



for the

First Quarter 2017

RECORD

NEWS FOR THE OHIO COURTS

OHIO JUDICIAL CONFERENCE NEW EXECUTIVE DIRECTOR

Independence, integrity, impartiality - the opening words of Canon 1 of our Code of Judicial Conduct. I would add intelligent and fair as the words that define the expectation of every person entering your courtroom or that you encounter in a community setting. None of us were born judges. Every judge has grown through education and life experience to achieve that honored position. When others test your judicial temperament, just stop, take a deep breath, smile and move on remembering you wear the robe for good reason and they do not.

Having shed my judicial robe December 31 and started a new life January 1 as your Executive Director, I will keep it short. We will try not to bury you with too much information, but tailor messages about legislative and Supreme Court developments to your court's jurisdiction. Your input is vital as we seek on your behalf to influence legislation and Supreme Court rule changes from early formulation to final adoption.

The Ohio Judicial Conference functions through the work of more than twenty standing committees of judges volunteering their time formulating Conference positions. If you are not currently directly involved, please consider where you would like to help and give us a call or send an email. The Conference is your organization. Use it to help us promote improvement in legislation and court rules. It is what we do.



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OHIO JUDICIAL CONFERENCE NEWS

Welcome Aleta Burns!

Aleta Burns is the Judicial Conference Fiscal/HR Officer and Office Manager. She joined the staff in July 2016. Aleta manages the Ohio Judicial Conference daily office operations, physical inventory, and handles all fiscal matters including accounts payable and accounts receivable, budget issues, and payroll and employee benefit issues. She is also the OJC liaison to the Ohio Department of Administrative Services, the Ohio Auditor of State, the Ohio Treasurer of State, and the Ohio Administrative Knowledge System. Aleta is a graduate of Capital University, where she earned a degree in Biology and Franklin University where she earned her MBA. She worked at the Ohio State University as an Administrative Associate for 4 years and spent a total of 16 years there in various administrative roles.



Welcome Shawn Welch!

Shawn Patrick Welch, Esq. staffs the Judicial Conference's Domestic Relations, Juvenile and Probate Law & Procedure Committees and assists the Legislative Counsel with all aspects of the Conference's legislative services. Shawn started working for the Judicial Conference in September of 2016. He is a graduate of Case Western Reserve University, where he majored in English and History, and earned his law degree from The Ohio State University Moritz College of Law. His prior legal experience includes five years with the Office of the Ohio Public Defender and four years with the Ohio Criminal Sentencing Commission. Prior to law school, Shawn worked as an Associate Financial Representative for Northwestern Mutual.



Justice Kennedy's Speech Not Inappropriate

We have a long tradition in this country and this state of people banding together and establishing organizations to engage in our public life. We call this civil society and it is one of the most endearing hallmarks of our democracy, a hallmark absent from most other countries.

It is the responsibility of every judge and justice in Ohio to speak on behalf of the institution of the judiciary, to engage with the public and civic organizations in order to assist Ohioans to better understand the judicial branch.

And because judges at every level of our court system often make difficult decisions, understanding the judiciary and the judicial process is more critical now than ever before. Given the role of the courts, it is crucial for judges to be available and to engage with the public so long as they do so within both the spirit and written obligations of their ethical responsibilities.

When Ohio Supreme Court Justice Sharon Kennedy spoke to the Greater Toledo Right to Life organization, she talked about the founding of this republic, the Constitution, and the separation of powers. She did not discuss or refer to any cases pending before the Supreme Court of Ohio, nor did she mention abortion and the host group's positions (March 17, "Pro-choice group calls on Ohio justice to step away from cases").



As a member of the judiciary, it is her duty to help demystify our branch of government and help everyone understand what we do and our role in our government, regardless of the underlying issues or philosophy of the sponsoring organization. This can be done in a manner that does not cross any judicial ethics lines.

If the litmus test for recusal from a case is merely speaking to a group that has a particular cause, there would be very few, if any, judges sitting on cases or, alternatively, engaged in their communities.

Indeed, such a principle would muzzle judges and prevent every judge in this state from engaging in the very civic society that is so essential to our democracy. Judges should recuse themselves when they cannot be fair, unbiased, and impartial in considering the facts and applying the law to a case before them. But the mere fact that a judge speaks to the membership of an organization that has exercised its right to engage in our civic life and participate in our governmental process by supporting proposed legislation or advocating for certain issues, without more, does not require recusal.

Although judicial decision-making is an essential duty of every judge, we do so much more today. Judges are integral to our government and have obligations that extend beyond the courtroom to include educating the public on their government. Judges should not be relegated to the halls of the courthouse, remote, and divorced from the people we serve. I do not think that Ohioans want this kind of judiciary.

When surveyed, the vast majority of people say they don't know enough about the judiciary and the courts. In order to enhance the public's knowledge of the judiciary, judges have to be able to speak to organizations, participate in educational opportunities, and promote their court's work.

As chief justice I would be remiss if I did not address this unfair criticism of Justice Kennedy, as I would do for any member of the judiciary. Unfair criticism of one member of the judiciary reflects poorly on all judges of Ohio.

Maureen O'Connor is the chief justice of the Supreme Court of Ohio.

SETTING BAIL IN OHIO: CRIMINAL RULE 46

JUDGE GARY DUMM

The following article was written a year before the Ohio Sentencing Commission's Ad Hoc Committee on Bail and Pretrial Services issued its report addressing potential Crim. Rule 46 modifications. The article reflects the current rule; however, the rule may be modified to include recommendations made by the Committee addressing bail reform issues currently under scrutiny throughout the country.

Setting Bail in Ohio under Criminal Rule 46

Bail is twofold in purpose: to ensure the accused's appearance and to address if necessary, public safety.

Setting bail in most courts may seem as routine as granting a recognizance bond when a defendant appears on a summons; however, there are several rule and statutory matters, which need to be considered on other occasions when establishing bail.

The United States Constitution provides that excessive bail shall not be required, as does Ohio's, but the Ohio Constitution further adds that all persons shall be bailable, except capital offenses where the proof is evident or the presumption great and except for a felony where the proof is evident or the presumption great and the person poses a substantial risk of serious physical harm to any person or the community.

The Ohio Constitution further enables the legislature to fix by law standards to determine whether a person charged with a felony should be bailable. Those standards are found in ORC 2937.222 and outline the procedure to be followed, if bail is requested to be denied by the prosecutor or by the court sua sponte. The code demands that a hearing be set within a very short time frame and the state has the burden of proof at a clear and convincing evidentiary standard. A very well written opinion on a denial of bail under the Ohio Constitution and ORC 2937.222 can be found in *State v. Urso* out of the 11th Dist. Court of Appeals.

TYPE OF BAIL (R. 46(A))

Any person who is entitled to be released under Crim. R. 46 can be released on *one or more* of the following bail types: Recognizance, 10% bail bond, Surety bond, Bond secured by real estate of securities, or deposit of cash. A cash only bond is unconstitutional and can be satisfied by posting a surety bond, because under the Ohio Constitution, all persons bailable are bailable by *sufficient sureties*. *State ex. rel. Jones v. Hendon; Smith v. Leis*.

Likewise, a 10% Bond Only is unconstitutional as a surety bond is always in play under Ohio Constitution Sec. 9, Art. I *sufficient sureties* provision. *State ex. rel. Sylvester v. Neal/State ex. rel. Fox et al. v. Waters*.

FACTORS IN SETTING TYPES OF BAIL (R. 46(C))

R. 46 tells the court to consider most of the things that most judges consider every day in setting bail, including, the nature and circumstances of the charge; use or access to weapons; weight of the evidence against the defendant; confirmation of identity; defendant's family ties; employment, financial resources; character; mental conditions; length of residence in community; jurisdiction of residence; criminal history; prior failures to appear or flight to avoid prosecution; and whether defendant is on probation, community control sanction, parole, post-release control bail, or under a protection order.

These same or similar factors are addressed by the legislature, as authorized by the Ohio Constitution in ORC 2937.23, which indicates that the court should consider "All relevant information," including the circumstances of the charge, the weight of the evidence, confirmation of identity and social ties to the community of the defendant, as well as whether the defendant was on some type of supervision at the time of the offense.

The legislature has also addressed bail issues in Domestic Violence cases under ORC 2919.251 and Violation of Protective Order cases for Aggravated Menacing, Menacing, and Stalking/Menacing under ORC 2903.212. These two code sections similarly mirror R. 46(C) and should also be reviewed in those matters as a routine part of setting bail, although the Ohio Constitution also clearly states that all laws in conflict with the criminal rules shall be of no force or effect.

Continued on next page...

CONDITIONS OF BAIL (R.46(B))

R. 46 addresses perhaps the best appearance and public safety bail tools, which are the conditions of bail and permits the court to a) place the person in custody of a person or organization; b) restrict travel, associations, place of abode; c) use house arrest or work release; d) use stay away orders from victims, witnesses, or others associated with the case with proof of threats, harassment, injury, or intimidation in the matter; e) require drug or alcohol treatment if an alcohol or drug involved offense and person needs the treatment; f) any other constitutional condition considered reasonably necessary to ensure appearance or public safety.

Ohio law has recognized surrendering passports, staying away from victims, staying out of particular areas geographically, engaging in pre-trial drug testing, monitoring by electronic monitored house arrest (EMHA), imposing a curfew, and attending a psychiatric clinic for evaluation and follow-up, all as valid conditions of bond.

The overall test to determine conditions of bail lies in the above R. 46(B)(7) condition of “any other constitutional condition considered necessary to ensure appearance or public safety”.

AFTER BAIL HAS BEEN POSTED R.46(E)

R. 46(E) makes it clear that bail can be amended at any time and does not require a major explanation on record as to why a change should occur; however, it is always good to explain to avoid the unpleasantness of a habeas corpus proceeding. Fail a drug test and bond can be reconsidered and adjusted. Just be careful that you understand that a failed drug test does not permit the forfeiture of a surety bond, since the surety bond only insures appearance. Bond in that situation can be revoked, but not forfeited.

Also R. 46(F) provides that bail information at a bail hearing need not conform to the rules of evidence as to admissibility, leaving room for probation officer input, arresting officer input, victim advocate input, and the like.

To offset the above in fairness, statements made by the defendant at bail hearings are not admissible as substantive evidence at trial.

BOND SCHEDULE (R.46(G))

This section makes it mandatory on the court to establish a bond schedule for all misdemeanors, including traffic, within which the court may include requirements of release that consider the conditions of bail of R.46(B) and whether a defendant is on probation, community control sanction, parole, post-release control, bail or under a protection order. This schedule shall also be credit card friendly in posting bail.

CONTINUATION OF BONDS (R.46(H))

Unless otherwise ordered, the same bond shall continue until return of verdict or acceptance of a guilty plea. If the court chooses to do so, it can also continue the bond pending sentence or disposition on appeal. Any bond provision that says otherwise is void as contrary to the rule.

WANT TO CONTRIBUTE TO THE NEXT EDITION OF FOR THE RECORD?

OJC ALWAYS NEEDS TIMELY AND RELEVANT ARTICLES TO PUBLISH.

