Council on Law Enforcement Education and Training

2024 Legal Update

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PREFACE

By statute, 70 O.S. § 3311.5(E), the Council on Law Enforcement Education and Training (CLEET) is required to update training related to legal issues, concepts, and state laws on an annual basis and no later than 90 days following the adjournment of a legislative session. This year's legal update continues efforts started in 2021 to incorporate a review of some significant cases that affect Oklahoma peace officers in addition to applicable statutory and rules changes. I acknowledge the efforts of attorney James L. Hankins, whose Oklahoma Criminal Defense Weekly newsletter does a masterful job of reviewing and highlighting important criminal law appellate opinions and upon whose work I have relied in identifying many of the cases highlighted in this update. I'm also grateful to Matt Love, general counsel at OMAG, for his vigilance in watching for and analyzing cases that impact Oklahoma law enforcement. I also am indebted to Abigayle Shropshire, an East Central University legal studies student who is interning at CLEET, for her efforts in proof-reading and link-checking this update. And my thanks goes out to CLEET's Jeanelle Hebert without whose technological assistance my efforts would be demonstrably less effective.

Please keep in mind that this document is, by necessity, a limited summary. If we were to address and link all the new cases and statutes that may have some impact on Oklahoma law enforcement and allied private industries, this document could run to several hundreds of pages. Even a brief summary of every case or provision would be unwieldy. I have attempted to include all new or revised statutes that have a direct or significantly tangential tie to law enforcement and allied private industries. I fully admit there may be provisions that directly impact law enforcement and allied private industries which I have missed in my efforts to review the latest legislative session and I am certain that my discernment of "significantly tangential" provisions will be different than many of yours would have been. My brief summaries of such provisions are meant only to highlight new or changed language and should not be relied upon as complete descriptions. Such summaries are also not offered as legal advice. Therefore, you are encouraged to read in their entirety any newly enacted or revised statutes, all of which are (or will be) available at www.oscn.net, and to seek guidance from competent legal counsel affiliated with your organizations before determining how or if the changes affect you. Copies of enrolled bills are also available on the Oklahoma Secretary of State's website: sos.ok.gov/gov/legislation.aspx. Hyperlinks to the enrolled bills are provided in this document as are hyperlinks to the various statutes, case opinions, constitutional provisions, and supporting materials discussed in the text. Please note that some of the hyperlinks may not bring up the new statutory language until the effective date of the enactments. Best efforts have been made to test the hyperlinks but I acknowledge my own limitations and those of my staff. My apologies for any that fail to work as expected.

Finally, I have tried my best to avoid too much editorializing, pontificating, or snarky commentating. To the extent I have failed, those extraneous comments are mine alone and do not reflect the official position of CLEET, the State of Oklahoma, or any other entity you may be tempted to complain about because of my statements.

CASE LAW UPDATES

CASES—INDIAN[1] COUNTRY JURISDICTION

State v. Fuller, 2024 OK CR 4. The Wyandotte Reservation Has Not Been Disestablished and Is Indian Country Under *McGirt*.

Fuller involves the assertion that the Wyandotte Reservation in far Northeastern Oklahoma still exists such that the land within its historic boundaries is Indian Country. Fuller, who was charged in state court with DUI, second and subsequent, after felony conviction; driving while license was suspended; failure to wear a seatbelt; and transporting an open container, filed a motion to dismiss asserting he is a member of the Cherokee tribe, that his crimes were committed within the territorial boundaries of the historic Wyandotte Reservation, and that the Wyandotte Reservation is still intact and should be considered Indian Country for purposes of criminal law jurisdiction. At the hearing on the motion to dismiss, the state did not challenge Fuller's Indian status nor the situs of the crimes but argued that the Wyandotte Reservation had been disestablished by Congress through termination. After considering the evidence, the court found the Wyandotte Reservation still existed and was Indian Country and dismissed the state charges against Fuller. The state appealed that decision and went before a reviewing court, which likewise determined that the Wyandotte Reservation constituted Indian Country, that Fuller's crimes were committed in Indian Country, and that as an Indian perpetrator in Indian Country, the state had no criminal jurisdiction over him. The state then appealed to the Court of Criminal Appeals, but did so after the Court issued its opinion in *State v. Brester*, 2023 OK CR 10, which we covered in the 2023 Legal Update and which found the Ottawa Nation and Peoria Nation Reservations were still intact and constituted Indian Country. In this case, the state admitted that *Brester* foreclosed the termination arguments it made below and the Court of Criminal Appeals agreed, finding that the district court had not abused its discretion in determining that the Wyandotte Reservation still exists and presently constitutes Indian Country.

The opinion in *Fuller*, however, identifies further developments in Indian Country law that could occur with the right case before the court and identifies some serious differences of opinion among the judges of the court about the effect of the U.S. Supreme Court's decision in *Oklahoma v. Castro-Huerta*, 597 U.S. 629 (2022). *Castro-Huerta* was discussed in the 2022 Legal Update. The Court of Criminal Appeals used its opinion in Fuller to "reiterate that in cases involving offenses falling under the General Crimes Act[2], 18 U.S.C. § 1152, the jurisdictional analysis does not end upon finding that a crime was committed in Indian country." Instead, the Court says, quoting the U.S. Supreme Court in *Castro-Huerta*, "a State has jurisdiction to prosecute crimes committed in Indian country unless state jurisdiction is preempted." *Fuller*, at ¶ 14 (quoting *Castro-Huerta*, 597 U.S. at 655). To determine if state jurisdiction is preempted, the Court of Criminal Appeals says a reviewing court must apply the [*White Mountain Apache Tribe v.*] *Bracker*[, 448 U.S. 136, 142-43, 145 (1980)] balancing test by taking into consideration tribal, state, and federal interests to determine whether the exercise of state criminal jurisdiction would infringe upon tribal

[1] "Indian" and "Indian Country" are legal terms of art under both federal and state law. As such, the term "Indian" is used in this document to refer to people who in other contexts or by other writers may be identified as Native American, American Indian, First Nation, First People, Indigenous, or some other descriptor. *See* "The Impact of Words and Tips for Using Appropriate Terminology: Am I Using the Right Word?", an insightful article published by the National Museum of the American Indian on the appropriate use of terminology.

[2] The General Crimes Act is also known as the Indian Country Crimes Act. We generally refer to the statute as the Indian Country Crimes Act in the basic academy's legal block module on Indian Country jurisdiction.

self-government. Such analysis, however, the Court noted, "will have to await another day and another case[,]" because the state abandoned on appeal its argument that the crimes charged against Fuller would not infringe on tribal self-government under the *Bracker* balancing test. *Fuller* at ¶ 15. As such, it seems like we can look forward to more Indian Country cases and a further evolving legal landscape in Oklahoma in the months and years to come.

***McCauley v. State*, 2024 OK CR 8. The Osage Reservation Was Disestablished and Is NOT Indian Country Under *McGirt*.**

In *McCauley*, the appellant argued that the state district court had no jurisdiction over him because he is an Osage Indian and his crime (a brutal stabbing of someone he suspected his girlfriend of having a sexual relationship with) occurred within the boundaries of the historic Osage reservation. In making this argument, McCauley asserted that *McGirt* had overruled prior Tenth Circuit precedent, which had found the Osage reservation had been disestablished by Congress. *See* *Osage Nation v. Irby*, 597 F.3d 1117, 1127 (10th Cir. 2010) (holding "the Osage reservation has been disestablished by Congress"). *Osage Nation* was a tax case, but relied on the same definition of Indian Country as asserted in *McGirt* and its progeny. The Court of Criminal Appeals "decline[d] to revisit the issue [of the status of the Osage reservation] and affirm[ed] the vitality of the Tenth Circuit's decision in *Osage Nation*." *McCauley* at ¶ 5. Therefore, the territory within the historic boundaries of the Osage reservation, which is essentially Osage County, is not Indian Country.

***State ex rel. Ballard, District Attorney v. Crosson, Special Judge*, 2023 OK CR 18. Judges Must Issue Arrest Warrants without Concern About *McGirt*.**

This is an interesting case out of Rogers County in which Matthew Ballard, the District Attorney for Craig, Mayes, and Rogers Counties, sued Special Judge Terrell Crosson for a writ of mandamus—an order to compel the judge to issue an arrest warrant. State authorities sought an arrest warrant for a defendant who was accused of manufacturing, possessing, and distributing child pornography. Judge Crosson considered the application and found probable cause existed that the defendant manufactured, possessed, and distributed child pornography, and that the offense occurred in Rogers County. The judge further found, however, that the offense also occurred within the historical boundaries of the Cherokee Nation, that the Cherokee Nation reservation had not been disestablished, and that the defendant was an enrolled member of the Navajo Nation and so was an Indian. Finding the state lacked jurisdiction to prosecute the defendant as he was an Indian who committed his crimes in Indian Country, the judge declined to issue the arrest warrant.

The Court of Criminal Appeals reviewed 22 O.S. § 171, which provides that "[w]hen a complaint, verified by oath or affirmation, is laid before a magistrate, of the commission of a public offense, **he must**, if satisfied therefrom that the offense complained of has been committed, and that there is reasonable ground to believe that the defendant has committed it, **issue a warrant of arrest**." *Ballard* at ¶ 6 (emphasis added.) Based on the statutory language, the Court determined that if probable cause is demonstrated, a judge has no option but to issue the requested arrest warrant. Consideration of jurisdictional issues such as whether a defendant is an Indian and whether the alleged crimes occurred in Indian Country are to be handled later in the litigation process, said the Court, not in the limited *ex parte* review a magistrate considering a request for an arrest warrant conducts. *Id*. at ¶¶ 6-7.

Stitt v. Treat, 2024 OK 21. Who Has Authority over State-Tribal Compacts?

(This is not an Indian Country case, at least not one involving criminal jurisdiction questions. However, this seemed like the best section to put it in.)

In this Oklahoma Supreme Court opinion, the court refused to declare that the Oklahoma Legislature lacked authority to pass any bills relating to State-Tribal compacts. The opinion was authored by Vice Chief Justice Dustin Rowe, who is Chickasaw.

During a special legislative session in the spring of 2023, the Legislature passed two bills dealing with State-Tribal compacts: (1) SB 26x, now codified at 68 O.S. § 346.1, which offers any tribe that is party to an existing State-Tribal tobacco products compact to extend the expiration of the compact to December 31, 2024. (2) HB 1005x, now codified at 74 O.S. § 1221.B, which offers any tribe that is a party to an existing State-Tribal motor vehicle licensing and registration compact to extend the expiration of the compact to December 31, 2024. Governor Kevin Stitt vetoed both bills, but the Legislature voted to override the governor's vetoes and both bills became law on July 31, 2023.

Immediately the governor filed an application for declaratory relief in the Oklahoma Supreme Court arguing the bills were invalid for three reasons: (1) the bills are the products of an unlawful concurrent special session and that the call of the special session failed to specifically reference the compacts; (2) the bills constituted an unlawful exercise of executive branch powers and so violated Article IV, Section 1, of the state constitution; (3) the bills contradict the governor's exclusive authority to negotiate State-Tribal compacts as conferred upon him by other statutes.

The Supreme Court majority ruled that the concurrent special session was lawful and the bills were proper for the special session, that the governor's authority to negotiate State-Tribal compacts is statutory not constitutional, and that the passage of the bills was not an infringement on the governor's statutory authority. Two justices, Chief Justice Kane and Justice Kuehn concurred in part and dissented in part to the majority's opinion.

CASES—SEARCH AND SEIZURE

U.S. v. Ronquillo, ___ F.4th ___ (10th Cir. 2024). When Is a Detached Garage within the Curtilage?

"Courts have agonized over the parameters of curtilage since Justice Holmes first hinted at the idea nearly a century ago[,]" is how the Tenth Circuit begins its opinion in *Ronquillo*. Slip Op. at 1[3]. At issue in this case is whether or not a search warrant which did not specifically include a detached garage as one of the places to be searched nonetheless authorized the search of the garage as part of the curtilage.

[3] A "Slip Op." or "slip opinion" is the first version of the Supreme Court's opinion in a case, which is posted on the court's website before the opinion is published in the bound volumes of the United States Reports. In this document, we also use the term "Slip Op." to refer to published cases from the Tenth Circuit that are available in first version form on the court's website or other online locations but are not yet "published" in the applicable reporter.

Here, the Denver Police Department received information from a confidential informant that an individual was selling methamphetamine at a certain property. Police conducted surveillance of the property and observed various people enter the residence, stay for five to ten minutes, then leave. Police also conducted two separate controlled buys with its informant. Based on this information, police obtained a search warrant for the property, which was described as "836 North Linley Court, a single family structure with green siding and trim on the east side of North Linley Court with a black metal security door with the numbers '836' to the right of the door in black." The property itself contained two structures—the main residence (from which the informant made the controlled buys and from where the various visitors were seen to come and go) and a detached garage. According to the opinion, a brick and wrought iron fence lined the property's back perimeter. The garage was about 25 feet away from the main residence and the two were connected by a walkway. The garage had two boarded-up windows and a door facing the backyard and residence. The structure also had a sealed and inoperable garage door facing the alley.

During the execution of the search warrant, officers entered the garage and found Ronquillo sleeping on a bed inside. Officers found cocaine, methamphetamine, and heroin on him. Ronquillo moved to suppress the evidence as the fruit of an illegal search because he was located in the garage which was not specifically included in the warrant's description of the property to be searched. The Court noted that it has "consistently held that a search warrant authorizing a search of a certain place includes any detached structures and vehicles located within its curtilage" and cited various of its cases in which detached garages, sheds, horse trailers, and other vehicles were found to have been properly searched because they were located within the curtilage. Slip Op. at 5-6.

Citing the U.S. Supreme Court, the Tenth Circuit defined curtilage as "the area to which extends the intimate activity associated with the 'sanctity of a man's home and the privacies of life.'" *Id*. at 6 (internal citations omitted). It then described four factors used to determine whether any particular feature is included in the curtilage. *Id*. Those factors are (1) the proximity of the area claimed to be curtilage to the home; (2) whether the area is included within an enclosure surrounding the home; (3) the nature of the uses to which the area is put; and (4) the steps taken by the resident to protect the area from observation by people passing. *Id*. (internal quotations and citations omitted). The Court then applied facts from the case to these factors finding that (1) the garage was relatively close to the residence; (2) that the back fence connected to both sides of the garage and because of the inoperability of the garage door anyone wishing to enter the garage had to do so from inside the enclosure created by the fence; (3) because Ronquillo was using the garage as a bedroom associated with the main residence, the garage usage was akin to the intimate activities associated with a home; and (4) as the interior of the garage was shielded from public view, its inclusion in the curtilage is highly likely. In weighing such factors and the facts of this case, the Court found the detached garage to be in the curtilage. As such, the search warrant authorized the search of the garage even though it was not separately listed in the description of the warrant.

Ronquillo also complained that he was improperly detained during the search. The Tenth Circuit noted that "[d]etentions incident to the execution of a search warrant are reasonable under the Fourth Amendment because the limited intrusion on personal liberty is outweighed by the special law enforcement interests at stake." Slip Op. at 9 (quoting *Bailey v. U.S.*, 568 U.S. 186, 202 (2013)). The

Court went on to note that peace officers have three law enforcement interests in detaining an occupant during the execution of a search warrant: officer safety, facilitating the completion of the search, and preventing flight. Slip Op. at 10 (citing *Michigan v. Summers*, 452 U.S. 692, 702-03 (1981)). Detentions incident to the execution of a search warrant must occur within the immediate area of the place to be searched, however. Since the search warrant authorized the search of the detached garage as being within the curtilage, the detention of anyone inside the garage, such as Ronquillo, was reasonable under the Fourth Amendment.

U.S. v. Hay, __ F.4th __ (10th Cir. 2024). The Surveillance Here Merely Enhances What Law Enforcement Could Always Do—Monitor a Suspect's Movement in Public View.

In this federal case originating in the U.S. District Court for the District of Kansas, the Tenth Circuit considered the reasonableness of the use of a pole camera to surveil a suspect's home. Hay, a veteran of the U.S. Army, was seriously injured in a car accident nearly 20 years ago. Hay applied for disability benefits from the Department of Veterans Affairs (VA), which determined he was permanently disabled and entitled to benefits. Several years after being awarded benefits, the VA's Inspector General received a tip that Hay was not actually permanently disabled and the IG initiated an investigation. Investigators observed Hay by feigning a deer poaching operation on a nearby farm, tailed him to medical appointments and other activities, and installed a pole camera on a school rooftop across the street from Hay's house. The camera was remote controlled, was activated by motion, and recorded near constant footage of Hay's house as visible from across the street. In total, the camera captured 15 hours of footage per day for 68 days. Following a six-year investigation, VA investigators developed sufficient evidence to suggest he was faking his disability. Eventually, Hay was indicted by a grand jury on counts of stealing government property and wire fraud. Following a jury trial, Hay was found guilty on all counts.

In part, Hay argued to the Tenth Circuit that the evidence obtained from the pole camera surveillance should have been suppressed as an unreasonable search under the Fourth Amendment. As is widely understood, the Fourth Amendment protects the people against unreasonable searches and seizures and the U.S. Supreme Court has made clear that warrantless searches are per se unreasonable and only a few specifically established and well-delineated exceptions authorize warrantless searches. In 2018, the Supreme Court noted that "[w]hen an individual seeks to preserve something as private, and his expectation of privacy is one that society is prepared to recognize as reasonable, we have held that official intrusion into that private sphere generally qualifies as a search and requires a warrant supported by probable cause." Slip Op. at 12 (quoting *Carpenter v. U.S.*, 585 U.S. 296, 304 (2018)). However, it has long been recognized that people do not have a reasonable expectation of privacy in activity that occurs in public. Slip Op. at 13.

