Council on Law Enforcement Education and Training

2018 Legal Update

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Please keep in mind that this document is, by necessity, a summary. If we were to copy all the new laws, this document would run to several thousand pages. Even a detailed summary of every provision would be hundreds of pages long, and that is simply not feasible. You are encouraged to read the complete laws, available at www.oscn.net. Click on 'legal research' and then click on 'Oklahoma Statutes Citationized'. You can get a complete history of each bill at the Oklahoma Legislature's website: http://webserver1.lsb.state.ok.us/WebBillStatus/main.html. The 'enrolled' bill is the final version.

NOTE – as a reminder again: From 2016 Legislative session, but effective January 1, 2017, SB 1202, amended 70 O.S.3311.4:

B. Beginning January 1, 2017, and annually thereafter, every active reserve peace officer, certified by CLEET pursuant to Section 3311 of this title, shall attend and complete a minimum of eight (8) hours of continuing law enforcement training accredited or provided by CLEET which shall include a mandatory one (1) hour on mental health issues.

This is in addition to the **required firearms qualification**.

SO, all Reserve Officers must annually complete eight hours continuing education which must include one hour on mental health. Full-time Officers must annually complete 25 hours of which two hours must be mental health. Whether full-time or reserve, all officers must also complete firearm qualification annually.

The officer, whether Reserve or Full Time, will be suspended if the training is not completed during the year in which it is required. When the training is then received, the officer is statutorily required to pay a reinstatement fee of $150 in order to have certification reinstated.

TITLE 21 – CRIMES AND PUNISHMENTS

HB 1124 (effective November 1, 2018) creates the Justice for Danyelle Act of 2018 and amends **21 O.S. 1125** to reflect that the "zone of safety" for victims of sex offenders now includes the victim's residence. A person who has been convicted of a sex crime and who is required to register as a sex offender is now prohibited from loitering within 1000 feet of the victim's residence. In addition, **57 O.S. 590** is amended to prohibit the sex

offender from residing, either temporarily or otherwise, within 2000 feet of the victim's residence.

HB 2281 (effective November 1, 2018) implements the Governor's Justice Reform Task Force Recommendations relating to various crimes. The amended statutes are listed below.

21 O.S. 1416, Warehouse Receipts-Fraud-Penalty is amended to reflect that if the value of property is less than $1,000 the person is guilty of a misdemeanor. If the value is $1,000 or more it's a felony but with graduated penalties based on the value (i.e., $1,000 but less than $2,500, punishment is up to two years in custody of DOC or one year in county jail; $2,500 but less than $15,000, punishment is in the custody of DOC for not more than five years or up to one year in county jail).

21 O.S. 1451, Embezzlement defined (NOTE: as last amended by State Question 780) is amended to provide that a person who is convicted of misdemeanor embezzlement can be punished, at the discretion of the court, by one or more nights or weekends in the county jail. The amendments also provide graduated penalties for felony embezzlement.

21 O.S. 1532, False Personation-Receiving Money or Property Intended for Another is amended to provide that if the money or thing of value is less than $1,000 it is a misdemeanor. If it's $1,000 or more, it's a felony subject to graduated penalties depending on the amount.

21 O.S. 1541.2, Obtaining Property by Trick or Deception - Attempt - False Representation or Pretense - Confidence Game (NOTE: as last amended by State Question 780) is amended to reflect that if the property obtained is $1,000 or more it is a felony but subject to the graduated penalties as discussed above. In addition, the defendant "shall also be ordered to pay restitution to the victim."

21 O.S. 1541.3, False or Bogus Checks (NOTE: as last amended by State Question 780) is amended to reflect that if a person makes, draws, utters, or delivers false or bogus checks the total sum of which is more than $2,000 (previously it was $1,000) even though each check is less than $1,000 in pursuance of a common scheme or plan to cheat or defraud the person is guilty of a felony. Larger amounts are subject to graduated penalties. If the total sum of two or more

bogus checks is over $500 but less than $2,000, it is a misdemeanor. In the latter case, the person can be sentenced to not more than a year in the county jail or, at the discretion of the court, be sentenced to nights or weekends in the county jail and restitution.

21 O.S. 1577, Sale, Delivery or Receipt of Forged Notes or Instruments - Aggregation of Offenses Due to Formulation of Plan; 21 O.S. 1578, Possession of Forged Notes or Instruments - Aggregation of Offenses Due to Formulation of Plan; 21 O.S. 1579, Other Forged Instruments (NOTE: all as last amended by State Question 780) and 21 O.S. 1592, Publishing Counterfeit Instruments or Coin as True. These statutes are revised to eliminate references to "forgery in the third degree" and generally provide that the crimes are misdemeanors if the value is less than $1,000 and a felony if $1,000 or more with graduated penalties as the value increases.

21 O.S. 1704, Grand Larceny and Petty Larceny Defined; 21 O.S. 1705 (NOTE: both as last amended by State Question 780). Among other things, these statutes are amended to resolve a conflict. Now Grand Larceny in the definition in §1704 is when the property taken is of a value of $1,000 or greater (previously it was exceeding $1,000---the change makes it consistent with § 1705). It remains Grand Larceny if the property, even though not of a value of $1,000 or greater, is taken from the person.

Section 1705 is amended to reflect that if the property taken is one or more firearms, if the property is taken from the person of another or if the value of the property taken is $1,000 or more but less than $2,500, it is a felony punishable by imprisonment in the custody of the Department of Corrections not exceeding two years or in the county jail not exceeding one year.

If the value is $2,500 or more it is subject to graduated penalties.

The person "**shall** also be ordered to pay restitution" (emphasis added).

21 O.S. 1713, Receiving Stolen Property - Reasonable Inquiry Required (NOTE: as last amended by State Question 780). As with the other statutes, it's a misdemeanor if the property is of a value of less than $1,000 and if the property

is of a value $1,000 or more it is a felony subject to graduated penalties based on the value.

21 O.S. 1720, Theft of Aircraft, Automobile, Automotive Driven Vehicle, or Construction or Farm Equipment. The punishment for this statute is changed from "…confinement in the State Penitentiary for a term of not less than three (3) years, nor more than twenty (20)…" to "imprisonment in the custody of the Department of Corrections for a term not exceeding five (5) years if the value of the vehicle is less than Fifty Thousand Dollars ($50,000.00) or for a term of not less than three (3) years, nor more than ten (10) years if the value…..is Fifty Thousand Dollars ($50,000.00) or greater…."

21 O.S. 1731, Larceny of Merchandise from Retailer or Wholesaler - Punishment - Subsequent Convictions (NOTE: as last amended by State Question 780). The statute is amended to reflect the graduated penalties as in the above statutes; to reflect that if the person commits three or more separate offenses under this section in a 90 day period, the value of the property in each can be aggregated to determine the appropriate punishment; that if the person acts in concert with another, each person is liable for the aggregated value of all items taken by all individuals and also subject to the penalties in 21 O.S. 421 (conspiracy); and, "shall also be ordered to pay restitution."

47 O.S. 4-102, Unauthorized Use of Vehicle or Implement of Husbandry is amended to reflect that upon conviction of unauthorized use of a vehicle the person is "guilty of a felony punishable by imprisonment in the custody of the Department of Corrections for a term not to exceed two (2) years." Previously it fell under the general punishment statute at 47 O.S. 17-102 (1-5 years plus fine). A new section is added making unauthorized use of an implement of husbandry (which includes receiving, possessing, concealing, selling, or disposing of it) a felony, punishable by the general punishment statute at 47 O.S. 17-102 (one to five years plus fine).

47 O.S. 17-102, Felonies, general punishment is changed from "imprisonment" for not less than one year nor more than five years to "imprisonment in the custody of the Department of Corrections" for not less than one year to not more than five years.

> **59 O.S. 1512, Oklahoma Pawnshop Act - Administration and Enforcement**, is amended to provide that a person who sells or pledges property to a pawnbroker who uses false or altered identification or a false declaration of ownership for property when the value of the property is less than $1,000 is guilty of a misdemeanor. If the value is $1,000 or more it is a felony subject to graduated penalties.

HB 2527 (effective November 1, 2018) amends 21 O.S. 1277 relating to the carrying of handguns by allowing the sheriff to authorize certain county employees who have handgun license under the Oklahoma Self-Defense Act to carry a concealed handgun in the scope of employment while within the courthouse. The sheriff can require that the employee complete additional training or instruction. In addition, the Board of County Commissions can authorize certain county employees with SDA licenses to carry a concealed handgun in the scope of employment on county annex facilities or grounds surrounding the county courthouse. The county employees so authorized are not permitted to carry the handgun into a courtroom, sheriff's office, adult or juvenile jail or any other prisoner detention area.

