

THE OHIO PROSECUTOR

January 2021

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www.ohiopa.org



From your President...



Daniel R. Lutz
Wayne County

My Fellow Prosecutors,

As the incoming OPAA President, I want to welcome all of our newly-elected prosecuting attorneys. I encourage you and your assistant prosecutors to take advantage of all the benefits our association offers.

Having served as Wayne County's Prosecuting Attorney for the past ten years, I can sincerely say that my active participation in the OPAA has been one of the highlights of my entire career.

Having the opportunity to network with other elected prosecutors across Ohio has definitely improved my ability to better serve the citizens of my county, and my OPAA committee participation has been very rewarding, especially when I see the OPAA's positive influence on state legislation.

As we progress through 2021, I'm confident that the OPAA, as well as every elected county prosecutor and assistant prosecutor, will continue to make Ohio's criminal justice system one of the best in the nation

Dan

From your Executive Director...



Louis Tobin
OPAA Executive
Director

Dear OPAA –

My note in the October newsletter started by saying that the 133rd General Assembly would soon come to an end. In hindsight, I feel like I might have used the term “soon” a little too loosely. W.C. Fields once famously said about Philadelphia that it was a wonderful town and that he spent a week there one night. I can appreciate the sentiment. Being at the Statehouse at the end of the 133rd General Assembly was wonderful, we spent a year there in December. The legislature went out with a flurry of activity, some good, some bad, and in my opinion it ended not a moment too soon. The 134th General Assembly is starting to get up and running. Session dates have been announced for 2021 and some committee appointments have been announced. As soon as they are finalized we will send out a list of key committees and their members. Topics that I expect will be debated over the next two years include bail reform, post-release control supervision, even more expansive sealing and expungement laws, recording custodial interrogations, juvenile interrogation practices, repeal of the transitional control veto, repeal of mandatory bindovers, and possibly the elimination of the F5s.

On a brighter note, and on behalf of OPAA, I want to welcome the group of prosecutors who were newly elected in November. There are 17 new prosecutors in the State, from counties of all sizes and covering just about every region. We wish all of you the best and are here to help in any way that we can. I also want to welcome OPAA’s new employee, Steve Taylor. We created a position for Steve in order to provide prosecutors across the state with another great resource. Steve has already started to send out guidance on recent Supreme Court cases, criminal practice, and enacted legislation, and has fielded several inquiries from prosecutors about ongoing cases and trial issues.

On the training side, our New Prosecutor Training was a great success. We had 54 attendees over two days including all of the newly elected prosecutors or a representative from their office. We are always looking for good topics and for presenters. If there is a topic you would like training on, a topic you would like to present on, or a speaker you think we should host, let us know. Our 2021 training schedule is included below.

Lou

At the Statehouse



Below is our recap of the 2020 enacted legislation of interest to the members along with the effective date. For a full list of bills that we are tracking visit www.ohiopa.org. If you have any questions about the work of the legislature or the status of any legislation please let us know!

House Bill 1 (Intervention in Lieu/Record Sealing) – Effective April 8, 2021

To modify the requirements for intervention in lieu of conviction and for sealing records of conviction and provide for deposit of some of the sealing application fee into the Attorney General Reimbursement Fund and the use of that amount for expenses related to sealing and expungement; to modify the law regarding use of a prison term as a sanction for a community control violation; to modify the drug and alcohol abuse civil commitment mechanism; to expand duties of the State Criminal Sentencing Commission; and to prohibit restraining or confining a woman or child who is a charged, convicted, or adjudicated criminal offender or delinquent child at certain points during pregnancy or postpartum recovery.

House Bill 24 (Humane Society Law) – Effective March 30, 2021

To make changes to humane society law, to make humane society agents subject to bribery law, to establish procedures for the seizure and impoundment of certain animals and livestock, to

make changes to animal euthanasia and animal seizure laws, and to re-enact provisions of law governing animal fighting and bestiality.