The Tenth Circuit reviewed cases finding that peace officers have no requirement of "shield[ing] their eyes when passing by a home on public thoroughfares" and that the use of aircraft by police for warrantless surveillance is acceptable so long as "[a]ny member of the public flying in [the] airspace who glanced down could have seen everything that the[] officers observed." Slip Op. at 13 (internal citations omitted). The Court also considered cases holding that observations requiring specialized equipment, such as the

use of thermal imaging cameras to see heat patterns inside a home, do require a warrant. *Id*. And, the Court noted it had previously found the warrantless use of a pole camera was constitutionally sound so long as the camera cannot see inside a house and is only capable of observing what any passerby could see." *Id*. (quoting *U.S. v. Jackson*, 213 F.3d 1269, 1280 (10th Cir. 2000) (*Jackson* involved the use of cameras installed on a telephone pole outside a residence in Elk City, Oklahoma, in a late 1990s crack cocaine distribution case)).

After a thorough assessment of Hay's arguments that continuous observation of his comings and goings at his house should be considered an invasion of privacy requiring a warrant, the Tenth Circuit rejected the claim and found that in this time when "cameras are ubiquitous, found in the hands and pockets of virtually all Americans, on the doorbells and entrances of homes, and on the walls and ceilings of businesses," the use of a pole camera to observe the front of a person's house does not violate the Fourth Amendment. Slip Op. at 20 (internal citation omitted). In fact, the Court found that "[t]he surveillance here merely enhances what law enforcement could always do—monitor a suspect's movement in public view." *Id*.

U.S. v. Streett, 83 F.4th 842 (10th Cir. 2023). Inevitable Discovery.

This federal child pornography and sexual activity with minors case out of New Mexico considers the applicability of the inevitable discovery rule to a search made pursuant to a defective warrant. The inevitable discovery rule provides that evidence obtained in violation of the Fourth Amendment—such as evidence obtained through an improper warrantless search or, as in this case, under the auspices of a defective warrant—that would have ultimately or inevitably been discovered by lawful means need not be suppressed. See *Nix v. Williams*, 467 U.S. 431, 444 (1984). The Tenth Circuit first assessed the question of whether the inevitable discovery rule applies in cases of defective warrants. The Court found the doctrine did apply in such cases. In this case, a warrant was applied for and obtained to search a specific property in Albuquerque, New Mexico, but the supporting affidavit failed to assert that Streett resided at the property (instead, the affidavit asserted Streett lived in the county in which the property was located) and so no probable cause was presented to justify the issuance of the warrant for that specific location. The Court framed the question as "whether the Search Warrant at issue here would inevitably have been granted had it been initially denied for lack of an adequate showing of probable cause, and thus whether the evidence would have been discovered." *Streett*, Slip Op. at 12.

Next, the Court asserted four factors for consideration in determining whether a proper warrant would have inevitably been granted in this case: (1) "the extent to which the warrant process has been completed at the time those seeking the warrant learn of the search," (2) "the strength of the showing of probable cause at the time the search occurred," (3) "whether a warrant ultimately was obtained, albeit after the illegal entry," and (4) "evidence that law enforcement agents 'jumped the gun' because they lacked confidence in their showing of probable cause and wanted to force the issue by creating a fait accompli[4]." Slip Op. at 12 (citing *U.S. v. Souza*, 223 F.3d 1197, 1204 (10th Cir. 2000) (internal citations omitted)).

[4] A fait accompli is defined as "something that has already happened or been done and cannot be changed." Cambridge Dictionary online.

Applying these factors to the instant case, the Court found that the first factor favored the government as officers had actually obtained a warrant, albeit a defective one, prior to the search. The second factor also favored the government as the officer had evidence from multiple sources at the time he applied for the warrant which indicated Streett's address was the one that was actually searched and that evidence of Streett's alleged crimes, particularly child pornography, would be found at that location. The Court says the third factor—whether a warrant was ultimately obtained—is an awkward fit for this case because a warrant was obtained *prior* to the search, it just was determined to be defective. Since the officer obtained a warrant prior to the search, the Court assessed this factor in the light of whether a subsequent proper warrant was likely to have been obtained had the initial application been denied. Noting that the officer "would have only had to add a single sentence to the Warrant Affidavit to make it proper"—changing the statement that Streett "lives in Bernalillo County" to "according to the T-Mobile records, resides at 4260 Plume Rd. NW, Albuquerque, NM"—the Court found this factor also favored the government. Slip Op. at 14-15. Finally, since the officer actually applied for, received, and waited for the issuance of a search warrant before executing the search, the Court found there was no "jumping the gun" by officers in this case and the fourth factor also favors the government. Since all four factors favored the government, the Tenth Circuit found the inevitable discovery rule was properly applied in this case and the evidence discovered pursuant to the original defective warrant did not have to be suppressed. This was because a more careful warrant application based on information already in the possession of the officer at the time the original application was made would have resulted in a valid warrant upon which the search would have been proper.

A word of caution, just because the inevitable discovery rule may be applicable in certain defective warrant cases, don't get in the habit of slapping together half-considered warrant affidavits. Peace officers should be articulate, careful, and thorough in drafting applications for search warrants and should ensure that any such applications clearly demonstrate probable cause to support the proposed search.

***U.S. v. Dawson*, ___ F.4th __ (10th Cir. 2024). Extending Traffic Stop to Verify Lawful Authority to Drive a Rental Car.**

Dawson is a case out of Wyoming where a Wyoming Highway Patrol trooper pulled over a driver for speeding at over 90 mph in a 70 mph zone. When the trooper pulled Dawson over, he asked for a driver license and registration. Dawson produced his own driver license and a registration showing the vehicle belonged to Avis Car Rental. Dawson also told the trooper he was in a hurry because he was running low on fuel and was trying to get to the next town with a gas station. The trooper asked Dawson to come back to his patrol car and to sit in the passenger seat while he worked on a citation. Dawson did so voluntarily. During this time, the trooper told Dawson that he needed to see the rental agreement that would show Dawson was in lawful possession of the rental car. Dawson called his girlfriend to see if she could locate the rental agreement and send a picture of it to Dawson's phone. The girlfriend sent a copy of a reservation email, but the email failed to include any information about the driver, the vehicle, or pickup and return dates.

The trooper completed and issued Dawson a speeding ticket but informed Dawson he needed to see the rental agreement before he could conclude the stop. Dawson called his girlfriend back in an effort to get a copy of the agreement. While Dawson was talking to his girlfriend, the trooper walked up to Dawson's car and spoke with Dawson's passenger. Because Dawson had said he was running low on fuel and as the trooper knew the closest location with gasoline was approximately 20 miles away, the trooper asked the passenger to turn on the vehicle and check the fuel level so that the trooper could determine if he needed to get some fuel to the location before sending Dawson and his passenger on their way. As Dawson's passenger leaned over from the passenger seat to look at the fuel gage, the trooper observed what appeared to be a marijuana bud on the seat beneath the passenger. Based on that plain view discovery, the trooper detained Dawson and his passenger and conducted a search of the vehicle. The search turned up two vacuum sealed bags containing 917 grams of methamphetamine. Dawson was arrested and charged in federal court with Possession with Intent to Distribute 500 Grams or More of Methamphetamine. Dawson eventually plead guilty but argued that the evidence should have been suppressed because the traffic stop was unreasonably prolonged.

Here the Tenth Circuit determined that it is necessary for a law enforcement officer to verify that someone driving a rental vehicle has lawful possession of the vehicle. As such, even though the speeding citation had been completed prior to the trooper observing the marijuana and then searching the car and finding the methamphetamine, the trooper was still rightfully waiting for Dawson to produce his rental agreement. Therefore, because the trooper's "traffic-based mission of the stop" had not been concluded at the time of the discovery of the marijuana, the discovery was not based on a diversion from the stop's original purpose to investigate ordinary criminal activity. Slip Op. at 7.

The court contrasted this case with one we discussed in our 2022 Legal Update, *U.S. v. Frazier*, __ F.4th ___ (10th Cir. 2022), in which a Utah Highway Patrol trooper had cited a failure to produce a rental agreement as one articulable fact among others to support reasonable suspicion. In that case, the Tenth Circuit noted that a stop could reasonably be prolonged for an officer to establish a driver's authority to operate a rental vehicle, but such delay could not be used to justify additional investigations related to suspected drug trafficking or other wrongdoing. In *Frazier* the trooper called in a K9 unit to conduct a dog sniff of the vehicle because he suspected, without sufficient support, that the driver was trafficking illegal drugs. Prolonging a traffic stop for unsupported reasonable suspicion is a Fourth Amendment violation but continuing a traffic stop for purposes of determining if a driver has lawful authority to drive a rental car is not.

***U.S. v. Ramos*, ___ F.4th ___ (10th Cir. 2023). Suppression of an Inventory of a Vehicle.**

In this case, which originated in Frederick, Oklahoma, a municipal officer arrested a driver and impounded his vehicle. Prior to the impoundment, the officer conducted an inventory search of the vehicle and discovered a machine gun and related ammunition. Ramos was eventually charged in federal court with the unlawful possession of a machine gun and with being a felon illegally in possession of ammunition. Ramos argued the inventory search violated his Fourth Amendment rights and the evidence resulting from the inventory should be suppressed.

Relying on *U.S. v. Sanders*, 796 F.3d 1241, 1243 (10th Cir. 2015), the Tenth Circuit noted that a peace officer's "community-caretaking" responsibilities may authorize the impoundment and related inventory search of a vehicle, but only when the impoundment is based on "something other than suspicion of criminal activity," such as "protecting public safety and promoting efficient movement of traffic." Slip Op. at 3 (internal citations omitted). In other words, "a community-caretaking impoundment cannot be based on a suspicion or hope evidence of criminal activity will be found in the vehicle." *Id*. at 3-4. The court identifies five factors which are helpful in determining whether an impoundment is justified by a reasonable, non-pretextual community-caretaking rationale. *Id*. at 5. Those factors include: (1) whether the vehicle is on public or private property; (2) if on private property, whether the property owner has been consulted; (3) whether an alternative to impoundment exists (especially another person capable of driving the vehicle); (4) whether the vehicle is implicated in a crime; and (5) whether the vehicle's owner and/or driver have consented to the impoundment. *Id*.

In this case, Ramos was arrested after being involved in a physical altercation with another man. He was arrested at the Hop & Sack convenience store and the vehicle he was driving prior to the altercation and arrest, a tow truck, was parked on the Hop & Sack property. The officer testified that when he arrests someone and no one else is around to take control of the vehicle that he impounds it. At the time of the arrest, the Hop & Sack was closed. The arresting officer asked Ramos if he needed anything out of the tow truck to which Ramos responded in the negative, but Ramos did tell the officer that the truck belonged to Ramos' mother. Although the officer knew both Ramos and Ramos' mother, he did not allow Ramos to contact his mother to come collect the truck nor did he contact her himself. The arresting officer and his supervisor who later appeared on scene, at first considered trying to determine if the tow truck was registered to Ramos' mother but in inspecting the outside of the truck determined that no license plate was displayed on the vehicle and so decided that regardless of whether the truck was registered to Ramos' mother or not it could not be driven on the roadway and so had to be impounded. However, the arresting officer asked Ramos about the missing license plate and Ramos indicated the plate was likely behind the seat in the truck. The officer found the plate and a call to dispatch verified that the plate was connected to Ramos' truck, that it was valid, and that the truck was properly insured.

After calling for a tow truck, the officer inventoried Ramos' truck and found a loaded M-16 firearm behind the driver's seat. After the inventory but prior to the arrival of the tow truck, Ramos' mother appeared on scene. The officer, however, determined that since the tow truck was already in route, the vehicle would be towed rather than released to Ramos' mother. Nevertheless, the M-16 had already been discovered pursuant to the inventory undertaken in anticipation of the impoundment.

The district court rejected Ramos' request to suppress the evidence found during the inventory, determining the *Sanders* factors reflected the impoundment was justified by a reasonable, non-pretextual community-caretaking rationale. In arriving at this decision, the district court found the first factor—was the vehicle on private property (it was)—nevertheless weighed in favor of impoundment because the private nature of the property did not significantly decrease the risk that the truck, if left unattended, would be burgled or vandalized and because the property did not belong to Ramos or his friends or family but instead was a commercial location. The second factor—was the property owner on which the vehicle was

located consulted? (it was not)—also weighed in favor of impoundment because although the property owner or manager was not directly consulted, there was a posted sign at the premises prohibiting parking by non-customers. The district court found the third factor—whether an alternative to impoundment, such as turning the vehicle over to another driver (none found)—supported impoundment because the truck was not legal for anyone to drive as it had no license plate attached to its bumper and because the impounding officer was the only patrol officer on duty that night in Frederick it was not reasonable to expect the officer to stand by indefinitely waiting on someone to come claim the vehicle. The district court found the fourth factor—whether the vehicle was implicated in a crime (it was not)—and the fifth factor—whether the driver consented to impoundment (he did not)—weighed against impounding the vehicle under the community caretaking theory. Nevertheless, the district court found that the impoundment was reasonable and not predicated upon pretext.

On review, the Tenth Circuit conducted a de novo, or a new, review of the factors. Assuming, without determining, the officer's decision to impound the vehicle was not pretextual to conduct a warrantless search, the court then independently considered the five *Sanders* factors. First, the Tenth Circuit rejects the district court's finding that because the Hop & Sack's private parking lot was not owned by Ramos and that leaving the vehicle there would leave it vulnerable to possible burglary or vandalism that impoundment was reasonable. Instead, noting the truck was "legally parked in a private parking lot and was not obstructing traffic," the Tenth Circuit found the first factor was clearly against the reasonableness of an impoundment. Second, the Tenth Circuit disagrees with the district court's finding that the Hop & Sack's sign indicating parking was for customers only supports the reasonableness of an impoundment. The second *Sanders* factor is consultation, the Tenth Circuit says, and the police in this instance had the opportunity to consult with the duty store clerk—and in fact did consult with the clerk, just not about whether the vehicle could be left in the parking lot. As such, the second factor suggests the impoundment was unreasonable. Third, the Tenth Circuit rejects the district court's finding that there was no reasonable alternative to impoundment as the vehicle had no attached license plate and no immediate alternate driver. In this case, the license plate was present, valid, and could easily have been attached to the truck's bumper by Ramos' mother. Furthermore, Ramos' mother was present at the location at least 15 minutes before the tow truck appeared. It would have been wholly reasonable, the Tenth Circuit, said for the police to allow Ramos' mother to attach the license plate and drive the truck home rather than impound it. The appellate court further agreed with the district court that the fourth and fifth factors suggested impoundment was unreasonable. The truck was not implicated in a crime and so police had no need to impound the vehicle to preserve evidence and Ramos did not consent to the truck's impoundment. Weighing all five factors together, the Tenth Circuit finds the impoundment under the community-caretaker role was unreasonable and so the inventory related to that impoundment was improper and the evidence found in the inventory must be suppressed.

So, what do we learn from this case? It appears that law enforcement will not be given any slack when reviewing community-caretaking impoundments. Instead, the courts seem to insist that the police dot every I and cross every T when it comes to the *Sanders* factors. Again, if the vehicle is on private property and is "legally" parked and not impeding traffic—even if parked overnight at a commercial location that has posted prohibitions on parking—that factor will likely weigh against the reasonableness of

impounding the vehicle. Even if a private property has a posted sign indicating a general preference against parking, if an owner or employee can be consulted, a failure to consult such person will weigh against the reasonableness. Even if there are some surmountable obstacles to making a vehicle roadworthy or some effort to locate a possible driver must be undertaken by police in order to avoid an impoundment, failing to allow the obstacles to be overcome or failing to either assist in locating an alternate driver or exercising patience for one to appear may make an impoundment unreasonable. When a vehicle is not itself implicated in a crime and impoundment is not necessary to preserve evidence of such crime, impoundment is likely unreasonable. And, when a driver is either not asked for consent to impound a vehicle or refuses to give such consent, impoundment under the community-caretaker exception may be unreasonable.

CASES—STAND YOUR GROUND

State v. Bradford, 2024 OK CR 3. Stand Your Ground.

In this case out of Bryan County, Bradford was charged with Second Degree Murder or, in the alternative, First Degree Manslaughter (misdemeanor manslaughter) or First Degree Manslaughter (heat of passion), for the death of his half-brother. Bradford and his sister had gone to their half-brother's residence because they had been alerted by the half-brother's wife that the half-brother and she were in a domestic dispute and that the half-brother was causing damage to the house they lived in. Although the half-brother and his wife lived in the house, Bradford, his sister, and the half-brother were joint owners of it. Upon arriving at the house, Bradford and his half-brother immediately got into a verbal altercation which escalated to a physical fight. At some point Bradford brandished a firearm and the half-brother reportedly told Bradford he was going to kill him. Thereafter, Bradford and his sister retreated to Bradford's vehicle and began driving down the public road away from the house. As they were making a turn at an intersection near the house, Bradford and his sister both heard a gunshot, causing them to stop the vehicle and duck within for cover. Both Bradford and his sister believed their half-brother was shooting at them. In response, Bradford grabbed his firearm and got out of the vehicle. He believed his sister had been shot, because she was screaming, and he thought the half-brother would try to shoot the gas tank on his vehicle. Bradford said he saw his half-brother standing with his arms raised to shoulder height and believed he was holding a firearm, although he could not see one. Bradford fired several shots at his half-brother then returned to his vehicle and drove away. Shortly thereafter Bradford drove to the police station and turned himself in. The half-brother died as a result of injuries received from Bradford shooting him.

Prior to trial, Bradford argued that he was justified in using the force he did against his half-brother and as such was entitled to immunity from criminal prosecution under 21 O.S. § 1289.25(F). The district court agreed with Bradford, granting him immunity, and the State appealed to the Court of Criminal Appeals.

When a defendant invokes statutory immunity under Section 1289.25(F), the court "must hold a pre-trial hearing to determine if the preponderance of the evidence warrants immunity." *Bradford* at ¶ 8 (internal citation omitted). "The district court must weigh and decide factual disputes as to the defendant's use of force to determine whether to dismiss the case based on statutory immunity. . . . The defendant has the

burden of proof on the issue of whether immunity attaches to his or her actions." *Id*. On appeal, the Court of Criminal Appeals reviews the district court's ruling for an abuse of discretion. Finding the trial court in this case evaluated the evidence under the proper standard the appellate court found Bradford "demonstrated by a preponderance of the evidence that (1) he was not engaged in an unlawful activity; (2) he was on a public roadway when he was attacked by [his half-brother], a place where he had a right to be; and (3) he reasonably believed it necessary to use deadly force to prevent death or great bodily harm to himself and/or [his sister]." *Id*. at ¶ 10. As a result of such findings, the Court of Criminal Appeals found Bradford had "no duty to retreat and ha[d] the right to stand his . . . ground and meet force with force, including deadly force[.]" *Id*.

