



# THE OHIO PROSECUTOR

January 2019

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[www.ohiopa.org](http://www.ohiopa.org)



## From your President...



Greetings Fellow Prosecutors!

As many of you know, the position of President of OPAA generally lasts for one year. However, I am stepping down from that position much earlier than anticipated. My final day as Delaware County Prosecutor is February 28, 2019. After that, I will join Attorney General Dave Yost's office on March 4, 2019.

Before I relinquish my post as Delaware County Prosecutor, and as a consequence President of OPAA, I want to say that it has been my pleasure and privilege to serve both Delaware County and OPAA, and my decision to leave is bittersweet.

The work done by Prosecutor's offices throughout the state is important, impactful, and yes, sometimes emotionally difficult. The work though, of "doing justice" is a passion and a calling that cannot be ignored. To my fellow Prosecutors, I cannot thank you enough. You have been amazing to work with over the past eight years. Your dedication to the citizens of your counties, your civil clients and the victims with whom you deal with on a daily basis is awe inspiring. You all have always been there to assist me with questions and cases.

To the folks at OPAA, Lou, Steve, Delores and Diana – you have kept the organization running like a well-oiled machine – even after John retired!

Please welcome Victor Viglucci as the new President of OPAA. He has graciously agreed to step in and assume the Presidency – and welcome Jane Hanlin who has been elected as Secretary for the remainder of the 2019 year.

Carol O'Brien  
2019 OPAA President

## From your Executive Director...



Dear OPAA Members –

It feels like it has been a long time since our last issue of The Ohio Prosecutor in October. A lot has happened in the interim. For starters, the November 2018 election resulted in a resounding defeat of State Issue 1 despite being outspent by proponents by around 10 – 1. There were many stakeholders who helped in this defeat but prosecutors across the state were the driving force. As I said in an email to the OPAA immediately following the election, you all owe yourselves a great round of applause but there is still work to be done. Discussions are already underway in the legislature about drug chapter reform. There should be plenty of time for a lively debate but it is critically important that prosecutors and assistant prosecutors touch base with local legislators early this year to remind them that the defeat of Issue 1 was not just about the fact that it was a poorly written constitutional amendment and that there are very good public policy reasons to maintain our felony drug possession offenses.

The election also resulted in the election of a slate of new statewide officeholders including now Governor Mike DeWine and now Attorney General Dave Yost – two former county prosecutors. Governor DeWine proceeded to hire Clark County Prosecutor, and OPAA Treasurer, Andy Wilson as his Senior Advisor for Criminal Justice Policy. Attorney General Yost proceeded to hire Delaware County Prosecutor, and OPAA President, Carol O'Brien as Deputy Attorney General for Law Enforcement. The OPAA wishes all four the best for their new roles and look forward to continuing to work with them to enact policies that promote public safety and the interests of justice.

With Carol and Andy leaving, the Executive Committee had to replace two OPAA Officers. Carol will remain OPAA President through February and will be replaced starting in March by Portage County Prosecutor Vic Viglucci. Cuyahoga County Prosecutor Mike O'Malley moved up from Secretary to Treasurer and Jefferson County Prosecutor Jane Hanlin was elected as the new Secretary of the Association. We are excited to have both Vic and Jane as part of our leadership.

Lou

## **New and Noteworthy**

### **OPAA Dues are due!**

If you haven't yet paid your 2019 dues, please do so as soon as you are able. Thanks!

## Your 2019 OPAA Officers



Carol O'Brien  
Delaware County  
President



Juergen A. Waldick  
Allen County  
President-Elect



Daniel R. Lutz  
Wayne County  
Vice President



Michael C. O'Malley  
Cuyahoga County  
Treasurer



Jane Hanlin  
Jefferson County  
Secretary

### Prosecutor reports to certain agencies are now due!

These include:

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 wire tap 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 office to be filed with the Attorney General, ORC 3719.141(F)(1)

## **At the Statehouse**

Below is recently enacted legislation and the Association's priorities for 2019. For a full list of bills that we are tracking visit [www.ohiopa.org](http://www.ohiopa.org). If you have any questions about the work of the legislature or the status of any legislation please let us know!

