Council on Law Enforcement Education and Training

2021 Legal Update

Prepared by Preston Draper, General Counsel

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FOREWORD

By statute, 70 O.S. § 3311.5(E), the Council on Law Enforcement Education and Training (CLEET) is required to update training related to legal issues, concepts, and state laws on an annual basis and no later than 90 days following the adjournment of a legislative session. This annual legal update is a part of CLEET's response of that statutory mandate. ***In an effort to provide a more valuable product, this year's legal update will incorporate a review of some significant cases that affect Oklahoma peace officers in addition to applicable statutory and rules changes.*** *I acknowledge the efforts of attorney James L. Hankins, whose Oklahoma Criminal Defense Weekly newsletter does a masterful job of reviewing and highlighting important criminal law appellate opinions and upon whose work I have relied in identifying many of the cases highlighted in this update. I am also indebted to ECU alum Wil Crawford who starts his last year of law school at Oklahoma City University in the fall and who is serving as a legal intern at CLEET. Wil carried the heavy water in identifying statutory changes that impact or may interest the law enforcement community. He also was responsible for writing some of the statutory summaries in this text.*

Please keep in mind that this document is, by necessity, a summary. If we were to address and copy all the new cases and statutes, this document could run to several hundreds or even thousands of pages. Even a detailed summary of every case or provision would be unwieldy. You are encouraged to read any newly enacted statutes, which are 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, case opinions, constitutional provisions, and supporting materials discussed in the text. Please note that some of the hyperlinks may not bring up the new statutory language until the effective date of the enactments. Best efforts have been made to test the hyperlinks, but I acknowledge my own limitations. My apologies for any that fail to work correctly.

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

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CASES

Search and Seizure.

State v. Hodges, 2020 OK CR 2. DUI Blood Draw.

In this case, an Oklahoma driver was involved in a DUI wreck that resulted in the death of another in Grant County. The driver was sent to a hospital in Kansas for medical treatment and the OHP requested assistance from the Kansas Highway Patrol in obtaining blood samples from the driver. A KHP trooper obtained blood samples apparently following Kansas law but in a manner which did not comply with Oklahoma's Board of Tests (BOT) rules. When the State submitted the blood test at trial arguing that the test should be admitted in the same way an Oklahoma test would be, the judge granted the defendant's motion to suppress because the blood draws did not comply with Oklahoma law (47 O.S. § 752).

However, the Oklahoma Court of Criminal Appeals (OCCA) held that if the State had argued that the Kansas blood draw complied with Kansas law and would have been admissible in a Kansas case, then the blood test would likely be "competent evidence" under 47 O.S. § 757.

Cochlin v. State, 2020 OK CR 23. More DUI Blood Draw.

This is another case involving a blood draw conducted without following the BOT rules. Here, an Oklahoma driver was admitted to the OU Medical Center trauma unit and a "rainbow draw" of the driver's blood occurred. A "rainbow draw" refers to the use of multiple vials with various colored stoppers used to contain blood from trauma patients. The blood from the rainbow draw was tested and showed the driver had a .33 BAC, whereas a subsequent warrant-based blood draw conducted some five hours later showed a .20 BAC. The driver complained that admitting the "rainbow draw" test was error because it was not conducted pursuant to the BOT rules. Citing its recent ruling in *Hodges*, the OCCA held that the rainbow draw was simply "other competent" evidence and was admissible despite the failure to follow BOT rules. The OCCA even went so far as to say, "Under the authority of Section 757, the trial court may consider other competent evidence regarding the collection and testing of [samples obtained without following BOT rules] and determine whether the evidence is admissible. To the extent our prior cases are inconsistent with this holding, they are overruled."

State v. Cardenas-Moreno, 2020 OK CR 15. DUI Preliminary Breath Test (BPT).

In this case, an Oklahoma officer administered a PBT to a driver and the State sought to admit the PBT into evidence as a type of field sobriety testing to show the driver was impaired. The driver objected and the trial court suppressed the PBT. On appeal, the OCCA found that the trial judge's statement that "[t]he PBT test is not admissible in Oklahoma" was totally incorrect and that PBTs

may be admitted on a case-by-case basis after assessment of their reliability. The OCCA reiterated that PBTs cannot be used to try to prove a specific alcohol concentration level.

State v. Roberson, 2021 OK CR 16. Probable Cause from Odor of Marijuana.

This case out of Tulsa County involved officers pulling over a vehicle with an expired tag and a driver who was not wearing a seatbelt shortly after the vehicle pulled out of a known "drug motel" parking lot. During the course of the stop, the front-seat passenger ducked down as if she were hiding something, the driver could not produce a driver license and was nervous, the driver had Irish mob tattoos, and a records check revealed that both the driver and passenger had extensive criminal histories, including drug convictions. During questioning and after telling officers he did not want them to search his vehicle, the driver admitted to having a small amount of marijuana in his ashtray. An officer entered the vehicle to look for and recover the marijuana and while in the vehicle smelled a strong odor of raw marijuana, which he added to the other circumstances to develop probable cause to search the entire vehicle. After the search of the vehicle, additional information was presented to a magistrate in support of a search warrant for the driver's motel room. An execution of that warrant led to the discovery of contraband.

At trial, the driver asserted that the presence or odor of marijuana in a vehicle cannot be used to develop probable cause since the legalization of medical marijuana. The trial court agreed and suppressed the evidence discovered in the searches of the vehicle and motel room. On appeal, the OCCA noted that the fact that some Oklahomans may lawfully purchase, possess, or consume marijuana is not equivalent to a blanket legalization, and that both the odor and presence of marijuana remain factors indicating criminal activity. It based its opinion, in part, on decisions from other states who also have legalized medical marijuana. **Bottom line: The OCCA says "[t]he decriminalization of marijuana possession for those holding medical marijuana licenses in no way affects a police officer's formation of probable cause based upon the presence or odor of marijuana."** Here the OCCA found that the driver's admission that he had marijuana in the vehicle constituted probable cause to search the vehicle for that marijuana. Once the officer was in the vehicle, the strong odor of raw marijuana provided further probable cause to extend the stop and expand the search.

Kansas v. Glover, 589 US ___ (2020). Traffic Stop Based on Vehicle Owner's Invalid Driver License Status.

In this Kansas case, a deputy sheriff ran a license place check on a pickup and discovered that the registered owner's driver license had been revoked. Assuming that the owner was the driver, the deputy initiated a traffic stop and arrested the driver, who was the owner, for driving on a revoked license. The owner/driver objected and claimed that there was no reasonable suspicion for initiating the stop. The trial court agreed, and suppressed evidence related to the stop. The Kansas Court of Appeals reversed, finding that reasonable suspicion existed. The Kansas Supreme Court

reversed, finding a Fourth Amendment violation. Eventually, the U.S. Supreme Court granted Kansas' certiorari request and heard the case.

The U.S. Supreme Court found in favor of the deputy, noting the deputy's commonsense inference that the owner was probably driving the vehicle provided sufficient reasonable suspicion for a brief investigative traffic stop. However, the Court pointed out that reasonable suspicion must still be assessed in light of the totality of the circumstances, and that additional facts may refute reasonable suspicion. For instance, if the owner is listed as a male in his sixties, but the driver appears to be a female in her twenties, reasonable suspicion that the driver is driving without a valid license does not exist from the facts of the case. Similarly, if the owner or driver are personally known to the officer and the person driving is known not to be the owner whose driving privilege is revoked or suspended, then reasonable suspicion would not exist.

U.S. v. Berg, 18-3250 (10th Cir. 2020). Traffic Stop Extended Detention for Drug Dog.

Generally, an officer may detain a driver without consent even after the original reason for the stop has ended if, during the stop, the officer develops an objectively reasonable and articulable suspicion that the driver is engaged in some illegal activity. (Quotations and citations omitted.) To determine if such reasonable suspicion existed, a court looks at the totality of the circumstances.

In this case, a Kansas Highway Patrol trooper spotted three vehicles traveling in tandem on I-70 going approximately 10 mph under the speed limit. After some initial investigation (from his vehicle, while driving), the trooper believed the group was traveling together with the front and back vehicles acting as decoys and the middle vehicle transporting drugs. After pulling over the middle vehicle, the trooper noticed a large amount of cargo in the vehicle, a minivan, and asked the driver if he was moving. The driver said he was moving from Las Vegas to Minnesota and had his clothes and a television in the vehicle. The trooper noticed the minivan was loaded with uniformly-sized boxes and large duffle bags that were crammed into every available space in the van. According to the trooper, such arrangements were not typical of how "normal" motorists pack their vehicles when moving. When the trooper asked about the driver's itinerary, the driver told the trooper that the driver was "in a hurry," but had spent time in Denver rather than being on the road and had chosen to break up a 24-hour drive into four days. In light of the driver's responses, the trooper's observations of the contents of the vehicle, and the trooper's knowledge of drug trafficking practices, the trooper asked the driver if he could search the vehicle. When the driver refused, the trooper told him he was being detained while a drug dog was called to search the vehicle.

In this case, the Tenth Circuit found that the extended detention was justified in light of the totality of the circumstances and the objectively articulable facts relied upon to develop reasonable suspicion. Officers are allowed to "draw on their own experiences and specialized training to make inferences from and deductions about the cumulative information available to them that

might well elude an untrained person" (internal citation and quotation omitted). Courts typically defer to a law enforcement officer's ability to distinguish between innocent and suspicious actions (internal citation and quotation omitted). The lesson? Make sure that you are developing articulable facts to support your reasonable suspicion and/or probable cause as you interact with individuals you suspect of being engaged in criminal activity. Courts are likely to grow less deferential to peace officers' assessments in cases in light of our current political climate, so it is very important that you be able to list and describe whatever facts you rely on in making such determinations.