Judge Lumpkin filed a special concurring opinion, in which Judge Hudson joined, quibbling with the use of the term "immunity" and asserting that a better way of looking at the statute is whether the defendant was justified in using the force such that prosecution is inappropriate rather than suggesting the defendant is immune from prosecution.

CASES—SECOND AMENDMENT

U.S. v. Rahimi, ___ U.S. ___ (2024). Disarming Domestic Violence Restraining Order Respondents Is Constitutional.

I was pleasantly surprised to learn the U.S. Supreme Court believes that reasonable measures to disarm individuals who have been found to pose threats to the physical well-being of others do not violate the Second Amendment. You may remember from last year's Legal Update that district and circuit courts around the country were relying on the Supreme Court's opinion in *New York State Rifle & Pistol Assn., Inc. v. Bruen*, 597 U.S. 1 (2022), to find that various long-existent bases for restricting an individual from possessing a firearm violated the Second Amendment. Rejecting a popular two-step inquiry formulated by the federal appeals courts following *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. Chicago*, 561 U.S. 742 (2010), *Bruen* directed courts to instead examine the country's "historical tradition of firearm regulation" in determining whether specific regulations were permissible. 597 U.S. at 22. Some examples of post-*Bruen* opinions include finding federal laws prohibiting gun possession while possessing a controlled dangerous substance were unconstitutional (see *U.S. v. Harrison*, CR-22-00328-PRW (OKWD 2023)) and finding disarming individuals who were respondents in domestic violence protective order cases violated the Second Amendment (see *U.S. v. Rahimi*, __ F.4th __ (5th Cir. 2023)).

However, in this case (which boasted an 8-1 decision, Justice Thomas being the lone dissenter), the Court found that "[s]ince the founding, our Nation's firearm laws have included provisions preventing individuals who threaten physical harm to others from misusing firearms." Slip Op. at 5. It also noted that some of the lower courts have misunderstood its prior decisions. *Bruen*, and others, which refer to historical traditions, are "not meant to suggest a law trapped in amber." Slip Op. at 7. Instead, "the Second Amendment permits more than just those regulations identical to ones that could be found in 1791." *Id*.

The appropriate analysis in these cases involves determining whether a challenged regulation is consistent with the *principles* that underlie our legal framework. *Id*.

Here, the Court found that two types of laws that existed prior to and at the time the Constitution was adopted suggest the protective order restriction is valid. Those laws included "surety laws," which required someone who was found to be likely to misbehave in the future to post a bond or surety or be jailed. If the person posted a bond and then broke the peace, the bond would be forfeited. The other category of laws were the "going armed" laws, which often prohibited "riding or going armed, . . . [to] terrify[] the good people of the land[,]" and were punished with "forfeiture of the arms . . . and imprisonment." Slip Op. at 13 (internal citations omitted). After a thorough review of these laws and drawing on the principles underlying them, notably the recognition of the government's right to disarm individuals who threaten or pose a credible risk of physical harm to others, the Court found that disarming respondents to domestic violence restraining orders does not offend the Second Amendment.

Bottom line? "When an individual poses a clear threat of physical violence to another, the threatening individual may be disarmed [consistent with the Constitution]." Slip op. at 13.

CASES—FIFTH AMENDMENT

Swager v. State, 2024 OK CR 12. Criminal Interrogations Are Designed to Convince People to Admit Truths They May Not Want to Confess.

"By their very nature," the Court of Criminal Appeals says, "criminal interrogations are designed to and geared toward convincing persons to admit truths they may not want to confess." *Swager* at ¶ 12. It is against this backdrop that the court considered Swager's argument that his confession was coerced by the interrogator. For a confession to be admissible, it must have been voluntarily made, that is, it must have been the product of a free and deliberate choice rather than intimidation, coercion, or deception AND the defendant's right to remain silent must have been waived with a full awareness of both the nature of the right being abandoned and the consequences of abandoning it. *Id*. at ¶ 8 (internal citations omitted). To be voluntary, a statement must not be obtained by any sort of threats or violence, nor by any direct or implied promises, nor by the exertion of any improper influence. *Id*. at ¶ 9. In order to determine if a suspect's will has been overcome, a reviewing court must consider the totality of the circumstances, both the characteristics of the accused and the details of the interrogation. *Id*.

In this case, Swager argued that he was subjected to coercive interviewing techniques in that the investigator who questioned him told Swager "(1) that he believed [Swager] was a good person who made a bad decision; (2) that he did not believe [Swager] was evil; (3) that he wanted to help [Swager] show the 'District Attorney's office and the twelve people that are watching' that [Swager] was not evil and calculating; (4) that he could not make any promises to [Swager], but he could tell the District Attorney's office that [Swager] was genuine, remorseful, helpful and maybe needed some help; and (5) that he was a 'buffer between [Swager] and the judicial system.'" *Id*. at ¶ 10.

The court reviewed the video of the interrogation and found that Swager understood each of the rights described in the *Miranda* warning and that his statements were voluntary. Swager was aware of his rights and that he could stop the questioning at any time. The investigator was respectful and friendly throughout the interrogation and his interviewing tactics, when viewed in context, were "well within the bounds of acceptable police interview practices," according to the court. *Id*. at ¶ 11. The specifically-complained-about statements made by the investigator fell within acceptable interrogation techniques and were not coercive according to the court. *Id*. at ¶ 12.

Nevertheless, Swager complained that the investigator failed to consider Swager's mental illness struggles during the interrogation. "Mental state is a factor to consider in determining the admissibility of confessions[,]" the court acknowledges, but the pertinent inquiry is whether the investigator "exploited [Swager's] mental state to obtain his confession." *Id*. at ¶ 14 (internal citations omitted). The court's review of the video of the interrogation in this case showed no indication of a mental impairment or any undue stress or overly fragile emotional condition. Because there was no indication of a mental illness or significant emotional struggle, the interrogator could not have taken advantage of such a deficit. In the end, the court found Swager's confession was knowingly and voluntarily made.

CASES—ENTRAPMENT

Caudle v. State, 2024 OK CR 14. "[M]erely Providing an Already Willing Participant the Opportunity to Commit a Crime Does Not Constitute Entrapment."

In this very short opinion, the Court of Criminal Appeals considers a claim of entrapment. The case begins when Caudle, who was working as a jailer in Okmulgee County, began interacting with a profile on the social media site, MeetMe. The profile was fictitious, having been created by an officer at the Okmulgee Police Department under the pseudonym of "Stevie J." Caudle initiated contact with "Stevie J." and was told early on that "Stevie J." was 13 years old. After being told "Stevie J." was 13, Caudle ceased contact using his original profile. However, within a day or so, Caudle had created himself a new profile and reached out to "Stevie J." using it. He was again told that "Stevie J." was only 13 years old, but this time he persisted in making conversation with "Stevie J.," some of it being sexual in nature, over the next several weeks. Eventually, Caudle made arrangements to meet "Stevie J." for sex. He drove to the pre-set meeting place, wearing his jailer's uniform, body armor, and carrying a firearm. He passed by the meeting place twice before finally pulling into the driveway, where he was confronted and arrested by law enforcement authorities.

Following his arrest, Caudle waived *Miranda* and made a statement that included an admission that he was the person who had been chatting with "Stevie J." However, he said he had changed his mind about having sex with the minor on his way to the arranged meeting and planned to break off their relationship in person. At trial, however, Caudle testified and claimed that he believed he had been chatting with a 23-year-old individual the whole time and that the statements about "Stevie J." only being 13 years old were part of a fantasy game. Caudle also asserted that he had been entrapped by the police.

Whether a defense of entrapment has been proven is a jury question, the Court of Criminal Appeals says. That is, there is a factual question to be determined as to "whether the defendant was ready and willing to violate the law." *Caudle* at ¶ 7. In fact, "the entrapment question is more about what kind of *person* the government has set out to catch, and whether that person was already ready and willing (*i.e.*, 'predisposed') to commit the crime at issue when he or she was first approached, than it is about whether the government tricked or deceived that target." *Id.*, quoting *Soriano v. State*, 2011 OK CR 9, ¶ 27 (emphasis in original). Therefore, it is up to the jury to determine whether a defendant was predisposed to commit the crime or was instead induced by law enforcement officials to do so. *Id*. "Police merely providing an already willing participant the opportunity to commit a crime does not constitute entrapment." *Id*.

CASES—SECURITY CAMERAS & JURY DELIBERATIONS

McCauley v. State, 2024 OK CR 8. The Sanctity of the Jury Room Should Not Be Invaded.

We looked at *McCauley* and its finding that the Osage Reservation has been disestablished and does not constitute Indian Country previously. Here, we review its assessment of the issue of courthouse security cameras recording jury deliberations.

Oklahoma law, which is in line with federal law, provides that "the sanctity of the jury room cannot be invaded." *McCauley*, 2024 OK CR 8 at ¶ 15 (quoting *Munn v. State*, 1969 OK CR 245, ¶ 5; citing *United States v. Olano*, 507 U.S. 725, 737 (1993)). Therefore, error occurs both when jury deliberations are recorded by a courthouse security system and when a prosecutor views any video feed of jury deliberations. *Id*. at ¶ 16. However, such errors are not "structural errors" requiring automatic reversal of a defendant's conviction. Instead, these errors are subject to a rebuttable presumption of prejudice, wherein the State bears the heavy burden of rebutting the presumption of prejudice. *Id*.

In this particular case, the jury in McCauley's trial held their deliberations in a courtroom rather than a separate jury room. The courtroom was equipped with a security camera which recorded video, but not audio. The security camera fed to a monitor on the fourth floor of the courthouse. When going to the fourth floor to use a restroom while waiting on the jury's deliberations, one of the prosecutors saw the video feed and observed it for approximately 30 seconds. When the existence of the camera system was raised to the judge, the judge ordered the cameras turned off. Defense counsel then argued that the prosecutor's viewing of any of the deliberations amounted to constitutional error which required a mistrial. The trial court determined the brief viewing of the video by the prosecutor in this case was minimal and benign and required no corrective action. *McCauley* at ¶¶ 18-19.

However, the danger of causing constitutional error by allowing video monitoring of a jury's deliberations remains a serious hazard—especially for sheriff's offices, which are typically responsible for courthouse security. In a case from Rogers County, a situation similar to but more egregious than that in *McCauley*

occurred. In the Rogers County case, *Oklahoma v. Kraft*[5], Rogers County Dist. Ct. Case No. CF-2018-465, jurors were again deliberating in a courtroom instead of a designated jury room.[6] The courtroom was equipped with security cameras and the cameras sent a direct feed to a security room for viewing by security personnel. *Kraft* Order at 3. As in *McCauley*, the feed was video only with no audio component. The video feed was readily available for security officers, or anyone else who might be present in the security room, to view in real time. Sometime during the jury's deliberations, one of the prosecutors entered the security room and began viewing the deliberations. Subsequently, another prosecutor joined the first to view the deliberations. The prosecutors' viewing of the jury was not passive but included "stud[ying] the video feed with great intensity, observing the demeanor and body language of specific jurors and the jury as a whole, zooming the video feed in and out for a closer look, commenting on the jurors' activities, viewing and commenting on the two (2) written questions sent out to the trial judge, [and] making conclusions as how each juror was 'voting' regarding the guilt of the defendant." *Kraft* Order at 4. The viewing of the jury also lasted for more than two and a half hours.

In this case, neither the judge nor defense team were informed about the viewing and recording of the jury until several days after the jury trial had been completed and a jury verdict rendered. At that time, a Rogers County law enforcement officer informed the judge of what had occurred and the judge informed defense counsel. The trial judge made a record of the alleged prosecutorial misconduct and, at the request of the defendant, recused himself and all other Rogers County judges from the case. An out-of-county judge was appointed to oversee the defendant's motion for mistrial and held a hearing on the matter.

Relying on the guidance given by the Court of Criminal Appeals in *McCauley*, the district judge found that the presence of active security cameras in the courtroom where the jury deliberated was an error but because there was no evidence the jurors were aware of the viewing and recording or that their deliberations were impacted by the cameras, the defendant's due process rights were not violated by the presence of the cameras to an extent that mistrial was required. However, the "deliberate and unabashed viewing" of footage from the cameras by prosecutors and security personnel did constitute actionable error. *Id*. at 7. As such, the district court declared a mistrial and granted the defendant a new trial.

In addition to the possibility of derailing a jury trial, allowing security cameras to record jury deliberations or allowing anyone to view the jury deliberations via a security feed constitutes a felony in Oklahoma. Pursuant to 21 O.S. § 588, anyone who "knowingly and willfully, by means of any device whatsoever, records or attempts to record the proceedings of any . . . jury . . . while such jury is deliberating" shall be guilty of a felony punishable by a fine of not more than $1,000.00 and/or up to two years of imprisonment. The statute also applies to listening to or observing or attempting to listen to or observe jury deliberations.

CASES—PRENATAL MEDICAL MARIJUANA USE

[5] A copy of the trial court's order may be downloaded from OSCN via this link. The decision is attached to the entry dated August 14, 2024, and titled "Decision and Order."

[6] In this case, it appears the reason for deliberating in the courtroom was to avoid placing jurors in a confined space and to allow them to socially distance because of the COVID-19 pandemic. See *Kraft* Order at 3 fn.2.

State v. Aguilar, 2024 OK CR 18. The Use of Medical Marijuana by an Expectant Mother Who Holds a Medical Marijuana Card Does Not Constitute Criminal Child Neglect.

In this case, the State appealed a pretrial order quashing for insufficient evidence an Information against Ponca City resident Amanda Aguilar. The State had charged Aguilar with one count of felony child neglect in Kay County based on allegations that Aguilar, who held a medical marijuana card, ingested medical marijuana during her pregnancy. According to news sources, Aguilar's child was born healthy but tested positive for marijuana shortly after birth. Aguilar admitted to using medical marijuana during her pregnancy, saying she used the drug to treat severe morning sickness. The hospital where Aguilar delivered her baby contacted child welfare workers after reviewing the baby's drug screen and handed the screening results over to police. The Kay County prosecutor filed charges asserting, at least in part, that Aguilar broke the law because her then-fetus did not have a separate medical marijuana card. A district judge tossed the charges in 2023, leading to the State's appeal.

The Court of Criminal Appeals, in a three-to-two decision, sided with the Kay County District Court. The Court found that under "the most logical reading" of the applicable statute, 10A O.S. § 1-1-105(48)(b)(1)[7], "illegal drugs" are those drugs whose possession or use violated the law at the time of such possession or use. *Aguilar*, 2024 OK CR 18 at ¶ 6. As such, "an expectant mother who exposes her unborn child to illegal methamphetamine could be convicted of child neglect." *Id*. However, "an expectant mother's licensed possession and use of medical marijuana would not trigger an automatic finding of neglect for failure to protect her unborn child from exposure to illegal drugs because as to her, marijuana is not an illegal drug." *Id*.

Judge Lumpkin filed a dissenting opinion in which he echoed the DA's argument that because a fetus is a separate being from its mother, exposing the unborn child to medical marijuana is a crime. The majority opinion countered this argument saying it went too far because, under Judge Lumpkin's analysis, an expectant mother who used any Schedule II through V drug during pregnancy pursuant to a prescription would be exposing her unborn child to illegal drugs and be subject to criminal prosecution unless the fetus was also prescribed the substance. In turn, Judge Lumpkin dismissed the majority's argument by saying that all other scheduled drugs which may be prescribed to patients require physician monitoring while marijuana does not.

Judge Lewis also filed a dissenting opinion. His dissent also embraced the notion that although marijuana consumption by an expectant mother with a medical marijuana card was lawful as to her own self, it was unquestionably illegal with regard to the fetus within her. In fact, Judge Lewis opined that "neither the People nor the Oklahoma Legislature intended to legalize child neglect in the form of marijuana exposure" when the medical marijuana laws were adopted. *Aguilar* at Lewis Dissent ¶ 7.

[7] The current version of the statute is now 10A O.S. § 1-1-105(49)(a)(2)(a), which provides, as the previous version did at the time of Aguilar's pregnancy, that one meaning of "neglect" is the failure or omission to protect a child from exposure to the use, possession, sale, or manufacture of illegal drugs.

The majority agreed that Judge Lewis' sentiments were likely correct but said if the Court was to find that after the laws were changed to make medical marijuana legal, Aguilar's licensed use of medical marijuana was illegal because of her pregnancy, the Court would be "rewrit[ing] the statutes in a way we simply do not think is appropriate for courts to do." *Aguilar* at ¶ 8. Therefore, the Court "urged" the Legislature to consider adopting laws that would clarify "when, if ever, the licensed use of marijuana may constitute child neglect[.]" *Id*.

Bottom line? For now, citing a mother for child neglect solely because she used medical marijuana while pregnant is unsustainable.

CASES—EIGHTH AMENDMENT AND HOMELESSNESS

***City of Grants Pass, Oregon v. Johnson et al.*, __ U.S. __ (2024). The Eighth Amendment Does Not Prohibit Municipalities From Enforcing Anti-camping Ordinances Against "Involuntarily Homeless" People.**

In *City of Grants Pass, Oregon v. Johnson et al.*, the US Supreme Court rejected the Ninth Circuit's holding that the 8th Amendment prohibits cities, towns, and counties from enforcing anti-camping ordinances against "involuntarily" homeless people. One of the challenges the Supreme Court found to the Ninth Circuit's ruling is that determining who was "involuntarily" homeless proved almost impossible and left municipalities, like Grants Pass, subject to ever-looming federal litigation. According to the Ninth Circuit, a person was involuntarily homeless if the overall homeless population in the community exceeded the total number of "adequate" and "practically available" shelter beds. However, the Supreme Court suggests that maintaining an accurate count of a highly transient homeless population and determining what constituted adequate and practically available shelter beds, when "adequate" and "practically available" were never well defined, are impractical if not impossible for municipalities. This is especially so, when determining practical availability means much more than simply if a bed is free at a shelter. This is because most shelters are run by charitable organizations, many of which impose various requirements on shelter users including prohibitions on tobacco, alcohol, and drug use and mandates such as attendance at and participation in religious services. Whether a free bed is "practically available" to a smoker if smoking is prohibited or to an atheist if religious meetings are required is an impossibly complex question.

