



BillBoard

MAY 16, 2016
LEGISLATIVE NEWS



The Ohio Judicial Conference is pleased to reintroduce BillBoard, a publication designed to help inform the General Assembly about the work of the Judicial Conference, legislative issues that are of importance to Ohio judges, and the resources that Judicial Conference staff offers to the legislature. It has been several years since we last published an issue of BillBoard and we are excited to breathe new life into a product that we hope you will find useful and informative.

The Judicial Conference sponsored its annual Judicial-Legislative Exchange Program on April 12. This year’s program set an all-time record for attendance. Forty pairs of judges and legislators from across the state spent the day together in Columbus in an effort to build relationships and promote understanding between the two branches. The program allows judges to see what a day in the life of a legislator is like and hopefully gain some appreciation for the legislative perspective. Judges spent the day with their legislators while they met with constituents and stakeholders, attended committee hearings, and voted in House or Senate session. They dedicated time to discussing issues of mutual importance to each branch.

Judge John M. Durkin the current Chair of the Judicial Conference had the opportunity to shadow Senator John Eklund two years ago, and Senator Joe Schiavoni this year. He said of the event that it was “incredibly challenging to stay current on bills that are being introduced and moving through the process, attend committee hearings, and meet with and hopefully satisfy constituents, and all of this in just the first two hours of the morning!” We heard from many judges who had similar experiences and who expressed real appreciation for the dedication, commitment, and difficult work of our legislators. We would like to extend our thanks to the legislators who hosted them. Judge Durkin asked that we “strongly encourage all judges to participate in this educational and worthwhile day, and to also encourage legislators to spend a day in the trenches with a judge.” Judge Durkin said that “such an exchange can only serve to strengthen our relationships and ultimately improve the administration of justice for Ohioans.”

In the past, the Judicial Conference has encouraged judges, following the legislative exchange, to reach out to the legislator that they were matched with to invite them to spend some time at their court. These “reverse” exchanges are an equally important part of this program because they allow the legislator to experience a day in the life of the judge and observe how the work of the General Assembly impacts the courts and the administration of justice. If you are interested in participating in a reverse exchange, call the Ohio Judicial Conference at 614-387-9750 by June 17.

Sincerely,

Ohio Judicial Conference Staff

TABLE OF CONTENTS

OJC Fact Sheet	2-3
Articles (HB 446 and SB 204/HB 307)	4-5
Bills.....	6

THE OJC IS AN INTEGRAL PART OF THE JUDICIAL BRANCH OF GOVERNMENT.

With every sitting judge in Ohio in its membership, the Ohio Judicial Conference is *the* voice of Ohio's judges. The Conference is organized into 20 working committees that review statutes, legislation, and court rules, and make recommendations aimed at improving the administration of justice. The Conference provides critical analysis of legislative initiatives and makes suggestions for reform and modernization through its legislative platform. The Conference publishes reports, impact statements, enactment news, policy statements, model rules, bench books, resource guides, and newsletters, and writes the Ohio Jury Instructions. The Conference advances judicial and legal education through continuing legal education events in collaboration with the Ohio Judicial College and Ohio State Bar Association.

THE OJC GIVES YOUR LOCAL JUDGES A FORUM, A RESOURCE, AND A VOICE.

The members of the Judicial Conference are kept apprised of legislative developments that impact court administration, criminal, civil, traffic, probate, domestic relations, and juvenile law. The Conference enables judges, who often have divergent opinions individually, to build consensus and speak with one voice. It acts as a forum for them to review and render opinions on the construction and effect of legislation, rules proposals, and other initiatives, and to suggest statutory and rule changes to address problems plaguing the administration of justice. It provides a meaningful way for judges to maintain effective communications with their colleagues, learn about changes in the law, and share ideas for implementation in Ohio's diverse communities.

THE OJC PROVIDES LEGISLATORS INSIGHT, INFORMATION, AND ANALYSIS.

Judges solemnly respect the distinct and separate roles of the legislature, judiciary, and executive branches of government. The Ohio Judicial Conference was statutorily created to serve the Ohio Legislature by providing insight into proposed legislation that could impact courts. The Conference strives to be a resource to the members of the General Assembly. All legislators have access to the Ohio Judicial Conference as a source of judicial feedback, research, and recommendations. Judges are in a unique position to provide early insight and perspectives on the practical impact of changes in the law that will help to avoid unintended consequences and protracted litigation. The combined experience of the Conference's judges give legislators insight that otherwise might be overlooked, to the detriment of the legislative process and the uniform administration of justice.

