




Ohio Attorney General's Law Enforcement Bulletin



September 2014

You play a huge role in school safety

Law enforcement officers play a vital role in the safety and security of Ohio students. Whether you are a full-time school resource officer, patrol near a school, or could be a first responder to a school emergency, it is important to be aware of criminal trends involving teens and best ways to work with school officials in investigations.

Criminal Trends Involving Teens

Unfortunately, criminal behavior such as menacing, bullying, possession of weapons, theft, assault, drug use, and underage drinking are prevalent in schools across Ohio and the nation. Here, we focus on two of the more widespread trends: marijuana dabbing and sexting.

- **Marijuana dabbing:** This process involves using a vaporizing device, aka “trippy stick” or e-cigarette, with a concentrated form of marijuana. The marijuana looks like honey or wax and is kept in a small jar called a pot.

“Kids will form a small ball from the wax, about the size of a BB, place it inside an e-cigarette or similar device, and let the heating element melt the wax,” explained Molly Blevins, a detective with the Genoa Township Police Department. “As the wax melts, the highly concentrated THC turns into vapor.”

Trippy sticks are typically smokeless and odorless, and from a distance they can look like pens, making them extremely popular with some students. Online videos demonstrate how vaporizers work and even how teens have used them to get high in class without detection.

“It’s not cheap stuff. One gram can cost up to \$60,” Blevins said. Yet, she said, “the user is getting a high that lasts hours from just a few hits off the device.”

Vaporizers are also being used with water-soluble drugs such as methamphetamines, powdered cocaine, bath salts, and other synthetic drugs. They are relatively inexpensive and rechargeable through a USB port.

Joe Graham, a school resource officer at Westerville Central High School, is frustrated that vaporizing devices are legal for teens to buy and possess.

“I do confiscate them (based on school policy), but the only way I can charge a kid (with drug paraphernalia) is if I can find evidence of either nicotine or marijuana,” he said. “The actual device is not classified as drug paraphernalia. The law just hasn’t caught up to the technology.”

“Some devices are now being sold to work wet or dry, which means a kid can use wax or leaf marijuana,” he added. “There is really no reason for a kid to have one of these things other than to get high.”

- **Sexting:** Although sexting is nothing new, schools are seeing a new trend in how photos are transmitted. Unlike regular text messages, which can be obtained by warrant to the phone provider, kids are using applications such as Snapchat and Kik Messenger to send photos. This type of application, which works only through wi-fi, does not store data on the device or with the provider.

“Kik Messenger, in particular, is difficult to obtain records from since it is based in Canada. We have to work through the Department of Justice,” Graham said.

Blevins said even if photos are on the device, some kids are using applications such as Private Photo Vault to securely store photos. And some are storing photos to remote locations, such as the cloud.

“Take the kid’s phone and place it in airplane mode immediately; do not turn it off. That way it cannot be wiped through the cloud before the lab can analyze it,” Blevins added. A warrant is needed to access items stored in that manner.

Another issue: Teens do not understand they are violating the law by taking and sending nude photos. Sadly, a few students are trading the pictures like baseball cards.

“We do preventative education during orientations and health classes, but kids still don’t understand the long-term implication of sexting,” said Adam Gongwer, a school resource officer with the Ontario Police Department and member of the Ohio School Resource Officers Association board.

It can also be difficult for law enforcement and prosecutors to decide whom to charge and with what crime.

“County prosecutors are between a rock and a hard place when looking at whether to charge the boyfriend for possessing the naked picture of his teenage girlfriend or for sending it to his friends when they break up,” Gongwer said. If charged, teens can face consequences that last a lifetime.

Tips for Working with School Officials

Law enforcement officers and school officials alike benefit when they partner in school investigations and emergency situations.

“Schools can do things that police cannot, and vice versa,” Graham said. This is because the constitutional rights of children in public school buildings are different than outside the building.

“For example, school administration only needs reasonable suspicion to search a locker because it is their property. Law enforcement, on the other hand, will need probable cause and possibly a warrant to search,” Graham said. School administrators are required to develop and inform students about the search policy prior to a search.

Of course, law enforcement cannot direct school administrators to search lockers, people, or possessions. If an officer did so, the administrator would be subject to the same constitutional requirements as the officer. See [*New Jersey v. T.L.O.*](#), U.S. Supreme Court, 1985.