CONTACT JUSTIN LONG AT THE JUDICIAL CONFERENCE

JUSTIN.LONG@SC.OHIO.GOV

2016 JUDICIAL SEAT CHANGES

Athens Co. Municipal Court

Todd L. Grace, elected to a full term beginning January 1, 2016. Judge Grace replaces Judge William Allan Grimm who retired. 1/1/16

Bedford Municipal Court

Michelle L. Paris, elected to a full term beginning January 1, 2016. Judge Paris replaces Judge Jeffrey L. Dean who retired. 1/1/16

Butler Co. Common Pleas Court

Gregory S. Stephens, appointed to an unexpired term ending January 2, 2017. Judge Stephens replaces Judge Patrica S. Oney who retired. 3/14/16

Clermont Co. Municipal Court

Jason Nagel, elected to a full term beginning January 2, 2016. Judge Nagel replaces Judge George E. Pattison who retired. 1/2/16

Cleveland Municipal Court

Janet Rath Colaluca, appointed to an unexpired term ending January 2, 2018. Judge Colaluca replaces Judge Angela R. Stokes who retired. 4/29/16

Michael R. Sliwinski, appointed to an unexpired term ending January 5, 2018. Judge Sliwinski replaces Judge Ed Wade who was elected to another seat. 4/4/16

Suzan Marie Sweeney, elected to a full term beginning January 1, 2016. Judge Sweeney replaces Judge James H. Hewitt, III who was defeated. 1/1/16

Judge Ed Wade, elected to a full term beginning January 3, 2016. Judge Wade (who ran for Judge Tarver's seat) replaces Judge Pauline H. Tarver who was defeated. 1/3/16

Cuyahoga Co. Common Pleas Court

Matthew A. McMonagle, appointed to an unexpired term ending January 4, 2017. Judge McMonagle replaces Judge Lance T. Mason who resigned. 1/4/16

Dayton Municipal Court

Mia Wortham Spells, elected to a full term beginning January 3, 2016. Judge Spells replaces Judge John S. Pickrel who retired. 1/3/16

Findlay Municipal Court

Mark C. Miller, appointed to an unexpired term ending January 1, 2018. Judge Miller replaces Judge Robert A. Fry who retired. 9/23/16

Franklin Co. Municipal Court

Cynthia Ebner was elected to a full term beginning January 5, 2016. Judge Ebner replaces Judge Carrie E. Glaeden who was defeated. 1/5/16

Eileen Paley was elected to a full term beginning January 6, 2016. Judge Paley replaces Judge Anne Taylor who retired. 1/6/16

Jodi L. Thomas, appointed to an unexpired term ending December 31, 2019. Judge Thomas replaces Judge Scott VanDerKarr who retired. 4/29/16

Hamilton Co. Common Pleas Court

Judge Lisa C. Allen, elected to an unexpired term ending March 31, 2019. Judge Allen replaces Judge Nadine Allen who retired. 12/13/16

Thomas D. Heekin, Jr., appointed to an unexpired term ending January 3, 2017. Judge Heekin replaces Judge John Andrew West who retired. 6/6/16

Holmes Co. Municipal Court

Andrew G. Hyde, appointed to an unexpired term ending December 31, 2019. Judge Hyde replaces Judge Jane Irving who passed away. 11/18/16

Lima Municipal Court

David A. Rodabaugh, appointed to an unexpired term ending January 1, 2018. Judge Rodabaugh replaces Judge Rickard A. Workman who retired. 3/1/16

Lorain Co. Common Pleas Court

D. Chris Cook, elected to an unexpired term ending January 4, 2019. Judge Cook replaces Judge Michele Silva Arredondo who was defeated. 12/24/16

Monroe County Court

Jason A. Yoss, elected to an unexpired term ending December 31, 2018. Judge Yoss replaces Judge Clifford N. Sickler who was defeated. 12/22/16

Summit Co. Common Pleas Court

Judge Joy Malek Oldfield, elected to an unexpired term ending April 30, 2021. Judge Oldfield replaces Judge Scot A. Stevenson who was defeated. 11/30/16

Scot A. Stevenson, appointed to an unexpired term ending April 30, 2021. Judge Stevenson replaces Judge Tom Parker who retired. 6/15/16

Court 2017 Technology Conference

Tuesday, April 25th
7:30am to 3:15pm

Worthington
DoubleTree Hotel
Columbus, Ohio



2017 JUDICIAL SEAT CHANGES

Supreme Court of Ohio

Justice Pat DeWine, elected to a full term beginning January 1, 2017. Justice DeWine replaces Justice Paul E. Pfeifer who retired. [1/2/17](#)

Justice Patrick F. Fischer, elected to a full term beginning January 1, 2017. Justice Fischer replaces Justice Judith Ann Lanzinger who retired. [1/1/17](#)

Akron Municipal Court

Ann Marie O'Brien, appointed to an unexpired term ending January 3, 2018. Judge O'Brien replaces Judge Joy Malek Oldfield who was elected to the Summit Co. Common Pleas Court. [2/21/17](#)

Jason T. Adams, appointed to an unexpired term ending December 31, 2019. Judge Adams replaces Judge Katarina Cook who was elected to the Summit Co. Domestic Relations Court. [3/1/17](#)

Butler Co. Common Pleas Court

J. Gregory Howard, appointed to an unexpired term ending January 3, 2019. Judge Howard replaces Judge Craig Hedric who was passed away. [2/27/17](#)

Clermont Co. Common Pleas Court

Judge Anthony W. Brock, elected to a full term beginning January 1, 2017. Judge Brock replaces Judge Thomas R. Herman who retired. [1/1/17](#)

Clermont Co. Municipal Court

Jesse B. Kramig, appointed to an unexpired term ending December 31, 2017. Judge Kramig replaces Judge Anthony W. Brock who was elected to the Clermont Co. Common Pleas Court. [2/6/17](#)

Cleveland Municipal Court

Jimmy L. Jackson Jr., appointed to an unexpired term ending January 2, 2022. Judge Jackson replaces Judge Ed Wade who passed away. [1/3/17](#)

Cuyahoga Co. Common Pleas Court

Kelly Ann Gallagher, elected to a full term beginning January 1, 2017. Judge Gallagher replaces Judge Jose A. Villanueva who retired. [1/1/17](#)

Michael P. Shaughnessy, elected to a full term beginning January 5, 2017. Judge Shaughnessy replaces Judge Matthew Astrab who was defeated. [1/5/17](#)

Sherrie M. Miday, elected to a full term beginning January 5, 2017. Judge Miday replaces Judge Matthew A. McMonagle who was defeated. [1/5/17](#)

Cuyahoga Co. Domestic Relations Court

Tonya R. Jones, elected to a full term beginning January 19, 2017. Judge Jones replaces Judge Cheryl S. Kerner who retired. [1/19/17](#)

Delaware Co. Domestic Relations Court

Randall D. Fuller, elected to a full term beginning January 1, 2017. This is a new seat so there is not a former judge. [1/1/17](#)

Fifth District Court of Appeals

Earle E. Wise, elected to a full term beginning February 9, 2017. Judge Wise replaces Judge Sheila Farmer who retired. [2/9/17](#)

First District Court of Appeals

Marilyn Zayas, elected to an unexpired term ending February 9, 2019. Judge Zayas replaces Judge Peter J. Stautberg who was defeated. [12/19/16](#)

Charles M. Miller, appointed to an unexpired term ending February 9, 2019. Judge Miller replaces Judge Patrick Fischer who was elected to the Supreme Court of Ohio. [2/28/17](#)

Dennis P. Deters, appointed to an unexpired term ending February 11, 2019. Judge Deters replaces Judge R. Patrick DeWine who was elected to the Supreme Court of Ohio. [3/6/17](#)

Franklin Co. Common Pleas Court

Jeffrey M. Brown, elected to a full term beginning January 4, 2017. Judge Brown replaces Judge Patrick E. Sheeran who retired. [1/4/17](#)

Fulton Co. Common Pleas Court

Judge Jeffrey L. Robinson, elected to a full term beginning January 1, 2017. Judge Robinson replaces Judge James E. Barber who retired. [1/1/17](#)

Gallia Co. Common Pleas Court

Judge M. Margaret Evans, elected to a full term beginning January 1, 2017. Judge Evans replaces Judge D. Dean Evans who retired. [1/1/17](#)

Gallipolis Municipal Court

Eric R. Mulford, appointed to an expired term ending January 1, 2018. Judge Mulford replaces Judge Margaret Evans who was elected to the Gallia Co. Common Pleas Court. [1/15/17](#)

Geauga Co. Common Pleas Court

Carolyn J. Paschke, elected to a full term beginning January 1, 2017. Judge Paschke replaces Judge David L. Fuhry who retired. [1/1/17](#)

Guernsey Co. Common Pleas Court

Daniel G. Padden, elected to a full term beginning January 1, 2017. Judge Padden replaces Judge David A. Ellwood who retired. [1/1/17](#)

Hamilton Co. Common Pleas Court

Curt C. Hartman, appointed to an unexpired term ending February 10, 2021. Judge Hartman replaces Judge Beth Myers who was elected to the First District Court of Appeals. [3/20/17](#)

Hamilton Co. Juvenile Court

Judge Melissa A. Powers, elected to a full term beginning January 1, 2017. Judge Powers fills a vacant seat. [1/1/17](#)

Hamilton Co. Municipal Court

Gwendolyn M. Bender, appointed to an expired term ending January 4, 2020. Judge Bender replaces Judge Melissa Powers who was elected to the Hamilton Co. Juvenile Court. [2/6/17](#)

Jacqueline M. Ginocchio, appointed to an expired term ending January 3, 2018. Judge Ginocchio replaces Judge Lisa Allen who was elected to the Hamilton Co. Common Pleas Court. [2/6/17](#)

Hancock Co. Common Pleas Court

Judge Jonathan P. Starn, appointed to an expired term ending December 30, 2020. Judge Starn replaces Judge Joseph Niemeyer who retired. [3/3/17](#)

Knox Co. Common Pleas Court

Richard D. Wetzel, Jr., elected to a full term beginning January 1, 2017. Judge Wetzel replaces Judge Otho Eyster who retired. [1/1/17](#)

Lawrence Co. Common Pleas Court

Andrew P. Ballard, elected to an unexpired term ending February 8, 2021. Judge Ballard replaces Judge D. Scott Bowling who passed away. [1/1/17](#)

Logan Co. Common Pleas Court

William T. Goslee, elected to a full term beginning January 1, 2017. Judge Goslee replaces Judge Mark S. O'Connor who retired. [1/1/17](#)

Lorain Co. Domestic Relations/Juvenile Court

Sherry Glass Strohsack, elected to a full term beginning January 2, 2017. Judge Strohsack replaces Judge Debra L. Boros who retired. [1/2/17](#)

Mahoning Co. Common Pleas Court

Anthony M. D'Apolito, elected to a full term beginning January 1, 2017. Judge Brock replaces Judge Shirley J. Christian who was defeated. [1/1/17](#)

Morrow Co. Common Pleas Court

Tom C. Elkin, elected to a full term beginning January 1, 2017. Judge Elkin replaces Judge Howard E. Hall who retired. [1/1/17](#)

Ninth District Court of Appeals

Judge Thomas A. Teodosio, elected to a full term beginning February 9, 2017. Judge Teodosio replaces Judge Carla D. Moore who retired. [2/9/17](#)

Judge Lynne S. Callahan, elected to a full term beginning February 10, 2017. Judge Callahan replaces Judge Beth Whitmore who retired. [2/10/17](#)

Paulding Co. Probate/Juvenile Court

Michael A. Wehrkamp, elected to a full term beginning February 9, 2017. Judge Wehrkamp replaces Judge John A. DeMuth who was defeated. [2/9/17](#)

Second District Court of Appeals

Judge Michael L. Tucker, elected to a full term beginning February 11, 2017. Judge Tucker replaces Judge Mike Fain who retired. [2/11/17](#)

Shelby Co. Probate/Juvenile Court

Jeffrey J. Beigel, appointed to an unexpired term ending February 8, 2021. Judge Beigel replaces Judge William R. Zimmerman who was elected to the Third District Court of Appeals. [2/20/17](#)

Sixth District Court of Appeals

Christine Mayle, elected to a full term beginning February 9, 2017. Judge Mayle replaces Judge Steve A. Yarbrough who retired. [2/9/17](#)

Stark Co. Family Court

David R. Nist, elected to a full term beginning January 1, 2017. Judge Nist replaces Judge Michael L. Howard who retired. [1/1/17](#)

Summit Co. Common Pleas Court

Alison Breaux, elected to a full term beginning January 5, 2017. Judge Breaux replaces Judge Todd M. McKenney who was defeated. [1/5/17](#)

Summit Co. Domestic Relations Court

Judge Katarina Cook, elected to a full term beginning January 5, 2017. Judge Cook replaces Judge Carol J. Dezso who retired. [1/5/17](#)

Third District Court of Appeals

Judge William R. Zimmerman, elected to a full term beginning February 9, 2017. Judge Zimmerman replaces Judge Richard M. Rogers who retired. 2/9/17

Warren Co. Common Pleas Court

Timothy N. Tepe, elected to a full term beginning January 1, 2017. Judge Tepe replaces Judge Michael E. Gilb who was defeated. 1/1/17

Warren Co. Domestic Relations Court

Jeffrey T. Kirby, elected to a full term beginning January 1, 2017. Judge Kirby replaces Judge Timothy A. Oliver who retired. 1/1/17

Washington Co. Common Pleas Court

Mark Kerenyi, elected to a full term beginning January 1, 2017. Judge Kerenyi replaces Judge N. Edward Lane, Jr. who retired. 1/1/17

Wood Co. Common Pleas Court

Matthew L. Reger, elected to a full term beginning January 1, 2017. Judge Reger replaces Judge Robert C. Pollex who retired. 1/1/17





American Judges Association

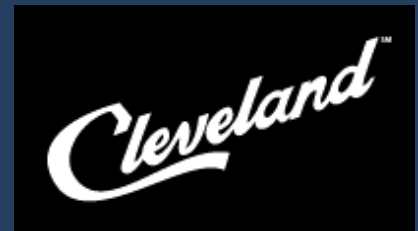
Cleveland and Ohio

are in the **spotlight** again, after having just hosted the **Republican National Convention**, won the **NBA basketball championship**, won the **MLB baseball American League championship**, won the **Hockey Calder Cup championship**, won the **Ultimate Fighting Championship**, won first choice in the **NFL draft** and . . . the **2017 American Judges Association Annual Meeting** will be held in . . .

