



# Ohio Attorney General's Law Enforcement Bulletin



**June 2013**

## **Safe Neighborhoods Initiative targets gun violence**

Strategies that have produced drastic reductions in gun-related crime in cities around the country form the foundation for Attorney General Mike DeWine's new Safe Neighborhoods Initiative.

In Boston, youth homicides fell by two-thirds and all homicides by half. In Cincinnati, homicides involving gangs fell 41 percent and other violent firearms incidents dropped 22 percent. In Stockton, Calif., where gang homicides fell from 18 the year before implementation to one afterward, the overall gun homicide rate fell 42 percent.

The Attorney General's Office has begun a pilot of the Safe Neighborhoods program in Akron in collaboration with local law enforcement, community and church leaders, social service providers, and victims' families. The plan — there and later statewide — is to target the most violent career criminals, a small segment of the population shown to commit the majority of Ohio's violent crime.

According to Ohio State University Professor Deanna Wilkinson, who analyzed Ohio Department of Rehabilitation and Correction and Bureau of Criminal Investigation data from 1974 to 2010, those with two or more violent felony offenses make up less than 1 percent of Ohio's adult population, but are responsible for 57 percent of Ohio's violent felony convictions.

"Our goal is to revitalize and restore the spirit of neighborhoods paralyzed by crime and gun violence," Attorney General DeWine said. "My office is going to help communities across the state implement holistic solutions."

Assistant Attorney General Bob Fiatal will lead the effort and work with local authorities interested in expanding it to their communities. A former FBI agent, he headed the Attorney General's Ohio Peace Officer Training Academy from 2010 until May, when he began his new assignment.

### **How it works**

Here's how the strategy is implemented:

- A city's high-crime groups or gangs are identified, and the most violent is targeted first.
- The most violent offenders and gang leaders who are on parole or probation in that area are ordered to appear for a "call-in."
- At this meeting, local, state, and federal law enforcement warn offenders of the prison time they will face if they continue to commit crime. (A proposed Armed Violent Career Criminal Act that would stiffen penalties for repeat violent offenders is under consideration by Ohio legislators.) Offenders are told they are being watched and have one more chance to stop. If they commit another gun-related violent crime, law enforcement comes out in full force on the entire gang.

- Clergy, community leaders, and residents who have lost family members also speak at the call-ins, sharing the community's plea that the violence end.
- Information on job training, alcohol and drug rehab, GED prep, and other social services is provided in a "one-stop shop" approach for those who want help.
- This same process is repeated with the next-most violent group and others as they are identified.

"The call-ins are an efficient and effective method of communicating the strategy's key message back to the entire universe of violent groups in the neighborhood," Attorney General DeWine said. "As these groups come to understand that violence by one may lead to law enforcement attention to all, the peer pressure that drives violence is reduced."

### **Why it works**

Three elements of the strategy address what really drives violence on the streets. First, it conveys that the community wants to see the violence end, values the offenders, and wants them to succeed. Second, it offers help to offenders who want it. And finally, it spells out specific and credible consequences for homicides and shootings directed at violent groups.

"This is more than an enforcement-based action. It's proactive work," Fiatal said. "We want to stop crime before it happens. The mindset in law enforcement has been to lock them up. And until a couple years ago, that's where I was, too. But it doesn't work in the communities we have now."

David Kennedy, director of the Center for Crime Prevention and Control at City University of New York's John Jay College of Criminal Justice, developed the model, first piloted as Operation Ceasefire in Boston in the mid-1990s. He has since worked with more than two dozen cities on firearms violence and drug market disruption initiatives.

Kennedy lays out the strategy — and the challenges of implementing and sustaining it — in his 2011 book, "Don't Shoot: One Man, a Street Fellowship, and the End of Violence in Inner-City America."

"It takes about 10 minutes to explain it," he writes. "... What we need to do is identify those core offenders, which is easy. Then we need to put together a core partnership of law enforcement, service providers, and community voices. If we can add strong figures close to the offenders — parents, elders, 'influentials' — so much the better.

"We need to organize law enforcement so it can provide a clear, crisp, predictable strategic response, particularly to the groups ... at the center of the action. We need to organize the social services and the community voices. We need to build a sustained relationship between the partnership and the streets in which we clearly, crisply, and repeatedly spell out standards, opportunities, and consequences. And in order to do all *that*, we need to undo the worst of the toxic rift between law enforcement and the neighborhoods."

Cincinnati is among cities that have worked with Kennedy to reduce gun violence. It implemented the Cincinnati Initiative to Reduce Violence (CIRV) in 2007 after the homicide rate rose from 41.3 per year in the 1990s to 88 in 2006. Loosely modeled after Operation Ceasefire, the program produced impressive results, including a 41 percent drop in gang-related homicides in the 42 months after its implementation, according to University of Cincinnati researcher Robin Engel, who has been involved from the start.