The Supreme Court also determined that the 8th Amendment is not well-suited to questions as to what behavior may be criminalized in the first place or how a government should go about securing a conviction for a violation of the criminalized behavior. Instead, the 8th Amendment's "cruel and unusual punishments" clause focuses on the methods and forms of punishments a government may impose following a criminal conviction.

Why is this important? Well, like many other states, Oklahoma is experiencing more and more homelessness and homeless encampments are becoming more commonplace as a consequence. The Oklahoma Legislature also passed a measure in this last session, SB 1854, providing that state-owned

lands many not be used for purposes of establishing an unauthorized camp, which is defined in the statute as "any tent, shelter, or bedding constructed or arranged for the purpose of or in such a way to permit overnight use on a property not designated as a campsite." In light of *Grants Pass*, that statute is likely to pass constitutional muster.

STATUTORY UPDATES

TITLE 21 – CRIMES AND PUNISHMENTS (and related provisions)

HB 3936 (effective November 1, 2024) substitutes the term "child pornography" with the term "child sexual abuse material."

This bill amends multiple statutes in Titles 10, 10A, 21, 22, 57, 68, and 74 to substitute the term "child sexual abuse materials" for the previously used term "child pornography." These amendments do not appear to make any substantive changes but simply substitute the term "child sexual abuse material" wherever the term "child pornography" previously appeared in the statutes. Similar revisions have been made in other states. It appears the purpose behind the changes is to emphasize in the legal terminology the abusive nature of the crimes committed to produce the damaging and obscene material.

HB 3642 (effective November 1, 2024) modifies definitions and descriptions of child sexual abuse material otherwise known as child pornography.

This bill amends 21 O.S. § 1021.2 to expand the types of prohibited acts when it comes to child sexual abuse material aka child pornography. Previously, the statute prohibited the knowing possession, procurement, manufacture, sale, or distribution of child sexual abuse material. Pursuant to the amendments, such acts as viewing, accessing, sharing, streaming, and downloading such materials also become violations under the statute. The punishment is also modified to include both 20 years imprisonment and a fine of not more than $25,000.00. In the former version of the statute, punishment could be by imprisonment, by fine, or by both imprisonment and fine.

Title 21, Section 1024.1 is also amended to simplify the definition of child pornography, which by HB 3936, will be known as child sexual abuse material. The pre-existing definition is drastically simplified by removing an expansive list of bad acts that can be visually depicted and replacing it with the following: "Any depiction of a child engaged in any act of sexually explicit conduct." Two additional definitions are also included in the amendment: "Any visual depiction of a child that has been adapted, altered, or modified so that the child depicted appears to be engaged in any act of sexually explicit conduct" and "any visual depiction that appears to be a child, regardless of whether the image is a depiction of an actual child, a computer-generated image, or an image altered to appear to be a child, engaged in any act of sexually explicit conduct, and such visual depiction is obscene." Other definitions in the section are also amended.

Finally, the definition of child pornography or child sexual abuse material found in 21 O.S. § 1040.12a is amended to refer back to the definition in Section 1024.1.

HB 3456 (effective November 1, 2024) amends definitions of sexual conduct and material as they relate to the display of materials harmful to minors and also codifies a Legislative finding related to regulating such materials.

This bill makes changes to five definitions found in 21 O.S. § 1040.75. The first is "sexual conduct," which was amended to remove acts of homosexuality and adding several other acts. The definition when effective will read as follows: "'Sexual conduct' means sexual intercourse, physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast, or fellatio, cunnilingus, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, or depictions or descriptions of sexual bestiality, sadomasochism, masturbation, or excretory functions[.]"

The next four involve a near total reworking of the definition of "material" and the elimination of definitions of "CD-ROM," "magnetic disk memory," and "magnetic tape memory." "Material" is newly defined to mean "anything tangible that is capable of being used or adapted to arouse prurient interest, whether through the medium of reading, observation, sound, or in any other manner including, but not limited to, anything printed or written, any book, magazine, newspaper, pamphlet, picture, drawing, pictorial representation, motion picture, photograph, video tape, video disk, film, transparency, slide, audiotape, audio disk, computer tape, video game, or any other medium used to electronically produce or reproduce images on a screen, or any mechanical, chemical, or electronic reproduction. Material includes undeveloped photographs, molds, printing plates, and other latent representational objects whether or not processing or other acts are required to make the content of the material apparent[.]"

Finally, the bill amends 21 O.S. § 1040.76, to express the following legislative findings: "The Legislature finds that protecting minor children from overtly sexual and violent content is a legitimate objective that should be actively enforced. The Legislature further finds that the protection of the right of the people to engage in the freedom of speech and expression is a sacred right in the United States; however, such performances and materials may not contain depictions of sexual conduct, nudity, or inappropriate violence which are harmful to minor children. Therefore, it is the intent of the Legislature that these provisions be diligently enforced to protect minor children while also protecting the free speech rights of the public." The remainder of Section 1040.76 preserves restrictions from the previous version which prohibit any person, including "persons having custody, control or supervision of any commercial establishment" from the following: (1) the display of material which is harmful to minors in a way that minors, as part of the general public, would be able to observe such material, (2) to sell, furnish, disseminate, etc., harmful materials to a minor, and (3) to present to a minor any performance which is harmful to a minor.

SB 1959 (effective November 1, 2024) creating new law in Title 15 imposing certain civil liability related to child sex abuse materials, obscene materials, and other materials that are harmful to minors.

Although not affecting Title 21, SB 1959 dovetails with some of the bills that do impact criminal law statutes. For instance, new law created by the bill to appear at 15 O.S. § 791 uses the term "child pornography" but refers to the definition in 21 O.S. § 1024.1 (remember that the term "child pornography" is being replaced by "child sex abuse materials" throughout the statutes). The main purpose of the bill, however, appears to be to impose civil liability on commercial entities that knowingly and intentionally publish or distribute obscene material, child pornography (child sex abuse materials), or depictions of child sexual exploitation.

HB 3450 (effective November 1, 2024) modifies terminology in several statutes to substitute "child sex trafficking" for "child prostitution."

Representative Jeff Boatman, R-Tulsa, sponsored this bill to remove what he called outdated and technically incorrect terminology from Oklahoma statutes. Similar to the substitution of "child sex abuse material" for "child pornography," described in our notes on HB 3936, above, this change seeks to emphasize the victimization of children and to avoid terminology that may seem to normalize the circumstances. Rep. Boatman says that "[t]here is no such thing as a child prostitute . . . when a child is in that dangerous situation, they are a victim, not an instigator."

The bill modifies 21 O.S. §§ 13.1, 843.5, 1029, 1030, 1031, 1087 and 1088; 22 O.S. §§ 40, 126, and 991h; 57 O.S. §§ 332.16, 571, and 582; and 74 O.S. § 151.1.

HB 3639 (effective November 1, 2024) amending statutes related to nonconsensual dissemination of private sexual images.

This bill simplifies the acts that constitute nonconsensual dissemination of private sexual images. Previously, to commit the crime, a perpetrator had to (1) intentionally disseminate an image of another person who was at least 18 years old, who was identifiable from the image itself or information displayed with the image, who was engaged in a sexual act or whose intimate parts were exposed, (2) disseminated the image with the intent to harass, intimidate, or coerce the person in the image, (3) have obtained the image under circumstances in which a reasonable person would know or understand the image was to remain private, and (4) know the person in the image had not consented to the dissemination. 21 O.S. § 1040.13b. After the amendments, a person commits nonconsensual dissemination of private sexual images when they (1) intentionally disseminate an image of another who is engaged in a sexual act or whose intimate parts are exposed, (2) obtained the image under circumstances in which a reasonable person would know or understand that the image was to remain private, and (3) disseminated the image without the effective consent of the person in the image.

The amendment also adds a section explicitly providing that the existence of this statute does not prohibit prosecutions in appropriate cases under the provisions of 21 O.S. §§ 1021.2 (procuring, possessing, manufacturing, selling, distributing, etc., child sex abuse materials), 1021.3 (parent/guardian consent to participation of minors in obscene materials), 1024.1 (definitions), 1024.2 (purchase, procurement, or possession of obscene material), 1040.12a (aggravated possession of child sex abuse material), or any other applicable statute. Also, a three-strike provision is added which makes dissemination of three or more images within a six-month period a felony punishable by imprisonment for not more than ten years.

SB 1211 (effective November 1, 2024) increases the punishment range for domestic abuse by strangulation.

Senate Bill 1211 amends 21 O.S. § 644(J) by making the applicable punishment range for any conviction of domestic abuse by strangulation a period of incarceration from not less than one (1) year to not more than ten (10) years or by a fine of not more than $20,000.00 or by both such fine and imprisonment. Previously, a first conviction carried a punishment of not less than one (1) year nor more than three (3) years imprisonment, a $3,000 fine, or both, and a second or subsequent conviction carried a punishment of not less than three (3) years nor more than ten (10) years, a fine of not more than $20,000.00, or both such fine and imprisonment.

HB 1792 (effective January 1, 2026) creates new law establishing a classification system for all felony criminal offenses.

This bill establishes a classification system for all felony crimes in Oklahoma. The classifications will include "Class Y," which is reserved for First Degree Murder, and Classes A1, A2, A3, B1, B2, B3, B4, B5, B6, C1, C2, D1, D2, and D3, under which all other violent and nonviolent felonies will be categorized. New sections of law are created at 21 O.S. §§ 20A, 20B, 20C, 20D, 20E, 20F, 20G, 20H, 20I, 20J, 20K, 20L, 20M, 20N, 20O, 20P and 20Q to accommodate the scheme. The bill, which purports to divide all the felonies contained in the Oklahoma Statutes into the various classes, runs 107 pages long. As to each class, the bill sets forth sentencing and release guidelines. Statements issued by the House of Representatives and Senate detail the background and reasons for the bill. The law does not take effect until January 2026.

HB 3996 (effective November 1, 2024) decreases the amount of time a lessee may intentionally fail to return equipment after expiration of a lease agreement before the action constitutes embezzlement.

This bill amends 21 O.S. § 1451 to decrease the amount of time a lessee may willfully or intentionally retain property following the expiration of a lease agreement before such action constitutes embezzlement. The previous version of the bill provided ten (10) days grace after the lease agreement expires. This version decreases that to five (5) days for most property but only forty-eight (48) hours for heavy equipment. As defined in the statute, "[e]mbezzlement does not require a distinct act of taking, but only a fraudulent appropriation, conversion or use of property."

HB 4069 (effective November 1, 2024) credit card fraud.

This bill substantially overhauls 21 O.S. § 1550.27 to provide more inclusive language as to what constitutes a card that is protected by the statute, makes violation of the statute a felony, adds explanatory language and presumptions as to prohibited acts, and adds enhanced penalties based on the number of cards possessed by the perpetrator. The amendment clarifies that the statute applies to "credit, debit, or similar cards that contain a magnetic stripe capable of storing data, in any form, either physically or digitally." A violation of the statute occurs when a person, with intent to defraud, falsely makes, clones, or alters a card from what the original issuer placed on the card or who utters such a false, cloned, or altered card. A person other than the purported issuer who possesses a false, cloned, or altered card is presumed to have violated the section. Also, a person who possesses three or more cards simultaneously that contain cloned or altered data is rebuttably presumed to have the intent to defraud. The amendment further provides that a person "falsely makes" such a card when they "mark[], alter[], or store[] information in whole or in part, in a physical or digital format, on a device or instrument which can function as a credit, debit, or similar card of an issuer but which is not such a card because the issuer did not authorize the marks, alterations, or stored information, or when the person alters a credit, debit, or similar card . . . including, but not limited to, when a person manipulates information included on an electronic magnetic stripe or chip contained on a card."

Punishment ranges are now listed as follows: For five or fewer cards: a felony punishable by imprisonment for not less than 2 nor more than 5 years and a fine not to exceed $5,000.00; for six or more but less than 20 cards: a felony punishable by imprisonment for not less than 5 nor more than 10 years and by a fine not to exceed $10,000.00; and for 20 or more cards: a felony punishable by imprisonment for not less than 10 nor more than 20 years and by a fine not to exceed $100,000.00.

SB 859 (effective November 1, 2024) increasing penalty for certain grand larcenies.

SB 859 increases the penalty for grand larceny under 21 O.S. § 1705, when the property taken is either (1) a firearm, (2) taken from the person of another, or (3) the value of the property is more than $1,000.00 but less than $2,500.00. Under the amendment, the term of imprisonment is not to exceed 5 years in DOC or one year in the county jail or by a fine of not more than $2,500.00 or by both such imprisonment and fine. Previously, the maximum imprisonment was not more than 2 years and the fine was not more than $1,000.00.

SB 1877 (effective November 1, 2024) extends larceny three-strike aggregation rule from 90 days to 180 days.

This bill addresses the larceny from retail or wholesale establishments statute, 21 O.S. § 1731. It makes only one change to the statute—it extends the three-strike aggregation rule from 90 days to 180 days, meaning that if an individual commits three or more separate offenses under the statute in a period covering 180 days, the total of the value of the goods or property taken in each larceny may be aggregated to determine the total value for purposes of identifying the appropriate punishment under the section.

Punishments range from misdemeanor jail terms of not more than 30 days and fines of not less than $10 nor more than $500 when the value of the goods stolen is less than $1,000 clear up to felony prison terms not to exceed eight years and fines of not more than $1,000 when the value of the goods taken is $15,000 or more.

HB 4156 (effective July 1, 2024) state-based immigration enforcement.

This bill creates new law at 21 O.S. § 1795 defining a crime of impermissible occupation, which occurs if a person is an "alien," defined in the statute as "any person not a citizen or national of the United States," and he or she "willfully and without permission enters and remains in the State of Oklahoma without having first obtained legal authorization to enter the United States."

The new statute requires an "arresting law enforcement agency" to collect "all available identifying information of the person including all fingerprints and any other applicable photographic and biometric data to identify the person." Once the data is collected, the agency is to cross-reference the data with "all relevant local, state, and federal criminal databases" and "federal lists or classifications used to identify a person as a threat or potential threat to national security." The bill also authorizes the OSBI to collect and maintain the identifying information collected by law enforcement agencies pursuant to the new statute.

The bill provides for two affirmative defenses to the new crime: (1) the person has been granted lawful presence or asylum in the United States by the federal government and (2) the person was approved for benefits under the Deferred Action for Childhood Arrivals program between June 15, 2012, and July 16, 2021.

In his signing statement related to the bill, Governor Stitt stated, "I want our Hispanic community to rest assured that this law does not give law enforcement the authority to profile individuals or question them about their immigration status without reasonable suspicion of a crime." The governor also launched the Oklahoma State Work Permits and Visas Task Force "to find ways to bolster our workforce and create opportunities for those who are here contributing to our communities and economy."

The bill has received a fairly significant amount of attention with lots of reporting and opinion surrounding it. Here are a couple of different reports on the bill and its perceived affects: Oklahoma Voice and Oklahoma Council on Public Affairs.

On June 28, 2024, U.S. District Judge Bernard M. Jones, Western District of Oklahoma, in a lawsuit brought by the federal Department of Justice against Oklahoma entered an order prohibiting the state from enforcing HB 4156. Attorney General Gentner Drummond called the ruling disappointing and vowed to continue to fight for Oklahoma and the state's right to protect its borders.

SB 1933 (effective November 1, 2024) creates the Sexual Assault Forensic Evidence (SAFE) Board and makes some adjustments to the Open Meetings Act.

SB 1933 creates the Sexual Assault Forensic Evidence (SAFE) Board within the Office of the Attorney General. (Previously, a Sexual Assault Forensic Evidence (SAFE) Taskforce was created by Executive

Order 2017-11 and has been twice renewed, EO 2019-05 and EO 2023-03.) The new law will be codified at 21 O.S. § 143 and 143.1. The bill lists seven objectives of the Board: (1) examine the process for gathering and analyzing sexual assault forensic evidence kits in Oklahoma; (2) develop plan to prioritize and accept untested kits; (3) identify procedures for testing anonymous kits; (4) identify possible improvements for victim access to evidence; (5) identify additional rights of victims concerning the kit testing process; (6) identify and pursue grants and other funding to address untested kits, reduce testing wait time, provide victim notification, and improve efficiencies in the kit-testing process; ad (7) develop a comprehensive training plan for equipping and enhancing the work of law enforcement, prosecutors, victim advocates, SANE nurses, and multidisciplinary sexual assault response teams. These are more-or-less the same objectives assigned to the previous taskforce.

The Board will be made up of 17 members: (1) four non-voting members—two senators appointed by the President Pro Tem, each must be from a different political party, and two members of the House of Representatives appointed by the Speaker, again, each must be from a different political party; (2) seven voting members—the Attorney General or designee; the Director of the OSBI or designee; the chief of the Oklahoma City Police Department or designee; the chief of the Tulsa Police Department or designee; the executive coordinator of the District Attorneys Council or designee; the executive director of the Native Alliance Against Violence or designee; and the director of CLEET; (3) six voting members to be appointed by the AG as follows: a SANE nurse selected from a list of three names submitted by the Oklahoma Nurses Association; a chief of a municipal police department other than OKC or Tulsa selected from a list of three names submitted by the Oklahoma Association of Chiefs of Police; a county sheriff selected from a list of three names submitted by the Oklahoma Sheriffs' Association; an attorney from an office of public defenders with criminal defense experience appearing on a list of three names submitted by the Oklahoma Indigent Defense System or other public defenders organization; an advocate of sexual assault victims from a community-based organization; and a person who is a survivor of sexual assault and who has experience with sexual assault forensic evidence kit collection or who is a survivor of sexual assault committed in this state who has participated in the justice system process.

