

Council on Law Enforcement Education and Training

2020 Legal Update



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By statute, [70 O.S. § 3311.5\(E\)](#), we are 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. *Typically, we focus almost exclusively on issues related to Oklahoma statutory and other law changes, but this year has been so unusual with COVID-19 and widespread protests about policing policies and techniques, that we will also look at some materials we haven't generally included in our legal update in the past.*

Please keep in mind that this document is, by necessity, a summary. If we were to address and copy all the new laws, this document could run to several hundreds or even thousands of pages. Even a detailed summary of every provision would be unwieldy. You are encouraged to read the complete laws, available at www.oscn.net. 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, constitutional provisions, and supporting materials discussed in the text. Please note that some of the hyperlinks may not bring up the new language until the effective date of the enactments.

COVID-19

[SB 1946](#) (emergency clause, effective May 21, 2020) creates new law to limit the civil liability of certain individual related to the COVID-19 pandemic. [76 O.S. § 111](#) is created to provide that someone conducting business in Oklahoma will not be liable for claims that a plaintiff was injured because of exposure or potential exposure to COVID-19 at or because of the business, so long as the business was conducted consistent with “federal or state regulations, a Presidential or Gubernatorial Executive Order, or guidance applicable at the time of the alleged exposure.” If more than one source of guidance was applicable at the time of the alleged exposure, the business will not be liable so long as its business was conducted consistent with “any applicable guidance.”

[SB 1947](#) (emergency clause, effective May 21, 2020) creates new law to limit products liability related to the COVID-19 pandemic. [76 O.S. § 112](#) is created to limit liability for the use of products in attempting to protect individuals from contacting or spreading infection or illness. Remarkably, the statute protects individuals from liability even when the products they are using are “used or modified for an unapproved use . . . [or are] utilized outside of such product’s normal use . . . [or even are] medications prescribed or dispensed for off-label use” so long as such use is to protect people from, prevent the spread of, attempt to combat, or to diagnose and treat people related to COVID-19. There is a limitation to the immunity. If someone had actual knowledge that the product was defective and acted with deliberate indifference or conscious disregard of the risk of harm or acted with a deliberate

intent to harm, that person would not be immune from liability. The law specifically includes “**first responders**” in the group of individuals for whom the immunity from liability is intended.

EO 2020-07 (first issued March 15, 2020) and **EO 2020-20** (first issued May 30, 2020). Governor Stitt issued a series of executive orders and amendments to those executive orders beginning in March 2020. The fifth amended version of EO 2020-07 (which is hyperlinked above) incorporated two provisions waiving **statutory and rule-based time requirements for completing peace officer and reserve peace officer training** (see ¶¶ 22 and 23). Those provisions were included in EO 2020-20 (see ¶¶ 20 and 21). CLEET Executive Director Jesus E. Campa also issued a [memo](#) (posted to CLEET’s website) regarding these provisions and made clear the provisions were to accommodate interruptions and delays in basic peace officer academy training and reserve peace officer academy training. **The executive order provisions were not intended to relieve peace officers and reserve peace officers of the obligation to comply with annual training requirements.** Director Campa also issued a [memo](#) on this topic, again posted to CLEET’s website.

TITLE 21 – CRIMES AND PUNISHMENTS (and related provisions)

SB 1462 (effective November 1, 2020) amends 21 O.S. § 1040.13b, 22 O.S. § 234, and 57 O.S. § 582 with regard to **nonconsensual dissemination of private sexual images**.

Two new subsections are added to [21 O.S. § 1040.13b](#). New subsection “G” provides that anyone who gains or attempts to gain financially from the nonconsensual dissemination of private sexual images will be guilty of a **felony** and new subsection “H” provides that the district attorney “shall not have the discretion to file a misdemeanor charge” for such a violation.

[Section 234 of Title 22](#) is also amended to make clear that the District Attorney has no discretion to file a charge under 21 O.S. § 1040.13.b(G) as a misdemeanor. In effect, the amendment essentially adds the crime of financial gain from the nonconsensual dissemination of private sexual images to the list of crimes catalogued at [21 O.S. § 13.1](#), the so-called 85% statute. That list includes twenty-two of the various horrible acts people can commit.

Finally, [57 O.S. § 582](#) is amended to add two new subsections regarding sex offender registry. New subsection “F” provides that anyone convicted after the effective date or who is serving a sentence or probation or parole for a crime or attempt to commit a crime as defined in 21 O.S. § 1040.13.b(G) will be subject to the **Sex Offenders Registration Act**. New subsection “G” provides that anyone who has received a deferred sentence at any time in any state, one of the U.S. Territories or the District of Columbia, any federal court, any Indian tribal court, any military court, or any court of a foreign country which, if committed in Oklahoma, would have constituted a crime under 21 O.S. § 1040.13b(F), must register.

SB 1290 (effective November 1, 2020) expands the list of medical care providers covered by the anti-assault and battery provisions of 21 O.S. §§ 650.4 and 650.5. With the change, [21 O.S. § 650.4](#) is amended to change “emergency medical care provider” to “medical care

provider” and adds to the list of such providers “laboratory technicians, radiologic technologists, physical therapists, physician assistants, chaplains, volunteers, pharmacists, nursing students, [and] medical students[.]” [21 O.S. § 650.5](#) is amended to also remove the requirement of “emergency” from the types of medical personnel who should not be assaulted. It also adds a new subsection “B,” which mirrors the list of “medical care providers” outlined in Section 650.4. The amendment further modifies the statute to make the action a felony punishable by imprisonment in the custody of DOC for a term not less than two years nor more than five years or by a fine not to exceed \$1,000.00.

The bill also creates new law at **63 O.S. § 1-114.3**. The new law requires hospitals, health clinics, and ambulance services to display “at all times in a prominent place a printed sign” (with mandatory minimum size and font requirements) that reads: “WARNING: ASSAULTING A MEDICAL PROFESSIONAL WHO IS ENGAGED IN THE PERFORMANCE OF HIS OR HER DUTIES IS A SERIOUS CRIME.”

