



THE OHIO PROSECUTOR

October 2024

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OPAA Officers

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From your Executive Director...



Prosecutors –

The election and the lame duck legislative session are around the corner. As you know, OPAA is working with judges and the other county elected officials to enact legislation that would give everyone four 6% pay adjustments from 2025 – 2028 in place of the current 1.75% adjustment, the diet COLA, that runs through 2028. The four 6% adjustments are designed to offset what has been lost to inflation since 2020 and cover inflation for the next four years. We are beginning to make some progress with legislators but still have a long way to go and it remains critical for legislators to hear from you. Please continue to contact them about the need for this adjustment and the importance of doing it in lame duck this year.

Other things on my lame duck watch list include HB 460, sponsored by Rep. Seitz and Rep. Hillyer, to enact a process for the automatic sealing of criminal records and HB 196, sponsored by Rep. Seitz and Rep. Williams, to restrict the length of community control sentences for misdemeanors (2 years) and F3/F4/F5 offenses (3 years). These are two bills that OPAA opposes. While these have not gained much support in Committee in the House, there is an effort underway to have them amended into another bill that is further along in the process. On the other side, I'm hoping to see HB 111, to make F3 domestic violence a "high-tier" F3, and HB 230, to increase the penalties for drug trafficking and remove the mens rea requirement for trafficking Schedule III, IV, or V drugs mixed with fentanyl.

Finally, we have a great agenda planned for the Annual Meeting at the Hilton Easton in December and I look forward to seeing many of you there.

Lou



At the Statehouse

Below is a current list of priority legislation along with the OPAA's position. For a full list of bills that we are tracking visit www.ohioopa.org. **Please contact Lou if you have any questions about a piece of legislation or the reason for our position.** Also, if you have any questions about the work of the legislature or the status of any legislation, please let us know!

Legislative Top 10 Bills to Watch

- 1) House Bill 460 (Automatic Sealing – Criminal Records). Requires BCI to compile lists of offenders who are eligible for record sealing and to submit those lists to the appropriate court on an ongoing basis for sealing. The court must seal the records unless a prosecutor objects for one of the limited reasons established in the bill. OPAA Position – Oppose.
- 2) House Bill 196 (Community Control Sanctions). Change the maximum periods of community control sanctions authorized for felonies and misdemeanors, modifies the confinement sanctions authorized for a violation of community control sanction conditions, and creates a procedure for early termination of community control sanction conditions. OPAA Position – Oppose.
- 3) House Bill 51 (Second Amendment Preservation Act). Prohibits a public office, public officer, or employee of the state or a political subdivision from enforcing federal law regarding firearms. Subjects the state or political subdivision to liability through a private cause of action for enforcing, attempting to enforce, or participating in any way in the enforcement of federal acts, executive orders, administrative orders, rules, regulations, statutes, or ordinances regarding firearms and for employing any former federal employees who worked on such issues while in federal employment. OPAA Position – Oppose.
- 4) 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.

- 5) 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.
- 6) House Bill 531/Senate Bill 263 (Sexual Extortion). Prohibits sexual extortion and aggravated sexual extortion and allows family of certain victims of aggravated sexual extortion to receive compensation from the crime victims compensation fund. OPAA Position – Support.
- 7) House Bill 91/Senate Bill 100 (Tracking Devices). 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.
- 8) Senate Bill 223/House Bill 366 (Organized Retail Theft). Enacts the Fight Organized Retail Crime and Empower Law Enforcement (FORCE) Act. The bills authorize the Organize Crime Investigation Commission to establish an organized retail theft task force, create the crime of organized retail theft, increase the penalties for theft of mail, increase the penalties for criminal mischief involving a retail pump, and update counterfeiting to address credit card “skimming.” OPAA Position – Amend.
- 9) Senate Bill 109 (Sex Offenses – Medical Professionals). Expands the offense of sexual battery to prohibit engaging in sexual activity, rather than just sexual conduct, and to prohibit causing another, not the spouse of the offender, to engage in sexual activity with the offender; or cause two or more other persons to engage in sexual activity, under specific circumstances, including if the offender is a licensed medical professional, the other person is a patient, and the sexual activity occurs in the course of medical treatment. Also expands the offense of failure to report a crime by prohibiting any person who knows that a licensed medical professional has committed a sex offense against a patient from failing to report such knowledge. Requires prosecutors to notify the State Medical Board of the conviction or plea of certain licensed individuals. OPAA Position – Monitor.
- 10) House Bill 315/House Bill 497 (Township and County Omnibus Bills). These bills make a variety of changes to township and county law. OPAA Position – Support/Monitor.



Notable legislation

HB37 OVI PENALTIES (JOHNSON M, MILLER K) To modify the law related to OVI-related offenses.

Position: Amend

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

HB51 SECOND AMENDMENT PRESERVATION (LOYCHIK M, SCHMIDT J) To enact the Second Amendment Preservation Act to add additional protections to the right to bear arms.

