

MEDINA COUNTY BAR ASSOCIATION

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Medina County Bar Association
www.medinabar.org



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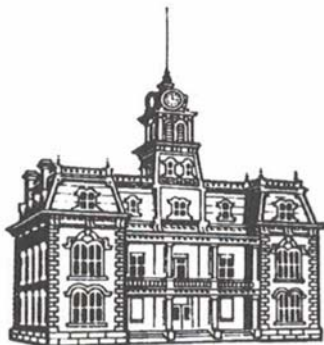
Attachment: Ohio's Notary Public Modernization Act.

Upcoming MCBA Events

- ❖ May 3, 2019: Law Day Luncheon, Weymouth Country Club, Medina
- ❖ June 7, 2019: Second Quarter Meeting, Santo Suossos
- ❖ September 6, 2019: Third Quarter Meeting, Amuse Bistro
- ❖ December 6, 2019: Fourth Quarter Meeting, Williams on the Lake

Law Day 2019

Join the MCBA for its annual Law Day Luncheon, which will be held Friday, May 3, 2019 from 11:30 a.m. until 1:30 p.m. at Weymouth Country Club. We are very privileged to have the Honorable Alice Batchelder as our keynote speaker. The MCBA will be recognizing the Essay Contest Scholarship Winner at the Luncheon and Community Legal Aid will recognize its Attorney of the Year for Medina County, Michele Sherrin. Please send your RSVP to Gina Hotchkiss at ghotchkiss@medinaco.org by April 26. Cost is \$20.00 for members and \$35.00 for non-members.



Medina County Bar Association

Our 2019 Executive Team:

President – Monica Russell, esq.
President-Elect Bradley J. Proudfoot, esq.
Vice President – Matthew Ameer, esq.
Treasurer – Michael Callow, esq.
Secretary – Melissa J. Piszczek, esq.
Executive Secretary – Gina Hotchkiss

Newsletter Editor – Monica Russell, esq.

Ninth District Judge Hears Oral Arguments

By Anne Yeager | March 27, 2019



Ninth District Court of Appeals Judge Thomas A. Teodosio served as a visiting judge on the Ohio Supreme Court on March 27, 2019 and heard oral arguments in a case involving whether a conviction on assault charge can be appealed while a rape charge is pending. Judge Teodosio replaced Justice Patrick F. Fischer, who recused himself from *State of Ohio v. Steven Allen Craig*, Case no. 2018-0146.

According to the Ohio Constitution, in the event of a recusal by a justice, the chief justice or acting chief justice can select any of the 69 sitting Ohio appellate court judges to sit temporarily on the Supreme Court.

This is the first time Judge Teodosio has sat during oral arguments. “It’s such an honor serving with the other justices,” Judge Teodosio said. “In your career, there are certain pinnacles and this is definitely the pinnacle of my judicial legal career.”

Judge Teodosio has sat on the Ninth District since 2017. He was also a Summit County Common Pleas judge from 2006 to 2017. He also served as a member of the Summit County Council. He received his bachelor’s and law degree from the University of Akron.

The Ninth District Court of Appeals serves four counties in northern Ohio and the Fourth District Court of Appeals serves 14 counties in southern Ohio. Both districts hear cases from county, municipal and common pleas courts as well as original actions in habeas corpus, mandamus, prohibition, procedendo and quo warranto.

Article appeared on the Ohio Supreme Court Website at:

http://www.courtnewsOhio.gov/bench/2019/VJTeodosio_032719.asp#.XKQHU1VKipo

Message from our President

Greetings Colleagues,

Thank you to our members who attended MCBA’s First Quarter Meeting. We had a lively discussion with Medina County Commissioner (and MCBA member) William Hutson regarding the “Concept Site Plan” for a proposed new courthouse. The Executive Committee would like to solicit comments from our members regarding the plan (which was emailed to the membership on March 21. Please let us know (1) What do you view as the current problems/challenges relating to the physical layout of the Common Pleas and Municipal courthouses? (2) What types of physical spaces/layouts would you like to see in the new courthouse? And (3) What are your other thoughts/concerns/suggestions?

As you may know, the Ninth District Court of Appeals recently moved. In their new building, they have conference rooms for each county in the district. We have been asked whether or not the MCBA will donate pictures for the Medina County conference room. On behalf of the Executive Committee, **I would like to invite members of the MCBA to submit their favorite photos of Medina County to our Executive Secretary Gina Hotchkiss at ghotchkiss@medinaco.org**. The Executive Committee will then select the best photos and have the same framed for display in the conference room. There is no monetary prize for having the best photo, but you will have bragging rights for so long as your picture is displayed.

I look forward to working with our Executive Committee in 2019 to schedule more full-day affordable CLE programs for our members. If you are interested in being a speaker at a CLE, please let us know.

