other computer crimes created in the bill.

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-116>

**HB121 ELIMINATE SPOUSAL EXCEPTIONS FOR SEXUAL OFFENSES (LANESE L, BOGGS K)** 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: 5/26/2021 - House Criminal Justice, (Second Hearing)

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-121>

**HB150 OHIO PUBLIC DEFENDER STATE LOAN REPAYMENT PROGRAM (HILLYER B, LELAND D)** To establish the Ohio Public Defender State Loan Repayment Program, to establish a task force to study Ohio's indigent defense system, and to make an appropriation.

Current Status: 5/4/2021 - Re-Referred to Committee

Comments: Loan forgiveness and Task Force should include prosecutors; Issues in the bill with how a county is designated as a public defender "shortage" area. Could apply to any county in Ohio as written.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-150>

HB161 ENACT CERTAIN CHILD ABUSE-RELATED OFFENSES (LAMPTON B) To include certain child abuse-related offenses in the violent offender database and to name the act Jacob's Law.

Current Status: 4/5/2022 - Senate Judiciary, (First Hearing)

Position: Monitor

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-161>

HB166 REGARDS CRIMINAL SENTENCING, CORRECTIONS (BOGGS K, CARFAGNA R) To modify the Criminal Sentencing Law with respect to non-life felony indefinite sentencing, to modify the process for felony appeals as a matter of right, to modify the Corrections Law regarding a Department of Rehabilitation and Correction reentry program for certain offenders, maximum workload and caseload standards for parole and field officers, GPS monitoring of offenders released from prison, and entry into LEADS of specified information about GPS-monitored offenders, and to require the Ohio Criminal Sentencing Commission to appoint an Offender Supervision Study Committee.

Current Status: 3/29/2022 - Senate Judiciary, (Second Hearing)

Comments: Amended 2/15/22 with complete rewrite of appellate review statute to address State v. Gwynne. Amendment is poorly drafted and makes it more difficult to impose consecutive sentences beyond a certain length. Opposed to this amendment.

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-166>

HB183 ABOLISH DEATH PENALTY (SCHMIDT J) 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: 3/3/2022 - House Criminal Justice, (Fifth Hearing)

Comments: See also Senate Bill 103

Position: Oppose

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-183>

HB211 STATE PROPERTY PROTECTION, PROSECUTION ACT (LARE J, PLUMMER P) To provide in specified circumstances for the Attorney General's prosecution of criminal activity committed at, or on, certain specified state facilities, buildings, premises, or property and to name the act the State Property Protection and Prosecution Act.

Current Status: 3/17/2021 - Referred to Committee House Criminal Justice

Comments: Limited to several state office buildings in Franklin County; State involvement is disfavored; Would be neutral if prosecutors had a right of first refusal.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-211>

HB254 DOMESTIC VIOLENCE FATALITY REVIEW BOARDS (BOGGS K, ABRAMS C) To provide for the establishment of domestic violence fatality review boards.

Current Status: 4/5/2022 - Senate Judiciary, (First Hearing)

Position: Monitor

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-254>

HB276 PROHIBIT PROSTITUTION PROCEEDS (POWELL J, SCHMIDT J) To prohibit a person from receiving proceeds of prostitution.

Current Status: 4/6/2022 - Referred to Committee Senate Judiciary

Comments: Amend to remove references to receiving the proceeds "from a prostitute," remove reference to promiscuous from definition of prostitute, and include specific reference to 2905.32. Amendment adopted in House Criminal Justice 6/24/21.

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-276>

HB283 EXPAND DISTRACTED DRIVING LAWS (ABRAMS C, LAMPTON B) To expand the texting while driving prohibition to a general prohibition against using an electronic wireless communications device while driving, with certain exceptions, and to create data collection requirements based on associated violations of the distracted driving laws.

Current Status: 3/3/2022 - BILL AMENDED, House Criminal Justice, (Fourth Hearing)

Comments: Amend to include tougher penalties for repeat violators and distracted driving as predicate offense for agg vehicular homicide and assault

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-283>

HB286 AGENCY ORDER APPEAL - LOCAL COURT OF COMMON PLEAS (SEITZ B) To generally change the venue in which appeal from an agency order is proper to the local court of common pleas, to provide that a civil action to challenge a state administrative order issued in a state of emergency be brought in the Court of Claims, and to revise the law governing claim preclusion in zoning appeals.

Current Status: 5/24/2022 - BILL AMENDED, Senate Judiciary, (Second Hearing)

Comments: Amended 6/8/21 to require that prosecutions for offenses against public administration be brought in the county of residence unless the accused chooses to be prosecuted in the county where the conduct occurred. Opposed to this amendment. Amendment removed 3/29/22 prior to bill passing House.