Position: Oppose

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

HB67 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.

Position: Oppose

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

HB77 DRONE OPERATION REQUIREMENTS, PROHIBITIONS (WILLIS B) To establish requirements and prohibitions governing the operation of unmanned aerial vehicles in Ohio.

Position: Support

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

HB91 PROHIBIT TRACKING DEVICES WITHOUT CONSENT (PATTON T) To generally prohibit a person from knowingly installing a tracking device or application on another person's property without the other person's consent.

Position: Support

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

HB111 DOMESTIC VIOLENCE PENALTIES (LARE J, MILLER K) To increase the sentencing range for third degree felony domestic violence and to create a presumption in favor of a prison term for the offense.

Position: Support

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

HB139 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.

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-139>

HB149 DRONE SURVEILLANCE REQUIREMENTS (WILLIS B) To establish requirements related to the use of an uncrewed aerial vehicle for surveillance.

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-149>

HB196 COMMUNITY CONTROL SANCTIONS (WILLIAMS J, SEITZ B) To change the maximum periods of community control sanctions authorized for felonies and misdemeanors, to modify the confinement sanctions authorized for a violation of community control sanction conditions, and to create a procedure for early termination of community control sanction conditions.

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-196>

HB212 PROPERTY PROTECTION ACT (KING A, KLOPFENSTEIN R) To extend the law that prohibits certain governments, businesses, and individuals from acquiring agricultural land to certain other property and to name this act the Ohio Property Protection Act.

Position: Monitor

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-212>

HB221 EXPAND POSTCONVICTION RELIEF (SCHMIDT J, UPCHURCH T) To expand the availability of postconviction relief based on DNA testing showing actual innocence.

Position: Oppose

State Bill Page: <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-221>

<p>HB230 DRUG TRAFFICKING, ORGANIZED TRAFFICKING OF PERSONS (ABRAMS C, SWEARINGEN D) To increase penalties for drug trafficking above certain amounts, to prohibit organized trafficking of persons, to authorize collecting oral fluid as evidence in suspected OVI cases, to require schools and institutions of higher education to incorporate instruction and policies on fentanyl awareness and abuse prevention, to designate the month of August as "Fentanyl Poisoning Awareness Month," and to amend the version of section 3314.03 of the Revised Code that is scheduled to take effect January 1, 2025, to continue the changes on and after that effective date.</p> <p><i>Position:</i> Support</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-230 <i>Page:</i></p>	<p>HB265 EXEMPTIONS FOR PUBLIC RECORDS LAW (WIGGAM S, HALL T) To exempt redaction request forms, affidavits, and the records of the work schedules of designated public service workers from disclosure under public records law.</p> <p><i>Position:</i> Monitor</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-265 <i>Page:</i></p>
<p>HB233 SELF-DEFENSE PROTECTION ACT (WILLIAMS J, HILLYER B) 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.</p> <p><i>Position:</i> Oppose</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-233 <i>Page:</i></p>	<p>HB270 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.</p> <p><i>Position:</i> Oppose</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-270 <i>Page:</i></p>
<p>HB234 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.</p> <p><i>Position:</i> Oppose</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-234 <i>Page:</i></p>	<p>HB272 HANDGUNS -- COURTROOMS (MATHEWS A, PIZZULLI J) To allow a concealed handgun licensee to carry a handgun in a building or structure that is not a courthouse but in which a courtroom is located in specified circumstances and to permit a nonresident of Ohio to obtain statutory relief from firearms disability based on an Ohio conviction, guilty plea, or delinquent child adjudication.</p> <p><i>Position:</i> Monitor</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-272 <i>Page:</i></p>
<p>HB258 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.</p> <p><i>Position:</i> Support</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-258 <i>Page:</i></p>	<p>HB295 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.</p> <p><i>Position:</i> Amend</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-295 <i>Page:</i></p>
<p>HB259 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.</p> <p><i>Position:</i> Oppose</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-259 <i>Page:</i></p>	<p>HB315 TOWNSHIP LAW CHANGES (HALL T, SEITZ B) To make various township law changes and to make an appropriation.</p> <p><i>Position:</i> Support</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-315 <i>Page:</i></p>