I am honored to serve the MCBA as President this year. If you have any suggestions for events for the MCBA or ways to better serve our membership, please let me know.

Sincerely,

Monica Russell

2019 MCBA President

Attorney at Critchfield, Critchfield & Johnston, Ltd.

Senate Bill 201 – Reagan Tokes Law Expands Indefinite Sentencing
By: Vince Viglucci, Assistant Prosecuting Attorney, Medina County Prosecutor’s Office

Attorneys practicing criminal law should be aware of Senate Bill 201, also known as the Reagan Tokes Law. This new law went into effect on March 22, 2019 and made some changes to Ohio’s felony sentencing laws. Most notably, Senate Bill 201 provides for indefinite prison terms for offenders sentenced to prison for a first or second degree felony committed on or after its effective date. Senate Bill 201 is not retroactive and applies only to crimes committed on or after March 22, 2019.

Senate Bill 201 does not change existing law with respect to the sentencing court’s determination of whether it will impose a discretionary prison term or whether it is required to impose a prison term. The law provides for an indefinite prison term consisting of a minimum term selected by the sentencing judge from the range of authorized terms, and a corresponding maximum term set by statute that is based on the minimum term imposed. Senate Bill 201 does not change the statutory ranges of 3-11 years in prison for a first degree felony and 2-8 years in prison for a second degree felony.

The big change to note is the following. For an offender sentenced to prison for a first or second degree felony, the maximum prison term under the new law is equal to the minimum term imposed on the offender (one of the prison terms from the statutory ranges above) plus 50% of that term. More specifically, the range is the longest minimum term imposed plus 50% of the longest minimum term for the most serious felony. For example, an offender sentenced to ten (10) years in prison on one first degree felony count would have a minimum prison term of ten (10) years and a potential maximum prison term of fifteen (15) years. This also means that, for example, in the unlikely scenario that a defendant was sentenced to eight (8) years in prison for a second-degree felony and at the same time sentenced to six (6) years in prison for a first-degree felony, the indefinite term would be three (3) years (50% of the six years for the first-degree felony), for a range of 8-11 years in prison.

When an offender is sentenced to an indefinite prison term under the new law, there is a presumption that the offender will be released when the offender has served his or her minimum prison term. However, the Ohio Department of Rehabilitation and Corrections (DRC) may rebut that presumption if it determines, at a hearing, that one or more of three conditions apply. The first condition that may rebut the presumption of release is that, regardless of the offender’s security level, both of the following apply: (1) during the offender’s incarceration, the offender committed institutional rule infractions that involved compromising a prison’s security, compromising the safety of a prison’s staff or inmates, or physical harm or the threat of physical harm to a prison’s staff or inmates, or committed a violation of law that was not prosecuted, and the infractions or violations demonstrate that the offender has not been rehabilitated, and (2) the offender’s behavior while incarcerated, including, but not limited to, the infractions and violations specified in clause (1), demonstrate that the offender continues to pose a threat to society.

The second condition that may rebut the presumption of release is that, regardless of the security level in which the offender is classified at the time of the hearing, the DRC placed the offender in extended restrictive housing at any time within the year preceding the date of the hearing. The third condition that may rebut the presumption of release is that, at the time of the hearing, the offender is classified by the DRC as a security level three, four, or five, or at a higher security level. If the DRC rebuts the presumption of release, it may maintain the offender’s incarceration after the expiration of the offender’s minimum prison term.

Continued on Page 4

Senate Bill 201 – Continued from Page 3

On the other end of the spectrum, Senate Bill 201 also provides for earned reduction of an offender's minimum prison term. The DRC's Director may notify the sentencing court in writing that the Director recommends the court grant the offender a reduction in the offender's minimum prison term based upon the offender's exceptional conduct while incarcerated or the offender's adjustment to incarceration. There is a rebuttable presumption that the sentencing court should grant a recommended reduction. That presumption may be rebutted by any of the same three "conditions" listed above. The recommended reduction may be for between 5% and 15% of the offender's minimum term, to be determined by rules adopted by the DRC. Upon receipt of a notice of recommended reduction from the Director, the sentencing court is required to schedule a hearing to consider whether to grant the reduction. The earned reduction provisions described above do not apply to an offender serving an indefinite prison term for a "sexually oriented offense" as defined in Ohio Revised Code § 2950.01(A).

Senate Bill 201 also includes notifications that courts must provide an offender at a felony sentencing in which an indefinite prison term is imposed under the new law. Under R.C. 2929.19(B)(2)(c), the offender must be notified at sentencing of the following:

- (1) The rebuttable presumption of release;
- (2) The authority for DRC to rebut the presumption and maintain the offender's incarceration in certain circumstances;
- (3) The procedures and criteria for DRC to rebut the presumption and maintain the offender's incarceration and the fact that it may do so more than one time; and
- (4) The required release of the offender on the expiration of the maximum term if the offender has not been released prior to the expiration of that term.