[HB 2777](#) (effective November 1, 2020) creates new law at [21 O.S. § 1740.2](#) to be known as the “Porch Piracy Act of 2020.” Under this new statute it “shall be unlawful for any person to hold, conceal, destroy or take mail from the mailbox or premises of another person or from a delivery vehicle . . . without the effective consent of the addressee and with the intent to deprive the addressee of the mail.”

The act makes the crime a misdemeanor but if a person commits “three or more separate offenses” within a sixty-day period, the person upon conviction shall be guilty of a felony carrying punishment of not less than two nor more than five years imprisonment and/or a fine not to exceed \$5,000.00.

In addition, the act requires those convicted of “porch piracy” to pay restitution pursuant to [22 O.S. § 991f](#). (Don’t let the title of the section, “Definitions,” fool you. It does contain substantive provisions regarding restitution.)

[HB 1423](#) (emergency clause, effective May 19, 2020) amends criminal statutes related to tobacco and vapor products in light of increase in age from 18 to 21 for lawful possession. [21 O.S. § 1241](#) is amended to reflect the illegality of furnishing any tobacco or vapor products to “any person under the age of twenty-one.”

[21 O.S. § 1242](#) is similarly amended to update the age restrictions on possession of any tobacco or vapor products. Section 1242 makes it illegal for anyone under the age of 21 who is in possession of any tobacco or vapor products to refuse to disclose to a peace officer, judge, teacher, etc., from whence such products were obtained.

[SB 1081](#) (emergency clause, effective May 19, 2020) creates new law at [21 O.S. §§ 1289.24b](#) and [1289.24c](#) preempting the field of legislation related to “extreme risk protection orders.” This is Oklahoma’s [Anti-Red Flag Act](#). It prohibits any agency or political subdivision of the state from accepting any grants or funding to implement any statute, rule, executive order, judicial order, or judicial findings that would have the effect of forcing an extreme risk protection order upon a citizen of Oklahoma. It defines an “extreme risk protection order” to mean any executive

order, written order, or warrant, issued by a court, the primary purpose of which is to reduce the risk of firearm-related death or injury by (1) prohibiting an individual from having custody, control, ownership, possession, or receipt of a firearm or (2) removing or requiring surrender of a firearm from an individual.

TITLE 22 – CRIMINAL PROCEDURE (and related provisions)

HB 2877 (effective September 1, 2020) amends various statutes relating to victims impact panels.

- An amendment to **22 O.S. § 991a(A)(7)(b)** [version 2] increases the fee for attending a victims impact panel to **\$75.00**. This increase is also reflected in changes to 22 O.S. § 991a(H)(3).
- **22 O.S. § 991aH(3)** is amended to **prohibit** certified assessment agencies, certified assessors, or providers of alcohol and drug substance abuse courses **from providing victims impact panel programs** and from having any **proprietary or pecuniary interests** in a victims impact program.
- **Subsection H(3)** is further amended to impose duties on victim impact program providers beginning **October 1, 2020**, and continuing each October 1, to essentially register with the **District Attorneys Council**, by providing various proofs and paying a **\$1,000.00 registration fee**.
- **22 O.S. § 991c(C)(2)** is amended to reflect the increase in fee to **\$75.00** for victim impact panel participation.
- **47 O.S. § 11-902(H)** is amended to reflect the fee increase for victims impact panel attendance as well. Subsection H is further amended to make victims impact panel attendance **mandatory** for anyone found guilty of **driving under the influence of drugs or alcohol** in violation of 47 O.S. § 11-902.

SB 1385 (effective November 1, 2020) amends **22 O.S. § 2002** and **12 O.S. § 2510** with regard to informants. Section 2002(A) receives a new subsection 4, which outlines requirements for disclosure by the State if the State intends to introduce testimony of a “**jailhouse informant**.” It requires disclosures be made at last ten (10) days prior to trial and imposes obligations to track cases in which jailhouse informant testimony was intended to be or was used.

Section 2510 is amended to add **jailhouse informants** whose testimony is disclosed pursuant to the requirements of 22 O.S. § 2002, to the list of informants whose **identity** is **not privileged** under the statute.

SB 1948 (emergency clause, effective May 20, 2020) amends **22 O.S. § 991c** regarding **deferred judgments** by adding a new Subsection K which provides that when “a person who is being considered for an acceleration of a deferred judgment for an offense where the penalty has subsequently been lowered to a misdemeanor shall only be subject to a judgment and sentence that would have been applicable had he or she committed the offense after July 1, 2017.”

Although not strictly related to criminal procedure, **SB 3756** affects criminal procedure in authorizing the use of videoconferencing technology in Oklahoma

courts. New law is created at [20 O.S. § 130](#) to permit the use of videoconferencing technology in “all stages of civil or criminal proceedings” but restricts its use “in a jury trial or a trial before a judge.”

TITLE 10A – CHILDREN AND JUVENILE CODE (and related provisions)

[SB 1948](#) (effective May 20, 2020) amends [10A O.S. §1-1-105](#), which defines terms used in the Oklahoma Children’s Code. Specifically, the Bill adds and defines the term “family-style living program” to mean “a residential program providing sustained care and supervision to residents in a home-like environment not located in a building used for commercial activity.”

[HB 1282](#) (effective November 1, 2020) amends provisions relating to the detention of children under the Oklahoma Juvenile Code. [Section 2-3-101](#) of Title 10A is amended to provide that no child age **12 or younger** shall be placed in a juvenile detention facility unless all alternatives have been exhausted and the child is currently charged with a criminal offense that would be a felony if committed by an adult and risk-assessment screening indicates the child requires detention. **The detention of any child age 12 or younger requires judicial review.** The section is further amended to provide that children age **13 or 14** may be admitted to a juvenile detention facility only after all alternatives have been exhausted and the child is currently charged with a criminal offense that would be a felony if committed by an adult and a risk-assessment screening indicates the child requires detention.