<p>HB322 CHILD SEXUAL ABUSE LAWS (SEITZ B, ABRAMS C) To impose a civil penalty, rather than a criminal penalty, on a person who fails to register with the childhood sexual abuse civil registry, to eliminate the residence restriction on such person, to create the offense of grooming, and to extend the limitation period for prosecuting a violation of the law requiring certain persons to report child abuse or neglect under certain circumstances.</p> <p><i>Position:</i> Support</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-322 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-322</p>	<p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-392 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-392</p> <p>HB401 CREATE OFFENSE OF DEEPPFAKE DISTRIBUTION (MILLER K, DEMETRIOU S) To create the offense of nonconsensual distribution of a deepfake.</p> <p><i>Position:</i> Amend</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-401 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-401</p>
<p>HB328 CATALYTIC CONVERTERS (ROEMER B, PLUMMER P) Regarding the sale of used catalytic converters.</p> <p><i>Position:</i> Support</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-328 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-328</p>	<p>HB460 AUTOMATIC SEALING-CRIMINAL RECORDS (HILLYER B, SEITZ B) To enact the Getting Rehabilitated Ohioans Working Act to allow for the automatic sealing of certain criminal records.</p> <p><i>Position:</i> Oppose</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-460 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-460</p>
<p>HB331 VILLAGE DISSOLUTION (MATHEWS A, YOUNG T) To modify the law regarding village dissolution.</p> <p><i>Position:</i> Monitor</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-331 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-331</p>	<p>HB478 EXPEDITED REMOVAL-UNAUTHORIZED OCCUPANTS (EDWARDS J, LARE J) To provide for the expedited removal of unauthorized occupants of residential property and to prohibit the use and sale of fraudulent deeds.</p> <p><i>Position:</i> Amend</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-478 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-478</p>
<p>HB366 FIGHT ORGANIZED RETAIL CRIME ACT (GHANBARI H) To enact the Fight Organized Retail Crime and Empower Law Enforcement (FORCE) Act to create the Organized Retail Theft Advisory Council and an investigative task force, to create the crime of theft of mail, to modify theft offenses and penalties related to retail property.</p> <p><i>Position:</i> Amend</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-366 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-366</p>	<p>HB480 EXPEDITED REMOVAL-UNAUTHORIZED OCCUPANTS (YOUNG T, DEMETRIOU S) To provide for the expedited removal of unauthorized occupants of residential property, to prohibit the use and sale of fraudulent deeds, and to declare an emergency.</p> <p><i>Position:</i> Amend</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-480 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-480</p>
<p>HB367 PROHIBIT UNAUTHORIZED DEEPPFAKES (MATHEWS A, HILLYER B) To make changes to the law relating to the unauthorized use of an individual's persona and to prohibit certain unauthorized deepfake recordings.</p> <p><i>Position:</i> Support</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-367 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-367</p>	<p>HB497 VARIOUS CHANGES TO COUNTY LAW (STEWART B, KLOPFENSTEIN R) To make various changes regarding county law and to amend the version of section 153.39 of the Revised Code that is scheduled to take effect January 1, 2025, to continue the change on and after that date.</p> <p><i>Position:</i> Monitor</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-497 <i>Page:</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-497</p>
<p>HB392 ADD NITROGEN HYPOXIA AS EXECUTION METHOD (STEWART B, PLUMMER P) To add nitrogen hypoxia as a method of execution and to prohibit the disclosure of execution identifying information.</p> <p><i>Position:</i> Support</p>	

<p>HB531 SEXUAL EXTORTION PROHIBITIONS, VICTIM COMPENSATION (LEAR B, LORENZ B) To enact Braden's Law to prohibit sexual extortion and aggravated sexual extortion and to allow family of certain victims of aggravated sexual extortion to receive compensation from the crime victims compensation fund.</p> <p><i>Position:</i> Support</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-HB-531</p>	<p>SB109 SEX OFFENSES, MEDICAL PROFESSIONALS (HACKETT R) Regarding sex offenses and individuals regulated by the State Medical Board and to amend the version of section 2305.111 of the Revised Code that is scheduled to take effect October 12, 2028, to continue the change on and after that date.</p> <p><i>Position:</i> Monitor</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-109</p>
<p>SB26 MARIJUANA-VEHICLE, WATERCRAFT USE (MANNING N) To change the laws pertaining to operating a vehicle or watercraft while under the influence of marihuana and the admissibility of evidence for purposes of OVI statutes.</p> <p><i>Position:</i> Oppose</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-26</p>	<p>SB165 USED CATALYTIC CONVERTER SALES (JOHNSON T) Regarding the sale of used catalytic converters, and to make an appropriation.</p> <p><i>Position:</i> Support</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-165</p>
<p>SB37 DRIVER'S LICENSE SUSPENSION CHANGES (BLESSING III L, INGRAM C) Regards driver's license suspension law; financial responsibility</p> <p><i>Position:</i> Oppose</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-37</p>	<p>SB217 AI TECHNOLOGY REQUIREMENTS, PROHIBITIONS (BLESSING III L, JOHNSON T) To require AI-generated products have a watermark, to prohibit simulated child pornography, and to prohibit identity fraud using a replica of a person.</p> <p><i>Position:</i> Amend</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-217</p>
<p>SB100 TRACKING DEVICE PROHIBITIONS (MANNING N, ANTONIO N) To generally prohibit a person from knowingly installing a tracking device or application on another person's property without the other person's consent or failing to remove or ensure removal of such a device or application from another person's property if the other person gave consent and subsequently revokes it.</p> <p><i>Position:</i> Support</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-100</p>	<p>SB223 ENACT FORCE ACT-ORGANIZED RETAIL THEFT (LANG G, RULLI M) To enact the Fight Organized Retail Crime and Empower Law Enforcement (FORCE) Act to create the Organized Retail Theft Advisory Council and an investigative task force, to modify theft offenses and penalties related to retail property, and to make an appropriation.</p> <p><i>Position:</i> Amend</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-223</p>
<p>SB101 DEATH PENALTY ABOLITION, JURY SELECTION (ANTONIO N, HUFFMAN S) To abolish the death penalty and to modify the number of jurors that may be challenged in cases where a defendant may be sentenced to life imprisonment.</p> <p><i>Position:</i> Oppose</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-101</p>	<p>SB226 EXTENDING PROPERTY PROTECTION LAWS (JOHNSON T) To extend the law that prohibits certain governments, businesses, and individuals from acquiring agricultural land to certain other property and to name this act the Ohio Property Protection Act.</p> <p><i>Position:</i> Monitor</p> <p><i>State Bill</i> https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-226</p>

