



Ohio Prosecuting Attorneys Association

Louis Tobin
Executive Director
Senate Bill 288
March 1, 2022

Chairman Manning, Vice-Chair McColley, Ranking Member Thomas and members of the Senate Judiciary Committee, thank you for the opportunity to offer testimony on the parts of Senate Bill 288 regarding speedy trial that we support and transitional control and the good Samaritan law, that we oppose.

Speedy Trial Changes – OPAA Supports this Change

Under current law, the prosecution is required to bring a defendant to trial on a felony charge within 270 days of arrest. When a defendant is held in jail each day is counted as three days towards speedy trial. Speedy trial calculations can become complicated for a variety of reasons. The three days for one counts if the person is arrested on a bail violation. The three days for one does not count if the person is arrested on new charges. Speedy trial time can also be tolled when, for example, a defendant requests a continuance, is undergoing a competency evaluation or restoration, or is confined in another state. Defendants also can waive speedy trial altogether. The Revised Code doesn't make any one party responsible for these calculations and most courts treat it as a shared responsibility between the prosecutor and the court. In most cases speedy trial presents no problems for either the defendant or the State.

The speedy trial language in SB 288 is the same as SB 48 (133rd) General Assembly that passed the Senate 31 – 0. The amendments require a court to release a person from custody if that person has not been brought to trial within the required amount of time. It authorizes the defendant to file a time-for-trial motion on the prosecutor within 14 days before a defendant must be brought to trial – meaning that if the defendant is aware that the speedy trial deadline is approaching they can ensure that a timely trial takes place without simply waiting for the deadline to pass and filing a motion to dismiss. Alternatively, if the defendant does wait until the deadline has passed and then files a motion to dismiss, the language grants the prosecution an additional 14 days to bring the case to trial. In either scenario, the case will be dismissed with prejudice once those 14 days are up.

Ohio is one of only thirteen states has a dismissal with prejudice rule for speedy trial violations – meaning that charges cannot be refiled if speedy trial time is violated. Other states and the federal government either release the defendant if they are being held, dismiss the case without prejudice, or allow the judge to dismiss the case with or without prejudice after taking into account factors like the severity of the violation and the seriousness of the charges. Ohio's harsh penalty of dismissal with prejudice regardless of whether the case is an F5 drug possession case or a murder case, and regardless of whether the violation is one day or one year, is not constitutionally necessary and is unduly harsh. This language in SB 288 strikes what we feel is a reasonable middle ground between the rights of the defendant and the justice that may due to the victim and the State.

Transitional Control Denial – OPAA Opposes this Change

Revised Code section 2967.26 allows for the ODRC to release certain prisoners during the last 180 days of their sentence into a “transitional control program” where they are released to a halfway house, reentry center, or community residential center, or to a residence ODRC has otherwise approved. Currently, judges can deny the release of a person into transitional control if the person was sentenced to two years or less in prison. This is a compromise that was brokered several years ago when judges had authority to deny release into transitional control for sentences of any length. This language in Senate Bill 288 would now go back on that brokered compromise.

More importantly, the reason for allowing judges to deny transitional control for sentences of two years or less is simple. Offenders who are sentenced to prison for sentences of two years or less often have enough credit for time served that they are immediately, or nearly immediately, eligible for placement in transitional control. These are individuals who most often are sent to prison after spending some time on probation and violating that probation multiple times. Providing ODRC with the authority to immediately release such a person back into the community through placement into transitional control undermines the determination at the local level that placement in the community has failed and that the person’s conduct warrants a prison sentence. Unelected employees of the executive branch should not be given the authority to override the decisions of the sentencing court.

I have attached to my testimony several examples from just one county in Ohio of individuals who were serving two years or less and who ODRC has tried to release into transitional control. I have a stack of these that cover the last few years that I would be happy to share with anyone on the committee at your request. These are just a few of the more glaring examples of why we don’t want unelected bureaucrats making release decisions:

State v. Ogle, Case No. 19-CRI-024: Defendant was convicted in May 2019 of having weapons under disability and ODRC sought to release him into transitional control two months later. The weapon was discovered during an investigation into allegations of child abuse. Defendant had a criminal history in Florida that included Battery, Battery of Law Officers/Firefighters/EMT, Resisting Officer with Violence, Domestic Battery, Possession of Methamphetamines, Use of Possession of Drug Paraphernalia, Resisting/Obstructing Officer without Violence, Disorderly Intoxication, False Report of a Crime, and Careless Driving.

