



THE OHIO PROSECUTOR

October 2023

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From your President...



Jane Hanlin
OPAA President
Jefferson County

Greetings and Happy Fall!

I trust that this newsletter finds you all very well, and I'm looking forward to seeing everyone at the winter conference in Easton.

We have been hard at work on a number of fronts, including providing proponent testimony on a House Bill 230, which would increase the penalties for offenders trafficking in cocaine, heroin, methamphetamine and fentanyl. The bill also provides an enhancement for involuntary manslaughter charges when fentanyl is the cause of death. Finally, it increases penalties for human trafficking.

We have also been spreading the word to encourage our citizens to vote against Issue 2, which would legalize marijuana in the state. I would encourage all of you to continue to spread that word, and to be as proactive on this front as possible.

It is also time for nominations for the various awards to be presented at the 2023 Annual Meeting. In recent years, nominations have been extremely sparse, which greatly hampers the ability of the Awards Committee in the selection process. Therefore, we would ask that each prosecutor take a few minutes to seriously consider making a nomination (or more than one). There must be at least one member of your staff who stands out! Information and forms were emailed to your office on October 13th. Contact diana@ohiopa.org if you need another copy sent.

Once again, I hope you are enjoying this beautiful fall season and I can't wait to see you all in December!

Jane

From your Executive Director...



Louis Tobin
OPAA Executive
Director

Prosecutors –

In recognition of Domestic Violence Awareness Month I want to highlight a few pieces of domestic violence legislation making their way through the General Assembly.

House Bill 111, sponsored by Reps. Jeff LaRe and Kevin Miller would make felony domestic violence a “high-tier” F3 and create a presumption in favor of a prison term for the offense. This is OPAA priority legislation and is something that we have sought to change since House Bill 86 created the two tiered F3 sentencing scheme more than a decade ago. The bill was reported out of the House Criminal Justice Committee in October.

Senate Bill 100, sponsored by Sens. Nathan Manning and Nickie Antonio, and House Bill 91, sponsored by Rep. Tom Patton, address the use of tracking devices or tracking applications to monitor the movement or location of another person without their consent. These bills stem from a series of incidents where victims discovered their movements were being monitored through Apple AirTags or similar devices. At least one victim was killed by her ex-boyfriend who it was later discovered had been tracking her in this way. The legislation makes it clear that this is illegal regardless of whether the tracking constitutes a pattern of conduct as prohibited by the menacing by stalking statute. Senate Bill 100 passed the Senate in June. Both bills are now pending in the House Criminal Justice Committee.

House Bill 161, sponsored by Reps. Miranda and Hillyer, and Senate Bill 127, sponsored by Sens. Manning and Kunze, eliminate the spousal exceptions for the offenses of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, sexual imposition, and importuning. Eliminating these exceptions has been a long time goal of the Ohio domestic violence community who argue that the exceptions are a relic of common law and an injustice for married victims of these offenses. House Bill 161 was reported out of the House Criminal Justice Committee in October.

According to the Ohio Domestic Violence Network there were 112 domestic violence fatalities between July 1, 2022, and June 30, 2023, and fifty two percent of offenders had prior contact with the criminal justice system. Legislation like that above is critical reducing domestic violence and to saving victim lives. Please consider contacting your legislators about the importance of these bills.

Lou



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 – Top 10 Bills to Watch

1) House Bill 51 (Second Amendment Preservation Act). Prohibits Ohio law enforcement from working to enforce federal acts, laws, executive orders administrative orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms. Subjects the state or any political subdivision to liability by private cause of action if they violate the bill's provisions or employ someone who previously acted as a federal official, agent, employee, or deputy who knowingly enforced, attempted to enforce, or gave material aid or support to others in an attempt to enforce any infringement after the bill's effective date. OPAA Position – Opposed.

2) Senate Bill 101/House Bill 259 (Death Penalty Repeal). Repeals the death penalty. OPAA Position – Opposed.

3) House Bill 111 (Domestic Violence Penalties). Makes felony domestic violence a “high-tier” F3 subject to a sentencing range of 1 to 5 years rather than 9 to 36 months. OPAA Position – Support.