Position: Monitor

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-286>

HB315 REGARDING BAIL (LELAND D, HILLYER B) To make changes regarding bail.

Current Status: 5/25/2022 - BILL AMENDED, House Criminal Justice, (Fourth Hearing)

Comments: At a minimum, the bill needs amended to provide funding for pretrial services, authorize judges to impose conditions of release in their own discretion, authorize the prosecutor to seek and the court to order pretrial detention for any felony consistent with the constitution, and provide more reasonable timelines for hearings.

Position: Oppose

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-315>

HB319 EXPANDING HUMAN TRAFFICKING JUSTICE ACT (GALONSKI T, RICHARDSON T) To allow a victim of human trafficking to expunge certain criminal records and to name this act the Expanding Human Trafficking Justice Act.

Current Status: 3/3/2022 - House Criminal Justice, (First Hearing)

Comments: Amend to (1) provide that the rules of evidence apply to hearings on these petitions, (2) require that the additional factors to consider apply to F3 offenses and offenses of violence in addition to F1 and F2 offenses, (3) require the court to have its probation department make inquiries concerning the applicant, and (4) provide that an application may not be made sooner than 180 days before the applicant has completed their sentence and received final discharge from the court or ODRC and shall not be granted before final discharge.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-319>

HB343 RIGHTS OF CRIME VICTIMS (WHITE A) To make changes relative to the rights of crime victims.

Current Status: 5/31/2022 - Senate Judiciary, (First Hearing)

Comments: Concerns regarding interlocutory appeal and possibility of reopening pleas, sentences, dismissals, diversions, etc.; The legislation needs the following changes: (1) funding, (2) amend definition of victim, (3) victim window to file appeal, (4) strict appeal timeline, (5) discretion for court of appeals to stay trial court proceedings for violation of victim rights; OPAA concerns about timelines for appeals and reopening of pleas, sentences, dismissals, diversions, addressed by amendment. Funding concerns remain. Clearer definition of victim still needed.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-343>

HB383 MODIFY PENALTIES FOR HAVING WEAPON UNDER DISABILITY (KOEHLER K) To modify the penalties for the offense of "having weapons while under disability."

Current Status: 5/26/2022 - SUBSTITUTE BILL ACCEPTED, House Government Oversight, (Third Hearing)

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-383>

HB390 REGARDING SEXUAL ASSAULT EXAM KITS (LANESE L, JOHN M) To require governmental evidence-retention entities to secure and test sexual assault examination kits in relation to an investigation or prosecution of trafficking in persons.

Current Status: 5/24/2022 - BILL AMENDED, Senate Judiciary, (Second Hearing)

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-390>

HB406 OFFENSE OF VOYEURISM (SCHMIDT J) To make changes to the offense of voyeurism.

Current Status: 5/19/2022 - House Criminal Justice, (Second Hearing)

Comments: Support but amend to remove purpose requirement in (B) and (C) and enhance penalties for minor victims

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-406>

HB408 SALE OF CATALYTIC CONVERTERS (YOUNG B) Regarding the sale of catalytic converters.

Current Status: 4/6/2022 - House Criminal Justice, (Second Hearing)

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-408>

HB427 PROHIBIT ADDICTION TO COMPEL PROSTITUTION (WHITE A, MANCHESTER S) To prohibit the use of a controlled substance or manipulation of controlled substance addiction as a method of human trafficking or to compel prostitution.

Current Status: 6/14/2022 - SIGNED BY GOVERNOR; eff. 90 days

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-427>

HB455 AVOID CHARGES FOR CARRYING WEAPON INTO CERTAIN PLACES (STOLTZFUS R) To provide an opportunity for a concealed handgun licensee or qualified military member to avoid charges for carrying a deadly weapon into a prohibited place if the person leaves upon request and to penalize failure to leave upon request or returning with a firearm.  
Current Status: 2/17/2022 - House Government Oversight, (Third Hearing)  
Position: Monitor  
State Bill Page:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-455>

HB462 PROHIBITION ON SWATTING (MILLER K, CARFAGNA R) To prohibit swatting.  
Current Status: 5/19/2022 - House Criminal Justice, (Second Hearing)  
Comments: Support the concept but should be done as sentencing enhancement for inducing panic (R.C. 2917.31) or making false alarms (R.C. 2917.32) since these offenses already cover this activity.  
Position: Amend  
State Bill Page:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-462>