Under Senate Bill 201, the existing provisions governing post-release control (PRC) for an offender released from prison after serving a definite prison term also will apply to an offender released after serving an indefinite prison term imposed under the new law. In short, indefinite prison terms imposed under the new law for a first or second degree felony will still include a mandatory period of PRC after the offender's release from prison. The duration of the period of PRC is the same as in the previously existing law – five (5) years for a first degree felony or a felony sex offense and three (3) years for a second degree felony that is not a felony sex offense.

(Disclaimer: This article expresses the author's personal evaluation of the subject matter and it is not to be construed as a formal opinion of the Medina County Prosecutor's Office.)



Did you know?

On December 19, 2018, Ohio enacted the Notary Public Modernization Act which significantly changes the laws pertaining to notaries and provides for remote online notarization. See attached article for more information.

In the trenches: Leading with empathy, By Steven McGarrity, Esq. Executive Director, Community Legal Aid

Last month, I had this crazy idea. It all started last year, when a strategic planning consultant we worked with told me that our organizational structure was borderline dysfunctional. (I'm paraphrasing. He didn't use those words. But I can read between the lines.)

See, nonprofits tend to grow organically. They develop out of some critical gap or need in society, and they branch off as funding expands. Then, inevitably, funding constricts, then expands again - each time creating structural cracks that could rival our roads after a long Ohio winter.

Our organization is no different. We are the product of multiple mergers and years of piecemeal restructuring, because when you're serving people with boots on the ground, who has time to think about effectiveness, anyway? So our consultant wasn't wrong. And he wasn't telling me anything I didn't already know. But what I *didn't* know was how to fix it.

So last month, while scheduling a meeting with staff members to discuss this very issue, it dawned on me: how was I, years removed from handling cases or screening client calls, supposed to determine the best way for us to structure those activities? (Hint: I couldn't.) I didn't have perspective. I didn't understand the complexities each of our team members dealt with on a daily basis. I couldn't relate to what they did for 8 or 9 hours every day. That's when I decided I was going to spend the next month "in the trenches."

I took a dive into the front-line services our team provides the community: I spent a day taking calls on our HelpLine and screening clients; I stood in front of a crowded room of addicts in various stages of recovery and answered their legal questions; I sat with veterans at an outreach center and helped them fill out their legal paperwork; I spent a Saturday alongside our volunteers, offering free legal advice to anyone who walked in the door; I accompanied staff members on house calls to clients; and I listened in on calls our attorneys made to clients waiting on a triage list for domestic violence help. It was a crash-course in all things Legal Aid - and I mean that literally. More than once, I had to call on my team members to bail me out on any number of activities.

I learned a lot. But my biggest take-away was this: Nothing that we do means anything without empathy. It's in the voice of our intake paralegal as she gently tells a caller we aren't able to assist them. It's in the humble step our staff make by removing their shoes upon entering a client's home. It's in the detailed instructions and reassurance our family law attorney gives to a domestic violence victim over the phone just hours before going to court to face their abuser in order to get a protection order against them. It's in the eye contact and diligent attention a volunteer attorney gives to a complete stranger who needs help getting utilities turned back on.

Empathy is pervasive in all we do as an organization, because without empathy, you can't really help someone. How can you provide legal advice or hope to make an impact in someone's life if you aren't willing to put yourself in their situation and see the world from their eyes?

We're just now starting to talk about what structural changes we need to make to be an effective organization. I'm not sure what it's all going to look like in the end, but I do know this: it will be intentional, it will be what our staff needs to feel like they can do their jobs, and it will be designed from a place of empathy - for our clients and for each other.



VIEWS FROM THE BENCH



Judge Kimbler's Courts Receive State Certification

The Mental Health Court and the Drug Court of Judge Joyce V. Kimbler have again earned final certification from the Ohio Supreme Court's Commission on Specialized Dockets. First certified under Judge James L. Kimbler on November 14, 2014, these dockets had to be recertified on November 23, 2015 when the dockets were assumed by Judge Joyce V. Kimbler. Specialty dockets are certified for a period of 3 years when they must again undergo evaluation and recertification. The current certification is effective March 21, 2019 through December 31, 2021.

In order to receive the re-certification, the court had to submit an application, undergo a site visit, and provide specific program materials in response to certification standards that went into effect in January 2014. Since 2014 the standards have been continuously updated to comply with the known best practices in the treatment of addiction and mental health.

Ohio Supreme Court Chief Justice Maureen O'Connor congratulated the Medina County Common Pleas General Division Drug Court and Medina County Common Pleas General Division Mental Health Court and Judge Kimbler for receiving final certification.