THE OJC HELPS TO INSTILL PUBLIC CONFIDENCE IN THE JUDICIARY.

Public confidence in the judiciary is one of the priorities of the Ohio Judicial Conference. When the Conference reviews bills, a significant and practical focus is how that bill will impact the public's access to the courts, their ability to obtain justice, and their right to be treated fairly under the law. Another of the Conference's priorities is to provide the General Assembly with insight on how legislation impacts court caseload and workload, insight that helps control the costs to the public of operating Ohio's courts.

OHIO JUDICIAL CONFERENCE STANDING COMMITTEES

APPELLATE LAW & PROCEDURE COMMITTEE

Judge Sean Gallagher and Judge Sylvia Sieve Hendon
OJC Liaison: Joshua Williams, 614-387-9767

COMMUNITY CORRECTIONS COMMITTEE

Judge Howard Harcha, III and Judge Beth Root
OJC Liaison: Louis Tobin, 614-387-9763

CRIMINAL LAW & PROCEDURE COMMITTEE

Judge Cynthia Westcott Rice and Judge Joyce Campbell
OJC Liaison: Joshua Williams, 614-387-9767

JUDICIAL ETHICS & PROFESSIONALISM COMMITTEE

Judge Mary DeGenaro and Judge Thomas M. Marcelain
OJC Liaison: Louis Tobin, 614-387-9763

JURY SERVICE COMMITTEE

Judge Jeffery B. Keller and Judge Reeve W. Kelsey
OJC Liaison: Marta Mudri, 614-387-9764

LEGISLATIVE COMMITTEE

Judge Jan Michael Long and Judge John R. Willamowski
OJC Liaison: Marta Mudri, 614-387-9764

PROBATE LAW & PROCEDURE COMMITTEE

Judge Jan Michael Long and Judge Jack R. Puffenberger
OJC Liaison: John Ryan, 614-387-9765

SPECIALIZED DOCKETS COMMITTEE

Judge Mary Huffman and Judge Joyce Campbell
OJC Liaison: Marta Mudri, 614-387-9764

CIVIL LAW & PROCEDURE COMMITTEE

Judge Philip M. Vigorito and Judge Gene A. Zmuda
OJC Liaison: Marta Mudri, 614-387-9764

COURT ADMINISTRATION COMMITTEE

Judge John J. Russo and Judge James A. Shriver
OJC Liaison: Louis Tobin, 614-387-9763

DOMESTIC RELATIONS LAW & PROCEDURE COMMITTEE

Judge Diane Palos and Judge David Lewandowski
OJC Liaison: John Ryan, 614-387-9765

JURY INSTRUCTIONS COMMITTEE

Judge Mary E. Donovan and Judge Jeffrey L. Reed
OJC Liaison: Louis Tobin, 614-387-9763

JUVENILE LAW & PROCEDURE COMMITTEE

Judge Luann Cooperrider and Judge Jim James
OJC Liaison: John Ryan, 614-387-9765

MAGISTRATES COMMITTEE

Judge Carol J. Dezso and Judge Beth W. Root
OJC Liaison: Joshua Williams, 614-387-9767

PUBLIC CONFIDENCE & COMMUNITY OUTREACH

Judge David M. Gormley and Judge Eugene A. Lucci
OJC Liaison: John Ryan, 614-387-9765

TRAFFIC LAW & PROCEDURE COMMITTEE

Judge Mark B. Reddin and Judge Jennifer P. Weiler
OJC Liaison: Joshua Williams, 614-387-9767



Lou Tobin



Marta Mudri



John Ryan



Joshua Williams



Justin Long

Judge Jonathan Starn Testifies for OJC in Support of HB 446

Judge Jonathan Starn of the Findlay Municipal Court has served as a judge since 2010. Prior to becoming a judge, he served nine years as a magistrate in Hancock County Common Pleas Court and Findlay Municipal Court. He also serves on the Traffic Law and Procedure Committee and has served on the Criminal Law and Procedure Committee of the Ohio Judicial Conference. Judge Starn provided proponent testimony on four changes that HB 446 (Rep. Manning) makes to existing law.