Mark your calendars

September 11-15, 2017

Renaissance Hotel, Cleveland, Ohio



Cleveland and Ohio **own** this annual meeting. The Ohio judges on the AJA Board of Governors invited the Board to bring the 2017 Annual Meeting to Cleveland. The educational and social programs were designed by Ohio judges; Ohioans comprise 60% of the speakers, presenters, and moderators; and Ohio judges need to make this one of the best judicial educational and networking experiences the AJA has ever held.

Topics at the Annual Meeting (over 13 hours of CJE) include:

- Constitutional Law
- Courts and Technology: New Ways to Connect to Old Problems
- Unfair Fines, Fees, Costs and Bail
- Judicial Independence
- After the Bullets and the Verdict: Wrongful Death Lawsuits in Police Shooting Cases
- Procedural Fairness and Pretrial Justice for Juveniles and Adults
- Judges as Champions of the Constitutional Right to Counsel
- Courts as Problem Solvers: Veterans, Mental Health, Drugs, Domestic Violence and Human Trafficking Courts
- Begin the Conversation on Race Relations
- Media and Courts – Handling High Profile Cases – Managing the Message from the Courtroom
- Living Outside the Robe: How to Manage Life Beyond the Bench



Although membership in the AJA is not required for a judge to attend an annual or midyear AJA conference, however . . .

Consider joining the American Judges Association. Member benefits include:



- Court Review (Journal) -- Court technology, managing your staff, controlling your docket-a bench's eye view of information you won't find anywhere else. Published quarterly and accepting contributions from you.
- Annual Educational Conference -- Our annual meetings and educational conferences focus on new information you need to know: developments in court security, trends in jury reform, relationships between state and federal courts, new efforts in raising public trust and confidence in the judiciary, and more. And we do it live, in person, and among your peers.

- Reduced annual conference registration fees (membership in AJA is not required to attend the conference);
- AJA Blog hosted by Judge Kevin Burke of Minnesota;
- Better Networking Opportunities and improved access to a wide variety of opportunities to network virtually and face-to-face with judges across North America who will collaborate to make you a better judge and improve courts.

AJA Membership Dues:

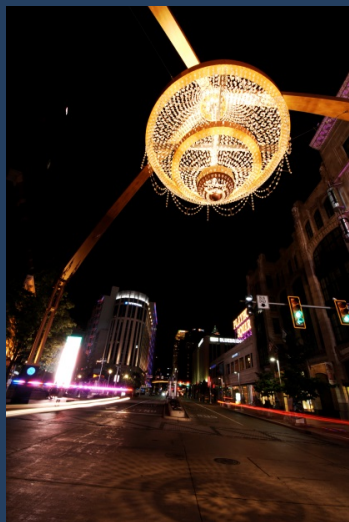
- \$175.00 Active-duty Judge (\$400.00 for three years of membership)
- \$65.00 Retired Judge
- Free Year - Newly elected/appointed (within the last twelve months)
- A 15% discount will be applied to the one-year dues of three or more judges on the same invoice.



About AJA:

The objective and purpose of the Association is: to promote and improve the effective administration of justice; to maintain the status and independence of the judiciary; to provide a forum for the continuing education of its members and the general public; and for the exchange of new ideas among all judges.

The American Judges Association was originally founded as the National Association of Municipal Judges (NAMJ) in 1959 at Colorado Springs, Colorado, by 30 municipal court judges. As the association's membership grew to include judges from other types of courts and from a wider geographical area, its name was changed to the American Judges Association in 1973. Currently, AJA has a membership exceeding 3,000 members, which includes both present and former judges of courts of all jurisdictions in the United States, Canada, Mexico, Puerto Rico, Guam, American Samoa and The Virgin Islands. Its Board of Governors is composed of representatives from fourteen districts.



For more information about joining the AJA or the Annual Meeting in Cleveland, contact:

Judge Eugene A. Lucci

Lake County Common Pleas Court,

(440) 350-2100, JudgeLucci@LakeCountyOhio.gov.

Photos Courtesy of ThisisCleveland.com

ENACTMENT NEWS

FROM THE 131ST GENERAL ASSEMBLY

House Bill 154 **Safe bicycle passing distance; malfunctioning traffic signals** *Effective March 21, 2017*

On December 19, 2016, Governor Kasich signed House Bill 154 into law. The bill specifies the minimum distance required for a motor vehicle to pass a bicycle, and clarifies the procedures to employ when a vehicle-detecting traffic signal is inoperable. The bill takes effect in March, 2017.

Bicycle-passing distance

Current law requires that when the operator of a motor vehicle wishes to pass another vehicle, the operator shall pass “at a safe distance” from the other vehicle. R.C. 4511.27(A)(1). H.B. 154 specifies that when a motor vehicle passes a bicycle, three feet or greater is considered a safe passing distance. Failure to comply with this regulation is a minor misdemeanor.

Malfunctioning traffic signal

Current law sets forth the procedure for proceeding through an intersection that is controlled by traffic-control signals if the signal facing the driver exhibits no colored lights or arrows, or fails to clearly indicate the assignment of right-of-way. (R.C. 4511.132). The procedure is: (1) Stop at a clearly marked line or before entering the intersection; (2) Yield the right-of-way to all vehicles; and (3) Proceed through the intersection. H.B. 154 allows a driver or operator to use the same outlined procedure should the signals otherwise be malfunctioning, including a failure of any vehicle detector to detect a vehicle, such as a bicycle (that may be too light to trigger the detection sensor to change the light).

House Bill 185 **Arson – unoccupied structures** *Effective March 21, 2017*

On December 19, 2016, Governor Kasich signed HB 185 into law. It modifies the offense of arson with regard to unoccupied structures, and creates a new affirmative defense. It takes effect in March, 2017.

Existing law generally prohibits causing, or creating a substantial risk of, physical harm to any property without the owner’s consent. R.C. 2909.03 (A). Lack of the owner’s consent, therefore, is an element of the offense of arson.

H.B. 185 modifies the law so that the lack of the owner’s consent is not an element of the offense when the property is not an occupied structure. Instead, it is an affirmative defense to an arson charge if the defendant acted with the consent of the owner of the unoccupied structure.

Unchanged by the bill, current law defines “occupied structure” as any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, or other structure, vehicle, or shelter, or any portion thereof, to which any of the following applies:

- It is maintained as a permanent residence or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present;
- At the time of the arson, it is occupied as the permanent or temporary habitation of any person, whether or not any person is actually present;
- At the time, it is specially adapted for the overnight accommodation of any person, whether or not any person is actually present;

At the time, any person is present or likely to be present in it.

House Bill 300
Termination of lifetime or 15-year license suspensions; granting of
limited driving privileges expanded
Effective March 14, 2017

Governor Kasich signed House Bill 300 into law on December 13, 2016. The bill goes into effect in March, 2017.

Timing for seeking termination or modification of lifetime or 15-year license suspension

A person whose driver's license has been suspended either for life under a class one suspension or for a period of at least 15 years under a class two suspension may, under current law, petition a court to modify or terminate the suspension if fifteen years have elapsed since the suspension began and during that period the person has no other moving violations or felony convictions, or if five years have elapsed since the suspension began and during that time the person has had no other moving violations or convictions of vehicular homicide or aggravated vehicular manslaughter. R.C. 4510.54.

H.B. 300 clarifies that the fifteen-year "waiting" period applies if the suspension was a result of a felony conviction, and the five-year period applies if the underlying offense was a misdemeanor. Additionally, the bill provides that if the suspension was the result of an OVI-related aggravated vehicular homicide conviction, the fifteen-year period begins not when the license suspension begins, but upon the offender's release from prison.

Limited driving privileges – purposes expanded

H.B. 300 adds two additional reasons for which a court may grant limited driving privileges: to attend any court proceeding related to the offense that resulted in the suspension, and to transport a minor child to school, day care, or any other location for the purpose of receiving child care.

HB 347

Civil Asset Forfeiture

Effective Date: April 2017

HB 347 was introduced in September of 2015, passed out of the House in May of 2016, and unanimously passed out of the Senate in December, 2016. It was signed by the Governor on January 4, 2017. The bill initially barred all civil forfeiture by completely removing Sec. 2981; it was amended considerably before its enactment to allow civil asset forfeiture in certain circumstances and to create a new criminal charge relative to civil asset forfeiture. A summary of the bill follows.

- For provisional title of property subject to *civil forfeiture*, a prosecutor must file a motion requesting a hearing and notify the property owner of the motion. A court must grant the motion if the prosecutor demonstrates by a preponderance of the evidence (rather than probable cause) that the property is subject to forfeiture. (RC 2981.03(A)(3)) An aggrieved party can file for a hearing on his interest in the property – the hearing must be scheduled not later than 21 days after filing, but the time can be extended for good cause shown. (RC 2981.03(A)(4)) An aggrieved person can also petition for conditional release; the court must decide on the petition within 21 days and within 10 days if the property is a mobile instrumentality.
- A complaint for civil forfeiture may only be filed if:
 - The property was seized with probable cause that it was involved in the commission of a felony or a “gambling offense” (defined in current law), or
 - The property was directly or indirectly obtained through the commission of a felony or gambling offense and either:
 - (1) the property owner is unavailable to the court because the property owner is
 - (a) deceased *[cannot be filed sooner than 3 months after owner is deceased and a certified death certificate must accompany the complaint]*, or
 - (b) the indictment or charge has been filed against the property owner or an arrest warrant has been issued, and the property owner is outside the state and unable to be extradited to the state for prosecution or reasonable efforts have been made by law enforcement authorities to locate the property owner, but the property owner has not been located *[cannot be filed sooner than 1 year after this circumstance applies]*, or
 - (2) the property owner has not claimed, or asserted any interest in, the property and all claims of aggrieved parties have been denied *[cannot be filed sooner than 3 months after this circumstance applies]* (RC 2981.05(A) and (J)).
- Note: current time frames for filing a civil forfeiture action are within 30 days of the seizure of the property, if alleged to be a mobile instrumentality or records, or within 60 days, subject to extension.
- For a final adjudication of forfeiture, the state must prove its case by clear and convincing evidence (current law requires preponderance of the evidence) (RC 2981.05(H)).
- Under the bill, the state may file a civil action against a person alleged to have received, retained, possessed, or disposed of proceeds exceeding \$15,000 *[this amount is tied to inflation and will be increased every January]* knowing or having reasonable cause to believe that the proceeds were derived from the commission of an offense “subject to forfeiture proceedings” (see above) (RC 2981.05(D)).
 - The complaint is to be filed in the court of common pleas in the county where the proceeds were allegedly illegally handled.
 - The complaint must contain the following information:
 - The person is alleged to have illegally handled \$15,000 or more in the commission of an offense subject to forfeiture
 - The state has a right to recover the proceeds so illegally handled
 - The actual amount of the proceeds