House Bill 136 (Death Penalty – Serious Mental Illness) – Effective April 10, 2021

To prohibit imposing the death penalty for aggravated murder when the offender had a serious mental illness at the time of the offense.

House Bill 263 (Occupational Licensing – Criminal Convictions) – Effective April 10, 2021

To enact and amend sections of the Revised Code to revise the initial occupational licensing restrictions applicable to individuals convicted of criminal offenses.

House Bill 404 (Electronic Meetings/COVID-19 Government Responses) – Effective Immediately

To continue essential operations of state and local government in response to the declared pandemic and global health emergency related to COVID-19 and to declare an emergency.

House Bill 431 (Sexual Exploitation) – Effective April 10, 2021

To require a juvenile court in specified circumstances to hold a delinquency complaint in abeyance in certain prostitution or human trafficking cases, to provide that the trafficking in persons elements that apply to a victim under age 16 also apply to a victim who is age 16 or 17, to prohibit a person from engaging in prostitution, to modify certain soliciting offenses and penalties, and to modify Sex Offender Registration and Notification Law and Conviction Record Sealing Law provisions regarding certain "unlawful sexual conduct with a minor" convictions.

House Bill 444 (Township Law Changes) – Effective April 10, 2021

To make various changes to township law, to make changes to the laws governing ambulance staffing, and to abate certain unpaid property taxes, penalties, and interest due on property that had been owned by a state college or university but is currently owned by a township.

Senate Bill 10 (Theft in Office Penalties) – Effective April 8, 2021 (Part Effective Immediately)

To expand the penalties for theft in office based on the amount stolen, to include as restitution audit costs of the entity that suffered the loss, to modify various aspects of the laws regarding criminal and delinquency record sealing and expungement, to expand the list of debts toward satisfaction of which the Tax Commissioner may apply a tax refund due to a taxpayer, to expand the basis of a court's exercise of personal jurisdiction, to specify a separate standard for the issuing of warrants upon presentation of a court order, and to declare an emergency.

Senate Bill 33 (Critical Infrastructure Facilities – Offenses) – Effective April 12, 2021

To modify certain criminal offenses with respect to critical infrastructure facilities and to impose fines and civil liability for damage to a critical infrastructure facility.

Senate Bill 68 (License Reinstatement – Community Service) – Effective April 8, 2021

To make changes to the laws governing police and driver education, driver's licenses and testing, motor vehicle title transactions, and Bureau of Motor Vehicles transactions; and to establish requirements related to orthotics and prosthetics licensure.

Senate Bill 140 (Concealed Carry – Knives) – Effective April 12, 2021

To exempt knives not used as weapons from the prohibition against carrying concealed weapons and to eliminate the prohibition against manufacturing, possessing for sale, selling, or furnishing certain weapons other than firearms or dangerous ordnance.

Senate Bill 175 (Duty to Retreat) – Effective April 5, 2021

To grant civil immunity to nonprofit corporations for certain injuries, deaths, or losses resulting from the carrying of handguns and to expand the locations at which a person has no duty to retreat before using force under both civil and criminal law.

Senate Bill 256 (Juvenile Parole) – Effective April 10, 2021

To enact and amend sections of the Revised Code regarding a bar against a sentence of life without parole, and special parole eligibility dates, for offenders who committed the offense when under age 18 and regarding dispositional hearings for abused, neglected, and dependent children.

Join us at the Statehouse!

Whether you are in town to testify on a bill for yourself or the Association, or just spending time away from your county, let us show you around the Statehouse. Call Lou or Steve at the office and we will work out the details.



New and Noteworthy

Reports Due

In January of each year In January of each year, the prosecutor must report to the administrative office of the United States Courts and to the Ohio Attorney General information required to be reported by 18 USC 2519, ORC Section 2933.60(B), which includes all wiretap information pursuant to court orders issued under the Ohio wiretap statute.