State v. Schuttera, Case No. 15-CRI-001 and 18-CRI-088: Defendant was convicted of Trafficking in Heroin and Tampering with Evidence and placed on community control. Defendant was continued on community control after one probation violation and ultimately sent to prison after a second probation violation when his probation officer found him with a loaded weapon (he was under a weapons disability) and he admitted to using drugs and associating with other felons. ODRC sought to release him into transitional control while he was under indictment for having weapons under disability while he was on probation. He was eventually convicted of the weapons under disability charge, sentenced to prison, and ODRC sought to release him into transitional control for that conviction too.

State v. Lewis, Case No. 18-CRI-203: Defendant was convicted of Menacing by Stalking and Telecommunications Harassment, both of which were felonies because of defendant’s prior convictions for similar conduct. Defendant sought judicial release which was denied. One week after the denial of judicial release, ODRC sought to release the defendant into transitional control.

State v. Larue, Case No. 20-CRI-079: Defendant was convicted of violating a protection order, a felony by virtue of the defendant's prior violation of a protection order. Defendant was placed on community control and ordered to complete programming at a CBCF. Defendant was brought back to court on a probation violation for continuing to have contact with the subject of the protection order and was sent to prison. ODRC sought to release him into transitional control.

State v. Hartsel, Case No. 20-CRI-050: Defendant was convicted of felony Domestic Violence and misdemeanor endangering children. The underlying incident involved the defendant's assault of his girlfriend that included his tossing their 8-month old child at her and then striking the child with a flip flop that he was trying to hit the girlfriend with. Defendant had a previous conviction for domestic violence under similar circumstances. Defendant was placed on community control which he violated by using drugs. He was continued on community control and sent to a CBCF for treatment where he assaulted another individual at the facility and consequently had his community control revoked. Despite receiving only a 16 month sentence after all of this, ODRC sought to release him into transitional control.

State v. Hayes, Case No. 19-CRI-075: Defendant was convicted of Trafficking in Marijuana and Trafficking in MDMA, a date rape drug. He was sentenced to prison for 12 months and released shortly after due to substantial jail time credit and was subsequently brought back to court by the Adult Parole Authority for probation violations. Defendant was ordered to enter and complete programming and was kicked out of the treatment program for testing positive for drugs and being in possession of an illegal substance. The judge imposed another 12-month term and in less than a month ODRC sought to release him into transitional control.

State v. Arangelovich, Case No. 19-CRI-186: Defendant was convicted of F2 burglary and domestic violence after he drunkenly forced his way into his ex-wife's home and attacked her in front of her children. ODRC recommended him for transitional control.

We respectfully oppose this change and would submit that we should in fact be going in the opposite direction of this amendment by restoring truthful sentencing practices that prioritize accountability, securing justice for victims, and promoting public safety.

Good Samaritan Expansion – OPAA Opposes this Change

Ohio prosecutors are not opposed to creating treatment opportunities for the drug addicted. Prosecutors have been at the forefront of creating prosecutor diversion programs for drug offenders, the creation of specialized drug court dockets, and implementing intervention in lieu of conviction. We oppose the expansion of the good Samaritan law for one simple reason – it has been our on the ground experience that the current law doesn't work. It leaves drug addicts who experience an overdose on their own to seek the treatment evaluation that is required by the law. Most addicts simply do not follow through. Many return immediately to abusing drugs and overdose again. Many if not most drug addicts need some incentive to seek and stay in treatment. Often arrest and justice system intervention are the best ways to accomplish this. Until we find a better way to ensure that those who experience overdoses are connected to treatment and supervised in that treatment, the good Samaritan law should not be expanded.

Thank you again for the opportunity to testify. I would be happy to answer any questions.



CHRISTOPHER R. TUNNELL

ASHLAND COUNTY
PROSECUTING ATTORNEY

August 28, 2019

Honorable Ronald J. Forsthoefel
Court of Common Pleas
Ashland County Courthouse
142 West 2nd Street
Ashland, Ohio 44805

Re: State of Ohio v. William Ogle
Case No. 19-CRI-024

Your Honor:

I have been notified by the Ohio Department of Rehabilitation and Correction of their intention to place the above referenced offender in their Transitional Control Program.