HB 2625 (effective November 1, 2018) amends 21 O.S. 1289.8 relating to the carrying of firearms by officers who have a Retired Firearm Permit issued by CLEET. Previously the retired officer was permitted to carry a firearm "anywhere in the State of Oklahoma." With the change, the retired officer with the permit can carry a firearm "throughout the State of Oklahoma." Presumably, the change was made to reflect that there are some places where a firearm is not permitted such as prisons and jails.

HB 2632 (effective November 1, 2018) amends 21 O.S. 1289.25 relating to Physical or Deadly Force Against Intruder. The change adds "places of worship" to those places where the statute applies (others include homes and places of business). A place of worship includes but is not limited to "churches, temples, synagogues and mosques" whether used as such on a temporary or permanent basis and whether owned or leased.

The bill added new language at 21 O.S. 1289.25(B) (2):

> 2. The person who uses defensive force knew or had a reasonable belief that the person against whom the defensive force was used entered or was attempting to enter into a dwelling, residence, occupied vehicle, place of business or place of worship for the purpose of committing a forcible felony, as defined in Section 733

of this title, and that the defensive force was necessary to prevent the commission of the forcible felony.

The definition of forcible felony in 21 O.S. 733 is "any felony which involves the use or threat of physical force or violence against any person."

HB 2702 (effective November 1, 2018) amends 21 O.S. 1761.1 relating to the dumping of trash on public or private property. The littering law is amended by adding section E to 21 O.S. 1761.1 to provide that a person who dumps any item of furniture, or item that exceeds fifty pounds, is punishable by a fine of not less than $1,000 nor more than $6,500 or by imprisonment in the county jail for not more than 60 days, or by both. The state traffic citation amount that may be assessed to a person caught dumping is increased from $400 to $500. If a peace officer of a county issued the citation, the funds that would otherwise be paid into the littering reward program (1/2 of the citation) are to be transferred to the general fund of the county of the law enforcement officer issuing the citation.

HB 2889 (effective November 1, 2018) amends 21 O.S. 1290.12 to clarify that a sheriff "may charge a fee of up" $25 for the fingerprinting fee assessed for a Self Defense Act license. Previously the statute stated the fee "shall not exceed" $25. The fee is for providing the two sets of prints required by the SDA.

HB 3260 (emergency clause, effective May 1, 2018) amends the requirements of the crime of stalking at 21 O.S. 1173. The change adds a definition of the word "following" to include the tracking of the movement or location of an individual through the use of a Global Positioning System (GPS) device or other monitoring device by a person, or person who acts on behalf of another, without the consent of the individual whose movement or location is being tracked. By way of reminder, stalking is when a person "willfully, maliciously, and repeatedly follows or harasses another person in a manner that" would cause a reasonable person (or family of that person) to "feel frightened, intimidated, threatened, harassed or molested" or actually causes the person to experience those feelings. The statute exempts from that definition the lawful use of a GPS device or other monitoring device by a car dealer or other motor vehicle creditor including a device containing technology to disable a vehicle and with the express written consent of the owner or lessee of the motor vehicle.

HB 3353 (effective November 1, 2018) amends various sections in Title 21 relating to weapons. The change in 21 O.S. 1272 eliminates "billy" from those weapons that are unlawful to carry. Section 1277 is amended to add "wildlife refuge" and "wildlife management area" to the list of places where it's not prohibited to carry a firearm pursuant to the Self Defense Act (NOTE: § 1277 was also amended by HB 2527 above). The Self Defense Act is amended at 21 O.S. 1290.8 to permit carrying a handgun while scouting.

SB 649 (effective November 1, 2018) amends 21 O.S. 51.1 relating to enhancement of punishment. The new language provides that a previous conviction for possession of a controlled dangerous substance, in either Oklahoma or another jurisdiction, cannot be used to enhance punishment under the second and subsequent offenses statute. Petit larceny offenses can no longer be used for enhancement. The language "punishable by imprisonment in State Penitentiary" is changed in a number of statutes to "punishable by imprisonment in the custody of the Department of Corrections." A person who has a previous felony conviction for a crime listed in 57 O.S. 571 (violent offenses as defined in the Oklahoma Prison Overcrowding Emergency Powers Act) who is convicted of another specified felony not listed in §571 may be punished by a term of not more than twice the maximum sentence that could have been imposed for a first conviction of the current offense. The specified crimes are: Uttering a forged prescription; Receiving stolen property; False personation; Unauthorized use of a motor vehicle; Grand larceny; False declaration to a pawnbroker; Forgery in the second degree; Receiving or possessing a stolen vehicle; or, Larceny of merchandise from a retailer. In addition, 21 O.S. 51.2 is amended. Before the change, that section stated that a person could not be sentenced as a second and subsequent offender if more than 10 years has elapsed since the felony conviction **unless** in the interim the person had been convicted of a misdemeanor involving moral turpitude. The change eliminates the reference to a misdemeanor involving moral turpitude so a person's subsequent felony is not subject to enhanced punishment if 10 years has elapsed since the first felony even IF the person had a subsequent misdemeanor conviction of a crime involving moral turpitude.

SB 786 (effective November 1, 2018) to amend the definition of Burglary in the 2nd Degree and create the crime of Burglary in the 3rd Degree (21 O.S. 1435). The burglary of "any automobile, truck, trailer, or vessel of another" is now 3rd Degree Burglary punishable by "imprisonment in the custody of the Department of Corrections" not exceeding five years. After November 1, 2018, 21 O.S. 1435 reads:

> A. Every person who breaks and enters the dwelling house of another, in which there is at the time no human being present, or any commercial building or any part of any building, room, booth, tent, railroad car or other structure or erection in which any property is kept or breaks into or forcibly opens, any coin operated or vending machine or device with intent to steal any property therein or to commit any felony, is guilty of burglary in the second degree.
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> B. Every person who breaks and enters any automobile, truck, trailer or vessel of another, in which any property is kept, with intent to steal any property therein or to commit any felony, is guilty of burglary in the third degree.

After the effective date, 21 O.S. 1436 reads:

> Burglary is a felony punishable by imprisonment in the custody of the Department of Corrections as follows:
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> 1. Burglary in the first degree for any term not less than seven (7) years nor more than twenty (20) years;
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> 2. Burglary in the second degree not exceeding seven (7) years; and
>
> 3. Burglary in the third degree not exceeding five (5) years.

SB 1005 (effective November 1, 2018) amends various statutes relating to human trafficking and sex crimes. The bill amends 21 O.S. 748.2 to require a peace officer or employee of a district court, juvenile bureau or Office of Juvenile Affairs to take protective custody of a minor when he or she has reasonable suspicion that the minor may be a victim of human trafficking and is in need of immediate protection. DHS is to be immediately notified. The minor shall not be subject to delinquency proceedings for prostitution or other nonviolent misdemeanors committed as a direct result of being a trafficking victim. The statute now states that it is an affirmative defense to delinquency or criminal prosecution for any misdemeanor or felony that the offense was committed during the time of and as a direct result of the minor being the victim of human trafficking.

The definitions of forcible sodomy (21 O.S. 888) and rape (21 O.S. 1111) are amended by providing that it is a violation of those acts when committed on a person who is at least 16 years of age but less than 18 years of age by a person responsible for the child's health, safety or welfare. Those persons include parent, legal guardian, custodian, foster

parent, a person over 18 with whom the child's parent cohabitates, any other adult residing in the child's home, an agent or employee of a residential home, institution, facility, or day treatment program, and an owner, operator, or employee of a child care facility.

Title 21 O.S. 1123 is amended to make it a felony to "force or require a child to defecate or urinate upon the body or private parts of another…" A parent or person responsible for the child's health, safety or welfare who commits a violation of paragraph A (lewd molestation), paragraph B (sexual battery), or paragraph C (lewd molestation of a corpse) when the victim is at least sixteen years of age but less than eighteen years of age is guilty of a felony subject to not more than 10 years imprisonment in the custody of DOC.

TITLE 22 – CRIMINAL PROCEDURE

HB 2881 (effective November 1, 2018) amends 22 O.S. 471.2, 22 O.S. 471.3, and 22 O.S. 471.4 relating to drug court programs. The eligibility requirements for drug court are relaxed. Previously the review of eligibility had to occur within four days of arrest and detention. Now it can occur at any time prior to disposition and sentencing **including**, sentencing on a petition to revoke a suspended sentence or probation violation. The change states that having been admitted to a drug court program within the past five years does not make the person ineligible for consideration.

HB 3283 (emergency clause, effective May 3, 2018) amends 22 O.S. 1007 relating to the restoration of competency of a person on death row who has been found to be insane. This amendment provides that the Department of Mental Health and Substance Abuse Services is required to provide competency restoration services for defendants at the location where the defendant is incarcerated. The Department may designate a willing and competent entity to provide the services. Before the defendant can be executed, sanity must be restored so that the defendant 1) has a rational understanding as to why he or she is being executed and 2) a rational understanding that he or she is to be executed and that execution is imminent.