### **Enacted**

#### **House Bill 38 (Criminal Offenses – Violence)**

Sponsored by Rep. Greenspan

To provide that purposely causing the death of a first responder or military member is aggravated murder and to require an offender to serve a mandatory prison term for certain types of attempted aggravated murder when the victim is a first responder or military member.

*Effective March 20, 2019*

#### **House Bill 92 (Public Indecency Classification)**

Sponsored by Rep. Schaffer

To require an offender who knowingly commits the offense of public indecency under certain circumstances involving exposure of private parts likely to be viewed by minors and for the purpose of sexual arousal or gratification to register as a Tier I sex offender/child-victim offender if the judge orders registration.

*Effective March 20, 2019*

#### **House Bill 96 (Sexual Imposition – Repeat Offenders)**

Sponsored by Rep. Hughes

To increase the penalty for sexual imposition when the offender previously has been convicted or pleaded guilty three or more times of any of several specified sex offenses and to enhance the penalty for disorderly conduct involving voluntary intoxication when the offender has previously been convicted of the offense three or more times.

*Effective March 22, 2019*

#### **House Bill 137 (Mandatory Reporting – Child Abuse)**

Sponsored by Rep. Kent

To make peace officers mandatory reporters of child abuse or neglect and to expand the types of peace officers authorized to receive reports of child abuse and neglect.

*Effective March 20, 2019*

#### **House Bill 228 (Burden of Proof – Self-Defense)**

Sponsored by Reps. Johnson and LaTourette

To modify the law governing state preemption of local firearm regulations and related remedies, the grounds for self-defense and the burden of proof, the authority of a law enforcement officer or investigator to carry a weapon, the offense of unlawful transactions in weapons, and other weapons-related laws.

*Most provisions Effective March 28, 2019; provisions governing state preemption effective December 28, 2019*

#### **House Bill 411 (Wrongful Imprisonment Law)**

Sponsored by Reps. Seitz and Sykes

To modify the state's wrongful imprisonment law and to modify the purpose of violation sanction centers.

*Effective March 22, 2019*

#### **House Bill 425 (Body Cameras/Dashboard Cameras – Public Records)**

Sponsored by Reps. Antani and Craig

To provide that specified portions of peace officers' body-worn camera or dashboard camera recordings and the infrastructure record of a public school are not public records for purposes of the Public Records Law, to replace expungement with sealing of ex parte protection orders and records under certain circumstances, to clarify the appellate process for the court's refusal to grant certain protection orders, and to repeal the pilot program regarding the removal of sealed or expunged records from certain databases.

*Effective April 8, 2019*

#### **House Bill 497 (Sexual Image Dissemination)**

Sponsored by Reps. Manning and Rogers

To prohibit the nonconsensual dissemination of private sexual images, to provide that certain property involved in the offense may be criminally forfeited, and to create certain legal rights and protections of a victim of the offense.

*Effective March 22, 2019*

#### **House Bill 595 (Wills and Trust Law)**

Sponsored by Rep. Cupp

Among other changes to wills and trusts law, provides that involuntary manslaughter not resulting from a felony vehicular homicide offense excludes an individual from inheriting from a decedent.

*Effective March 22, 2019*

#### **Senate Bill 20 (Permanently Disabling Crime Specification)**

Sponsored by Sen. Hackett

To require an additional prison term of 6 years for an offender who is convicted of or pleads guilty to felonious assault if the offender is convicted of or pleads guilty to a specification that the victim suffered permanent disabling harm and that the victim was under 10 years of age at the time of the offense.