This is a Defendant who was convicted of Having Weapons While Under Disability and Tampering with Evidence in May of this year, which you sentenced to an aggregate prison term of eighteen (18) months. This Defendant came to Ashland by way of Highlands County, Florida where he had previously been convicted of Battery, Battery of Law Officers/Firefighters/EMT, Resist Officer with Violence, Domestic Battery, Possession of Methamphetamine, Use or Possess Drug Paraphernalia, Resist/Obstruct Officer without Violence, Disorderly Intoxication, False Report Commission of Crime, and Careless Driving, The Ashland Police Department learned of Mr. Ogle's weapon, a Hi-Point 9mm hand gun, while investigating a child abuse complaint that involved his discharge of the firearm.

Given the current political climate and the flurry of new firearm regulations being introduced by the State, I find it amazing that the ODRC would be seeking to let a violent armed felon out of prison and into transitional control. I would ask that we continue to protect the citizens of Ashland County by disapproving this transfer.

Sincerely,

CHRISTOPHER R. TUNNELL
Prosecuting Attorney



CHRISTOPHER R. TUNNELL

ASHLAND COUNTY
PROSECUTING ATTORNEY

September 6, 2018

Honorable Ronald J. Forsthoefel
Court of Common Pleas
Ashland County Courthouse
142 West 2nd Street
Ashland, Ohio 44805

Re: State of Ohio v. Andrew W. Schuttera
Case No. 15-CRI-001

Your Honor:

I have been notified by the Ohio Department of Rehabilitation & Correction of their intent to place the above referenced offender in the Transitional Control Program.

This Defendant was convicted of Trafficking in Heroin and Tampering with Evidence, and placed on Community Control November 19, 2015. The Defendant had his first probation violation filed against him December 8, 2017, for associating with a felon, and using marihuana and buprenorphine. The Defendant was continued on Community Control, which lasted until May 2018, when the Defendant's probation officer found him in possession of a loaded .22 caliber rifle, and the Defendant admitted to smoking crack and drinking alcohol with his felon brother. Thereupon, the Defendant was sentenced to his current 24 month prison term. The Defendant's track record alone, while taking into account his prior criminal history, would seem to be enough to justify the disapproval of the transitional control transfer.

One of the many problems with ODRC making decisions about releasing inmates is that they may not be aware the Defendant has a pending felony case before this Court in 18-CRI-088. It strikes me as ludicrous to place an individual in the Transitional Control Program who has a history of probation violations, criminal convictions, and a felony charge that has yet to be resolved. I would humbly ask that the transitional control placement be disapproved.

Sincerely,

CHRISTOPHER R. TUNNELL
Prosecuting Attorney



CHRISTOPHER R. TUNNELL

ASHLAND COUNTY
PROSECUTING ATTORNEY

April 4, 2019

Honorable Ronald J. Forsthoefel
Court of Common Pleas
Ashland County Courthouse
142 West 2nd Street
Ashland, Ohio 44805

Re: State of Ohio v. Andrew W. Schuttera
Case No. 15-CRI-001 & 18-CRI-088

Your Honor:

I have again been notified by the Ohio Department of Rehabilitation and Correction of their intent to place the above referenced offender in the Transitional Control Program.

I enclose with this letter my correspondence to you of September 6, 2018, asking you to disapprove the transitional control request when the Defendant was incarcerated solely on 15-CRI-001. I appreciate you disapproving the transitional control placement at that time. Within that correspondence, you'll note that I gave ODRC the benefit of the doubt. I assumed they were unaware that 18-CRI-088 was pending at the time of their request. Based on their latest recommendation, it isn't that they were unaware, ODRC clearly does not care that the Defendant committed a new felony offense while on probation for the old felony offense. This Defendant didn't just commit a new felony, he was convicted in 18-CRI-088 of Having Weapons While Under Disability. One would think that even the state prison system would recognize the community's interest in deterring felons from possessing firearms. I suppose it is well past the time which ODRC was worthy of receiving the benefit of the doubt.

I, again, must ask that the transitional control placement be disapproved for Mr. Schuttera.

