



# Ohio Attorney General's Law Enforcement Bulletin



**July 2014**

## **A Quick Look: Criminal Gang Trends in Ohio**

Criminal gangs pose a growing threat to our communities. They can endanger law enforcement and threaten the health and safety of neighborhoods through violence, drugs, prostitution, human trafficking, and other organized crime.

Last year, the National Gang Intelligence Center (NGIC) conducted a survey on community perceptions of gang violence and activity, reporting that gang influence continues to grow. Their reach into communities is expanding through migration from other states, collaboration with drug trafficking organizations and rival gangs, and recruitment of new members. According to NGIC, U.S. gang membership falls into three categories: street gangs, representing an estimated 88 percent of all gang members; prison gangs, approximately 9.5 percent; and outlaw motorcycle gangs (OMGs), about 2.5 percent.

Meanwhile, gangs are becoming more efficient by adapting to changes in society and the economy, using new technology and other strategies to target or evade law enforcement, NGIC reported. Their members are even known to join government groups or take government jobs to obtain information and special skills.

Here's a look at trends involving OMGs and juvenile squads as well as how the Attorney General's Bureau of Criminal Investigation (BCI) can help law enforcement agencies address gang activity.

### **Outlaw Motorcycle Gangs**

In 11 percent of jurisdictions nationwide last year, OMGs were reported to be the greatest threat and most violent gangs, even though their members make up just 2.5 percent of all gang members.

Detective Mark Lovett of the Columbus Division of Police has tracked OMGs around the state and taught classes on the subject for the past 10 years. Known for a fairly significant presence of outlaw motorcycle gangs, Ohio began seeing an influx of these groups in the 1960s when the gangs migrated into the Midwest from the East and West coasts, Lovett said.

"All have specific patches to identify the gang," most commonly on a jacket or vest, although sometimes on a motorcycle or helmet, he said. "They want you to know who they are, so they make it pretty easy."

OMGs typically are organized around drug activity or other organized crime, he said, adding, "Most of them are pretty bold, especially in their contacts with law enforcement. Fear is their power."

Lovett said Northeast Ohio, particularly Canton and Akron, have large alliances of OMGs. As with street gangs, OMGs recruit locally and tie local motorcycle gangs to national organized crime. For example, the SAW Boys support the Outlaws, while the North Coast Motor Cycle Club supports the Hells Angels in Northeast Ohio. Southwest Ohio, particularly around Cincinnati, experiences problems between the Iron Horseman and Cincinnati Highway Men, and Central Ohio has the Outlaws and Avengers as its major OMGs.

“These rivalries are leading to turf battles in cities, ending in violence,” Lovett said.

Black outlaw motorcycle gangs have also been around since the 1960s, but have expanded in recent years and are now a cross between an outlaw motorcycle gang and traditional street gang, he said.

Traditional street gangs, both neighborhood and national gangs, have a history of confrontation and gun violence. NGIC reported that 80 percent of those surveyed believe this type of gang to be the most violent and problematic for their community.

### **Juvenile Street Gangs**

Fifty-three percent of respondents indicated that street gang membership in their jurisdiction has increased over the past two years, a trend tied in part to the rise in the number of juveniles participating in gangs.

“Gang members are now the children of past gang members,” said a BCI criminal intelligence analyst based in Northwest Ohio. “It’s a family culture.”

Street gangs can be linked to crime in elementary, secondary, and high schools as well as on certain college campuses, NGIC reported. Schools provide fertile ground for recruitment and can experience gang activity such as assaults, robberies, threats, intimidation, drug distribution, and weapons offenses. Gang presence on college campuses is a growing concern as more members are gravitating toward college to escape gang life, join athletic programs, or acquire advanced skill sets for their organizations.

In Columbus, Lovett said, authorities are seeing a new type of street gang called “squads.” Mostly neighborhood-based, squads are highly violent groups of youngsters ages 10 to 18 associated with gun activity. Police routinely find photographs and videos on social media sites of these juveniles brandishing guns, engaging in violent behavior, and wearing gang colors.

“The squads are linking to adult gangs,” Lovett said, “which makes them even more violent.”

### **Identifying Gangs and Gang Activity**

How do you know if you are dealing with a gang in your community? BCI’s Criminal Intelligence Unit (CIU) can help.

CIU works closely with local law enforcement agencies to help identify gangs, members, and trends in each region. “A lot of gangs don’t travel, and more are becoming neighborhood-centered, so a regional approach works best,” the Northwest Ohio analyst said.