U.S. v. Mayville, 19-4008 (10th Cir. 2020). Traffic Stop Extended Detention for Drug Dog.

In this case involving a Utah Highway Patrol trooper, the Tenth Circuit reviewed an officer's authority to detain a motorist during a traffic stop. The general rule as announced by the U.S. Supreme Court is that such authority "ends when tasks tied to the traffic infraction are—or reasonably should have been—completed." *Rodriguez v. U.S.*, 575 U.S. 348, 354 (2015). As such, ordinary inquiries incident to a traffic stop and permissible safety precautions must be completed in a reasonable time. Officers cannot undertake "safety precautions" for the purpose of extending the time of a stop to allow for investigation of other possible criminal activity not related to the initial reason for the stop. Here, the trooper encountered a driver with an out-of-state license who was driving an out-of-state vehicle. At the initiation of the stop, the trooper observed the driver apparently trying to hide something under the driver's seat. In addition, the driver could not produce registration documentation for the vehicle and was exhibiting an unusual demeanor akin to drowsiness or being under the influence. Based on these circumstances, the trooper decided to run a criminal background check through dispatch. While dispatch was working on the request, the trooper also requested a narcotic detector dog. Approximately fourteen minutes into the traffic stop a trooper with a drug dog arrived and about five minutes later the dog alerted on the vehicle. The Tenth Circuit found the first trooper's actions in this case were diligent efforts related to the initial mission of the stop and, thus, the stop was not unreasonable.

U.S. v. Morales, 19-5059 (10th Cir. 2020). Traffic Stop Extended Detention—Consent to Search After Delay.

In this case, originating in the Northern District of Oklahoma, an officer from the Pryor Police Department pulled over a vehicle for illegally engaging its fog lamps. The traffic stop lasted approximately thirty-two minutes until the detainees agreed to a search of their vehicle and the officer discovered more than four pounds of methamphetamine. Prior to trial, a motion to suppress the search was filed based on the allegation that the stop resulted in an unreasonably lengthy detention. The district court agreed and suppressed the evidence. The government appealed and the Tenth Circuit reversed, finding the traffic stop did not violate the Fourth Amendment.

In assessing the claim, the Tenth Circuit looked at the pre-consent stop in three parts: Part 1 consists of minutes 1-10, during which the officer spoke to the driver and passenger about the purpose of their travel (allegedly driving to Joplin, Missouri, to work for a cleaning company), their driver licenses (which the individuals produced), proof of insurance (which was not produced), and who owned the vehicle that was being driven. The driver agreed to accompany the officer to his cruiser and sat in the vehicle while the officer asked him questions. Using the OLETS system, the officer determined that the vehicle belonged to the passenger's wife and that the driver had no outstanding warrants. The driver admitted to previous criminal behavior and was described by the officer as showing signs of "extreme nervousness," including "heavy breathing" and "neck thumping."

During Part 2, minutes 10-32, the officer conducted further investigation. First, during minutes 10-17, the officer left the driver in his cruiser and returned to the stopped vehicle to talk to the passenger. The passenger admitted past illegal behavior and stated he had been "in and out" of Mexico recently. During minutes 17-32, the officer called EPIC, a national law enforcement database that provides information about border crossings and criminal history. According to the officer's testimony, EPIC verified the individuals' statements about their recent border crossings and previous criminal history.

In Part 3, post-32 minutes into the stop, the officer returned the individuals' driver licenses and said he wasn't going to write any tickets or warnings but requested permission to search the vehicle. (The officer testified he suspected the duo were involved in illegal drug trafficking prior to the end of Part 1 of the stop.) Both men consented to the search. During the search, the officer discovered four vacuum-sealed bags containing a total of 4.11 kilograms of methamphetamine and arrested both men.

In this case, the district court found the initial purpose of the traffic stop (improperly activating fog lamps) was valid and was complete when it was determined that the passenger's wife owned the vehicle. However, the court found that the officer had developed reasonable suspicion of illegal drug trafficking and that such reasonable suspicion justified continued detention to ask the passenger questions after initially talking to the driver. On the other hand, the court found that the call to EPIC was unreasonable because the officer failed to explain why it was necessary to obtain the information or what impact the information would have had, especially since the passenger had already admitted to a recent border crossing from Mexico.

On appeal, the government argued that the call to EPIC was reasonable because it was a diligent means of investigation that was likely to confirm or dispel the officer's suspicions of drug trafficking. Although the actual call did not provide information beyond confirming what the suspects had said, the Tenth Circuit noted that it could have provided more information and the officer's decision to seek that information was not unreasonable. Nor was the 15-minute delay in the stop to communicate with EPIC unreasonable. It is reasonableness, not efficiency, which is

the touchstone of the Fourth Amendment. So long as an officer's actions constitute a reasonable means to investigate and the length of the action is reasonable, the Fourth Amendment is satisfied.

Fuentes v. State, 2021 OK CR 18. Collective-Knowledge Doctrine.

This is a Canadian County case which involves a traffic stop on I-40 within the Oklahoma City municipal limits. The vehicle that was stopped belonged to and was being driven by an individual who was under investigation by the Criminal Enterprises Task Force with regard to methamphetamine trafficking. Some weeks prior to the traffic stop, a task force detective received information from a confidential informant that Fuentes was trafficking meth. That information was subsequently corroborated when officers were called to a domestic disturbance involving Fuentes and officers reportedly observed "a good amount of methamphetamine" and money at the residence. Based on such information, detectives obtained a warrant authorizing them to install an electronic tracking device on Fuentes' vehicle. At about the same time, another reliable CI told officers that Fuentes intended to travel to Phoenix, Arizona, and return to the OKC area with a fresh load of drugs.

Detectives then monitored Fuentes' trip to and from Phoenix and as he approached the Oklahoma City area, OCPD officers were informed of the make, model, and tag number of Fuentes' vehicle and were told that he was suspected of being involved in drug trafficking. The officers were requested to stop the vehicle once it crossed into Oklahoma City if any traffic violations were observed. When Fuentes' vehicle was observed speeding and failing to signal lane changes, a traffic stop was initiated. While the officer was writing a ticket and running computer checks, a drug dog was summoned.

After completing the ticket, but before the drug dog had finished its check of the vehicle, Fuentes asked for permission to leave the site of the traffic stop. Officers refused to allow him to leave and subsequently the drug dog alerted on a duffle bag located in the back seat of the vehicle. 441 grams of methamphetamine were found in the duffle.

At trial and on appeal, Fuentes complained that the officer who stopped him had no personal knowledge or observations to suspect him of drug trafficking and that the extended detention to allow the drug dog to sniff the car was unreasonable. The Court of Criminal Appeals refuted Fuentes' claim noting that for almost 50 years Oklahoma had adhered to the premise that "an agent may rely upon his fellow officers to supply the information which forms the basis of the arresting officer's reasonable grounds for believing that the law is being violated." In other words, in this case, it was completely reasonable and permissible for the officer who stopped Fuentes for speeding and un-signaled lane changes to also detain him based on the reasonable suspicion of drug trafficking supplied by the detective who had information from the two CIs as well as the electronic tracking device. Such "collective-knowledge"-based reasonable suspicion justified continued detention while the drug dog was dispatched and walked around the vehicle.

U.S. v. Sadlowski, 19-2004 (10th Cir. 2020). Search Warrants and Sufficient Particularity.

This federal case involves the issuance of a search warrant by a state metropolitan court judge in New Mexico. The warrant was issued on the basis of an affidavit made by a detective with the county sheriff's office, which included corroborated information from a confidential informant. Detectives from two different sheriffs' offices as well as ATF agents subsequently executed the warrant and federal charges were brought. Among other things, the defendant argued that the warrant did not list the place to be searched (the defendant's house) with sufficient particularity. This argument complained, at least partially, about the fact that the warrant relied on supporting documents for some of the description of the place to be served. For instance, the warrant at issue here authorized officers to search "the persons and/or place described in the [a]ffidavit." The Tenth Circuit reminds us that search warrants may incorporate an underlying affidavit and other documents by referring to such documents in the body of the warrant "using suitable words of reference." Moreover, the court found that the warrant itself listed the defendant's address in the upper-left-hand corner of every page of the warrant application and contained this description: "The residence to be searched is located in the City of Albuquerque, County of Bernalillo, and State of New Mexico. The residence is a single-story dwelling with a pitched, shingled roof. The exterior of the residence is grey in color. The door to the residence faces north. The garage door is red in color and also faces north. The numerics (sic) "808" are posted on the mailbox, which is in front of the residence, as well as on the curb."

Remember, more detail is generally better when requesting a search warrant (unless you provide the wrong detail). In our world of cut-and-paste it can be very easy to inadvertently cut part of a description you need to rely on or to leave part of a description from a previous case. Please be sure to proofread any descriptive language before submitting it to the judge.

U.S. v. Guillen, 20-2004 (10th Cir. 2021.) Parent's Authority to Consent to Search of Adult Child's Room.

When a young woman found a pressure cooker bomb hidden under her bed, law enforcement agents went to the home of the only person she said might want to harm her: Ethan Guillen, her ex-boyfriend. When they arrived at the home (which was owned by Ethan's father), agents spoke to Ethan (who was an adult) and then obtained permission from his father to search the house, including but without specifying Ethan's bedroom. Once evidence linking the bomb to Ethan was discovered in the bedroom, agents confronted him about it, and he confessed. On appeal, he claimed his father did not have authority to consent to the search of Ethan's room.

