

# *The Prosecutor*

newsletter from  
**Mat Heck, Jr.**  
Prosecuting Attorney



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Spring 2017

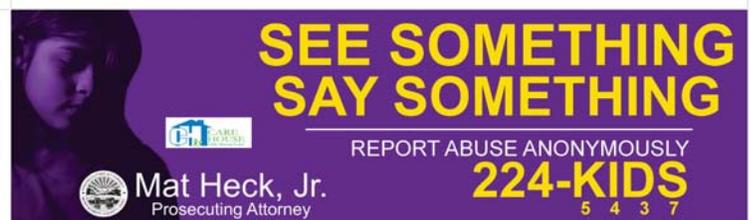
## Child Abuse Awareness Month

Since 1983, April has been recognized as Child Abuse Awareness Month in the United States. On Wednesday, April 5, 2017, Prosecutor Heck kicked off the local campaign at CARE House, Montgomery County's Children's Advocacy Center. Present were representatives from the other CARE House partners, which are the Montgomery County Sheriff's Office, the Dayton Police Department, Montgomery County Jobs and Family Services - Children Services Division, and Dayton Children's Hospital.

In his welcoming statement, Prosecutor Heck gave some sobering national statistics on child abuse and neglect, noting that every year, more than 3.6 million referrals are made to child protection agencies, involving more than 6.6 million children. Also, sadly, in the United States, it is estimated that between 4 and 5 children die every day as a direct result of abuse or neglect - one of the worst records among industrialized nations. About 70% of the children who died as a result of child abuse or neglect were two years of age or younger. Prosecutor Heck noted that nationally, a report of child abuse is made ever 10 seconds.

As a way of promoting the message of child abuse awareness, our office is providing special bibs and snack cups that are to be given to families, emblazoned with the message, "Hug me, don't hurt me." The Evenflo Company, headquartered in Miamisburg, donated a number of child safety seats and booster seats. Additional items were purchased by the prosecutor's office to also be given to families. All of these items will be provided through our other partnering agencies, including the Family Services Association, Women, Infant and Children (WIC), the Elizabeth New Life Center, Catholic Social Services, and Children Services.

In closing, Prosecutor Heck challenged the community to get involved. "If you know or suspect a child is being abused or neglected, report it to law enforcement or call 224-KIDS. If you see something, say something. Just one person having the courage to get involved and doing the right thing can make all the difference to a child who is being abused."



## Information Relating to Problem Dogs

Now that the weather is warmer and people are spending more time outside, questions about dogs that are running loose or are aggressive always come up. Many people have no idea where to turn if there are aggressive dogs in their neighborhood. Here are some tips and useful information on what you can do.

### Who to Call When Having a Problem With a Dog

- If during business hours of Monday through Friday, 10:00 a.m. to 6:00 p.m. and Saturday, 10:00 a.m. to 4:00 p.m., call the Montgomery County Animal Resource Center (MCARC) at 937-898-4457.
- Or call your local police department.
- Or call 911 if you need emergency assistance.

### What Can MCARC or the Police Do?

- Catch and contain the dog.
- Interview witnesses and gather evidence to determine if citations should be issued to the dog's owner.
- Determine whether the dog should be designated a nuisance, dangerous, or vicious dog. These designations are defined by Ohio law in the Ohio Revised Code (O.R.C.) and may result in special licensing and containment requirements being placed upon the dog's owner. In general, a nuisance dog is a dog that has acted in a menacing way but has not bitten anyone. A dangerous dog is a dog that has caused physical harm to a person, or killed another dog. A vicious dog is a dog that has caused serious physical harm to, or caused the death of, a person.
- If a designation is appropriate, the officer will complete a designation form to give to the dog's owner. The form will explain what the designation means and the dog owner's rights and obligations.

### What Can You Do to Help?

- Give a written statement or a sworn affidavit providing the details of the incident.
- If necessary, appear in court and testify if the dog's owner requests a hearing on the dog's designation or if a criminal case is brought against the dog owner.