Sincerely,

CHRISTOPHER R. TUNNELL
Prosecuting Attorney



CHRISTOPHER R. TUNNELL

ASHLAND COUNTY
PROSECUTING ATTORNEY

July 30, 2019

Honorable Ronald J. Forsthoefel
Court of Common Pleas
Ashland County Courthouse
142 West 2nd Street
Ashland, Ohio 44805

Re: State of Ohio v. Timothy A. Lewis
Case No. 18-CRI-203

Your Honor:

I have been notified by the Ohio Department of Rehabilitation and Correction of their intention to recommend the above referenced offender for the Transitional Control Program.

I'm sure you will recall the facts of the underlying case since you just denied the Defendant's Motion for Judicial Release last week. The Defendant was convicted of Menacing by Stalking and Telecommunication Harassment, both felony level offenses based upon the Defendant's prior convictions for similar conduct. The Defendant, additionally, has a long and serious history of violent criminal behavior.

The victim in this matter has contacted my office having learned that the Defendant had been marked for movement to transitional control through VINELink, and has asked that I tell you she specifically objects to the Defendant entering this program. I, therefore, would ask you to use your discretion and disapprove the transitional control transfer.

Respectfully submitted,

CHRISTOPHER R. TUNNELL
Prosecuting Attorney

CC: Timothy A. Lewis, *pro se*
Attorney John A. Boyd
O.D.R.C.
State Representative Darrell Kick
State Senator Larry Obhof

CRT: slm

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prosecutor@ashlandcounty.org



CHRISTOPHER R. TUNNELL
ASHLAND COUNTY
PROSECUTING ATTORNEY

December 30, 2021

Judge Ron Forsthoefel
Ashland Common Pleas Court
142 West Second Street
Ashland, Ohio 44805

Re: State of Ohio v Nathan W. Larue
Case No. 20-CRI-079

Your Honor:

I've been notified by the Ohio Department of Rehabilitation and Correction of their intent to place the above referenced offender in the transitional controlled program. This Defendant was convicted in your court with the offense of violating a protection order. The offense is a felony by virtue of the prior violation of protection order. You placed the Defendant on community control and ordered him to enter and successfully complete the Crosswagh CBCF program. Subsequent to his completion of the CBCF program he was brought back before you for a probation violation for continuing to have contact with the subject of the protection order. The State does not see any benefit to placing the Defendant in the transitional control program when he has already had the benefit of CBCF programming and judges in two different courts telling him to stay away from the victim. I respectfully ask that you use your discretion and disapprove the placement.

Respectfully submitted,

CHRISTOPHER R. TUNNELL
Prosecuting Attorney

CC: Nathan W. Larue, pro se
O.D.R.C.
State Senator Mark Romanchuck
State Representative Darrell Kick
Attorney Benjamin Zushin

CRT:clg



CHRISTOPHER R. TUNNELL

ASHLAND COUNTY
PROSECUTING ATTORNEY

August 25, 2021

Honorable Ronald J. Forsthoefel
Court of Common Pleas
Ashland County Courthouse
142 West 2nd Street
Ashland, Ohio 44805

Re: State of Ohio v. Jason D Hartsel
Case No. 20-CRI-050

Your Honor:

I have been advised by the Ohio Department of Rehabilitation and Correction of their recommendation that the above referenced offender be placed in a Transitional Control Program.

As you will recall the Defendant was recently sentenced for the offense of felony Domestic Violence and misdemeanor Endangering Children. Despite being convicted of a felony offense of violence and then bombing out of residential programming, ODRC seems to think prison is not for Mr. Hartsel.

The underlying incident involved the assault by this Defendant on his girlfriend Jessica Phillips, not just in the presence of their 8-month-old child, but that during the incident the Defendant tossed the child at her and then struck the child with a flip-flop that he was trying to hit Ms. Phillips with. While Officers were taking the report, the victim reported a prior incident where the Defendant, likewise, threw the baby at her and then began throwing items at her, striking her as she held the child. The Defendant was previously convicted of Domestic Violence in 2018.

Hartsel was given the opportunity to prove himself on Community Control. This resulted in a February 17, 2021 Community Control Violation for using drugs. He was again given a break by being sent to CROSSWAEH CBCF. Another Community Control Violation Complaint was filed on May 13, 2021, after he was kicked out of CROSSWAEH for assaulting another individual at the facility. It was at that point he was sentenced to a sixteen (16) month term. The Defendant has substantial jail time credit against that sixteen (16) month term. It is clear this Defendant has a violent pre-disposition and doesn't listen to sanctions or Orders from Courts or programs.