A third party may consent to the search of a suspect's property when the person has either actual or apparent authority to do so. Actual authority exists when the person has (1) mutual use of the property by virtue of joint access or (2) control for most purposes. Apparent authority exists when the facts available to the officer at the time would cause a person of reasonable caution to believe

that the consenting party had authority over the premises. As the Tenth Circuit said, "[w]hen a child—even an adult child—lives in a parent's home, the parent is presumed to have 'control for most purposes over the property and therefore actual authority to consent to a search of the entire home.'" That presumption prevails unless facts exist to show an agreement or understanding between the parent and the child that the parent must obtain permission before entering the child's room.

In this case, Ethan's dad testified that he had agreed to enter Ethan's room only with permission and Ethan's brother testified that Ethan habitually locked his door to keep others out. However, when agents asked for permission to search, there was no qualification by the father that a special arrangement existed for Ethan's room and that only Ethan could consent. When agents searched the house, the door to Ethan's room was wide open, his backpack (which was searched) was lying in the middle of the floor, and the father had clothing, musical instruments, and other things stored in the room, which suggested he frequently accessed it. In light of such circumstances, the Tenth Circuit held the agents were reasonable in relying on the father's consent and that no Fourth Amendment violation occurred.

***United States v. Cooley*, 19-1414 (593 U.S. ___ (2021)). Indian Officers Searching Non-Indians During Traffic Stops.**

In an opinion issued on June 1, 2021, the U.S. Supreme Court clarified that tribal law enforcement officers have "authority to detain temporarily and to search non-Indian persons traveling on public rights-of-way running through a reservation for potential violations of state or federal law." Obviously, this opinion complements and enhances the *McGirt* decision regarding the Muscogee (Creek) Nation and the state court decisions expanding *McGirt* to the Cherokee, Chickasaw*, Choctaw, and Seminole Nations. Since all of the territories within the historic boundaries of those nations are now reservation land, the Cooley opinion seems to authorize tribal officers to stop, detain, and search any person within such areas (including in towns and cities) so long as the purpose of the stop (when the person they encounter is non-Indian) is to consider violations of state or federal law.

**Bosse v. State*, 2021 OK CR 3, is the case in which the Oklahoma Court of Criminal Appeals determined the *McGirt* principles applied to the Chickasaw Nation and rendered all of the territory within the Nation's historic boundaries Indian Country. Since publication, the mandate in that case has been stayed by both the OCCA and the U.S. Supreme Court to allow the State to seek certiorari in the high court. The case can be followed here. We may have further guidance on Indian Country issues in Oklahoma if the Court grants certiorari. However, in the meantime, it appears for practical purposes that the parties will continue to consider territories within the Chickasaw Nation boundaries to be Indian Country.

Evidence.

Bagrev v. State, M-2019-205 (Okla. Crim. App. 2020) (Not for Publication). Observational Evidence when Radar Is Disallowed.

This case involved a traffic stop for speeding. The trooper who effectuated the stop testified at trial that he observed a driver approaching at a high rate of speed and used his Stalker 2 radar system to clock the vehicle's speed at 65 mph in a 45-mph zone. The driver, upon being stopped, told the trooper he thought he was in a 60-mph zone. The judge found the trooper had not recently performed the internal and external tests necessary to verify the radar unit was functioning properly and so excluded the evidence regarding the speed determination by radar. However, the judge did convict the driver of speeding 1-10 miles over the limit and imposed a $10.00 fine (which was later reduced to $5.00). On appeal, the driver argued that since the radar evidence was excluded his conviction should be overturned. The Court of Criminal Appeals found the evidence, which included the trooper's testimony of his physical observation of the vehicle's speed and the driver's statement that he thought he was in a 60-mph zone were sufficient to support the conviction.

I include this case just as a reminder that testimony of personal observations is good, admissible evidence.

Adult Certification of Juveniles.

MCT v. State, 2020 OK CR 3. When Is a Case a Subsequent Criminal Prosecution for Purposes of Adult Certification under 10A OS § 2-5-204(H)(1)?

This is an interesting case in which a juvenile committed crimes in Oklahoma County then, while that prosecution was ongoing (but before he was adjudicated as an adult), committed subsequent crimes in Cleveland County. In his Oklahoma County case, the juvenile stipulated to adult status and pleaded guilty as an adult. He then argued he should remain a juvenile in the Cleveland County case because he committed his Cleveland County crimes before being adjudicated an adult in the other case. The adjudication hearing in Cleveland County, however, occurred after he was adjudicated as an adult in Oklahoma County. As the Court of Criminal Appeals said, the controlling statute, 10A OS § 2-5-204(H)(1), is quite simple. Upon being adjudicated as an adult, a child or youthful offender maintains adult status in all subsequent criminal prosecutions. It is the timing of the adjudications and prosecutions that matter, not the sequence of the commission of the crimes.

AMC v. State, 2021 OK CR 20. Custodial Interrogations of Children.

In this case out of Oklahoma County, AMC, a seventeen-year-old, was interrogated by Oklahoma City homicide detectives while in custody. After AMC told detectives he could not read, he was read the Miranda warning from a pre-printed waiver sheet and then asked to initial and sign if he

was willing to talk to the detectives. AMC signed the waiver and spoke with detectives outside the presence of any other person. At the time of the interrogation, AMC was not formally charged with any crime but had been arrested for a probation violation. AMC had never been adjudicated as an adult or youthful offender and so arguably had the legal status of a child at the time of the interrogation.

The juvenile code provides that "[n]o information gained by a custodial interrogation of . . . a child . . . shall be admissible into evidence against the . . . child unless the custodial interrogation about any alleged offense by any law enforcement officer or investigative agency . . . is done in the presence of the parents, guardian, attorney, adult relative, adult caretaker, or legal custodian of the . . . child." 10A O.S. § 2-2-301(A). Based on that statute, AMC argued he was a child and the custodial interrogation of him violated the law and required that any information gained during the investigation had to be suppressed. The DA's office countered by citing 10A O.S. § 2-5-205(B), which provides that 15-, 16-, and 17-year-olds who are "charged with murder in the first degree" are to be held accountable as adults and will "have all the statutory rights and protections of an adult accused of a crime." According to the DA's office, because detectives suspected AMC of first degree murder his interrogation only had to comply with adult standards.

The Court of Criminal Appeals determined that "charged with murder in the first degree" as used in Section 2-5-205(B) doesn't mean formally charged but only means that "the offense under investigation" for which the interrogation is held must be first degree murder. Because in this case, the detectives were clear with AMC that their interrogation was related to the homicide investigation and because following the interrogation officers booked AMC into jail on a first degree murder complaint, the custodial interrogation outside of the presence of parents, guardian, attorney, or others was proper.

The majority justified its conclusion by noting "custodial interrogation most often refers to questioning, before the filing of charges, during the investigative stage by law enforcement." Thus, the judges concluded, "[i]nterpreting our juvenile statutes on custodial interrogation to apply only after formal charges are filed runs counter to common usage of that term."

Despite the detectives booking AMC on a first degree murder complaint, the DA's office refused to file murder charges and instead ultimately charged him with Possession of a Firearm After Juvenile Adjudication. It was his adjudication for the firearm offense from which AMC appealed.

The holding in this case was by a three-judge majority over a two-judge dissent. Both Judges Kuehn and Lewis issued fairly sharp dissents and each joined the other's dissent as well. As an aside, Judge Kuehn is now Justice Kuehn as Governor Stitt appointed her to the Oklahoma Supreme Court on July 26, 2021.

Right to Counsel and *Miranda*.

Coddington v. Sharp, Warden OSP, 16-6295 (10th Cir. 2020). Knowing and Voluntary Waiver.

This opinion is from a federal habeas attack on an Oklahoma robbery and murder conviction. The crimes occurred in 1997 when Coddington went on a cocaine binge and robbed several convenience stores and beat his friend to death with a claw hammer while seeking money to prolong his high. Two days after the murder, Coddington was arrested at his apartment and immediately began making statements to police that seemed to be leading to a confession, so officers read him the *Miranda* warning. Coddington waived his rights and continued making statements. Some hours later, at the police station, officers reminded him of his previous waiver. Coddington stated that he remembered his rights and the waiver and then confessed to the robberies and murder. While talking to police, Coddington remembered the murder in detail, including: (1) the clothes he wore; (2) that he and the victim had watched TV and talked for several hours before he asked the victim for money, was asked to leave, and then attacked the victim; (3) how many times he struck the victim; (4) details of the hammer—that it had a chrome handle with a rubber grip; (5) how much money he took from the victim and the denominations of the bills; and (6) that he had not reported the altercation with the victim to police because he did not want to get caught.

Coddington asserted two primary arguments to the federal court which he had previously presented to the OCCA: (1) that the time between being read the *Miranda* warning and being questioned at the station was of such a length that the questioning was improper; and (2) that his intoxication was such that his waiver should be considered unknowing.

As to the first argument, the Tenth Circuit found that officers properly read Coddington the *Miranda* warning upon his arrest and then, prior to questioning him at the station, asked him if he remembered receiving the warning and waiving his right previously. Such warning and reminder were sufficient to render Coddington's confession at the station knowing and voluntary. The court also cited Coddington's familiarity with law enforcement and his prior convictions as proof of his understanding of his rights. As an aside, it never hurts in such circumstances to re-read the *Miranda* warning on the record prior to further questioning.