Law enforcement and administrators should also work together when dealing with emergency situations and evacuations. “We have seen in emergency situations where students text message their parents and then parents show up, or kids may leave school grounds on their own,” Gongwar said.

Trying to locate teens or having parents bang on the door during a lockdown can distract from the emergency response. As part of a school’s safety plan, law enforcement and school administrators should discuss such situations and develop plans of action.

It is also important to be prepared and practice for emergency situations. One approach Graham recommends is ALICE, which stands for alert, lockdown, inform, counter, and evacuate. ALICE training offers schools proactive strategies that increase chances of survival during an armed intruder event.

“I would recommend all schools in Ohio receive ALICE training,” Graham said. “It is that important.”

Pam Vest Boratyn, who chaired the Ohio Attorney General’s School Safety Task Force, agrees that preparation and practice are essential. Law enforcement should “talk with school officials, teachers, staff, parents, and students to build the trust needed for prevention,” she said. “Local control, organization, and resources are keys to successful planning and execution in the event of an emergency. The response is greatly improved if everyone knows their roles and responsibilities.”

Resources

[Ohio Attorney General School Safety Task Force](#)

[OPOTA: School Resource Officer Training](#)

[Ohio School Resource Officers Association](#)

[ALICE Training Institute](#)

[Ohio Public Defender: School Search Case Law Summaries](#)

[ACLU of Ohio: Student Rights Handbook](#)

Columbus Channel 10TV News: [Police Concerned About Growing Number of Dabbers Using Highly Concentrated Pot](#), 10TV, Columbus, Jan. 30, 2014

By Jennifer Anne Adair

Deputy General Counsel for Law Enforcement Initiatives

Search and Seizure (Forced Entry, Warrantless Search): *Ohio v. Fisher*

Question: Can you force entry into a residence, without a warrant, when you have identified suspects from past criminal incidents inside?

Quick Answer: No, unless there is an exception to the warrant requirement.

[State of Ohio v. Fisher](#), Fifth Appellate District, Fairfield County, July 9, 2014

Facts: On a domestic violence call, officers approach a duplex with an upper and lower level apartment. They knock on the lower level apartment, but no one answers. Upstairs, an officer is let in to the apartment by a young girl. The officer finds her mother with a red marks on her face and neck.

The woman says that her brother Jonathan Fisher, who lives in lower level, attacked her. She said he may be with their other brother, who has an open warrant. The officer goes back downstairs and walks around the perimeter of duplex. He finds an open window and, in plain sight, observes two men inside. The woman is brought down and identifies the men as her brothers. With the domestic violence affidavit signed and knowledge of the alleged outstanding warrant, officers force their way into the lower level apartment and find the two men with a large bag of marijuana. Fisher filed a motion to suppress, arguing that the officers were required to have a warrant before entering the lower level apartment.

Importance: In this case, the officers needed a warrant. Neither 1) the presence of a guest with an outstanding warrant, nor 2) the identification of the domestic violence suspect justified a warrantless entry. The person who lives in the home is still entitled to privacy protections unless a warrant exception, such as to give emergency aid or to protect someone after hearing sounds of violence coming from inside, clearly applies.

Keep in Mind: Remember to follow the proper steps when you're entering a residence. In this case, the police observed and identified the men inside the lower level apartment and knew both had engaged in criminal activity. However, neither was in the process of committing a criminal act at the time, nor was either fleeing from a criminal activity. Just because you see a suspect inside a residence doesn't mean you can force your way in without a warrant.

More on Search and Seizure

Gun in Room 205: You respond to a call at a local motel, where a man in room 205 has allegedly threatened several people with a gun. On arrival, you knock on room 205 and a female asks who it is from behind a closed door. You answer "police" and she opens the door wide enough to see into the room. You then notice a male dive to floor. Fearing this is an unsafe situation, you draw your weapon and enter the room. You apprehend and cuff the man. A search of the room produces no weapons. During a pat-down, you find heroin in his pocket. Do the drugs get suppressed? The court in *Peck* says no. A warrantless entry is allowed if exigent circumstances are present and officer safety is at risk. The police in this case had a reasonable suspicion a gun was in the hotel room, and Thomas Peck's sudden movement created an exigent circumstance. Remember, the mere fact a firearm may be inside does not create an exigent circumstance. What must be present, and explained, is the risk of danger from its use. For example, the exigent circumstance was created by Peck's action of diving for a possible weapon. [State of Ohio v. Peck](#), Second Appellate District, Montgomery County, June 27, 2014