Sustaining such gains can be a challenge, and that's been the case in Cincinnati, Engel said, noting that a recent increase in gang-related homicides has coincided with changes in CIRV leadership, the loss of critical partnerships, and reduced funding.

Cincinnati Assistant Police Chief James Whalen supports the concept. "The application of focused deterrence principles to gun violence saves lives," he said. "It's a technique that we've employed here that has been very effective for us. It's a work in progress, and it requires constant attention and adjustment, but we've been very satisfied with the results."

### **AG provides additional resources**

As part of the Safe Neighborhoods Initiative, the Attorney General's Office has designated \$7 million for grants to fund community efforts that offer alternatives to violence. The grants will fund social service and community programs.

"It is important that these neighborhoods have necessary social services available to help offenders get on a new track and get their lives turned around," Attorney General DeWine said.

The Bureau of Criminal Investigation (BCI) also will play a role. Criminal intelligence analysts can help establish data baselines, measure results, and identify patterns of gang activity, violent crimes, and firearms use to complement local agencies' efforts. Agents can provide advanced crime scene reconstruction to identify locations where shots were fired and conduct forensic investigations of crime scenes.

BCI also can provide a "virtual command center" for local coordination, and agents can be part of a visible presence when violent crimes occur. In addition, BCI will collect data on gang activities to contribute to a statewide strategy for reducing violent gang activity.

"Some of the concepts of the group violence reduction strategy have been tried in Ohio cities previously. What the Attorney General's Office can bring to the table are resources and continuity that can help sustain these efforts over the long haul," Fiatal said.

### **For more information**

- For details on the Safe Neighborhoods Initiative, contact Bob Fiatal at [Robert.Fiatal@OhioAttorneyGeneral.gov](mailto:Robert.Fiatal@OhioAttorneyGeneral.gov) or **216-787-3030**.
- Read "Don't Shoot: One Man, a Street Fellowship, and the End of Violence in Inner-City America" by David Kennedy.
- Visit the National Network for Safe Communities website at [www.nnscommunities.org](http://www.nnscommunities.org).

## **Trainings help officers speak to and for abused children**

Two upcoming training opportunities can help law enforcement officers enhance their ability to speak to and for abused children. The trainings, provided by the Ohio Attorney General's Office in coordination with the National Child Protection Training Center, also can benefit prosecutors, victim advocates, and social workers.

**[When Words Matter: Emerging Issues in Forensic Interviewing](#)**

When Words Matter is the largest annual conference for forensic interviewers in the United States. It is designed to extend the concepts taught at five-day forensic interviewing courses. The conference is ideal for child protection professionals, forensic interviewers, law enforcement officers, prosecutors, social workers, and medical or mental health professionals who work with maltreated children.

**Dates:** July 29–Aug. 1, 2013

**Location:** Hilton Columbus Downtown

**Fees and Scholarships:**

- \$300 — Early Bird Registration (through June 30)
- \$350 — Standard Registration (through July 26)
- \$375 — Late Registration (after July 27)
- [Click here for information on limited registration scholarships made possible by the Ohio Attorney General's Office](#)

**Finding Words Ohio: Interviewing and Preparing Children for Court**

This five-day course gives participants a chance to learn the necessary skills to conduct a competent investigative interview of a child abuse victim. The training includes lecture and discussion, review of videotaped interviews, skill-building exercises, and an interview practicum. It is appropriate for investigative teams of child protection professionals, forensic interviewers, law enforcement officers, prosecutors, and social workers.

**Dates:** Oct. 21–25, 2013

**Location:** Center for Family Safety and Healing at Nationwide Children's Hospital, Columbus

**Fee:** \$100

**For more information:** Visit the [Ohio Attorney General's website](#). If you have additional questions, contact the Attorney General's Crime Victim Services, 614-644-8694, or at [VictimServiceProviderTrainings@OhioAttorneyGeneral.gov](mailto:VictimServiceProviderTrainings@OhioAttorneyGeneral.gov).

## **Registration opens for School Safety/Crisis Management Conference**

A School Safety/Crisis Management Conference addressing emergency management and planning along with recommended steps to take before, during, and after an emergency is scheduled for Aug. 19 in Columbus.

Law enforcement, public safety, and education officials are urged to attend the conference, sponsored by the Ohio Attorney General's Office, the U.S. Department of Education, and the Buckeye Association of School Administrators (BASA). It will take place from 8 a.m. to 2:45 p.m. Monday, Aug. 19, at the Renaissance Hotel, 50 N. Third St., Columbus.