Prior to January 31, the prosecutor must file a Law Enforcement Trust Fund (LETF) annual report with the county auditor of expenditures made during the previous calendar year verifying that the proceeds and forfeited monies were expended only for the purposes authorized by ORC 2981.13(C) and specifying the amounts expended for each authorized purpose. (copy to county commissioners)

On or before March 1, the cumulative annual report of a prosecutor approved control substance sell by a peace officer to be filed with the Attorney General, ORC 3719.141(F)(1) with all applicable Ohio laws and regulations, including Ohio's Prevailing Wage Law and competitive bidding requirements.

Pending Supreme Court Cases of Interest

Criminal-Law Issues of Interest Accepted for Review in Ohio Supreme Court (State's appeals are noted). Contact Steve Taylor with any questions you might have.

Set for Oral Argument

20-143 St. v. Azeen Whether *State v. Carpenter*, 68 Ohio St.3d 59 (1993), applies retroactively to a unnegotiated plea entered before it was decided. *Oral Argument on Jan. 27, 2021* (State's appeal; Cuyahoga County)

20-312 St. v. Montgomery Whether the defendant was denied his right to a fair trial when the trial court permitted the victim to be introduced to the jury during voir dire as representing the State of Ohio and permitted the victim to sit with the prosecutor at counsel table throughout the trial. *Oral Argument on Jan. 27, 2021* (Stark County)

19-487 St. v. Lawson Death penalty case. *Oral Argument on Mar. 2, 2021* (Lawrence County)

20-337 St. v. LaRosa Whether the warrantless and non-consensual seizure of personal items from a hospital room violates the Fourth Amendment. *Oral Argument on Mar. 3, 2021* (Trumbull County)

19-303 St. v. Brinkman Death penalty case. *Oral Argument on Mar. 4, 2021* (Cuyahoga County)

20-290 St. v. Tidwell Whether simple face-to-face contact between an unnamed citizen and a police officer may be enough to remove the citizen from the category of "anonymous" and consider him a

“citizen informant,” whose tip merits a high degree of credibility and value for Fourth Amendment purposes. *Oral Argument on Mar. 30, 2021* (State’s appeal; Hamilton County)

20-415 St. v. Bond Whether the trial court violated the defendant’s Sixth Amendment right to a public trial by partially limiting access to the courtroom after an altercation disrupted court proceedings. *Oral Argument on Mar. 30, 2021* (State’s appeal; Richland County)

Keep an Eye on These

20-1266 St. v. Maddox Whether the constitutionality of the Reagan Tokes Act is ripe for review on direct appeal from sentencing, or only after the defendant has served the minimum term and been subject to extension by ODRC (Lucas County)

20-1189/1250 St. v. Brooks Whether the shift in the burden of proof enacted by H.B. 228 eff. 3-28-19 applies to all subsequent trials regardless of when the offense was committed. (Richland County)

20-1187 St. v. Campbell Whether the warrantless search of the probationer based on the consent-to-search condition of community control was constitutional, whether the remedy of exclusion applies to a mere statutory issue, and whether the good-faith exception applies. (State’s appeal; Fairfield County)

20-1055 St. v. Lundy Whether the need for the defense to justify the length of delay in filing a delayed motion for new trial improperly violates attorney-client privilege and whether the motion was properly denied without a hearing. (Franklin County)

20-1018 St. v. Eatmon Whether and when the court must issue a material-witness warrant on behalf of the State to compel the attendance of material witnesses. (State’s appeal; Cuyahoga County)

20-866 St. v. Foreman Whether the mere presence of drug metabolites in a defendant’s body, without more, suffices to establish venue in the charging county for the crime of drug possession. (Seneca County)

20-797 St. v. Crawford Whether the crime of having weapon under disability can serve as the predicate offense to involuntary manslaughter. (Cuyahoga County)

20-683 O’Neal v. State of Ohio et al. Whether ODRC’s execution protocol 01-COM11 is subject to the rule-making requirements of R.C. 111.15. (AG’s Office)

20-648 St. v. Bethel Whether the defense provided sufficient evidentiary documentation indicating a *Brady* violation and whether the “unavoidable prevention” standard applicable to untimely post-conviction petitions and delayed motions for new trial is constitutional as applied to *Brady* claims. (Franklin County)

20-544/625 St. v. Hubbard (Defendant’s appeal; Butler County) Whether retroactive application of the violent offender database statutes in R.C. 2903.41 et seq. violates Article II, Section 28 of the Ohio Constitution.