Detaining while Investigating: You arrive at the scene of a reported abduction, finding a man with a woman handcuffed in his car. The man is ordered to leave the car, and you cuff him while investigating the situation. Within two or three minutes, you determine there is a bench warrant for the woman's arrest and the man is a bail bondman. The man remained handcuffed for a while after you make this discovery. Did you violate his rights? The court in *Lacey* said yes. If you detain someone longer than necessary, you may lose your qualified immunity and find yourself getting sued. You can detain a suspect when you reasonably believe he may have committed a crime. But if you then uncover facts that there was no crime, the person is no longer a "suspect," and you need to let him go. Once the officers in this case uncovered Dwayne Lacey's identity as a bondsman, they knew no abduction had occurred. As a result, Lacey should have immediately been released. As an aside, bail bondmen in Ohio are required to notify local law enforcement before attempting to apprehend, detain, or arrest an individual, under [Ohio Revised Code \(R.C.\) 2927.27\(A\)\(3\)](#). Failure to do so is a misdemeanor in the first degree, with a possible six-month prison term, \$1,000 fine, or both. The

court made no finding about Lacey's admitted violation of this statute, but did point it out to the lower court for consideration. [Lacey v. City of Warren](#), Sixth Circuit Court of Appeals, Ohio, July 3, 2014

Hunches Confirmed: While on routine patrol at 3:30 a.m., you see a black SUV speed past with two men. When you activate your lights to make the stop, the SUV takes off at a speed that is unsafe to chase. After reporting the incident to your sergeant, he tells you drive down Salem Street on the belief the SUV would be there. You do, and find the SUV with the two men from the traffic stop inside, backed into a driveway. Upon seeing you, both men flee. You order them to stop, and when they fail to obey, you taser and arrest one of them. Was this search and seizure proper? The court in *United States v. Davis* said yes. Although the reason the officer went down Salem Street was on a hunch, the actual stop was based on an articulable reasonable suspicion because he recognized both men from the earlier traffic incident. In this case, the hunch was confirmed *before* the officer acted. If the hunch was confirmed during or after the stop, the court probably would have said the stop was improper. [United States v. Davis](#), Sixth Circuit Court of Appeals, Tennessee, July 23, 2014

Furtive Movement and Loose Lips: On patrol you see two cars driving the wrong way on a one-way street. You stop the second car and note the back-seat passenger making furtive movements. You ask the back-seat passenger to exit the car and ask him what he was doing. He tells you he was stuffing a bag under the seat. You ask him if you can see the bag, and he gives it to you. The bag is an empty "booster bag" used for shoplifting. Based on this, you call in back-up to perform a probable cause search of the vehicle. The search identifies criminal tools, stolen merchandise, and drugs. Was the search proper? The court in *Westlake* said yes, reversing and remanding the lower court's decision that the stop was improper because an officer cannot rely on furtive movement alone to perform a search. The appellate court determined the stop was proper because the officer only relied on the furtive movement to ask the passenger to step out of the vehicle. The passenger then volunteered information and evidence of the criminal tool. It was at that point the officer had probable cause to search the vehicle. [Westlake v. Gordon](#), Eight Appellate District, Cuyahoga County, July 10, 2014

Traffic (OVI, Voluntary Collection and Storage of Bodily Fluids): Ohio v. Ossege

Questions: 1) Do you have to first inform a suspect that he can refuse to give a urine sample before his consent can be voluntarily given? 2) Is a sample considered compromised if you do not fill out the required information on the label?

Quick Answers: 1) No, informing the suspect he can refuse to give a sample is not a prerequisite to voluntary consent. It is, however, one of the factors a court will consider to determine the voluntariness of the consent. 2) No, the sample wouldn't be compromised as long as other unique identifiers can link it to the suspect.

