

The Prosecutor

newsletter from
Mat Heck, Jr.
Prosecuting Attorney



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Summer 2015

Prosecutor's Office Book Drive Benefits CARE House

On Friday, May 1, 2015, the prosecutor's office capped off an interoffice book drive to benefit CARE House with an ice cream social. The book drive was a fun and productive way for our office to recognize April as Child Abuse Prevention Month.

CARE House, located at 410 Valley Street, near Dayton Children's Hospital, is a Child Advocacy Center accredited by the National Children's Alliance in Washington, D.C. The facility opened in 1999 to ensure that child victims of abuse can be seen at a single facility by police officers, social workers, doctors, detectives, counselors, prosecutors and victim advocates and other who work together to protect and serve children and hold offenders accountable.

The book drive collected new or very gently used books so that each child who goes to the CARE House can get a free book along with a stuffed animal. At the end of the book drive, the staff had collected and donated a total of 884 books. Thanks to staff who donated books and those who organized the event.



Erin Claypoole, Assistant Prosecutor/Criminal Trial Supervisor, Libby Nicholson, CARE House Director, Jamie Oliver, Victim Advocate, and Julie Bruns, Chief of the Juvenile Division of the Prosecutor's Office with some of the donated books.

ArriveSafe Update

The *ArriveSafe* program was launched in December 2007; it has continued to be very popular and successful. The program is paid for with donations from AAA Miami Valley and Heidelberg Distributing and funds seized from convicted drug dealers - no taxpayer dollars are spent! To date, we have provided over 4,500 free cab rides home.

Watch for *ArriveSafe* announcements for upcoming holiday weekends!

25th Annual Violence Prevention Project Awards Ceremony

On Wednesday, May 6, 2015, Prosecutor Heck announced the winners of the 25th annual Violence Prevention Project at an event held at the Dayton Masonic Temple in Dayton.

During the awards ceremony, the winners of the Violence Prevention Poster and Essay Contest were announced and recognized. The top 150 students were invited to attend the ceremony and enjoy a free pizza lunch, courtesy of Dayton's Original Pizza Factory. Prosecutor Heck also recognized the many area teachers who were present or participated and encouraged their students to submit posters or essays.

This year, nearly 1,300 entries were submitted by students from over 40 area schools in Montgomery County. The Violence Prevention Project encourages youth to submit a poster or essay describing how violence affects our community and ways to prevent violence. Common themes were bullying, shootings, and drug and alcohol abuse, showing that our youth are aware of the dangers and understand the causes of violence.



Many of the participants and teachers pose with Prosecutor Heck.

Many of the posters submitted to the contest will be featured in Prosecutor Heck's 2016 Violence Prevention Calendar, of which over 6,000 copies are distributed to students, teachers, and residents in the Miami Valley.

During the ceremony, Prosecutor Heck said, "Violence is a public health problem that has a substantial impact on individuals, their families and communities. Youth violence touches all of us, and we all have a role in preventing it. This project gives us an opportunity to acknowledge the positive efforts of these students."

Every participant received a prize. The ceremony recognized some of the best entries, and those participants were awarded additional prizes. Sponsorship of the Violence Prevention Project this year came from Sheriff Phil Plummer, Dayton Police Chief Richard Biehl, Centerville Police Chief Bruce Robertson, King's Island, the Kroger Aquatic Center, Aullwood Audubon Center, GZK Restaurant Systems, Dairy Queen, Wal-Mart, the Boonshoft Museum of Discovery, Evans Bakery and Mike-Sells Potato chips.



The winners all enjoyed a free pizza luncheon, courtesy of Dayton's Original Pizza Factory.



Montgomery County Environmental Crimes Task Force Successful

The Montgomery County Environmental Crimes Task Force seeks to improve and protect public health and the environment through responsible enforcement and comprehensive outreach and education. The Task Force is a partnership between local municipalities, enforcement agencies, and regulatory organizations, including the Montgomery County Sheriff's Office, Montgomery County Environmental Services, the City of Dayton, the City of Trotwood, Harrison Township, Jefferson Township, Public Health—Dayton and Montgomery County, the Ohio Environmental Protection Agency and our office which prosecutes those individuals found to have violated a felony environmental crime.