SB 363 (emergency clause, effective March 5, 2018) amends 22 O.S. 1105.3 to permit special judges to determine eligibility for the release of defendants charged with certain crimes even if the person is not eligible for pretrial release by a pretrial

program. Prior to this legislation, only district or associate district judges could release these defendants under these circumstances.

SB 650 (effective November 1, 2018) amends 22 O.S. 18 relating to expungements. With this change a person with a non-violent felony conviction is eligible to apply for an expungement if:

- they have not had another felony or misdemeanor conviction in the last seven years (previously 15 years);
- has no pending charges; and
- at least five years have elapsed since the completion of the sentence.

SB 689 (effective November 1, 2018) amends various sections in Title 22 regarding the sentencing of offenders. Listed below are some of the changes.

- **22 O.S. 982a** permits the court to modify the sentence of an offender who received life without parole for a non-violent offense. To be eligible for the sentence modification, the person must have served at least 10 years and there must be a finding that the best interests of the public will not be jeopardized. Before modifying the sentence, the court must provide notice to the victim or representative of the victim and allow them to provide testimony at the hearing.
- **22 O.S. 985.1** is amended to provide that any departure from the mandatory minimum sentence shall not reduce the sentence to less than 25% of the mandatory term.
- **22 O.S. 988.2** is amended to remove the Level of Service Inventory as the only risk and needs assessment tool.
- **22 O.S. 988.8** is amended to provide that community sentencing shall include specialized supervision by DOC for repeat offenders, sex crime offenders, domestic violence offenders, and offenders with diagnosed mental health needs and, if identified on a risk and needs assessment, cognitive behavioral treatment.
- **22 O.S. 991a** is amended to provide that persons sentenced for 21 O.S. 644, assault and battery, are to receive an assessment for batterers which is to be conducted through a certified treatment program for batterers.

In addition, the court may require that persons sentenced for domestic abuse participate in an intervention program for batterers certified by the Attorney General.

If the defendant alleges the he or she is a victim of domestic abuse and the current conviction is a response to abuse, the court may require that he or she undergo an assessment in a domestic violence program certified by the Attorney General. If the assessment shows the person is a victim of domestic violence, the person shall undergo treatment and participate in a certified program for domestic violence victims.

Supervision for a person sentenced to probation under this section cannot be extended for a failure to pay fines, fees, and other costs (excluding restitution) except upon a finding of willful nonpayment.

Title 22 O.S. 991a (I) relating to taking DNA from persons convicted for certain misdemeanor convictions is amended (yet again! There have been several amendments to DNA collection past few years) to include those convicted of unlawful carrying of a firearm, illegal transport of a firearm, and discharging of a firearm as those who are required to submit to DNA testing (**subject** to the availability of funding which has apparently not occurred).

- **22 O.S. 991b** is amended to reflect, among other things, that a revocation for a "technical violation" of a suspended sentence cannot exceed six months for a first violation and five years for a second or subsequent violation. Technical violations are defined as a violation of the court-imposed rules and conditions of probation **other than:**
    - committing or being arrested for a new crime;
    - attempting to falsify a drug screen or failing three or more within a three-month period;
    - failing to pay restitution;
    - tampering with an electronic monitoring device;
    - failing to report initially or missing assigned reporting in excess of 60 days;
    - unlawfully contacting a victim, co-defendant, or criminal associate;
    - 5 or more separate and distinct technical violations within a 90 day period; and,

- any violation of the Specialized Sex Offender Rules.

Absent a finding of willful nonpayment, an offender cannot be revoked for failure to pay fines and costs.

22 O.S. 991c is amended to reflect that a deferred sentence, with some exceptions cannot exceed seven years (previously 10 years). If restitution has been ordered, the court can order the period of supervision to be extended for a period not to exceed three years. Any acceleration of a deferred sentence based on a technical violation cannot exceed 90 days for the first violation or five years for a second or subsequent violation.

SB 900 (emergency clause, effective May 1, 2018) amends 22 O.S. 996.1 to change the definition of "offender" in the Delayed Sentencing Program for Young Adults to include a person adjudicated as a juvenile delinquent or youthful offender. Title 22, §996.3 is amended to direct that DOC, upon an offender's completion of the program, notify the Sheriff of the county where the order was issued. The Sheriff is required to take custody of the offender.

SB 1098 (no effective date specified so effective 90 days after recess of the Legislature –August 2, 2018) creates the Criminal Justice Reclassification Coordination Council at 22 O.S. 1701. The 22-member council is to review and make recommendations to the Legislature regarding:

- the classification of all felonies into appropriate categories;
- appropriate sentence lengths for each class of felonies;
- appropriate enhanced sentences for crimes committed after offenders have been convicted of other crimes; and
- other appropriate changes that will improve the criminal justice system and ensure the pubic safety of its citizens.

The recommendations are intended to maintain or reduce the prison population.

The Council is to submit a report annually by December 31 each year.

SB 1346 (no effective date specified so effective 90 days after recess of the Legislature –August 2, 2018) amends 22 O.S. 977 to reflect that when a conviction is

entered the court clerk is to enter the month of birth on the minutes. Previously only the year of birth was entered.

TITLE 19 – COUNTIES AND COUNTY OFFICERS

HB 1120 (effective November 1, 2018) amends 19 O.S. 514.4 and 19 O.S. 514.5 This bill authorizes sheriffs to contract with a statewide association of county sheriffs to administer contracts with third parties attempting to locate and notify persons of their outstanding misdemeanor or failure-to-pay warrants. Sheriffs contracting with such an association are authorized to assign their rights and duties regarding the contracts to the association.

HB 3470 (effective November 1, 2018) amends 19 O.S. 180.43. With the change, funds received from a contract between a county and the Department of Justice, the Department of Corrections, or any municipality for the care of detainees in the county jail will be deposited in the Sheriff's Service Fee Account. Prior to the change, those funds were deposited in a separate revolving fund with the county treasurer. The change authorizes the sheriff to use the funds for capital expenditures. Any surplus can be used for salaries, training, equipment, or travel.

SB 279 (emergency clause, effective April 11, 2018) purportedly amends 19 O.S. 180.43. The change in this bill permits the county sheriff to contract with any public or private entity engaged in the business of transportation of prisoners. There is some confusion regarding this bill and whether it will remain in effect after November 1, 2018. See HB 3470 above which goes into effect on that date and seems to repeal, at least by implication, this change since the language about public and private entities in **not** in HB 3470. After November 1, 2018, oscn.net indicates the version in HB 3470 is the law and the statute does **not** have the relevant language that's in this bill.

SB 1021 (effective November 1, 2018) amends 19 O.S. 138.5 by deleting language that creates a rebuttable presumption that any defendant who is able to post bail is not indigent and therefore ineligible for the appointment of an indigent defender. The amendment directs the court to consider the ability to post bail in determining the eligible for the appointment of a public defender, but such consideration cannot be the sole factor for determining eligibility.

TITLE 37/ TITLE 37A – INTOXICATING LIQUORS, ALCOHOLIC BEVERAGES

NOTE: On October 1, 2018, these statutes and all other laws relating to alcoholic beverages will be transferred to the new Title 37A, the Oklahoma Alcoholic Beverage Control Act, created in response to State Question 792, approved by voters on November 8, 2016. Among other things, the Act will permit strong beer and wine to be sold in grocery and convenience Stores.

SB 1332 (effective October 1, 2018) amends 37A O.S. 2-139 relating to low point beer establishments within 300 feet of churches and school property. With the change, those establishments that were licensed prior to October 1, 2018 to sell low-point beer and which were permitted to be located within 300 feet of any school or church property are permitted to operate with any license in effect on October 1, 2018. The measure further provides that if the establishment ceases to be regularly open to the public or changes ownership, the provisions of this section no longer apply (i.e., the business would have to meet current spacing requirements).

SB 1333 (effective October 1, 2018) amends the definitions for the Oklahoma Alcoholic Beverage Control Act at 37A O.S. 1-103. The Act, among other things, defines "small brewer" as a brewer who manufactures less than 65,000 barrels of beer annually. Previously it was less than 25,000 barrels.

SB 1334 (effective October 1, 2018) amends the Oklahoma Alcoholic Beverage Control Act, 37A O.S. 2-121. An employee license under the act permits the person to work in a licensed package store, retail spirits, retail wine or retail beer establishment, brewpub, mixed beverage establishment, beer and wine establishment, bottle club, public event or any establishment where alcohol or alcoholic beverages are sold, mixed, or served. The amendment requires that a person seeking such a license complete a training program conducted by the ABLE Commission or by an agency approved by ABLE, within 14 days after initial licensure.