*Effective March 20, 2019*

#### **Senate Bill 145 (Dismemberment Abortion Prohibition)**

Sponsored by Sen. Huffman

To amend sections 2305.114, 2307.53, 2901.01, 2903.09, 2919.123, 2919.151, and 2967.193 and to enact section 2919.15 of the Revised Code to criminalize and create a civil action for dismemberment abortions.

*Effective March 22, 2019*

**Senate Bill 158 (Combating Elder Fraud)**

Sponsored by Sen. Wilson

To develop best practices and educational opportunities to combat elder fraud and exploitation, to modify the membership of the elder abuse commission, and to provide for fines and require full restitution from offenders who are found guilty of certain fraud-related crimes against the elderly.

*Effective March 20, 2019*

**Senate Bill 201 (Reagan Tokes Law – Indefinite Sentencing)**

Sponsored by Sens. Bacon and O'Brien

Provide for indefinite prison terms for first or second degree felonies, with presumptive release of offenders sentenced to such a term at the end of the minimum term; to generally allow the Department of Rehabilitation and Correction with approval of the sentencing court to reduce the minimum term for exceptional conduct or adjustment to incarceration; to allow the Department to rebut the release presumption and keep the offender in prison up to the maximum term if it makes specified findings; to require the Adult Parole Authority to study the feasibility of certain GPS monitoring functions; to prioritize funding for residential service contracts that reduce homeless offenders; to name those provisions of the act the Reagan Tokes Law; to include conduct involving an impaired person within certain sex offenses relating to conduct involving a minor; to require the Attorney General to create and maintain a statewide tracking system for the processing of sexual assault examination kits; and to eliminate the requirement that one of the judges of the Wayne County Municipal Court sit within the municipal corporation of Orrville.

*Effective March 22, 2019*

**Senate Bill 214 (Female Genital Mutilation)**

Sponsored by Sens. Lehner and Terhar

To exclude from the definition of public record under the Public Records Law any depiction by photograph, film, videotape, or digital, visual, or printed material of victims of crime under specified circumstances dealing with the victims' bodily privacy, to exclude from that definition specified residential and familial information regarding county or multicounty corrections officers, and to prohibit female genital mutilation.

*Effective April 5, 2019*

**Senate Bill 231 (Violent Offender Database)**

Sponsored by Sen. Gardner

Provides for a violent offender database, establish a presumption that violent offenders must enroll in the database for ten years, establish procedures for a violent offender to rebut the presumption and avoid the duty and procedures for court extension of the duty and termination of an extended duty, and name those provisions of the act "Sierah's Law;" to modify the membership and duties of the Ex-Offender Reentry

use the single validated risk assessment tool for adult offenders that the Department of Rehabilitation and Correction has developed; and to provide that the notice of release from prison of specified serious offense offenders that is given to sheriffs is to be the same as that provided to prosecuting attorneys and eliminate the notice to sheriffs regarding pardons, commutations, paroles, and transitional control transfers of offenders.

*Effective March 20, 2019*

**Senate Bill 296 (Officer Death Benefit Fund Revisions)**

Sponsored by Sen. Hottinger

To revise the payments that surviving family members receive from the Ohio Public Safety Officers Death Benefit Fund and to permit surviving spouses and children to participate in the health, dental, and vision benefits offered to state employees as if the survivors were employees of this state; to increase the compensation of elected public officers through 2028; to create the Public Office Compensation Advisory Commission; to create the Office of Innovate Ohio; to allow the Lieutenant Governor to receive the salary of the head of an office within the Governor's office in lieu of the Lieutenant Governor's statutory salary; and to declare an emergency.