A BCI criminal intelligence analyst based in Northeast Ohio said CIU can help agencies by setting up databases, compiling records to identify gang members’ associates or the organizational structure of gang leadership, creating timelines of gangs’ criminal activity, and providing intelligence for roundups.

“For example, CIU assisted the Youngstown Police Department with a case by searching through police reports to help establish the existence of a gang, finding the pattern of criminal activity, and charting out the members and associates of the gang,” the analyst said.

Toledo was experiencing a problem with juveniles assisting adult gangs. While awaiting hearings, many of these juveniles were being housed in the county jail. They would come in with information for adult gang members and take information out. Sometimes this caused problems with violence, especially when the corrections officers did not know the juveniles were associated with gang activity.

“CIU worked with the Toledo Police Department to create a reference book for corrections officers that instructed them how to identify gang affiliation by tattoos or brands,” the Northwest Ohio analyst said. “This helped not only keep the jail safer, but provided intelligence back to the police department.”

CIU can also help agencies organize existing gang files for placement in the Mid Atlantic Great Lakes Organized Crime Law Enforcement Network (MAGLOCLLEN), part of the Regional Information Sharing Systems (RISS) program. RISS offers secure information-sharing and communications, critical analytical and investigative support services, and training to enhance officer safety. RISS supports efforts against organized and violent crime, gang activity, drug activity, terrorism, human trafficking, identity theft, and other regional priorities.

Effectively addressing Ohio’s numerous gang-related issues will require cooperation and coordination among agencies, something Lovett already sees happening.

“I think we are on the forefront of reaching solutions with a good number of agencies already working together across Ohio,” he said.

### **Related links**

[OPOTA Course: Infiltrating Outlaw Motorcycle Gangs](#)  
[Bureau of Criminal Investigation](#)  
[National Gang Report for 2013](#)  
[National Gang Intelligence Center](#)  
[National Alliance of Gang Investigators’ Association](#)  
[Federal Bureau of Investigation gang site](#)  
[Regional Information Sharing Systems](#)  
[Ohio Revised Code 2923.41](#)

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## **Search and Seizure (Warrantless Search of Cell Phones): *Riley v. California* and *United States v. Wurie***

**Question:** Can you search the data on an arrestee’s cell phone without a warrant?

**Quick Answer:** No, a warrant is generally required to search the data of a phone after arrest because of the amount and type of private, personal information stored on a modern phone.

[Riley v. California](#), U.S. Supreme Court, June 25, 2014, decided with [United States v. Wurie](#), U.S. Supreme Court, June 25, 2014

**Facts in *Riley*:** After David Riley was arrested for carrying a concealed weapon, the arresting officer seized his phone and looked through it. The officer noticed the letters “CK” in the contents of the phone and believed this stood for “Crip Killers,” a slang term for members of the Bloods gang. The officer gave the phone to a detective in the gang unit, who examined videos, photos, text messages, and other information. He found video of young men sparring, with someone yelling “blood” in the background, and a photo of Riley standing in front of a car believed to be involved in a shooting. Based on this, Riley was charged with additional crimes in the shooting. Although he was convicted, the U.S. Supreme Court vacated the conviction because it found that the search violated the Fourth Amendment.

**Facts in *Wurie*:** Brima Wurie was arrested after a drug sale. At the station, officers seized two cell phones. One of the phones repeatedly received calls to a number labeled “my house.” Officers opened the flip phone and checked the call log to find the number. Using a phone directory, officers traced the number to an apartment building, finding Wurie’s name on the mailbox. The apartment was secured while a search warrant was obtained. Crack, marijuana, and firearms were discovered in the apartment. Even though the officers obtained a warrant to search the house, the appellate courts reversed the conviction because they were led to the house after an impermissible warrantless phone search.

**Importance:** After you’ve arrested someone, there’s a lot of temptation to turn a cell phone on and flip through it. But *Riley* and *Wurie* offer cautionary tales why you shouldn’t. Both suspects were arrested for more significant crimes, and both convictions were overturned because the officers looked through a cell phone without a warrant. While you can physically seize a phone, you cannot skim through its contents.

If you do, however, find yourself in a situation where exigent circumstances (another exception to the warrant requirement) require the phone to be searched immediately, for example accessing the phone to turn the lock feature off or searching a phone that is the target of an imminent remote wipe, it may be considered as a reasonable step to secure a scene to preserve evidence while awaiting a warrant. But keep in mind that you need to have specific facts that demonstrate why the phone was about to be remotely erased. You can’t just argue that because the phone *could* be remote wiped, you had to search it without first getting a warrant.