4) House Bill 196 (Community Control Sanctions). Makes changes to the maximum period of community control for misdemeanors, F5 and F4 offenses (2 years) and F3 offenses (3 years). Specifies that for a “technical violation of community control, the court may impose a more restrictive non-residential sanction or impose a “temporary incarceration sanction” that for a first technical violation shall not be more than 15 days, for a second technical violation shall not be more than 30 days for a third technical violation shall not be more than 45 days for a fourth or subsequent technical violation may include any sanction

authorized in 2929.15(B)(1)(a) to (c). Finally, the bill amends the definition of technical violation to apply to all felonies rather than only F5s and non-violent/non-sex offense F4s. OPAA Position – Opposed.

5) House Bill 221 (Post-Conviction Relief). Expands eligibility for post-conviction relief based on “qualifying DNA testing” defined as testing performed under sections 2953.71 to 2953.81 or “DNA testing that was performed at the request or on behalf of the petitioner other than as described in division or at the request or on behalf of the state or any government entity.” The bill also expands who may file a late or second or successive petition for post-conviction relief. OPAA Position – Opposed.

6) House Bill 230 (Drug Trafficking/Organized Trafficking of Person). Increases penalties for trafficking cocaine, heroin, fentanyl, and methamphetamine. Creates a 5-year sentencing specification for involuntary manslaughter related to a fentanyl overdose death. Removes provisions from the drug possession law related to Schedule III, IV, and V drugs mixed with fentanyl. Creates the offense of offense of organized trafficking in persons. OPAA Position – Support.

7) House Bill 233 (Self-Defense). Creates a procedure for a person who is accused of an offense that involved the person's alleged use of self-defense to file a pretrial motion asserting self-defense. If granted, the bill provides that there is a rebuttable presumption that the accused person acted in self-defense. If the motion is denied, the person may still assert self-defense at trial. OPAA Position – Opposed.

8) Senate Bill 26 (OVI Law – Marijuana). Changes the law regarding per se OVI for marijuana. The bill requires at least five nanograms of Delta-9 THC per milliliter of the person's blood for per se OVI. It creates an inference that the person is under the influence of marijuana if they have at least twenty-five nanograms of Delta-9 THC per milliliter of urine or at least two, but less than five, nanograms of Delta-9 THC per milliliter of blood. OPAA Position – Opposed.

9) House Bill 91/Senate Bill 100 (Tracking Devices). While not identical, these bills both prohibit a person from using a tracking device or application to track the position or movement of another person without the other person's consent. A violation is a misdemeanor of the first degree for a first offense. The penalty is enhanced to a felony of the fourth degree for any subsequent violation and under other specified circumstances similar to those in the menacing by stalking statute. OPAA Position – Support.

10) Senate Bill 127/House Bill 161 (Eliminate Spousal Exception for Sexual Assaults). Eliminates the spousal exceptions for the offenses of rape, sexual battery, unlawful sexual conduct with a minor, gross sexual imposition, and importuning and permits a person to testify against the person's spouse in a prosecution for one of these offenses. OPAA Position – Monitor.

Notable Legislation

(provided by actionTRACK - Hannah News Service, Inc.)

HB 20 OHIO COMPUTER CRIMES ACT (SWEARINGEN D) To enact the Ohio Computer Crimes Act.

Current 3/28/2023 – **BILL AMENDED**, House

Status: Criminal Justice, (Fourth Hearing)

Position: Support

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-20>

HB 33 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 7/3/2023 – **SIGNED BY GOVERNOR**; eff.

Status: Immediately

Position: Amend

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-33>

HB 34 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 9/27/2023 – Senate Judiciary, (First Hearing)

Status:

Position: Monitor

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

HB 35 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; 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; and to declare an emergency.

Current 10/12/2023 – **SIGNED BY GOVERNOR**;

Status: eff. Immediately

Position: Support

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-35>

HB 37 OVI PENALTIES (JOHNSON M, MILLER K) To modify the law related to OVI-related offenses, including penalties and the relevant lookback period.

Current 10/24/2023 – **SUBSTITUTE BILL**

Status: **ACCEPTED**, House Criminal Justice, (Third Hearing)

Position: Support

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-37>

HB 44 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 6/13/2023 – **BILL AMENDED**, House

Status: Criminal Justice, (Fourth Hearing)

Position: Support

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-44>

HB 50 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 10/11/2023 – Senate Community

Status: Revitalization, (Second Hearing)

Position: Monitor

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-50>

HB 51 SECOND AMENDMENT PRESERVATION (LOYCHIK M, SCHMIDT J) To enact the Second Amendment Preservation Act to add additional protections to the right to bear arms and to declare an emergency.