*Veto Override December 27, 2018, Effective Immediately*

**OPAA Legislative Priorities for the 133<sup>rd</sup> General Assembly**

Felony Strangulation – To provide that strangulation, knowingly impeding the normal breathing or circulation of blood by applying pressure to the throat or neck, or by blocking the nose or mouth, is a felony offense and that the prosecution is not required to prove that the victim suffered physical harm or serious physical harm or visible injury. Ohio is one of only three states (Kentucky and South Carolina) without a felony strangulation statute. House Bill 362 (131<sup>st</sup>) passed the House 97 – 0. Senate Bill 207 (132<sup>nd</sup>) passed the Senate 30 – 0.

Domestic Violence – To make felony domestic violence a “high-tier” third degree felony with a sentence of up to 5 years.

Speedy Trial – To amend sections 2945.71 and 2945.73 of the Revised Code to provide a prosecutor an additional fourteen days to commence a trial after a person charged with a felony has been discharged because the person has not been brought to trial within the required amount of time and to authorize the court to release the person from detention in connection with those charges pending trial. Senate Bill 32 (132<sup>nd</sup>) passed the Senate 32 – 0.

Child Restraints – To remove the prohibition in R.C. 4511.81(G) on the admission of evidence that a child was not properly restrained by a child seat or child restraining device.



Coalition and eliminate its repeal; to require halfway houses to Delinquent Tax Foreclosures – To provide that, to the extent a county taxing authority is required to publish a legal notice for any purpose associated with the collection or enforcement of real or personal property taxes, including but not limited to notices of tax delinquencies and tax foreclosures, the government may satisfy that requirement by causing the required legal notice to be published electronically.

Involuntary Manslaughter – To provide that causing or contributing to the death of another person as a result of the offender's sale, distribution, dispensation, or administration of a controlled substance or controlled substance analog is a violation of the offense of involuntary manslaughter and to make this offense a strict liability offense.

Appeal By State – To permit the state to appeal as of right any decision of the court that does not involve double jeopardy.

State v. Nucklos – To provide that, unless otherwise specified, the phrase “does not apply” in the criminal code creates an affirmative defense to be proven by the defendant by a preponderance of the evidence. In 2009 the Ohio Supreme Court ruled that division (B) of 2925.03, which says that the drug trafficking statute “does not apply” to manufacturers, licensed health professionals, pharmacists, and certain other persons and entities, is an element of the offense that must be disproved by the state beyond a reasonable doubt, rather than an affirmative defense to be proved by the defendant by a preponderance of the evidence, thus placing the burden on the state to prove a negative beyond a reasonable doubt. The proof of the “does not apply to” factor involves information or evidence that is peculiarly within the knowledge of the defendant, and may not be within the knowledge of the state, such as the intent of the actor.

Drug addicted babies – To amend 2919.22(A), child endangering, to include a parental duty of care, protection, and support for an unborn child.

Weapons Theft – To amend R.C. 2913.01 and R.C. 5502.63 to provide that theft from a “federally licensed firearms dealer” means theft from an importer, manufacturer, or dealer having a license to deal in firearms, destructive devices, or ammunition for firearms and/or destructive devices, issued and in effect pursuant to the federal “Gun Control Act of 1968,” 82 Stat. 1213, 18 U.S.C. 923 et. Seq., and any amendments or additions to that act or reenactments of that act.

Plea agreements – Provide that the court may set aside a plea agreement on the grounds that the defendant failed to fulfill his obligations under the agreement.

or other obligations of a person convicted of the underlying criminal offense.

Immunity - Change from transactional to use immunity. Also make it clear that testimony pursuant to a grant of immunity is required at any relevant proceeding, not just the first time.

Grand Jury – To maintain the integrity of the grand jury process as provided in current law.

## Join us at the Statehouse!

If you are ever in Columbus on a Tuesday or Wednesday, let us show you around the Statehouse, take you to a committee meeting, or introduce you to some of the decision makers on capitol square. There are also “interested party” meetings throughout the year that are worth attending. We’ll keep you posted on those that we have an interest in. Come experience the process!!