SB241 EXPEDITED REMOVAL-RENTAL OCCUPANTS (HUFFMAN S, BRENNER A) To provide for the expedited removal of unauthorized occupants of residential property and to prohibit the use and sale of fraudulent deeds.

Position: Amend

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-241>

Page: [summary?id=GA135-SB-241](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-241)

SB263 ENACT BRADEN'S LAW (BRENNER A) To enact Braden's Law to prohibit sexual extortion and aggravated sexual extortion and to allow family of certain victims of aggravated sexual extortion to receive compensation from the crime victims compensation fund.

Position: Support

State Bill <https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-263>

Page: [summary?id=GA135-SB-263](https://www.legislature.ohio.gov/legislation/legislation-summary?id=GA135-SB-263)

New and Noteworthy



Merit Decisions of Interest Since 8/1/24

State v. Echols, 2024-Ohio-5088. The Court (7-0) held that acts of witness intimidation and false-alibi creation are “other acts” subject to analysis under Evid.R. 404(B) and are admissible thereunder. (Decided 10-25-24; Hamilton County)

State v. Kyles, 2024-Ohio-5038. The Court (7-0) concluded that stray dogs and cats fit within the definition of “companion animal” under R.C. 959.131(A)(1) so that the defendant could be found guilty of F-5 animal cruelty under R.C. 959.131(C) for causing serious physical harm to a companion animal by dousing a stray cat with bleach. (Decided 10-23-24; State’s appeal; Cuyahoga County)

State v. Smith, 2024-Ohio-5030. The Court (5-2) accepted the State’s appeal and summarily reversed the judgment of

the First District on the issue of venue, reaffirming that venue can be proven circumstantially. (Decided 10-22-24; State’s appeal, Hamilton County)

State ex rel. Cincinnati Enquirer v. Bloom, 2024-Ohio-5029. The Court (4-1-2) ordered mandamus and prohibition relief requiring the juvenile court to provide the relator news organization with access to a trial transcript from a juvenile-delinquency case. The case had been sealed under the automatic-sealing provision applicable in juvenile court under R.C. 2151.356(B)(1)(d), but the four-vote majority invalidated automatic sealing as violative of the open-courts provision under Article I, Section 16, of the Ohio Constitution. (Decided 10-22-24)

State v. Hale, 2024-Ohio-4866. The Court (6-1) upheld the detention of a recent passenger of a vehicle based on reasonable suspicion of the driver’s recent operation of the vehicle without a license and based on reasonable suspicion that the passenger was implicated. (Decided 10-10-24; Licking County)

State v. Dunlap, 2024-Ohio-4821. A splintered five-vote majority (5-2) upheld the officer’s actions in briefly continuing the detention of a vehicle and its occupants to ask the driver if he was licensed to drive when the initial traffic stop had been lawful but the officer learned of facts upon approaching the driver-side door that negated the original reasonable suspicion justifying the stop. (Decided 10-9-24; State’s appeal; Geauga County)

State v. Gasper, 2024-Ohio-4782. The Court (7-0) held that, for purposes of a charge of rape under R.C. 2907.02(A)(1)(c), a permanent mental condition can be relied upon as the predicate to establish that the victim’s ability to resist or consent was substantially impaired. (Decided 10-8-24; Hamilton County)

State v. Wogenstahl, 2024-Ohio-2714. The Court (6-1) held that the capital defendant lacked good cause for untimely filing of his application for reopening in the court of appeals. The jurisdictional nature of the defendant’s argument did not demonstrate “good cause,” and, because the jurisdictional arguments had already been rejected, even the issue of jurisdiction was barred by res judicata. (Decided 10-1-24; Hamilton County)