- A civil action is stayed if there is a commensurate criminal charge (RC 2981.05(D)(2) (see below).
- The state has to prove its case by clear and convincing evidence (RC 2981.05(D)(3)).
- The action must be commenced within two years after the alleged illegal handling of money and the court must complete the trial within one year, unless extended.
- The bill creates the criminal offense of “receiving proceeds of an offense subject to forfeiture proceedings” (RC 2927.21 (B),(C), (D), and (E)):
 - If the value of the proceeds is less than \$1,000 – an M1
 - If the value is \$1,000 or more, but less than \$25,000 – an F5
 - If the value is \$25,000 or more, but less than \$150,000 – an F4
 - If the value is \$150,000 or more – an F3
- The bill creates a rebuttable presumption that the person in possession of the property at the time of its seizure is considered to be owner of the property unless legal title states otherwise.
- The bill eliminates the condition under current law that a criminal forfeiture has not begun to allow a prosecutor to commence a civil forfeiture action (RC 2981.01(B)(10) and 2981.03(F)). The bill permits the prosecutor to commence a civil forfeiture action simultaneously with or after the filing of the complaint, indictment, or information, in the same court in which the applicable charging instrument is filed. The civil forfeiture action is stayed during the pendency of the criminal proceedings. (RC 2981.05(C)).
- The bill eliminates the current provision permitting a civil forfeiture action to be commenced regardless of whether the offender has pleaded guilty to, or been convicted of, the act that is the basis of the civil forfeiture order (RC 2981.03(F)).
- In a *criminal* forfeiture:
 - The burden of proof is changed to clear and convincing evidence (currently, it is a preponderance of the evidence). (RC 2981.04(B)).
 - A person is subject to criminal forfeiture not just if convicted (as under current law), but also if entering an intervention in lieu of conviction. (RC 2981.04(A)).
 - A third party claimant must assert in a petition that (1) the petitioner has a legal interest in the property or (2) the petitioner is a bona fide purchaser of the property. (RC 2981.04(E)(1)). A third party claimant cannot assert a claim for unreachable property. (RC 2981.06(D)(3))
 - Proportionality review requires the state to show by clear and convincing evidence that the amount of the seizure is proportionate to the offense. (RC 2981.09(A)) The property owner has the burden of showing the value of the property or hardship caused by seizure. (RC 2981.09(D)(2))
 - A standard of clear and convincing evidence is required to order forfeiture of non-forfeitable property in the value of property that is subject to forfeiture but is unreachable (currently, no standard is specified). If the state shows by clear and convincing evidence that property was transferred, sold, or deposited in violation of RC 2981.07 (Interference With or Diminishing of Forfeitable Property), then the state can only forfeit that property, and cannot forfeit non-forfeitable property of the same value instead.
 - Law enforcement is prohibited from transferring any property seized to any federal law enforcement authority or agency for forfeiture under federal law unless (RC 2981.14(A) and (B)):
 - The value of the seized property exceeds \$100,000 (minus the value of contraband, if it were to be sold); or
 - The property is being transferred for federal criminal forfeiture proceedings

RC 2329.84 (Goods in Execution Claimed by a Third Party) was modernized to eliminate the need for a summons commanding the sheriff to summon 5 disinterested men with the qualifications of electors to appear before the court not more than 3 days after the date of the writ to serve as jurors.

House Bill 388

Ignition Interlock Device Driving Privileges – “Annie’s Law”

Effective April 6, 2017

On January 4, 2017, Governor Kasich signed H.B. 388 into law. Known as “Annie’s Law,” the bill modifies OVI sentencing law, and is intended to incentive the use of ignition-interlock devices.

“Unlimited” IID privileges

Under existing law, first-time OVI offenders are subject to a mandatory driver’s license suspension. A court may grant “limited” driving privileges, allowing the offender to drive for occupational, educational, vocational, or medical purposes, to take a driver’s license examination, to attend court-ordered treatment, or any other purpose that the court determines to be appropriate (R.C. 4510.021(A)).

As an alternative to these “limited” driving privileges, H.B. 388 now allows first-time OVI offenders to petition the court for “unlimited driving privileges” with an ignition-interlock device (“IID”). Under these unlimited driving privileges, offenders can drive without limitation as to time, place, or purpose, provided they have IIDs installed in their vehicles. A court granting unlimited driving privileges may still impose other reasonable conditions upon the privileges, such as maintaining insurance and refraining from committing further traffic violations. Any mandatory jail time associated with the underlying OVI offense is to be suspended pending successful (i.e. no IID violations) completion of the licensee’s suspension period, and the court shall maintain jurisdiction over the offender until the expiration of the suspension period. If the offender violates any term or condition the court has imposed on the driving privileges, the court shall require the offender to serve the jail term. Additionally, courts may shorten the length of suspension for offenders on unlimited driving privileges (see below).

H.B. 388 does nothing to change the existing options pertaining to driving privileges during a mandatory suspension for first-time OVI offenders. That is, the court still has the discretion to deny any driving privileges all together, to grant “limited” driving privileges as they exist in current law, and, now, to grant “unlimited” driving privileges with an IID. Upon issuing an order requiring the use of an IID, the court shall provide notice to the offender of all the actions a court is authorized or required to take if the offender commits an IID violation (see below).

An offender who is granted unlimited-with-IID privileges is required to obtain from the Bureau of Motor Vehicles a restricted license. An offender who operates a vehicle before obtaining such a license is subject to the existing penalties for driving under OVI suspension (R.C. 4510.14).

IID violations

The bill defines an “ignition interlock device violation” as a certified device, installed in an offender’s vehicle, indicating that it has prevented the offender from starting a motor vehicle because the device was tampered with or circumvented, or the device detected the presence of alcohol on the offender’s breath. The manufacturer of the IID shall inform the court of any violations that occur. The penalties for an IID violation remain the same as in current law (R.C. 4510.13).

Upon any such IID violation, existing law allows the court to increase both the license suspension and the period of time which the offender is prohibited from exercising any limited driving privileges by a factor of two. Any increase in the suspension length cannot result in a suspension that is longer than what the court was originally authorized to order. If, however, the violation occurs within sixty days of the end of the suspension period, and the court does not impose an increased suspension by a factor of two, H.B. 388 requires the court to issue an order extending the suspension so that the suspension terminates sixty days from the date of the IID violation, regardless of whether this extension results in a suspension longer than what the court was originally authorized to order.

Change in ranges of suspension length

Under current law, a first OVI offense is subject to a suspension of six months to three years, a second offense is one to five years, and a third offense is two to ten years. H.B. 388 modifies these ranges as follows:

- First OVI offense: 1 to 3 years
- Second OVI offense: 1 to 7 years
- Third OVI offense: 2 to 12 years

If, however, a first-time OVI offender requests and is granted unlimited-with-IID privileges, the court may reduce the minimum length of the suspension by half (thus a minimum six-month suspension for unlimited-with-IID privileges).

10-year “lookback” period

The bill also modifies the “lookback” period for purposes of enhanced penalties for repeat OVI-related offenses. Under existing law, that period is six years, while H.B. 388 changes that period to ten years.

Additional court costs

When granting unlimited-with-IID privileges, H.B. 388 requires courts to impose an additional court cost of \$2.50, which may not be waived unless the offender is found to be indigent. This cost is to be used to fund the Department of Public Safety’s habitual OVI-offender registry. The court may also impose an additional \$2.50 cost to be deposited in the court’s special projects fund.

Restricted plates

The bill removes the requirement that an offender display restricted license plates following a second OVI offense. The bill retains the requirement for second-time offenders if the offender committed a “high test” violation or if the offender refused to submit to a chemical test and had previously committed an OVI offense within the preceding 20 years.



House Bill 410

Truancy Reform

Effective April 2017

House Bill 410, signed by the Governor on January 4, 2017, reforms Ohio's truancy laws. The bill eliminates the designation "chronic truant" and allows for adjudication of a "habitual truant" as an unruly child. An unruly habitual truant may be further adjudicated a "delinquent child" if the court order regarding the unruly adjudication is violated. The bill also prevents a school district from applying the district's zero tolerance policy for "excessive truancy", and prohibits a school from suspending, expelling, or removing a student based solely on absences, among other changes. Most provisions of the bill will go in effect in April 2017, with some provisions effective later.

Definition Changes

The bill eliminates all references to "chronic truant" and, instead provides that a child of compulsory school age who has already been adjudicated an "habitual truant" and who violates the court order regarding that adjudication, may be further adjudicated a "delinquent child" (RC 2151.011 & RC 2152.02).

The bill modifies the threshold calculation for a "habitual truant" from a specified consecutive number of days absent without excuse (five consecutive, seven in one school month, or 12 in a school year) to a specified number of hours (30 consecutive, 42 in one school month, or 72 in a school year) (RC 2151.011).

The bill simplifies the "unruly child" statute to include "[a]ny child who is an habitual truant from school," eliminating a reference to habitual truants "who previously had not been adjudicated an unruly child for being an habitual truant" (RC 2151.022).

Annual Juvenile Court Report Changes

Currently, juvenile courts are required to submit an annual report to the county commissioners under R.C. 2151.18. The bill changes the annual juvenile court report requirements to include the following information: (1) the number of children placed in diversion for a unruly child complaint filed based solely on a child being an habitual truant, (2) the number who successfully completed those diversion programs, and (3) the number who failed to complete the programs and were adjudicated unruly. Additionally, juvenile courts will now be required to file this annual report with the Supreme Court of Ohio (RC 2151.18).

Juvenile Court Jurisdiction and Procedure Changes

The bill modifies juvenile court jurisdiction to include a child who is alleged to be a delinquent child for violating a court order regarding the child's prior adjudication as an unruly habitual truant (RC 2151.23).

The juvenile court, upon the filing of a complaint that a child is unruly based on the child's habitual truancy, must consider an alternative to adjudication including diversion from the juvenile court system, as long as the child has not already failed to complete an available alternative. The "court shall consider the complaint only as a matter of last resort." The bill also allows the child to assert an affirmative defense that the child participated in and made satisfactory progress on an absence intervention plan or other alternatives to adjudication (RC 2151.27).

The bill mandates that the parent, guardian, or other person having control over the child is to be summoned to a hearing and directed to bring the child to the hearing in cases alleging delinquency for violating a court order regarding the child's prior adjudication as an unruly habitual truant (RC 2151.28).

If a child is adjudicated an unruly child for being a habitual truant, or a delinquent child for violating a court order regarding the child's prior adjudication as an unruly child for being an habitual truant, the court must provide notice to the child's school within 10 days (RC 2151.354 & RC 2152.19).

Any person having knowledge of a child who appears to be a delinquent child for violating a court order regarding the child's adjudication as an unruly child for being an habitual truant may file a sworn complaint against the child or child and parent, guardian, or person having care of the child (RC 2152.021).

School District Requirement Changes

The bill eliminates "excessive truancy" from a school district's zero tolerance policy for violent, disruptive, or inappropriate behavior (RC 3313.534). A school is prohibited from suspending, expelling, or removing a student based solely on absences without legitimate excuse beginning July 1, 2017 (RC 3313.668).

A school district is prohibited from carrying over any remaining part of an out-of-school suspension at the end of the school year into the following year, but is permitted to require the student to participate in a community service or alternative consequence for the number of hours equal to the remaining period of the suspension. A school district may allow the student to complete any assignments missed because of suspension (RC 3313.66).

Starting in the 2017-18 school year, school districts must adopt a new or amended policy on addressing and ameliorating student absences. The policy must provide a truancy intervention plan for any student who is excessively absent from school. The bill eliminated a requirement that the school incorporate into the policy an intervention strategy of assigning the habitual truant to an alternative school (RC 3321.191).

If a child is absent without legitimate excuse for thirty-eight or more hours in one school month, or sixty-five hours in one school year (just below the thresholds for habitual truancy) the attendance office must notify the child's parent, guardian, or custodian of the absences in writing within seven days after the date of the triggering absence (RC 3321.191).

Beginning in the 2017-18 school year, the school shall report to the Ohio Department of Education when a required notice is submitted to a parent, guardian, or custodian, when a child has been absent without legitimate excuse in excess of the threshold for an habitual truant, when a child that has been adjudicated an unruly child for being an habitual truant violates the court order regarding that adjudication, and when an absence intervention plan has been implemented for a child (RC 3321.191).

School Attendance Officer Changes

A school attendance officer must file a complaint in juvenile court on the sixty-first day after implementation of an absence intervention plan if the student 1) was absent without legitimate excuse the specified number of hours to be an habitual truant, 2) the school district made meaningful attempts to re-engage the student, and 3) the student refused to participate or did not make meaningful progress on the plan. If the sixty-first day falls over summer break, the school has discretion to extend the plan for thirty days into the next school year (RC 3321.13).