## OPAA Advocacy Day at the Statehouse!

With our first advocacy day going so well back in November we are planning another. We are anticipating April 9, which will be the same day as this year’s OCCO legislative reception. We’ll keep you posted. Please let us know if you are interested in shadowing your legislator.

## Membership Services

### Community Outreach

#### Union County provides Ballistic Shields to Schools

Union County Prosecutor David Phillips purchased 25 ballistic shields designed to protect against a school shooter, offering these safety tools to all public and private schools in Union County, but hoping they are never needed. “It’s like a fire extinguisher. All the schools have fire extinguishers,” Phillips said. “You hope there’s never a fire there that you have to put out. This is a product that, frankly, we hope is never needed.”



These “Emergency Response Shields” hang on a wall and are manufactured by Maryland-based Hardwire LLC., which builds armor for the United States military and law enforcement. The 11-pound shield measures 18 inches by 20 inches, and it is strong enough to stop a round fired from assault rifles,

handguns, and shotguns, according to the company. The shields are made to be easily carried with handles and used to protect a person’s head and torso, giving “them the ability to investigate a shooter or move throughout the building with some level of protection,” Phillips said. “They are easy to deploy.

Use of forfeiture money and property - Amend 2981.12(G) to provide that money or property forfeited may not be used to pay any fine imposed upon, or any court costs, attorney fees, Students, staff, or a school resource officer could use the shield in the event of an active shooter.”

Phillips contacted area superintendents about providing the shields after first getting one for his office. “The response was an overwhelming, yes,” he said. The shields cost approximately \$23,000, which Phillips said he paid for using his law enforcement trust fund, not tax dollars. The money in this fund is seized and forfeited from criminals.

“I can’t think of a better use of this money than to help protect our children,” Phillips concluded.



*Thank you to Union County for providing this article. If your county would like a community outreach program featured please email the information to Steve or Lou.*

## Ohiopa.org

The “pressroom” area of the OPAA website is being updated regularly. Check out the latest news from around the state or your hometown! <http://www.ohiopa.org/pressroom.html>

## OPAA Legislative and Executive Committee Meetings

## 2019 OPAA Training Dates

Please join us in 2019 for our CLE training programs.

OCAPS -The Adult Protective Services Puzzle: Putting the Pieces Together, March 15, OSU Fawcett Center

OPAA Effective Brief Writing Webinar, March 27, 12:00-1:00

OPAA Spring Training, April 25th and 26th, Sheraton on Capitol Square Columbus

OPAA Summer Workshop, June 21st & 22nd, Breakers Cedar Point, Sandusky

OPAA Fall Training, September 26th and 27th, Cleveland Crowne Plaza Playhouse Square

OPAA Juvenile Prosecutor training, TBD, Sheraton Columbus at Capitol Square

OPAA Annual Meeting, December 12th & 13th, Hilton Easton Columbus

## Webinars:

The OPAA will be sponsoring quarterly webinars throughout the year. These 1 hour, CLE approved trainings will feature Phil Bogdanoff presenting on a variety of topics. The next one is scheduled for March 27. We will send out details prior to each.

## Ohio Prosecuting Attorneys Investigator’s Association

The Ohio Prosecuting Attorneys' Investigators' Association (OPAIA) and the Middle Atlantic-Great Lakes Organized Crime Law Enforcement Network will be co-hosting a two day trainer to be conducted at the Columbus, Oh Police Academy located at 1000 N. Hague Ave. Columbus, Oh 43204. The dates of the training will be April 18th from 0800 to 1500 and 19th from 0800 to 1200. This training will cover 1) The Characteristics of an Armed Gunman, 2) Surviving the Aftermath of an Officer Down Situation and 3) Case Law Updates. To view the registration flyer and register for the conference, follow the below link. Please feel free to distribute this flyer to any criminal justice agencies. If you have any questions, contact Alan Hayes 513-317-0721 or [ahayes@magloclen.riss.net](mailto:ahayes@magloclen.riss.net)