The State asks that you use your discretion and disapprove the placement so that Mr. Hartsel will have the opportunity to understand that no one will be lenient with him going forward.

Sincerely,

CHRISTOPHER R. TUNNELL
Prosecuting Attorney



CHRISTOPHER R. TUNNELL

ASHLAND COUNTY
PROSECUTING ATTORNEY

November 20, 2020

Honorable Ronald J. Forsthoefel
Court of Common Pleas
Ashland County Courthouse
142 West 2nd Street
Ashland, Ohio 44805

Re: State of Ohio v. Devin A. Hayes
Case No. 19-CRI-075

Your Honor:

I have been notified by the Ohio Department of Rehabilitation and Correction of their recommendation to place the above referenced drug dealer in transitional control.

As you will recall from when the case was directly before you for sentencing, Mr. Hayes is well known in the community for dealing drugs. At the time he came into contact with law enforcement in this case, he had a third degree felony quantity of marihuana, third degree felony quantity of MDMA (Ecstasy), a batch of marihuana brownies, digital scales, 88 vape pens containing suspected marihuana oil, and ledgers detailing his drug trafficking activities. You sent him to prison for 12 months for Trafficking in Marihuana and Trafficking in MDMA with 5 years of community control upon his release as to the third degree felony Possession of Marihuana count. With his jail credit he didn't spend very long in prison, and it didn't take him very long to reoffend.

The Adult Parole Authority brought Probation Violations against him on August 19th, noting that on July 27th he was released from prison and transported to the Mansfield VOA, where he was to enter and successfully complete the program. On August 19th he was kicked out of the VOA for testing positive for drugs and being in possession of an illegal substance. On October 2nd you imposed another 12 month term. ODRC re-admitted him on October 21, 2020, and, in less than a month, recommends him for their Transitional Control Program.

This Defendant is an absolute failure while on Court supervision, obviously has no interest in rehabilitation, and is a threat to our community. I humbly request that you choose to disapprove the Transitional Control transfer.

Sincerely,

CHRISTOPHER R. TUNNELL
Prosecuting Attorney

CC: Devin A. Hayes
Attorney Joseph P. Kearns
O.D.R.C.
State Representative Darrell Kick
State Senator Larry Obhof
Mike DeWine, Governor, c/o Andy Wilson

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CHRISTOPHER R. TUNNELL

ASHLAND COUNTY
PROSECUTING ATTORNEY

August 25, 2020

Honorable Ronald J. Forsthoefel
Court of Common Pleas
Ashland County Courthouse
142 West 2nd Street
Ashland, Ohio 44805

Re: State of Ohio v. Gerald E. Arangelovich
Case No. 19-CRI-186

Your Honor:

I have been notified of the Ohio Department of Rehabilitation and Correction's intent to place the above referenced offender in the Transitional Control Program.

This is a Defendant that drunkenly forced his way into his ex-wife's home and attacked her in front of her children. It is an absolute mystery how someone convicted of burglary, as a felony of the second degree; and domestic violence would ever be eligible for transitional control, but here we are.

I enclose a copy of the victim's letter that was provided to the Court as part of her Victim Impact Statement, and I would ask that you disapprove the placement and not allow O.D.R.C. to re-victimize this woman.

Respectfully Submitted,

CHRISTOPHER R. TUNNELL
Prosecuting Attorney

CC: Gerald E. Arangelovich, *pro se*
Attorney Donald Wick
O.D.R.C.
State Representative Darrell Kick
State Senator Larry Obhof
Mike DeWine, Governor, c/o Andy Wilson

Enclosure: victim letter
CRT: slm

COPY

Your Honor,

I will never be able to put into words what the actions of this man has done to me, or how his actions affected myself and my children. I can't explain the emotional heartache, physical struggle, or fear that entraps a person when they are violated in a physical way, their safe place no longer safe, because of the choices that one person makes. Whether under the influence or not, the decision was made to discredit everything that was moralized and held as examples to my children, when it came to the topic of laying your hands on another person with the intent to cause physical harm.