The bill also amends the Open Meetings Act provision regarding executive sessions to authorize the SAFE Board to hold executive sessions. 25 O.S. § 307.

HB 3428 (effective November 1, 2024) modifies the statute governing body piercing and tattoo operators.

This bill modifies law related to body piercing and tattoo operators. Interestingly, the law appears in Title 21, which deals with criminal law, rather than Title 63, which deals with public health and safety. 21 O.S. § 842.3. The likely reason for this placement is that beginning in 1957 and continuing until 2006 it was unlawful to tattoo a person in Oklahoma and so tattoo-related statutes were in Title 21. See 21 O.S. § 841 (repealed in 2006). The 2024 updates all deal with current licensing issues and don't involve law enforcement, but since it was in Title 21 and as many law enforcement officers have been tattooed I thought it was worth including.

SB 1291 (effective November 1, 2024) shortens renewal period for SDA license.

This bill significantly shortens the renewal period for an SDA handgun license. Previously, licensees had three years (!) from the expiration of the license to comply with the renewal requirements. This bill

amends 21 O.S. § 1290.5 to reduce that time to 30 days after expiration. The bill also authorizes either paper or electronic application forms and modifies statutory language to acknowledge both methods of applying.

SB 721 (effective November 1, 2024) makes minor modifications to the SDA safety and training course requirements.

This bill amends 21 O.S. § 1290.14, the provision of the SDA which describes its firearm safety and training course, to remove references to multiple types of handguns, generally replacing other options with the universal term "pistol."

It also amends 21 O.S. § 1290.15, which lists those individuals who may be exempt from taking the SDA firearm safety and training course. Qualifiers previously appearing in the exemption for individuals who are honorably discharged from active military duty, National Guard duty, or military reserve duty have been removed. Those include a 20-year time limitation from the date of discharge and the requirement that the veteran was previously "trained and qualified in the use of handguns."

Additionally, Section 1290.15's subsection C, which stated that "[n]o person who is determined to be exempt from training or qualification may carry a concealed or unconcealed firearm pursuant to the authority of the Oklahoma Self Defense Act until issued a valid handgun license or [they] possess[] a valid military identification card[,]" is deleted from the statute.

HB 3157 (effective November 1, 2024) makes certain acts related to prostitution felonies and describes the related punishments.

HB 3157 amends 21 O.S. § 1028, which describes various unlawful prostitution-related activities, by adding language that makes such acts felonies and describes the attendant punishments. It also makes clear that violations which involve minor victims are subject to more stringent punishments.

SB 556 (effective November 1, 2024) makes performance of a notarial act without first making in good faith the required determination of identity a misdemeanor.

This bill, though modifying 49 O.S. § 113 rather than a section in Title 21, nevertheless creates a new misdemeanor. The bill provides that a notary public who performs a notarial act without first making in good faith the required determination of the identity of the person appearing before the notary will be guilty of a misdemeanor and subject to a fine not to exceed $1,000.00 or imprisonment in the county jail not to exceed ten days or both such fine and imprisonment.

SB 1735 (effective November 1, 2024) creates a new variant of the misdemeanor of unlawful entry.

This bill creates a new variant of the misdemeanor of unlawful entry under 21 O.S. § 1438. The new means of committing the crime is, with intent to commit a crime, to enter an area of a commercial business that is (1) commonly reserved for personnel of the commercial business where money or other property is kept or (2) clearly marked with a sign or signs that indicate to the public that entry is forbidden.

SB 1994 (effective June 5, 2024) provides for property owners to request the sheriff to immediately remove of certain unlawful occupants.

This bill creates new law to allow property owners to request assistance from the sheriff to immediately remove individuals who are unlawfully occupying real property belonging to the owner. The new law, which is codified at 21 O.S. §§ 1354, 1355, 1356, and 1357, is not designed as a work-around for the protections in landlord-tenant law. Instead, the law appears to be designed to provide a means of addressing initial squatters as opposed to hold-overs or others who claim a legitimate interest in the real property. In order to request assistance, the property owner is required to complete and submit a written complaint to the sheriff of the county in which the real property is located. A form for the complaint is included in the bill. The bill also provides for the sheriff to receive a fee for service of the complaint notice and authorizes the sheriff to charge a reasonable hourly rate if requested to stand by to keep the peace while the property owner changes the locks and removes the personal property of the unauthorized occupants from the premises.

TITLE 22 – CRIMINAL PROCEDURE (and related provisions)

HB 3782 (effective November 1, 2024) adds a new basis for refusing to release an arrestee on bond.

This bill provides a "rebuttable presumption" in 22 O.S. § 1101 that no conditions of release on bond would assure the safety of the community if the prosecutor shows by clear and convincing evidence that the arrestee (1) was previously arrested for a violent offense and released on bond and (2) while on bond the person was subsequently arrested and charged with a violent crime listed in 57 O.S. § 571.

HB 3546 (effective November 1, 2024) amends some procedures relative to cite and release warrants and cost arrest or cost-related warrants.

This bill modifies 19 O.S. § 514.4 and 22 O.S. § 983, which deal with cite and release warrants and cost arrest or cost-related warrants. Section 514.4 is primarily amended to return some discretion to courts in determining when a cost-related warrant should be recalled. Section 983 primarily modifies some of the procedural steps and requirements when a defendant is either cited and released or arrested on a cost arrest or cost-related warrant. Most of the modifications appear to apply more to the courts than to peace officers.

HB 3612 (effective November 1, 2024) allows courts, upon motion by DA, to hold the execution of a sentence in abeyance if the offender has a pending sentence of incarceration in the federal system.

HB 3612 creates new law at 22 O.S. § 982b to allow courts to hold the execution of a sentence of incarceration in abeyance if the offender has a pending sentence of incarceration in the federal system.

Any such order must be made on a district attorney's motion and there is no requirement that the court grant the motion. In determining whether to hold a sentence in abeyance, the court is to consider the safety of the public, corrections and law enforcement personnel, other inmates, and the offender. The statute makes clear that if a sentence is held in abeyance, the prisoner is not to be released by the Oklahoma Department of Corrections until and unless federal authorities take actual physical custody of the offender. No order of abeyance may be issued in a case in which the offender has been sentenced to death.

HB 1724 (effective November 1, 2024) provides means for courts to stay driver license suspensions and revocations for certain offenders.

This bill adds a new provision to 22 O.S. § 988.20 to provide courts authority to stay action by Service Oklahoma to suspend, revoke, cancel, or deny driving privileges to certain offenders who are participating in community sentencing. First, the authority does not extend to circumstances in which the reason for the Service Oklahoma action was a conviction for reckless driving or driving under the influence. Second, the stay authority does not constitute authority to grant driving privileges to someone who has not been issued a driver license or whose driver license has expired. Such offenders will be required to apply for a driver license in the normal course. However, for all others, if the court finds the community-sentencing-participating offender has no means of transportation other than driving themselves, the court may issue a written order to Service Oklahoma to stay any suspension, revocation, cancellation, or denial of driving privileges while the offender participates in the program. The court may also maintain jurisdiction over the offender's driving privilege for up to one year after the person graduates from the community sentencing program.

HB 3668 (effective November 1, 2024) provides for a 12-year statute of limitations regarding sexual abuse of a vulnerable adult and adds matters relating to Medicaid fraud into the definition of "racketeering activity."

This bill adds a twelve-year statute of limitations from the "discovery" of the crime of sexual abuse of a vulnerable adult pursuant to 21 O.S. § 843.1. See 22 O.S. § 152. Under the statute, "discovery" means "the date that a physical or sexually related crime involving a victim eighteen (18) years of age or older is reported to a law enforcement agency." *Id.* The bill also amends 22 O.S. § 1402, which provides definitions of terms used in the Oklahoma Racketeer-Influenced and Corrupt Organizations (RICO) Act, to add Medicaid fraud into the types of actions that constitute "racketeering activity." Finally, the bill reduces the dollar amount of payments necessary to have illegally claimed or received from $2,500.00 to $1,000.00 to constitute Medicaid fraud. 56 O.S. § 1006.

Note, SB 1658 covered some of these same topics and had significantly different outcomes, which will have to be reconciled before they can be effectively acted upon.

SB 1658 (effective November 1, 2024) provides that sexual abuse of a vulnerable adult and the nonconsensual dissemination of private sexual images may be prosecuted so long as they are commenced by the 45th birthday of the alleged victim; increases the statute of limitations for certain crimes committed against adults from 12 to 20 years from discovery; and makes the new limitations retroactive except in cases in which the crimes are already time-barred.

This bill amends 22 O.S. § 152 to add sexual abuse of a vulnerable adult and the nonconsensual dissemination of private sexual images to those crimes which may be prosecuted so long as they are commenced by the 45th birthday of the alleged victim. These amendments seem a bit out of place as they are inserted into a list of crimes committed against children. For instance, the statute appears to possibly foreclose the possibility of prosecuting the crime of sexual abuse of a vulnerable adult if the victim is over 45 years of age at the time of the crime. Surely such is not the intent of the amendments. The bill also amends Section 152 to extend the statute of limitations for certain crimes committed against adults to 20 years (the previous version was 12 years) from the date of discovery, which means the date the crime is reported to law enforcement. Finally, the bill makes the new limitations periods retroactively applicable, except in cases in which a crime is already time-barred.

Note, HB 3668 covered some of these same topics and had significantly different outcomes, which will have to be reconciled before they can be effectively acted upon.

SB 1770 (effective November 1, 2024) modifies various statutes related to expungement of criminal records.

This bill makes significant changes to subsections B and C of 22 O.S. § 18 as well as other modifications to other parts of the statute. Subsection B's definition of "expungement" is expanded under the bill as follows:

"Expungement" means the sealing of criminal records, as well as any public civil record, involving actions brought by and against the State of Oklahoma arising from the same arrest, transaction, or occurrence. A fully sealed expunged record shall not be available to the public **or to law enforcement**. Such records may be retained in the state criminal history repository but shall only be accessible to designated employees of the Oklahoma State Bureau of Investigation for research and statistical purposes. A partially sealed expunged record shall not be available to the public but shall be available to law enforcement agencies for law enforcement purposes[.]

The bill also adds a new definition to subsection B: "Single-source record" means a criminal history record from this state that consists of an Oklahoma arrest record only. A single-source record shall not contain any arrest from another state, a federal arrest, or an entry into the National Sex Offender registry or a National Crime Information Center (NCIC) wanted/warrant entry.

Subsection C is amended to modify the effective date for the automatic sealing of "clean slate eligible arrest records" to "three (3) years after November 1, 2022[.]" "Clean slate eligible arrest record" is also defined to mean an arrest record where each charge within the record meets one of the following criteria:

(1) records described in paragraph 1, 2, 3, 4, 5, 6, 14, or 15 of subsection A; (2) records described in paragraph 7 of subsection A where the prosecutor has declined to file charges and the record is an Oklahoma single-source record; or (3) records described in paragraph 8, 10, or 11 of subsection A where the record is an Oklahoma single-source record.

The bill also amends 22 O.S. § 19 to add two new subsections, one of which is inserted as subsection F, and provides "if a petitioner requests expungement for multiple offenses in one county, each of which would qualify for expungement if processed sequentially, the expungements may be considered under a single petition. The petitioner shall not be required to submit multiple petitions to accomplish the sequential sealing of multiple offenses in a single county." The other is added as subsection S and provides "[a]ny offense that has been expunged shall not be treated as a prior offense in determining whether another offense qualifies for an expungement under Section 18 of this title."

SB 1711 (effective November 1, 2024) allows criminal defendants who are in custody in another county to appear at a criminal proceeding via videoconferencing.

In light of the COVID-19 pandemic, the Legislature enacted 20 O.S. § 130 to authorize the use of videoconferencing technology in all stages of civil and criminal proceedings in Oklahoma. This bill clarifies that authorization by specifically noting that it "includes the use of videoconferencing technology for appearances where the person is in custody in a county different from the county in which the case is filed." The bill further amends two sections in Title 22: Section 451, which requires a defendant to be arraigned before the court in which a criminal case is filed. The amendment provides that "[i]f the defendant's physical presence is not possible because the defendant is in custody in another county, the arraignment shall take place by videoconference[.]" And Section 452, which formerly required personal presence at an arraignment of any felony defendant. The amendment now allows that appearance to be in person or by videoconference.

SB 1660 (effective November 1, 2024) updates statutes on arrest and search warrants.

This bill amends several related sections in Title 22. Some of the amendments are as follows:

Section 1221: The definition of search warrant is updated to include as an option the command to "search for a person for whom an arrest warrant has been issued." (Previously the definition only addressed commands to search for personal property.) Section 1221 is further updated to include a definition of "arrest warrant" for purposes of the search warrant statutes. That definition is "an outstanding arrest warrant for any felony offense or a misdemeanor offense of domestic assault and battery . . . [.] The term shall include arrest and bench warrants, but shall not include warrants issued solely for failure to pay court financial obligations, other than restitution[.]"

Section 1222 is amended to include a provision that "[a] search warrant may be issued to allow peace officers to enter, search for, and seize a person for whom an arrest warrant has been issued."

Section 1226, which includes the statutory form for a search warrant, updates the form with model language to recognize the new statutory authority to search for a person for whom an arrest warrant has been issued. The search warrant is to describe the person and the court from which the arrest warrant was issued.

Section 1233 adds a subsection requiring peace officers who execute search warrants to search a third-party residence for a person with an outstanding warrant to return the search warrant to the issuing magistrate by filing an arrest and booking affidavit or by filing a separate return identifying the person and location where the person was found. Model language is provided in the amendment.

Of course, Oklahoma magistrates have long issued search warrants to allow searches in the homes of third-parties for individuals with outstanding arrest warrants and Oklahoma peace officers have long executed such search warrants. Such authority, however, has been based on case law rather than statute. See *Steagald v. U.S.*, 451 U.S. 204 (1981).

HB 3752 (effective November 1, 2024) adds some ODOC involvement with the Domestic Violence Fatality Review Board.

This bill amends statutes related to the Domestic Violence Fatality Review Board, which is housed within the Attorney General's Office. First, it amends 22 O.S. § 1601(B) to add records of the Oklahoma Department of Corrections (ODOC) to those records and reports which the Board may request and obtain as it reviews any case of domestic violence death. Second, it amends 22 O.S. § 1602 to increase the Board membership from 20 to 21 by adding "a designee of the Director of the Department of Corrections" to the Board. Such designee must be a person with a minimum of five years of experience in corrections and who is assigned to the Community Outreach, Programs, or Population Units of ODOC while appointed to the Board. Finally, the bill further amends Section 1602 by modifying the selection criteria of a couple of Board members who are appointed by the Attorney General. Two members, at least one of whom must be a survivor of domestic violence, are now to be selected by the AG from recommendations submitted by certified domestic violence programs in Oklahoma. Previously, those appointees were to be selected from a list of three names submitted by the Oklahoma Coalition Against Domestic Violence and Sexual Assault. The Coalition was dissolved last year after a former director was accused of significant misspending and federal investigators froze funding for the Coalition.

SB 771 (effective November 1, 2024) provides for the Office of Public Guardian to be involved in criminal cases in which the defendant may have an intellectual disability.

This bill amends 22 O.S. §§ 1175.1, 1175.3, 1175.4, and 1175.6b with regard to the Office of Public Guardian's involvement with criminal cases in which a defendant may have an intellectual disability. The Office of Public Guardian is a unit of the Oklahoma Department of Human Services' Legal Services office.

HB 3885 (effective November 1, 2024) extends the time limit on requesting a suspension of driving privileges for individuals who fail to timely respond to citations.

This bill amends 22 O.S. § 1115.1A. The statute directs municipal and district court clerks to notify Service Oklahoma when a defendant who was issued a traffic citation and released upon personal recognizance fails to appear for arraignment without good cause and has not posted bail, paid a fine, or made any arrangement with the court to satisfy the citation and the citation has not been satisfied. It also directs such clerks to request Service Oklahoma to suspend the driving privilege and license of the defendant. The previous version of the statute required such actions to take place within 120 days of the issuance of the citation. The amendment extends that time to one year.

SB 1702 (effective April 30, 2024) adds language explaining the confidentiality requirement and discovery exemption for information related to death penalty executions.

This bill adds explanatory information about the confidentiality requirements and discovery exemptions found in 22 O.S. § 1015, regarding the identity of all persons or entities who participate in or administer the execution process or who produce or supply drugs, medical supplies, or medical equipment for executions. The bill provides that the requirements and exemptions "shall be broadly construed and shall include but not be limited to any documents, records, photographs, or other information that the Director of the Department of Corrections determines may identify or reasonably lead directly or indirectly to the identification of any person or entity[.]"

SB 325 (effective November 1, 2024) modifies some provisions related to speedy trials.

This bill reduces the amount of time a person charged with a crime can be "held in jail solely by reason thereof" before a hearing on the right to a speedy trial must be held. Previously 22 O.S. § 812.1 required such a hearing "within one (1) year after arrest." The amendment reduces that time to nine months after initial appearance. The bill also amends 22 O.S. § 812.2, which describes the procedure for a speedy trial hearing and possibly acceptable reasons for the delay. A new provision is included that allows the court to consider whether the availability of a court reporter has led to the delay. However, if such is the case, a court reporter must be assigned to the case within 60 days of the speedy trial hearing.

HB 3960 (effective November 1, 2024) modifies DUI sentencing.

Previously, under 22 O.S. § 991a, special limitations were placed on a court's ability to impose a suspended sentence for someone being sentenced for a second or subsequent felony DUI pursuant to 47 O.S. § 11-902. HB 3960 strips those special limitations from the statute, making individuals convicted of subsequent felony DUIs subject to the same provisions as other serial felons, that is, that generally a person convicted of a third or subsequent felony is not eligible for a suspended sentence.

TITLE 12 – CIVIL PROCEDURE

HB 3774 (effective November 1, 2024) significantly overhauls law regarding admissibility of certain statements in various juvenile deprived, juvenile delinquent, and criminal proceedings.