Since the Task Force was created, there have been over 100 environmental criminal cases investigated, and 80 successful convictions, both felony and misdemeanor. In addition, the Task Force has facilitated the cleanup of over 90 illegal dumpsites throughout the county.

Most citizens know that dumping waste and/or trash is illegal, but in Ohio, hauling more than 10 scrap tires without proper registration from the Ohio Environmental Protection Agency is also illegal. More times than not, those without proper registration dump those tires at an abandoned property or along the side of the road. Those tires can become a health hazard, serving as a breeding ground for disease-carrying mosquitoes. Scrap tire fires can generate toxic smoke and oil that can contaminate surface water and ground water. In 1998, a grass fire in Tracy, California ignited an unlicensed tire disposal facility containing some 7 million tires. The fire burned for 26 months, and was finally extinguished in December, 2000!

For more information about the Environmental Crimes Task Force visit <http://www.mcohio.org/envirocrimes>. There is an online form you can use to report vehicles you see committing an environmental crime. If you wish to report an existing dump site, please contact Public Health—Dayton & Montgomery County at 937-225-4460.

Did you know? - Montgomery County residents may dispose of up to 10 tires per year completely free of charge at the South Transfer facility at 1001 Encrete Lane (off of West Dorothy Lane) with a proper proof of residency. For more information, contact the Montgomery County Solid Waste District at 937-225-4999 or <http://www.mcohio.org/services/swd>.



How Many People Are Sentenced to Prison?

A common question we receive when we give presentations to community groups is, “Why don’t more people get sentenced to the penitentiary?” There are many factors that affect the sentence that any particular defendant receives, including the degree of felony(s) convicted and the recommendations from the pre-sentence investigation done by court staff.

Under Ohio law, the sentencing court must also consider the purposes of felony sentencing, as dictated by Title 29 of the Ohio Criminal Code, “The overriding purposes of felony sentencing are (1) to protect the public from future crime by the offender and others, and (2) to punish the offender. To achieve these purposes the court is required to consider the need for incapacitating the offender, deterring the offender and others from future crime, rehabilitating the offender, and making restitution to the victim of the offense, the public, or both. A sentence imposed for a felony must be reasonably calculated to achieve the above-stated purposes, commensurate with and not demeaning to the seriousness of the offender’s conduct and its impact upon the victim, and consistent with sentences imposed for similar crimes committed by other offenders with similar characteristics.”

During the first quarter of 2015, 690 defendants were sentenced by the Montgomery County Common Pleas Court. The Common Pleas Court Judges have the sole authority to sentence convicted persons. Of those, 209 were sentenced to prison. Another 438 were sentenced to Community Control Sanctions (CCS), formerly known as probation. There were 21 offenders who received a mixture of CCS and local jail time. The rest were either sentenced to local jail time only or received a fine or received a sentence of time already served. Compare this to the first quarter of 2014, when 638 defendants were sentenced: 222 were sentenced to prison, 380 received CCS, 18 received CCS and Jail. Statistically, there was an insignificant increase of 3.7% of defendants receiving CCS in the year-to-year comparison.

What Are the Sentences for the Different Degrees of Offenses?

Title 29 of the Ohio Criminal Code specifies the possible penalties for felony and misdemeanor offenses, if the defendant does not receive Community Control Sanctions:

Felony Level	Confinement	Maximum Fine
Felony 1	3,4,5,6,7,8,9,10 or 11 years	\$20,000
Felony 2	2,3,4,5,6,7 or 8 years	\$15,000
Felony 3	9,12,18,24,30 or 36 months*	\$10,000
Felony 4	6,7,8,9,10,11,12,13,14,15,16,17 or 18 months	\$5,000
Felony 5	6,7,8,9,10,11 or 12 months	\$2,500
Misdemeanor Level		
Misdemeanor 1	Maximum of 180 days	\$1,000
Misdemeanor 2	Maximum of 90 days	\$750
Misdemeanor 3	Maximum of 60 days	\$500
Misdemeanor 4	Maximum of 30 days	\$250
Minor Misdemeanor	None	\$150

*Some Felony 3 offenses carry a term of 12, 18, 24, 30, 36, 42, 48, 54 or 60 months confinement.