**LINK: MAGLOCLEN / OPAIA Spring Trainer**



February 28 - Brio Tuscan Grille Polaris  
March 28 - Athletic Club of Columbus  
April 24 - Sheraton Columbus at Capitol Square



# Community Solutions for Scrap Tire Cleanup and Removal

*Many local communities and government officials want to address illegal tire dumping, but are not sure where to start or how to finance it. Ohio EPA's state-funded scrap tire cleanup program may be the solution.*



Through the program, county and local government entities pick up open dumped scrap tires from public roadsides, alleys, rights-of-way and river clean-up efforts. They then provide access rights for state contractors to remove scrap tires staged at a centralized location for proper management or disposal.

The Ohio EPA provides many resources for the prosecuting attorney. Contact Leanne Greenlee for more information or training opportunities for your office:

Leanne Greenlee

Health Department Liaison

Ohio EPA

Division of Materials and Waste Management

50 West Town Street Suite 700

Columbus, OH 43215

Work: (614) 705-1012

Cell: (614) 563-0964

[leanne.Greenlee@epa.ohio.gov](mailto:leanne.Greenlee@epa.ohio.gov)



Division of Materials and Waste Management  
May 2018

Guidance Document #1007

## Law Enforcement Guide to Scrap Tires

### Purpose

The purpose of this guide is to provide information to law enforcement personnel regarding major requirements of Ohio's scrap tire rules and laws. However, it is only a guide and the appropriate sections of the Ohio Revised Code (ORC) and Ohio Administrative Code (OAC) should be read in their entirety and Ohio EPA staff consulted whenever a question arises.

Scrap tires are improperly handled every day in Ohio for a variety of economic benefits, past practices and out of ignorance of Ohio's laws and regulations. Private citizens open dump tires to avoid paying for disposal; tire stores contract with illegal haulers to remove their scrap tires; and employees of legitimate tire-hauling services may attempt to make extra income by picking up loads of scrap tires, dumping the scrap tires and profiting from the disposal fees.

Ohio EPA's enforcement efforts are aimed at reducing the illegal handling and disposal of scrap tires, including illegal open dumping and open burning of scrap tires.

Illegally open dumping scrap tires creates a nuisance that obstructs the natural beauty of Ohio's landscape and can accumulate water and create a breeding ground for mosquitoes that transmit a variety of diseases to people and animals. Illegally open burning scrap tires can create immediate health hazards to persons with breathing problems.

### Applicable Rules and Statutes

- Ohio Revised Code Chapter 3734
- Ohio Administrative Code 3745-27-57

### Enforcement at a Glance

- A load of more than 10 scrap tires may require investigation.
- Most haulers should have a transporter registration certificate from Ohio EPA.
- A registration certificate that is imprinted with "VOID" is a red flag.
- A legitimate hauler should have scrap tire shipping papers.
- Burning scrap tires is illegal.
- Open dumping of scrap tires is illegal.



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## Source Water Assessment and Protection Program



Also known as "Wellhead Protection" and "Drinking Water Source Protection," Ohio's Source Water Assessment and Protection (SWAP) program assists communities with protecting their sources of drinking water (streams, lakes and aquifers) from contamination. The SWAP program addresses over 4,500 public water systems in Ohio and does not address private residential water systems.

Although Ohio's public water systems treat their drinking water to meet health-based standards, treatment is expensive and may not address every kind of contaminant. By taking steps to avoid chemical spills in the areas surrounding a well field or upstream from a surface water intake, a community can help reduce the costs of their water and better ensure a safe and high-quality supply of drinking water.

### WHAT'S NEW

- 2016 Drinking Water Source Protection Update

### QUICK LINKS

- Source Water Protection Areas  
Interactive map showing source water protection areas, sole source aquifers and assessment reports.

- Developing a Protection Plan  
Examples, Templates, Guidances and Strategies

## Endorsed Drinking Water Source Protection Plans