20-549 St. v. Jarvis (State’s appeal; Muskingum County) Whether retroactive application of the violent offender database statutes in R.C. 2903.41 et seq. violates Article II, Section 28 of the Ohio Constitution.

20-508 St. v. Metz Whether the court of appeals violated the deferential standard of review for consecutive sentences by substituting its judgment for that of the trial court. (State’s appeal; Cuyahoga County)

20-495 St. v. Jordan Whether a warrantless public arrest based on probable cause was invalid because police had time to obtain an arrest warrant first. (Hamilton County)

20-485/826 St. v. Jones Whether a trial court imposing community control must reserve at that time the ability to impose the possible prison sentence as a consecutive sentence if the defendant violates community control in the future. (Harrison County)

20-368 St. v. Jones Whether the court of appeals misapplied the sufficiency-of-evidence standard in various respects in finding the evidence insufficient on prior calculation and design. (State’s appeal; Hamilton County)

20-338 St. v. Glenn Whether an order requiring the creation and disclosure of summaries of conversations a criminal defendant’s attorney has had with potential witnesses in the course of the attorney’s investigation and preparation for trial is a final appealable order pursuant to R.C. 2505.02(B)(4). (Montgomery County)

19-1566 St. v. Gedeon Whether a defendant is subject to the post-sentence standard of manifest injustice when he has been granted intervention in lieu of conviction and then subsequently files a motion to withdraw plea. (State’s appeal; Summit County)

19-1298 St. v. Bourn Whether the defendant can establish actual prejudice for purposes of preindictment delay in a sexual-assault case when he is pursuing a consent defense and provides no reliable indication that any non-speculative evidence related to consent existed and was lost due to the delay. (State’s Appeal; Cuyahoga County)

19-1215 St. v. Philpotts 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. (Cuyahoga County)



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

2020-005

Requested by: Mahoning County Prosecuting Attorney
The proceeds from the sale of real property that is titled in the name of a board of county commissioners, and that was purchased, maintained, renovated, repaired and improved through the years by a county board of developmental disabilities' levy funds, may be placed by the board of county commissioners in a separate fund to be used only for construction, equipment, furnishing, maintenance, or repair of the county buildings and the acquisition of sites.

2020-006

Requested by: Ashtabula County Prosecuting Attorney
The opinion examines whether collections from tax foreclosures and forfeited land sales may be distributed to county land banks. The opinion contains three conclusions: 1) A board of county commissioners may authorize that up to 5% of delinquent taxes and assessments collected from a vacant land sale or tax foreclosures, conducted pursuant to R.C. 5721.18 and 5721.19, may be paid to county land banks, 2) delinquent taxes and assessments from forfeited lands sales cannot, pursuant to R.C. 5723.18, be paid to a county land bank, and 3) the phrase "collections of delinquent real property, personal property, and manufactured and mobile home taxes and assessments," as used in R.C. 321.261(B) includes collections from forfeited land sales.

2020-2007

Requested by: Monroe County Prosecuting Attorney
Under specific conditions, a board of county commissioners has authority to execute leases of county-owned property for the purpose of construction and use of a Class II saltwater injection well involving disposal.

Membership Services

Community Outreach

Butler County: Dispelling Grand Jury Myths with Your Grand Jurors



After our grand jurors are selected and instructed by a judge, I meet them on the morning of their first day and provide additional information concerning their service. I begin shortly by telling them I have a pop quiz and that gets their attention. It is only one multiple choice question: Whose grand jury is this?

The choices are A. The judge's (because he or she instructed them), B. The prosecutor's (because the prosecutor presents the cases and they hear from media that prosecutors can indict a ham sandwich if they want to), C. It is your grand jury (because only you have the vote), or D. All of the above.