Current 10/10/2023 – **SUBSTITUTE BILL**

Status: **ACCEPTED**, House Government Oversight, (Sixth Hearing)

Position: Oppose

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-51>

HB 56 POLICE PURSUIT, FLEEING PENALTIES (PLUMMER P, WHITE A) To require law enforcement entities to train officers related to the pursuit of a motor vehicle and to increase penalties for fleeing from law enforcement and forms of stunt driving.

Current 10/17/2023 – **REPORTED OUT AS**

Status: **AMENDED**, House Criminal Justice, (Fourth Hearing)

Position: Support

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-56>

HB 67 PENALTY REDUCTIONS DUE TO CHANGES IN LAW (SEITZ B, WILLIAMS J) To provide that if a penalty for an offense has been imposed on an offender and if the penalty for that offense is subsequently reduced by a change to the Revised Code or Constitution, the penalty previously imposed on the offender may be reduced.

Current 10/24/2023 – House Criminal Justice, (Second Hearing)
Status: Hearing)

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-67>

HB 77 DRONE LAWS (WILLIS B) To establish requirements and prohibitions governing the operation of unmanned aerial vehicles in Ohio.

Current 10/31/2023 – House Aviation and Aerospace, (Second Hearing)
Status: (Second Hearing)

Position: Support

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-77>

HB 83 REMOVE PENALTIES – DRUG PARAPHERNALIA (HUMPHREY L) To remove criminal penalties for the use and possession of drug paraphernalia and drug abuse instruments.

Current 2/28/2023 – Referred to Committee House Criminal Justice
Status: Criminal Justice

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-83>

HB 84 LOWER AGE – POLICE OFFICERS (DEMETRIOU S, WILLIAMS J) To lower the minimum age for an original appointment as a police officer from twenty-one to eighteen years of age.

Current 3/29/2023 – House Homeland Security, (Third Hearing)
Status: Hearing)

Position: Monitor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-84>

HB 91 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 10/17/2023 – House Criminal Justice, (Fourth Hearing)
Status: Hearing)

Position: Support

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-91>

HB 101 VILLAGE DISSOLUTION (BIRD A, SCHMIDT J) To modify the law regarding village dissolution.

Current 10/10/2023 – **BILL AMENDED**, Senate
Status: Local Government, (Fourth Hearing)

Position: Monitor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-101>

HB 110 CATALYTIC CONVERTERS (YOUNG B, ROEMER B) Regarding the sale of used catalytic converters, and to make an appropriation.

Current 5/2/2023 – House Criminal Justice, (Third Hearing)
Status: Hearing)

Position: Support

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

HB 111 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 10/10/2023 – **REPORTED OUT**, House Criminal Justice, (Fourth Hearing)
Status: Criminal Justice, (Fourth Hearing)

Position: Support

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-111>

HB 122 EXPAND INTIMIDATION OFFENSES (PAVLIGA G, MILLER A) To expand intimidation offenses to include guardians ad litem and court-appointed special advocates and to designate May 1st as “Court-Appointed Special Advocates Appreciation Day.”

Current 9/13/2023 – Referred to Committee Senate
Status: Judiciary

Position: Amend

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-122>

HB 124 ELIMINATE LIMITATIONS PERIOD – RAPE (GALONSKI T, MIRANDA J) To eliminate the period of limitation for the criminal prosecution of a person for rape and for a civil action brought by a victim of conduct that would constitute rape and to extend the period of limitation for a civil action by a victim of childhood sexual abuse other than rape.

Current 10/17/2023 – House Criminal Justice, (First Hearing)
Status: Hearing)

Position: Support

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-124>

HB 139 INCREASE PENALTIES FOR ASSAULT OF SPORTS OFFICIAL (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 10/17/2023 – **REPORTED OUT**, House
Status: Criminal Justice, (Fourth Hearing)
Position: Oppose
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-139>
Page:

HB 140 PASSING SCHOOL BUS (BROWN R) To make changes to the law governing passing a school bus.

Current 10/31/2023 – House Transportation, (Third Hearing)
Status: Hearing)
Position: Support
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-140>
Page:

HB 148 CRIMINAL CHILD ENTICEMENT (DELL'AQUILA R) To require that a person act with a sexual motivation to commit the offense of criminal child enticement.

Current 4/18/2023 – Referred to Committee House
Status: Criminal Justice
Position: Monitor
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-148>
Page:

HB 149 DRONE REQUIREMENTS (WILLIS B) To establish requirements related to the use of an uncrewed aerial vehicle for surveillance.