HB488 GUARDIANSHIP LAW (GRENDALL D, GALONSKI T) To make changes to the Guardianship Law and to authorize a court of common pleas or county court to employ an attorney under certain circumstances to provide legal services to the court.  
Current Status: 6/1/2022 - Informally Passed; Vote 60-27  
Comments: Concerned with provision allowing judges to hire outside counsel without consent of prosecutor/commissioners.  
Position: Amend  
State Bill Page:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-488>

HB498 ADULT USE ACT (CALLENDER J, FERGUSON R) To enact the Ohio Adult Use Act and to levy a tax.  
Current Status: 12/7/2021 - Referred to Committee House Finance  
Position: Oppose  
State Bill Page:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-498>

HB500 ELIMINATE MANDATORY BINDOVERS (STEWART B, LAMPTON B) To eliminate mandatory bindovers and reverse bindovers, and modify the law governing a discretionary bindover, of an alleged juvenile offender from a juvenile court to a criminal court.  
Current Status: 2/15/2022 - House Criminal Justice, (First Hearing)  
Comments: Mandatory bindovers result from only the ten most serious offenses. Juvenile must be charged with a murder offense, have a serious prior record, or commit the offense with a gun.

This is an issue of public safety and substantial justice for the victims of these crimes.  
Position: Oppose  
State Bill Page:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-500>

HB504 INCREASE PENALTY FOR DISTURBING RELIGIOUS GATHERING (CARFAGNA R, JOHNSON M) To increase the penalty for "disturbing a lawful meeting" when committed with the intent to disturb or disquiet an assemblage for religious worship or to prevent, disrupt, or interfere with a virtual meeting or gathering for religious worship.  
Current Status: 5/31/2022 - Senate Judiciary, (First Hearing)  
Position: Support  
State Bill Page:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-504>

HB511 PUBLIC RECORDS (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: 6/2/2022 - House Criminal Justice, (First Hearing)  
Position: Support  
State Bill Page:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-511>

HB531 COUNTY PROSECUTOR LEGAL SERVICES (GHANBARI H) To allow a county prosecutor to provide legal services to a metropolitan planning organization, regional transportation planning organization, or regional council of governments.  
Current Status: 5/24/2022 - Senate Local Government and Elections, (First Hearing)  
Position: Monitor  
State Bill Page:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-531>

HB545 PRIVILEGED TESTIMONIAL COMMUNICATIONS (ABRAMS C, BALDRIDGE B) 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.  
Current Status: 5/25/2022 - Referred to Committee Senate Judiciary  
Comments: Amend to provide that (1) the peer support team member must be dispatched or assigned for the sole purpose of providing peer support services and (2) the training regimen must be approved to ensure that certain core training is met.  
Position: Amend  
State Bill Page:  
<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-545>

HB580 MOTOR VEHICLE OFFENSES (MILLER K) To modify the penalty for the offense of "failure to comply with an order or signal of a police officer" involving the offender's operation of a motor vehicle and expressly provide that a motor vehicle used in the offense is subject to possible seizure and forfeiture.

Current Status: 5/19/2022 - House Criminal Justice, (First Hearing)

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-580>

HB586 POSTCONVICTION RELIEF BASED ON DNA EVIDENCE (SCHMIDT J, UPCHURCH T) To authorize the filing of an initial or subsequent postconviction relief petition regarding a felony conviction that is based on DNA testing showing actual innocence, when the testing was done at the request or on behalf of the petitioner in the case in any circumstances, the state, or any government entity.

Current Status: 5/19/2022 - House Criminal Justice, (First Hearing)

Comments: This legislation creates a process by which a person can file successive petitions for post-conviction relief based on unreliable DNA evidence. It circumvents safeguards that exist in current statute to ensure the reliability of DNA tested.

Position: Oppose

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-586>

HB607 PUBLIC SAFETY FACTOR IN SETTING BAIL (LARE J, SWEARINGEN D) To add public safety as a factor in setting bail.

Current Status: 5/31/2022 - Re-Referred to Committee

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-607>

HB672 TRACKING DEVICES (PATTON T, SYKES E) 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: 6/2/2022 - House Criminal Justice, (First Hearing)

Comments: Amend to (1) better define "tracking application" and "tracking device", (2) prohibit the use of the device "in or on" another person's property, (3) address revoked consent and clarify consent of parents in situations involving difference child custody arrangements.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-672>

HB699 CRIMES AND CORRECTIONS (SEITZ B, GALONSKI T) To modify various aspects of the law regarding crimes and corrections, correctional officers and employees, coroner records, inmate internet access, civil protection orders, delinquent child adjudications, youthful offender parole review, OVI and other traffic offenses, and criminal record sealing and expungement.