First, the bill includes “harmful intoxicant” in the definition of “drug of abuse” for purposes of OVI offenses. Under current law, a person is guilty of an OVI if they operate a vehicle under the influence of alcohol or a “drug of abuse.” Harmful intoxicants, defined in existing law to include compounds or mixtures whose vapors can induce intoxication, excitement, giddiness, or other physiological effects, are not included in the definition of “drug of abuse.” Put simply, this is “huffing,” and under existing law, a person operating a vehicle under the influence of huffing cannot be convicted of OVI because these “harmful intoxicants” are not considered drugs of abuse. HB 446 would correct this by including such harmful intoxicants in the definition of “drug of abuse.”

Second, the bill corrects an inconsistency pertaining to F₃ OVI sentencing that has been plaguing sentencing courts for several years. Under current sentencing guidelines in Title 45, a third-degree felony OVI is eligible for a prison term of up to five years. However, conflicting language in Title 29 limits *all* third-degree felonies to maximum prison terms of three years. There are exceptions to this limit, but these OVI offenses are not on that enumerated list of exceptions. This has left trial courts, and courts of appeals, unsure of the legislature’s intent regarding how these offenders should be sentenced. While the Judicial Conference has no preference as to whether the maximum sentence should be three years or five, we are happy that HB 446 addresses the inconsistency and gives courts unambiguous guidance, and we support the change.

Third, HB 446 corrects an unintended consequence whereby certain speeding offenders who have prior speeding offenses are subject to a lower penalty than those who commit the speeding offense for the first time. By default, the offense of speeding is a minor misdemeanor. Under current law, that offense is enhanced to an M₄ when the speeding is done in certain special zones, such as a school zone or a business district, but only if the offender has no prior speeding offenses. The statute is silent as to what happens if the offender *does* have prior offenses, and the offense therefore defaults back to the sentencing requirements for a minor misdemeanor. As a result, for example, someone with no prior speeding offenses who speeds in a school zone is charged with an M₄, whereas someone that has prior speeding violations who speeds in the same zone is only charged with a minor misdemeanor. HB 446 corrects this unintended consequence by eliminating the reference to prior speeding offenses, so that anyone who speeds in a special zone is charged with an M₄, regardless of previous offenses.

Finally, HB 446 adds two offenses that were apparently omitted from a list of charges against which an affirmative defense can be raised. Current law provides that a person can raise the affirmative defense of “driving in an emergency” if charged with one of several driving-under-suspension-related offenses. Current law does not, however, allow for this affirmative defense to be raised for two seemingly similar offenses: driving while under a 12-point suspension (4510.037), and driving with a suspended license for failing to appear or pay a fine or for default in payment of child support (4510.111). HB 446 would add these two offenses to the list of offenses for which a defendant may raise the affirmative defense of “driving in an emergency,” thus correcting what appears to be an oversight in the revised code.

HB 446 makes much needed clarifications and corrections to Ohio’s traffic laws, will give courts, prosecutors, and defendants clearer guidance on the legislature’s intent, and will help further the effective administration of justice in our courts.

Judges Provide Testimony in Support of Eliminating Mandatory Driving Suspensions (SB 204 and HB 307)



Every two years, the Judicial Conference adopts a legislative platform consisting of initiatives Ohio's judges wish to see enacted by the General Assembly. SB 204 (Sen. Seitz) and HB 307 (Rep. Pelanda) would implement an item on this year's platform and Judge Robert Hart (Fremont Municipal Court) and Judge Ken Spanagel (Parma Municipal Court) have provided testimony in support of both bills on behalf of the Ohio Judicial Conference.

Current sentencing laws require the suspension, of at least six months, of an offender's driver's license for most criminal drug offenses contained in Chapter 2925 regardless of whether the offense involved the use of a motor vehicle. Not only is a nexus between the suspension and the criminal offense not required, it is most often non-existent.

These mandatory license suspensions, when the underlying offense often has nothing to do with the use or operation of a motor vehicle, do little to serve the expressed or implied purposes and principles of sentencing set forth in the Revised Code. In fact, the inability to operate a motor vehicle poses a major impediment to *rehabilitating* the offender, which indeed is one of the overarching purposes of criminal sentencing.