[State of Ohio v. Ossege](#), Twelfth Appellate District, Clermont County, July 21, 2014

Facts: An officer was dispatched to the scene of a vehicle accident involving two pedestrians. Anthony Ossege and his two children were in the vehicle, and a pedestrian was dead. The officer did not observe any signs that Ossege was impaired, and he denied drug or alcohol use. Ossege was transported back to the station to write his statement and while there was asked to give, and consented to, a urine sample. The sample was kept in the refrigerator for two days and mailed to the

crime lab. The results indicated 356.16 nanograms of marijuana per milliliter. Ossege filed a motion to suppress, claiming the sample was not given voluntarily because he was never told he did not have to give it. Ossege also argued the sample was incorrectly collected and stored, thus should be thrown out.

Importance: The collection of bodily fluid is a seizure under the Fourth Amendment and requires a warrant unless an exception applies. One exception is where the suspect voluntarily consents. While the subject's knowledge that he can refuse to give a sample is a factor in voluntariness, it is not a prerequisite to establishing voluntary consent. The court will look at the totality of the circumstances. In this case, the court considered all of the other factors and determined Ossege had given voluntary consent — he was voluntarily transported to the station, was not under arrest, was being cooperative in the investigation, and there were no threats or coercion by the officer. The officer's failure to inform Ossege that he did not have to give a sample did not change the voluntariness of the consent.

[Ohio Administrative Code \(O.A.C.\) 3701-53-05\(E\)](#) requires samples to be labeled with the name of the suspect, date and time of collection, name or initials of the person collecting the sample, and name or initials of the person sealing the sample. Ossege questioned whether the sample belonged to him because it did not contain his name and was placed in the refrigerator with nine other samples. The court determined that even though the sample did not contain Ossege's name, it was properly collected, stored, and identified by the police officer who made the collection. It also contained other information, such as the officer's name and date of collection, which provided unique identifiers.

Keep in Mind: This case highlights when simple errors or oversights can lead to big issues for a case. If the officer would have done two simple things, these issues would not be before a court: 1) inform Ossege he could refuse the test, and 2) filled out the sample's label completely.

Another Look: In *Baker*, the court threw out BAC samples collected from a suspect. It found the officer failed to comply with [O.A.C. 3701-53-05\(F\)](#), which requires that blood and urine samples be refrigerated unless in transit or under examination. Because the trooper failed to refrigerate the samples for four hours and the state did not show the samples were not compromised due to lack of refrigeration, the BAC results were thrown out. [State of Ohio v. Baker](#), Eleventh Appellate District, Ashtabula County, June 30, 2014

More on Traffic

At or Before the Line: You stop a car for a traffic violation because it failed to stop before the solid bar stop and instead stopped on the line. When you approach the car, you detect a strong odor of alcohol, and the driver's eyes are red, bloodshot, watery, and glassy. You administer the field sobriety tests, which results in failure. The city ordinance states "... every driver of a vehicle approaching a stop sign *shall stop at a clearly marked stop line* ..." Did you have a reasonable articulable suspicion for the stop? The court in *Drushal* said no. It determined the city ordinance did not require a vehicle to be stopped *before* the white line, but *at* the white line. The court defined "at" as meaning "in, on, or near." Since the officer misunderstood the law and the vehicle was stopped on the line, there was no reasonable articulable suspicion for the stop. [State of Ohio v. Drushal](#), Ninth Appellate District, Wayne County, July 14, 2014

Electronic Traffic Tickets: The Ohio Supreme Court has adopted amendments to the Ohio Traffic Rules about electronic tickets. In January, the traffic rules were modified to allow the use of e-tickets under a pilot project. But the project did not consider the use of a hybrid system in which officers issue tickets electronically, but rather file paper tickets with the court. As a result, amendments to Traffic Rule 3 deleted the requirement that an electronic ticket meet the mandatory "form and

content” requirement of a paper ticket. The amendments also require that any paper ticket generated from the e-ticket be of sufficient quality to meet record retention requirements. [The amendments](#) appear on the Ohio Supreme Court website.

Register now for the AG’s Law Enforcement Conference

Law enforcement agencies across Ohio and the nation have to work harder, smarter, and more collaboratively than ever before in the face of dwindling resources and increasingly cunning criminals. The Ohio Attorney General’s 2014 Law Enforcement Conference — scheduled Oct. 28-29 at the Hyatt Regency Columbus — will update attendees on recent trends and provide great networking opportunities across several criminal justice disciplines.