### What Happens if You Harm a Dog?

- A person who kills a dog could be charged with one or more of these crimes:
  - Cruelty to Companion Animals (O.R.C. 959.131)
  - Injuring Animals (O.R.C. 959.02)
  - Poisoning Animals (O.R.C. 959.03)
- However, the following are factors that would be considered in deciding whether a person should be charged with a crime or found guilty if charged with a crime:
  - O.R.C. 955.28 states a dog can be killed if the dog is chasing or approaching a *person* in a menacing/attacking fashion and attempts to bite or endanger a person, or if such a dog injures or kills a person. The same is true if the dog chases, threatens, harasses, injures, or kills livestock, poultry, or another animal other than a dog or cat that is someone's property.

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## Information Relating to Problem Dogs

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- Whether a person is charged with or convicted of a crime if a dog is killed when attacking *another dog or a cat* would depend on if the person acted maliciously or willfully, if the killing of the dog was needless, or if the person caused unnecessary or unjustifiable pain or suffering to the dog. It is very important to remember that the determination of whether the killing of a dog is justified would be made on a case by case basis. Killing a dog may result in you having to defend your actions in court.
- O.R.C. 959.04 states that the crimes of Injuring Animals and Poisoning Animals do not apply to a person who kills or injures an animal to prevent the animal from trespassing upon another's "enclosure" or while driving an animal away from another's "premises." However, to avoid criminal charges, within 15 days of the trespassing animal being injured or killed, payment must be made for damages done to the animal - less the amount of damage to your property caused by the trespassing animal - or a sufficient sum of money is deposited with an appropriate court to cover such damages.
- In addition to possible criminal charges, you could also be sued civilly by the owner for wounding or killing a registered dog (or dog that is exempt from registration requirements).

### Your Responsibilities if You Kill a Dog

- If a citizen kills a dog to prevent that dog from causing further injury or death to a person, and that dog has bitten a person, 1) the board of health must be notified and given the facts and circumstances of the dog's death immediately; 2) the body of the dog must be held until the board of health claims it to perform tests for rabies. See, O.R.C. 955.261(A)(3).
- Be advised, that if a dog that has bitten a person is NOT causing a risk of further injury or death, O.R.C. 955.261(A)(2) prohibits a person from killing that dog until a mandatory 10-day quarantine period has been completed.

*This information is provided as a public service. It is not intended to give legal advice. Remember, each situation is fact sensitive and any criminal charges or civil liability would be determined on a case by case basis depending on the facts present.*

The Montgomery County Prosecutor's Office is located in the Dayton-Montgomery County Courts Building, 301 West Third Street, Dayton, Ohio. Our mailing address is P.O. Box 972, Dayton, Ohio, 45422.

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## The Victim/Witness Division

Late last year, Clare Gallagher, our Social Media Intern, took an in-depth look at the work of our Victim Advocates in the Prosecutor's Victim/Witness Division. Here is her report:

The Victim/Witness Division of the Prosecutor's Office is a vital component of the office. Many people do not know of the services offered by the division or realize the importance of the division until they are thrown into the criminal justice system.

The Victim/Witness Division works with victims and witnesses of felony violence, specializing in the areas of sexual assault, felony domestic violence, and homicide. Advocates provide 24-hour response to all area hospital emergency departments, whenever someone is sexually assaulted. A 24-hour crisis hotline is available for any victim or witness of crime. Presently there are ten staff members in the division and 40 dedicated volunteers who help with the 24-hour crisis line and hospital response.

When a person is identified as a victim of a violent crime, they are afforded certain constitutional rights. Prosecutor's Victim Advocates work to ensure that victims are treated with fairness, dignity and respect. Advocates make contact with victims and offer assistance as they navigate the criminal justice system. Advocates also make it clear to the victims that they have a right to be informed, the right to be present, and the right to restitution.

After a crime occurs, many victims encounter physical, emotional and economic hardships. Prosecutor's Victim Advocates are knowledgeable of local agencies and programs that can assist victims. According to Sandra Hunt, Director of the Victim/Witness Division, "Having a compassionate advocate to listen and provide support can lessen the traumatic impact of the crime."

