



# Ohio Judicial Conference

The Voice of Ohio Judges

April 16, 2024

The Honorable Gary Click  
Ohio House of Representatives  
77 South High Street, 12<sup>th</sup> Floor  
Columbus, OH 43215

The Honorable Mark Johnson  
Ohio House of Representatives  
77 South High Street, 12<sup>th</sup> Floor  
Columbus, OH 43215

Re: House Bill 429

Dear Representative Click and Representative Johnson:

The Traffic Law and Procedure Committee of the Ohio Judicial Conference has reviewed House Bill 429, which enacts increased fines and penalties when a moving violation is committed in a construction zone, under certain circumstances. I would like to share with you some of the feedback from our members.

First, judges have concerns with the requirement that the increased penalty only applies when the offense is corroborated by two eyewitness or by video recording. This requirement is not practical, as judges may not have access to any video footage or witness information at the time a defendant appears and enters a plea of guilty or no contest at arraignment. Some judges report that the prosecution sometimes does not receive video evidence from law enforcement until several weeks after the arraignment. It is also unclear how this information could be incorporated into a waiver schedule for defendants who wish to pay the ticket without appearing in court. Additionally, this requirement may raise constitutional questions, as the Ohio Supreme Court has found unconstitutional sentencing schemes that impose a stricter sanction based on the existence of corroborating evidence. See *State v. Bepko*, 142 Ohio St.3d 41, 2015-Ohio-475.

Second, the bill escalates the punishment for second and third or more offenses, but does not indicate how far back the court is to look when counting previous offenses, a period known as a "lookback period." Without clarification, this would be taken to mean the number of offenses in one's lifetime. We would suggest adding a finite period of time, or a specified lookback period. Courts would be required to keep copies of these convictions to establish the number of prior violations. Without a finite lookback period, courts would be required to keep these records on file forever, which would be difficult to manage outside of a court's existing records retention/destruction schedule.

OHIO JUDICIAL CONFERENCE

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Finally, further complicating matters is a defendant's statutory right to a jury trial. R.C. 2945.17(B)(2) provides the right to a jury trial for any offense if it is aailable offense or the fine exceeds \$1,000. Under H.B. 429, for a first and second offense there is no jail time. If the combined fine is \$1,000 or less, the defendant would not be entitled to a jury trial. Therefore, if the underlying first or second offense is a minor misdemeanor, the total fine would not exceed \$1,000 and the defendant could not have a trial by jury. A third offense, however, would trigger the defendant's right to a jury trial as the supplemental fine is \$1,200.00 in addition to the fine for the underlying offense. Because there is no potential jail sentence, a defendant would not be entitled to appointment of counsel. If the underlying offense is greater than a minor misdemeanor, it would be aailable offense regardless of the amount of the fine, and the defendant would be entitled to a trial by jury and appointment of counsel if indigent. The right to a trial by jury based on the amount of the potential fine is a statutory, not a constitutional right. The General Assembly could avoid a jury trial situation when the underlying third offense is a minor misdemeanor by specifically exemption these traffic offenses with the supplemental fine (\$1,200) from the general statutory right to trial by jury in R.C. 2945.17.

Thank you for considering the feedback of Ohio's judges. Please do not hesitate to contact me if you have any questions or concerns.

Sincerely,

A handwritten signature in black ink that reads "Paul E. Pfeifer". The signature is written in a cursive style with a large, prominent "P" at the beginning.

Paul E. Pfeifer  
Executive Director

CC: Rep. Cindy Abrams, Chair, House Criminal Justice Committee  
Rep. Richard Brown, Ranking Member, House Criminal Justice Committee