[10A O.S. § 2-7-401](#) is also amended to provide that **the rate of reimbursement** of approved operating costs shall be 100% for the Office of Juvenile Affairs (OJA) for any child in OJA custody after adjudication and disposition and while held in a juvenile facility pending other placement.

[SB 1423](#) (emergency clause, effective May 13, 2020) increases the minimum age to purchase, receive, or possess tobacco or vapor products from 18 to 21. [Section 2-8-224\(A\)](#) of Title 10A is amended to reflect the age change.

TITLE 11 – CITIES AND TOWNS (and related provisions)

[SB 187](#) (emergency clause, effective May 20, 2020) creates new uncodified law regarding COVID-19. The Bill creates the Municipal Government COVID-19 Emergency Budget Act to provide short-term budget solutions for municipal governments due to the “extreme volatility in sales tax revenue projections” related to the COVID-19 pandemic. The law allows for municipalities to adopt a temporary budget for fiscal year 2021 that can remain in effect for up to six months. At the conclusion of the temporary budget, the municipality must adopt a permanent budget. Open Meeting Act provisions are to be followed when adopting both temporary and permanent budgets.

[HB 3330](#) (emergency clause, effective June 15, 2020) creates the [Sergeant Schoolfield Line of Duty Disability Act](#), which amends [11 O.S. § 50-115](#) regarding disability

benefits for police officers. Section 50-115 is amended to provide that if an injury to a covered individual resulted from a violent act while in the performance of a duty as a police officer, the State Board shall determine that the individual has suffered a 100% disability and award the benefit in accordance with that standard. A “violent act” is defined as a “violent attack upon the member by means of a dangerous weapon, including, but not limited to, a firearm, knife, automobile, explosive devise or other dangerous weapon.” [Sergeant Matthew Schoolfield](#) is a Chickasha police officer who was seriously injured after being shot six times (three bullets were not stopped by his body armor) while attempting to serve a warrant in 2017. He has had [nine surgeries](#) and still undergoes physical therapy several times a week. Prior to this legislation, because of how [disability benefits](#) were calculated in the [Oklahoma Police Pension and Retirement System](#) (OPPRS), officers whose injuries prevent them from returning to active duty, were nevertheless determined to have less than a 100% disability and thus ineligible for full disability payments.

The Bill also amends [62 O.S. § 3103](#) to add bills that “modif[y] the disability pension standard for police officers who are members of the [OPPRS]” to the list of “nonfiscal retirement bills.”

TITLE 37A – INTOXICATING LIQUORS, ALCOHOLIC BEVERAGES (and related provisions)

[SB 1948](#) (emergency clause, effective May 21, 2020) amends multiple provisions in Title 37A.

- Section 6 of the Bill amends [37A O.S. § 1-103](#) to add “wine or spirit” to the definition of “brand”; inserts the words “less than” in defining a “small brewer” as a brewer who manufactures *less than* 65,000 barrels of beer annually; adds a definition for “winemaker”; and adds a definition for “satellite tasting room,” which is “a licensed establishment operated off the licensed premises of the holder of a small farm winery or winemaker license, which serves wine for on-premises or off-premises consumption.”
- Section 9 of the Bill amends [37A O.S. § 2-101](#) to add an **annual licensing fee of \$100.00 for satellite tasting room licenses**.
- Section 11 of the Bill amends [37A O.S. § 2-118](#) to include the term “**commercial passenger vessel**” along with the previously existing terms airplane and railroad/train with regard to alcoholic beverage licenses.
- Section 14 of the Bill amends [37A O.S. § 2-120](#) to allow **wholesaler’s agent licenses** to be issued to an employee of a beer distributor licensee regardless of the employee’s job responsibilities.
- Section 16 of the Bill amends [37A O.S. § 2-121](#) to require the ABLE Commission to provide written **notice to an employer** if an employee’s application for an employee license is denied.
- Section 18 of the Bill amends [37A O.S. § 2-148](#) to allow the ABLE Commission to issue employee **licenses to convicted felons** so long as such convictions were not for violent offenses as listed in [57 O.S. § 571\(2\)](#) or an offense under Title 37A.

- Section 20 of the Bill amends [37A O.S. § 6-102](#) to allow more than two drinks to be served at a time to a single customer so long as those drinks constitute a “tasting flight” as defined in [37A O.S. § 6-102.1](#): (1) a “beer tasting flight” is not more than four separate individual beers of not more than five ounces each served together at one time; (2) a “wine tasting flight” is not more than four separate individual wines of not more than 1.5 ounces each served together at one time; and (3) a “spirit tasting flight” is not more than four separate individual spirits of not more than 0.5 ounces each served together at one time.
- Section 22 of the Bill amends [37A O.S. § 6-108](#) to allow retail wine or retail beer license holders who sell wine or beer at a multiunit discount to be allowed to offer or furnish prizes, premiums, gifts, or similar inducements to consumers in connection with the sale of wine or beer.

[HB 1349](#) (emergency clause, effective July 1, 2020) amends [37A § 2-109](#) to allow retail beer licensees to sell malt beverages with alcohol beverage volume up to 15%. This amendment increases the alcohol beverage volume from its previous limit of 8.99%.

TITLE 47 – MOTOR VEHICLES

[SB 1948](#) (emergency clause, effective May 21, 2020) amends a couple of sections found in Title 47.

- Section 24 of the Bill amends [47 O.S. § 583](#) by adding two new subsections (7 and 8) to subsection C. Subsection 7 provides for a \$75.00 installation inspection fee for new single-wide manufactured homes and a \$125.00 fee for new multi-floor manufactured homes. This fee is to be paid by any manufacturer who sells new manufactured homes to be shipped to or sited in Oklahoma. Subsection 8 provides for the installer of a used manufactured home to pay a \$75.00 inspection fee at the time of installation for used manufactured homes that are sited and installed in Oklahoma.
- Section 26 of the Bill amends [47 O.S. § 11-314](#) to include the phrase “a stationary vehicle that is displaying flashing lights” in the statute that requires other drivers on highways to proceed with caution and to change lanes if safe to do so when encountering emergency vehicles, maintenance vehicles, licensed wreckers, and now stationary vehicles displaying flashing lights.