"Specialized dockets divert offenders toward criminal justice initiatives that employ tools and tailored services to treat and rehabilitate the offender so they can become productive members of society," said Ohio Supreme Court Chief Justice Maureen O'Connor. "Studies have shown this approach works by reducing recidivism while saving tax dollars."

Specialized dockets are courts that are dedicated to specific types of offenses or offenders and use a combination of different techniques for holding offenders accountable while also addressing the underlying causes of their behavior. There are more than 210 specialized dockets in Ohio courts that deal with issues such as:

- Drugs and Alcohol
- Mental Health
- Domestic Violence
- Human Trafficking

The standards provide a minimum level of uniform practices for specialized dockets throughout Ohio, and allow local courts to innovate and tailor to meet their community's needs and resources.

Specialized dockets are problem solving dockets which change the way a judge thinks about the defendant appearing before her. In addition to punishing the defendant and protecting the public, the court begins to look for ways to rehabilitate the defendant and solve the problems underlying the behavior. The core of both specialized dockets is the use of an integrated team approach to problem solving. To that end, the treatment teams may consist of the Judge, members of the Probation Department, a representative of the Prosecutor's Office, a defense attorney, licensed clinical professionals, and treatment providers. Specialty courts are established to assist offenders on their road to recovery by providing services and programming to address their specific needs. This may include:

Inpatient treatment; intensive outpatient treatment; individual treatment; gender specific programming; and, family therapy, as well as assistance in obtaining education, training, employment, transportation, anger management, housing, parenting classes, domestic violence classes, and physical, dental and mental health treatment. A participant

in Drug Court may benefit from medication assisted treatment. Medication assisted treatment addresses the disease aspect of drug addiction. Mental health courts focuses on the treatment and rehabilitation of offenders with a history of serious mental illness, which is oftentimes the root cause of the person's criminal involvement. Some of the goals of mental health court dockets include:

- Diverting non-violent offenders out of the traditional criminal justice track
- Reducing the length of confinement for offenders with serious mental illness
- Improving the mental health and well-being of the participants
- Increasing access to treatment services
- Creating effective working relationships between the treatment and criminal justice systems
- Improving public safety by reducing recidivism
- Relieving jail and prison overcrowding

The Commission on Specialized Dockets has 22 members who advise the Supreme Court and its staff regarding the promotion of statewide rules and uniform standards concerning specialized dockets in Ohio courts; the development and delivery of specialized docket services to Ohio courts; and the creation of training programs for judges and court personnel. The commission makes all decisions regarding final certification.

TANNERITE and its LEGAL PITFALLS

By: S. Forrest Thompson,
Medina County Prosecutor

Many otherwise law abiding citizens run the risk of violating the law without knowing they are doing so. That is why I wanted to publish this article dealing with a product sold under the name "TANNERITE".

Tannerite is actually granulated ammonium nitrate and aluminum powder which when combined, creates a product defined as a SAN (Sensitized Ammonium Nitrate). This SAN is "shock sensitive" to small caliber firearm rounds and explodes when impacted. This product is sold in gun stores and other retail outlets and is commonly purchased and used by recreational shooters. Here is the problem. *While this product is legally sold in Ohio, the law prohibits mixing and or use of the product.*¹

The confusion comes about because, while you are legally permitted to purchase Tannerite, possessing Tannerite after it is mixed is a felony. ORC 2923.17(A) states no person shall "knowingly acquire, have, carry, or use a dangerous ordnance. Tannerite is sold containing two components which the instructions tell you to mix. However, since once the product is mixed it becomes a *dangerous ordnance*, possessing tannerite *after* being mixed is a felony of the 5th degree.

More importantly, the act of mixing the two components of Tannerite is defined as manufacturing a SAN and doing so is a violation of ORC 2923.11 (K) (3), a FELONY OF THE 2ND DEGREE.

Consequently, an uninformed and otherwise law abiding citizen could find themselves facing serious criminal charges for which prison time is anticipated by law.

Clearly, aside from the obvious risk to health and safety created by tannerite, using it, mixing it and/or possessing after it is mixed has serious legal consequences and should be avoided.

¹ Ohio State Fire Marshal- Explosive Target Guidance (6-28-2013)

Other News of Note



The law firm of **Critchfield, Critchfield & Johnston, Ltd.**, unanimously elected Amy L. Demlow as its managing member, effective March 1, 2019. Demlow, a corporate attorney in the firm's Medina office, becomes the first female managing member in the history of a law firm that traces its roots to the Civil War. CCJ has 39 attorneys in five offices in Ohio (Medina, Wooster, Ashland, Millersburg, and Mount Vernon).

Demlow succeeds Robert C. Gorman, who has managed the firm since 2013. Gorman will return to a full-time corporate and employment law practice, primarily out of CCJ's Wooster office.