Current 4/18/2023 – Referred to Committee House
Status: Aviation and Aerospace
Position: Oppose
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-149>
Page:

HB 161 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 10/17/2023 – **REPORTED OUT**, House
Status: Criminal Justice, (Fifth Hearing)
Position: Monitor
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-161>
Page:

HB 168 OHIO ADULT USE ACT (CALLENDER J, WEINSTEIN C) To enact the Ohio Adult Use Act and to levy a tax.

Current 5/23/2023 – Referred to Committee House
Status: Finance
Position: Oppose
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-168>
Page:

HB 175 REQUIRE SECURE STORAGE OF FIREARMS (MIRANDA J, BREWER D) To require secure storage of firearms, to authorize an income tax credit for the purchase of firearm storage and locking devices, to name this act the Keep Every Home Safe Act, and to make an appropriation.

Current 6/6/2023 – House Government Oversight,
Status: (First Hearing)
Position: Oppose
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-175>
Page:

HB 191 BAIL (SWEARINGEN D, SEITZ B) To make changes regarding bail and to declare an emergency.

Current 6/30/2023 – **SIGNED BY GOVERNOR**;
Status: eff. Immediately
Position: Support
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-191>
Page:

HB 196 COMMUNITY CONTROL SANCTIONS (WILLIAMS J, SEITZ B) To change the maximum periods of community control sanctions authorized for felonies and misdemeanors and to modify the confinement sanctions authorized for a technical violation of community control sanction conditions.

Current 10/17/2023 – House Criminal Justice, (First Hearing)
Status: Hearing)
Position: Oppose
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-196>
Page:

HB 212 PROHIBIT FOREIGN ADVERSARIES FROM OWNING REAL PROPERTY (KING A, KLOPFENSTEIN R) To prohibit foreign adversaries and certain businesses from owning real property in Ohio and to name this act the Ohio Property Protection Act.

Current 6/20/2023 – Referred to Committee House
Status: Civil Justice
Position: Amend
State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-212>
Page:

HB 221 EXPAND POSTCONVICTION RELIEF (SCHMIDT J, UPCHURCH T) To expand the availability of postconviction relief based on DNA testing showing actual innocence.
Current 10/10/2023 – House Criminal Justice, (First Hearing)
Status: Hearing)
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-221>

HB 230 DRUG TRAFFICKING, ORGANIZED TRAFFICKING OF PERSONS (ABRAMS C, SWEARINGEN D) To increase penalties for drug trafficking above certain amounts and to prohibit organized trafficking of persons.
Current 10/25/2023 – House Homeland Security, (Fourth Hearing)
Status: (Fourth Hearing)
Position: Support
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-230>

HB 233 SELF-DEFENSE PROTECTION ACT (WILLIAMS J) To enact the Self-Defense Protection Act to create a pretrial procedure for a person asserting self-defense, defense of another, or defense of that person's property.
Current 9/12/2023 – Referred to Committee House
Status: Criminal Justice
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-233>

HB 234 GENUINE REMORSE COURT CONSIDERATIONS (WILLIAMS J, ROGERS E) To prohibit a court imposing a sentence on an offender for a felony or misdemeanor from considering whether the offender who entered an Alford plea shows genuine remorse for the offense.
Current 10/24/2023 – House Criminal Justice, (Second Hearing)
Status: Hearing)
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-234>

HB 245 ADULT CABARET PERFORMANCES (KING A, WILLIAMS J) To prohibit adult cabaret performances in locations other than adult cabarets.
Current 9/12/2023 – Referred to Committee House
Status: Criminal Justice
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-245>

HB 258 TOBACCO SALES TO MINORS (CARRUTHERS S) To increase fines for repeatedly selling tobacco products to minors and to apply the public nuisance law to places where such sales occur.
Current 9/12/2023 – Referred to Committee House
Status: Criminal Justice
Position: Support
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-258>

HB 259 ABOLISH DEATH PENALTY (SCHMIDT J, MILLER A) 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, and to make an appropriation.
Current 10/11/2023 – House Finance, (Second Hearing)
Status: Hearing)
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-259>