As to the second argument, the court reiterated that intoxication alone does not render a confession involuntary. Instead, such intoxication must rise to the level of "substantial impairment" and show that a suspect's will is overborne to invalidate a confession. Coddington argued that because his confession also included a number of crimes that authorities could not verify, he must be considered as having been substantially impaired. But, in light of his ability to recall specific details about his crimes, the court held that there was no showing of substantial impairment. Further, the record shows that Coddington was aware of his surroundings and officers did not pressure or coerce his confession.

Reynaud v. State, F-2018-827 (Okla. Crim. App. 2020) (Not for Publication). Unequivocal Request for Counsel.

The standard is familiar: When one is in custody and being questioned, they have a constitutional right to counsel (and to be informed of this right). In order to exercise the right, one must unequivocally invoke the right to counsel. Essentially, this requires some statement from the detainee "that can reasonably be construed to be an expression of a desire for the assistance of an attorney."

In this case, the detainee was told by the interviewing detective that he had a right to get an attorney any time he wanted. The detainee responded by saying, "I could get one right now," and "maybe next time we chat you can bring me one." This statement, according to the court, is not an unambiguous, unequivocal request to have counsel present at the interrogation. Instead, the court found all the other circumstances surrounding the interview showed that the detainee understood his rights and intended to waive them as he spoke to the detective.

I include this case simply as a reminder that although it is the interviewee's responsibility to request counsel, it does not hurt to clarify any ambiguous statements and to do so on the record.

Open Records Requests.

Wagner v. Office of the Sheriff of Custer County, 2021 OK CIV APP 20. Emailing Records in Response to Open Records Requests.

This case involves a dispute between Jay Wagner, a professor of journalism in Milwaukee, Wisconsin, and the Custer County Sheriff's Office. Professor Wagner sent a request in compliance with the Open Records Act to the sheriff's office asking for copies of incident or initial offense reports generated by the office during a specific two-day period. The professor's request asked that any pertinent records be delivered to him as digital files via email.

The sheriff (or his staff) looked for and found the relevant records but refused to deliver them via email or any other method, arguing the Open Records Act did not require such delivery. Instead, when the professor asked why his request had not been complied with, the sheriff responded that the search had been timely made and the requested documents were "ready for you or a representative to pick up at our office Monday through Friday, 8 a.m. to 4 p.m., excluding weekends and holidays."

Subsequently the professor sued the sheriff claiming he had a right to have the records delivered electronically but the trial court found no such right exists in the Act. On appeal, the Court of Civil Appeals reviewed the language of the Act and found that Section 24A.2 provides ". . . public bodies do not need to follow any procedures for providing access to public records except those specifically required by the Oklahoma Open Records Act." **Bottom line?** *Open records*

requesters cannot require you to email them the requested records. You are free to do so, however, if you choose.

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. That would mean that the area in which he committed his crime was still Indian Country for purposes of the Major Crimes Act, 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 Supreme 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 had far-reaching effects in eastern Oklahoma because the treatment of territory formerly conferred on the Five Tribes (Cherokee, Muscogee (Creek), Seminole, Choctaw, and Chickasaw) had all been similar over the last 100 or more years. If the Muscogee (Creek) reservation was 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.

In March and April 2021, the Oklahoma Court of Criminal Appeals issued a series of cases in which they found the *McGirt* principles applied to the Cherokee (*Hogner v. State*, 2021 OK CR 4), Chickasaw (*Bosse v. State*, 2021 OK CR 3), Choctaw (*Sizemore v. State*, 2021 OK CR 6), and Seminole (*Grayson v. State*, 2021 OK CR 8) Nations such that the territories within the historic boundaries of each Nation constituted reservations which are Indian Country. The *Bosse* case has been stayed by both the OCCA and the U.S. Supreme Court and Oklahoma is in the process of drafting a petition for certiorari for the Supreme Court's consideration. *Bosse* involved a non-Indian committing a crime against Indians in the Chickasaw Nation. It appears the Oklahoma Attorney General is arguing that jurisdiction can be waived under federal law and that defendants who submitted themselves to Oklahoma's criminal jurisdiction should not be able to collaterally attack their convictions based on the *McGirt* decision. The OAG also appears to be arguing that the state has concurrent jurisdiction over crimes committed by non-Indians against Indians in Indian Country.

In May 2021, the OCCA granted a stay of trial proceedings and ordered briefing in *State ex rel. District Attorney v. Wallace*, 2021 OK CR 15, a case out of Pushmataha County where an Indian who was convicted of second-degree felony murder in 2012 is seeking post-conviction relief in light of *McGirt*, arguing that the state had no jurisdiction to try and convict him. The court directed the parties to submit briefs addressing the following question: "*In light of* Ferrell v. State, *1995 OK CR 54, 902 P.2d 1113*, United States v. Cuch, *79 F.3d 987 (10th Cir. 1996),* Edwards v. Vannoy *(No. 19--5807), 593 U.S. __ (May 17, 2021), cases cited therein, and related authorities, should the recent judicial recognition of federal criminal jurisdiction in the Creek and Choctaw Reservations announced in McGirt and Sizemore be applied retroactively to void a state conviction that was final when McGirt and Sizemore were announced?*" Between this case and the potential that the U.S. Supreme Court will consider the OAG's arguments in *Bosse*, the picture of Indian Country jurisdiction in Oklahoma continues to be in flux.

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 (unless the OAG is correct and the state has concurrent jurisdiction over such non-Indians).
- 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.

Finally, in May 2021, Representative Tom Cole, Republican representative of Oklahoma's 4th Congressional District and enrolled member of the Chickasaw Nation, has introduced legislation in the U.S. House of Representatives (H.R. 3091) that would authorize the state and the Chickasaw and Cherokee Nations to compact on public safety matters without federal involvement.

LEGISLATIVE ACTION

Title 21 – Crimes and Punishments (and related provisions).

HB 1630 (effective November 1, 2021) amends multiple statutes related to the SDA.

- **21 O.S. § 1278** previously provided that a person who has been granted a handgun license and is subsequently convicted of carrying or wearing a deadly or dangerous weapon with the intent of unlawfully injuring another person shall have such license *permanently* revoked. Section 1278 is amended by this bill to remove the word "permanently."
- **21 O.S. § 1280** is amended to also remove the word "permanently" with regard to revocation of a handgun license of a person convicted of unlawful pointing of a handgun or other deadly weapon.
- **21 O.S. § 1287** is likewise amended to remove the word "permanently" regarding revocation of a handgun license of someone convicted of possessing a firearm or other listed weapon while committing or attempting to commit a felony.
- **21 O.S. § 1290.2** is amended to include a new definition of "completed application" with reference to handgun licenses.
- **21 O.S. § 1290.5** is amended to remove the 90-day grace period currently afforded handgun licenses on renewal and to add language requiring the OSBI to deny a renewal application if the license is currently suspended or revoked or has previously been suspended or revoked. In addition, the background check requirement for a renewal application is revised to refer to the search criteria described in 12 O.S. § 1290.12, excluding requirements of state and FBI fingerprint searches.
- **21 O.S. § 1290.11**, which lists "other preclusions" from eligibility to hold a handgun license, is amended to make changes to subsection A(6). The subsection now provides that someone who has two more misdemeanor public intoxication or DUI convictions will be precluded from obtaining a handgun license for three years from the date of the completion of the last sentence OR will require a certified statement from a licensed physician that the person is not in need of substance abuse treatment. Section 1290.11 is further amended to add a new subsection A(11) which provides that having a previously revoked handgun license is a preclusion and will have a preclusive period of five years from the date of revocation.
- **21 O.S. § 1290.12** is amended to require the OSBI to conduct an immigration alien query (IAQ) for non-U.S. citizen applicants. The amendment of this section also eliminates the requirement that the OSBI approve an application unless and until a federal fingerprint search reveals information that would preclude the applicant from obtaining a license.
- **21 O.S. § 1290.18** is amended to require non-U.S. citizen applicants to list their alien or admission number on their application. It also requires the applicant to acknowledge that they have reviewed the FBI Privacy Act statement and the Oklahoma SDA.
- **21 O.S. § 1290.19** is amended to require OSBI to include the date of issuance of a license on the license itself.

HB 1684 (effective November 1, 2021) amends 21 O.S. § 974 with regard to a peace officer's duty to arrest persons for certain gambling offenses. This bill amends the language of the statute to provide that a peace officer has a duty to arrest OR to file a report with the DA to see if arrest is warranted for a person who is committing or has committed a gambling offense.

SB 646 (effective November 1, 2021) deals with firearms in locations where alcoholic beverages are served. This bill amends **21 O.S. § 1272.1** and **21 O.S. § 1290.22** and repeals **21 O.S. § 1272.2**.

- Section 1272.1 is amended to clarify that it applies to establishments where "the sale of alcoholic beverages . . . constitutes the primary purpose of the business."
- Section 1272.1 is amended authorize (1) peace officers, licensed armed private investigators, and licensed armed security guards, (2) the owner or proprietor of the establishment, and (3) employees of the establishment who have permission from the owner or proprietor to carry firearms in bars "when acting in the scope and course of employment."
- Section 1272.1 is further amended to allow individuals to carry or possess "any weapon designated in Section 1272" into any restaurant or other establishment licensed to dispense alcoholic beverages "where the sale of alcoholic beverages does not constitute the primary purpose of the business."
- Section 1272.1 still prohibits peace officers who are in actual physical possession of a weapon from consuming alcoholic beverages, except in the authorized line of duty as an undercover officer. It also prohibits any other person, employee, private investigator, or armed security guard who is in actual physical possession of a weapon from consuming alcoholic beverages in such establishments.
- Section 1272.1 is amended to provide that violation of the statute constitutes a misdemeanor with a possible punishment of a fine not to exceed $250 (previously a violation was a felony punishable by a fine not to exceed $1,000 and/or up to two years imprisonment).
- Section 1290.22 is amended to include liquor stores in the list of entities covered by the section.
- Section 1290.22 is amended to provide that if a person who is otherwise lawfully carrying a firearm on premises that is posted as prohibiting such carrying of firearms, the person may be asked to leave and, if the person refuses and a peace officer is summoned, the person may be guilty of a misdemeanor punishable by a fine not to exceed $250.
- Section 1272.2, which previously made a violation of Section 1272.1 punishable by a fine of $1,000 and/or up to two years imprisonment, is repealed.