During the implementation phase of a student's absence intervention plan, if the student is absent without legitimate excuse for thirty or more consecutive hours or forty-two or more hours in one school month, the school attendance officer must file a complaint, unless the student has made substantial progress on the plan (RC 3321.13).

Absence Intervention Team

If the child is considered a habitual truant, the school shall assign the student to an absence intervention team within 10 days, but the bill exempts school districts with a chronic absenteeism percentage of less than 5% (RC 3321.19).

Within 14 days of a student's assignment to an absence intervention team, the team shall develop an intervention plan. Within seven days of the development of the plan, the school shall make reasonable efforts to notify the parent, guardian, custodian or guardian ad litem with written notice of the plan. The school has discretion to contact the juvenile court to ask to have the student informally enrolled in an alternative to adjudication. If the child becomes habitually truant within the final 21 days of the school year, the school may assign one official to work on an absence intervention plan during the summer (RC 3321.191).

Required membership of each absence intervention team includes a representative from the child's school district or school, another representative from the school district or school that knows the child, and the child's parent, guardian, guardian ad litem. The school must select the team within seven school days of the triggering absence. Within that period of seven days, the school shall make at least three meaningful, good faith attempts to secure participation from the parents, guardian, custodian, or guardian ad litem. If the parent, guardian, custodian, or guardian ad litem fail to respond within seven days, the school shall investigate whether the failure triggers mandatory reporting to a public children services agency, and develop an intervention plan notwithstanding the absence (RC 3321.191).

Additional Consequences for Truancy

Contributing to the Unruliness or Delinquency of a Child (R.C. 2919.24) now includes the act of contributing to an adjudication of a delinquent child based on the child's violation of a court order adjudicating the child unruly for being a habitual truant.

The bill specifies that a parent, guardian, or custodian of an adjudicated truant child must provide a surety bond in the sum of not more than \$500 as required by the court (RC 3321.38).

House Bill 432

Omnibus Probate Bill; SB 358

Effective April 6 2017

On January 4, 2017, the Governor signed House Bill 432, the “Omnibus Probate Bill,” which modifies the Franklin County Guardianship Service Board, the Uniform Simultaneous Death Act, the Ohio Trust Code, the Uniform Principal and Income Act, and the Ohio Transfers to Minors Act, and adopts guardianship land sale provisions and the Revised Uniform Fiduciary Access to Digital Assets Act. The bill will be effective in April, 2017.

Computerization Fee Increases Removed

The bill had included an OJC Legislative Platform item meant to bring parity of computerization fees across jurisdictions; the bill was amended prior to enactment to remove the computerization fee increases for county, domestic relations, juvenile, municipal, and probate courts.

SB 358 (Revised Uniform Fiduciary Access to Digital Assets Act)

Prior to enactment, the bill was amended to include Senate Bill 358, the Revised Uniform Fiduciary Access to Digital Assets Act (RUFADAA) which provides fiduciaries with specific authority to access, control, or copy digital assets and accounts and applies the same legal standards to fiduciaries managing digital assets as fiduciaries managing tangible property. Definitions for dozens of relevant terms are provided (RC 2137.01). The RUFADAA provisions do not apply to digital assets of an employer used by an employee in their business (RC 2137.02).

The RUFADAA provisions grant users of “online tools” the power to direct a custodian to disclose digital assets to designated recipients (an example of an online tool is Gmail’s “Inactive Account Manager” which sends out notices to designated recipients after specified periods of time, such as three months of inactivity). If the user does not have an online tool to give direction for digital assets, another method may be used, such as a will or power of attorney (RC 2137.03).

RUFADAA grants an account custodian discretion to grant full or partial account access to a fiduciary and no requirement to release digital assets deleted by the user. If segregation, per a request for some but not all assets, would pose an undue burden on the custodian, the custodian or fiduciary may seek a court order (RC 2137.05(D)) to release some, all, or no digital assets, or to release them in camera to the court.

If a deceased user consented to or a court directs disclosure of the contents of electronic communications of the user, the custodian must disclose the content of electronic communications, if the custodian receives from the estate: (1) A written request for disclosure in physical or electronic form; (2) A copy of the death certificate of the user; (3) A copy of the letter of appointment; (4) a copy of the user’s will, trust, power of attorney, or other record evidencing the user’s consent (assume online tools are not used); and (5) certain other documents the custodian can request. (RC 2137.06) The same documents are required for a custodian to release the content of electronic communications to an agent, per a power of attorney. (RC 2137.08) The same documents are required for a custodian to release a catalogue of electronic communications (without content) to the estate, although the custodian cannot release such a catalogue if prohibited by the user or if otherwise ordered by the court. (RC 2137.07)

A custodian must comply with a request for digital asset information within 60 days after receipt of necessary documents under RC 2137.06 – 2137.13 (a request for disclosure, a death certificate, etc.). If a custodian fails to comply, the fiduciary may seek a court order directing compliance (RC 2137.15).

Any digital assets held in a trust must be disclosed by a custodian to a trustee that is an original user of an account (RC 2137.09). If the trustee is not an original user and wants access to electronic communication contents, the trustee must provide the custodian with (1) a written request and (2) a trust instrument or certification granting access to electronic communications contents (RC 2137.11). If a trustee is not an original user and wants access to digital assets and a catalogue of electronic communications (without content), the trustee must provide the custodian with 1) a written request, and 2) a trust instrument or certification (RC 2137.11).

A court may grant a guardian access to the digital assets of a ward, after the opportunity for a hearing. A guardian may then request the custodian to suspend or terminate a digital account of the ward (RC 2137.13).

The bill also updates Ohio's statutory power of attorney form for property to include digital assets and electronic communications (RC 1337.60).

Franklin County Guardianship Service Board

The bill grants the director of the Franklin County Guardianship Service Board (or a designee) authority to act on behalf of the board and allows the board to charge reasonable fees for services to wards (RC 2101.026).

Uniform Simultaneous Death Act (USDA)

The bill changes the description of "living person" to a person who was living at the death of the intestate and survived the death of the intestate by at least 120 hours; and changes the description of "dead person" as a person having died before the intestate or failing to live at least 120 hours after the intestate (RC 2105.02). No descendant can inherit from an intestate unless the descendant survives the intestate by at least 120 hours, or is born within 300 days after the intestate's death and lives for at least 120 hours (RC 2105.14).

If a title or interest depends on surviving the death of an individual, and the survivor does not establish by clear and convincing evidence that the survivor outlived the other individual by 120 hours, the survivor is considered predeceased (RC 2105.32). If a co-owner with rights of survivorship in property or an account does not establish by clear and convincing evidence that the co-owner survived the other co-owner by 120 hours, then one-half of the property passes as if one co-owner survived the other by 120 hours and one-half passes as if the other co-owner survived the one by 120 hours; if there are more than two co-owners with right of survivorship in property or an account and it is not established by clear and convincing evidence that at least one co-owner survived the others by 120 hours, the property passes proportionally (RC 2105.32).

The definition of death in RC 2108.40, a cessation of the functions of the brain, is included in this section (RC 2105.35).

A "transfer-on-death designation affidavit" is a "governing instrument" (RC 2105.31), similar to a deed, will, trust, annuity, or pension, which determines the conveyance of property testate or intestate.

Automobile Allowance for Surviving Spouse

The bill eliminates the two car limit automobile allowance for a surviving spouse (RC 2106.13) and increases the maximum total value of automobiles that may be transferred to the surviving spouse from \$40,000 to \$65,000 (RC 2106.18).

Wills and Will Deposits

The bill creates conflicting statutory language on will deposit fees. Prior to enactment, language in the probate court fee statute that would have increased the will deposit fee from \$5 to \$25 was stricken, leaving the fee statute unchanged (RC 2101.16). But the bill modifies the will deposit statute to require payment of \$25 (RC 2107.07).

The bill amends the will deposit statute to clarify that a will may be deposited “before or after the death of the testator, and if deposited after the death of the testator, with or without applying for its probate.” If the will is not delivered or disposed of after 100 years, the judge may dispose of the will after making an electronic copy. The bill also clarifies that a deposited will is not a public record until probated (RC 2107.07).

If a beneficiary to a will is aware of the will and prevents or neglects to have it probated for one year after the testator’s death, property will pass as if that beneficiary predeceased the testator (RC 2107.10).

Guardianship Land Sales

RC 2127.012 creates the option of selling real estate from a guardianship estate by filing the same type of consents as in the sale of a decedent’s estate, in other words: if all interested parties provide written consent; the sale price is at least 80% of a recent, appraised value; neither the ward’s spouse or next-of-kin are minors; and the guardian provides sufficient bond to the court (R.C. 2127.10).

Ohio Trust Code Changes

To the extent there is no conflict of interest between the holder of a limited testamentary power of appointment or a presently exercisable limited power of appointment and the persons represented with respect to the particular question or dispute, the bill authorizes a holder may to also represent and bind persons whose interests as possible appointees are subject to the power. (RC 5803.02).

The bill also authorizes an agent under a power of attorney to create a trust for a principal, whether or not the principal has capacity to create the trust and indicates an intention to create the trust, but only as provided in RC 1337.21 to 1337.64 (Uniform Power of Attorney Act) (RC 5804.02).

Ohio Transfers to Minors Act (OTMA)

The bill amends the definition of “minor” within OTMA provisions to permit the holding of custodial property to be delayed until after the minor turns 21, if the later date is specified in the written instrument that provides for the gift or transfer. The specified time must be no later than the date the minor turns 25 (RC 5814.01 and RC 5814.09). If the minor dies after age 21, but prior to attaining the specified age, the custodian must deliver the property to the minor’s estate (RC 5814.09). The bill also increases the transfer amount requiring court authorization from \$10,000 to \$25,000 (RC 5814.01).

The OTMA provisions allow a donor or transferor of a gift to a minor to designate one or more successor custodians (RC 5814.01) and for custodians themselves to also designate one or more successor custodians (RC 5814.06).

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House Bill 436

Vehicle Immobilization & Driving Privileges

Effective April 6, 2017

On January 4, 2017, Governor Kasich signed H.B. 436 into law. An OJC Legislative Platform item, H.B. 436 takes effect in April, 2017.

Current law allows a court to grant limited driving privileges to a second-time OVI offender after 45 days of the mandatory driver's license suspension. However, the offender's vehicle is required to be immobilized for 90 days.

H.B. 436 corrects this inconsistency by allowing the court, upon the granting of limited driving privileges, to order the termination of the 90-day immobilization. If the court terminates the suspension and the offender subsequently violates a condition of the driving privileges, the court may reinstate the balance of the immobilization period that had been terminated.

House Bill 451

Life-Sustaining Treatment Statutory Priority Changes

Effective April 6, 2017

HB 451 provides that an individual's statutory priority to decide whether or not to withhold or withdraw life-sustaining treatment for the individual's relative is forfeited if any of the following applies: (1) the individual is married to the patient and they are parties to a pending divorce, dissolution, legal separation, or annulment; (2) the individual is the subject of a protection order, and the patient is the alleged victim; or (3) the individual has been charged with felonious or aggravated assault and the harm suffered by the patient as a result of the offense directly caused the patient to be in a terminal condition. (R.C. 2133.08(C)(2))

If an individual is not permitted, under R.C. 2133.08(C)(2), to decide whether or not to consent to withholding or withdrawing life-sustaining treatment for a relative, that individual also cannot object to consent given by a priority individual or class of individuals that is permitted to make that decision (R.C. 2133.05(B)(1)).

Pursuant to R.C. 2133.09, if a probate court hearing is ordered to determine whether to withhold or withdraw nutrition and hydration from a patient who has been in a permanent unconscious state for at least 12 months, then an individual whose statutory priority is forfeited under R.C. 2133.08(C)(2) is considered not competent to testify at the hearing. Also, such an individual may not commence an action in probate court for an order mandating comfort care (R.C. 2133.12(E)(2)(c)).

If an attorney-in-fact under a healthcare power of attorney agreement is the subject of a protection order and the principal is the alleged victim, the bill precludes the attorney-in-fact from making decisions pertaining to the use or continuation of life-sustaining treatment, nutrition, or hydration to a principal (R.C. 1337.13(H)). The principal's attending physician makes the determination, in good faith, whether the attorney-in-fact can or cannot refuse or withdraw treatment because the attorney-in-fact is the subject of a protection order and the principal is the alleged victim.