HB 3774 amends 12 O.S. § 2803.1(A) to make two types of statements admissible in "juvenile deprived proceedings and pre-trial and post-trial criminal and juvenile delinquent proceedings, including preliminary hearings, prosecutive merit hearings, and hearings on the revocation of probation or acceleration of a deferred judgment": First, statements which are made by children under the age of 16 or by children 16 and older who have a disability or by a person who is incapacitated as defined in 43A O.S. § 10-103, which describe any act of physical abuse, domestic abuse, neglect, the enabling of abuse or neglect, any sexual contact, any conduct prohibited by a long list of criminal statutes, and any act or omission that resulted in great bodily injury to the person are admissible in the listed proceedings. Second, statements by a person described above which detail any of the types of abuse or neglect outlined in the previous description, with the caveat that the person making the statement witnessed the act or omission, are admissible in such proceedings. (It appears the statute intends the "witnessed" requirement to be applicable to testimony related to any of the bad acts or omissions described, but based on the way the language is written, the limitation could be interpreted by a court to be only effective as to an act or omission resulting in death or great bodily injury.)

The bill also adds a new section to the statute making certain statements admissible in criminal and juvenile delinquent trials if the child or incapacitated person testifies at the trial whether in person, via videoconferencing equipment, or other alternative means: First, statements which are made by children under the age of 16 or by children 16 and older who have a disability or by a person who is incapacitated as defined in 43A O.S. § 10-103, which describe any act of physical abuse, domestic abuse, neglect, enabling physical abuse or neglect against the child or incapacitated person or any act of sexual contact, any conduct prohibited by a long list of criminal statutes, and any act or omission that resulted in great bodily injury to the person are admissible in such trials. Second, statements by a person described above which detail any of the types of abuse or neglect outlined in the previous description, with the caveat that the person making the statement witnessed the act or omission are admissible in such trials. (It appears the statute intends the "witnessed" requirement to be applicable to testimony related to any of the bad acts or omissions described, but based on the way the language is written, the limitation could be interpreted by a court to be only effective as to an act or omission resulting in death or great bodily injury.) The provision also allows for such statements to be admissible even if the child or incapacitated person does not testify at trial if (1) the child is unavailable pursuant to 12 O.S. § 2804(A) and the requirements for admissibility under Section 2804(B) are met, or (2) the court determines the statement is nontestimonial.

The nontestimonial notation references the line of US Supreme Court and Oklahoma Court of Criminal Appeals case law that divides hearsay statements into those that are testimonial in nature, meaning their purpose is as an out-of-court substitute for trial testimony (an accusatory type of statement), and those that

are nontestimonial in nature, meaning their purpose is for a purpose not directed toward future prosecution. The leading cases include *Crawford v. Washington*, 541 U.S. 36 (2004), and *Davis v. Washington*, 547 U.S. 813 (2006).

The statute also defines "disability" as "a physical or mental impairment which substantially limits one or more of the major life activities of the child or the child is regarded as having such an impairment by a competent medical professional."

Finally, the amendment removes the requirement for the court to conduct a hearing outside the presence of the jury to consider the reliability of the statement before determining admissibility.

TITLE 10A – CHILDREN AND JUVENILE CODE

SB 1638 (effective April 22, 2024) clarifies DHS responsibilities regarding runaway and missing child reports.

This bill, which took effect in April 2024 under an emergency clause, amends 10A O.S. § 1-9-123 to clarify the contents of the reports the Department of Human Services is required to submit to the National Center for Missing and Exploited Children and local law enforcement when it is notified of a runaway or missing child. The contents are to include, "where reasonably possible:" (a) a photo of the child; (b) a description of the child's physical features such as height, weight, sex, ethnicity, race, hair color, and eye color; and (c) "endangerment information" such as the child's pregnancy status, prescription medications, suicidal tendencies, vulnerability to sex trafficking, and other risk factors. The bill further requires DHS to "maintain regular communication" with law enforcement and NCMEC.

SB 1601 (effective November 1, 2024) creates new law adopting the Uniform Unregulated Child Custody Transfer Act.

Although not addressing Title 10A, this bill creates several sections of new law that affect children. The new laws, known collectively as the Uniform Unregulated Child Custody Transfer Act, will appear in Title 43 including Sections 561-101, 561-102, 561-103, 561-201, 561-202, 561-203, 561-204, 561-205, 561-401, and 561-402. The Act prohibits the transfer of custody of a child to another person with the intent to abandon the rights and responsibilities concerning the child, except when done through an authorized adoption or guardianship, a judicial award of custody, placement by or through a child-placing agency, or any other judicial or tribal action.

TITLE 11 – CITIES AND TOWNS

HB 3858 (effective April 18, 2024) amends provisions of the Oklahoma Police Pension and Retirement System (OPPRS).

This bill amends several sections of the Oklahoma Police Pension and Retirement System (OPPRS). It amends 11 O.S. §§ 50-109 and 50-110 to require payments from participating municipalities be made to

the system online. The bill also amends 11 O.S. § 50-124 to allow for payment of child support payments and arrearages from funds of the system.

SB 102 (effective June 1, 2025 and July 1, 2025) increases contribution amounts from OPPRS members and participating municipalities.

This bill amends provisions of the Oklahoma Police Pension and Retirement System (OPPRS), particularly 11 O.S. §§ 50-109 and 50-110. Section 50-109 is amended to increase the amount of funds a participating municipality must appropriate and submit to the system from 13% of the actual paid base salary of each member of the system employed by the municipality to 14%, effective July 1, 2025. Section 50-110 is amended to increase the minimum amount of actual paid base salary each member is to contribute to the system from 8% to 9%, effective July 1, 2025.

In addition, certain definition lists applicable to the system found in 62 O.S. § 3103 and 11 O.S. § 50-101 are amended. Part of Section 50-101's amendment was to increase the multiplier from 2½% to 3%, effective July 1, 2024. Also, the computation of a retirement annuity for individuals who completed ten or more years of credited service and elect the vested benefit is changed effective July 1, 2025.

You can read OPPRS's explanation of the effect of the bill here. The bill was originally vetoed by the Governor, but that veto was overridden by a two-thirds vote in both the House and Senate.

SB 1545 (effective November 1, 2024) allows municipal criminal courts of record to close for holidays on which the other municipal offices are closed.

This bill amends 11 O.S. § 28-122, which previously required municipal criminal courts of record to follow the holiday schedule of the state district courts. With this amendment, municipal courts will now close for those holidays declared by the governing body of the municipality on which the other municipal offices are closed.

TITLE 19 – COUNTIES

SB 1668 (effective November 1, 2024) authorizes sheriffs to contract with private security firms to guard prisoners or detainees who are temporarily housed in a medical facility outside the confines of the jail.

This bill adds a new provision to 19 O.S. § 547 to allow sheriffs to contract with a licensed private security agency to guard any prisoner or detainee who is temporarily housed in a medical facility outside the confines of the jail. The provision specifically prohibits security agencies from transporting prisoners to or from outside medical facilities. Transportation duties are to be conducted only by the sheriff or a deputy sheriff.

TITLE 37A – INTOXICATING LIQUORS, ALCOHOLIC BEVERAGES

HB 3571 (effective November 1, 2024) creates Odell's Law, eliminating the requirement for alcoholic beverage license holders to check IDs, but not eliminating the requirement that alcoholic beverages not be sold to anyone under the age of 21.

Odell is a 90-year-old friend of Representative Robert Manger who tried to purchase a beer but was refused because he did not have his ID on him. According to Manger, the existing requirements that all persons be ID'd prior to any alcohol sale is "cumbersome" and Odell's Law will "allow[] people over the legal drinking age to purchase alcohol even if they've forgotten their ID or don't wish to show it." Manger's Senate co-author was Senator Darrell Weaver. Weaver says "[t]his bill not only streamlines operations but also ensures that Oklahomans who are clearly of legal drinking age are not unnecessarily inconvenienced."

The bill adds a new section of law at 37A O.S. § 2-164 to prohibit any "state law, administrative rule, or regulation" that requires an entity licensed by the Oklahoma Alcoholic Beverage Laws Enforcement Commission "to check identification (ID) cards prior to selling or serving alcoholic beverages to a person." The bill does not, however, "absolve the license holder from the prohibition of selling or serving alcoholic beverages to a person under twenty-one (21) years of age." As such, the bill allows license holders "upon their discretion" to "choose to check and verify a person's ID prior to selling or serving a person an alcoholic beverage."

TITLE 43A – MENTAL HEALTH

HB 3451 (effective November 1, 2024) modifying definitions used in Title 43A.

This bill updates several definitions found in 43 O.S. § 1-103. Perhaps the most significant of these is in the definition of "person requiring treatment." There, new language was inserted as follows: "All time elapsed during **medical** stabilization tolls the twelve (12) hour time for an initial assessment pursuant to paragraph 1 of subsection A of Section 5-208 of this title, and the one-hundred-twenty-hour emergency detention time pursuant to paragraph 3 of subsection A of Section 5-208[.]" (Emphasis added.) Those paragraphs in 43A O.S. § 5-208 provide that a person in protective custody "shall be subject to an initial assessment at the appropriate facility by a licensed mental health professional within twelve (12) hours of being placed in protective custody for the purpose of determining whether emergency detention of the customer is warranted" and that if emergency detention is warranted, such detention is not to exceed 120 hours, excluding weekends or holidays, except upon a court order.

HB 3317 (effective November 1, 2024) adds training requirement for multidisciplinary teams involved in elder or vulnerable adult abuse investigations.

Peace officers whose duties include or who have experience and training in investigating elder and vulnerable adult abuse and neglect cases are required members of multidisciplinary teams dedicated to the investigation and prosecution of such cases. This bill amends 43A O.S. § 10-115 to require that at least one member of such a multidisciplinary team complete "dementia-specific training on Alzheimer's disease and related dementia" including information on communication skills, problem-solving with challenging behaviors, or explanation of Alzheimer's disease and other dementia. CLEET's basic peace officer academy curriculum includes training on elder abuse, Alzheimer's disease, and dementia.

TITLE 47 – MOTOR VEHICLES

HB 3671 (effective November 1, 2025) voluntary designation of autistic diagnosis on driver license or state ID card.

This bill creates new law at 47 O.S. §§ 6-125 and 6-125.1, authorizing individuals who have a driver license or state identification card to voluntarily designate themselves as having been diagnosed with an autism spectrum disorder, which designation can then be used by law enforcement or emergency medical personnel to identify and more effectively communicate with such individuals. The individual may also choose whether the designation should appear on the driver license or ID card or in the Oklahoma Law Enforcement Telecommunications System (OLETS). The law also provides for the ability to remove the designation at any time.

In order to be eligible for the voluntary designation, a person must have been diagnosed with an autism spectrum disorder by a primary care physician, licensed psychologist, or licensed psychiatrist. Service Oklahoma is to prepare a standardized autism diagnosis form for the person's treating/diagnosing physician, psychologist, or psychiatrist to complete as certification of the diagnosis.

Under the new law, the registry of voluntary designees will include, but not necessarily be limited to: (1) the license plate and registration information of any motor vehicle the person intends to regularly operate; (2) the emergency contact information of a person who can communicate on behalf of the person who has been diagnosed with an autism spectrum disorder; and (3) any other information that may assist a law enforcement officer when communicating with the person. Various limitations on the use of the information obtained and protections of that information are provided in the statute.

The bill also requires the Department of Public Safety in consultation with Service Oklahoma, CLEET, the Oklahoma Department of Mental Health and Substance Abuse Services, and "other entities or individuals with expertise in autism" to develop a program to "assist and train law enforcement officers to effectively communicate with a person who has been diagnosed with an autism spectrum disorder . . . [to] include training in de-escalation methods when interacting with a person who has been diagnosed with an autism spectrum disorder, proper utilization of the registry . . . , proper utilization of any specific

information regarding an individual listed in the registry, and any other information that may be useful to law enforcement officers when interacting with a person who has been diagnosed with an autism spectrum disorder." Such program is to be available to every state, tribal, county, and municipal law enforcement agency in the state.

This bill does not become effective until November 1, **2025**.

SB 1168 (effective November 1, 2024) DPS to provide opportunities for ARIDE training.

This bill directs the Department of Public Safety to establish a pilot program to increase the availability of Advanced Roadside Impaired Driving Enforcement (ARIDE) training. DPS is authorized to provide funding, administer the program, and establish grant criteria related to the program. The bill creates a new section of law at 47 O.S. § 2-140a.

SB 2035 (effective September 1, 2024) establishing the Mason Treat Act.

This 49-page bill adds new law and amends existing law regarding temporary license plates. The impetus of the bill was a nearly disastrous vehicle collision in Canadian County in early January 2024. Mason Treat, the 16-year-old son of Senate President Pro Tem Greg Treat, was pulled over by a Canadian County Sheriff's Office deputy because Mason was driving his newly-purchased car without any tags. Although it is totally legal to drive a vehicle in Oklahoma without a tag for up to 60 days following a private sale in Oklahoma, the only way for law enforcement to ensure the vehicle is legal is to pull over the driver and review the documentation that is required to be kept with the vehicle—including a bill of sale and copy of the title. As the deputy visited with Mason and reviewed the documentation, a driver who had fallen asleep ran directly into Mason's car and the deputy seriously injuring them.

This bill institutes a pre-registration process under which purchasers of vehicles must obtain a temporary paper tag within two days of the purchase and a metal license plate with temporary decals within ten days of the purchase. If the purchase is through a dealer, the dealer is responsible for initiating the pre-registration and providing the customer with a temporary paper tag. If the purchase is from a private individual, either the purchaser or seller must initiate the pre-registration themselves. After the pre-registration is completed, buyers will have two months from the date of purchase to fully register their vehicles, including the payment of tag, title, and tax. Pre-registration may be done online through Service Oklahoma's Ready, Set, Tag! page or in person at Service Oklahoma's headquarters in Oklahoma City or through a licensed operator (what we used to—and probably still do—call a tag agency).

HB 3000 (effective November 1, 2024) creates the Impaired Driving Prevention Advisory Committee.

This bill creates the Impaired Driving Prevention Advisory Committee with a new section of law at 47 O.S. § 6-212.7. The committee is charged with collecting, analyzing, and interpreting crash data on impaired driving incidents, reviewing and monitoring the state's impaired driving system, providing a

network of communication and cooperation among various stakeholders to coordinate and integrate efforts and resources to reduce the incidence and severity of impaired driving crashes, and completing an annual statewide strategic plan to reduce incidence of impaired driving and related crashes.

The committee will be comprised of 15 members, as follows: the Commissioner of Public Safety, or designee; the Chief of the Oklahoma Highway Patrol, or designee; a member appointed by the District Attorneys Council; a member appointed by the Administrative Office of the Courts; the Director of the Department of Mental Health and Substance Abuse Services or designee; the Director of the Oklahoma State Bureau of Investigation, or designee; the Director of the Board of Tests for Alcohol and Drug Influence, or designee; The Director of the Oklahoma Highway Safety Office, or designee; the President of the Oklahoma Association of Chiefs of Police, or designee; the President of the Oklahoma Sheriffs' Association, or designee; the Chief Executive Office of Service Oklahoma, or designee; a member for the Board of Directors of Safety Advocacy for Empowerment (SAFE); a representative designated by a victim advocacy group to be selected by the Commissioner of Public Safety; a member of the Oklahoma House of Representatives appointed by the Speaker of the Oklahoma House of Representatives; and a member of the Oklahoma State Senate appointed by the President Pro Tempore of the Oklahoma State Senate.

The bill also amends several sections relating to impaired driving including 47 O.S. §§ 6-205.1, 6-212.3, and 6-212.5.

HB 2687 (effective July 1, 2024) adds CLEET-certified officers who are employees of the Attorney General's Office or the Oklahoma Military Department to OLERS.

This bill amends the statutes describing the Oklahoma Law Enforcement Retirement System (OLERS) and creates new law to add CLEET-certified agents of the Attorney General's Office and Oklahoma Military Department to the system. See 47 O.S. §§ 2-300, 2-309.9, 2-309.10, and 62 O.S. § 3103. The bill was originally vetoed by Governor Stitt on May 13, 2024, who noted that he "cannot sign legislation that would add additional employees to defined benefit plans because [he] believe[s] all new hires should be on defined contribution plans." The House and Senate reconsidered the measure and passed it with more than three-quarters of the members voting in favor, thus overriding the veto.

HB 2416 (effective November 1, 2024) and HB 3516 add new law enforcement-related memorial roads, bridges, etc.

These bills name several transportation features in honor of various Oklahomans including several law enforcement officers. Although the legislation appears in Title 69 and not Title 47, their roadway connections make this seem like an appropriate spot to discuss.

The bridge on US Highway 75 crossing over State Highway 67 in Glenpool in Tulsa County is designated as the "Patrolman Joseph Barlow Memorial Bridge." 69 O.S. § 1698.434. Barlow died from wounds sustained in a head-on collision while he was escorting a funeral procession for a member of his department, the McAlester Police Department, who had passed away. The collision occurred on March

17, 2023, and Barlow passed away on March 20, 2023. A veteran of the US Army, Barlow was 26 years old at the time of his death and was survived by his wife, toddler son, and mother.

The bridge on Interstate 44 crossing over Southwest 44th Street in Oklahoma County is designated as the "Sgt. Meagan Burke Memorial Bridge." 69 O.S. § 1698.436. Burke was also killed in a head-on collision while on duty. The six-year veteran of the Oklahoma City Police Department was survived by her father, mother, and sister. She was killed instantly by the force of the collision on September 29, 2022.

The section of US Highway 69 beginning at E2000 Road in Bryan County extending northeasterly to the intersection of South Caddo Highway in Atoka County is designated as the "Captain Jeff Sewell Memorial Highway." 69 O.S. § 1698.442. Sewell, who was an active member of the Oklahoma Highway Patrol, had served more than 32 years with the Patrol. He contracted COVID-19 while on duty in 2020 and succumbed to complications of the disease. At the time of his death, Sewell made his home in Atoka and had just recently taken on the assignment as captain of the Officer Assistance Program. He was survived by his wife, two daughters, and five grandchildren.