"The firm has thrived under Bob Gorman's leadership the last six years. I'm honored to have this opportunity to serve Critchfield's talented team of professionals" said Demlow.

"A year ago I was tasked with creating a plan for smooth succession planning at the firm," Gorman said. "After doing my homework, the message from my colleagues was clear. We all have a high degree of confidence that Amy's leadership skills will help propel the firm to even greater success."

Demlow has been with CCJ since 1996. In addition to chairing the firm's Board of Directors and setting the pace with strategic leadership, she will maintain a practice that focuses primarily on mergers and acquisitions, estate planning and general corporate law.



At the First Quarter meeting the MCBA presented a plaque of appreciation to the Judge Kevin Dunn, in recognition of the contributions of the Medina County Probate and Juvenile Courts to the MCBA's CLE programming in 2018.

(Pictured with MCBA's President-Elect Brad Proudfoot and President Monica Russell)

At the MCBA's 2018 Annual Meeting, Attorney Steve Brown was presented the MCBA's Professionalism Award.

(Pictured with MCBA's Immediate Past President Brian Kerns)



Notice: Judge William R. Baird, former Summit County Court of Common Pleas Judge and Ninth District Court of Appeals Judge, passed away on February 4, 2019 at the age of 84. He was a dedicated public servant and will be missed. His obituary can be found here:

<https://www.legacy.com/obituaries/ohio/obituary.aspx?n=william-r-baird&pid=191506385&fhid=4396>

Call for Nominations

The **MCBA Professionalism Award** was established to recognize an attorney's exceptional dedication to the standards of the profession and further to recognize one who has demonstrated integrity and humanitarian concern within the Medina County community. Nominations will be accepted through October 1st of the calendar year, and the award is presented at the MCBA's Annual Meeting, held in December. The nominations are reviewed by the Executive Committee of the Medina County Bar Association. After careful review, The Executive Committee then selects the recipient of the award. Nominees must be members of the Medina County Bar Association. The nomination form should be completed and attached to an accompanying letter giving, in as much detail as possible, the reasons for the nomination. For a copy of the form, please contact Gina Hotchkiss at gshotchkiss@medinaco.org.

At the Annual Meeting, the MCBA will also honor members with 50 years or more of practice. If you know of anyone who meets this criteria, please let us know!

Ohio's Notary Public Modernization Act
Online and electronic notarizations and other substantial changes to Ohio's notary law

By: Attorney Monica E. Russell
Critchfield, Critchfield & Johnston, Ltd.

On December 19, 2018, Senate Bill 263 was signed into law in Ohio. It will be effective as of September 20, 2019. This bill brings substantial changes to Ohio's notary laws including the enactment of rules permitting online and electronic notarization, the requirement of criminal background checks for non-attorney notaries, the requirement of educational programs for notaries, and the change in authority over all aspects of the issuance and termination of a notary public commission to the Ohio Secretary of State.

Most notably, S.B. 263 allows for an authorized "online notary" to perform a notarial act remotely (commonly referred to as "RON" for remote online notary) and it allows for any notary to notarize an electronic document signed in the physical presence of the notary. The RON portion of S.B. 263 is based upon a model bill developed by the American Land Title Association and the Mortgage Bankers Association.

A. Online Notary

Online notarization is a "notarial act performed by means of live two-way video and audio technology that conforms with the standards adopted by the secretary of state." R.C. 147.60 (I).

As a practical matter, how does an online notarization work? The online notary and the principal (person signing the document) will connect through a live video and audio feed on their respective computers, iPhones or other electronic devices. The online notary will confirm the principal's identity. The online notary will acknowledge the principal's electronic signature on the subject document (or administer the oath for a jurat and witness the signature) and then add his or her electronic signature and seal to the document. The online notary must maintain a recording of the process as well as an electronic journal in which the online notary records in chronological order detailed information regarding all online notarizations.

The online notary performing this service must be physically located in Ohio at the time the online notarization takes place. The principal can be physically located anywhere in the territory of the United States. The principal can even be located outside of the United States if (a) the act is not known by the online notary to be prohibited in the jurisdiction where the principal is located; and (b) the document containing the notarial certificate is to be filed with a court or entity located in the U.S. or involves real or personal property located in the U.S. or is part of a transaction substantially connected with the U.S. See R.C. 147.64.

The secretary of state is tasked with implementing rules governing online notary commissions including technology and security standards. These rules have not been released as of yet. Note that the new laws do not allow an online notary to remotely take or certify a deposition.

Keep in mind that there is a difference between an “electronic signature” and a “digital signature.” An electronic signature, according to R.C. 147.591(F) “means an electronic sound, symbol, or process attached to or logically associated with an electronic document and executed or adopted by a natural person with the intent to sign the electronic document.”