[HB 3508](#) (effective November 1, 2020) amends [47 O.S. § 11-1110](#) to require truck-tractors which carry cargo on Oklahoma roadways to maintain “a general liability insurance policy that covers the costs of cleanup of any substance that is spilled or otherwise deposited on the roadway or right-of-way[.]”

[HB 4049](#) (effective November 1, 2020) amends [47 O.S. § 1132A](#) with regard to online services provided by motor license agents. The Bill adds language requiring any motor license agent fees collected by a state agency to be deposited in the General Revenue Fund and excludes the Oklahoma Tax Commission from the [definition](#) of motor license agent. This bill was enacted by a veto override.

HB 3270 (effective November 1, 2020) amends **47 O.S. §§ 1112.2** and **1112.3** regarding **motor vehicle license plates and registrations**. This Bill amends Section 1112.2 to **increase the time from five days to fifteen calendar days** that a purchaser of a used motor vehicle from which the license plate has been removed by the previous owner can operate the vehicle without a license plate so long as a **dated, notarized bill of sale** is carried in the vehicle. It also amends Section 1112.3 to allow **electronic versions of vehicle registration certificates** and to allow vehicle operators to **redact home address information** printed on a registration certificate.

SB 408 (effective 90 days after sine die adjournment) addresses requirements for **driver license endorsements to operate certain vehicles**.

- The Bill amends **47 O.S. § 6-110.1** to insert a new subsection C (making previous subsection C into subsection D) providing that “[n]o person shall operate a motor vehicle requiring endorsements as provided for in this section without having a valid Class A, B, C or D license with the required endorsements.”
- The Bill amends **47 O.S. § 6-303** to add a new subsection J making it a **misdemeanor** to operate a motor vehicle on the public roadways without the necessary driver license endorsements.

HB 1276 (effective November 1, 2020) makes changes in law related to **license revocation for noncompliance with child support orders**.

- The Bill **repeals 47 O.S. § 6-201.1**, which has provided that the Commissioner of Public Safety shall revoke a person’s **driving privilege** upon receipt of a court order from the Department of Human Services, Office of Administrative Hearings, finding that the person is obligated to pay **child support** but is not in compliance with such order.
- The Bill also removes language from **43 O.S. § 139** which used to allow district courts to revoke or suspend occupational, professional, and business licenses and driving privileges of parents who were noncompliant with a child support order for at least 90 days.
- The definition of “license” is changed in **43 O.S. § 139.1** to remove references to authorizations to engage in a profession, occupation, or business and references to driver license or permit.

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

SB 1948 (emergency clause, effective May 21, 2020) amends numerous provisions in **Title 63**.

- Section 44 of the Bill amends **63 O.S. § 420(B)** to make clear that a person who does not have in their possession a state-issued medical marijuana license but who is in possession of up to **1.5 ounces of marijuana and can state a medical condition** shall be guilty of a misdemeanor offense punishable by a fine of up to \$400.00 but will **not be subject to any imprisonment**. Also provides that once an officer is satisfied as to the identity of the person, the officer shall issue a

written citation and notice to answer the charge in an appropriate court and shall release the person upon personal recognizance unless there is also a violation of some other provision of law.

- Section 44 of the Bill also amends 63 O.S. § 420(L) to clarify that a **caregiver license gives the licensee the same rights as a medical marijuana patient license**, “including the ability to possess marijuana, marijuana products and mature and immature plants . . . **but excluding the ability to use marijuana or marijuana products** unless the caregiver has a medical marijuana patient license.”
- Section 46 of the Bill amends 63 O.S. § 425(H) to provide that “[b]iomedical and clinical **research** which is subject to federal regulations and institutional oversight shall not be subject to State Department of Health oversight.”
- Section 48 of the Bill amends 63 O.S. § 427.2 to modify the **definitions** of (a) “medical marijuana waste” or “waste” to exclude “roots, stems, stalks and fan leaves” and (b) “usable marijuana” to include “stems” and “fan leaves.”
- Section 51 of the Bill amends 63 O.S. § 427.14(E)(11) to exempt individuals who were issued a medical marijuana business license prior to the enactment of the Oklahoma Medical Marijuana and Patient Protection Act from various Oklahoma **residency requirements**. Subsection F is amended to make the 90-day time constraint for OMMA consideration of a business license application a **90-business-day time constraint**. Subsection H is modified to remove “**publicly traded company[ies]**” from the list of persons and entities prohibited from receiving a medical marijuana business license.
- Section 53 of the Bill amends 63 O.S. § 1-324.1 to allow the State Department of Health to issue false certificates pursuant to a request by a law enforcement, military, or intelligence agency under the aegis of 21 O.S. § 1550.41(E) to identify a law enforcement officer or agent as another person for the sole purpose of aiding in a criminal investigation or a military or intelligence operation.
- Section 57 of the Bill amends 63 O.S. § 2-302(D) with respect to the frequency and types of information to be provided by manufacturers and distributors of controlled dangerous substances to the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.
- Section 59 of the Bill amends 63 O.S. 2-309D(B) to include tribal peace officers as individuals who, at the OBN Director’s discretion, may be allowed access to otherwise protected information for use in furtherance of criminal, civil, or administrative investigations and prosecutions in relation to efforts to guard against the diversion of controlled dangerous substances.

SB 1423 (emergency clause, effective May 19, 2020) increasing legal age to purchase or possess tobacco and/or vapor products.