The portion of Interstate 35 beginning at mile marker 202 and extending north for one mile in Noble County is designated as the "Trooper Charlie Hanger Honorary Mile." Hanger is the Oklahoma peace officer who arrested Timothy McVeigh approximately 70 minutes after the unprecedented domestic terrorist bombing of the Murrah federal building in Oklahoma City.

The bridge on Interstate 240 crossing over South Pennsylvania Avenue in Oklahoma County is designated as the "Sgt. Robert 'Bobby' Blaine Swartz Memorial Bridge." Swartz, who served with the Oklahoma County Sheriff's Office for nearly 25 years, was killed on August 22, 2022, as he and another deputy attempted to serve eviction paperwork.

The portion of US Highway 75 beginning at the intersection of E 106th Street N and ending at the intersection of E 126th Street N in Tulsa County is designated as the "OHP Captain Larry Jackson Memorial Highway." This designation was first made two years ago, but the description of the portion of the roadway that bears Jackson's name was updated this year. Jackson died in a plane crash while off duty in 2008. He had been a pilot for OHP for about 20 years.

If you see that I've missed any law enforcement officers included in this bill, please let me know and I'll update this entry.

SB 1909 (effective November 1, 2024) authorizes an additional new special license plate.

This bill updates 47 O.S. § 1135.5 to authorize a "Broken Arrow Public Schools" license plate for the purpose of "demonstrate[ing] support for Broken Arrow Public Schools. The legislation also authorizes a licensing agreement with the school district that will allow up to $20.00 of the fee for each special license plate issued to be paid to the Broken Arrow school system. Service Oklahoma's catalog of specialty plates shows the various available designs and costs.

HB 3599 (effective November 1, 2024) changing responsibilities for issuing state identification cards from the Department of Public Safety to Service Oklahoma, again.

HB 3599 substitutes Service Oklahoma for the Department of Public Safety throughout 47 O.S. § 6-105.3. As you are aware, many duties and responsibilities were transferred from DPS to Service Oklahoma a couple of years ago. In 2022 two amended versions of Section 6-105.3 were enrolled, the first swapped out Service Oklahoma for DPS but the second left DPS in place. Typically, later-enacted law supersedes previous law, even if both are passed in the same legislative session. *See Oklahoma's Children, Our Future, Inc. v. Coburn*, 2018 OK 55 at ¶ 49. Therefore, to ensure Service Oklahoma was the statutorily-designated responsible party in this section, another amendment was necessary.

HB 1923 (effective November 1, 2024) amends various transportation-related statutes.

This bill amends various transportation-related statutes, including, but not limited to, the following: 47 O.S. § 1-159 (changing the name of the area set apart within a roadway for the exclusive use of pedestrians from "safety zone" to "pedestrian refuge"); 47 O.S. § 11-203 (amending guidance on pedestrian control signs); 47 O.S. § 11-308 (modifying language regarding "circular intersections" the term used by the amendment in place of the previous term "rotary traffic island" and indicating that traffic should flow "counterclockwise" rather than "to the right of" islands in such circular intersections; 47 O.S. § 11-309 (removing a provision prohibiting the use of the center lane of a roadway divided into three lanes except when it is safe to overtake and pass another vehicle, when used to prepare for a left turn, or where the center lane is designated as a traffic lane exclusively for the direction of travel in which the vehicle is proceeding); minor changes to other sections are also made.

TITLE 57 – PRISONS AND REFORMATORIES (and related provisions)

HB 1629 (effective January 1, 2025) expands voting eligibility for former felons.

This bill expands voting eligibility for former felons. Previously the affected statute, 26 O.S. § 4-101, provided that former felons became eligible to vote after having "fully served their sentence of court-mandated calendar days, including any term of incarceration, parole or supervision, or completed a period of probation ordered by any court." With the amendment, individuals who have had their sentences discharged, who have received a commutation that reduced the sentence of any active felony conviction to time served provided they have no other outstanding sentences under any other felony convictions, who have received a commutation for a crime that has been reclassified from a felony to a misdemeanor, or who have been granted a pardon and have no other outstanding sentence under any other felony conviction.

TITLE 59 – PROFESSIONAL LICENSES

SB 857 (effective November 1, 2024) changes the definition of armed bail enforcer to provide for the carrying of a "firearm" as opposed to a "pistol."

Section 1350.1 of Title 59 has defined "armed bail enforcer" as "a bail enforcer having a valid license issued by the Council on Law Enforcement Education and Training authorizing the holder to carry an approved pistol or weapon in the recovery of a defendant pursuant to the Bail Enforcement and Licensing Act." This bill substitutes the term "firearm" for "pistol," thereby expanding the types of guns which armed bail enforcers may carry. By the way, "weapon" as used in the definition, is defined in the section as a "taser, stun gun, baton, night stick or any other device used to subdue a defendant, or any noxious substances [meaning OC spray, pepper spray, mace or any substance used as a physiological irritant]."

SB 1941 (effective November 1, 2024) addresses processes when bail bondsmen and insurers guarantee travel expenses to return a defendant to custody.

This bill amends 59 O.S. § 1332, which deals with processes for bail bondsmen to avoid forfeiture of bail by returning a missing defendant to custody. Once a bail undertaking is declared forfeited, the bail bondsman has 90 days to return the defendant to custody. The added language addresses when the bondsman or insurer has guaranteed travel expenses to return a defendant to custody. Under the amendment, when those travel expenses have been guaranteed, "(a) the law enforcement agency that placed the hold shall promptly advise the [bondsman or insurer] of a hit confirmation, (b) prior to transporting the defendant, the law enforcement agency that placed the hold shall provide the [bondsman or insurer] a good faith estimate of the reasonable return expenses to return the defendant to custody. The [bondsman or insurer] may request to decline to pay travel expenses, and the law enforcement agency may release its hold and the defendant shall not be considered returned to custody. If the law enforcement agency cannot contact the [bondsman or insurer], the [bondman's or insurer's] guarantee of travel expenses shall be honored by the [bondsman or insurer], and (c) a [bondsman or insurer] may request to withdraw their NCIC request any time prior to a defendant's arrest."

HB 3786 (effective November 1, 2024) amends provisions of the Oklahoma Security Guard and Private Investigation Act as related to licensing requirements for retired peace officers.

This bill modifies two provisions of the Oklahoma Security Guard and Private Investigation Act, particularly 59 O.S. §§ 1750.3A and 1750.6. Section 1750.3A is amended to extend the retired peace officer exemption from the requirement to obtain an MMPI as part of the licensing application process from one year to five years following retirement. Section 1750.6 is amended to wholly exempt retired peace officers who apply for an armed security guard, armed private investigator, or armed combination license from the requirement to submit fingerprints for background check purposes. The bill does not

exempt active peace officers or retired officers who are applying for an unarmed license from the fingerprint requirement.

TITLE 63 – PUBLIC HEALTH AND SAFETY (and related provisions)

SB 1995 (emergency effective April 24, 2024) amends multiple statutes related to medical marijuana.

This is a sprawling 64-page bill that amends lots and lots of statutes related to medical marijuana. Obviously, if you are closely involved with medical marijuana regulation, you will want to read the full thing. For the rest of us, I'm including a few highlights that stuck out to me, but by no means should you take this blurb to be a comprehensive summary of the bill.

63 O.S. § 420(A) is amended to add measurements in grams to the list of the amounts of marijuana that can legally be possessed.

63 O.S. § 420(M) is amended to clarify that a physician who signs off on a patient license application must be licensed by and be in good standing with either the State Board of Medical Licensure and Supervision, the State Board of Osteopathic Examiners, or the Board of Podiatric Medical Examiners. (Subsection M was subsection N in previous versions.)

63 O.S. § 425 is amended to add subsection H, which prohibits the location of any medical marijuana commercial grower within 1000 feet of a school. The provision includes a grandfather clause for preexisting establishments and makes clear that a school cannot move to within 1000 feet of an established grow facility and then seek to use the statute against the grower.

63 O.S. § 426.1 includes new language "[t]o prevent the granting of the grandfather provisions of Section 425," as regards commercial dispensaries. Avoiding the grandfather provisions apparently can be accomplished by municipal government action, as described in the statute.

63 O.S. § 427.3 is amended to add a couple of additional powers to the Oklahoma Medical Marijuana Authority: (1) the power to declare and establish a moratorium on processing and issuing new medical marijuana business licenses for an amount of time the Authority deems necessary and (2) the power to enter into and negotiate the terms of a memorandum of understanding between the Authority and other state agencies concerning the enforcement of laws regulating medical marijuana.

Many other amendments to existing statutes are also accomplished through the bill. Again, if you are closely involved with medical marijuana regulation and enforcement, you'll want to make sure you do a comprehensive review of the bill's many provisions.

HB 3567 (effective May 15, 2024) makes changes to some existing and adds new definitions related to controlled dangerous substances and makes some other statutory changes.

This bill makes several modifications and additions to the list of definitions contained in 63 O.S. § 2-101. Some of the changes are to re-alphabetize the list, which at some point had definitions simply added to the end of it so that not all of the terms were located in alphabetical order. The bill also adds a few new substances to the Schedule I list in 63 O.S. § 2-204 and some changes to various requirements and procedures in 63 O.S. §§ 2-304, 2-305, 2-309, and 2-406.

SB 1296 (effective July 1, 2024) restructures the Opioid Overdose Fatality Review Board by removing two seats.

The Opioid Overdose Fatality Review Board, which meets regularly to review cases and develop strategies to improve the state's response to opioid overdose, is restructured by this bill to remove two seats from the board. 63 O.S. § 2-1002. One is the Chief of Injury Prevention Services of the State Department of Health or designee and the other is an attorney in private practice who was previously selected by the Attorney General from a list of three names submitted by the Oklahoma Bar Association. A county sheriff and a chief of a municipal police department remain as members of the board. In addition, a previous requirement that the board meet at least quarterly has been removed and replaced with the more manageable "as frequently as necessary" meeting schedule.

HB 2152 (effective November 1, 2024) restructures the Maternal Mortality Review Committee by, among other things, removing the seat previously held by a law enforcement officer.

This bill significantly restructures the Maternal Mortality Review Committee which previously was comprised of twenty-five (25) members, including "a current law enforcement officer who is employed by a local or county law enforcement agency." 63 O.S. § 1-242.4. Following the amendments, the committee now has eleven (11) members, none of whom are required to have law enforcement experience.

SB 1457 (effective January 1, 2025) making post-traumatic stress disorder a compensable injury for law enforcement officers through the workers' compensation system.

This bill adds an exception to the limitation in the workers' compensation system that generally only physical injuries are compensable. Section 13 of Title 85A is amended to provide that law enforcement officers, paid or volunteer firefighters, and certain emergency medical technicians, who suffer post-traumatic stress disorder as defined in the statute while responding to an emergency may have a compensable work-related injury. The bill provides for the possibility of temporary disability payments, permanent disability benefits, and the maintenance of health insurance for set periods in certain circumstances.

The bill defines post-traumatic stress disorder to mean an injury or condition in which a first responder has been exposed to a traumatic event and (a) has experienced, witnessed, or confronted an event that involved actual or threatened death or serious injury, or a threat to the physical integrity of others, and the response involved fear, helplessness, or horror; (b) the traumatic event is persistently re-experienced in one or more of the following ways: (1) recurrent and intrusive distressing recollections of the event, (2) recurrent distressing dreams, (3) acting or feeling as if the traumatic event was recurring, (4) intense psychological distress at exposure to cues that symbolize an aspect of the traumatic event, or (5) physiological reactivity on exposure to cues that symbolize an aspect of the traumatic event; (c) persistent avoidance of stimuli associated with the trauma and numbing of general responsiveness such as efforts to avoid thoughts, feelings, or conversations associated with the trauma, markedly diminished interest or participation in significant activities, or a feeling of detachment or estrangement from others; (d) persistent symptoms of increased arousal such as difficulty falling or staying asleep, irritability or outbursts of anger, difficulty concentrating, or hypervigilance; (e) the duration of the disturbance is more than one month; and (f) the disturbance causes clinically significant distress or impairment in social, occupational, or other important areas of functioning.

SB 1740 (effective April 24, 2024) provides first responder immunity for administering an emergency opioid antagonist.

This bill amends 63 O.S. § 1-2506.1 to grant immunity from liability to a first responder for any civil damages that may result from acts or omissions of the first responder who administers an emergency opioid antagonist in good faith. Exceptions apply when the first responder commits gross negligence or willful wanton wrongs in administering the emergency opioid antagonist. "Law enforcement officials" are specifically listed as first responders in the statute.

HB 3361 (effective June 1, 2025) new law regarding medical marijuana packaging and sales.

This bill creates new law at 63 O.S. § 431.1 to require that all medical marijuana "flower, trim, shake, kief, medical marijuana product, or other flower-based product not defined as concentrate" is to be sold in pre-packaged form in package sizes weighing not less than ½ of a gram to not more than 3 ounces. It further allows nonopaque materials to be used when packaging medical marijuana flower, so long as all other packaging and labeling requirements are met, and the flower product is placed in an opaque container before it leaves a licensed medical marijuana dispensary. The new statute also notes that the "display and smelling of medical marijuana shall be allowed pursuant to Section 421 of Title 63 of the Oklahoma Statutes."

This law will not take effect until June 2025.

SB 1280 (effective November 1, 2024) amends 63 O.S. § 2-401 to reference fentanyl.

This bill amends 63 O.S. § 2-401 to reference fentanyl.

HB 2426 (effective May 24, 2024) repeals two sections of statute related to the collection of 911 landline fees.

According to its bill summary, this bill repeals two sections of statute, 63 O.S. §§ 2814 and 2815, which were renumbered last year as 63 O.S. §§ 2869.1 and 2869.2, respectively. The now-repealed sections were related to the collection of 911 landline fees and although intended to be repealed by legislation in 2023 were not because the sections had been renumbered. This bill is simply a clean-up measure. The bill summary states that as of January 2023, no 911 centers received any direct funding from the fee structure repealed by this bill.

SB 423 (vetoed) would have added aggravated eluding of a peace officer to the list of crimes for which a minor would normally be charged as a youthful offender.

This bill added aggravated eluding of a peace officer (so long as the factual basis of the charge comported with either subsection B or C of 21 O.S. § 540A) to the list of crimes for which minors who are 15, 16, or 17 years old at the time they commit the crime would normally be charged as a youthful offender. The Governor vetoed this bill noting that "[w]hile I do not condone eluding, this crime, although dangerous, does not belong on a list alongside second-degree murder, kidnapping, rape by instrumentation, or forcible sodomy."

TITLE 68 – TAXES (and related provisions)

SB 2029 (effective November 1, 2024) authorizes the Oklahoma Tax Commission to designate its Director of Safety and Security as a peace officer if CLEET certified.

This bill amends 68 O.S. § 105.1 to authorize the OTC to designate as a peace officer its Director of Safety and Security, so long as the person in the position is a CLEET-certified peace officer. The person is authorized to conduct personnel investigations, background checks, and assist with security at OTC facilities. They will also be authorized to review information contained in the files of federal, state, or local law enforcement officials in order to conduct investigations. The person is not, however, authorized to conduct any type of investigation related to violations of Oklahoma tax law if such investigations would also include criminal investigations.

TITLE 70 – SCHOOLS (and related provisions)

SB 1521 (effective July 1, 2024) revamps the school resource officer statute.

Last year the Legislature passed legislation that became 70 O.S. § 5-148.1, in which school resource officers were defined as "law enforcement officer[s] with sworn authority and training in school-based law enforcement and crisis response who [are] assigned by an employing law enforcement agency to work collaboratively with one or more schools using community-oriented policing concepts."

This year, that section has been amended to remove the definition and instead state that school districts participating in the School Resource Officer Program shall give first priority to employing or contracting with officers who meet the former definition. However, a new paragraph is also added to provide that "[i]f a law enforcement agency that serves the area in which a school district is located is unwilling or unable to provide a law enforcement officer [who meets the description we discussed above], a participating school district may employ or contract with a retired law enforcement officer or [a licensed] armed security guard." The school district is to "require a background check on the individual."

The amendment goes on to require a law enforcement agency that serves the area in which the school district is located to "preauthorize"—whatever that means—any retired officer or security guard who is hired by the district. The law enforcement agency is also required to grant the individual access to its radio system and provide the person a police band radio system to use, although the school district is supposed to pay for the radio.

HB 2102 (effective date not included in the bill) creates the Hope Shaffer Act.

In January 2020, 15-year-old Hope Shaffer was a backseat passenger in a driver's education vehicle that was being driven by a fellow student. A driving instructor was in the front passenger seat. According to news reports, as the student driver exited Interstate 240 near Shields Boulevard in Oklahoma City, a pickup truck rear-ended the vehicle injuring all of the occupants. Although the driver and instructor suffered non-life-threatening injuries, Shaffer died from the injuries she received.

Shaffer's parents said they were not informed until after the accident that Hope would be a passenger in a vehicle other student drivers would be operating. Under new law codified at 70 O.S. § 19-124, driving students will not be allowed to ride in a vehicle while it is operated by a fellow student unless their parent or legal guardian has signed a waiver allowing the practice. The bill requires the waiver to be on a form separate from other information and to include the following statement: "I understand if my child is a passenger in a mother vehicle operated by a student driver, there is a risk of death, serious injury, or collision."

The law also prohibits commercial driver training schools and school districts who offer driver training from declining to admit students to driver training if their parents/guardians refuse to sign the waiver.

HB 4073 (effective July 1, 2024) enacts "Alyssa's Law" to require all school districts to implement a mobile panic alert system.

The bill requires all school districts in the state to implement a mobile panic alert system which shall connect emergency service technologies to ensure real-time coordination among multiple first responder agencies and integrate with public safety answering point infrastructure to transmit 911 calls and mobile activations. The Oklahoma State Board of Education (OSDE) is to adopt a list of approved mobile panic alert systems. At a minimum those system are to (1) automatically alert designated school personnel when an emergency response is initiated on-site; (2) provide emergency responders with floor plans, caller location, and other information to assist emergency responders during a 911 call; and (3) integrate

designated school personnel with emergency responders to provide real-time situational updates during an emergency. The bill makes new law at 70 O.S. § 5-149.4 and amends 70 O.S. § 5-148.2.