HB 270 SAM KNISLEY FAMILY SUPPORT ACT (YOUNG T, MATHEWS A) To require a felony offender of an OVI-caused aggravated vehicular homicide to pay child maintenance when the victim is a parent, legal guardian, or custodian of a minor child, to allow child maintenance to be awarded in a wrongful death action when the offender is deceased, and to name this act the Sam Knisley Family Support Act.
Current 9/26/2023 – Referred to Committee House
Status: Criminal Justice
Position: Oppose
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-270>

HB 272 DEADLY WEAPON – COURTROOMS (MATHEWS A, PIZZULLI J) To allow a concealed handgun licensee to carry a deadly weapon or dangerous ordnance in a building or structure that is not a courthouse but in which a courtroom is located if court is not in session.
Current 10/31/2023 – House Government Oversight, (Third Hearing)
Status: (Third Hearing)
Position: Amend
State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-272>

HB 289 SORN LAW NONCOMPLIANCE (ROBB BLASDEL M, SWEARINGEN D) To provide that if a Tier I or Tier II sex offender/child-victim offender fails to comply with duties under the SORN law, the period of time that the offender has a duty to comply is tolled during the time of the failure, and to make disseminating matter harmful to juveniles a sexually oriented offense and a person who violates the offense a Tier I sex offender/child-victim

offender.

Current 10/3/2023 – Referred to Committee House

Status: Criminal Justice

Position: Amend

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-289>

HB 295 INNOCENCE ACT (DEMETRIOU S) To enact the Innocence Act to prohibit an organization from failing to verify the age of a person attempting to access material that is obscene or harmful to juveniles, to prohibit a person from using another person's likeness to create sexual images of the other person, and to create a private right of action for each prohibited activity.

Current 10/24/2023 – Referred to Committee House

Status: Criminal Justice

Position: Amend

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-295>

HJR 2 PROHIBIT SLAVERY AS PUNISHMENT FOR CRIME (JARRELLS D, PLUMMER P) Proposing to amend Section 6 of Article I of the Constitution of the State of Ohio to prohibit slavery or involuntary servitude in Ohio for the punishment of crime.

Current 6/7/2023 – Referred to Committee House

Status: Constitutional Resolutions

Position: Amend

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HJR-2>

SB 9 LAW CHANGES-MEDICAL MARIJUANA (HUFFMAN S, SCHURING K) To amend the law related to medical marijuana.

Current 5/16/2023 - Senate General Government,

Status: (Seventh Hearing)

Position: Oppose

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

SB 26 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 5/9/2023 - **SUBSTITUTE BILL**

Status: **ACCEPTED**, Senate Judiciary, (Third Hearing)

Position: Oppose

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

SB 37 DRIVER'S LICENSE SUSPENSION CHANGES (BLESSING III L, INGRAM C) To make changes to the laws governing driver's license suspensions for certain drug offenses and failure to pay child support and to the laws governing penalties for failure to provide proof of financial responsibility.

Current 2/22/2023 - Senate Judiciary, (Second

Status: Hearing)

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-37>

SB 51 SOS-ELECTION INTEGRITY DIVISION (GAVARONE T) To establish the Election Integrity Division in the Office of the Secretary of State.

Current 5/16/2023 - Senate General Government, (Second Hearing)

Status: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-51>

SB 88 AGGRAVATED MENACING EXPANSION-UTILITIES (SMITH K, CIRINO J) To expand the offense of aggravated menacing to prohibit threatening a utility worker, cable operator worker, or broadband worker with intent to obstruct the operation of a utility.

Current 5/9/2023 - Senate Judiciary, (Second Hearing)

Status: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-88>

SB 91 PUBLIC FUNDS ABUSE, WASTE (SCHAFFER T) Regarding fraud, waste, and abuse of public funds.

Current 9/12/2023 - Referred to Committee House

Status: Government Oversight

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-91>

SB 100 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 10/17/2023 - House Criminal Justice, (First

Status: Hearing)

Position: Amend

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-100>

SB 101 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: 5/9/2023 - Senate Judiciary, (First Hearing)

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-101>

SB 109 SEX OFFENSES, MEDICAL PROFESSIONALS (HACKETT R) Regarding sex offenses and individuals regulated by the State Medical Board and to amend the version of section 4759.05 of the Revised Code that is scheduled to take effect December 29, 2023, to continue the change on and after that date.

Current Status: 9/20/2023 - Senate Judiciary, (Second Hearing)

Position: Amend

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-109>

SB 122 LAW CHANGES - BAIL (MANNING N, HICKS-HUDSON P) To make changes regarding bail and to declare an emergency.