SB 1336 (effective October 1, 2018) amends the Oklahoma Alcoholic Beverage Control Act, 37A O.S. 3-125 to prohibit the sale, dispensing, serving, or consumption of alcoholic beverages on the premises of a mixed beverage, caterer, public event, charitable event, special event, on-premises beer and wine, small brewer or

brewpub licensee between the hours of 2:00 a.m. and 8:00 a.m. (previously sales were prohibited between 2:00 a.m. and 10:00 a.m.). In addition, municipalities may enact ordinances that require such premises to be **closed** between the hours of 2:00 a.m. and 6:00 a.m. Municipalities may also enact ordinances regulating the closing times of ABLE Commission licensees who sell alcoholic beverages for on premise consumption however no ordinance can be enacted for premises to open later than 6:00 a.m. or close earlier than 2:00 a.m.

SB 1498 (effective October 1, 2018) amends 37A O.S. 3-103 of the Alcoholic Beverage Control Act. The amendment requires the Alcoholic Beverage Laws Enforcement Commission to send notices of application to sell alcoholic beverages to the chief of police of the town or city. In addition, any political subdivision which is entitled to notice of an application for a license is considered an interested party and can appeal issuance of the license.

SB 1499 (effective October 1, 2018) amends 37A O.S. 2-148 of the Alcoholic Beverage Control Act. The amendment provides that an employee license under the Act can be issued to a person who has a felony conviction if the conviction is over five years old and was not for a violent felony listed in 57 O.S. 571.

SB 1570 (effective October 1, 2018) amends 37A O.S. 4-105 of the Alcoholic Beverage Control Act to permit counties to level an annual occupational tax on retailers of alcoholic beverages.

TITLE 47 – MOTOR VEHICLES

HB 1152 (effective November 1, 2018) amends the Oklahoma Temporary Motorist Liability Plan at 47 O.S. 7-626. This plan, created in 2013, provides minimum vehicle liability coverage for those whose license plates have been seized for failure to maintain insurance. Previously the above referenced statute stated:

> A statewide association of county sheriffs in Oklahoma shall serve as the Plan Administrator.

The amended language reads:

> The Insurance Commissioner may contract with a statewide association of county sheriffs in Oklahoma to serve as the Plan Administrator.

It appears the intent of the Legislature is to give the Insurance Commissioner the option of performing as Plan Administrator or contracting with a statewide association of county sheriffs.

HB 1560 (effective November 1, 2018) amends 47 O.S. 14-103 to permit loads with a height of over thirteen and one-half (13 ½) feet if authorized by a permit issued by the Commissioner of Public Safety or the Commissioner's representative in conjunction with the Department of Transportation. The highways to be used will be specified consistent with public safety and convenience.

HB 2634 (effective November 1, 2018) amends 47 O.S. 2-102 to permit the Commissioner of the Department of Public Safety to return to his/her previous position upon completion of his/her duties as Commissioner provided he/she is not otherwise disqualified due to disciplinary reasons, termination of employment or inability to effectively lead the agency.

HB 2635 (effective November 1, 2018) amends 47 O.S. 6-117 relating to Motor Vehicle Reports. The bill provides that the Motor Vehicle Report, including any record or information associated with the Motor Vehicle Report, is not a "public civil record" and is not subject to expungement. The Motor Vehicle Report is a summary of the driving record of a person and includes collisions, convictions of motor vehicle laws, and any action taken to against the driving privilege of the person for the last three years.

SB 1091 (effective November 1, 2018) amends 47 O.S. 11-902 relating to driving under the influence. This bill was authored by Treat of the Senate and Roberts [Dustin] of the house and signed by the Governor on April 12, 2018. SEE HB 2643 below. A provision that requires the district attorney to seek enhanced punishment due to previous convictions is removed. Before the change, the DA would have to seek the enhanced punishment. According to the Bill Summary, this bill cleans up statutory language to match the federal requirements so that the Oklahoma Department of Transportation (ODOT) can continue to receive federal funds. Because the language has not been consistent with federal requirements, last fiscal year ODOT did not receive approximately $14,000,000 that they would have received had the language been consistent.

HB 2643 (emergency clause, effective April 24, 2018) amends 47 O.S. 11-902 relating to driving under the influence). This bill was authored by the same elected officials and is identical to SB 1091 discussed above <u>except</u> this bill has an emergency clause and was signed by the Governor on April 23, 2018. This is the version that is in effect…..but it really doesn't matter since they're identical (but it DID become effective earlier which is presumably why this one was passed with the emergency clause).

HB 2651 (effective November 1, 2018) amends 47 O.S. 802 relating to commercial driver training. The Commissioner of the Department of Public Safety may require that training for Class A, B, or C commercial licenses include training on Human Trafficking recognition, prevention, and identification. If the Commissioner opts to require the training, the Commissioner shall collaborate with organizations that specialize in recognizing and preventing human trafficking and with the Oklahoma Bureau of Narcotics and Dangerous Drug Control (OBNDD).

HB 3290 (effective November 1, 2018) amends 47 O.S. 11-309 RE use of the left lane. In the apparent never-ending story of "stay out of the left lane unless you're passing," this statute has again been changed. Readers may recall that this statute was amended in 2017 to prohibit, subject to certain conditions such as traffic flow, road configuration, and the potential for merging traffic, driving in the left lane on a roadway with four or more lanes except when overtaking or passing another vehicle. This year the statute is amended to clarify that this prohibition does not prohibit driving in the left lane of a roadway within the city limits of a municipality if the road is not part of the National System of Interstate and Defense Highways. The bill also removed the language "a roadway divided into four or more lanes" and replaced it with "a roadway."

SB 1203 (no effective date specified so effective 90 days after recess of the Legislature – August 2, 2018) amends 47 O.S. 11-801 and creates new law at 47 O.S. 11-801e regarding speeding violations. The result of the change is to cap the fine and costs for speeding 1-10 miles per hour over the limit at $100. Of that amount, $5 is the fine. The remaining amounts are various costs/assessments, including the CLEET assessment which for this particular violation is now $4.50 (previously $10.00 pursuant to 20 O.S. 1313.2). The reduction in fine and costs will remain in effect until November 1, 2020, unless changed prior to that date.

SB 1266 (emergency clause, effective April 18, 2018) creates new law at 47 O.S. 14-124. The law exempts employees of custom harvester operations from the requirement of having a hazardous material endorsement for their commercial class A license.

SB 1339 (effective July 1, 2019 – note the year) amends and creates new law relating to vehicle registration and license tags. This legislation amends a variety of statutes relating to license tags. When these statutes become effective, among other changes, a license tag will go with the owner, rather than the vehicle, and owners must carry registration for the vehicle being operated.

> **47 O.S. 1112** is amended to require that when a vehicle is registered the owner must provide a full description of the vehicle to include, per the added language, the make, model, and color.
>
> **47 O.S. 1112.2** is created to provide that after the above effective date (July 1, **2019**) license plates are to remain with and in the name of the owner of the vehicle upon transfer, i.e., when a vehicle is transferred the seller keeps the plate to be used on a replacement vehicle of the same registration class. License plates cannot, after the effective date, be transferred between owners. Provisions are made for the person to pay the difference in registration costs between the sold and replacement vehicles (but if the vehicle is not replaced or the replacement vehicle has a lower registration cost no refund is to be given!).
>
> The person who buys the car is permitted to operate the vehicle for up to five days without a license plate if a dated notarized bill of sale is carried in the vehicle.
>
> **47 O.S. 1112.3** is created and provides that 30 days after purchase of a vehicle the driver/operator shall have in his/her possession or in the vehicle and display upon demand of a peace officer or employee of DPS the following:
>
> - Registration certificate or official copy thereof;
> - True copy of rental or lease documentation;
> - Registration certificate or official copy thereof issued for a replacement vehicle in the same registration period;
> - Temporary receipt printed upon self-initiated electronic renewal of a registration via the Internet; or

- Cab card issued for a vehicle registered under the International Registration Plan (The International Registration Plan is a registration reciprocity agreement among states of the United States, the District of Columbia and provinces of Canada providing for payment of apportionable fees on the basis of total distance operated in all jurisdictions).

47 O.S. 1113 is amended to provide that, after the effective date of **July 1, 2019**, certificates of registration will be carried in or on **all** vehicles (not just commercial vehicles as in current law) in such manner as to permit a ready examination upon demand of a peace officer or duly authorized employee of DPS.

TITLE 63 – PUBLIC HEALTH AND SAFETY

HB 2795 (effective November 1, 2018) amends 63 O.S. 2-302 to provide a new registration fee for medical facility owners that prescribe certain drugs on a monthly basis. Those owners must register with the Oklahoma Bureau of Narcotics and Dangerous Drugs annually if a majority of patients are prescribed opioids, benzodiazepines, barbiturates or carisoprodol (not including Suboxone or buprenorphine) on a reoccurring monthly basis.