Current Status: 6/13/2022 - Introduced

Comments: Companion bill to SB 288; Opposed to (1) repeal of transitional control veto, (2) expansion of record "expungement" to authorize the expungement of any record that can be sealed, (3) expansion of earned credit from 8% to 15%, (4) provisions on judicial release during a public health state of emergency or on "recommendation" of the director of ODRC, and (5) authorizing record sealing for domestic violence.

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-HB-699>

SB90 DOMESTIC VIOLENCE-STRANGULATION (KUNZE S, ANTONIO N) To expand the offense of domestic violence to also prohibit a person from knowingly impeding the normal breathing or circulation of the blood of a family or household member by applying pressure to the family or household member's throat or neck or blocking the family or household member's nose or mouth.

Current Status: 2/15/2022 - Senate Judiciary, (Third Hearing)

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-90>

SB103 ABOLISH DEATH PENALTY (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: 6/16/2021 - Senate Judiciary, (Second Hearing)

Comments: See also HB 183.

Position: Oppose

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-103>

SB112 TAX FORECLOSURES, LAND REUTILIZATION (DOLAN M) To make changes to the law relating to tax foreclosures and county land reutilization corporations.

Current Status: 3/29/2022 - House Ways and Means, (First Hearing)

Comments: See also HB 241; Supportive of bill overall and in particular provisions related to electronic notice for foreclosure proceedings.

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-112>

SB164 ANIMAL CRUELTY (HOTTINGER J, YUKO K) To revise the law and penalties associated with companion animal cruelty and to prohibit the destruction of a domestic animal by the use of a gas chamber.

Current Status: 6/1/2022 - PASSED BY SENATE; Vote 32-0

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-164>

SB182 BAIL REFORM (MCCOLLEY R, HUFFMAN S) To make changes regarding bail.

Current Status: 4/5/2022 - Senate Judiciary, (Third Hearing)

Comments: At a minimum, the bill needs amended to provide funding for pretrial services, authorize judges to impose conditions of release in their own discretion, authorize the prosecutor to seek and the court to order pretrial detention for any felony consistent with the constitution, and provide more reasonable timelines for hearings.

Position: Oppose

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-182>

SB183 EXPUNGE CRIMINAL RECORDS-TRAFFICKING VICTIMS (FEDOR T, KUNZE S) To allow a victim of human trafficking to expunge certain criminal records and to name this act the Expanding Human Trafficking Justice Act.

Current Status: 12/7/2021 - SUBSTITUTE BILL

ACCEPTED, Senate Judiciary, (Fourth Hearing)

Comments: Amend to (1) provide that the rules of evidence apply to hearings on these petitions, (2) require that the additional factors to consider apply to F3 offenses and offenses of violence in addition to F1 and F2 offenses, (3) require the court to have it probation department make inquiries concerning the applicant, and (4) provide that an application may not be made sooner than 180 days before the applicant has completed their sentence and received final discharge from the court or ODRC and shall not be granted before final discharge.; Bill amended 12/7/21 to require the court to order its probation department to make inquiries regarding the applicant and to add F3 offenses to the offenses for which the court must consider specific factors before granting an application.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-183>

SB203 OPERATING A VEHICLE UNDER THE INFLUENCE-MARIHUANA (MANNING N) To change the laws pertaining to operating a vehicle or watercraft while under the influence of marihuana and the admissibility of evidence regarding the testing of a person's whole blood, blood serum or plasma, urine, breath, or other bodily substance for purposes of OVI statutes.

Current Status: 3/15/2022 - Senate Veterans and Public Safety, (Second Hearing)

Comments: Repeals per se OVI based on marijuana metabolites and replaces it with an inference of impairment if a person has a certain concentration of delta-9 THC; amend to reflect State of Washington RCW 46.61.502 that provides that a person is guilty of driving under the influence of marijuana if, within 2-hours of driving they have a THC concentration of 5.0 or higher as shown by analysis of their blood. If the sample is taken after more than 2-hours may be used as evidence that the person was impaired.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-203>

SB216 CUSTODY OF INFANTS - SUBSTANCE EXPOSURE (JOHNSON T) To enact Dylan's Law regarding parental custody of infants born substance exposed.

Current Status: 2/8/2022 - Senate Judiciary, (Third Hearing)

Comments: Support but amend R.C. 2919 to permit prosecution for child endangerment when child is born as a substance exposed infant.

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-216>

SB218 VOYEURISM - INCREASE PENALTIES (ANTANI N) To increase the penalties for the offense of voyeurism.

Current Status: 9/28/2021 - Senate Judiciary, (First Hearing)

Comments: Amend to provide higher penalties when victim is under 13.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-218>

SB226 LIMITATIONS PERIOD - OFFENSES INVOLVING CHILDREN (KUNZE S, ANTONIO N) To extend, from the age of majority to age 26, the tolling of the period of limitation for offenses involving a wound, injury, disability, or condition that indicates abuse or neglect of a child.