State v. Mays, 2024-Ohio-4616. The Court (4-3) concluded that the verdict form’s reference to the degree-raising statutory provision making the offense a fifth-degree felony was sufficient to comply with R.C. 2945.75(A)(2) and that, in the absence of a defense objection to the verdict form, there was no plain error warranting reversal in that regard anyway. (Decided 9-25-24; Lucas County)

State v. Sheckles, 2024-Ohio-3339. The Court (6-1) held that the federal Department of Justice’s *Tuohy* regulation does not create rights enforceable by a criminal defendant and would not justify exclusion of a former federal employee’s testimony in a case in which the former employee was apparently willing to testify and had the authorization to do so. (Decided 9-6-24; State’s appeal; Hamilton County)

Wilson v. Wilson, 2024-Ohio-2845. The Court (7-0) dismissed the case as improvidently accepted. The case had raised the issue of whether a court entering a four-year domestic-violence civil protection order violates the Second Amendment by invoking 18 U.S.C. 922(g)(8) and R.C. 3113.31(E)(1)(h) to specifically prohibit the respondent from possessing or obtaining any deadly weapons and by further requiring that the respondent turn over all deadly weapons to law enforcement. The Court likely viewed the appeal as lacking merit after the United States Supreme Court upheld these kinds of gun-related orders as part of domestic-violence protection orders in *United States v. Rahimi*, 602 U.S. ___ (2024). (Dismissed 7-31-24; Discretionary appeal arising from Butler County)

Newly-Accepted Criminal Law Cases Since 8/1/24

24-1083 *State v. Diaw* Whether an investigative subpoena issued to an internet-app provider was overly broad and implicated the Fourth Amendment’s protection of location data under *Carpenter v. United States* so that the disclosure of a single location point in response to the subpoena violated the Fourth Amendment and warranted suppression. (Franklin County)

24-1184 *State v. Kincaid* Whether the traffic stop investigation of the marked-lanes violation had been completed so that the officer’s decision to delay the K-9 sniff for 5-10 minutes amounted to an unlawful extension of the stop, thereby rendering the eventual K-9 sniff unlawful and warranting suppression of the drugs found as a result of the sniff. (Meigs County)

24-965 *State v. Hikec* (1) Whether a limiting instruction rendered harmless the admission of cell-phone evidence that should have been suppressed altogether; (2) Whether other-acts evidence related to texts occurring two weeks before the incident on trial should have been excluded. (Fairfield County)

24-1038 *State v. Fraley* Whether the 365-day time period for filing a post-conviction petition after the filing of the transcript in the court of appeals in the direct appeal will be considered to start running when the transcript is not filed

during the direct appeal but, instead, is only filed during a reopened appeal. (Butler County)

24-1050 *State v. Striblin* Whether the Fifth District erred in sustaining the defendant’s facial constitutional challenge on Second Amendment grounds after the defendant’s no contest plea to a charge under R.C. 2923.121(A) for illegal possession of a firearm on a liquor permit premises. (State’s appeal; Muskingum County)

24-930 *State v. Khalif* (1) on State’s appeal: Whether a guilty verdict “as charged” is sufficient to comply with R.C. 2945.75(A)(2) and to thereby constitute a guilty verdict for the charged offense (instead of the least degree of the offense); (2) on defendant’s cross-appeal: Whether the “Stand Your Ground” statutory amendment as to self-defense effective on 4-6-21, which removed the duty to retreat for most situations, applies to post-effective-date trials of offenses that occurred before the amendment’s effective date (this issue held for *State v. Miree*). (Franklin County)

24-951 *State v. J.B.* (1) Whether the court can deny an application for sealing based solely on its conclusion that the defendant’s criminal record makes it unlikely that she is rehabilitated; (2) Whether the court denying sealing can consider sua sponte the State’s legitimate governmental interest in maintaining the record of conviction. (State’s appeal; Hamilton County)

24-882 *State v. Gowdy* Whether the trial court’s statements vitiated the validity of the defendant’s guilty plea when the court had reviewed a surveillance video of the incident and indicated before the plea that the court would not instruct on self-defense. (Hamilton County)

24-872 *State v. Rogers* Whether the general statements of a group of jurors confirming that they will follow the law are sufficient to rehabilitate or otherwise dispel a particular prospective juror’s expressions of partiality. (Warren County)

24-899 *State v. Ballish* Whether the test from *State v. Jones*, 49 Ohio St.3d 51 (1990), is applicable to a community-control condition that is specifically authorized by statute. (State’s appeal; Geauga County)

24-854 *State v. Roberts* Even if the court of appeals was correct in concluding that the evidence of the defendant’s statements and other acts should have been excluded, whether the court of appeals failed to correctly apply the standard for harmless error. (State’s appeal; Hamilton County)