HB 2798 (effective November 1, 2018) creates an Opioid Overdose Fatality Review Board with a sunset date of July 1, 2023. New law is created at 63 O.S. 2-1001 creating the 20-member board. The make-up of the board is set forth in 63 O.S. 2-1002. The Attorney General appoints 10 of the members and provides administrative assistance and services to the board. The remaining members are various agency heads in the mental health, medical, and law enforcement fields. Among other things, the Board is tasked with conducting case reviews of death of persons 18 years of age or older due to licit or illicit opioid use; collecting, analyzing, and interpreting data on opioid overdose deaths; by majority vote of the Board, making reports to various elected officials; and developing state and local databases on opioid overdose deaths. An annual statistical report is to be made detailing the incidences and causes of opioid overdose deaths that have been reviewed by the board. The report is to include recommendations for the medical and law enforcement systems.

New law is created at 63 O.S. 2-1003 that, among other things, states at § C:

> Upon the request of the Board**, every entity within** the medical and **law enforcement** system **shall provide to the Board any information requested** by the Board relevant to the discharge of its duties, **unless otherwise prohibited by state or federal law** (emphasis added).

HB 2913 (emergency clause, effective April 23, 2018) creates the Oklahoma Industrial Hemp Agricultural Pilot Program at 2 O.S. 3-401 et seq., and amends 63 O.S. 2-101. The Program allows universities and farmers who contract with universities to cultivate certified hemp seed for research and development for industrial purposes. The Program is managed by the Department of Agriculture, Food, and Forestry.

In addition, 63 O.S. 2-101 is amended to permit the growing of industrial hemp pursuant to the program. The bill also changes the spelling of "marihuana" (as it was spelled previously in the statute) to "marijuana" which now seems to be the preferred spelling.

HB 2931 (effective January 1, 2020) amends 63 O.S. 2-309 to require the use of electronic prescriptions for all Schedule II, III, and IV drugs after the effective date above. There are exceptions such as licensed veterinarians, where electronic/technology failures prevent the prescription from being transmitted electronically, practitioners other than pharmacists who dispense directly to the user, hospitals, nursing homes, hospice and dialysis facilities, etc.… Circumstances under which electronic prescriptions may not be used include various compound prescriptions and prescriptions issued under approved research protocols. After the effective date, a Schedule III, IV, of V drug cannot be filled or refilled more than six months after the date of the prescription or be refilled more than five times after the date of the prescription, unless renewed by the practitioner.

HB 3037 (effective November 1, 2018) amends 63 O.S. 1-292 to permit an epinephrine auto-injector to be prescribed to an "authorized individual." It permits an authorized individual to provide or administer an epinephrine auto-injector in the same manner as an authorized entity. An authorized individual is:

> ….an individual operating or participating in any entity or organization at or in connection with which allergens capable of causing anaphylaxis may be present, including, but not limited to, restaurants, recreation camps, youth sports leagues, amusement parks and sports arenas.

SB 793 (effective November 1, 2018) amends various sections in Title 63 to lessen punishments. Specifically, 63 O.S. 2-401 now provides the transporting or possessing with intent to distribute a Schedule I or II substance, except for marijuana is punishable by "imprisonment in the custody of the Department of Corrections" for not more than seven years. Previously the statute permitted punishment up to life. With the change, a second or subsequent offense is subject to 14 years in the custody of DOC.

For Schedule III, IV, or V or marijuana transporting or possession with intent is punishable by imprisonment in the custody of DOC not more than five years. A second conviction is punishable by no more than 10 years and a third by not more than 15 years.

The section that stated the sentence was not subject to suspension, probation, or deferred sentences unless it was a first offense is eliminated so someone convicted of a subsequent offense **can** receive those type sentences now.

Punishment for first offense manufacturing a controlled dangerous substance is punishable by imprisonment in the custody of DOC not to exceed 10 years; for a second offense not less than two nor more than 20 years; and, for a third offense not less than 10 years nor more than life.

The punishment for first offense trafficking in 63 O.S. 2-415 is set at imprisonment in the custody of DOC not to exceed 20 years; a second offense is subject to not less than four years nor more than life with a requirement that the person serve 50% of the term before being eligible for parole; and, a third trafficking conviction is punishable by not less than 20 years nor more than life, again with the requirement of serving 50% of the term before being eligible for parole. Those convicted of trafficking are not eligible for earned credits or any other type of credit that reduces the length of sentence below 50% of the imposed sentence.

The section dealing with cultivation of plants from which controlled dangerous substances are derived in 63 O.S. 2-509 is amended to reflect that the maximum sentence is 10 years (previously life). Second offense is punishable by two to 20 years and a third or subsequent conviction is punishable by not less than ten nor more than life.

SB 937 (effective November 1, 2018) amends 63 O.S. 2-309D relating to the Anti-Drug Diversion Act. With the change, tribal law enforcement agencies can access the central repository.

SB 939 (effective November 1, 2018) amends 63 O.S. 2-206 to add the salts, isomers, and salts of isomers of methylphenidate to Schedule II.

SB 940 (effective November 1, 2018) amends 63 O.S. 2-204 by adding several fentanyl compounds to the list of Schedule I drugs.

SB 1078 (effective November 1, 2018) amends 63 O.S. 2-415 to add fentanyl to the list of substances subject to trafficking penalties. Trafficking amounts of fentanyl and its analogs and derivatives are one or more gram of a mixture containing fentanyl or carfentanil or fentanyl analogs or derivatives.

SB 1367 (effective November 1, 2018) creates new law at 63 O.S. 2-413.1 prohibiting a peace officer from taking a person into custody based solely on the commission of an offense involving a schedule I or schedule II drug if the officer reasonably believes that the person is requesting emergency medical help "for an individual who reasonably appeared to be in need of medical assistance due to the use of a controlled dangerous substance." There are conditions to what the statute refers to as being immune from criminal prosecution. The officer must reasonably believe all of the following:

- The individual provided his/her full name and other relevant information requested by the officer;
- The officer remained at the scene with the individual who reasonably appeared to be in need of medical assistance due to the use of a controlled dangerous substance (Schedule I or II);
- The individual cooperated with emergency medical assistance personnel and peace officers at the scene.

In addition, the amount of the controlled dangerous substance involved does not constitute trafficking weight as provided in 63 O.S. 2-415.

The "immunity" extends only for possession of the controlled dangerous substance and possession of paraphernalia.

Finally, a section provides that a person may not bring an action against a peace officer or political subdivision of the officer based on the compliance or failure of the officer to comply with this statute.

TITLE 70 - SCHOOLS

HB 2882 (effective November 1, 2018) creates new law at 70 O.S. 3311.16 and 70 O.S. 3311.17. Section 3311.16 permits any state-supported technology center school or any higher education institution in this state to offer courses of study for law enforcement certification, basic peace officer certification academies and other law-enforcement-related training if applications to do so are approved by CLEET. CLEET may authorize up to 2 new entities per year to offer these courses or training. Those attending are limited to individuals who are neither commissioned nor appointed by a law enforcement agency (i.e., they have not yet been hired by an agency). Any courses or training offered must meet minimum standards established for peace officers and meet all applicable eligibility requirements for students to receive benefits pursuant to any of the federal G.I. bills. Participants must submit all background investigation requirements set forth in 70 O.S. 3311.

Section 3311.17 permits CLEET to "conduct basic peace officer certification academies and other law-enforcement-related training for individuals who are neither commissioned nor appointed by a law enforcement agency under rules established by CLEET." CLEET is to establish rules, tuition, and fees. Individuals participating in this training who are not commissioned or appointed by an agency must meet the minimum standards established for officers as set forth in 70 O.S. 3311. Upon successfully completing the basic academy and employment by an Oklahoma law enforcement agency, the person's certification will become effective. Employment and certification must be obtained within two years of completion of the basic academy.

SB 1023 (effective November 1, 2018) creates new law at 70 O.S. 3311.17 (the bill creates a new section of law at 3311.16 "unless there is created a duplication in numbering" which there was so this is a **second** version of 3311.17 – see HB 2882 above) to permit CLEET to train individuals who are non-commissioned or not currently employed by law enforcement agencies in exchange for tuition. There is not a direct conflict between the 2 bills so, other than a question about creating emergency rules, the ability to have this type of class seems clear.

SB 1150 (emergency clause, effective July 1, 2018) creates two new sections of law at 70 O.S. 24-100.8 and 70 O.S. 1210.163. Section 24-100.8 requires that an "officer or

employee of a school district or member of a board of education" notify law enforcement of any verbal threat or any act of "threatening behavior" which may reasonably have the potential to harm either students, school personnel, or school property. The officer, employee, or member of the board of education is immune from discipline or civil liability for making such a report in good faith if they reasonably believe a person is making verbal threats or is exhibiting threatening behavior.

Section 1210.163 requires a school employee to "promptly report" to the Department of Human Services and local law enforcement if the employee "has reason to believe that a student is a victim of abuse or neglect." The phrase "child abuse and neglect" is defined to include a wide variety of crimes set forth in the statute.