Current Status: 6/13/2023 - **REPORTED OUT**, House Criminal Justice, (First Hearing)

Position: Support

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-122>

SB 127 ELIMINATE SPOUSAL EXCEPTIONS-SEXUAL OFFENSES (KUNZE S, MANNING N) 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: 6/7/2023 - Referred to Committee Senate Judiciary

Position: Monitor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-127>

SB 165 USED CATALYTIC CONVERTER SALES (JOHNSON T) Regarding the sale of used catalytic converters, and to make an appropriation.

Current Status: 10/11/2023 - Referred to Committee Senate Judiciary

Position: Support

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-165>



The Ohio Supreme Court

Steve Taylor, OPAA



Merit Decisions of Interest Since 8/1/2023

State v. Gynne, ___ Ohio St.3d ___, 2023-Ohio-3851. The Court (4-3) reconsidered its earlier decision regarding appellate review of consecutive sentencing in *State v. Gynne*, ___ Ohio St.3d ___, 2022-Ohio-4607. The four justices in the majority vacated that earlier decision. But the fourth justice relied on a different ground to grant reconsideration and did not reach the issues addressed by the three-justice plurality. (Decided 10-25-23; Delaware County)

State v. Jordan, ___ Ohio St.3d ___, 2023-Ohio-3800. The Court (3-1-3) reinstated the conviction of the defendant for sexual imposition under R.C. 2907.06(A)(2), which proscribes sexual contact with another person when the “offender knows” that the other person’s “ability to appraise the nature of or control the offender’s or touching person’s conduct is substantially impaired.” The lead opinion concluded that the evidence was sufficient to find the defendant knew that the victim’s blindness, coupled with her developmental disabilities, substantially impaired her ability to appraise the nature of and control his conduct. The fourth vote supporting the Court’s judgment concurred in judgment only without opinion. (Decided 10-24-23; State’s appeal; Hamilton County)

State v. Williams, ___ Ohio St.3d ___, 2023-Ohio-3647. The Court (4-3) concluded that a prisoner satisfies the “causes to be delivered” requirement of R.C. 2941.401 when he delivers the written notice and the request for final disposition to the warden where he is imprisoned, even if the warden fails to deliver the notice and request to the prosecutor and court. (Decided 10-10-23; Lorain County)

State v. Toran, ___ Ohio St.3d ___, 2023-Ohio-3564. The Court (5-2) rejected the notion that the prosecution must always introduce a copy of the police agency’s written policy allowing the inventory search in order to show that the inventory search was governed by standardized rules. The Court examined the officer’s oral testimony, along with the body-cam footage that had been introduced, to conclude that the evidence had been sufficient to show the existence of the policy and to support the inventory search. (Decided 10-4-23; State’s appeal; Hamilton County)

State v. Miller, ___ Ohio St.3d ___, 2023-Ohio-3448. The evenly-split Court (3-1-3) was divided on the question of whether the defendant had submitted sufficient evidentiary documentation to warrant an evidentiary hearing on his combined post-conviction petition and delayed motion for new trial. The appellate court had said no. Three justices agreed with that ruling, but three said that the evidentiary documentation was sufficient. The seventh justice would have dismissed the defendant’s appeal as having been improvidently accepted. The evenly-divided Court stated that, “[i]n the absence of four votes to reverse the judgment of the Eighth District Court of Appeals, that judgment is affirmed.” (Decided 9-28-23; Cuyahoga County)

State v. Schilling, ___ Ohio St.3d ___, 2023-Ohio-3027. The Court (7-0) agreed with the State that the sex offender could not receive credit for time spent registering in another state because the statutory credit provision for out-of-state-registration periods is limited to those offenders who were convicted *outside* Ohio and who were now registering for those conviction(s) in Ohio. This sex offender had been convicted in Ohio. But the Court also concluded that credit was unnecessary because: (1) the defendant was really just a sexually oriented offender with a 10-year duty under Megan’s Law; (2) his Ohio duty to register had commenced at the time of his 2008 conviction; (3) the running of the Ohio registration period was not tolled while the defendant lived out of state; and (4) with no tolling, the duty to register had already expired by the time he had first sought early termination in 2019 of what he thought was his 15-year Tier I duty to register. The Court also recognized that the decision in *State v. Henderson* vis-à-vis res judicata applying to merely voidable judgments did not apply to the original Tier