Early on, I take a show of hands and the results are typically all over the place. Seeing that, and after giving them a few moments

to consider their answers, I simply tell them that the answer is of course "C. It is your grand jury" and we continue to talk further about grand jury independence.

I know it may seem simplistic, but that has not been the case with grand jurors here in Butler County. Your grand jurors may appreciate it too.

Thank you to Butler County Prosecutor Mike Gmoser for providing this information. If your county would like a community outreach program featured please email the information to Steve or Lou.

Madison County D.A.R.E. Program

For 32 years the Madison County Prosecutor's Office has partnered with the Sheriff's Office to sponsor the Madison County DARE program. Starting in 1989, the DARE curriculum outlining the pitfalls of drug and alcohol abuse has been shared with all fifth graders across the county.



The Madison County Prosecutor's Office recognizes the benefit of continuing our financial and moral support of the DARE Program. County Prosecutor Nicholas Adkins noted that the curriculum

evolves from year to year to stay relevant, engaging, and effective.

In addition to financial donations, the prosecutor's office donates new smart TVs to be given to the Individual Spirit Award recipient at each middle school. The Spirit Award is given to the student that has gone above and beyond during the DARE program to earn recognition as the top participant in the school.



Prosecutor Adkins has personally attended well over 30 graduation ceremonies to recognize the award winners and present their prize.

The student from each fifth grade class with the best DARE commitment essay is chosen as the Top Gun. During the

ceremony, these students read aloud their commitment to put into practice the lessons learned from DARE. The students often share that their favorite memory from the DARE program is wearing the “drunk goggles”.



The overall impact of the DARE program on the community can't be quantified. However; the DARE Officers often share that their favorite memories are of students that return ten years after participating in the program and say thank you for the lessons learned.

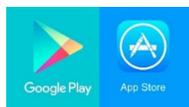
Thank you to Madison County Prosecutor Nick Adkins for providing this information. If your county would like a community outreach program featured please email the information to Steve or Lou.

OPAA App

Don't forget to download the OPAA! It offers similar content to the OPAA website, but with a few key added benefits:

- **Push notifications:** We believe the ability to send push notifications of upcoming events and newly available content is key for the Association. We intend to use push notifications through the app as an additional means of communicating important information.
- **Contacts integration:** the app allows users to add prosecutors and expert assistants to their personal Contacts (using the plus sign beside each contact). This feature is unique to the mobile application. Also, much like the website, while on the roster page you can touch on the name to pull up a picture of the prosecutor.
- **OPAA Alerts:** An app only feature is the ability to share updates and announcements through the “Alerts” feature. The alerts inside the app, combined with “Push” notifications, give us the ability to communicate with members in a new, more efficient manner.

This free app is available to iOS users from the App Store, and to Android users via the Google Play store. Search “OPAA mobile.” We hope you will find the OPAA app useful. Please share this information with everyone in your office. We encourage all feedback.



OPAA Training

Annual Meeting 2020

The OPAA once again missed out on the Hilton Columbus at Easton for our 2020 Annual Meeting, but we made do with another virtual event for nearly 500 participants! Reviews were positive. Thanks to all the attendees and presenters that made it a success! We hope to be back at Easton 2021 - December 16th and 17th.

New Prosecutor Training 2021

Thank to all that attended our in-person New Prosecutor training last week. We had 54 attendees from 35 counties attending. This is nearly double our usual attendance at this training!

2021 dates:

Spring Training

April 15 and 16

Sheraton Columbus Hotel at Capitol Square

Summer Workshop

Dates to be determined

Breakers Cedar Point

Fall Training

September 23 and 24

Crowne Plaza Cleveland at Playhouse Square

Juvenile Prosecutor Training

October 14

Sheraton Columbus Hotel at Capitol Square

Annual Meeting

December 16 and 17

Hilton Columbus at Easton

The OPAA will also be continuing webinars throughout 2021.