Speakers will include Susan Graves, a school emergency management trainer for the U.S. Department of Education; Arthur Cummins, a trainer for the International Critical Incident Stress Foundation; and Marleen Wong, a University of Southern California associate dean who has helped develop recovery programs for schools throughout the U.S. and abroad. Ohio Attorney General Mike DeWine will provide an update on his office's work on school safety issues.

For a full agenda and to register online, visit [www.basa-ohio.org](http://www.basa-ohio.org) and click on the Events tab. The \$159 per person conference fee covers materials, breakfast, lunch, dinner, and parking. For more information, contact BASA at 614-846-4080.

## ***Maryland v. King, U.S. Supreme Court, June 3, 2012***

The U.S. Supreme Court has affirmed the constitutionality of taking DNA samples from felony arrestees. This case confirms the validity of the Ohio law that established the requirement for felony arrestees to submit DNA samples beginning in July 2011.

Visit the [U.S. Supreme Court](http://www.supremecourt.gov) website to view the entire opinion.

## ***Smith v. Stoneburner, U.S. Sixth Circuit Court of Appeals, May 10, 2013***

**Quick Summary:** This case should be a must-read for officers trying to understand how courts view — sometimes skeptically — an officer’s actions that intrude on individual liberty. Although this case turns on the complex legal question of qualified immunity, it is a candid view of how courts seek to protect individual liberty from undue police intrusion.

**Facts:** Charles Smith shoplifted a \$14.99 cell phone charger from a Walgreens store. He was watched on video, seen by eyewitnesses, and detained; but he refused to stay in the store and walked back to his house (which apparently was within sight of the Walgreens). Two officers responded, reviewed the evidence, and went to Smith’s house to speak to him. There they met Smith’s 19-year-old younger brother, Logan, and asked if they could enter the house. Logan said he’d ask his mother and told them to wait on the back deck.

When Logan went into the house, Officer Stoneburner followed him inside, and Logan gave him a “Why are you coming in the house? I told you to wait outside” look. Eventually, Logan, Smith, and their mother, Donnetta, all went outside to the deck to talk to the officers. The officers questioned Smith and patted him down. Stoneburner asked if he could search the house, and Smith mumbled something and went back inside. Stoneburner followed, asking if there was anything he should know about. Smith started to close the door behind him, but Stoneburner stopped him and then reached in to grab Smith’s wrist. Stoneburner pulled Smith outside, bent him over the railing, and put him under arrest.

**Why this case is important:** This case explains, in plain language, the difference between how an officer views a set of circumstances and how the courts do. Many officers reading the facts of this case may not think the officer did anything wrong. But the Sixth Circuit disagreed, and so those officers now are facing a federal trial.

### **Consider each action in turn:**

*Following the brother into the house:*

- **The officer’s view:** Entering the house was not illegal because Logan watched him enter and did not object. Therefore, he consented to the entry.

- **The court's view:** The officer was told to wait outside but entered anyway. While Logan may have “acquiesced” to Stoneburner entering, he didn't “freely invite” the officer in. Further, he gave the officer a dirty look for entering.

The court didn't buy the officer's argument that Logan “consented” to allow him to enter just because Logan didn't tell him to leave. Logan's version of the events was that he told Stoneburner to stay on the deck, but Stoneburner simply ignored him and entered the house anyway. Here, the court is suggesting that a citizen who has already told an officer not to enter should not be required to attempt to forcibly eject an officer who has entered anyway. Put simply, once Logan told Stoneburner to stay outside, Stoneburner had no legal authority to enter the house and violated the Constitution the second he crossed the threshold.

*Entering the house a second time to reach in and grab Smith:*

- **The officer's view:** He had probable cause to arrest because he had evidence that Smith had stolen property. Therefore, his entry was justified as hot pursuit or to prevent the destruction of evidence.
- **The court's view:** Smith, who stole a \$14.99 phone charger, was simply leaving the questioning. Since he had consented to speak with the officers, he was free to leave as well. Therefore, he was not being “hotly pursued,” and the court flatly rejected the idea that he would destroy the evidence.
  - If a suspect — particularly one suspected of a low-level crime such as stealing a \$15 phone charger — walks away from questioning and back into his house, he is not “fleeing.” Otherwise, as the court noted, “To call that choice ‘flight’ would make a fugitive out of any citizen who exercises the right to end a voluntary conversation with a police officer.”
  - Moreover, even if there had been pursuit, it couldn't have been “hot” pursuit because there was no emergency that required Smith's immediate apprehension. As the court noted, if Stoneburner had gone to get a warrant, Smith “would have remained inside the house, a non-violent person alone with a non-violent phone charger.”
  - There was no serious risk to the evidence. There was eyewitness evidence of the stolen charger, and there was really no way to get rid of the charger. As the court noted, “Tossing the charger out the window would have accomplished little. This was not Venice. It was canal-free Sturgis, Mich.”