- The Bill amends 63 O.S. § 1-229.12 to **define** “proof of age” to mean appropriate identification that describes the person as “twenty-one (21) years of age or older and contains a photograph or other likeness of the individual and appears on its face to be valid.”
- The Bill also amends 63 O.S. § 1-229.13 making it **unlawful for any person to sell, give, or furnish any tobacco or vapor product to someone under 21 years of age; requiring sellers**

and distributors of tobacco and vapor products **to demand proof of age** from prospective purchasers or recipients; and **replacing previous age requirements of 18 years old with 21 years old.**

- Additionally, the Bill amends [63 O.S. § 1-229.15](#) to require retail sellers of tobacco or vapor products to post a **sign** stating “IT’S THE LAW. WE DO NOT SELL TOBACCO PRODUCTS OR VAPOR PRODUCTS TO PERSONS UNDER 21 YEARS OF AGE.” Additional specifications for the sign are also given.
- The Bill amends [63 O.S. § 1-229.16](#) **changing age references** from 18 years of age to 21 years of age and **updating the form** retail sales clerks must sign by which they pledge to obey the law.
- **References to age** in [63 O.S. §§ 1-229.17](#), [1-229.18](#), [1-229.21](#), [1-229.22](#), and [1-229.26](#) are changed from 18 years of age to 21 years of age.
- The Bill amends [63 O.S. § 1-1530](#) to provide that the Department of Health and Department of Mental Health and Substance Abuse Services are to work together to develop new and innovative strategies to **prevent tobacco use “or use of vapor products by persons under the age of twenty-one (21).”** Previously, the statute only applied to tobacco use by minors.

[SB 1783](#) (effective November 1, 2020) amends [63 O.S. § 2-101](#) regarding industrial hemp. Amends 63 O.S. § 2-101 which modifies the definition of marijuana as not including industrial hemp, to provide that industrial hemp may “only be grown pursuant to the Oklahoma Industrial Hemp program” and that it “may be shipped intrastate and interstate.”

TITLE 2 – AGRICULTURE (and related provisions)

[SB 1528](#) (effective November 1, 2020) amends [2 O.S. § 3-403](#). The amendment seems to signal approval by the USDA of Oklahoma’s industrial hemp program. The [USDA’s website](#) shows that as of July 2020, Oklahoma’s program was permitted to “continue to operate under the 2014 pilot.”

TITLE 70 – SCHOOLS (and related provisions)

[SB 1948](#) (emergency clause, effective May 21, 2020) amends [70 O.S. § 3311.5](#). The amendment allows CLEET to authorize **municipalities with populations less than 65,000 and counties with populations less than 500,000 to operate basic law enforcement academies** upon proper application. CLEET is limited to authorizing only two such entities’ applications per year.

[SB 1198](#) (emergency clause, effective July 1, 2020) creates new law at [70 O.S. § 27-104](#) to be known as the “[Riley Boatwright Act](#).” The act requires that prior to the beginning of the 2020-2021 school year, **each school district board of education is to coordinate with emergency medical services providers to develop a plan for the provision of emergency medical services at athletic events** or other activities held at school district facilities.

SB 3398 (emergency clause, effective May 19, 2020) amends various statutes regarding teacher background checks.

- **70 O.S. § 5-142** is amended to require any **teacher** who does not have an Oklahoma criminal history record check from the OSBI as well as a national criminal history record check on file with his or her employing district shall complete such checks **upon the next renewal of his or her teaching certificate**. Any other person employed by a school district who does not have such record checks on file must complete them **by July 1, 2022**. Any **teacher eligible to retire** from the Teacher's Retirement System who does not have such checks on file with his or her employing district must have such checks filed at the **earlier of either July 1, 2022, or at the next renewal of his or her teaching certificate**.
- **70 O.S. § 6-101** is amended to prohibit school districts from entering into written contracts with teachers who do not have Oklahoma criminal history record checks as required by **70 O.S. § 6-190**.

TITLE 57 – PRISONS AND REFORMATORIES (and related provisions)

SB 1424 (emergency clause, effective July 1, 2020) new law at **57 O.S. § 528.8** regarding pay increases to certain Department of Corrections (DOC) employees. The pay raises are applicable to DOC personnel employed by DOC on the last working day of June 2020 and assigned to work at North Fork Correctional Center, Oklahoma City Community Correctional Center, or a facility listed in **57 O.S. § 509**. The increase is for up to the equivalent of \$2.00 per hour but shall be reduced “by an amount proportional to the raise that was received pursuant to [2019’s **HB 2771**].” **HB 2771** provided for a general proportional pay raise for all state workers in 2019.

HB 3251 (effective November 1, 2020) amends **57 O.S. § 571** to add various domestic abuse crimes to the definition of violent crime. Specifically, the Bill adds “domestic abuse by strangulation,” “domestic assault with a dangerous weapon,” “domestic assault and battery with a dangerous weapon,” and “domestic assault and battery with a deadly weapon,” as provided for in **21 O.S. § 644**, to the list of crimes defined as violent crimes.

TITLE 74 – STATE GOVERNMENT and TITLE 75 – STATUTES AND REPORTS (and related provisions)

SB 1922 and **HB 4161** (effective July 1, 2020) general appropriations bills. The Bills were passed on veto overrides. **HB 4161** authorizes funds allocated in Sections 113-117 of **SB 1922**, which are related to the Department of Public Safety, to be used to implement **REAL ID**, expend for equipment and other things related to 911 services on Oklahoma Turnpikes, to hold an OHP Trooper academy, and to implement a medical marijuana pilot program.

- Several sections of SB 1922 allocate monies from the [Opioid Lawsuit Settlement Fund](#) to various state agencies “to address [the] impact of opioids on the state and its residents.”
 - Section 67 gives \$7,977,420.00 to the Oklahoma Health Care Authority.
 - Section 70 gives \$12,000,000.00 to the Department of Mental Health and Substance Abuse Services.
 - Section 105 gives \$1,579,714.00 to the Department of Corrections.
 - Section 110 gives \$500,000.00 to the Board of Medicolegal Investigations.
 - Section 112 gives \$2,400,000.00 to the Oklahoma Bureau of Narcotics and Dangerous Drugs.
 - Section 120 gives \$1,500,000.00 to the Attorney General’s Office.
 - Section 130 gives \$3,000,000.00 to the Oklahoma Supreme Court.
- Section 106 of the Bill authorizes OSBI to spend up to a maximum of \$100,000.00 for the purchase of “evidence items, paying fees to informers or special employees, paying expenses incurred in the prosecution and defense of civil actions, and paying other expenses as incurred under the Evidence Fund activity in trying to apprehend and convict violators of the laws of this state.”