The General Assembly has consistently indicated that it favors community control sanctions for low-level offenses. As part of these community control sanctions, and to reduce the likelihood of recidivism, courts may order an offender to participate in substance-abuse treatment programs, maintain employment, or attend follow-up meetings or hearings with the court or other local agencies and resources. Without question, one of the most significant impediments to fulfilling these obligations is a lack of transportation. While public transportation may be available in some of our urban areas, that simply is not the case in the majority of Ohio counties. Suspension of a driver's license means offenders must obtain transportation from other persons to and from their probation appointments, job training, job interviews, jobs, treatment, educational programs and other programs. When they cannot get to these services or programs, they are more likely to be brought back before the court for a community control violation. Alternatively, they may elect to drive and hope they don't get caught, which may result in a new offense and a possible violation of community control.

SB 204 and HB 307 are important steps in removing some of the collateral sanctions that lead to increased rates of recidivism in the first place. The bills would make these driver's license suspensions for drug offenses discretionary, rather than mandatory. Judges are often in the best position to weigh all factors and sensibly impose a driving suspension period with the necessary conditions and terms. If the judge, familiar with the defendant and the facts of the case, feels, in his or her discretion, that suspending the defendant's license is an appropriate sanction, he or she is still free to do so. Under SB 204 and HB 307 though, judges' hands will no longer be tied, and they will no longer be *required* to impose a sanction that quite often does more harm than good.

COURT IMPACT: BILLS INTRODUCED IN APRIL 2016

*blue text denotes a bill that impacts the courts

Referred to House Judiciary Committee:

- HB 513, **Jury Service & Breastfeeding**, introduced 4.12.16 *THIS BILL IS BEING REVIEWED BY THE OJC JURY SERVICE COMMITTEE.*
- HB 516, **Mutual Restraining Order**, introduced 4.13.16 *THIS BILL IS BEING REVIEWED BY THE OJC DOMESTIC RELATIONS LAW & PROCEDURE COMMITTEE.*
- HB 517, **Birth Certification**, introduced 4.13.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*
- HB 521, **Parole Eligibility**, introduced 4.14.16 *THIS BILL HAS BEEN REVIEWED AND IS BEING TRACKED BY THE OJC CRIMINAL LAW & PROCEDURE COMMITTEE.*

Referred to House Government Accountability and Oversight Committee:

- HB 504, **Public Records – Higher Education**, introduced 4.4.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*
- HB 506, **Audits of JobsOhio**, introduced 4.6.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*
- HB 536, **Wire the Statehouse Act**, introduced 4.28.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*
- HB 539, **New Americans Office**, introduced 4.28.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*

Referred to House State Government Committee:

- HB 518, **Concealed Carry – Government Facility**, introduced 4.13.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*
- HB 519, **Human Impact Statement**, introduced 4.13.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*
- HB 526, **Trespassing Animal**, introduced 4.19.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*
- HB 529, **Concealed Carry – Tactical Medical Professional**, introduced 4.25.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*

Referred to House Local Government Committee:

- HB 531, **Township Mileage Reimbursement**, introduced 4.25.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*

Referred to House Financial Institutions and Family Advancement Committee:

- HB 537, **Sexual Orientation**, introduced 4.28.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*

Referred to Special House Medical Marijuana Committee:

- HB 523, **Medical Marijuana**, introduced 4.14.16 *THIS BILL WILL HAVE AN IMPACT ON THE CRIMINAL CODE. IT WAS REVIEWED BY THE OJC CRIMINAL LAW & PROCEDURE COMMITTEE AND A LETTER WAS SENT TO THE HOUSE MEDICAL MARIJUANA COMMITTEE REQUESTING SEVERAL TECHNICAL CHANGES.*

Referred to Senate Civil Justice Committee:

- SB 304, **Political Subdivision Refusal of Duty**, introduced 4.4.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*
- SB 308, **Child Support**, introduced 4.7.16 *THIS BILL IS BEING REVIEWED BY THE OJC DOMESTIC RELATIONS LAW & PROCEDURE COMMITTEE.*
- SB 318, **Ohio Civil Rights Law**, introduced 4.25.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURTS.*

Referred to Senate Criminal Justice Committee:

- SB 316, **Increased Penalty for Sexual Imposition**, introduced 4.20.16 *THIS BILL IS BEING REVIEWED BY THE OJC CRIMINAL LAW & PROCEDURE COMMITTEE.*

Referred to Senate State and Local Government Committee:

- SB 309, **School Bus Ticketing**, introduced 4.7.16 *THIS BILL IS NOT EXPECTED TO HAVE A SIGNIFICANT IMPACT ON THE COURT*