SB 672 (effective November 1, 2021) addressing carrying of firearms in vehicles. The bill amends **21 O.S. §§ 1272**, **1289.7**, and **1289.13A** and repeals **21 O.S. § 1289.13**.

- Section 1272 is amended to clarify that the transporting of a firearm by vehicle on a public roadway by a person who is eligible to carry under so-called "Constitutional Carry" is not prohibited.

- Section 1289.7 is amended to authorize anyone who is not otherwise prohibited from possessing or purchasing a firearm, and who is not transporting in furtherance of a crime, may transport a firearm, loaded or unloaded, at any time in a vehicle.
- Section 1289.7 is amended to authorize anyone who is between 18 and 20 years of age, who is not otherwise prohibited from possessing or purchasing a firearm, and who is not transporting in furtherance of a crime, may transport an unloaded firearm, open or concealed, at any time in a vehicle.
- Section 1289.7 is further amended to provide that a person who is transporting a firearm in a vehicle must inform a law enforcement officer that he or she is in actual possession of a firearm when "demanded" to do so by the officer during any arrest, detainment, or routine traffic stop (the previous version said when "asked to do so").
- Section 1289.13A is amended to reflect changes to the other statutes.
- Section 1289.13, which previously made it unlawful to transport a loaded rifle or shotgun in a vehicle over a public roadway unless it was clip- or magazine-loaded, not chamber-loaded, and in an exterior locked compartment or trunk or in the interior compartment of the vehicle, is repealed.

SB 926 (effective November 1, 2021) amends 21 O.S. § 1289.24 regarding firearms regulation by political subdivisions of the state. Section 1289.24 is the state preemption statute, and this bill adds air powered pistols and air powered rifles to the list of items over which municipalities and other political subdivisions of the state have no regulatory authority. A new exception is also added for ordinances allowing municipalities to issue a citation to an individual or the parent/guardian of a minor who discharges an air pistol or air rifle in an intentional or negligent manner which causes the projectile to leave the intended premises.

HB 1135 (effective November 1, 2021) does away with the need for a "POSTED – NO TRESPASSING" sign found in 21 O.S. § 1835. Previously, for a person to be trespassing in a "garden, yard, pasture, or field," there needed to be a "posted – no trespassing" sign. The bill deletes the "posted" requirement from the statute such that there no longer needs to be a sign in order for a trespasser to be liable. The bill also provides exceptions for a number of individuals, including, e.g., peace officers, government employees in the performance of their duties, and oil and gas workers with a lawful reason to be on the land. The penalty remains the same – a misdemeanor punishable by thirty (30) days to six (6) months in jail and/or a fine of $50 to $500.

HB 2666 (effective November 1, 2021) alters the definition of rape found in 21 O.S. § 1111. Rape is currently defined, in relevant part, as "an act of sexual intercourse . . . accomplished with a male or female who is not the spouse of the perpetrator." There was a separate subsection dealing with marital rape. The distinction between marital and nonmarital rape originated in the medieval notion that there was no such thing as rape in marriage. The new definition is, again in relevant part, "an act of sexual intercourse . . . accomplished with a male or female within or without the bonds of marriage." The subsection dealing with marital rape is repealed, and marital and nonmarital rape will now be treated the same.

HB 1759 (effective November 1, 2021) adds a new prohibited activity to the Oklahoma Computer Crimes Act, 21 O.S. §§ 1952, 1953. The bill prohibits the use of a malicious computer program and makes doing so a felony punishable by up to ten (10) years in DOC custody and/or a fine of $5,000 to $100,000. A malicious computer program is defined as "any computer program that is created, executed, modified, or distributed with the intent to disrupt, destroy, deny access to, redirect, defraud, deceive, exceed or gain unauthorized access to any computer, computer system, computer network, or data." The bill lists some examples, such as "viruses, Trojan horses, spyware, worms, rootkits, backdoors, [and] ransomware."

HB 2515 (effective November 1, 2021) makes some significant changes to Oklahoma's child sex crime laws, mostly found in 21 O.S. § 843.5.

- **Definitional Changes:**
  - The distinction between "a parent or other person" is removed, and the phrase **"a person responsible for the health, safety, or welfare of a child"** is substituted. That phrase includes a parent, legal guardian, custodian, foster parent, person eighteen (18) or older that lives with the child and is at least three (3) years older than the child, an owner/operator/agent/employee/volunteer of a child care facility, public or private residential home, institution, facility, or day treatment program that the child attended, an intimate partner of the parent of the child, or a person who has voluntarily accepted responsibility for the care or supervision of the child.
  - **Incest** now means marrying, committing adultery, or fornicating with a child by a person responsible for the health, safety, or welfare of a child.
  - **Sodomy** now means forcing a child to perform oral sex on a responsible person or a responsible person performing oral sex on a child.
  - **Sexual intercourse** now means the actual penetration, however slight, of the vagina or anus by the penis.
  - **Child sexual abuse** now means sexual intercourse, penetration of the vagina or anus, however slight, by an inanimate object or any part of the human body not amounting to sexual intercourse, sodomy, incest, or a lewd act or proposal.
  - **Child sexual exploitation** now encompasses a broad array of other offenses committed against or involving children, including, e.g., human trafficking, child porn, and prostitution.
- **Consent Not a Defense –** the bill declares that consent cannot be raised as a defense to any of the crimes enumerated in 21 O.S. § 843.5.
- **Uniform Applicability and Consolidation –** the bill removes outmoded distinctions made between children sixteen (16) to eighteen (18) years of age and children under sixteen (16). The law now treats every victim under eighteen (18) the same. It also consolidates sections dealing with forcible sodomy, rape, and lewd or indecent proposals committed against children under eighteen (18) into 21 O.S. § 843.5.

HB 2674 (emergency clause, effective May 27, 2021) adds a new term to many of Oklahoma's laws concerning tobacco and tobacco-adjacent products. "Nicotine products" are now restricted in addition to tobacco and vapor products. A "nicotine product" is "any product that contains nicotine extracted or isolated from plants, vegetables, fruit, herbs, weeds, genetically modified organic matter, or that is synthetic in origin and is intended for human consumption." Products approved by the FDA for smoking cessation are excluded. Some examples of statutes that the new term appears in include but are not limited to:

- Purchase or Possession of Tobacco, Nicotine or Vapor Product by Minors, 10A O.S. § 2-8-224.
- Furnishing Tobacco, Nicotine, or Vapor Products to Minors, 21 O.S. § 1241.
- Required Signage in Retail Establishment, 63 O.S. § 1-229.15.

SB 862 (effective November 1, 2021) amends 21 O.S. § 1247 concerning smoke-free areas. The bill permits trusts or other entities operated for the benefit of counties or municipalities to designate their premises as smoke-free, meaning there can be no smoking or vaping of tobacco, nicotine, marijuana, or other products. The most obvious potential application of this law is to allow privately-owned but publicly accessible parks to designate themselves as smoke-free. For those interested, the Oklahoma City Parks Master Plan touches on the relationship between publicly- and privately-owned parks.

HB 2645 (emergency clause, effective May 12, 2021) adds to the list of places that it is unlawful to carry a firearm pursuant to 21 O.S. § 1277. This bill allows a city, county, town, public trust with a political subdivision as a beneficiary, or state governmental authority to set aside property for an event. If the property has certain minimum-security provisions, carrying on that property during the event is unlawful. The minimum-security provisions are a "metallic-style" fence at least eight (8) feet high that encompasses the property, controlled access points staffed by uniformed commissioned peace officers, and a walk-through metal detector. If a public authority sets aside a property for an event on behalf of an event permit holder, but doesn't set up those minimum-security provisions, then concealed carry is permissible. The permit holder has the option of allowing open carry at the event as well.

HB 2546 (effective November 1, 2021), the Sexual Assault Victims' Right to Information Act, creates some new rights for victims and duties for peace officers.

- **Victims' Rights:**
  - Right to speak to an advocate before undergoing a forensic medical exam, to be codified at 21 O.S. § 142C-2.
  - Right to have an advocate present during interviews with DAs or peace officers, codified at 21 O.S. § 142C-3.
  - Right to have forensic evidence not be used to prosecute a victim for any misdemeanor crime, and to not have forensic evidence be used as a basis to search for further evidence

of any unrelated misdemeanor crimes that may have been committed by the victim, to be codified at 21 O.S. § 142C-4.

- Right to request and receive the status and results of the analysis of any forensic evidence, and to request a copy of the police report, to be codified at 21 O.S. § 142A-3.

- **Peace Officer Duties:**
  - Make *every effort* to allow the victim to speak to an advocate through telecommunication, to be codified at 21 O.S. § 142C-2.
  - Permit an advocate to be present during interviews with victims, to be codified at 21 O.S. § 142C-3.
  - Do not, for any reason, discourage a victim from getting a forensic medical exam or reporting a sexual assault, to be codified at 21 O.S. § 142C-3.
  - Provide victims with the same information as would be required by 21 O.S. § 142A-3, to be codified at 21 O.S. § 142C-5.
  - When informing the victim of their rights under 21 O.S. § 142A-3, instead of saying "as a victim of rape or forcible sodomy, you have certain rights," now say "as a victim of sexual assault, you have certain rights."