TITLE 57 – PRISONS AND REFORMATORIES

HB 2286 (effective November 1, 2018) amends various statutes in Title 57 by creating a streamlined administrative parole process and a comprehensive aging and medical parole process. This bill changes the percentage of a sentence that a person must serve before being considered for parole. For a crime committed after November 1, 2018, with conditions, the person is eligible for parole after having served one-fourth (¼) of the sentence or consecutive sentences imposed. If the person was not convicted for a violent offense or was not sentenced to life without parole, they can go through the newly created administrative parole process. Under subsection (C) (2) of 57 O.S. 332.7, unless the person was sentenced to life without parole, he or she will be eligible for parole (apparently the "normal" parole hearing process) after serving one-fourth (¼) of the sentence or consecutive sentence.

The administrative parole process is described in 57 O.S. 332.7 (R). The Pardon and Parole Board can vote to grant administrative parole if the following conditions are met:

- the person has substantially complied with the case plan;
- no objections were filed by the victim or the District Attorney on behalf of the victim;
- the person has not received a primary class X infraction within two years of the parole eligibility date;

- the person has not received a secondary class X infraction within one year of the parole eligibility date; or
- the person has not received a class A infraction within six months of the parole eligibility date

The Pardon and Parole Board can grant the administrative parole without holding a hearing.

The bill creates new law at 57 O.S. 332.21 to provide an aging and medical parole process. If the inmate:

- is at least 60 years old;
- has served the shorter of 10 years of the term or terms of imprisonment or 1/3 of the total term or term of imprisonments;
- poses minimal public safety risks;
- is not imprisoned for a violent crime (as described in 21 O.S. 13.1 or 57 O.S. 571); and
- has not been convicted of a crime that would require sex offender registration

The Pardon and Parole Board is required to use an evidence-based risk-assessment instrument to assess whether the inmate is a public safety risk.

If the Pardon and Parole Board finds by a preponderance of the evidence that the prisoner can live and remain at liberty without posing a substantial risk to public safety the Board can grant parole.

HB 2630 (effective November 1, 2018) amends 57 O.S. 510.9 which relates to the Electronic Monitoring Program. This legislation modifies the eligibility requirements for the Electronic Monitoring Program for nonviolent offenders. If a nonviolent offender has a home offer, has been processed and received through the Department of Corrections Assessment and Reception Center, and has met all other requirements, he/she may be assigned to the Electronic Monitoring Program. An offender with a sentence of more than ten years who has 24 months or more left to serve is not eligible for the program. Previously those convicted of trafficking in illegal drugs, offenders who have been denied parole in the previous 12 months, and inmates previously removed from the program or any other alternative to incarceration could not participate in the program;

however, those restrictions have been removed so those offenders are now eligible for electronic monitoring.

The measure requires DOC to develop policies (rather than promulgate rules) to implement the Electronic Monitoring Program.

The Fiscal Analysis in the Bill Summary notes that the daily costs to DOC for an incarcerated individual range from $47 to $94 while the daily cost for GPS is $3.34.

HB 2631 (effective November 1, 2018) amends 57 O.S. 510 relating to the powers and duties of the Director of the Department of Corrections. The legislation removes the requirements that appointed wardens have a bachelor's degree and six years of professional work experience in corrections and removes the requirement that correctional officers graduate from an approved training course prior to or during the first six months of employment. The measure creates "correctional peace officers" who are designated by the Director. The peace officer authority of correctional peace officers shall be limited to:

> maintaining custody of prisoners; preventing attempted escapes; pursuing, recapturing and incarcerating escapees and parole or probation violators and arresting such escapees, parole or probation violators; serving warrants; carrying firearms; preventing contraband from entering any penal institutions; arresting individuals who commit crimes at any penal institution; and performing any duties specifically required for the job descriptions. Such powers and duties of correctional peace officers may be exercised for the purpose of maintaining custody, security, and control of any prisoner being transported inside and outside this state as authorized by the Uniform Criminal Extradition Act and the Interstate Corrections Compact.

The Director is to develop and implement a basic training academy consisting of at least 200 hours of instruction and a firearms course of not less than 20 hours of instruction. If in the opinion of the Director a person has received sufficient training or experience the Director may waive any hours or courses required to complete the basic course of instruction however the firearms training program shall not be waived.

An annual in-service training of at least 40 hours of continued corrections education and annual recertification of firearms proficiency is required.

The Director may authorize other employees of DOC to carry firearms anywhere in the state to use for self-defense pursuant to DOC policies upon completion of the firearms training course. An identification card will be issued to such employee that grants him/her the authority to carry the firearm pursuant to this section.

The Director is permitted to enter into contracts with media or film production companies to allow DOC to authorize a media or film production company to shoot commercial films at penal institutions.

HB 3330 (effective November 1, 2018) amends 57 O.S. 590 relating to locations where a registered sex offender may reside. With the change, a person subject to the registration requirements of the Oklahoma Sex Offender Registration Act is prohibited from living within a 2000-foot radius of a "family child care home" as defined in the Oklahoma Child Care Facilities Licensing Act. In that Act, at 10 O.S. 402, a family child care home 'means a family home which provides care and supervision for seven or fewer children for part of the twenty-four-hour day. The term "family child care home" shall not include informal arrangements which parents make independently with neighbors, friends, and others, or with caretakers in the child's own home.'

HB 3393 (effective November 1, 2018) creates new law at 57 O.S. 4.2 relating to pregnant inmates in prisons and jails. Penal institutions, detention centers and county jails are required to use the least restrictive restraints necessary when the facility has knowledge, actual or constructive, that an inmate is pregnant. There is a presumption that no restraints shall be used unless directed by the physician in charge:

- when transporting an inmate who is in labor;
- during any phase of labor;
- during delivery;
- when the inmate is recuperating unless there are "compelling grounds to believe that the inmate is an immediate and serious threat of harm to either herself or others or is substantial flight risk and can't be controlled by other means.

Specific restraints are not permitted to be used on pregnant inmates in, apparently, all circumstances. These include abdominal restraints, four point restraints, ankle and leg restraints that may increase the risk of downward falls, and any kind of chain restraints where the inmate is linked to another inmate.

Unless requested by the physician in charge, correctional officers are to be positioned outside the room. All female inmates are to receive notice in writing (in a language and manner understandable to the inmate) about these requirements when they are admitted and again when the inmate is known to be pregnant.

All penal institutions, detention centers, and county jails have to ensure that pregnant inmates have access to one or more of the following during delivery:

- A family member or friend (previously approved on the visitor's list)
- A member of the clergy
- A doula provided the services are furnished by a certified doula at no cost to the institution. Doula is defined in the statute but generally that's a person who provides emotional and physical support continuously during labor and birth and intermittently during the prenatal and postpartum periods.

The measure prohibits the use of any kind of restraint when transporting an inmate who is in labor, while the inmate is delivering the baby, or while the inmate is recuperating from the delivery. The measure creates a misdemeanor punishment for any correctional officer found guilty of using restraints on a pregnant inmate, subject to imprisonment of up to one year in the county jail, a fine of up to $1,000 or both fine and imprisonment.

SB 185 (effective November 1, 2018) amends 57 O.S. 332.1A relating to the Pardon and Parole Board. Members of the Pardon and Parole Board are required to complete annual training related to the probation and parole process. The training curriculum is to include identifying, understanding and targeting criminogenic needs, the principles of effective intervention, core correctional practices and how to support and encourage offender behavior change. The qualifications to be appointed to the Pardon and Parole Board are modified and at least two members of the Board are to have five years of training or experience in mental health services, substance abuse services, or social work.

TITLE 59 – PROFESSIONS and OCCUPATIONS

HB 2933 (effective November 1, 2018) creates new law at 59 O.S. 4003 requiring that, other than health care professions, every administrative body or official with authority

over occupational licensing or certification grant a one-year waiver of fees associated with licensure or certification to a low income applicants.

HB 2950 (effective November 1, 2018) amends 59 O.S. 1423 that relates to scrap metal dealers. The bill provides for an Internet-based reporting method that applies to all geographic areas of the state for those scrap metal dealers not subject to a local designation for Internet reporting. The change prohibits, with specific exceptions, any person from selling or purchasing copper wire in four-gauge size or larger. A scrap metal dealer is prohibited from providing payment for a vehicle until the certificate of ownership has been submitted to the Tax Commission or a tag agency and the vehicle is determined not to be stolen.

HB 3070 (effective November 1, 2018) is an amendment to 59 O.S. 1512 relating to false or altered identification or false declaration of ownership to a pawnbroker. NOTE: SEE HB 2281 WHICH ALSO AMENDS THIS STATUTE-There is a conflict in the punishment that can be assessed. This bill provides that a person who commits the crime where the value of the property is less than $1,000, he or she is subject to a fine of no more than $500 and/or county jail time of no more than six months. The HB 2281 version provides for up to one year. This version provides that if the property is one or more firearms, it is a felony. This version maintains the provision that if the property was taken in a burglary or robbery it is a felony even if the value is less than $1,000.