24-879 *In re A.C.* Whether the juvenile court erred by granting early release from ODYS commitment even though the juvenile had agreed as part of the counseled and enforceable plea agreement that he would never apply for early release and the court would never grant early release. (State's appeal; Hamilton County)

Upcoming Oral Arguments

23-1318 & -1417 *State v. Logan* Whether R.C. 2929.13(F)(8) requires a mandatory prison term and precludes the imposition of community-control sanctions on an underlying felony when a defendant is found guilty on a corresponding firearm specification. (State's appeals; Cuyahoga County) (Argument on 1-7-25)

23-1531 *In re P.M.S.* Whether a rape by force occurs when the only evidence of force is the physical exertion inherent in the sexual act itself. (Warren County) (Argument on 2-18-25)

24-108 *State v. Staffrey* Whether a prisoner serving a pre-Senate Bill 2 indefinite sentence can be granted judicial release under current R.C. 2929.20. (State's appeal; Mahoning County) (Argument on 2-19-25)

23-1614 *State v. Morris* (1) Whether the appellate court erred in rejecting *Montejo v. Louisiana*, 556 U.S. 778 (2009), for purposes of the Ohio Constitution by holding that a request for counsel at a first appearance amounts to an invocation of counsel and therefore cuts off the ability of police to initiate an interrogation of the defendant outside of court; (2) Whether the right to counsel attaches on the filing of a criminal complaint; (3) Whether the defendant unequivocally invoked the right to counsel when he asked during the interrogation "I can't see a lawyer?" (State's appeal; Hamilton County) (Argument on 2-19-25)

24-87 *State v. Coker* Whether there was sufficient evidence of vaginal penetration when the victim testified initially that the phrase "have sex" meant vaginal penetration and the victim thereafter testified by using the "have sex" phrase to describe the sexual conduct. (State's appeal; Wood County) (Argument on 2-20-25)

23-772 *State v. Jones* Whether an appellate court abuses its discretion by denying leave to appeal the granting of a new trial in a 26-year-old capital case where the State complies with App.R. 5(C)'s requirements, timely sets forth errors for review, and shows it has evidentiary support for the claimed errors. (State's appeal; Hamilton County) (Argument on 2-20-25)

24-340 *Z.J. v. R.M.* Whether R.C. 2903.211(A)(1) requires a victim to actually experience mental distress or only believe that the stalker will cause the victim physical harm or mental distress in order for a court to issue a civil stalking protection order. (Certified-conflict appeal arising from Richland County) (Argument on 2-20-25)

24-05 *State v. Clinkscale* In determining judicial-release eligibility, whether jail-time credit reduces the required waiting period "after the expiration of all mandatory prison terms" under R.C. 2929.20(C)(1)(a) – (d). (State's appeal; Franklin County) (Argument on 3-11-25)

24-164 *State v. Thompson* Whether the defendant's "hybrid" sentencing amounted to imposing ten years of community-control supervision, thereby exceeding the five-year limit for community control. (Franklin County) (Argument on 3-12-25)

Keep an Eye Out for These Cases Awaiting Decision

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)

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) (Argument on 2-7-24)

22-1458 *State v. Duncan* & 22-1449 *State v. Mirre* 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. (Cuyahoga County) (Argument on 7-23-24)

23-1204 *State v. Wilcox* Whether video footage of the excited utterances of a witness in the immediate aftermath of a shooting is "testimonial" for purposes of the right to confrontation. (State's appeal; Hamilton County) (Argument on 7-9-24)

23-1289 *State v. Smith* Whether the victim's statements to police while in an ambulance being treated for injuries following a domestic assault by the defendant were admissible as non-testimonial hearsay under the "emergency exception" that is recognized in the *Cranford v. Washington* line of cases. (State's appeal; Cuyahoga County) (Argument on 7-24-24)

Ohio Attorney General Opinions

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

2024-005

Requested by: *Adams County Prosecuting Attorney*

It is a criminal offense for a person to knowingly enter and occupy another's residence without legal right or permission of the owner or lawful tenant. At the request of the property owner or lawful tenant, a law enforcement officer may enter onto the property and arrest the trespasser when probable cause for the arrest exists. If property rights are reasonably in dispute, then the property owner may need to file an eviction action. Absent probable cause for arrest or a court order to remove the occupant, a law enforcement officer could incur liability for acting without legal authority.

Outreach



Butler County Prosecutor Mike Gmoser was nice enough to share his latest outreach newsletter with us. Here is another excerpt of interest. The entire newsletter is available at <https://www.ohiopa.org/newsletter62024.pdf>

Success! Scammer Caught, Arrested, Extradited and Prosecuted! Man admits to identity theft scheme that took thousands from local senior citizens

Hassan Forde pled guilty on August 31, 2023 to (2) counts of Identity Fraud, (1) count of theft from persons in a protected class, (1) count of receiving stolen property and (1) count of forgery. Judge Michael Oster, Jr. sentenced Forde to 5–7.5 years in prison and ordered Forde to pay restitution in the amount of \$59,062, which has been paid to victims through the Adult Probation Department. Assistant Prosecutor Garrett Baker, Chief of the Crimes Against the Elderly and Economic Crimes Division, worked diligently with Westchester County District Attorneys' office in Upstate New York to apprehend Forde.