I classification because the classification automatically applied as a matter of law and did not depend on any court “imposition” of it. (Decided 8-31-23; State’s appeal; Hamilton County)

State v. Hurt, ___ Ohio St.3d ___, 2023-Ohio-3013. The Court (4-3) dismissed the defendant’s appeal as having been improvidently allowed. Issues included the question of “Stand Your Ground” retroactivity. (Decided 8-30-23; Cuyahoga County) (The Court has now ordered briefing in No. 22-1458, *State v. Duncan*, to address the issue of SYG retroactivity)

Newly-Accepted Criminal Law Cases Since 8/1/23

23-889 *State v. Hickman* Whether a trial court has discretion to deny a change-in-commitment request in the absence of clear and convincing evidence indicating that the level change should not be granted. (Ashtabula County)

22-1114 *State v. Wiley* Whether a jury’s finding of a mitigating element that causes an offense to become an inferior offense is binding at a retrial and thus precludes a conviction for the greater offense at the retrial. (previously held for *Hurt*; briefing ordered on 10-11-23; Cuyahoga County)

22-1458 *State v. Duncan* (1) Whether S.B. 175’s elimination of the duty to retreat for self-defense as effective 4-6-21 applies to all trials held after the effective date of the act regardless of the date of offense; (2) whether the trial court must consider all of the evidence presented, viewing that evidence in the light most favorable to the defendant, in determining whether the court will instruct on a lesser offense. (previously held for *Hurt*; briefing ordered on 10-11-23; Cuyahoga County)

23-1024 *State v. Echols* Whether evidence of witness intimidation that tends to establish consciousness of guilt also constitutes a prior bad act of a defendant for which a court must conduct its analysis under Evid.R. 404(B) and the framework set forth in *State v. Hartman*. (Hamilton County)

23-786 *State v. Gasper* Whether, in a prosecution for rape under R.C. 2907.02(A)(1)(c), the definition of substantial impairment in *State v. Zeb*, 31 Ohio St.3d 99 (1987), applies to an impairment from a permanent mental condition. (Hamilton County)

23-839 *State v. Mays* Whether the requirement in R.C. 2945.75(A)(2) that a “guilty verdict shall state either the degree of the offense of which the offender is found guilty, or that such additional element or elements are present” can be satisfied by a verdict form that cites the statutory sections,

permitting the defendant to be convicted of the higher-level offense. (Certified-conflict appeal; Lucas County)

23-654 *State v. Glover* (1) Whether trial and appellate courts applying R.C. 2929.14(C)(4) can give exclusive focus to the defendant's aggregate prison term when deciding whether consecutive sentencing is appropriate; (2) whether the court of appeals violated the clear-and-convincing standard of review under R.C. 2953.08(G)(2) by substituting its judgment for that of the sentencing court. (State's appeal; Hamilton County)

Recent and Upcoming Oral Arguments

22-1049 *State v. Jones* Whether 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) (Argument on 9-26-23)

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". (State's appeal; Hamilton County) (Argument on 9-26-23)

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) (Argument on 9-26-23)

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) (Argument on 9-27-23)

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) (Argument on 10-25-23)

23-294 *State v. Sheekles* (1) Whether the burden of showing testimony ought to be excluded under a claimed privilege should be on the party seeking to exclude the testimony when the claimed privilege involves whether a former federal employee can testify under a federal regulation; (2) whether the federal regulations require that the former federal employee produce written authorization to the court and defense counsel from the federal Department of Justice for the former federal employee to testify; (3) whether a trial court should definitively exclude evidence at a pretrial motion in limine even though a ruling on a motion in limine is meant to be only a tentative ruling that anticipates the court's potential ruling at trial. (State's appeal; Hamilton County) (Argument on 11-14-23)

23-213 *State v. Grad* (1) Whether a defendant need only present prima facie evidence of newly discovered scientific evidence to obtain a hearing on a motion for leave to file a motion for a new trial; (2) Whether scientific discoveries postdating trial may constitute newly discovered evidence even if the basis for those scientific discoveries were generally known or available at the time of trial. (Medina County) (Argument on 12-12-23)

23-356 *State v. Fork* Whether the definition of "motor vehicle" as it applies to aggravated vehicular assault under R.C. 2903.08(A)(1)(a) is the definition found in R.C. 4511.01, as opposed to the definition in R.C. 4501.01, in relation to the Polaris all-terrain vehicle that was being used as transportation at the time of the incident. (State's appeal; Sandusky County) (Argument on 12-12-23)