Current Status: 5/31/2022 - Senate Judiciary, (Second Hearing)

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-226>

SB261 LAW CHANGES-MEDICAL MARIJUANA (HUFFMAN S) To amend the law related to medical marijuana.

Current Status: 4/27/2022 - House Government Oversight, (Fourth Hearing)

Comments: Opposed to removal of Board of Pharmacy from oversight role and to expansion of doctor's ability to recommend marijuana for any condition.

Position: Oppose

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-261>



SB288 CRIMINAL LAW CHANGES (MANNING N) To modify the Criminal Law regarding arson and related offenses; robbery, burglary, trespass, safecracking, and related offenses; theft, fraud, and related offenses; offenses against the public peace; offenses against justice and public administration; miscellaneous offenses; the meaning of "prior calculation and design"; certain vehicle license suspensions; a new offense of "aggravated rape"; and other miscellaneous provisions of that Law.

Current Status: 5/17/2022 - SUBSTITUTE BILL

ACCEPTED, Senate Judiciary, (Seventh Hearing)

Comments: Criminal Justice Recodifications Committee recommendations removed 5/17/22; Remain opposed to (1) repeal of transitional control veto, (2) expansion of record "expungement" to authorize the expungement of any record that can be sealed, (3) expansion of earned credit from 8% to 15%, (4) provisions on judicial release during a public health state of emergency or on "recommendation" of the director of ODRC, and (5) authorizing record sealing for domestic violence; See also House Bill 699

Position: Oppose

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-288>

SB292 PROHIBITION ON SWATTING (BRENNER A) To prohibit swatting.

Current Status: 3/15/2022 - Senate Judiciary, (First Hearing)

Comments: Support the concept but should be done a sentencing enhancement for inducing panic (R.C. 2917.31) or making false alarms (R.C. 2917.32) since these offenses already cover this activity.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-292>

SB311 LAW CHANGES-CORONERS, DEATH CERTIFICATES (HUFFMAN S, JOHNSON T) To revise the law governing coroners and death certificates and to amend the version of section 4723.431 of the Revised Code that is scheduled to take effect on September 30, 2024, to continue the change on and after that date.

Current Status: 4/6/2022 - Senate Health, (Second Hearing)

Comments: Support provision regarding journalist access to CLEIR in preliminary autopsies.

Position: Support

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-311>

SB322 SEX OFFENSES, MEDICAL PROFESSIONS (HACKETT R) Regarding sex offenses and individuals regulated by the State Medical Board.

Current Status: 5/18/2022 - Referred to Committee Senate Health

Comments: Remove requirement to report based on "reasonable cause to suspect."

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-322>

SB339 TRACKING DEVICE-GENERAL 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.

Current Status: 5/31/2022 - Senate Judiciary, (Second Hearing)  
Comments: Amend to (1) better define "tracking application" and "tracking device", (2) prohibit the use of the device "in or on" another person's property, (3) address revoked consent and clarify consent of parents in situations involving difference child custody arrangements.

Position: Amend

State Bill Page:

<https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA134-SB-339>

actionTRACK - Hannah News Service, Inc.



**Lame Duck:** *noun* Short, infamous period after the general election when the legislature does a load of its business before new office holders take office.

or in other words....



## New and Noteworthy



Steve Taylor

### Merit Decisions of Interest Since 8/1/22

**State v. Drain**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3697. The Court (7-0) affirmed the convictions and (6-1) affirmed the death penalty in a prison killing by an offender who had previously been convicted of aggravated murder. (Decided 10/19/22; Warren County)

**State v. Bellamy**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3698. The Court (7-0) held that that the mandatory-exclusion remedy under Crim.R. 16(K) regarding expert-witness reports only applies at a trial occurring within the 21-day window following the party's disclosure of the expert's report. For trials and retrials occurring outside the 21-day window following disclosure, the mandatory-exclusion provision is inapplicable. (Decided 10/19/22; State's appeal; Delaware County)

**State v. Towns**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3632. The Court (7-0) reaffirmed that a prosecutor's general power to prosecute criminal-law violations is not limited by another statute creating an administrative remedy in relation to the violation unless the General Assembly expressly says so. (Decided 10/18/22; State of Ohio/City of Bryan)