**Keep in mind:** The officers in this case were investigating the theft of a \$15 phone charger, a fact that played heavily in the court's analysis of the officers' action, and they essentially invited themselves into the Smiths' home without permission. There was no doubt in the court's mind that the officers grossly exceeded the scope of any “consensual” permission from the occupants.

In the past, we've recommended that in order to think of what consent means, you should try putting yourself in the homeowner's shoes and imagine a consensual encounter with a stranger such as a door-to-door solicitor. This is because when you are having a *consensual conversation* with a suspect, *you are in the same circumstances as any other citizen*. By definition, a consensual encounter is one where you are not exercising police authority to force someone to talk to you. The idea of “consent” is that you are not using your position of authority to coerce your way into someone's house, rather that they are freely inviting you in.

So, imagine what your reaction would be if you asked a solicitor to wait outside and they instead walked into your house behind you. You would feel like they were violating your home and privacy. The second you do the same thing to a citizen, you are moving beyond the scope of a consensual encounter.

Visit the [U.S. Sixth Circuit Court of Appeals](#) to view the entire opinion.

## ***United States v. Siler, U.S. Sixth Circuit Court of Appeals, May 15, 2013***

**Question:** Can an officer use false threats or promises of leniency to secure a confession from a suspect?

**Quick Answer:** No. The Sixth Circuit said the interrogation in this case “presents a stark example of police impropriety and deplorable interrogation techniques.” This is a good read on how *not* to get a confession.

**Facts:** Jeffery Siler was arrested by the Knoxville Police Department on a probation violation, but he was interviewed by an investigator regarding two burglaries. In the first interview, the investigator Mirandized Siler and then asked him about a handgun that had been stolen from one of the houses. During the course of the interview, the investigator told Siler:

- He had clout with the prosecutor, suggesting that the prosecutor would go along with him.
- He could not promise Siler anything, but he was “the one who typed the warrants” and therefore he was instrumental in deciding whether Siler got charged or went to rehab.
- He could not put an agreement in writing unless he first charged Siler.

There was a short break, and when the investigator returned, Siler asked what would happen if he could locate the gun. The investigator said he would speak with Siler’s probation officer. In addition, he brought in a stack of papers that allegedly noted 30 different investigations involving Siler, and when asked if those would go away, the investigator said, “There you go.” He again indicated that he typed the warrants, and Siler wouldn’t be charged. When asked who would be charged with the gun crime, the investigator said, “Nobody.”

Ten days later, a second interview occurred at Siler’s request, but only after Siler and his wife repeatedly tried to contact the investigator. At the interview, Siler was read his Miranda rights but asked questions about whether he was incriminating himself. The investigator again said the district attorney would work with him. Siler confessed and later was indicted on federal gun charges.

**Why this case is important:** Officers have some latitude in using deception to secure a confession. For example, it’s common to overstate the strength of your evidence; but you cannot coerce a confession. The courts are particularly leery when an officer makes *promises or threats* that are vague or untrue. In other words, if you get a confession through promises that you know are not true (or that you later break), you are increasing the chances that a court will suppress the confession.

The court in this case looked at the totality of the circumstances regarding the confession and found that the investigator’s actions were “deplorable.” He lied or misrepresented his influence over the process. He repeatedly promised that no one would be charged if Siler confessed, a promise that he either had no ability to make or that he willfully broke later. The court found that the investigator’s repeated coercive tactics overwhelmed Siler’s ability to truly consent to confess.

**Keep in mind:** Interrogations can be tricky to navigate. There is a fine line between the kinds of appropriate nudging that leads to a confession versus inappropriate coercion that violates the

Constitution. This case is a good, short read for anyone who wants to see an example unconstitutional coercion.

Visit the [U.S. Sixth Circuit Court of Appeals](#) website to view the entire opinion.

### ***State v. Howard, Second District Court of Appeals (Champaign, Clark, Darke, Greene, Miami and Montgomery counties), May 24, 2013.***

**Question:** Can an officer open a small container found during a pat-down that he suspects may contain razor blades.

**Quick answer:** No. An officer's mere hunch that a small container may contain razor blades is insufficient.

**Facts:** Joseph Howard was patted-down as officers were investigating nuisance calls to a party being thrown by an outlaw biker gang. During the Howard's pat-down, the officer found a handgun (which Howard had a CCW permit for) and three legal pocket knives. He also detected a small, hard container in Howard's front pocket. Concerned the container might have razor blades in it, the officer opened it and discovered cocaine. The officer testified later that he had expertise in gang activity and believed that gang members (and others) occasionally hid razor blades on their person.