HB 463

Expedited Foreclosure

Effective Date April 6, 2017

HB 463 was introduced in February, 2016, and was composed of two main parts: (1) a part that created an expedited foreclosure process for vacant and abandoned buildings and (2) a part that created a procedure by which a judgment creditor could utilize a private selling officer to sell a foreclosed property. Those provisions were enacted in May 2016 as part of HB 390 and became effective September 28, 2016. HB 463, then, was amended to include adjustments to the recently enacted processes and, right before passage, was enacted to include some unrelated bills concerning housing discrimination cases before the Civil Rights Commission, UCC updates, and local elections. The bill was signed by the Governor on January 4, 2017 and will become effective in April, 2017. A summary of the bill follows.

EXPEDITED FORECLOSURE:

- A court is required to hold an oral hearing in determining whether to proceed in an expedited manner in a foreclosure action (although this was the intent in the earlier version of the bill, it was not explicit). (RC 2308.02(C))
- When both a judgment creditor and the first lienholder seek to redeem a foreclosed property, the first lienholder prevails. (RC 2329.311(B))

HOUSING CIVIL RIGHTS:

- Current actual damages and attorney's fees in housing discrimination cases before the Civil Rights Commission are mandatory; the bill makes them permissive. (RC 4112.05(G)(1)(a))
- Currently, the Civil Rights Commission can award a complainant punitive damages; the bill instead allows the Commission to assess a civil penalty against a person found to have engaged in housing discrimination; the penalty is paid to the state. Current actual damages are not altered by the bill. (RC 4112.05(G)(1)(b))

CHANGES TO OHIO UCC LAWS:

- "Writing" or "written" in the UCC on commercial paper and bank deposits is changed to "record" to allow electronic records and signatures. (RC 1303.05(A)(2), (A)(3), and (B))
- Suretyship and guaranty rules are modernized. (RC 1303.01(B)(2) and 1303.59(G))

LOCAL ELECTIONS:

- If a board of elections or the Secretary of State determines that a local initiative petition does not fall within the scope of a local government's constitutional authority, the board of elections or the Secretary of State is required to invalidate the local initiative petition; examples provided during hearings included municipal marijuana legalization and local minimum wage laws. (RC 307.95(B)) This provision may be unconstitutional, both as a violation of separation of powers and as an infringement on the people's power of initiative.

A municipal recall petition is not valid after 90 days after the date of the first signature; the recall election must be held at the next primary or general election 90 days after the petition is certified. (RC 705.92)

Senate Bill 30
Ohio Family Stability Commission
Effective March 20, 2017

SB 30 enacts R.C. 5101.345 to create the Ohio Family Stability Commission within the Ohio Department of Job and Family Services. The Commission will consist of twenty-five members with expertise in a variety of areas. Of the experts required to be on the Commission, two are required to have expertise of the judicial system, and two are required to have expertise in criminal justice.

The Commission must conduct research on societal issues impacting family stability, specifically the divorce rate and ways to minimize it, the birth rate among unmarried individuals, the rate of domestic violence and child abuse, and child support and child custody. The Commission is to report to and provide recommendations to the General Assembly. The bill automatically repeals the newly-created Commission after four years.

Senate Bill 139
Postconviction relief in death-penalty cases
Effective April 6, 2017

On January 4, 2017, Governor Kasich signed Senate Bill 139 into law. The bill pertains to the procedures courts and clerks must follow when considering postconviction relief petitions in death-penalty cases. The bill takes effect in April, 2017.

S.B. 139 incorporates several of the recommendations of the Joint Task Force to Review the Administration of Ohio's Death Penalty. Specifically, the bill:

- Allows a person who had been sentenced to death to file a petition requesting postconviction relief if the person claims that there was a denial or infringement of the person's rights under the Ohio or U.S. Constitution that creates "a reasonable probability of an altered verdict."
- Requires a clerk of court, when the court imposes a sentence of death, to make and retain a copy of the entire record, and deliver the original record in its entirety to the court of appeals.
- Allows a court to authorize depositions, subpoenas, and other forms of discovery in postconviction relief proceedings in death-penalty cases. For good cause shown, the court may permit the petitioner or the prosecutor to take depositions of or issue subpoenas (1) to witnesses who testified at trial, or who were disclosed by the state prior to trial, if, by clear and convincing evidence, the witness is material and a deposition or subpoena is of assistance in substantiating or refuting the petitioner's claim that there is a reasonable probability of an altered verdict, or (2) to any other witness if there is good cause that the witness is material and that a deposition or subpoena is of assistance in substantiating or refuting the petitioner's claim that there is a reasonable probability of an altered verdict.
- Provides that there is no page limit for petitions for postconviction relief in a death-penalty case.

Requires a judge who considers a petition for postconviction relief filed by a person who had been sentenced to death to state specifically in the findings of fact and conclusions of law the reasons for a dismissal, denial, or granting of relief.

SB 199
Concealed Carry Law – Active Military
Effective Date: March 20, 2017

Senate Bill 199 was signed by the Governor on December 19, 2016. It becomes effective on March 20, 2017. The Act makes changes to concealed carry law.

The Act exempts “active duty” members of the armed forces of the United States from certain prohibitions on carrying concealed handguns and from the requirement to have a concealed carry license so long as the person is carrying:

- 1) A valid military identification card;
- 2) Documentation of successful completion of firearms training that meets or exceeds the training requirements to obtain a concealed carry license in Ohio.

(R.C. 1547.69, 2923.12, 2923.121, 2923.122, 2923.123, 2923.126, 2923.16)

Provides that a person on active duty who is not able to promptly produce a valid military identification card and documentation of successful completion of firearms may be issued a citation and assessed a civil penalty of up to \$500. The citation is automatically dismissed, and the penalty not assessed if:

- 1) Within 10 days of the issuance of the citation the offender presents a valid military ID and documentation of successful completion of firearms training, which were both valid at the time of the issuance of citation, to the law enforcement agency that employs the citing officer;
- 2) At the time of the citation, the offender was not knowingly in a place described in division (B) of section 2923.126.

Specifies the penalties for a person who is not authorized to carry a handgun and who is knowingly in a place described in division (B)(5) of section 2923.126 (i.e. any public or private college, university, or other institution of higher education).

(R.C. 2923.12)

Exempts individuals who have a valid concealed carry license and “active duty” members of the military from the prohibition against conveying or attempting to convey a handgun, or possessing a handgun, in a school safety zone as long as the person, in addition to having a valid license or meeting the above requirements for “active duty,” leaves the handgun in a motor vehicle and locks the motor vehicle. (R.C. 2923.122)

The Act makes several changes to division (B) of R.C. 2923.126 regarding prohibited places to carry a concealed weapon even with a license or as an “active duty” firearm carrier. The Act retains the prohibition, at R.C. 2923.126(B)(3), against a concealed carry licensee bringing a handgun into a courthouse or a building where a courtroom is located. Among other things, the Act alters a separate provision which now prohibits the carrying of a concealed weapon into any building that is a government facility or a political subdivision (that is not a building that is used primarily as a shelter, restroom, parking facility, or rest facility) “*unless the governing body with authority over the building has enacted a statute, ordinance, or policy that permits a licensee to carry a concealed handgun into the building.*” Note that this has the potential to impact any employees of the court who are housed in a building separate from the courthouse (e.g. probation departments). (R.C. 2923.126(B)(7))

Modifies the prohibition against carrying a concealed handgun to institutions of higher learning, day care facilities, aircraft, and public areas of airport terminals. (R.C. 2923.126)

Prohibits a business entity, property owner, or public or private employer from establishing, maintaining, or enforcing a policy or rule that prohibits or has the effect of prohibiting a person who has been issued a concealed carry license from storing a firearm or ammunition in a motor vehicle subject to certain conditions. Exempts these same entities from any civil liability. (R.C. 2923.1210)

Authorizes the selling or furnishing of a firearm to active duty members of the military who are between 18 – 21 years old and who meet the previously stated requirements regarding ID and training. (R.C. 2923.21)



SB 227

Attorney General Reforms

Effective Date: April 2017

Senate Bill 227 was signed by the Governor on January 4, 2017. The Act makes various changes to the laws governing the duties and functions of the Attorney General and modifies judgment dormancy law. The following are portions of the bill that are of relevance to the courts.

- Current law requires any party that requires or requests a financial institution to assemble or provide a customer's financial records in connection with any investigation, action, or proceeding, to pay the financial institution for all actual and necessary costs incurred. When these costs are incurred as part of a judicial proceeding, payment is in addition to any witness fees. The Act exempts the state from the obligation to pay when the records are required under a subpoena, demand for production, request for records, or demand for inspection issued by or on motion of the Attorney General or the Organized Crime Investigations Commission. (R.C. 9.02)
- Removes the requirement that the Attorney General ensure that its public records and open meetings law training programs be CLE accredited by the Supreme Court of Ohio's Commission on Continuing Legal Education. (R.C. 109.43)
- Requires a court to take a person's or child's fingerprints at the time of sentencing or adjudication, or order them to appear before the sheriff or chief of police to do so, if fingerprinting was required but not done at the time of arrest, arraignment, or first appearance. (R.C. 109.60)
- Amends the state anti-trust law to include within the definition of "trust" a "combination of capital, skill, or acts by two or more bidders or potential bidders, or one or more bidders or potential bidders and any person affiliated with a public office, to restrain or prevent competition in the letting or awarding of a public contract in derogation of any statute, ordinance, or rule requiring the use of competitive bidding or selection in the letting or awarding of the public contract." Increases the penalty for conspiracy against trade from a first degree misdemeanor to a fifth degree felony and, under certain circumstances outlined in the Act, to a fourth degree felony. (R.C. 1331.04 and 1331.99)
- Specifies for the purposes of the consumer sales practices act that the failure of a supplier to obtain or maintain any registration, license, bond, or insurance required by state law or local ordinance for the supplier to engage in the supplier's trade or profession is an unfair or deceptive act or practice. Specifies that certain currently prohibited activities, such as encouraging a consumer to default on a mortgage or loan agreement, constitute an unconscionable act or practice in connection with a consumer transaction. (R.C. 1345.02, 1345.07, 1345.031)
- Specifies for the purposes of the consumer sales practices act that notice of cancellation of a prepaid entertainment contract may be given by email or fax in addition to manual delivery, personal delivery, and delivery by certified mail. (R.C. 1345.24, 1345.43, 1345.44)
- Adds two sections that prevent a judgment from going dormant:
 - An order of garnishment that is issued or is continuing, or until the last garnishment payment is received by the court clerk or the garnishee files the final report, whichever is later;
 - A proceeding in aid of execution that is commenced or is continuing (R.C. 2329.07)
- Adds to the definition of an "offense of violence" patient abuse committed by a person who owns, operates, or administers, or who is an agent or an employee of, a "care facility" against a resident or patient of the facility. (R.C. 2901.01)
- Requires that any "child pornography" that is offered as evidence or that comes into the custody or control of the prosecutor or the court remain in the custody or control of the prosecutor or the court. Requires a court to deny a defendant's request to reproduce any child pornography if the prosecutor gives the defendant, the defendant's attorney, and any individual the defendant seeks to qualify as an expert witness ample opportunity to examine the child pornography where it is being held. (R.C. 2945.63)
- Requires a probation officer or county department of probation that is directed by the court to make written reports concerning a person whose record is being sealed to determine whether the person was previously fingerprinted, and if so, to include a record of those fingerprints with the written report.

If the person was not previously fingerprinted, the court must order the person whose record is being sealed, to be fingerprinted by the sheriff; the sheriff must forward those fingerprints to the court, and the court must forward the fingerprints and a copy of the sealing order to BCII. (R.C. 2953.32)

Modifies the Medicaid Estate Recovery Program form to require a beneficiary to indicate whether the deceased owner had ever been a Medicaid recipient or the beneficiary's lack of knowledge on the subject; the same is required regarding a predeceased spouse. (R.C. 5302.221)

Senate Bill 232

Death Designation Deeds; Posthumously Born Children

Effective March 2017

On December 13, 2016, the Governor signed Senate Bill 232, which changes the law on posthumously born children and transfer on death designation deeds, and adopts new law regarding trust beneficiary rights for children born via assisted reproductive technology. The bill will be effective in March 2017.