Dayton Executive Inn—Another Eyesore Comes Down

On a frigid February 18, 2015 morning, demolition on the Harrison Township eyesore known as the Dayton Executive Inn began. The shuttered hotel was built in 1961 and closed for good in 2008. Since that time, it sat empty and was vandalized. The property became a public nuisance and the property owners owed nearly \$1.2 million in unpaid property taxes. After a long legal battle over what would become of the property, a traditional tax foreclosure was filed by the prosecutor's office. The land was purchased by an out of state investor, and demolition began almost immediately. Currently the vacant land is for sale for development. Its close proximity to the Dayton Hollywood Racino makes the removal of this nuisance a plus for the City of Dayton as well.

Prosecutor Heck commented, "The high visibility of the property from Interstate 75 gave the area an unfair and undeserved reputation. Harrison Township, denied much needed tax revenue, welcomes the opportunities this redevelopment brings to the area. The citizens of Harrison Township deserve to have neighborhoods free of the blight this property had become."

United States Supreme Court Rules on Ohio Case

On June 18, 2015, in a 9 - 0 ruling, the United States Supreme Court reversed the Supreme Court of Ohio in *Ohio v. Clark*. The Ohio Prosecuting Attorneys Association and the National Children's Alliance, both of which Prosecutor Heck has served as President, filed briefs in the case, which was brought by the Cuyahoga County Prosecutor's Office.

In this case, a teacher discovered injuries and abuse marks on a 3-year-old. The teacher asked the child who had caused the marks, in an effort to protect the child. The child identified the defendant, Darius Clark, as the person who had caused the injuries. Clark was the boyfriend of the child's mother.

At trial, the child's statements to the teacher were entered into evidence, but the child did not testify. The defendant was convicted on all but one of the charges he faced. The Ohio Eighth District Court of Appeals reversed the defendant's conviction, on "confrontation clause" grounds, finding that since the teacher was mandated to report suspected child abuse to Children's Services and/or law enforcement, the child's statements were "testimonial" and should not have been admitted. The confrontation clause generally prohibits the introduction of "testimonial" statements by a non-testifying witness, unless the witness is "unavailable to testify, and the defendant had a prior opportunity for cross-examination." In this case, the child was found to be incompetent to testify due to his age. The Supreme Court of Ohio affirmed the Appellate Court in a 4-3 decision.

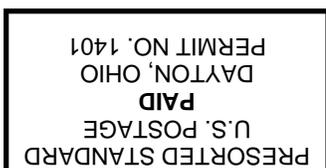
The Cuyahoga County Prosecutor's Office appealed to the United States Supreme Court, who reversed the decision, ruling that the existence of a mandatory reporting requirement did not turn the child's statements into "testimonial" statements, and that the teacher's mandatory reporting requirement does not make her actions those of a law enforcement officer gathering evidence for prosecution. The United States Supreme Court affirmed the conviction of Darius Clark on several counts of felonious assault, endangering children and domestic violence.

Office Staff Updates

The following are staff additions since our last newsletter.

DATE	NAME	POSITION AND ASSIGNMENT
2/17/15	Jessica Yane	Victim Advocate, Victim/Witness Division
2/17/15	Brandi Wright	Legal Secretary, Case Management
4/20/15	Christina Mahy	Assistant Prosecutor, Appellate Division
5/4/15	Adam Laugle	Assistant Prosecutor, Civil Division
6/1/15	Trent Sulek	Assistant Prosecutor, Juvenile Division
6/29/15	Tara Poteet	Victim Advocate, Victim/Witness Division

The Prosecutor is published as a public service by the Montgomery County Prosecutor's Office. For questions or comments about articles appearing in The Prosecutor, or to recommend topics you'd like to see, please contact: Mr. Greg Flannagan, Public Information Officer at 937-225-5610 or e-mail info@mcpo.com



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