Examples of electronic signatures for Jane Doe:



A digital signature is essentially encryption technology used in creating electronic signatures. It is like an electronic fingerprint that allows for verification that an electronic signature is associated with a particular principal.

There are a number of vendors that provide online notarization services. Here is a short demo video that shows how one such vendor, Notarize, provides RON services:
<https://www.youtube.com/watch?v=JvoMzIIBJa0>.

Notarize also just published a book on RON. It's [available on Amazon here](#) but you can also download and share the ebook for free here: www.notarize.com/book

(1) Becoming an online notary

Pursuant to R.C. 147.63, all notaries wishing to be an online notary must be a resident of Ohio at all times during their commission (even if the notary is an out of state attorney) and must apply for and receive authorization from the secretary of state specifically to perform online notarization. There is a required educational course, exam, and fee. The applicant must demonstrate that the technology the applicant intends to use complies with the secretary of state’s guidelines. Online notarization authorization expires when the regular notary commission expires. For attorneys, the term is limited to 5 years.

(2) Verifying the identity of the principal

According to R.C. 147.64(E), an online notary is required to determine from personal knowledge or satisfactory evidence as described below that the principal appearing before the notary remotely is in fact the individual that he or she claims to be.

A notary public has “satisfactory evidence” when the notary has either of the following:

- (a) remote presentation by the principal of a government- issued identification credential (passport or driver’s license), *credential analysis* of the identification credentials provided, and *identity proofing* of the principal; OR

(b) verification by one or more credible witnesses who appear in person before the notary and who can be identified by either personal knowledge or all of the following: (i) presentation of a government-issued identification credential, including a passport or driver's license, that contains the signature and photograph of the witness; (ii) **credential analysis** of the identification credentials provided; and (iii) **identity proofing** of the witness.

What is **credential analysis** and how is it different from **identity proofing**?

Credential analysis is defined as a “process or service operating according to standards adopted by the secretary of state under section 147.62 of the Revised Code through which a third person affirms the validity of a government-issued identification credential through review of public and proprietary data sources.”

Identity proofing is defined as “a process or service operating according to standards adopted by the secretary of state under section 147.62 of the Revised Code through which a third person affirms the identity of a natural person through the review of personal information from public and proprietary data sources.”

These definitions are not particularly clear. However, looking at the rules adopted by other states which have adopted RON is instructive. The Texas Secretary of State provides the following explanation on its website (<https://www.sos.state.tx.us/statdoc/identityproofing.shtml>):

What is credential analysis?

Credential analysis is the process by which a principal’s government-issued identification card is validated. The process requires a third party to use technology to confirm the security features on an ID and confirm the ID is not fraudulent. The third party also uses information available from the issuing source or other authoritative source to confirm the details on the credential.

As part of the process, the third party is required to provide an output of the authenticity test to the notary and enable the notary to visually compare the credential used during credential analysis with the principal who has personally appeared before the notary via audio-visual transmission.

What is identity proofing?

Identity proofing is the means by which the principal (signer of a document) affirms their identity. This is done through a third party who uses dynamic knowledge based authentication (KBA). KBA is a process in which the principal is asked a series of questions about the principal’s identity and personal history. In order to pass, the principal must answer at least 80% of the questions correctly. If the principal fails their first attempt, they may retake the quiz once within 24 hours. If the principal fails a second attempt they are prohibited from retrying with the same notary for at least 24 hours.

(3) Documenting the transaction

According to R.C. 147.65, the online notary has to maintain one or more detailed electronic journals in which the online notary records in chronological order information pertaining to all online notarizations as well as a recording of the transaction. This must be password protected and include detailed info on the notarial act and identification of the principal. The online notary has to keep a backup of the information.

If the online notary leaves his/her employment, the electronic journal is supposed to go with the online notary and R.C. 147.65(E)(1) specifically states that “an employer shall not retain the electronic journal of an employee who is an online notary public when the notary’s employment ceases.” However, the online notary may use a third party repository to keep and store the electronic journal (there will be rules promulgated by the secretary of state regarding such third parties) and can designate the employer as that third party repository.

Third parties are permitted to inspect or request copies of entries in the electronic journal if a very specific request with the month, year, type of record, and name of principal is made. If the online notary is an attorney then he/she shall only allow such an inspection/request if the requesting party was a party to the transaction.

Upon death or adjudicated incompetence of an online notary, the executor/guardian shall transmit the electronic journal to the secretary of state or an approved repository who shall maintain it for ten years.

B. Electronic Notarization

S.B. 263 also authorizes any notary public (not just online notaries) to notarize an electronic document signed with an electronic signature in the notary’s physical presence. See R.C. 147.591. Although a notary does not have to comply with the particular registration and education requirements for online notaries in order to notarize an electronic signature in person, the notary must comply with the technology and security requirements related to electronic signatures and seals.