Posthumously Born Children Changes

The bill provides that no descendant can inherit from an intestate unless that person survives the intestate by at least 120 hours, or is born within 300 days after the intestate's death and lives for at least 120 hours after birth (RC 2105.14). Any person born more than 300 days after the death of a testator shall not inherit from the will unless the will clearly provides otherwise. Under this section, any posthumously born child must be born within one year and 300 days to inherit. This requirement does not apply to testamentary trusts. The bill also clarifies that children born after the making of a will shall take testamentary shares (RC 2107.34).

The bill adds posthumously born children, including those born through assisted reproductive technology, as an exception to the requirement that an administrator and executor render a final account of their administration of an estate within six months after appointment (RC 2109.301).

Transfer on Death Designation Changes

The bill modifies the designating transfer on death beneficiary statute to clarify that when a spouse is designated the transfer on death beneficiary for real property, but there has been a subsequent divorce, dissolution, or annulment, the spouse shall be deemed to have predeceased the owner of the real property. This is applicable to both transfer on death affidavits and deeds (RC 5302.23). The bill provides that the above changes regarding divorced, dissolved or annulled marriages are an exception to the general rule that RC 5302.23 is prospective, thus applying these specific changes retroactively (RC 5302.24).

Children Born Via Assisted Reproductive Technology (ART)

The bill adopts new provisions to govern the trust beneficiary rights of children born through assisted reproductive technology (ART). No child born via ART more than 300 days after the death of a trust settlor shall be considered the settlor's child unless the trust clearly provides otherwise. No other person born via ART more than 300 days after the event that caused a class of trust beneficiaries to close shall be included in that class, unless the terms of the trust clearly provide otherwise. If the terms of a trust provide for children or other persons born via ART and provide for a time period longer than 300 days, that time period applies, up to a maximum period of five years after the settlor's death or other event. If the terms of the trust provide for children or persons born via ART, but do not provide a time period, the maximum period is one year and 300 days (RC 5801.12).

Senate Bill 319

Opiate Mid-Biennium Review; HB 325

Effective April 2017

On January 4, 2017, the Governor signed SB 319 into law. SB 319, termed the Opiate Mid-Biennium Review, contains mostly changes to Pharmacy Board regulations. Relevant to courts, the bill permits certain entities, including courts and probation departments, to procure naloxone for use in emergency overdose situations. (R.C. 4729.514(A)). The bill also provides limited civil, criminal, and professional immunity to employees, volunteers, or contractors of these entities when administering naloxone (R.C. 3707.562(E) and 4731.943(E)), per a written protocol provided by a physician. The bill authorizes community addiction services providers to utilize time-limited recovery supports as part of medication-assisted treatment for certain offenders within certified drug court programs. (R.C. 331.90(E)).

Prior to enactment, SB 319 was amended to contain HB 325, regarding treatment for pregnant women on controlled substances. The amended bill enacts R.C. 2151.26 to preclude a public children services agency from filing a complaint alleging a newborn is abused, neglected, or dependent if the sole basis of the complaint is that the mother used a controlled substance while pregnant, as long as the mother does all of the following: (1) enrolls in drug treatment before the end of her 20th week of pregnancy, (2) completes a treatment program or is in the process of completing a treatment program, and (3) maintains her regularly scheduled appointments and prenatal care for the duration of the pregnancy.

If the mother enrolled in treatment after the 20th week of pregnancy, the agency may file a complaint based solely on the mother's use of controlled substances while pregnant, but the court has discretion to (1) consider the complaint, (2) hold the complaint in abeyance if the mother is in the process of completing a treatment program and maintaining her appointments and prenatal care, or (3) dismiss the complaint if the treatment program was completed and the mother maintained her appointments and prenatal care.

The bill does not prevent public children services agency from filing a complaint if the agency determines the mother or any other adult is unable to provide adequate parental care for the newborn.

Evidence of controlled substance use from a test or screening to determine pregnancy or provide prenatal care is not admissible in a criminal proceeding against the woman screened (R.C. 2945.65), but other evidence of drug use can still result in a criminal prosecution.

Senate Bill 331
Sexual conduct with an animal – Cockfighting, bearbaiting
Effective March, 2017

On December 19, 2016 the Governor signed into law Senate Bill 331. Originally introduced to regulate the sale of dogs by pet stores and retailers, the bill received a number of amendments before passage during the lame duck session, several of which created or expanded criminal offenses pertaining to animals.

Sexual conduct with an animal

SB 331 prohibits engaging in sexual conduct (defined in the bill) with an animal. The bill also prohibits the possession, sale, or purchase of an animal with the intent that the animal be subjected to sexual conduct, as well as organizing, promoting, aiding, or abetting the conduct of an act involving sexual conduct with an animal. Law enforcement officers may seize and cause the animal(s) involved in the offense to be impounded. A violation is a second-degree misdemeanor, and the court may order the offender to forfeit the animal(s). If the court finds the offender suffers from a mental or emotional disorder, and that the disorder contributed to the commission of the offense, the court may require, as a community-control sanction or condition of probation, a psychological evaluation or counseling, with costs assigned to the offender.

Cockfighting and bearbaiting

Existing law prohibits engaging in or being employed at cockfighting, bearbaiting, or pitting an animal against another, receiving money for admission to a place kept for such a purpose, or using, training, or possessing any animal for seizing, detaining, or mistreating another animal.

SB 331 expands this prohibition to include the following activities with respect to an event involving cockfighting, bearbaiting, or pitting an animal against another:

- Wagering money or anything else of value on the results of the event
- Paying money or anything else of value in exchange for admission to the event
- Receiving money or anything else of value in exchange for another person's admission to the event
- Using or possessing a substance or device intended to enhance an animal's ability to fight or inflict injury on another animal
- Permitting or causing a minor to be present at the event if any other person at the event is engaged in any of the activities listed above.

A person who engages in cockfighting or bearbaiting is guilty of a felony of the fourth degree, while a person who engages in any of the activities listed above is guilty of an unclassified felony, and the court may impose a fine of up to \$10,000. Knowingly witnessing cockfighting, bearbaiting, or an event in which animals are pitted against one another and any of the above-listed activities occur constitutes aiding and abetting, and is similarly an unclassified felony.

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WELCOME



WEEKLY FYI:



NATIONAL NEWS:

- Arkansas's Cruel and Unusual Killing Spree
- I Went to a Town Hall Meeting in a County Ravaged by Opioids. What I Saw Broke My Heart.
- OxyContin Maker Asks Judge to Toss Case Brought by City
- Gorsuch Might Be Tough to Predict on Criminal Justice Cases



STATE NEWS:

- Justice Insider: Murderer's Attorney Tries Punctuation Defense in Sentencing
- Summit Prosecutor Campaign Reaches out to Victims in Different Languages
- Drunken Driver Gets 180 Days After Coroner's Office Says Crash Victim Died of Cancer
- Retired Stark County Family Court Judge Michael Howard to Speak at 2017 LEAD Conference at Georgetown University

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SUPREME COURT OF OHIO JUDICIAL COLLEGE COURSE CALENDAR

*(for Judges, Magistrates, Acting Judges, Court Personnel, Judicial Candidates, Probation Officers,
Adult Guardians and Guardians ad Litem)*

Additional Judicial College courses are available online for self-study hours via the link below.
<http://www.supremecourt.ohio.gov/Boards/judCollege/calendars/17OnlineSS.pdf>

Note: Listed judicial and professional conduct hours are projections. Refer to course announcements for final and approved judicial college hours.

<u>DATE</u>	<u>COURSE</u>	<u>FOR</u>	<u>LOCATION</u>
April 2017			
4 Tue	Probation Officer Training Program	Probation Officers	Dayton
6 Thu	Supervisor Series (1 of 2)	Court Personnel	Columbus
6 - 7 Thu - Fri	Capital Cases	Judges	Columbus



Continued on next page...

April 2017

7	Fri	Supervisor Series (2 of 2)	Court Personnel	Columbus
12	Wed	Guardian ad Litem Continuing Education Course: The GAL Interview (12:30-4:00 p.m.)	Guardians ad Litem	Ashland
13	Thu	Managing Mentally Ill Youth on Probation (1 of 2)	Probation Officers	Toledo
18	Tue	Probation Officer Training Program	Probation Officers	Akron
20	Thu	Adult Guardianship 3 Hour Continuing Education Course: Developmental Disabilities (8:45 a.m. - noon or 1:00 - 4:15 p.m.) BROADCAST	Adult Guardians	Broadcast to various Ohio sites
21	Fri	Abuse, Neglect, Dependency Course	Judges & Magistrates	Web Conference
21	Fri	Consumer Law 2017 1 of 2)	Judges & Magistrates	Cleveland
21	Fri	Ohio Jury Manager Association (OJMA) Conference	Court Personnel	Columbus
25	Tue	Probation Officer Training Program	Probation Officers	Columbus
26 - 28	Wed - Fri	Court Management Program (CMP) 2017 Level I: Managing Court Financial Resources	CMP 2017 Class	Columbus
27	Thu	Guardian ad Litem Continuing Education Course: Report Writing (12:30-4:00 pm)	Guardians ad Litem	Cincinnati
27	Thu	Guardian ad Litem Pre Service	Guardians ad Litem	Cincinnati

May 2017

1 - 4	Mon - Thu	New Judges Orientation Part II (judicial conduct hours will be requested)	New Judges	Columbus
2	Tue	Probation Officer Training Program	Probation Officers	Dayton
2 - 5	Tue - Fri	Ohio Association for Court Administration (OACA) Spring Conference	Court Personnel*	Cleveland
9	Tue	Probation Officer Training Program	Probation Officers	Perrysburg
10 - 12	Wed - Fri	Ohio Association of Magistrates (OAM) Spring Conference (professional conduct hours will be requested)	Magistrates*	Cincinnati
11	Thu	Fundamentals of Adult Guardianship 6 Hour BROADCAST	Adult Guardians	Broadcast to various Ohio sites
16	Tue	Probation Officer Training Program	Probation Officers	Akron
17 - 19	Wed - Fri	Court Management Program (CMP) 2019 Level I: CourTools	CMP 2019 Class Level I	Columbus
18 - 19	Thu - Fri	Motivational Interviewing	Probation Officers	Columbus
23	Tue	Probation Officer Training Program	Probation Officers	Columbus
24	Wed	Guardian ad Litem Continuing Education Course: Divorce (8:30 a.m.-noon or 1:00-4:30 p.m.)	Guardians ad Litem	Columbus

June 2017

5	Mon	Probate Pre-Conference	Judges & Magistrates	Warren
6 - 8	Tue - Thu	Ohio Association of Probate/Domestic Relations/Juvenile Judges Summer Conference (judicial conduct hours will be requested)	Judges*	Warren
7	Wed	Probation Officer Training Program	Probation Officers	Dayton
14	Wed	Adult Guardianship 3 Hour Continuing Education Course: Developmental Disabilities (8:45 a.m. – noon or 1:00 p.m. – 4:15 p.m.) BROADCAST	Adult Guardians	Broadcast to various Ohio sites
15	Thu	Judicial Candidates Seminar (1:30-3:30 p.m.)	Judicial Candidates	Columbus
16	Fri	Consumer Law 2017 (2 of 2)	Judges & Magistrates	Columbus
20	Tue	Court Security Officers Unit 4: Communication	Court Personnel	Columbus
20	Tue	Probation Officer Training Program	Probation Officers	Akron
21	Wed	Guardian ad Litem Continuing Education Course: Psychiatric Disorders (12:30-4:00 p.m.)	Guardians ad Litem	Cleveland
21	Wed	Guardian ad Litem Pre Service Course	Guardians ad Litem	Cleveland
21 - 23	Wed - Fri	Court Management Program (CMP) Class of 2017 Level I: Human Resources	CMP 2017 Class	Columbus
21 - 23	Wed - Fri	Ohio Common Pleas Judges Association (OCPJA) Summer Conference (judicial conduct hours will be requested)	Judges*	Cleveland
22 - 23	Thu - Fri	Juvenile Court Clerks Association	Court Personnel	Columbus
23	Fri	Court Security Screening Course	Court Personnel	OPOTA-Toledo
27	Tue	Probation Officer Training Program	Probation Officers	Columbus