**State v. Campbell**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3626. The Court (6-1) concluded that the officer's suspicionless search of the defendant's cell phone was allowed under the Fourth Amendment because the defendant had agreed to a consent-to-search condition allowing the search of his property, which plainly included his cell phone. But five justices concluded that R.C. 2951.02(A) rendered the consent ineffectual as a matter of state law because the statute requires "reasonable grounds" for a probation-officer search and that, because of this provision, the officer lacked statutory authority to carry out a consensual search. These five justices went on to conclude that, because the statute did not provide for any exclusionary remedy for a violation, there would be no basis to grant suppression as to the cell-phone search. (Decided 10-13-22; State's appeal; Fairfield County)

**State v. Leegrund**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3623. The Court (6-1) held that the trial court's imposition of sentence for murder as "life in prison with eligibility for parole after 15 years" was equivalent to the statute providing that the sentence shall be "an indefinite term of fifteen years to life." The judge's language imposing sentence need not precisely track the statutory language. (Decided 10-13-22; State's appeal; Cuyahoga County)

**State v. Troisi**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3582. The Court (7-0) concluded that, for purposes of drug trafficking under R.C. 2925.03, the prosecution failed to provide sufficient notice in the trial court as to what provision(s) in R.C. Chapter 4729 had been violated for purposes of proving that the drug wholesaler fell outside the statutory exemption for wholesalers. However, the trial court was wrong to dismiss the indictment with prejudice; only a dismissal without prejudice was warranted. (Decided 10-11-22; Cuyahoga County)

**State ex rel. Randlett v. Lynch**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3260. The Court (7-0) affirmed the denial of a mandamus action challenging the common pleas court's filing of nunc pro tunc entries specifying the applicable mandatory five-year period of post-release control. Crim.R. 36 allows a trial court to correct a sentencing entry to reflect that the court properly imposed post-release control at the earlier sentencing hearing, and a proper nunc pro tunc entry is not a collateral attack on the judgment it corrects. (Decided 9-20-22; Franklin County)

**State v. O'Malley**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3207. In regard to the mandatory forfeiture of the vehicle used by a third-time OVI offender, the Court (7-0) rejected the defendant's Equal Protection challenge to the law's provision limiting the forfeiture to those vehicles owned by the repeat offender. The Court (5-2) also rejected the defendant's claim that the forfeiture of the \$31,000 vehicle amounted to an unconstitutional Excessive Fine under the Eighth Amendment. (Decided 9-15-22; Medina County)

**State v. Wilson**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3202. The Court (4-3) held that the evidence was insufficient on "operate" for the offense of driving under OVI suspension under R.C. 4510.14 because "operate" means to cause the movement of the vehicle, rather than merely being seated in the driver's seat with the key in the ignition and the engine and heater running. (Decided 9-14-22; City of Cincinnati appeal; Hamilton County)

**State v. Sanford**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-3107. The Court (7-0) applied the *Adams-Baker* line of cases and

affirmed the appellate court's conclusion that the remaining aggravated vehicular homicide and OVI charges started with a new speedy-trial clock when they were brought after receiving the new toxicology result that was essential to deciding whether the OVI per se charge should be brought and, ergo, whether the AVH-based-on-OVI charge should be brought. (Decided 9-8-22; Lorain County)

**State v. G.K.**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-2858. The Court (7-0) held that the trial court could not order a partial sealing of dismissed charges in a criminal case since the defendant had also been convicted on a count in the case and could not obtain a sealing of that conviction. "Under the plain language of the statutes governing sealing, the dismissed counts in the indictment may not be sealed until the conviction is eligible to be sealed." (Decided 8-19-22; State's Appeal; Cuyahoga County)

**State v. Whitaker**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-2840. The Court (7-0) mostly affirmed the defendant's convictions and affirmed the death sentence in a case in which the defendant forcibly entered a vacant house with 14-year-old A.D. and then raped, tortured, and killed her. While mostly affirming, the Court held that the vacant house was not an "occupied structure" and therefore the evidence was insufficient on aggravated burglary. (Decided 8-18-22; Cuyahoga County)

**State v. CSX Transp.**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-2832. The Court (5-2) concluded that R.C. 5589.21's prohibition on a stopped train blocking a railroad crossing for more than five minutes is preempted by federal law. (Decided 8-17-22; Union County)

**State v. Stutler**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-2792. The Court (7-0) concluded that the prosecution has the burden of proving by clear and convincing evidence that the supervised community movement recommended by a facility as to a NGRI defendant would pose a threat to safety of the public or any person. The Court rejected the view that the court has a general discretion to deny such requests for supervised release when there is no such clear and convincing proof. (Decided 8-16-22; Stark County)

**State v. Yontz**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-2745. The Court (7-0) concluded that orders granting ILC are not final orders that can be appealed by the defendant, and it likewise concluded that orders denying motions to modify ILC terms are not final orders appealable by the defendant. (Decided 8-11-22; Guernsey County)