HB 2544 (effective November 1, 2021) clarifies some language in 21 O.S. § 13.1 and 57 O.S. § 571 about elder abuse. Previously, both sections included the phrase "who is a resident of a nursing facility" after "abuse of a vulnerable adult as defined in [43A O.S. § 10-103]." The statute removes the phrase "who is a resident of a nursing facility" from both sections.

SB 403 (emergency clause, effective April 15, 2021) makes it unlawful to disrupt meetings of political subdivisions pursuant to 21 O.S. § 280. It is also now unlawful for any person causing a disruption to a political subdivision's meeting to refuse to disperse or leave after proper notice by a peace officer, sergeant-at-arms, or other security personnel. Political subdivisions include but are not limited to cities, towns, and counties. A violation of this section is a misdemeanor punishable by up to one (1) year in jail and/or a fine of up to $1,000.

HB 1674 (effective November 1, 2021) changes some of the laws related to rioting.

- **Obstruction of Roads** – the bill makes it a misdemeanor to obstruct the normal use of a public street, highway, or road punishable by up to one (1) year in jail and/or a fine of $100 to $5,000 pursuant to 21 O.S. § 1312.
- **Liability Shield –** a new law to be codified at 21 O.S. § 1320.11 shields a person operating a motor vehicle from criminal and civil liability for causing injury or death to an individual obstructing a roadway if:
  - The injury or death occurred while the operator was fleeing from a riot under a reasonable belief that the flight was necessary to protect the operator from serious bodily injury or death; and
  - The operator exercised due care at the time of the death or injury.

- **Organization Conspiring in Riot –** a new law to be codified at 21 O.S. § 1320.12 provides that any organization found to have conspired to commit any crime found in 21 O.S. §§ 1320.5-1320.10 shall be fined an amount ten times (10x) greater than the fine authorized by the corresponding provision.

HB 1643 (effective November 1, 2021) codifies a new law prohibiting the doxxing of a peace officer or public official. The new law will be codified at 21 O.S. § 1176. "Doxxing" is a term that refers to publishing an individual's personal information. The law makes it a misdemeanor to publish, post, or otherwise make publicly available the personally identifiable information of a peace officer or public official if it places them in reasonable fear of death or serious bodily injury. The first violation is punishable by up to six (6) months in jail and/or a fine of up to $1,000. Any second or subsequent violation is punishable by up to one (1) year in jail and/or a fine of up to $2,000. The bill also amends 68 O.S. § 2899.1 to allow peace officers and public officials to request that a county assessor not make their information publicly available on the internet.

SB 312 (effective November 1, 2021) ups the penalty for identity theft pursuant to 21 O.S. § 1533.1 when the victim is under eighteen (18). Identity theft of a person under eighteen (18) is a felony now punishable by two (2) to ten (10) years in DOC custody and/or a fine of up to $100,000.

Title 22 – Criminal Procedure (and related provisions).

HB 1022 (effective November 1, 2021) amends 22 O.S. § 1115.1A relating to release upon personal recognizance for misdemeanor traffic violations. Section 1115.1A is amended to provide that payment of the fine and costs associated with a misdemeanor traffic violation that is not accompanied by a written plea of guilty or nolo contender shall constitute a plea of nolo contendere and shall "function as a written, dated and signed citation form acceptable to the court."

SB 1948 (effective November 1, 2021) amends 22 O.S. § 60.1 to make the definition of family or household member more inclusive. Previously the definition of family or household member was limited to "parents, including grandparents, stepparents, adoptive parents and foster parents," "children, including grandchildren, stepchildren, adopted children and foster children," and persons otherwise related by blood or marriage living in the same household." This bill expands that definition to also include "persons otherwise related by blood or marriage." The expansion is important because by definition, domestic abuse in Oklahoma requires that the victim be a current or previous intimate partner or household member. A protective order is only available to victims of domestic abuse, stalking, harassment, or rape. By expanding the definition, several loopholes are closed. The example I use in the basic academy is the no-good son-in-law who does not and has never lived in his in-law's home but who comes over and beats up his father-in-law. Previously, this was not domestic violence and so the father-in-law could not be granted a protective order. Now, the father-in-law is authorized to seek and, with appropriate evidence, receive a protective order against the no-good son-in-law. It does not fix the problem of a daughter's no-good boyfriend, however, because a boyfriend is not related by "blood or marriage," even if he is living in the same household.

HB 1095 (effective November 1, 2021) adds to the sentencing powers of a court. The bill amends **22 O.S. § 991a** to provide a court the ability, pursuant to the terms and conditions of a written plea agreement, to prohibit a defendant from entering, visiting, or residing within the judicial district in which the defendant was convicted until after the completion of the sentence. The court must ensure the defendant has access to services or programs required as part of his or her probation.

HB 2095 (effective November 1, 2021) adds a new activity that can constitute racketeering to the list contained in 22 O.S. § 1402. "Engaging in, attempting to engage in, conspiring to engage in, or soliciting, coercing, intimidating another person to engage in" unlawful assembly in violation of 21 O.S. § 1320.3 is now defined as racketeering activity. The activities on the list constitute racketeering regardless of whether or not they are independently charged, so even if a person is not charged with unlawful assembly, they may still be charged with racketeering activity.

SB 348 (effective November 1, 2021) creates a new statute of limitations on first- and second-degree manslaughter in 22 O.S. § 151. Prosecutions for first- and second-degree manslaughter must be commenced within ten (10) years after the date that the crime is reported to a law enforcement agency.

HB 2774 (effective November 1, 2021) imposes a duty on sheriffs and other law enforcement agencies to comply with immigration detainer requests by ICE. The bill amends 57 O.S. § 16a to require "sheriffs, jailers, prison keepers, and their deputies" to hold persons pursuant to an immigration detainer request, and to inform the person that they are being held for that reason. It also creates a new section of law, which will be codified at 22 O.S. § 171.3, extending the same duties to any "law enforcement agency that has custody of a person who is subject to an immigration detainer request." Sheriffs and other law enforcement agencies must allow reasonable access to prisoners by ICE for the purpose of identifying inmates.

SB 17 (effective November 1, 2021) creates some additional duties for a peace officer who conducts a lethality assessment pursuant to 21 O.S. § 142A-3. If, after conducting a lethality assessment, a referral is suggested by the assessment, the peace officer must tell the victim the results of the assessment. The peace officer then must offer to call the domestic violence hotline. If the victim refuses the offer, the peace officer must document the refusal on the lethality assessment. Even if the victim refuses the offer, the peace officer must still provide information on shelters, DV programs, and other social services.

HB 2295 (effective November 1, 2021) affects several different kinds of bonds:

- **Personal Recognizance Bonds, 22 O.S. § 1105 –** a person is not eligible for a PR bond if they are arrested for a violation of an ex parte or final protective order issued pursuant to 22 O.S. §§ 60.2, 60.3, an act constituting domestic abuse, domestic assault and battery, or domestic assault and battery with a deadly weapon pursuant to 21 O.S. § 644, or an act constituting domestic abuse, stalking, or harassment pursuant to 22 O.S. § 60.1.
- **Pretrial Release Programs, 22 O.S. § 1105.3** – a person is not eligible for pretrial release, under any circumstances, if they are accused of domestic abuse, domestic assault and battery, domestic assault and battery with a dangerous weapon, domestic assault and battery with a deadly weapon, stalking, or violation of a VPO.
- **Own Recognizance Bonds, 22 O.S. § 1108.1** – a person is not eligible for an OR bond for traffic offenses, violations of an emergency ex parte or final protective order, domestic abuse, and stalking or harassment.

SB 585 (effective November 1, 2021) adds some examples of what constitutes habitual or willful neglect of duty pursuant to 22 O.S. § 1181. Under Section 1181, any state, county, municipal, or other officer can be removed from office for, among other things, habitual or willful neglect of duty. This bill declares the following activities to be habitual or willful neglect of duty:

- Knowingly giving false testimony before a legislative committee;
- Knowingly engaging in operations beyond the constitutional or statutory authority delegated to the agency that the officer works for; or

- Repeatedly refusing to provide information to a committee, either house, or a member of the legislature in a timely manner.

Title 12 – Civil Procedure (and related provisions).

HB 1632 (effective November 1, 2021) amends 12 O.S. §§ 1148.10 and 1148.10A with regard to forcible entry and detainer. Section 1148.10, which provides the form of a writ of execution, is amended to change and simplify the language of the form making clear that such a writ requires *physical possession* of the affected property be restored to the plaintiff in a civil suit. Section 1148A is amended to include the descriptor "physical" to the possession discussed in the statute.

SB 361 (effective November 1, 2021) amends the Peer Support Counseling Privilege found at 12 O.S. § 2506.2. Section 2506.2 describes a privilege for peer support counseling which provides "[a]ny communication made by a participant or counselor in a peer support counseling session conducted by a law enforcement agency or by an emergency services provider for public safety personnel or emergency services personnel, and any oral or written information conveyed in the peer support counseling session, is confidential and may not be disclosed by any person participating in the peer support counseling session." The bill amends the definition of "peer support counseling sessions" to authorize the participation in such sessions by the immediate family of the public safety or emergency services personnel without the loss of the privilege.