Forde was so brazen about his success at stealing from innocent victims, many of them seniors, that he posted the pictures on Facebook.



How to Keep This From Happening to You

- Mail checks inside the post office, not in an outside mailbox.
- Use indelible black ink gel pens.

- Use certified mail or delivery service with tracking for important checks.
- Monitor bank accounts and credit reports regularly for signs of fraud.
- **Immediately** report lost or stolen checks to the bank or credit union.
- Place a “stop payment” order on a check if it’s lost or stolen.

How to Report a Scam

- If your bank account has been compromised, contact your financial institution immediately!
- It is important to make a report to your local police department.
- Also, you can report the scam to the Federal Trade Commission (FTC) at, <https://reportfraud.ftc.gov>.
- You may also contact the Ohio Attorney Generals’ Office at 1-800-282-0515.
- And/or you can report a scam to the **Butler County Crimes Against the Elderly SCAM** hotline at, 1-888-662-3673.

Four Signs that it is a Scam!

1. Scammers PRETEND to be from an organization you know.

Scammers often pretend to be contacting you on behalf of the government. They might use a real name, like the FTC, Social Security Administration, IRS, Medicare, or make up a name that sounds official. Some pretend to be from a business you know, like a utility company, a tech company, or even a charity asking for donations. They use technology to change the phone number that appears on your caller ID. So the name and number you see might not be real.

2. Scammers say there’s a PROBLEM or a PRIZE.

They might say you’re in trouble with the government. Or you owe money. Or someone in your family had an emergency. Or there’s a virus on your computer.

Some scammers say there’s a problem with one of your accounts and that you need to verify personal

information. Others will lie and say you won money in a lottery or sweepstakes but have to pay a fee to get it. Or give your personal information so they can contact the IRS for you and report your winnings before you can receive your money.

3. Scammers PRESSURE you to act immediately.

Scammers want you to act before you have time to think. If you’re on the phone, they might tell you not to hang up so you can’t check out their story.

4. Scammers tell you to PAY in a specific way.

They often insist that you can only pay by using cryptocurrency, wiring money through a company like MoneyGram or Western Union, using a payment app, or putting money on a gift card and then giving them the numbers on the back of the card. **ALL METHODS THAT ARE ESSENTIALLY IMPOSSIBLE TO RECOUP YOUR MONEY.**

Some will send you a check (that will later turn out to be fake), then tell you to deposit it and send them money, instructing you to keep a portion for your trouble. When the check is returned as fraudulent, you are responsible for repayment of the check.

Be Very, Very Cautious when Communicating with Someone on Dating Sites!

- Scammers say they can’t meet you in person. They might say they’re living or traveling outside the country, working on an oil rig, in the military, or working with an international organization.

- Scammers will ask you for money. Once they gain your trust, they’ll ask for your help to pay medical expenses (for them or a family member), buy their ticket to visit you, pay for their visa, or help them pay fees to get them out of trouble. They may even offer to help you get started in cryptocurrency investing.

- Scammers will tell you how to pay. All scammers, not just romance scammers, want to get your money quickly. And they want your money in a way that makes it hard for you to get it back. They’ll tell you to wire money through a company like Western Union or MoneyGram, put money on gift cards (like Amazon, Google Play, iTunes, or Steam) and give them the PIN codes, send money through a money transfer app, or transfer cryptocurrency.

FASTER PAYMENT MEANS FASTER FRAUD!

OPAA at Capital Law

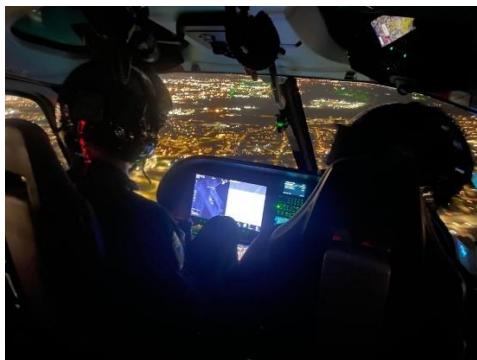
OPAA once again participated in the annual Capital University Law School Fall Community Event. It was great talking with current law students about becoming prosecutors!



Capital Law alums Steve Barnett (Carroll County) and Chip McConville (Knox County) man the table, along with “cool” Ryan Barnett. Not shown, Director Tobin.

OPAA in the Air

Prior to the Fall Training several members of the OPAA Executive Committee spent some time in the OSHP helicopter over Cleveland as it assisted law enforcement on the ground. Thanks to ODPS Director and former Clark County Prosecutor Andy Wilson for offering this opportunity to our members.