**State v. McNeal**, \_\_\_ Ohio St.3d \_\_\_, 2022-Ohio-2703. The Court (7-0) held that the defendant's unopposed motion for leave to file a delayed motion for new trial under

Crim.R. 33(B) made a prima facie showing justifying the granting of leave because it stated a prima facie claim of unavoidable prevention owing to the failure of the police or prosecution to turn over a lab report indicating the absence of alcohol in blood drawn from the victim at the hospital approximately three and a half hours after the rape offense. (Decided 8-9-22; Montgomery County)

### **Supplemental Briefing Ordered**

**19-1215 St. v. Philpotts.** (1) Whether R.C. 2923.13(A)'s blanket ban on continued possession of firearms by indictees violates the Second Amendment or violates procedural due process; (2) Per 9-8-22 sua sponte order of supplemental briefing: What is the impact, if any, of *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 142 S.Ct. 2111 (2022). (Cuyahoga County; Argument held 10/27/21)

### **Newly-Accepted Criminal Law Cases Since 8/1/22**

**22-993 In re E.S.** Whether circumstantial evidence is entitled to the same weight as direct evidence in a juvenile bindover proceeding in determining whether there is probable cause, and whether the evidence and inferences must be examined by the appellate court in a light most favorable to the prosecution. (State's appeal; Cuyahoga County)

**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 *Miranda* rights in a question-first, warn-later scenario. (Cuyahoga County)

**22-707 St. 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)

**22-733 St. v. Jordan/22-734 St. v. Johnson.** Whether conflicts of interest in multiple representation cases should be

judged by a clear and understandable standard or test. (Scioto County)

**22-736 St. 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)

**22-773 St. v. Marshall.** Whether a former guest lacks a reasonable expectation of privacy in a hotel room he remains in after checkout time, especially where that individual was utilizing the hotel room to commit crimes. (State’s appeal; Wood County)

**22-782 St. 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)

**22-488 St. 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)

**22-779 St. 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)

### Upcoming Oral Arguments

**19-1787 St. v. Nicholson** Death penalty case. (Cuyahoga County) (Argument on 1-11-23)

**20-1496 St. 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 St. 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)

### Keep an Eye Out for These Cases Awaiting Decision

**21-1491 St. v. Ashcraft** In a prosecution for a change-of-address violation under R.C. 2950.05, whether R.C. 2950.99(A)(2)(b)(ii)’s requirement of a mandatory sentence of 36 months for an offender having a prior conviction also allows the court to impose an additional prison term of 9 months chosen from the range of prison terms authorized for third-degree felonies under R.C. 2929.14(A)(3). (Knox County)

**21-1060 St. v. Brasher** (1) Whether a trial court retains jurisdiction under Marsy’s Law to correct previous proceedings as to restitution after a defendant’s conviction and performance of his prison sentence by filing a post-completion-of-prison-sentence supplemental sentencing entry ordering restitution. (State’s Appeal); (2) Victims are constitutionally entitled to full and timely restitution, and must be provided an effective appellate remedy for violations of their right to restitution. (Victim’s appeal). (Butler County)

**21-1254 St. v. Bortree** Whether the statute of limitations for attempted aggravated murder and attempted murder is six years under R.C. 2901.13(A)(1)(a). (Logan County)

**21-1047 St. v. Fisk** Whether Ohio Constitution, Article I, Section 10(a), gives standing to the State of Ohio, through the prosecuting attorney who tried the defendant’s criminal case, to challenge on appeal the trial court’s decision not to order restitution as part of a defendant’s sentence. (State’s Appeal; Montgomery County)

**21-1033 St. v. Gwynne** (1) Whether the defendant’s consecutive sentences totaling 65 years are clearly and convincingly not supported by the record; (2) Whether the 65-year aggregate sentence shocks the conscience and

thereby constitutes cruel and unusual punishment.  
(Delaware County)

**21-944. *St. v. Messenger*** Whether self-defense claims are subject to sufficiency-of-evidence review. (Franklin County)

**21-913 *St. v. Hill*** Whether the trial court abused its discretion in not allowing the defendant to enter a plea of no contest. (Stark County)

**21-761 *St. v. Schubert*** Whether the good-faith exception applies in relation to a search warrant for a cell phone found at a crash scene when the affidavit supporting the warrant only states that the police “may” find evidence of how a crash occurred on the phone, without any actual evidence that the driver was using his phone when the crash occurred. (Licking County)

**21-215 *St. v. Haynes*** Crim.R. 7 provides that the prosecution “shall” provide a bill of particulars upon timely request, and this provision is mandatory and is not satisfied by the prosecution’s provision of discovery, and the State violates due process by failing to inform the defendant of the specific acts the defendant is accused of committing. (Wood County)