C. Electronic Document to be Treated as an Original

Per R.C. 147.591(B) and R.C. 147.64(A)(2), electronically notarized documents are considered original documents. Furthermore, a printed copy of such a document “shall be accepted by county auditors, engineers, and recorders for purposes of approval, transfer, and recording to the same extent as any other document that is submitted by an electronic recording method and shall not be rejected solely by reason of containing electronic signatures or an electronic notarization, including an online notarization” as long as the document contains a complete notarial certificate.

But what if the county does not have electronic recording? This is an issue not addressed in S.B. 263. It is likely that an amendment to the bill will be passed which will permit a notary to certify that a printed electronic document is a true and accurate copy of the original document so that the same can be submitted for recording in counties that do not have electronic recording. This is

referred to as the “papering out” amendment.

D. General Rules Applicable to all Notaries

(1) Requirements to become a Notary Public

R.C. 147.01 now requires anyone wishing to be a notary to submit a criminal records check report, completed within the preceding six months demonstrating that the applicant has not been convicted of any “disqualifying offense.” A disqualifying offense includes a crime of moral turpitude as defined in section R.C. 4776.10 or a violation of a provision of Chapter 2913 of the Revised Code. If a notary is convicted of or pleads guilty to a disqualifying offense, he/she must notify the secretary of state who will then revoke the notary’s commission. An applicant also must be a resident of Ohio although that is not a new requirement.

Attorneys are exempt from the requirement of a criminal background check and, provided that they maintain a principal place of business in Ohio, they are also exempt from the residency requirement.

Applicants must also complete an educational program and pass a test administered by an entity authorized by the secretary of state. Any attorney who is not already a commissioned notary as of September 20, 2019 must complete the educational program but does not have to take the test.

Pursuant to R.C. 147.01(D), the secretary of state shall now oversee the processing of all notary public applications and issuance of notary public commissions, all of which shall be done electronically. It is no longer necessary for an applicant to obtain a certificate from a judge stating that the applicant is of good moral character.

The application fee has increased from \$15.00 to up to \$150.00, as determined by the secretary of state (the fee will include the educational program and test fee). See R.C. 147.37.

According to R.C. 147.031, notary commissions in effect as of September 20, 2019 remain valid until the commission’s expiration date. If the notary renews his/her commission before the expiration date, he/she must obtain the criminal records check, and pay a \$60 fee to renew (this can be done up to three months in advance of expiration). However, if the notary allows the commission to lapse, then he/she has to apply for a new commission which means the applicant has to complete the educational course and pass the test.

(2) Change in Fees which may be Charged

Notaries can charge \$25.00 for online notarizations and \$5.00 for other notarial acts per R.C. 147.08. Notaries can also charge a reasonable travel fee, as agreed to by the parties. The secretary of state may adopt rules to allow an increase in these fees.

(3) Performing Notarial Acts

A. *Notarial certificates in general* (R.C. 147.542(G))

A notary must provide a completed notarial certificate for every notarial act the notary performs. Every notarial certificate should include the following information:

- (1) The type of notarization being performed (acknowledgment or jurat);
- (2) The state and county venue where the notarization is being performed;
- (3) The wording of the acknowledgment or jurat in question;
- (4) The date on which the notarial act was performed;
- (5) The signature of the notary, exactly as shown on the notary's commission;
- (6) The notary's printed name, displayed below the signature;
- (7) The notary's seal and commission expiration date; and
- (8) If an electronic document was signed in the physical presence of a notary or if an online notarization was performed then the certificate should so state.

B. *Acknowledgement certificates*

An acknowledgement is the type of notarial certificate required for deeds, mortgages, land installment contracts, and other documents identified in R.C. 5301.01. **R.C. 147.011(A) now defines an acknowledgement as “a notarial act in which the principal of the notarized document acknowledges all of the following: (1) That the principal has signed the document; (2) That the principal understands the document; (3) That the principal is aware of the consequences of executing the document by signing it.”**

The acknowledgment certificate should clearly state that no oath or affirmation was administered to the principal with regard to the notarial act per R.C. 147.542(D)(1). The standard forms for acknowledgements were modified slightly but are still acceptable. The same are included at the end of this document.

C. *Jurat certificates*

A jurat is the type of notarial certificate used on an affidavit and with certain liens (like a mechanic's lien or condominium unit owners association lien). **R.C. 147.011(D) now defines a jurat as “a notarial act in which both of the following are met: (1) the principal of the document is required to give an oath or affirmation that the statement in the notarized document is true and correct; (2) The principal signs the notarized document in the presence of a notary public.”**

The jurat certificate must clearly state that an oath or affirmation was administered to the principal with regard to the notarial act per R.C. 147.542(D)(2). A new standard form for a jurat certificate was created, it is included at the end of this document.