As members of the Prosecutor's Office, advocates work with criminal prosecutors to prepare victims and witnesses for court hearings. This may include helping with transportation, clothing, and court accompaniment. It is also important to recognize that after the conclusion of a criminal case, victims may have further contact with an advocate to discuss counseling and the probation or parole process.

Making decisions after a sexual assault is often upsetting and confusing. It is for that reason, the Prosecutor's Victim/Witness Division **is the county "rape crisis" agency.** Advocates respond to area hospitals to provide crisis intervention and support. Victims are encouraged to participate in the criminal justice process to afford them the right for protection, evidence collection from all crime scenes, investigation, arrest of suspect and possible prosecution. While law enforcement must be notified of any felony crime, victims may have a forensic examination without agreeing to participate in a criminal investigation.

Two victim advocates are assigned to CARE House to work with child victims of physical or sexual abuse. This child advocacy center works to provide best practices to reduce the risk of re-victimizing children.

Advocates also work with homicide survivors, those who have lost someone to violence. Advocates recognize the unique and complicated grief process and provide additional support to family and friends.

An important function of the Victim/Witness Division is to assist victims in preparing and providing the court with Victim Impact Statements. This process allows victims to address the court and explain the physical and emotional harm suffered as a result of the offense, and promotes healing and closure for victims and families.

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## The Victim Witness Division

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The Prosecutor's Victim/Witness Division also provides numerous presentations on crime prevention. Advocates conduct presentations to all schools in Montgomery County and to any community group as requested.

### Major Drug Offender's Conviction Affirmed

On April 28, 2017, the 2nd District Court of Appeals affirmed the conviction of **Rene Nevarez-Reyes**, of Palatine, IL. The defendant's vehicle was stopped by a Sheriff's Deputy for expired license plates on October 26, 2014. A deputy's K-9 alerted to illegal drugs in the vehicle. A search warrant was obtained and approximately 7 pounds of crystal methamphetamine, worth \$250,000, was found in a compartment inside the vehicle's gas tank. The defendant was successfully prosecuted for Aggravated Possession of Drugs with a Major Drug Offender (MDO) Specification and sentenced to 11 years in prison, which is a mandatory sentence because of the MDO specification.

The defendant appealed his conviction because the reason for the traffic stop was made erroneously - the vehicle's tags were in fact not expired. The deputies were unaware that Illinois uses a different system of tag numbers, and ran the defendant's plate through the computer system incorrectly, giving the impression that they were expired.

The Court of Appeals affirmed the conviction, stating that while the traffic stop for expired plates was in error, the stop itself was valid and legal because the deputies were acting in good faith under a simple mistake of fact. The defendant is incarcerated at Noble Correctional Institution with an expected release date of August 11, 2023.

### ArriveSafe Update

The ArriveSafe Program, designed to help make our streets safer from drunk drivers, has been very successful. Since the program started in 2007, over 5,900 cab rides have been provided free of charge to Montgomery County residents, with some 757 cab rides given in 2016. Over the St. Patrick's Day holiday weekend earlier this year, the program prevented over 100 drivers from getting behind the wheel when they should not have been driving. Those people made the smart decision to call for a cab ride home and not risk their lives or the lives of others.

Don't drink and drive. Have a designated driver, call for a cab, or use Uber or Lyft. Prosecutor Heck says, "The life you save may be your own!"



Prosecutor Heck with members of the Montgomery County OVI Task Force announce ArriveSafe for St. Patrick's Day weekend.

## Office Staff Updates

The following are staff additions since our last newsletter:

<b>DATE</b>	<b>NAME</b>	<b>POSITION AND ASSIGNMENT</b>
2/21/17	Michael Allen	Assistant Prosecutor, Juvenile Division
2/22/17	Miranda Carnahan	Legal Secretary, DTAC
2/27/17	Liam Oliss	Office Messenger
3/20/17	Kayla Burkett	Legal Secretary, Case Management
4/3/17	Daniel McConnell	Legal Secretary, DTAC



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