23-621 *State v. Hale* Whether the seizure of an individual who was recently a passenger in a car already parked when law-enforcement personnel approached it, and the subsequent warrantless seizure and search of their purse, violated the Fourth Amendment. (Licking County) (Argument on 12-12-23)

23-393 *State v. Dudas* Whether a post-conviction petition is timely under R.C. 2953.21(A)(2)(a) if it is filed within 365 days after the filing of the trial transcript in the defendant's delayed appeal. (Cuyahoga County) (Argument on 12-13-23)

23-572 *State v. Jones* (1) Whether a reviewing court on appeal is limited to the evidence admitted into the record by the trial court; (2) Whether a court of appeals is obligated to follow the standard of review for ineffective assistance of counsel claims set forth in *Strickland v. Washington* or can apply its own lower standard; (3) Whether the "inevitable discovery" doctrine requires officers to have taken steps toward obtaining a search warrant when the officers had a good faith

belief that a valid exception to the warrant requirement authorized the search and negated the need to obtain a warrant; (4) Whether an appellate court is authorized to remand a case with orders that defendant file a motion to suppress and that orders specific issues be raised, while leaving his trial and conviction intact. (State's appeal; Hamilton County) (Argument on 12-13-23)

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)

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)

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

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)

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 6-27-23)

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) (Argument on 9-12-23)

22-1290 *State v. Beatty* 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) (Argument on 9-13-23)

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) (Argument on 9-13-23)

Ohio Attorney General Opinions

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

2023-009

Requested by: Geauga County Prosecuting Attorney

The duties of the county records commission, county microfilming board, and county recorder acting as chief administrator of the county microfilming board cannot be delegated to the board of county commissioners. Because the duties of the county records commission and the county microfilming board cannot be delegated, they may only be transferred pursuant to the procedure outlined in R.C. 307.847. There is no explicit or implicit authority in the Revised Code for the county microfilming board to contract for services with its own county's board of county commissioners; instead, the county microfilming board is statutorily required to provide these services to the board of county commissioners.

2023-008

Requested by: Licking County Prosecuting Attorney

The county dog warden has no mandatory duty to accept and impound unregistered dogs voluntarily brought to the county-operated dog shelter by a non-owner. The county dog warden has the discretion to accept and impound registered

or unregistered dogs voluntarily brought to the county-operated dog shelter by a non-owner.

Association Outreach

The Association once again participated in the Capital University Law School fall community gathering that brings together law students and student organizations, professional associations, bar prep companies, and law school departments in a casual networking environment.



The OPAA table was busy and we were glad to have Carroll County Prosecutor Steve Barnett, Knox County Prosecutor Chip McConville, and Director Tobin manning the table to answer questions about a career in the county prosecutor's office. Special thanks to "Cool Ryan" Barnett for the set-up help again this year!

2023 Fall Training

The OPAA Fall Training was once again held in Cleveland at the Crowne Plaza on Playhouse Square. We had 227 attendees from 52 counties join us for the 2 day event. Thanks to all that presented and attended! (unfortunately, the photographer was absent)

2023 Juvenile Prosecutor Training

The OPAA Juvenile Prosecutor training was held at the Marriott Columbus Northwest (new venue) on October 19th and welcomed 101 attendees from 48 counties. Thanks to all that presented and attended!

Juvenile Prosecutor Training Pictures



Judge David Hejmanowski (Delaware County) gets the day started with presentations on juvenile case law and legislative updates, and was nice enough to cover sex offender registration guidelines for another presenter that couldn't make it.



Franklin County Assistant Prosecutor Alison Skinner Peters presented on prosecuting abuse, neglect, and dependency cases.





Franklin County Chief Juvenile Division prosecutor Chris Clark presented on bindovers, specifications, and DYS commitments.



Dr. Daniel L. Davis and Dr. Terrance J. Kukor close the 2023 OPAA Juvenile Prosecutor Training with a presentation on juvenile competency.

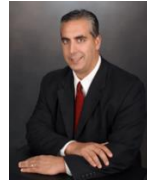


Happy Halloween!

Your 2023 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

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

2024 Training Dates

Spring – April 18th and 19th, Hilton Columbus Polaris

Summer – June 21st and 22nd, Hotel Breakers Cedar Point

Fall – September TBD

Annual – December 12th and 13th, Hilton Columbus Easton