HB 1024 (effective November 1, 2021) disqualifies certain persons from licensure as a process server pursuant to 12 O.S. § 158.1. If a person is convicted of one of the violent crimes enumerated in 57 O.S. § 571 or of a crime that requires a person to register as a sex offender pursuant to 57 O.S. § 582, that person is not eligible to be licensed as a process server, or to apply for a license renewal. The bill also:

- Makes it a misdemeanor to hold oneself out as a process server without a license pursuant to 12 O.S. § 158.1;
- Makes it a misdemeanor to commit any assault, battery, or assault and battery against a licensed process server in the performance of their duties pursuant to 21 O.S. § 650.6, punishable by up to one (1) year in jail and/or a fine of up to $1,000; and
- Makes it a misdemeanor punishable the same as above to resist the execution of legal process, enter into a combination with any other person to resist the execution of legal process, or release or fail to control an animal in retaliation for execution of legal process pursuant to 21 O.S. § 1319. So, if you were thinking of setting your dogs on a process server, you probably shouldn't.

Title 13 – Common Carriers (and related provisions).

SB 980 (effective November 1, 2021) adds to the list of crimes that may warrant a wiretapping order pursuant to 13 O.S. § 176.7. A law enforcement agency may now ask the district attorney to ask the Attorney General to ask a judge for permission for a wiretap when investigating child sexual exploitation pursuant to 21 O.S. § 843.5, or sexual conduct or communication with a minor by use of technology pursuant to 21 O.S. § 1040.13a.

SB 272 (effective November 1, 2021), the Kelsey Smith Act, creates a new law allowing law enforcement agencies to access call location information in certain situations. Kelsey Smith was abducted from a store parking lot in 2007, but by the time law enforcement was able to access the location information from her cell phone, it was too late. Kelsey's parents have been advocating the passage of similar laws in states all over the country. This law, to be codified at 13 O.S. § 178, has three main components:

- **Access to Location Information –** requires telecom carriers to provide call location information to a law enforcement agency so that the agency can respond to a call for emergency services, or in an emergency situation that involves a risk of death or serious physical harm.
- **Emergency Contact Directory –** requires all telecom carriers falling under Oklahoma's jurisdiction to provide a contact number for the carrier to the OSBI that law enforcement agencies can call to obtain call location information. The OSBI will maintain a directory of contact numbers as a resource for law enforcement agencies.
- **Liability Shield –** provides a shield from liability for telecom carriers and their agents/employees who provide call location information in good faith and in accordance with this law.

Title 10A – Children and Juvenile Code (and related provisions).

HB 2317 (effective November 1, 2021) creates new law providing a grievance procedure for children who have been detained in an adult facility. The bill tasks the Oklahoma Commission on Children and Youth with creating the grievance process to be administered by the Commission's Office of Juvenile System Oversight (OJSO). The OJSO will have authority to investigate complaints related to placement, treatment, psychological services, social services, educational services, recreation, abuse, neglect, or misconduct, cleanliness and hygiene, and routine problems with employees, contractors, or other incarcerated persons in the facility. OJSO is required to notify OJA when a complaint is received and to notify DHS is the complaint involves a child in DHS custody. The new law is to be codified at 10A O.S. § 2-3-105. It will not apply to any child housed in a DOC facility or housed under a contract with DOC.

SB 960 (emergency clause, effective April 27, 2021) deals with relinquishment and abandonment of children. This bill amends 10A O.S. § 1-2-109 to protect a parent from prosecution for child abandonment or child neglect based solely on the relinquishment of a child thirty (30) days of age or younger to a medical services provider or child rescuer. (Previously the protection had extended only to relinquishment of children seven (7) days of age or younger.) A child may be relinquished by leaving the child in a "newborn safety device" that is physically located in a police station, fire station, child protective services agency, hospital, or other medical facility, and meets other requirements—like being in a visible area and having an alarm that notifies employees when a child is placed in the device. The bill also amends 21 O.S. § 851 to align the criminal provision with the relinquishment authorization of Section 1-2-109.

HB 2311 (effective November 1, 2021) changes some laws governing the detention of children under the age of eighteen (18). Most notably:

- Children under the age of eighteen (18) can now be held in an adult jail or other detention facility if the jail or other facility is licensed by the Department of Health to detain children. 10A O.S. § 2-2-403.
- If a child is placed in secure detention, the facility must provide sight and sound separation for the child, and the facility must meet the requirements for licensure as a juvenile detention facility according to Office of Juvenile Affairs standards. 10A O.S. § 2-3-101.
- A facility must be licensed by the Department of Health to detain children in order for a youthful offender sentenced as an adult to be held there while awaiting housing in DOC custody. 10A O.S. § 2-5-204.
- If a person certified as a youthful offender is eighteen (18) or older, they can be held in general population at a county jail. 10A O.S. § 2-5-209.

SB 987 (effective November 1, 2021) permits a court to order a peace officer to transport a child pursuant to 10A O.S. § 1-2-105. A court can order a peace officer to transport

a child for the purpose of the child undergoing an examination in the course of an abuse or neglect investigation.

SB 27 (effective November 1, 2021) allows DHS to collaborate with any law enforcement agency to conduct background checks pursuant to 10A O.S. § 1-7-115. The statute used to limit DHS to collaborating only with *local* law enforcement agencies to conduct background checks of persons considered for emergency placements. Additionally, DHS is now required to collect fingerprints of all the persons living in the home considered for emergency placement who are over the age of eighteen (18) or under the age of eighteen (18) and who have been certified as an adult for the commission of a crime. The fingerprints are to be forwarded to the OSBI to undergo an FBI Interstate Identification Index.

SB 310 (effective November 1, 2021) amends 10A O.S. §§ 2-5-205, 2-5-206 concerning the certification of a defendant as a youthful offender. There appears to be some conflict in the language in these statutes. Section 2-5-205 now reads, in relevant part, "Any person fifteen (15), sixteen (16), or seventeen (17) years of age who is charged with murder in the first degree **or rape in the first degree or attempt thereof** at that time shall be held accountable for his or her act as if the person was an adult and *shall not be subject to the provisions of the Youthful Offender act*" (bolded section is the amendatory language, italicized words are emphasis added). Section 2-5-206, on the other hand, now reads, in pertinent part, "Any person fifteen (15), sixteen (16), or seventeen (17) years of age who is charged with rape in the first degree or attempt thereof *may be held accountable for such acts as a youthful offender* pursuant to this section or as an adult" (emphasis added). We will probably see some litigation about this conflicting language. The bill also makes some slight changes to the list of offenses that create youthful offender status when committed by persons fifteen (15), sixteen (16), or seventeen (17) years of age found in Section 2-5-206. The list now includes:

- Second-degree murder;
- Kidnapping;
- First-degree manslaughter;
- Robbery with a dangerous weapon or firearm, or attempt;
- First-degree robbery, or attempt;
- Rape by instrumentation, or attempt;
- Forcible sodomy;
- Lewd molestation;
- First-degree arson, or attempt; and
- Any offense in violation of 21 O.S. § 652.

Title 11 – Cities and Towns (and related provisions).

HB 2225 (effective November 1, 2021) amends several laws governing the disposition of certain seized property. Disclaimer – A reminder that this is a summary only. Agencies should consult with their district attorney, municipal counselor, or other legal counsel to ensure full compliance with these and any related laws.

- **11 O.S. § 34-104:**
  - Requires the court with jurisdiction (if prosecution has been initiated) or the prosecuting authority (if prosecution has not been initiated) to make a determination that property seized in connection with a criminal investigation or arrest is not needed as evidence before the property can be disposed of.
  - Requires that written notice of a hearing on an application to dispose of property be sent to each owner of the property and the person last in possession of the property at least eleven (11) days before the hearing if the property is worth $250 or more.
  - Requires that, if the property is worth $500 or more and the owner or possessor is unable to be found, notice of a hearing must be given by publication in the county where the property is being held at least three (3) days before the hearing. The notice must include a description of the property, or the location where a list of held property can be viewed during business hours.
  - Provides that, if a municipality knows who the owner of seized currency is, the municipality may transfer the currency to the owner without a court order.
  - Requires that, if property is seized in the course of an arrest or detention but is not seized as evidence, the municipality holding the evidence must give written notice that the property is available for return within ninety (90) days from the seizure.
- **22 O.S. § 1321:**
  - Provides that property does not have to be returned to the owner if the owner is legally prohibited from possessing the property. The example that most readily comes to mind is persons who are prohibited from owning firearms – there would be no duty to return a firearm to such a person.
  - Provides that property does not have to be returned to the last possessor of the property if there is evidence that suggests the last possessor is not a *lawful* possessor of the property.
  - Provides that, if a defendant makes an affidavit of non-ownership in connection to seized property, the peace officer taking the affidavit no longer must file the affidavit with the court clerk. The peace officer must provide a copy of the affidavit to the defendant.
  - Requires the owner of property that is ordered released provide proof of ownership. If the owner of the property relies on an affidavit to establish ownership, the owner can be made to sign an agreement to indemnify the custodian of the property in the event of an adverse claim.

- Permits a court with appropriate jurisdiction to order weapons destroyed rather than released if the court determines that the owner is mentally or emotionally unstable or cannot legally possess a weapon.

- **22 O.S. § 1322** – requires that, when property is ordered to be released, it must be made available within twenty (20) days of the issuance of the order.
- **22 O.S. § 1326** – requires peace officers to deliver a receipt for seized property to a defendant directly or to the detention officer holding the detainee's property. Peace officers then must give a copy of the receipt to the head of the peace officer's agency, or the agency head's designee.

Title 37A – Alcoholic Beverages (and related provisions).