SB 956 (effective November 1, 2018) amends the Oklahoma Pharmacy Act at 59 O.S. 353.7. Among other things this bill provides that inspectors employed by the State Board of Pharmacy who are CLEET certified have statewide jurisdiction to perform duties under the act and are considered peace officers.

SB 1446 (effective November 1, 2018) relates to the regulation of opioid drugs. An amendment to 59 O.S. 495a.1 requires that doctors who hold a DEA registration number receive at least one hour of pain management education annually. The definition of unprofessional conduct in 59 O.S. 509 is amended to include prescribing, dispensing, or administering opioid drugs in excess of doses specified in a new statute at 63 O.S. 2-309I. That statute limits the initial prescription to a seven-day supply and provides that there be a review of the course of treatment for a patient who is continuously prescribed an opioid or other Schedule II drug for three months. Various definitions are changed or added in 63 O.S. 2-101. All references to “marihuana” are changed to “marijuana,” apparently adopting that as the standard spelling. In addition, acute pain, chronic pain, and initial

prescription are defined. The term "Patient-provider agreement" is defined and sets forth what a practitioner must explain to a patient regarding the pain-management plan and the dangers of dependence. Finally, 63 O.S. 2-309D is amended to provide that the failure of the practitioner to check the central repository created by the Anti-Drug Diversion Act is grounds for disciplinary action.

SOME OTHER CHANGES OF INTEREST

HB 1461 (effective November 1, 2018) amends 74 O.S. 192, 74 O.S. 193, and 74 O.S. 194 relating to inspections of city and county jails by eliminating references to American Correctional Association Standards and eliminating references to the Jail Inspection Division of the State Department of Health. The result is that the ACA Standards are no longer required and the State Department of Health performs the functions previously required to be done by the Jail Inspections Division. In addition, the term "jailer" is replaced with "detention officer."

HB 2177 (no effective date specified so effective 90 days after recess of the Legislature – August 2, 2018) creates new law, <u>not</u> to be codified, that recognizes certain documents are treasures that should be displayed in public buildings and on public grounds. These documents include, but are not limited to, the Ten Commandments, Magna Carta, Mayflower Compact, Declaration of Independence, United States Constitution, Bill of Rights, Oklahoma Constitution, and other historically significant documents. **New law is created at 25 O.S. 2101** to provide that in the event of a legal challenge the Attorney General is authorized to provide a legal defense to a political subdivision.

HB 2259 (Effective November 1, 2018) amends 10A O.S. 1-2-101 in the Children and Juvenile Code to require anyone who has reason to believe a child under the age of 18 is a victim of abuse and neglect report the matter to the Department of Human Services <u>immediately</u> (previously said "promptly"). In addition, new sections are added to the statute to require that a teacher of a child under 18 who has reason to believe that a child under 18 is a victim of abuse or neglect shall report the matter to DHS immediately and that the report shall be made via the hotline established in the statute. Any allegation of abuse or neglect reported in any manner to a county DHS office shall immediately be referred to the hotline. If a teacher of a student age 18 or over has reason to believe a

student 18 or over has been abused or neglected, the teacher is required to report the matter to local law enforcement.

HB 2592 (effective November 1, 2018) amends 26 O.S. 4-115.2 relating to registered voters and keeping certain addresses confidential. The change permits the Secretary of the State Election Board to promulgate rules to permit the "immediate family of law enforcement personnel" to apply to keep their residence and mailing addresses confidential. Prior to this change law enforcement personnel were able to apply but not families. Immediate family of law enforcement personnel is defined as "a spouse, child by birth or adoption, stepchild or parent living at the same residence as the law enforcement personnel."

HB 2952 (effective November 1, 2018) amends 29 O.S. 4-107.2 relating to using aircraft to hunt "depredating animals." The reader may recall that the legislature amended this law in the 2017 session to permit, among other things, a person other than the licensee to shoot depredating animals from aircraft. This bill eliminates "nonexperimental" from the definition of aircraft so that it now reads:

> "Aircraft" means manned fixed wing and non-fixed wing aircraft registered with the Federal Aviation Administration (FAA).

HB 2997 (effective November 1, 2018) creates new law at 25 O.S. 98.17 which reads:

> The red-tailed hawk, Buteo jamaicensis, is hereby designated and adopted as the state raptor of the State of Oklahoma.

So we now have a state raptor to go along with the official state bird (scissor-tailed flycatcher, Muscivora Forficata**),** official state rock (the Barite Rose, commonly known and referred to as the "rose rock"), official state vegetable (the watermelon), official state flying mammal (the Mexican free-tailed bat, Tadarida brasiliensis) and official state cartoon character (GUSTY®).

HB 3017 (emergency clause, effective July 1, 2018) amends 74 O.S. 840-2.10a. This statute was amended during the 2017 session of the legislature to require that state agencies provide or contract to provide debriefing and counseling services for their employees who are involved in, witness, or are otherwise exposed to a violent or traumatic event in the workplace. This bill moves the responsibility for promulgating

rules to implement the services from the Office of Management and Enterprise Services to the Department of Mental Health and Substance Abuse.

HB 3064 (effective November 1, 2018) creates new law at 43A O.S. 10-111.1 requiring the Attorney General to create and maintain the Vulnerable Adult Abuse, Neglect and Exploitation Report. This report is to be available to the public and is to include the defendant's name, the crime for which the person was convicted, a description of the findings of abuse, neglect, or exploitation to include the circumstances of the abuse, the date of conviction or plea was accepted by the court, the relationship of the defendant to the victim, and the county where the offense(s) occurred.

HB 3284 (effective November 1, 2018) amends 28 O.S. 153.3 relating to bond fees. The district court clerk or municipal court clerk is to charge a fee of $35 for the initial filing of any bond or security deposited with the district court clerk or municipal court clerk. Prior to the implementation of this legislation, $25 went to the Sheriff's Jail Fund for those persons sentenced to jail. With the change, the $25 goes to the Sheriff's Jail Fund if the person is booked into a jail.

HB 3300 (effective November 1, 2018) creates the Breanne Bell Act and amends 10 O.S. 1430.3 to require that the Department of Human Services (DHS) will:

> Develop and disseminate a form to all providers of group home services which shall be signed and witnessed by each direct care staff member working with residents notifying the staff member that the staff member may be prosecuted criminally for having sexual contact with a person in their care.

SB 224 (effective November 1, 2018) amends various sections in Title 10A relating to juveniles.

- 10A O.S. 2-2-301 is amended to require that a youthful offender be represented by counsel at every hearing or review until the case is completed or dismissed.
- 10A O.S. 2-2-501 now requires a court to advise the child's attorney, along with others, of the contents and conclusion of reports before an order of disposition is made.
- 10A O.S. 2-4-107 is amended to cap the salary of any employee of a county juvenile bureau other than its director at 85% of that of Class A county officer.

- 10A O.S. 2-5-204 now requires that records submitted to the court during a hearing on a motion for certification as a youthful offender or for imposition of an adult sentence be confidential and sealed.
- 10A O.S. 2-5-205 relating to persons under 18 charged with 1st degree murder is amended to provide that certain information will be filed and admitted under seal and are confidential.
- 10A O.S. 2-5-206 is amended to reflect that preliminary hearings for certain youthful offenders are to occur within 90 days. Certain records for these youthful offenders must be filed or admitted under seal and are confidential.
- 10A O.S. 2-5-207 is changed to authorize the Office of Juvenile Affairs to recommend that a youthful offender be returned to OJA custody at the age of 18 years and six months, until the age of 19, to complete the reintegration phase of the treatment program.
- Finally, the measure **repeals** 10A O.S. 2-5-101 (Persons 16 or 17 Years of Age Considered Adults for Committing Certain Offenses - Warrants - Certification as Child). The result of this repeal seems to indicate that the only persons under 18 who are automatically considered adults are those 13, 14, 15, 16, and 17 year olds who are charged with 1st degree murder. Those who are 13 or 14 are still provided the opportunity to be certified as juveniles or youthful offenders.

SB 340 (effective November 1, 2018) amends 11 O.S. 28-124 and provides that if a defendant is without means to pay fine and costs in a municipal court of record and no undue hardship would result, the judge may require the person to perform community service at a rate of not less than the current federal minimum wage.

SB 898 (no effective date, effective 90 days after adjournment - August 2, 2018) amends the Open Meetings Act at 25 O.S. 307 to permit executive sessions when discussing safety and security matters at state penal institutions or correctional facilities and to discuss contracts requiring approval of the Board of Corrections.