[HB 1799](#) (effective November 1, 2020) amends [75 O.S. § 13](#) to permit the Secretary of State “to provide for the annual compilation, codification and annotation of the Oklahoma Statutes and the Oklahoma Session Laws in the form of electronic publication accessible to the public free of charge.” Selection of the vendor is exempted from the competitive bidding requirement of the Oklahoma Central Purchasing Act. (This exemption is also noted in an amendment to [74 O.S. § 85.3A](#).)

[HB 3967](#) (effective November 1, 2020) creates new law at [74 O.S. § 582](#) declaring Israel to be a “prominent trading partner.” Under the legislation, the state and companies that do business with the state are advised **not to boycott trade with Israel** (the statutory language is “should not boycott”). The state is further prohibited from entering into contracts with any company who does not submit “written certification” that the company is not currently engaged in a boycott of goods or services from Israel. For purposes of this statute, the “state” is defined to include “an agency, board, commission or department of this state.”

[SB 1948](#) (effective May 21, 2020) amends [74 O.S. § 150.2](#), which outlines the powers and duties of the Oklahoma State Bureau of Investigation (OSBI). This Bill adds a grant of power to the OSBI “to contract with municipal or county law enforcement agencies to conduct administrative reviews of law enforcement use-of-force investigations for compliance with current investigative procedures, standards and law.” It also provides that any such use-of-force investigation review shall be conducted by a certified peace officer.

[HB 3939](#) (emergency clause, effective July 1, 2020) amends [74 O.S. § 918.1](#) to require distributions of a member’s benefit under the Oklahoma Public Employees Retirement System ([OPERS](#)) to begin no later than required by [Section 401](#) of the federal Internal Revenue Code.

HB 4138 (effective 90 days after sine die adjournment) creates new law at **74 O.S. § 30.3** et seq. with regard to opioid abatement efforts. The Bill creates “political subdivision opioid abatement grants” which are “monetary grants to abate the opioid crises in a comprehensive manner that includes cooperation and collaboration with political subdivisions.” Approved purposes for such grants include “evidence-based, forward-looking strategies, programming and services” used to address many different topics specifically identified in the statute. Some of those topics closely related to law enforcement efforts include “decreas[ing] the oversupply of licit and illicit opioids,” “address[ing] the needs of individuals who are involved, or who are at risk of becoming involved, in the criminal justice system due to opioid use, abuse or disorder through programs or services in municipal and county criminal judicial systems, including prearrest and postarrest diversion programs, pretrial services and drug or recovery courts,” “support[ing] efforts to prevent or reduce overdose deaths or other opioid-related harms, including through increased availability and distribution of naloxone and other drugs that treat overdoses for use by first responders [and others],” “reimburse[ing] or fund[ing] law enforcement . . . expenditures relating to the opioid epidemic, including costs of responding to . . . police calls for service, equipment, treatment or response alternatives, and training for law enforcement . . . as to appropriate practices when dealing with opioids or individuals who are at risk of opioid overdose or death,” and others.

The Bill also creates the **Oklahoma Opioid Abatement Board** to be comprised of nine members appointed as follows: one member each appointed by (1) the Governor, (2) the State Auditor and Inspector, (3) the State Treasurer, and (4) the State Superintendent of Public Instruction; two members appointed by both (1) the Speaker of the House and (2) the President Pro Tempore of the Senate; and the Attorney General or his or her designee, who shall be an ex officio member and will only be entitled to vote in the case of a tie.

HB 4140 (effective 90 days after sine die adjournment) appropriates \$10,220,000.00 into the Oklahoma Opioid Abatement Revolving Fund created pursuant to HB 4138.

HB 2272 (effective November 1, 2020) amends **74 O.S. § 915** with regard to calculating retirement benefits for deputy sheriffs and county jailers.

HB 3613 (effective November 1, 2020) creates new law at **51 O.S. § 50** to be known as the “**Personal Privacy Protection Act**.” This new law will prohibit public agencies, including any state or local governmental unit, political subdivision, or court, from collecting “personal affiliation information,” which is defined as “any list, record, register, registry, roll, roster or other compilation of data of any kind that directly or indirectly identifies a person as a member, supporter, or volunteer of, or donor of financial or nonfinancial support to” any non-profit entity organized under section 501(c) of the US Internal Revenue Code. The law also prohibits public agencies from disclosing “personal affiliation information” that may already be in their possession and specifically exempts such information from the disclosure requirements of the Oklahoma Open Records Act. The law does not preclude reports or disclosures required by the Oklahoma Ethics Commission prior to the effective date of the act, lawful warrants issued by competent courts, lawful requests for discovery during litigation, and admission of such information as relevant evidence before a competent court (however courts are prohibited from “publicly reveal[ing] personal affiliation information absent a specific finding of good cause.” Knowing violation of the act shall constitute a misdemeanor.

SB 661 (emergency clause, effective March 19, 2020) amending the Open Meetings Act to allow for more liberal use of videoconferencing. The Bill amends **25 O.S. §§ 304, 306, and 307.1** to allow public bodies to hold their open meetings using exclusively videoconferencing or teleconferencing technology during the existence of the COVID-19 emergency. (The authorization ceases upon the termination of the emergency declaration by the governor or November 15, 2020, whichever occurs first.) Special requirements are imposed to conduct such meetings and the Attorney General’s office provided FAQ sheets **#1** and **#2** to help agencies navigate the authorization. Notice provisions in **25 O.S. § 311** were also amended to eliminate the requirement that notice of a public meeting must be made available to the public at the principal office of the public body or at the location of the meeting. (Such modification also ceases upon the termination of the emergency or November, 15, 2020, whichever occurs first.)