**Keep in Mind:** Technology is ever changing. The court considered how the following technologies affect how cell phones are searched:

- **Remote Data Wiping:** Data wiping, although a frequent plot in many TV shows, is not common in practice yet. It is easy to stop a third party from remotely wiping a phone by turning it off or taking out the battery, thereby disconnecting it from the network, or by placing it in an aluminum sandwich-size bag called a [faraday cage](#), which blocks the network signal to the phone. Many police departments around the country are using the bags as standard practice when seizing cell phones. The court found that the possibility of remote data wiping was not a reason to allow a warrantless search.
- **The Cloud:** In an interesting twist in *Riley*, the government agreed that any search of a cell phone that could occur incident to arrest, should *not* include data that accessed remotely, such as in the cloud. But as law enforcement, how do you know what data is stored on the phone and/or in the cloud? The government made the suggestion that law enforcement should disconnect phones

from the network prior to search and develop protocol to make sure cloud data is not accessed. The court did not provide an answer; it just stated that this example of easily assessable data not even stored on the phone is why the privacy interests are so high.

**Ohio Law:** In 2009, the Ohio Supreme Court in [State v. Smith](#) examined a similar question concerning whether data could be searched on cell phones. Antwaun Smith was arrested on drug-related charges after responding to a call to his cell phone from a crack cocaine user acting as a police informant. During the arrest, police took Smith's cell phone and later searched the phone's contents without a warrant or his consent. Just as in *Riley*, the Ohio Supreme Court's ruling found a warrantless search is prohibited when there are no immediate safety concerns. More on *Riley* and *Smith* appeared in a recent [Court News of Ohio story](#).

## **Search Warrants (Cell Phone Pings): *State of Ohio v. Taylor***

**Question:** Do you need a search warrant to request a suspect's cell phone pings from the service provider?

**Quick Answer:** No. When a person voluntarily uses a cell phone, he has no expectation of privacy to the data voluntarily transferred to the service provider, such as a ping. As a result, you do not need a warrant to request this kind of information.

[State of Ohio v. Taylor](#), Second Appellate District, Montgomery County, June 13, 2014

**Facts:** Darren Taylor, along with two others, murdered the owner of a pawn shop during an attempted robbery. A customer followed Taylor and his accomplices as they fled in a van. He called the police and gave the license plate number, which was registered to Taylor in Detroit. Based on the registration and a database search, police were able to locate Taylor's cell phone number, his brother's number, and their service provider. Police requested the ping history of both phones from Sprint. Although Taylor had turned his phone off, his brother's phone was active and pinging. During the surveillance, the pings placed the phone in Detroit, at the pawnshop, back to Detroit, and then to the location where an accomplice's dead body was found. The last ping occurred at the police station, where Taylor was detained. Taylor allowed police to search the two cell phones and police obtained an administrative subpoena for additional phone records from Sprint. Taylor filed a motion to suppress, claiming tracking the cell phone pings constituted a warrantless search under the Fourth Amendment.

**Importance:** When a person uses a cell phone, he voluntarily transmits information to the cell service provider about the phone's physical location. The user has no reasonable expectation of privacy to this information. When there is no reasonable expectation of privacy, a search warrant is not necessary. In addition to location, information such as the name and street of the subscriber, the subscriber's phone number, the telephone numbers of calls placed or received, and the duration of the calls can also be obtained without a search warrant.

**Keep In Mind:** Cell phone data is different from placement of a tracking device on a suspect's car. Although both use pings to determine location, the difference is that the suspect voluntarily uses a phone. It is this voluntary use that overcomes the expectation of privacy. For the tracking device, because of the trespassory nature of secretly placing the tracker on the car, you must obtain a warrant. If, however, the suspect voluntarily takes possession of a tracking device, say within a

package they picked up believing it to be drugs, tracking the suspect's movement does not require a warrant because he voluntarily took possession of the device.

**Another Look:** Consider the case of [United States v. Skinner](#), Sixth Circuit Court of Appeals, Tennessee, Aug. 14, 2012, in which federal agents tracked cell phone pings to find Melvin Skinner, who was in possession of drugs. The court determined that when authorities tracked a known number voluntarily used by the suspect while traveling on public roads, the suspect did not have a reasonable expectation to the privacy of the data and physical location of the cell phone.