D. *Principals with limited physical abilities.*

R.C. 147.59 provides for methods for individuals whose physical characteristics limit their ability to sign a document presented for notarization to use a designated alternative principal to sign on their behalf.

E. *Requirement of official register deleted.*

A revision to R.C. 147.04 removes the requirement that notary publics maintain an official register of every certificate of protest and copies of notes.

F. *Notary tools.*

The notary's seal must be between $\frac{3}{4}$ an inch to 1 inch in size. However, a person commissioned as a notary public prior to September 20, 2019 can continue to use a seal that met the prior requirements of the statute.

(5) Prohibitions: S.B. 263 includes a myriad of prohibitions regarding the conduct of a notary.

A. *General Prohibitions.*

According to R.C. 147.141, a notary SHALL NOT:

- Notarize his/her own signature/take his own deposition;
- Perform a notarial act if notary has conflict of interest with regard to transaction in question (which is defined as having a direct financial or other interest in the transaction in question, excluding fees which are permitted by law);
- Certify that a document is an original or a true copy of another record;
- Use a name or initial in signing certificates other than that by which notary is commissioned;
- Affix a signature to a blank form of an affidavit or certificate of acknowledgement and deliver that to another or notarize a signature on a document if its incomplete or blank;
- Take an acknowledgement of or administer oath to a person who the notary knows to have been adjudicated mentally incompetent;
- Notarize a signature on a document if the principal is not capable of understanding the nature and effect of the document;
- Alter anything in a written instrument after it has been signed by anyone;
- Amend or alter a notarial certificate after the notarization is complete;
- Notarize a signature if it appears that the principal may be unduly influenced or coerced;
- Take an acknowledgement of execution in lieu of an oath if oath is required (see also R.C. 147.542(E) which states that a notary public shall not use an acknowledgement certificate when a jurat certificate is required and conversely shall use a jurat certificate when an acknowledgment certificate is required); or

- Determine the validity of a power of attorney or any other form designating a representative capacity such as trustee, etc. unless the notary is attorney.

B. Unauthorized Practice of Law

According to R.C. 147.142, a notary that is not an attorney cannot provide any service that constitutes the unauthorized practice of law or solicit or accept compensation to prepare documents for another person in a judicial or administrative proceeding. A non-attorney notary also cannot use the phrase “notario” or “notario publico” to advertise the notary’s services (apparently these words have a different connotation in certain Latin American countries and indicate that the person has the equivalent of a law license).

R.C. 147.542(H) clarifies that a notary can explain to a principal the difference between an acknowledgement and a jurat but cannot advise the person which the type of notarial act that best suits a situation, unless the notary is an attorney.

C. Violation of oath of office

Per R.C. 147.03, a notary that violates oath of office shall be removed by the secretary of state (before it was the court of common pleas in the county where the notary resided). R.C. 147.032 allows the secretary of state to investigate violations of Chapter 147 upon a signed complaint from any person. The secretary of state can hold disciplinary hearings and can revoke, suspend or issue a letter of admonition. Once a notary’s commission is revoked, he/she cannot apply again.

The oath is not described in S.B. 263, but a sample oath is below:

I do hereby swear that I will support the Constitution of the United States and the Constitution of the State of Ohio and that I will faithfully discharge the duties of the position to which I have been appointed according to law, and the best of my abilities.

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Statutory short forms of Acknowledgments and Jurats

R.C. 147.55: Acknowledgement Certificates

(A) For an individual acting in the individual's own right:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name of person acknowledging).

(Signature of person taking acknowledgment)
(Title or rank)

(B) For a corporation:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name of officer or agent, title of officer or agent) of (name of corporation acknowledging), a (state or place of incorporation) corporation, on behalf of the corporation.

(Signature of person taking acknowledgment)
(Title or rank)

(C) For a partnership:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name of acknowledging partner or agent), partner (or agent) on behalf of (name of partnership), a partnership.

(Signature of person taking acknowledgment)
(Title or rank)

(D) "For an individual acting as principal by an attorney in fact:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name of attorney in fact) as attorney in fact on behalf of (name of principal).

(Signature of person taking acknowledgment)
(Title or rank)

(E) By any public officer, trustee, or personal representative:

State of
County of

The foregoing instrument was acknowledged before me this (date) by (name and title of position).

(Signature of person taking acknowledgment)
(Title or rank)

Sec. 147.551. Jurat certificates

State of Ohio
County of

Sworn to or affirmed and subscribed before me by (signature of person making jurat) this date of (date).

(Signature of notary public administering jurat)
(Affix seal here)
(Title of rank)
(Commission expiration date)