July 2017

5	Wed	Guardian ad Litem Continuing Education Course: The GAL Interview (12:30-4:00 p.m.)	Guardians ad Litem	Athens
6	Thu	Probation Officer Training Program	Probation Officers	Dayton
11	Tue	Probation Officer Training Program	Probation Officers	Perrysburg
12	Wed	Guardian ad Litem Continuing Education Course: Adolescent Psychiatric Disorders (8:30 a.m.-noon or 1:00-4:30 p.m.)	Guardians ad Litem	Columbus
13	Thu	Fundamentals of Adult Guardianship 6 Hour BROADCAST	Adult Guardians	Broadcast to various Ohio sites
17 - 19	Mon - Wed	Association of Municipal/County Judges of Ohio (AMCJO) Summer Conference (judicial conduct hours will be requested)	Judges*	Huron
18	Tue	Probation Officer Training Program	Probation Officers	Columbus
19	Wed	Supervisor Series (1 of 2)	Court Personnel	Columbus

July 2017

20	Thu	Supervisor Series (2 of 2)	Court Personnel	Columbus
21	Fri	Certified Court Managers (CCM) Seminar	Certified Court Managers	Columbus
25	Tue	Probation Officer Training Program	Probation Officers	Akron
28	Fri	Court Security Officers Unit 2: Court Security Fundamentals (2 of 3)	Court Personnel	Dayton

August 2017

1	Tue	Probation Officer Training Program	Probation Officers	Dayton
3	Thu	Court Security Officers Unit 4: Communication (2 of 3)	Court Personnel	Cincinnati
10	Thu	Judicial Candidates Seminar (1:30-3:30 p.m.)	Judicial Candidates	Columbus
15	Tue	Probation Officer Training Program	Probation Officers	Akron
16	Wed	Guardian ad Litem Continuing Education Course: Psychiatric Disorders (12:30-4:00 p.m.)	Guardians ad Litem	Dayton
17	Thu	Adult Guardianship 3 Hour Continuing Education Course: Medications and Medical Advocacy (8:45 a.m. - noon or 1:00 - 4:15 p.m.) BROADCAST	Adult Guardians	Broadcast to various Ohio sites
18	Fri	Managing Mentally Ill Youth on Probation (2 of 2)	Probation Officers	Columbus
22	Tue	Probation Officer Training Program	Probation Officers	Columbus
30	Wed	Ohio Courts of Appeals Judges Association (OCAJA) Fall Conference (judicial conduct hours will be requested)	Judges*	Columbus
31	Thu	Ohio Court Reporter's Course	Court Personnel	Columbus
31 - 1	Thu - Fri	Ohio Judicial Conference Annual Meeting	Judges*	Columbus

September 2017

6	Wed	Probation Officer Training Program	Probation Officers	Dayton
7	Thu	Domestic Violence and Contempt for Acting Judges (2 of 4)	Judges, Magistrates & Acting Judges	Cleveland
12	Tue	Probation Officer Training Program	Probation Officers	Perrysburg
13 - 15	Wed - Fri	Court Management Program (CMP) 2017 Level II: Graduation and Court Community Communication	CMP 2017 Level II	Columbus
19	Tue	Probation Officer Training Program	Probation Officers	Akron
20	Wed	Fundamentals of Adult Guardianship 6 Hour BROADCAST	Adult Guardians	Broadcast to various Ohio sites
21	Thu	Guardian ad Litem Continuing Education Course: Divorce (12:30-4:00 p.m.)	Guardians ad Litem	Toledo
21	Thu	Guardian ad Litem Pre Service	Guardians ad Litem	Toledo
21	Thu	Pretrial Services- TBC	Court Personnel	Columbus

September 2017

22	Fri	Street Smart	Probation Officers	Columbus
26	Tue	Probation Officer Training Program	Probation Officers	Columbus
27 - 29	Wed - Fri	Ohio Association of Magistrates (OAM) Fall Conference (professional conduct hours will be requested)	Magistrates*	Columbus
28	Thu	Court Security Officers Unit 2: Court Security Fundamentals (3 of 3)	Court Personnel	Perrysburg
29	Fri	Court Security Officers Unit 3 and/or 5: Legal Considerations (1 of 2)	Court Personnel	Columbus

October 2017

3	Tue	Probation Officer Training Program	Probation Officers	Dayton
4 - 6	Wed - Fri	Court Management Program (CMP) 2019 Level I: Caseflow	CMP 2019 Class Level I	Columbus
5	Wed	Search Drills: Juvenile	Probation Officers	London
6	Thu	Search Drills: Adult	Probation Officers	London
6	Fri	Criminal Rules by the Numbers: Part V	Judges & Magistrates	Columbus
11	Wed	Guardian ad Litem Continuing Education Course: Child Development (12:30-4:00 p.m.)	Guardians ad Litem	Cleveland
12	Thu	Adult Guardianship 3 Hour Continuing Education Course: Medications and Medical Advocacy (8:45 a.m. - noon or 1:00 - 4:15 p.m.) BROADCAST	Adult Guardians	Broadcast to various Ohio sites
13	Fri	Delinquency & Unruly Course	Judges & Magistrates	Web Conference
17	Tue	Probation Officer Training Program	Probation Officers	Akron
19	Thu	Domestic Relations Court Personnel Course	Court Personnel	Columbus
19	Thu	Traffic Law (1 of 2)	Judges, Magistrates & Acting Judges	Cleveland
20	Fri	Judicial Conduct Seminar	Judges & Magistrates	Cleveland
24	Tue	Probation Officer Training Program	Probation Officers	Columbus
24 - 27	Tue - Fri	Ohio Association for Court Administration (OACA) Fall Conference	Court Personnel*	Columbus
26	Thu	Retired Judges Course	Retired Judges	Columbus
27	Fri	Municipal & Common Pleas Course	Judges, Magistrates & Acting Judges	Web Conference
27	Fri	Presentence Investigation (PSI) Writing Course	Probation Officers	Columbus

November 2017

1	Wed	Guardian ad Litem Continuing Education Course: Divorce (12:30-4:00 p.m.)	Guardians ad Litem	Youngstown
1	Wed	Guardian ad Litem Pre Service	Guardians ad Litem	Youngstown
2	Thu	Fundamentals of Adult Guardianship 6 Hour BROADCAST	Adult Guardians	Broadcast to various Ohio sites
3	Fri	Evidence	Judges & Magistrates	Columbus
3	Fri	Juvenile Traffic	Judges & Magistrates	Web Conference
7	Tue	Probation Officer Training Program	Probation Officers	Dayton
8	Wed	Supervisor Series (1 of 2)	Court Personnel	Columbus
9	Thu	Court Security Officers Unit 4: Communication (3 of 3)	Court Personnel	Akron
9	Thu	Domestic Violence and Contempt for Acting Judges (3 of 4)	Judges, Magistrates & Acting Judges	Dayton
9	Thu	Supervisor Series (2 of 2)	Court Personnel	Columbus
14	Tue	Probation Officer Training Program	Probation Officers	Perrysburg
15	Wed	Guardian ad Litem Continuing Education Course: The GAL Interview (12:30-4:00 p.m.)	Guardians ad Litem	Cincinnati
15	Wed	Probate Course	Judges & Magistrates	Web Conference
15 - 17	Wed - Fri	Court Management Program (CMP) 2017 Level I: Graduation and Purposes of Courts	CMP 2017 Class	Columbus
17	Fri	Domestic Relations Judges Winter Seminar	Judges & Magistrates	Columbus
17	Fri	Traffic Law (2 of 2)	Judges, Magistrates & Acting Judges	Columbus
28	Tue	Probation Officer Training Program	Probation Officers	Akron
29 - 30	Wed - Thu	Court Executive Team	Judges & Court Personnel	Columbus
30	Thu	Probation Officer Training Program	Probation Officers	Columbus
30 - 1	Thu - Fri	Ohio Association of Juvenile Court Judges (OAJCJ) Winter Conference (judicial conduct hours will be requested)	Judges*	Columbus

December 2017

1	Fri	Judicial Conduct	Judges & Magistrates	Web Conference
5	Tue	Probation Officer Training Program	Probation Officers	Dayton
6	Wed	Guardian ad Litem Pre Service Course	Guardians ad Litem	Columbus
6 - 8	Wed - Fri	Ohio Common Pleas Judges Association (OCPJA) Winter Conference (judicial conduct hours will be requested)	Judges*	Columbus

December 2017

8	<i>Fri</i>	Court Security Officers Units 3 and/or 5: Legal Consideration and Civil Process (2 of 2)	Court Personnel	Akron
11 - 14	<i>Mon - Thu</i>	New Judges Orientation Part I (judicial conduct hours will be requested)	New Judges	Columbus
15	<i>Fri</i>	Domestic Violence and Contempt for Acting Judges (4 of 4)	Judges, Magistrates & Acting Judges	Columbus
19	<i>Tue</i>	Adult Guardianship 3 Hour Continuing Education Course: Medications and Medical Advocacy (8:45 a.m. - noon or 1:00 - 4:15 p.m.) BROADCAST	Adult Guardians	Broadcast to various Ohio sites
19	<i>Tue</i>	Guardian ad Litem Continuing Education Course - Topic TBD (8:30 a.m.-noon or 1:00-4:30 p.m.)	Guardians ad Litem	Columbus
19	<i>Tue</i>	Probation Officer Training Program	Probation Officers	Akron
21	<i>Thu</i>	Probation Officer Training Program	Probation Officers	Columbus

PLEASE NOTE:

This schedule is SUBJECT TO CHANGE. View the Judicial College homepage for course schedule updates, brochures, and additional information, via www.supremecourt.ohio.gov/Boards/judCollege/default.aspx

To register for a Judicial College course or to view a course announcement, please visit our online registration site at www.judicialeducation.ohio.gov

1. Every two years, as part of the required 40 hours of CJE/CLE, full-time judges, part-time judges, and retired judges eligible for assignment are required to obtain a minimum of 10 hours of instruction from the Judicial College, to include 3.0 hours of instruction in judicial conduct. (Gov. Jud. R. IV, §3 A-C)
2. Every two years, magistrates are required to obtain 24 hours of CLE. Of the 24 hours of CLE, magistrates must obtain a minimum of 10 hours of instruction from the Judicial College and 2.5 hours of instruction in professional conduct. Magistrates may obtain professional conduct hours from the Judicial College or another approved provider. (Gov. Bar R. X, §12)
3. Every two years, acting judges are required to obtain 24 hours of CLE. Of the 24 hours of CLE, acting judges must obtain a minimum of 10 hours of instruction from the Judicial College. Acting judges may obtain their 2.5 professional conduct hours from the Judicial College or another approved provider. (Gov. Bar R. X, §11)
4. Full-day courses typically consist of 5.5 CJE/CLE credit hours and are from 9:00 a.m. - 4:00 p.m., unless otherwise noted. Video Teleconferences are now referred to as Web Conferences, typically consist of 2.5 CJE/CLE credit hours, and are from 1:00 p.m. - 3:45 p.m., unless otherwise noted.

Please refer to the course announcement for the approved CJE/CLE credit hours and for course registration information.

5. The Judicial College cannot accept registration for courses until the course announcement has been emailed and online registration opened through Judicial eCademy.
6. (*) Indicates course registration through an association. Please check the course announcement when it is distributed to confirm the credit hours to be offered.
7. For all non-association courses, please check the Judicial College course announcement when it is emailed to confirm whether judicial and/or professional conduct hours will be offered.
8. (**) Indicates no pre-registration or tuition for the Judicial Candidates Seminars; simply attend the session of your choice.

Abbreviations: AJ = Acting Judge; AdG = Adult Guardian; CJE = Continuing Judicial Education; CLE = Continuing Legal Education; CCM = Certified Court Managers; CMP = Court Management Program; CP = Court Personnel; GAL = Guardian ad Litem; J = Judges; JC = Judicial Candidates; M = Magistrates; NJs = New Judges; OPOTA = Ohio Peace Officers Training Academy; POs = Probation Officers; RJ = Retired Judges; TBD = To Be Determined

To access Gov. Jud. R. IV and Gov. Bar R. X, please go to: www.supremecourt.ohio.gov/LegalResources/Rules/default.asp

To access CLE rule changes and FAQs, go to: www.supremecourt.ohio.gov/AttySvcs/CLE/ruleChanges2014/judgeFAQ.asp

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