### **More on Search Warrants**

**More Time to Execute Tracking Device Warrants:** Starting July 1, 2014, Ohio Criminal Rule of Procedure 41 will be amended to give law enforcement more time to place tracking devices after the issuance of a warrant. Currently, law enforcement is given three days to complete a search, no matter the type of warrant. The ability to install a tracking device within three days can be difficult, especially if no opportunity arises for law enforcement to safely and secretly install the device. The amendment allows law enforcement greater flexibility by not mandating a specific time period for placement of a tracking device. Instead, law enforcement will write the date of installation and period the device was used on the warrant, and then return it to the court promptly after the tracking period has ended. Within 10 days after use of the tracking device began, law enforcement must serve a copy of the warrant on the person who was tracked, unless the court authorizes reasonable delay of service. Click [here](#) to read the entire Amendment Package and to learn more.

**What Address? Who Lives There?** You write an affidavit to obtain a search warrant for electronic devices at the home of a man sending sexually explicit photos and content to a minor. You state the address in the affidavit, but fail to say that the address is the home of your suspect. The home is searched and evidence is recovered to charge the suspect with importuning, illegal use of a minor in nudity-oriented material, and disseminating matter harmful to a juvenile. Was the search valid even though you didn't say the location to be searched was the home of the suspect? The court in *Penny* said yes. Although the affidavit did not explicitly connect the suspect to the address, there was enough detail that the link was common sense. If the officer had just said that the suspect resides at the address to be searched, this case doesn't go forward. Although affidavits are routine, you should double check that all the required "links" are clearly written. Even though this court made a "common sense" link, it could have easily said the warrant was invalid. [State v. Penny](#), Fifth Appellate District, Stark County, May 27, 2014

- **Special Case Note:** The above rule is only applicable to the Fifth District of Ohio and its counties. When dealing with federal courts or agencies, remember the rule from [U.S. v. Rose](#) (Sixth Circuit of the United States Court of Appeals) holding there is no probable cause for a warrant when the supporting affidavit did not explicitly link the suspect or crime with the address to be searched. To read more about *Rose*, see the [May 2013 Law Enforcement Bulletin](#).

## **Proper Protocol (Excessive Force): *Shreve v. Franklin County***

**Question:** Is using a Taser on an inmate who suffered a seizure and refused to comply with orders to be cuffed excessive force?

**Quick Answer:** Not if the facts surrounding the Taser use show that the inmate resisted assistance and created a legitimate safety concern for the officers.

[Shreve v. Franklin County](#), Sixth Circuit Court of Appeals, Southern District of Ohio, Feb. 6, 2014

**Facts:** Michael Reed, an inmate, suffered a seizure in his cell. Franklin County sheriff's deputies entered the cell to find Reed on the floor with his hands above his head and a cut above his eye. Reed was told to put his hands behind him, and deputies explained they were cuffing him for safety so he could be taken to the hospital. He placed one hand down and was cuffed. However, as deputies attempted to get the other hand, Reed pulled his hand away and held it across his chest. Reed continued to refuse being handcuffed and was told he was going to be tasered if he didn't cooperate. He did not comply, and the deputies tasered him. He was told not to fight anymore. Reed reached toward one of the deputies and answered "OK." Deputies told Reed eight more times to put his hands behind him, but Reed continued to reach out, saying "please, please, please." Two more deputies attempted to gain control of Reed without success. He was told that the deputy would use the Taser again if he did not stop resisting. Reed did not comply and was tasered a second time. Eventually, deputies got Reed handcuffed and transported to the hospital. The entire incident was captured on video. Reed claimed the deputies used excessive force by using the Taser on him twice.

**Importance:** Excessive force cases are largely fact-based claims, requiring the court to examine your decision to use force to determine whether you are acting with "deliberate indifference" to the person you are using force against. In this case, the deputies were forced to taser Reed in order to secure him for medical transport. Reed created the circumstances that led to him being tasered, and so the court — looking at all the surrounding circumstances — determined that using a Taser was not excessive force. Remember, the more confident you are in your decision and the more able you are to list specific facts to support the decision, the easier your time on the witness stand. Although the standard is not supposed to be a 20/20 hindsight review of the facts, that won't stop a defense attorney from grilling you about every detail.

**Keep in Mind:** Qualified immunity is a defense commonly used by law enforcement in excessive force cases. When you are sued civilly for conduct associated with your job as a public official, you may be entitled to qualified immunity. That means you cannot be sued. The person suing must prove you are not entitled to the immunity. They must show you violated a clearly established statutory or constitutional right and that any reasonable officer standing in your shoes would have known the conduct was a violation. In determining qualified immunity, courts examine all of the facts and what you know legally. For example, if a court in your jurisdiction decided shooting a fleeing unarmed suspect was a constitutional violation and the next week you shoot a fleeing unarmed suspect, the court may find you are not entitled to immunity because you should have been aware of the case.