These 1 hour, CLE approved trainings will feature multiple speakers presenting on a variety of topics, typically during the lunch hour and of course, via our on-demand offerings. We will email details prior to each. We also hope to offer a trial advocacy program later in the year, virus permitting. We will keep you posted!



2020 OPAA Annual Meeting Award

Winners

As was the world, it was somewhat odd trying to create a proper salute to this year's award winners. In the end we opted to keep everyone safe and mail out awards to the winner. Congratulations and thank you to all the award recipients!

Prosecutor of the Year
John D. Ferrero, Stark County



Outstanding Assistant Prosecutor of the Year
Alison L. Cauthorn, Washington County

Photo: Washington County Prosecutor Nicole Coil (left) presents Assistant Prosecutor of the year Alison Cauthorn with her plaque.



Meritorious Assistant Prosecuting Attorney
Paul H. Kennedy, Fulton County



Outstanding Staff Person
Debra K. Cline, Wayne County



Outstanding Peace Officer
Detective Steven J. Stechschulte, Jr., Lima PD
Photo: Allen County Prosecutor Juergen Waldick (left), presents Detective Stechschulte, Jr. with his plaque.

OPAA Leadership Award
Juergen A. Waldick, Allen County

John E. Murphy Award
Ronald J. O'Brien, Franklin County

2020 Milestone for Justice Award Winners
*for their devotion to the cause of justice and service to their
community and the citizens of the State of Ohio*

- Hon. Cecilia M. Cooper, Ashtabula County
- Hon. Daniel P. Fry, Belmont County
- Hon. D. Vince Faris, Clermont County
- Hon. Robert Herron, Columbiana County
- Hon. Ronald J. O'Brien, Franklin County
- Hon. Stephen K. Haller, Greene County
- Hon. Joel Blue, Guernsey County
- Hon. Owen Beetham, Harrison County
- Hon. Benjamin Fickel, Hocking County
- Hon. Sean Warner, Holmes County
- Hon. Dennis Will, Lorain County
- Hon. Stephen J. Pronai, Madison County
- Hon. Charles S. Howland, Morrow County
- Hon. D. Michael Haddox, Muskingum County
- Hon. Kelly A. Riddle, Noble County
- Hon. John D. Ferrero, Stark County
- Hon. Trecia Kimes-Brown, Vinton County

At the Office

New Hire!

We are pleased to welcome Steven Taylor as our Legal Research and Staff Counsel for the membership!



Steve comes to the OPAA from the Franklin County Prosecutor's Office, where he most recently served as Chief Counsel in the Appeals Division, a position he held for 17 years. In addition to his regular duties for Franklin County, Steve provided training talks for the OPAA, authored the OPAA Case Digest, frequently volunteered to write Amicus Briefs on

behalf of OPAA, and regularly made himself available to OPAA and to prosecutors across the state to provide assistance and guidance on a variety of legal issues.

We created a position for Steve to provide these services, and to serve as an additional resource to Ohio prosecutors, on a statewide full-time basis. Steve will be available to provide on-call legal advice about your cases, to provide standard briefing on common issues, to provide training talks, and to provide legal resources like the Case Digest and memoranda on topics of common interest.

We are excited to have Steve here and hope that you will find him to be a valuable resource. If you wish to contact Steve, his email here is taylor@ohiopa.org, his cell phone is 614.530.5578, and as always, the office phone is 614.221.1266

Your 2021 OPAA Officers

We welcome Athens County Prosecutor Keller Blackburn to the Secretary position of the OPAA officers and start to his journey to OPAA President. As Secretary, he will be responsible for all meeting minutes and will perform the duties of the Secretary as may be required by the President or the Executive Committee.



Daniel R. Lutz
Wayne County
President



Michael C. O'Malley
Cuyahoga County
President-Elect



Jane Hanlin
Jefferson County
Vice President



Kevin S. Talebi
Champaign County
Treasurer



Keller J. Blackburn
Athens County
Secretary