**Why this case is important:** The court held that opening the container violated the Constitution because the officer had neither consent nor a warrant. Pat-down searches promote officer safety, but they must be limited to weapons that could harm the officer. In the words, allowing officers the limited ability to pat-down a suspect is a balance between a person's right to privacy and protecting officers.

However, following a line of Ohio cases, this court held that if officers could search *any* container that could conceivably hold a razor blade, they would essentially be able to search *every* container. Indeed, because razor blades are so small and flexible, an officer conducting a pat-down for razors could search every article of clothing, bag, or container on a suspect.

**Keep in mind:** The purpose of a pat-down search is to protect you from *obvious* weapons that present an immediate risk to you. It is not a free license for you to conduct a search that the Constitution otherwise prevents. In Ohio, courts have routinely rejected the argument that officers open small containers because they might contain a small weapon like a razor blade.

View the [Ohio Second District Court of Appeals](#) website to view the entire opinion.

### ***State v. Cruz, Eighth District Court of Appeals (Cuyahoga County), May 9, 2013***

**Question:** Can officers search a vehicle that leaves a premises that they have a warrant to search?

**Quick Answer:** No. A search warrant is limited to the immediate premises it describes.

**Facts:** Andres Cruz was running a drug operation through his pizza shop, receiving large amounts of cocaine and heroin. Officers made controlled buys against Cruz and ultimately got a search warrant for Cruz's residence. While the officers were preparing to execute the warrant, Cruz left the house. He was tailed by officers, lost briefly, reacquired, stopped, and placed under arrest. The officers traced Cruz's vehicle back and eventually found a purse containing nearly a kilo of cocaine and a third of a kilo of heroin that had been thrown out of Cruz's Trailblazer.

**Why this case is important:** Although these events took place in 2010, the Eighth District Court of Appeals applied a recent [U.S. Supreme Court case, \*Bailey v. U.S.\*](#), and found that the search of Cruz's vehicle — which occurred far from the premises listed in the search warrant — was unconstitutional. However, although the search of the vehicle (and the statements obtained from Cruz during it) was unconstitutional, the court found that the convictions were supported by sufficient evidence because 1) the purse containing the drugs had been "abandoned," and therefore it wasn't unconstitutionally seized or searched, and 2) the search of the house was proper because it was covered by the warrant.

**Keep in mind:** When executing a premises-based search warrant (that is, one that allows you to search a particular house or apartment), you are limited to the premises and the very-near surrounding area. If a suspect has left the area, a premises-based search warrant does not allow you to stop and search them. Of course, if you execute a search warrant and a suspect flees from the premises, you may be able to pursue them under your agency's pursuit policies.

View the [Ohio Eighth District Court of Appeals website](#) to view the entire opinion.

## ***State v. Taylor, Ninth District Court of Appeals (Lorain, Medina, Summit and Wayne counties), May 20, 2013***

**Question:** Is physical control a lesser-included offense of an over-the-limit OVI?

**Quick Answer:** No.

**Facts:** Richard Taylor was charged with OVI and found not guilty. However, the court found him guilty of the lesser-included offense of physical control. Taylor appealed the conviction, and the appeals court overturned.

**Why this case is important:** When a person is acquitted on an offense, he can still be convicted of an uncharged lesser-included offense. What this means is that even if a suspect is "undercharged" (that is, not charged with every conceivable offense), a court can still convict on lower-level charges "included" in the greater offense. A good example of this is theft and robbery. You cannot commit a robbery without committing a theft; so theft is a lesser-included offense of robbery.

However, whether one offense is a lesser-included offense of another often is a complex legal question. In this short, seven-page opinion, the court explained why physical control is not a lesser-included offense of OVI by covering issues ranging from the drunken operation of a bicycle to whether electric cars have an ignition.

If Taylor had been charged with physical control, he would have been convicted. But, because he was not charged and because physical control is not a lesser-included offense of OVI, he got off completely.

**Keep in mind:** Some prosecutors don't like a "charge everything" approach. Some prosecutors don't like undercharging. Talk to your prosecutor about these types of charging decisions, but remember that any offense you don't charge is an offense the suspect might avoid later. And if you ever want to read a case that turns on drunken bicycling and a Tesla's ignition, this is the one for you.

View the [Ohio Ninth District Court of Appeals website](#) to view the entire opinion.