COURTS AND JURIES

HB 2673 (emergency clause, effective July 1, 2020) modifying judicial compensation. The Bill rejects the [proposal by the Board on Judicial Compensation of a 9.2% salary increase](#) for judges but approves an increase of 4.5%. The judges affected are the Chief Justice and other justices of the Supreme Court, the Presiding Judge and other judges of the Court of Civil Appeals, the Presiding Judge and other judges of the Court of Criminal Appeals, District Judges, Associate District Judges, and Special District Judges. This is a non-codified piece of legislation that goes into effect on July 1, 2020.

SB 3756 (effective November 1, 2020) authorizes the use of videoconferencing technology in Oklahoma courts. As discussed previously in the section on Criminal Procedure, new law is created at 20 O.S. § 130 to permit the use of videoconferencing technology in “all stages of civil or criminal proceedings” but restricts its use “in a jury trial or a trial before a judge.” Many courts across the state have already adopted the use of videoconferencing technology—at least for certain matters—and such use was specifically endorsed in the [Third Emergency Joint Order Regarding The COVID-19 State of Disaster](#) issued by the Oklahoma Supreme Court and Oklahoma Court of Criminal Appeals.

SB 1054 (emergency clause, effective March 19, 2020) amending 28 O.S. § 86, which deals with the Lengthy Trial Fund. This Bill provides for the Office of Management and Enterprise Services to transfer, at the request of the Administrative Director of the Courts, any monies from the Lengthy Trial Fund to other funds as necessary to allow the Supreme Court, Court of Civil Appeals, and district courts to perform duties imposed on them by law. Such authorization is granted until June 30, 2021.

SOME OTHER LEGISLATIVE ACTIONS THAT MAY BE OF INTEREST

[SJR 27](#) (received by Secretary of State on May 15, 2020) directs the Secretary of State to refer to the people a proposed amendment to **[Section 40 of Article X](#)** of the Oklahoma Constitution (the Tobacco Settlement Endowment Trust Fund). The gist of the proposition is as follows: “This measure amends Section 40 of Article 10 of the Oklahoma Constitution. It modifies the amount of the annual tobacco settlement payments to the state to be deposited into the Tobacco Settlement Endowment Trust Fund. It modifies the amount of the annual tobacco settlement payments to the state to be deposited into the Tobacco Settlement Fund for appropriation by the Oklahoma Legislature. It specifies that deposits into the Tobacco Settlement Fund shall be appropriated and expended to draw down federal matching funds for the Medicaid program.

This measure is styled **[State Question 814](#)** and will be on the ballot on November 3, 2020.

[SB 1375](#) (effective November 1, 2020) amends **[85A O.S. §§ 50](#)** and **[56](#)** to recognize **chiropractors and chiropractic services** as appropriate caregivers and treatments under the Administrative Workers’ Compensation Act.

[SB 1718](#) (effective November 1, 2020) amends several sections in Title 36 related to **insurers, mental health and substance use disorders**. Four sections are amended, including 36 O.S. §§ **[6060.10](#)**, **[6060.11](#)**, **[6060.12](#)**, and **[6060.13](#)**. Definitions are changed and added and new obligations are placed on insurers and health benefit plans with regard to mental health and substance use disorders.

[HB 3068](#) (effective November 1, 2020) amends **[68 O.S. § 238.2](#)** eliminates the requirement that a state employee who fails to come into **compliance with income tax laws** after notice be terminated and instead allows for such employee’s wages to be **garnished** until tax compliance is obtained.

[HB 2871](#) (effective November 1, 2020) creates new law at **[34 O.S. § 3.2](#)** to allow **registered voters who are certified participants in the address confidentiality program to use the address given to the person by the Attorney General’s Office as their address for purposes of signing an initiative or referendum petition**. The address confidentiality program is established under **[22 O.S. § 60.14](#)** and allows victims of domestic violence, sexual assault, and stalking to be given a “new address” to prevent their assailants from finding them.

[HB 3916](#) (effective November 1, 2020) amends **[3A O.S. § 710\(2\)](#)** to allow lottery tickets **to be purchased with checks, credit cards, and charge cards in addition to cash and debit cards**. Actually, the statute now says “[a]ll forms of applicable retail payment shall be accepted.” Potentially, I guess that means that lotto tickets could also be bought with Bitcoin or PayPal and other electronic transfers.

[SB 1877](#) (effective November 1, 2020) creates new law at 61 O.S. § 334 which requires state agencies to ensure that a “lactation room,” meaning a hygienic place other than a bathroom and which is shielded from view, free from intrusion, and contains a chair, working surface, and an electrical outlet, is available for use by state employees to breast feed or express breast milk.

[SB 285](#) (effective November 1, 2020) amends [40 O.S. § 435](#) to require state agencies to allow employees who are lactating a reasonable paid break time each working day to use the lactation room now required by SB 1877 “for the purpose of maintaining milk supply and comfort.” The Bill continues to allow and encourage non-state-agency employers to provide such breaks but does not require them to do so if doing so “would create an undue hardship on the operations of the employer.”

INDIAN COUNTRY JURISDICTION

[McGirt v. Oklahoma](#), U.S. Supreme Court Case No. 18-9526. ([Argued May 11, 2020](#) and [decided July 9, 2020](#)).

Two Oklahoma criminal cases have traveled to the U.S. Supreme Court in the last couple of years. The first case to be granted certiorari was [Sharp v. Murphy](#) (previously known as *Royal v. Murphy*), U.S. Supreme Court Case No. 17-1107. The *Murphy* case came to the Supreme Court from a ruling by the U.S. Court of Appeals for the Tenth Circuit. *Murphy* involves a Muscogee (Creek) citizen who was convicted of first degree murder and sentenced to death for a horrific crime that involved the beating and castration of a romantic rival and the rival’s eventual death from being left by Murphy to bleed out on a rural McIntosh County road. In post-conviction relief applications and federal habeas corpus petitions Murphy argued that his prosecution and conviction were invalid because the historic boundaries of the Muscogee (Creek) reservation had never been disestablished and so the area in which he committed his crime was still Indian Country for purposes of the Major Crimes Act and so state authorities had no jurisdiction to try him. The Tenth Circuit sided with Murphy, finding the reservation is still intact. Current U.S. Supreme Court Associate Justice Neil Gorsuch was on the Tenth Circuit panel when that court heard Murphy’s case and so was excluded from consideration of the case at the high court. After hearing oral arguments in 2018, the Supreme Court took the very unusual step of calling for additional briefing and re-argument. The case has yet to be reargued.