Alyssa's Law is based on a national effort led by the family of Alyssa Alhadeff, who was killed in the shooting at the Marjory Stoneman Douglas High School in Parkland, Florida, in 2018.

HB 3958 (effective July 1, 2024) creates new law governing electronic or digital communications between school personnel and students.

This bill creates new law at 70 O.S. § 6-401 to govern electronic or digital communications, defined to include emails, text messages, instant messages, direct messages, social media messages, and others, between school personnel and students. Primarily, the bill requires that any such communications also include the student's parent or guardian. Alleged violators are to be placed on administrative leave while the school district investigates and if the investigation uncovers "misconduct" (which is not defined in the statute), the school district is to report the incident to law enforcement, pursuant to 70 O.S. § 1210.163. Section 1210.163 requires school personnel to report child abuse or neglect to DHS and local law enforcement. Presumably, the "misconduct" referenced in the new law would include any of the bad acts listed in Section 1210.163.

HB 1795 (effective November 1, 2024) creates the Sergeant CJ Nelson Legacy Act to provide higher education and career tech benefits to children of Oklahoma first responders who lose their lives in the line of duty.

This bill amends 70 O.S. § 3218.7-1 to provide that within the Oklahoma State System of Higher Education no fees nor room and board are to be charged to children of Oklahoma peace officers, firefighters, commissioned members of the Oklahoma Law Enforcement Retirement System, and emergency medical technicians who have given their lives in the line of duty. The benefit is limited to a period of five years.

The bill also creates new law at 70 O.S. § 14-134.1 to mandate that no fees will be charged by the career technology system to children of first responders who lost their lives in the line of duty. This benefit is also limited to a period of five years.

You may recall that Sgt. CJ Nelson tragically died in July 2022 from injuries received when he was stopped at a red light on a motorcycle and a utility truck slammed into him. He was the first Edmond Police Department officer to be killed in the line of duty. Nelson and his wife, Jenefer, had two minor children.

HB 3998 (effective November 1, 2024) modifies statute authorizing employing agency to recoup expenses related to cadet's participation in basic academy.

CLEET's primary governing statute, 70 O.S. § 3311, has had a provision, Subsection N, in it for many years that authorizes a law enforcement agency who employs a peace officer and pays their salary and

other expenses while the peace officer attends a basic peace officer academy to recoup some of that expenditure if the peace officer resigns from the employer who sent them to the academy and is hired by another law enforcement agency within certain time frames. The start time was previously triggered by the "initial employment with the original employing agency." The amendment changes that to "the date the person is commissioned with the law enforcement agency."

By statute, CLEET is not a party to actions under the section and any collection efforts, litigation, or other processes are between the individual who attended the academy, the law enforcement agency that paid their salary while at the academy, and the law enforcement agency that hired them after they resigned from the original employer.

HB 3234 (effective November 1, 2024) authorizes CareerTech to outline eligibility criteria and requirements for high school equivalency diplomas.

This bill amends 70 O.S. § 14-132 to add authorization to the State Board of Career and Technology Education to "outline the eligibility criteria and requirements for individuals twenty-one (21) years of age and older seeking to obtain a high school equivalency diploma based on their work experience and educational attainment."

TITLES 25, 51, 64, 74, and 75 – STATE GOVERNMENT (and related provisions)

SB 1200 (effective upon the enactment of an applicable federal law) creates new law to adopt year-round daylight saving time as the standard time for Oklahoma if a federal law authorizing states to observe year-round daylight saving time is passed.

This bill sort of addresses one of those things so many of us love to hate—time changes. It will be codified at 25 O.S. § 90.28, if it ever becomes effective. Despite growing expert opinion that the semiannual ritual of changing time is unhealthy and even dangerous, the likelihood of Congress ever getting around to passing a law authorizing the states to adopt a new year-round time system seems remote for now. The federal Uniform Time Act, which became effective in 1967, allows states to choose to be on permanent standard time, but does not allow states to choose permanent daylight saving time (like SB 1200 would do). Apparently, there is some tension between various medical professionals and business leaders regarding standard versus daylight saving time. Many health experts claim that standard time is better for our health, as it aligns more closely with our evolutionary internal clocks which crave morning light and dark evenings. Apparently early to bed and early to rise has real health benefits. However, economic forces much prefer daylight saving time because it encourages people to be out and about and, most important, to spend money, in the evenings. Emily Olson and Diba Mohtasham give some history and analysis of the issue in this March 2024 article they authored for NPR. The National Conference of State Legislatures also have an interesting report on the subject.

HB 1449 (effective November 1, 2024) the "Women's Bill of Rights."

This bill creates new, but uncodified, law to be known as the Women's Bill of Rights with the asserted purpose of bringing "clarity, certainty, and uniformity under the laws of this state with respect to natural persons of both biological sexes and the manner in which they are treated as such under the laws of this state. All laws where the application thereof is contingent upon the classification of a person as being female or male, woman or man, girl or boy, are hereby superseded and interpreted to the extent necessary by this act, including but not limited to, any educational benefits, corrections housing, employment protections, and civil rights laws codified in the statutes of this state."

The bill amends 25 O.S. § 16 to provide definitions of the terms "father," "female," "male," "man" or "boy," "mother," "natural person," "person," "sex," and "woman" or "girl." Such definitions are to apply wherever the terms are used in the Oklahoma Statutes, unless another definition is specifically applied to various provisions.

The bill further amends 25 O.S. § 1101 to add a new paragraph providing that "[a]ny policy, program, or statute that prohibits sex discrimination shall be construed to forbid unfair treatment of females or males in relation to similarly situated members of the opposite sex. The state or its political subdivisions shall not be prohibited from establishing distinctions between sexes when such distinctions are substantially related to an important government objective, including, but not limited to, biology, privacy, safety, or fairness."

A definition of "'equal,' with reference to sex[,]" is added to 25 O.S. § 1201 to provide that equal "shall not be construed to mean same or identical, and to differentiate between the sexes shall not necessarily be construed to be treating the sexes unequally."

Finally, the bill adds new law at 25 O.S. § 1202 to provide that "[t]he state, any political subdivision, or any state agency or department, including, but not limited to public school districts, that collects vital statistics for the purpose of gathering accurate public health, crime, economic, or other data shall include, but not be limited to, the identification of any natural person who is part of the collected data as either male or female as defined in Section 16 of Title 25[.]"

HB 3937 (effective November 1, 2024) adding notice requirements for public meetings.

This bill adds a requirement to the Open Meetings Act, 25 O.S. § 311, that "all state public bodies" (1) post notice of all regular meetings, including date, time, place, and agenda for the meeting in prominent public view at the principal office of the public body or at the location of the meeting if no office exists AND (2) post on the body's internet website the date, time, place, and agenda for the meeting. Non-state public bodies appear to only have to provide one or the other notice methods.

HB 3780 (effective November 1, 2024) removes expired COVID-era videoconferencing provisions from the Open Meetings Act.

In response to the COVID-19 pandemic, the Legislature enacted provisions in the Open Meetings Act, 25 O.S. § 307.1, to authorize public bodies to conduct meetings entirely by videoconference, including

executive sessions. Such authorization was specifically set to expire in the statute, the expiration being either February 15, 2022, or thirty (30) days after the expiration or termination of the state of emergency related to COVID-19, whichever was to occur first. This bill simply removes that expired and now unnecessary language from the statute.

The bill also recodifies 74 O.S. § 3106.2, which requires public bodies to make date, time, place, and agenda of public meetings available on their websites, as 25 O.S. § 311.1, to move it into the Open Meetings Act.

SB 1716 (effective November 1, 2024) adds a new basis for executive sessions during public meetings held by public bodies.

This bill amends the Open Meetings Act at 25 O.S. § 307 to add the ability of professional licensing boards to enter executive session during a public meeting to review and discuss mental health documents related to a licensee who is under investigation or review by the board. The new provision includes several limitations: (1) the executive session can only be held to review or discuss mental health documents directly related to the licensee or to receive testimony from relevant witnesses in order for the board to make a determination in the matter, (2) the documents reviewed or discussed are kept confidential, privileged and not discoverable in civil actions, and not made available to the public, and (3) the licensee is given the opportunity to be present during any witness testimony or discussion of the mental health documents.

HB 3779 (effective November 1, 2024) modifies provisions of the Open Records Act.

This bill amends 51 O.S. § 24A.3, the definitions section of the Open Records Act, to remove several paragraphs that previously described what a "record" is not. After the amendment, "record" now "does not mean: a. computer software, or b. nongovernmental personal effects[.]" The bill also makes several additions to the list of records in 51 O.S. § 24A.5 which are required to be kept confidential and to which most sections of the Open Records Act will not apply.

SB 1574 (effective November 1, 2024) also modifies provisions of the Open Records Act.

This bill expands the definition of "record" under the Open Records Act to include "applications and other documents related to licensure matters that are filed of record in a district court, including, but not limited to, marriage licenses, process server licenses, closing out sale licenses, transient merchant licenses, pool hall licenses, and bail bondsmen registration." 51 O.S. § 24A.3.

HB 3511 (effective November 1, 2024) makes various adjustments to special elections procedures.

This bill modifies several sections related to special elections. It amends 26 O.S. § 12-108 to extend from not less than 20 days to not less than 30 days after the close of the filing period as the first date upon which a special primary election may be conducted. That section is further amended to provide for a special runoff primary election, which may occur not less than 20 days after the special primary election. The

special general election is to be held not less than 20 days after the date of the special runoff primary election but if a special primary election is not needed, the special general election will be moved to the date of the special primary election and if a special primary election is held but a special runoff primary election is not needed, the special general election will be held on the date of the special runoff primary election. Hopefully that all makes sense.

Sections 12-109 (which addresses what happens when a candidate is elected at one of these elections) and 14-118 (which deals with absentee ballots) are also amended in the bill.

SB 1854 (effective November 1, 2024) prohibits the use of state-owned lands for unauthorized (homeless) camps.

This bill seeks to combat the growing homelessness crisis in our country and state. It creates new law at 64 O.S. § 1097 to prohibit "unauthorized camps" on state-owned lands. Unauthorized camps are defined in the statute as "any tent, shelter, or bedding constructed or arranged for the purpose of or in such a way to permit overnight use on a property not designated as a campsite." The bill provides that violation of the statute will constitute a misdemeanor punishable by a fine not to exceed $50 or by imprisonment in the county jail not to exceed 15 days or by both a fine and imprisonment. However, the bill also provides a caveat for first-time offenders: "[A] person who commits a first violation of this section shall be issued a warning, and a citation may not be issued unless the person refuses any assistance offered to them by the arresting officer. Such assistance may include, but is not limited to, transportation to a shelter, food pantry, or other place where resources are made available to assist the indigent and homeless."

The U.S. Supreme Court this term decided *City of Grants Pass, Oregon v. Johnson et al.*, __ U.S. __ (2024), which found the Ninth Circuit's determination that the 8th Amendment's Cruel and Unusual Punishments clause prohibits cities, towns, and counties from enforcing public camping bans against the "involuntarily homeless" was wrongly decided. This likely means that Oklahoma's new law would pass constitutional muster if (or when) it may be challenged.

SB 1169 (effective July 1, 2024) the Land Office and OMES are to contract with DPS for security and law enforcement services.

This bill adds a new section of law at 64 O.S. § 1096, which directs the Commissioners of the Land Office and the Office of Management and Enterprise Services (OMES) to contract with the Department of Public Safety (DPS) for security and law enforcement services in all facilities under the jurisdiction of any of those agencies within the State Capitol Park in Oklahoma City or the Executive Center in Tulsa.

HB 2896 (effective July 1, 2024) provides funding for a centralized DPS training center.

This bill creates new law at 73 O.S. § 187A-12 to authorize $74,000,000.00 from the Legacy Capital Financing Fund be used to finance a centralized training facility for the Department of Public Safety. The facility is slated to be built in Lincoln County just a few miles south of the I-44 corridor.

SB 1371 (effective May 24, 2024) moves the Oklahoma Office of Homeland Security to the Department of Public Safety.

This bill moves the Oklahoma Office of Homeland Security into the Department of Public Safety and makes the Commissioner of DPS the "Homeland Security Advisor." As Homeland Security Advisor, the Commissioner is authorized to possess or obtain federally recognized clearances as appropriate for the position; is responsible for the operation and administration of the Office of Homeland Security; and is directed to appoint subordinates and employees and to expend appropriated or other available funds to carry out the purposes of the Oklahoma Homeland Security Act. The Commissioner is also authorized to commission employees as peace officers, but such employees must obtain and maintain CLEET certification as full-time peace officers. All personnel appointed to the Office of Homeland Security are exempt from the full-time employee limit of DPS.

The bill also provides that the personnel, motor vehicles, computer and communications equipment, training equipment, records, furniture, and other property and equipment allocated to the Office of Homeland Security is to remain with OHS through the transfer to DPS.

HB 2914 (effective July 1, 2024) creates the Oklahoma Sheriff's Office Funding Assistance Grant Program.

This bill establishes the Oklahoma Sheriff's Office Funding Assistance Grant Program, which will be administered through the Attorney General's Office. The program is designed to supplement sheriff's office budgets, although the funds cannot be used to directly boost salaries, and the grants are tiered based on the gross assessed total tangible property valuation of the county. New law is created at 74 O.S. §§ 20k-1A and 20k-1B and amendments occurred to 19 O.S. §§ 180.43, 180.62, and 180.65.

HB 1805 (effective November 1, 2024) some changes to the Oklahoma Public Employees Retirement System (OPERS).

This bill makes minor changes to various provisions of the act but makes some more substantial changes when it comes to members who have provided service as licensed emergency medical personnel who worked for participating employers. If you might fall into this category, you should take a closer look at the statute. Affected sections include 74 O.S. §§ 902, 915, 916.3, 919.1, and 920A.

HB 1068 (effective November 1, 2024) makes some changes in OPERS benefits for deputy sheriffs and jailers.

This bill amends various statutes including 74 O.S. §§ 902, 915, 916.3, 919.1, and 920A to make changes in the Oklahoma Public Employees Retirement Systems (OPERS), which may affect some deputy sheriffs and jailers. If you fall into this category, we encourage you to review the legislation and to check with OPERS for any updated guidance.

HB 3763 (effective November 1, 2024) authorizing burn ban signage on ODOT and OTA signposts.

HB 3763 authorizes fire departments and appropriate county officials to place "burn ban" signs on "agreed-upon signposts controlled by the Oklahoma Department of Transportation and Oklahoma Turnpike Authority." Local officials are to work with ODOT and OTA to agree upon locations and to remove signs in a timely manner. Local officials also bear the costs of the signs.

HB 3568 (effective November 1, 2024) mandating the OSBI to implement a rapid DNA investigative lead program.

This bill directs the OSBI to "promulgate necessary policies, procedures, and forms for participation in a rapid DNA investigative lead program, a statewide program for law enforcement agencies, outlining the collection and processing of crime scene samples utilizing rapid DNA instrumentation." Included in the authorization is for OSBI to set program parameters and to provide procedures related to training, maintenance, and use of rapid DNA instruments. The added language will appear as a new paragraph D to 74 O.S. § 150.27. According to the FBI, rapid DNA or rapid DNA analysis is a fully automated process of developing a DNA profile from a mouth swab, which can occur within 1-2 hours without the need for a DNA laboratory or any human intervention and review.

HB 1010 (effective November 1, 2024) provides purchasing options for state agencies, departments, institutions, or satellite offices of such entities which are located in a county without statewide contracted vendors.

This bill adds an option for state entities that are located in counties without statewide contracted venders that will allow the state entities to purchase necessary equipment and supplies from local businesses at or below state contract pricing without first obtaining a waiver or permission from Central Purchasing after 72 hours from providing written or electronic notice to the Central Purchasing Director. Certain restrictions and requirements apply, including that such purchase cannot exceed $2,500.00 and certain documentation must be maintained by the entity. The statute that is amended is 74 O.S. § 85.3.

SB 1662 (effective November 1, 2024) requires OSBI to create a process regarding fingerprint-based national criminal history record check information for businesses and organizations that provide care or care placement services to children, the elderly, or individuals with disabilities.

This bill creates a new section of law at 74 O.S. § 150.9.2 to require OSBI to develop procedures in accordance with the federal National Child Protection Act of 1993 and the federal Volunteers for Children Act to enable qualified businesses and organizations to request state and national criminal history records checks of potential employees and volunteers.

SB 2039 (effective July 1, 2024) creates a domestic violence focused revolving fund.

This section creates a new revolving fund in the Office of the Attorney General to be designated the "Domestic Violence and Sexual Assault Services Revolving Fund." 74 O.S. § 19.4. The fund is to be used to (1) provide statewide access to and a stable system of delivery of services to victims of domestic violence and sexual assault; (2) promote a coordinated community approach to serving victims of domestic violence and sexual assault; and (3) providing access to equitable, appropriate, and accessible services through dedicated support of underserved population programs. The bill also sets forth criteria to be eligible to receive money from the fund. It also amends 74 O.S. § 18p-1 to provide that "[f]or any county in which there is more than one sexual assault program, domestic violence program, or batterers intervention program and one or more of the programs operates a shelter program, only the program or programs operating a shelter shall receive grants or funding from the Victim Services Unit [of the AG's Office]."

SB 1856 (effective November 1, 2024) allows state agencies to consider job performance when making reduction-in-force decisions.

Among other things, this bill, while reemphasizing that reduction-in-force cannot be used as a disciplinary or retaliatory action by state agencies, a low job performance evaluation within the preceding 12 months can be considered by an appointing authority when making reduction-in-force decisions. 74 O.S. § 840-2.27C.

HB 1297 (effective November 1, 2024) directs the Secretary of State to publish the Oklahoma Administrative Code and the Oklahoma Register electronically and makes the electronic versions the official versions.

This bill directs the Secretary of State to publish the Oklahoma Administrative Code and the Oklahoma Register electronically and also makes the electronic versions the official or prevailing versions. Sections 250.9, 255, 256, and 257.1 in Title 75 are amended in relation to this legislative direction.