SB 908 (effective November 1, 2018) amends 74 O.S. 150.23. With the change, a correctional officer is permitted to retain possession of their firearm upon retirement (previously they were only permitted to retain possession of their badge), and to purchase the rifle, shotgun or both prior to retirement at the price paid by DOC at the time of original purchase.

SB 993 (effective November 1, 2018) amends 43A O.S. 10-105 relating to the Protective Services for Vulnerable Adults Act. An investigation of allegations of abuse, neglect or exploitation of a vulnerable adult is to be conducted jointly by Department of Human Services and law enforcement when feasible. The statute now requires that investigators be suitably trained in interview techniques and that investigations be conducted at the appropriate developmental age level of the victim.

SB 1066 (effective November 1, 2018) amends 10A O.S. 2-2-404 to authorize a court to order an extra 180 day deferral of delinquency adjudication proceedings if the court finds a child has made satisfactory progress in a diversion program and the extension is necessary to accomplish the treatment goals.

SB 1475 (emergency clause, effective July 1, 2018) creates new law at 40 O.S. 800 creating the Occupational Licensing Review Act and the Occupational Licensing Advisory Commission. The Commission is to review, over a 4-year period, each occupational and licensing act and to recommend to the legislature whether each license should be maintained, modified, or repealed.

SUPREME COURT CASE OF INTEREST

Carpenter v. United States, Supreme Court of the United States, No. 16–1466. Argued February 26, 2018—Decided June 27, 2018

In this case, the Supreme Court looked at the constitutionality of obtaining cell-site location information (CSLI) without a warrant. The FBI had identified several suspects in an armed robbery and obtained court orders (not search warrants) under the Stored Communications Act to obtain their cell phone records. The wireless carriers produced the CSLI for Carpenter and from that they were able to obtain almost 13000 location points over 127 days. These locations points showed that his phone was near four of the armed robbery locations. At trial, Carpenter moved to suppress the evidence and after the trial court denied the motion to suppress, he was convicted. The Sixth Circuit affirmed his conviction and he then appealed to the Supreme Court.

The issue before the Court is whether a search warrant is needed to access CSLI data that can track a person's past movements. The Court examined previous cases that held a search warrant is required to install and track a GPS device on a suspect's vehicle (U.S.

v. Jones, 565 U.S. 400 (2012) – The Government's attachment of a GPS device to the vehicle and monitoring constitutes a 4th Amendment search) and that held that there's no reasonable expectation of privacy in information provided to a third party (U.S. v. Miller, 425 U.S. 435) – no expectation of privacy in financial records held by a bank and Smith v. Maryland, 442 U.S. 735 – no expectation of privacy in records of dialed telephone numbers conveyed to telephone companies). Applying these cases and analyzing the intrusion on privacy represented by the government being able to obtain near perfect surveillance by the use of CSLI, they ruled it can only be obtained by use of a search warrant and the third party doctrine does not apply in this case.

The Court was careful to narrow the holding of this case. The Smith and Miller cases, noted above, are still good law. The Court further noted that there are case-specific exceptions such as exigent circumstances that might support a warrantless search. As with all exceptions to the warrant requirement officers are urged to document the facts and remember that the burden is always on the prosecution to prove that the search falls under one of the few well-delineated exceptions.

STATE QUESTION 788 – MEDICAL MARIJUANA

As readers are most likely aware, Oklahoma voters approved State Question 788 on June 26, 2018. This resulted in a number of statutes that, taken together, provide a comprehensive scheme of licensing relative to the production, distribution, sale, and use of medical marijuana. The relevant statutes are 63 O.S. 420 through 63 O.S. 426. The reader is encouraged to read these statutes since only the high points are set forth below.

63 O.S. 420 – provides that a person who has a medical marijuana license shall be able to:

- Consume marijuana legally;
- Possess up to three ounces on their person;
- Possess six mature plants;
- Possess six seedling plants;
- Possess one ounce of concentrated marijuana;
- Possess 72 ounces of edible marijuana; and
- Possess up to eight ounces of marijuana in their residence.

Further a person who does not have a medical marijuana card but who can "state a medical condition" and possesses no more than 1.5 ounces is guilty of a misdemeanor subject to a fine of no more than $400.

The State Department of Health shall establish a regulatory office and will be responsible for issuing medical marijuana, dispensary, grower, and packager licenses.

A medical marijuana license is valid for two years and is $100 unless the persons is on Medicare, Medicaid, or SoonerCare in which case it's $20. An application must be approved or denied within 14 days of receipt (for other licenses – see below – the Department of Health has two weeks to process, approve or deny, and mail the approval or denial to the applicant).

The Department of Health can only keep the following records for each approved medical license:

- Digital photo of the license holder;
- Expiration date of the license;
- The county where the card was issued; and
- A unique 24-character identification number assigned to the licensee.

A caregiver license is available for qualified caregivers of a medical marijuana license holder who is homebound.

"An Oklahoma Board certified physician" must sign applications for a medical license. There are no qualifying conditions however the "license must be recommended according to the accepted standards a reasonable and prudent physician would follow when recommending or approving any medication."

Counties and cities may enact "guidelines allowing medical marijuana license holders or caregivers to exceed the state limits" set forth above (i.e., the plant and weight limits).

63 O.S. 421 – provides for the issuance of a medical marijuana dispensary license for a fee of $2,500. The statute sets forth the criteria to obtain a license and the reporting requirements regarding the weight of marijuana purchased and the weight of marijuana sold. A retailer is subject to a penalty only for a "gross

discrepancy" which can't be explained. Fraudulent reporting can result in a $5,000 fine and a second offense in a 2-year period is punishable by revocation.

63 O.S. 422 – provides for a commercial grower license for a fee of $2,500. A grower may only sell to a licensed retailer or a licensed packager, not directly to a medical marijuana license holder. Monthly reports are required. If the federal government lifts restrictions on buying and selling between states, a licensed commercial grower will be permitted to do business with out of state wholesalers. As with dispensaries, fraudulent reporting can result in a $5,000 fine with a second offense in a 2-year period punishable by revocation. There are no limits on how much marijuana a licensed grower can grow.

63 O.S. 423 – provides for a medical marijuana processor license. The same criteria apply to a processor as to other types of licenses. A processor may take marijuana plants and distill or process into concentrates, edibles, and other forms for consumption and sell them to other processors or retailers.

63 O.S. 424 – provides for marijuana transportation licenses that will be issued to holders of retail, growing, or processing licensees. All marijuana transported will be in transported in a locked container and clearly labeled "Medical Marijuana or Derivative."

63 O.S. 425 – provides for protective from discrimination for those who have a medical marijuana license. Provisions include:

- A school or landlord may not refuse to enroll or lease to and may not otherwise penalize a person solely for his/her status as a license holder unless failing to do so would cause the school or landlord to lose a monetary or licensing related benefit under federal law or regulation.
- Unless it would cause an employer to lose a monetary or licensing related benefit under federal law or regulation, the employer may not discriminate against the licensee in hiring, termination, or imposing any term or condition of employment. An employer can take action against an employee who uses or possesses marijuana while in the place of employment or during work hours. The employer may not take action based on the licensee's result of a drug test showing positive for marijuana.

- For purposes of medical care including organ transplants, the authorized use of marijuana shall be considered the equivalent of the use of any other medication under the direction of a physician.
- A medical marijuana license holder may not be denied custody or visitation or parenting time and there is no presumption of child endangerment or neglect by virtue of being a license holder.
- No licensee "may unduly be withheld from holding a state issued license by virtue of being a medical marijuana license holder. This would include such things as a concealed carry permit."
- A municipality may not unduly change or restrict zoning laws to prevent a retail marijuana establishment from opening. The establishment cannot be within 1000 feet of a public or private school entrance.

The Department of Health can issue special research licenses.

63 O.S. 426 – The tax on marijuana is 7% of the gross amount received by the retail seller which will primarily fund the regulatory office. IF proceeds exceed the amount needed to fund the office, the surplus will be allocated to the General Revenue Fund (75%) and the Oklahoma Department of Health, earmarked for drug and alcohol rehabilitation (25%).

The Oklahoma Medical Marijuana Authority Rules

The Authority has promulgated rules regarding medical marijuana that can be accessed at http://omma.ok.gov/. After the Governor approved some of the rules on July 11, 2018 and after much public discussion and turmoil, draft amendments to THOSE rules were proposed on July 27, 2018. Ultimately the rules will be finalized and can be accessed on the Secretary of State website at http://www.oar.state.ok.us/oar/codedoc02.nsf/frmMain

The reader should be aware that there almost certainly will be future rule or statute changes and/or litigation that will impact enforcement. Also bear in mind that some violations will only be violations of rules which are enforceable through administrative processes rather than the criminal justice system. Given the dynamic nature of this new process it's always advisable, when possible, to seek legal counsel prior to taking action.