**21-483 *St. v. Belville*** (1) whether supplemental discovery, which the State is obligated to turn over to the defense, tolls speedy-trial time for constitutional speedy-trial purposes; (2) whether a defendant’s inaction in providing discovery to the State, even when not requested, tolls speedy-trial time indefinitely without violating constitutional and statutory speedy-trial rights. (Lawrence County)

**20-1392 *St. v. Yerkey*** Whether victims are constitutionally entitled to restitution for losses incurred throughout the prosecution of the criminal offense, including lost wages from attending hearings. (State’s appeal; Columbiana County)

**19-1381 *St. v. Garrett*** Death Penalty Case (Franklin County)

### Ohio Attorney General Opinions

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

#### 2022-013

*Requested by: Liberty Township Law Director*

A township that elects to offer reimbursement to its employees under R.C. 505.60(D) is not required to provide reimbursement to its township trustees.

#### 2022-012

*Requested by: Logan County Prosecuting Attorney*

Pursuant to R.C. 519.13, a township is not required to have a separate board of zoning appeals for each zoned area.

## OPAA Training



The **2022 OPAA Fall Training** at the Crowne Plaza Playhouse Square in Cleveland was well received by the 232 prosecutor attendees from 57 counties and the AG’s office.

The OPAA also hosted training on October 28 at the Sheraton Columbus at Capitol Square for the membership’s Administrative Professional group. We had 65 attendees from 20 counties participate in the event.

**Thanks to all that attended, trained, and worked these events!**

### 2022 OPAA Upcoming Trainings

Annual Meeting  
December 8<sup>th</sup> and 9<sup>th</sup>  
Hilton Columbus at Easton

### 2023 OPAA Training Schedule

Spring Training - April 20<sup>th</sup> & 21<sup>st</sup>, Sheraton at Capitol Square, Columbus

Summer Workshop - June 22<sup>nd</sup> & 23<sup>rd</sup>, Breakers Hotel, Cedar Point

Fall Training - September TBD

Juvenile Prosecutor Training - October TBD

Annual Meeting - December 14<sup>th</sup> and 15<sup>th</sup>, Hilton Columbus at Easton

## Community Outreach

### Women In Law – Miami University

I was honored to speak at Miami University, my alma mater, to a group of young women who aspire to enter the field of law.

About 100 young women from the Miami University Women In Law organization attended the recent presentation. They were so engaging and professional. They asked about how difficult it is working in such a heartbreaking field as county prosecutor. They also asked about finding a good place to start a career as an attorney.



It was encouraging to see so many women interested in becoming attorneys. I was able to tell them that when I started as a county prosecutor, there were only three other women who were county prosecutors out of Ohio's 88 counties. Now there are 16 female county prosecutors and that the students have the opportunity to make that number even larger.

The Women in Law group at Miami University was founded in 2020 and has about 150 members. Their mission is dedicated to building a vibrant and supportive community for women in law during their time at Miami University and beyond. Their purpose is to provide tools, knowledge, and mentorship for undergraduate women pursuing a career in law.

It was a pleasure to meet this fine group of young women and I look forward to what they will bring to our future of women in the field of law.

Sherri Bevan Walsh  
Summit County Prosecutor

## OSU – Notre Dame



Henry County Prosecutor Howe-Gebers and Director Tobin had a friendly wager on the OSU – Notre Dame game where the luck of the Irish ran out with a 21-10 loss.

While Prosecutor Howe-Gebers refused to do an O-H, she was a good sport for wearing the t-shirt at Fall Training.

**Happy Halloween!**



## A Career Well Done!

Delores (shown here trying to adopt a stray dog) will be retiring after the Annual Meeting in December following a brief 42-year career with the OPAA. We plan to recognize Delores, her long career of service to Ohio prosecutors, and her dedication to the OPAA at the Annual Meeting reception on Thursday evening. We hope you will attend. Delores will be greatly missed at the OPAA but we can't think of anyone more deserving of some retirement rest and relaxation.



## Your 2022 OPAA Officers



Michael C. O'Malley  
Cuyahoga County  
President



Jane Hanlin  
Jefferson County  
President-Elect



Kevin S. Talebi  
Champaign County  
Vice President



Keller J. Blackburn  
Athens County  
Treasurer



David P. Fornshell  
Warren County  
Secretary

## 2022 Executive Committee Meetings

November – No Meeting

December 7<sup>th</sup>  
Hilton Columbus at Easton, prior to the OPAA  
Annual Meeting.  
Legislative 3:00, Executive 4:00.