During our years of marriage this man taught my sons that they were to never lay their hands, in a destructive or harmful way, on a woman, ever. Now they've been a witness to their own father going against everything that was taught to them, and it is my hope and prayer that they will rise above what they witnessed, and continue to choose to take that stance, as they become men that will one day choose to love a woman.

I am heartbroken for my kids and what they endured not only that night, but then in the days moving forward. The processing that they have had to do should not be something that any child ever has to endure. My oldest son was put in a position of having to make a choice to protect his mom from the man that he calls dad. The man that he should've never had to protect his mom from. The amount of stress, pressure, and guilt that has effected Joshua is in describable. To hear your father speak the words, "I am ok living in prison for the rest of my life, I will kill your mother," should not be anything any son should have to hear. Then to hear his father request him to take care of his brother and sister is a responsibility that should not be known to anyone, but the father, instead this burden was placed upon Joshua. These are words that can never be unheard.

Alexis and Kaden are currently undergoing counseling in order to understand and process through the tragic events of that night and losing their dad for an undetermined amount of time. The hysterical cry of Alexis that night repeats over and over in my mind. The anger and frustration shown by Kaden over the events that have taken place breaks this mother's heart. The damage to these children is not beyond repair, but certainly will be something that effects them their entire lives.

When our separation occurred there was a conversation, between Gerald and myself, the day that he moved out. I promised I would never fight with him about the kids, keep the kids from seeing him, or prohibit him from being involved in their lives, unless it came to alcohol, to which I vowed I would go to the ends of the earth to protect them. Gerald promised that alcohol would not be an issue or concern. He showed that he was in agreement with that statement when he signed the court ordered document that he was not to be consuming alcohol when exercising his visitation with the kids. This was disregarded putting us in the position we find ourselves today.

This man was once a man that claimed to love me, as his wife. His nasty words, angry actions, and constant yelling and meddling in my life had become a common practice for him that I decided I was no longer going to tolerate or accept for myself. I no longer had to accept this kind of behavior toward me and I was in control of the choices of allowing it or not allowing it. The verbal aggression, verbal abuse, emotional conflict, and manipulative behavior had become too much for one person to bear and was not something I was going to continue to allow to effect my well being and happiness.

I am requesting that a 3 year minimum sentence be given in light of his actions, his threats, and his alcohol history. Several OVI/Reckless Operation citations and judgments makes it clear that he has an issue with alcohol that he is unwilling to accept or deal with. A verbal threat to shoot myself in an attempt to settle his anger makes it evident that he has no regard or respect for a woman. The physical action of placing his hands upon myself in an attempt to cause harm clearly depicts that he has anger issues that require addressing.

I am also requesting that the no contact order be placed back over the children, and mine would remain in place, for the duration of his sentence and probation. He gave up his rights as a father when he entered jail. He is unable to financially provide for his children, emotionally support them, or fulfill any of his fatherly duties while serving a sentence for a crime he chose to commit. After he serves his jail time, and is released to some form of probation, he needs to be court ordered to seek additional help, counseling, and have some sort of accountability that he is able to care for himself before being permitted to proceed for caring for my children, in an attempt to be a father and repair 3 damaged relationships.

Furthermore I would request that I be permitted to read this statement, in it's entirety, along with addressing Gerald with this final paragraph.

Gerald,

There's not a day that goes by that the events don't play in my mind. The actions that you chose to take against myself, causing trauma and stress to my children, will be actions that will never be tolerated or accepted ever again. I will never forget you standing at the end of my bed, my safe place, yelling and screaming, your hands being placed around my neck, Joshua tackling you to the bedroom floor, and listening to the hysterical cries of my children. I do, however, choose to forgive you. Never forgotten, just forgiven. This is done for myself. The anger and frustration of this situation will no longer consume me. I will now be able to move on and truly enjoy the happiness and peace that I have found by not allowing you to have any control over my thoughts, actions, or feelings any longer. I am prayerful and hopeful that you truly identify and recognize the needed help for yourself. That you accept responsibility for your actions, serve your time and sentence, and find a way to move forward with peace and happiness at the end of this chapter for you.

For me, this chapter ends today.

Sincerely,

A handwritten signature in cursive script that reads "Heather D. Arangelovich". The signature is written in black ink and is positioned above the printed name.

Heather D. Arangelovich