After calling for additional argument in *Murphy*, the Supreme Court granted certiorari in [McGirt v. Oklahoma](#), another case involving a serious state-court felony conviction involving a member of the Muscogee (Creek) Nation whose crime was committed within the historic boundaries of the Muscogee (Creek) reservation. McGirt was convicted of serious sex crimes against a minor. The *McGirt* case arrived at the U.S. Supreme Court from a decision of the Oklahoma Court of Criminal Appeals. The Supreme Court heard oral arguments in the case in May 2020 (if you click on the hyperlink “Argued May 11, 2020”

above, you can listen to the arguments). The issue was essentially the same as that in *Murphy*—does the Muscogee (Creek) reservation still exist such that Major Crimes Act jurisdiction prevents Oklahoma from trying Indians accused of serious crimes within the bounds of the historic reservation? The determination of this issue has far-reaching effect in eastern Oklahoma because the treatment of territory formerly conferred on the Five Tribes (Cherokee, Muscogee (Creek), Seminole, Choctaw, and Chickasaw) has all been similar over the last 100 or more years. If the Muscogee (Creek) reservation is found to be intact, then the historic borders of each of the other four tribes named above would also likely be found to be intact upon a proper legal request.

On July 9, 2020, the Supreme Court issued its 5-4 [opinion in *McGirt*](#). The majority opinion was delivered by Justice Gorsuch (who authored the Tenth Circuit’s opinion in *Murphy*) with Justices Ginsburg, Breyer, Sotomayor, and Kagan joining him. The Chief Justice filed a dissent with Justices Alito, Kavanaugh, and Thomas joining him (Justice Thomas did not join in one of the Chief Justice’s footnotes) and Justice Thomas filed his own dissenting opinion as well. Essentially, the Court found that the Muscogee (Creek) Nation’s historic boundaries constitute a continuing “reservation,” at least for Major Crimes Act (MCA) purposes. However, as the Court acknowledges, “many federal civil laws and regulations do currently borrow from §1151 when defining the scope of Indian country.” *McGirt*, SLIP OP majority opinion at 40. Meaning, there could be wide-ranging legal ramifications from this opinion, despite the Court’s assertion that it was only deciding the case based on the MCA.

This ruling could trigger a series of events that turns almost all of eastern Oklahoma into Indian Country for purposes of criminal jurisdiction. This could significantly complicate enforcement matters because arrest and prosecutorial jurisdiction anywhere within the historic Muscogee (Creek) Nation boundaries now depends on the status of the perpetrator and victim as Indian or non-Indian. In other words, for every crime in the affected areas, authorities will first have to determine whether an accused person and/or his or her victim is Native American or not. As noted, such circumstances may soon extend to other areas of eastern Oklahoma.

Here’s a quick review of Indian Country jurisdictional principles:

- Indian Country includes (1) reservation land; (2) dependent Indian communities; and (3) all Indian allotments, the Indian titles to which have not been extinguished. [18 USC § 1151](#).
- If both the perpetrator and victim are non-Indian, even though the crime occurred in Indian Country, the state would have jurisdiction.
- If the perpetrator is non-Indian and the victim is Indian then jurisdiction is federal.
- If the perpetrator is Indian and the victim is non-Indian and the perpetrator has not been punished by the tribe, then jurisdiction is federal.
- If both the perpetrator and victim are Indian and the crime is a major crime under the Major Crimes Act, [18 USC § 1153](#), then jurisdiction is federal and tribal.
- If both the perpetrator and victim are Indian and the crime is not one of the crimes listed in the Major Crimes Act, 18 USC § 1153, jurisdiction is exclusively tribal.

If you're confused, here are a couple of resources that may help clear things up. The first is from the [Tribal Law and Policy Institute](#) and the other is from the Offices of the United States Attorneys [Criminal Resource Manual](#).

Congress could eliminate the Indian Country jurisdiction complications regardless of the Supreme Court's decision by either formally disestablishing the reservations of the affected tribes (historically they have been treated as though they were disestablished for at least the last 100 years) or Congress could give Oklahoma jurisdiction in Indian Country as it has done with other states pursuant to Public Law 280 or it could fashion a uniquely Oklahoma solution. However, despite how significant of an issue this may be for law enforcement and residents of eastern Oklahoma, it is likely relatively insignificant to Congress. Even if it were to be significant to Congress, there are still questions as to whether Congress would or could enact a "fix."

Localized practical fixes for law enforcement agencies could include more cross-deputations between municipal, state, and tribal agencies. That fix, however, does not sort out the complications that will arise in prosecuting cases (determining which government has authority to bring charges and which court has jurisdiction to hear complaints).

The Oklahoma Attorney General's Office (on behalf of the state) and the administrations of the Chickasaw, Cherokee, Choctaw, Muscogee (Creek), and Seminole Nations were previously working on a joint solution to the enforcement problems that stem from the *McGirt* decision. On July 9, 2020, the six entities issued a [joint statement](#) that suggested an agreement regarding a "framework of shared jurisdiction" was in the works and on July 16, 2020, those same entities released an "[agreement-in-principle](#)," which called for various legislative and intergovernmental cooperative fixes. However, on July 17, 2020, that agreement was called into question by a letter from Muscogee (Creek) Principal Chief David W. Hill, which said the "Muscogee (Creek) Nation is not in agreement" with it. On July 20, 2020, Governor Stitt issued [Executive Order 2020-24](#) establishing the "Oklahoma Commission on Cooperative Sovereignty" to "address concerns and make recommendations to the State and the United States Congress" in light of *McGirt*. Attorney General Hunter has also released a [FAQ](#) (frequently asked questions) document regarding the case and trying to dispel some of the misinformation that has arisen lately. I'm sure there will be much more to come on this matter.