The conference is the premier gathering of state, county, and municipal law enforcement officers in Ohio. Each year, there is something new to gain. Not only is it a great chance to network and exchange ideas, but also allows participants to hear about cutting-edge techniques, major criminal issues, and legal updates from experts in the field. The conference also celebrates and honors law enforcement officers with the distinguished valor, training, and service awards during the Oct. 29 luncheon.

The cost of the conference is \$75, and all workshops qualify for credit toward this year’s continuing professional training requirement for peace officers and troopers.

The conference is open to all professionals serving the criminal justice system. Law enforcement, attorneys, social workers, corrections officers, probation officers, and judges can customize a track that works best for their professional needs. Continuing education credit is also offered for social workers and attorneys.

Each year, the conference presents a theme in line with Attorney General Mike DeWine’s mission of protecting families. Seniors, who are becoming increasingly victimized by criminals, were a natural focus for this year as a complement to the Attorney General’s recently announced [Elder Justice Initiative](#). The *Protecting Ohio’s Seniors* track offers workshops on the prosecution of financial crimes against the elderly, elder abuse, law enforcement’s connections with older adults, and evidence-based prosecution.

The conference also provides five other tracks. Attendees may take a full track or mix and match among the workshops. The Bureau of Criminal Investigation (BCI) will present a track focused on *Crimes Against Children*. This track includes workshops on missing children; abuse and fatality investigations; case studies in child pornography cases; and sex trafficking.

There is also a *Management/Technology* track, through which participants will learn about social media; procedural justice and police legitimacy; close call reporting; and alternative ways to deal with synthetic drugs. Workshops on drug trends; distracted driving; and sovereign citizens will be featured in the *Emerging Crime Problems* track.

For attorneys, or anyone wanting a legal update, the *Legal* track offers updates in domestic violence, human trafficking, concealed carry, Fourth Amendment search and seizure, and identity theft laws. Lastly, the *This & That* track offers a variety of workshops ranging from homicide investigations to interacting with Muslim populations.

Each year, the conference brings new speakers and workshops. Among this year's new presenters is Chief David Oliver of the Brimfield Police Department. Oliver has gained international attention thanks to his department's Facebook page. He will discuss how his department uses social media in its day-to-day operations and community building efforts as well as pitfalls and helpful hints to be aware of.

A workshop led by Franklin County Municipal Court Judge Paul Herbert, creator of Ohio's first human trafficking court, is also new this year. He will talk about how to recognize and respond to human trafficking victims who may also be prostitutes.

A topic that law enforcement deals with on a daily basis is distracted driving. But sometimes even law enforcement officers are distracted by all the technology at their fingertips. To address this topic, OPOTA Training Officer Scott Whatley will be joined by sports anchor Dom Tiberi of Columbus' WBNS-10TV, who lost his daughter Maria to distracted driving, to talk about distracted driving crashes involving police officers and ways to prevent them.

This year's conference also presents three keynote speakers addressing a variety of topics. First, James A. White Sr. will speak at the opening session on Oct. 28 about personal and professional empowerment in law enforcement. White is a senior master training coach and owner of Performance Consulting Services in Columbus. The lunch on Oct. 28 will feature Bobby Smith, a retired Louisiana state trooper and internationally recognized speaker and author who was left blind when a violent offender shot him in the face in 1986. Lastly, Michael LaRiviere, a member of the Salem, Mass., Police Department, and Ursel McElroy, deputy director of education and policy for the Attorney General's Crime Victim Services Section, will share insights on responding to elder abuse. Their talk is the opening session on Oct. 29.

To register for the conference, complete the [online form](#) or print a [registration packet](#) to mail. The registration packet also contains descriptions of all workshops. The deadline to register is Oct. 19. For those traveling to Columbus on Monday, Oct. 27, the Fraternal Order of Police will host a reception from 6 to 8 p.m. at Callahan's restaurant, across the street from the hotel.

For more information about the conference, visit the [Ohio Attorney General's website](#). If you have questions, call 740-845-2684 or send an email to LEC@OhioAttorneyGeneral.gov.