Warren County Prosecutor David Fornshell



Tuscarawas County Prosecutor Ryan Styer, Carroll County Prosecutor Steve Barnett, and Wood County Prosecutor Paul Dobson



OPAA Training

The 2024 OPAA Fall Training held September 19th and 20th at the Cleveland Crowne Plaza was attended by 190 prosecutors and assistant prosecutors representing 48 counties along with the OAG.



Steve Taylor with a presentation on the “top 12” list of mistakes that are most likely to lead to regret and consternation.



Union County Prosecutor David Phillips takes a look at new tech available for the prosecutor offices.

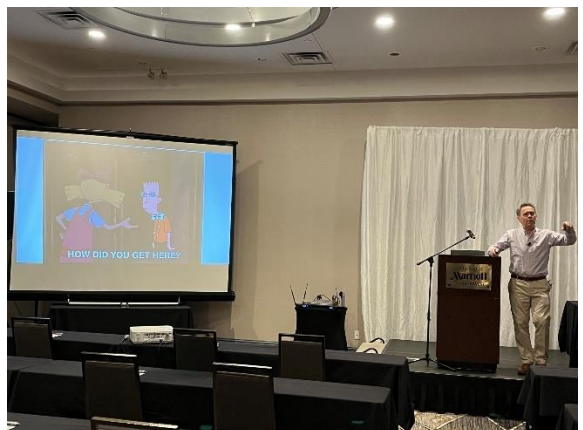


Phil Bogdanoff presents Attorneys and Social Media – How to keep the Disciplinary Counsel from Knocking on your Door!

The 2024 OPAA Administrative Professionals training was held at the Marriot Columbus Northwest on October 17th. We had 60 attendees from 24 counties for this one day event.



Phil Bogdanoff helps us, help victims, to trust in the criminal justice system.



Mark Weaver from Communications Counsel (and Marion County APA) presented on dealing with news and social media.



David Moser from Fishel Downey Albrecht and Riepenhoff gets the training started with a presentation on public records, open meetings, and 1st amendment auditors.

Our 3 day Trial Advocacy Boot Camp was once again held at the beautiful Ohio Northern campus the first week of August. OPAA provided 15 aspiring assistant criminal prosecutors with the opportunity to experience getting ready for a felony jury trial. Those attending were Jessica Zeigler (Greene County) Alexis Hogya (Warren County), Brittany Durieux (Wayne County), Daniel Picketts, (Ross County), Cassius Russell (Licking County), Lauren Hase (Lorain County), Emily Mothmiller (Shelby County), Megan Hobart (Richland County), Kenneth Sapp (Delaware County), Scott Wilson (Adams County),Morgan Jackson, (Van Wert County), Ashley Johnson (Athens County), Kara Richter (Champaign County), Kallen Haddox (Muskingum County), and David Haverfield (Wayne County). Thanks to all that attended, trained, and provided for us!



Trial prep with the trainers! Time to fine tune your case and apply what you've learned to prep for Friday trials.

Additional pictures from all events can be viewed on our X account by clicking the icon.



2024 OPAA Trainings

OPAA Annual Meeting December 12th and 13th
Hilton Columbus at Easton

Online self-study webinars have been approved through December 31 for CLE credit. A list of available topics is located at <https://www.ohiopa.org/members.html>

2025 Training Dates

New Prosecutor Training – January 23 & 24, Hilton Columbus at Polaris

Spring Training - April 17 & 18, Hilton Columbus at Polaris

Summer Workshop - June 19-21, Breakers Cedar Point

Fall Training - September 18-19 – Crowne Plaza Cleveland at Playhouse Square.

Annual Meeting - December 4-5, Hilton Columbus at Easton

At the Office

Our New 3rd floor Tenant has Moved In!



We are happy to welcome the Ohio Network of Children's Advocacy Centers to the third floor. ONCAC is a statewide association composed of accredited and developing local children's advocacy centers (CACs) or developing multi-disciplinary team members. Member CACs serve children throughout Ohio and the local professionals investigating and treating child sexual and physical abuse.

The CAC multidisciplinary approach maximizes the strength of all disciplines involved in child sexual abuse investigations and minimizes the trauma to child victims. ONCAC is committed to building on existing resources to benefit multidisciplinary efforts across Ohio and to providing services tailored to the needs of each community we serve.

More information can be found on their website at

<https://www.oncac.org>

Your 2024 OPAA Officers



Kevin S. Talebi
Champaign County
President



Keller J. Blackburn
Athens County
President-Elect



David P. Fornshell
Warren County
Vice President



Gwen Howe-Gebers
Henry County
Treasurer



Steven D. Barnett
Carroll County
Secretary



2024 OPAA Executive and Legislative Committee Meeting Dates

November - No Meeting
December – Wednesday, December 11th, Hilton Columbus at Easton (prior Annual Meeting).