SB 760 (emergency clause, effective April 27, 2021) amends 37A O.S. § 6-109 to provide an exception to the general prohibition against allowing alcohol containers to be removed from a licensee's premises. The bill adds language to allow patrons to carry an alcoholic beverage "within the entire premises" when multiple licensees are lawfully operating in a facility intended for multiple licensed premises within the facility and which contains a "common use area." Wil calls this bill "The Collective" bill after the popular OKC "food hall." We've included a link to The Collective's website here simply so you can see an example of the type of premises this change may affect. (In no way is including the link meant as any official endorsement or non-endorsement of the venture.)

HB 2122 (effective August 19, 2021) creates a new article, the Oklahoma Cocktails-To-Go Act of 2021, at 37A O.S. § 7-101 et seq. It allows holders of a mixed beverage license to sell cocktails, mixed drinks, or single-serve wines in sealed containers at their location to be consumed off-premises, if certain requirements are met. But **third-party delivery services are prohibited from delivering these kinds of beverages**. Read a press release from the Oklahoma Senate about the bill here.

SB 385 (effective November 1, 2021) permits retail spirits, retail wine, and retail beer licensees to host taste testing events. First, the bill provides an exception for taste testing events to the general prohibitions on retail spirits, retail wine, and retail beer licensees allowing a retail container to be opened or consumed on their premises. 37A O.S. §§ 6-103, 6-108. Second, taste testing events must conform to the following rules, now found in 37A O.S. § 2-109(D):

- The taste testing must be supervised directly by the licensee;
- All beverages must be poured by the licensee or their employees;
- Beverages must be sourced from Oklahoma-licensed wholesalers, distributors, small brewers, or self-distributing wineries;
- Licensees can only provide samples of the type of alcohol they are licensed to sell;
- The event must be restricted to consumers twenty-one (21) and older, and each consumer must be limited to one (1) fluid oz. of spirits, two (2) fluid oz. of wine, or three (3) fluid oz. of beer per day;
- No samples can leave the licensed premises; and
- Samples must be poured from their original containers, no more than six (6) containers can be open at any time, and any unused product in an open container must be poured out at the end of the day.

HB 1096 (effective November 1, 2021) excludes social media interaction from the definition of "inducement" pursuant to 37A O.S. § 3-123. As long as no reimbursement is made directly or indirectly in return for social media advertising, licensees can interact on social media without the interaction constituting inducement.

SB 85 (effective November 1, 2021) amends 37A O.S. § 2-102 to give small brewer licensees a new privilege. A holder of multiple small brewer licenses can now sell beer produced at up to three (3) breweries that the licensee has a license for at any of the other three (3) breweries or on a premises contiguous to a brewery.

HB 2726 (emergency clause, effective May 6, 2021) defines some new terms and creates new regulations related to those terms. It also provides some new regulations regarding self-served drinks from automated devices.

- **New Definitions –** to be codified in 37A O.S. § 1-103, include:
  - **Bottle service** means the sale and provision of spirits in their original packages by a mixed beverage licensee to be consumed in that mixed beverage licensee's club suite.
  - **Club suite** means an exclusive space limited to certain patrons granted access to the space by the licensee.
- **Authorization –** a mixed beverage license now authorizes a licensee to conduct bottle service pursuant to 37A O.S. § 2-110. Containers must remain in the club suite, must be consumed in their entirety at or before the end of the reservation period of the club suite, and must be provided exclusively by the mixed beverage licensee.
- **Self Service from Automated Devices –** pursuant to 37A O.S. § 6-102, ABLE Commission licensees can permit patrons to serve themselves beer or wine from an automated device on a licensed premises if:
  - The licensee monitors and can control the dispensing of beer or wine from the device;
  - The licensee ensures that there is constant video surveillance of the device when the premises is open to the public, and the licensee stores footage for at least sixty (60) days so that it can be made available at the request of authorized law enforcement agents; and
  - The licensee uses a radio frequency identification device (RFID), or other technology approved by the ABLE Commission, to limit patrons to either ten (10) ounces of wine or thirty-two (32) ounces of beer. The licensee may authorize an additional ten (10) ounces of wine or thirty-two (32) ounces of beer if the licensee re-IDs the patron.

Title 43A – Mental Health (and related provisions).

SB 87 (effective November 1, 2021) amends 43A O.S. § 3-428 to provide for mental health diversion by law enforcement of a person in possession of CDS or paraphernalia. The bill adds a new subsection G to the statute which authorizes law enforcement to divert a person who is in possession of CDS or paraphernalia, and who appears to need help, and who consents to help to be taken to an approved drug treatment center, an approved center for substance abuse evaluation, or some other facility by a law enforcement officer in lieu of being arrested. The program must be created with the advice and consent of the county's DA and must be reapproved annually by the DA.

SB 3 (effective November 1, 2021) alters the duty of peace officers to transport certain persons pursuant to 43A O.S. §§ 1-1-110, 5-207.

- Peace officers are responsible for transporting **persons who are in need of initial assessment, emergency detention, or protective custody** from an initial point of contact to the nearest "facility" (as that term is defined in 43A O.S. § 1-103) within thirty (30) miles from the peace officers' operational headquarters. If available, peace officers may utilize telemedicine to have a person assessed. If the nearest facility is more than thirty (30) miles from the peace officers' operational headquarters, the Oklahoma Department of Mental Health and Substance Abuse Services (ODMHSAS) or one of its contractors must facilitate the transportation.
- Peace officers must immediately transport **a person who appears to be or states that they are mentally ill, alcohol dependent, or drug dependent to a degree that emergency action is necessary** to the nearest facility within thirty (30) miles from the peace officers' operational headquarters. If available, peace officers may utilize telemedicine to have a person assessed. If the nearest facility is more than thirty (30) miles from the peace officers' operational headquarters, the ODMHSAS or one of its contractors must facilitate the transportation.
- When a peace officer transports a person pursuant to either of these sections, the peace officer's agency is responsible for any subsequent transportation of the individual pending the completion of an initial assessment, emergency detention, protective custody, or inpatient services.
- Agencies may contract around the duties in these sections.

Title 47 – Motor Vehicles (and related provisions).

HB 2202 (effective November 1, 2021) amends 47 O.S. § 1151(A)(5) to give a grace period for expired tags. Section 1151(A)(5) makes it illegal to operate a vehicle without a proper license plate or decal or on which all taxes due the state have not been paid. The amendment prohibits state, county, and municipal law enforcement officers from issuing a citation for such a violation "during the thirty-day period immediately succeeding the last day of the month during which a vehicle registration should have been renewed[.]"

SB 889 (emergency clause, effective April 19, 2021) amends 47 O.S. § 2-300 with regard to the Oklahoma Law Enforcement Retirement System. OLERS applies to law enforcement officers and some others connected to OHP, OSBI, OBN, ABLE, and some park rangers. The bill increases age for distribution from 70 ½ years to 72 years.

HB 2182 (effective November 1, 2021) amends 47 O.S. § 955 regarding towing vehicles from public roadways. This bill adds an additional basis for officers of DPS or any political subdivision to authorize the towing of a vehicle that is blocking a public roadway. This addition allows the towing of a vehicle that obstructs "the normal movement of public transit along a rail fixed guideway." Essentially, this bill authorizes OKC to tow vehicles that block the streetcar system.

HB 2238 (emergency clause, effective April 22, 2021) amends 47 O.S. § 11-507 to create an exception to the general prohibition on standing in a roadway to solicit rides, donations, employment, or business from motorists. The bill now allows such solicitations if "performed on a roadway maintained by a city or town in compliance with a permit and regulations adopted by ordinance." As you can see, this was declared to be immediately necessary for the preservation of the public peace, health, or safety. I suppose this now makes a fire department's "fill the boot" campaign solicitations legal. Who knew you could have arrested all those guys previously?

HB 1788 (effective November 1, 2021) amends 47 O.S. §§ 11-1401, 11-1401.2 regarding toll collections on turnpikes. The amendments largely deal with video toll collection systems. One provision requires a vehicle owner to register the vehicle with DPS for the purpose of imposing monetary liability on the owner for the failure of an operator to comply with the toll collection regulations of the OTA. Another prohibits a person from operating a vehicle on a turnpike with knowledge that the registered owner of the vehicle is liable for any outstanding toll evasion violations. Yet another makes an owner or operator of a vehicle subject to a charge by DPS or other law enforcement agency for an owner's failure to timely pay an invoice for tolls submitted through the video toll collection system.

SB 355 (effective November 1, 2021) is the Oklahoma Peer-to-Peer Car Sharing Program Act. This bill creates new law to be codified at 47 O.S. § 1050 et seq. It authorizes and sets

out guidelines for peer-to-peer car sharing programs. Not familiar with peer-to-peer car sharing? Automotive World says "think about Airbnb, but for cars."

SB 367 (effective November 1, 2021) amends provisions of 47 O.S. §§ 752, 754, and 759 regarding blood draws and breath tests of impaired drivers. The main features of the bill are as follows:

- Adding intermediate and advanced EMTs and paramedics to the list of persons authorized to make blood draws.
- Deleting the language that previously required arrested persons to surrender driver licenses and authorized peace officers to seize driver licenses.
- Imposing admissibility standards for blood draws to include (1) that the blood draw be accomplished by a person authorized to do so under Section 752, and (2) that the sample be analyzed by a laboratory accredited pursuant to 74 O.S. § 150.37 (i.e., that the lab be accredited according to the International Organization for Standardization standard 17025).
- Imposing admissibility standards for breath tests to include: (1) that the test is performed by an individual holding a valid permit from the Board of Tests; (2) that the BAC measurement device used is on the most current conforming product list published by USDOT; (3) that the test be performed on a BAC measurement device maintained by the BOT; and (4) the test is performed in accordance with operating procedures established by the Director of Tests or the BOT.

HB 2325 (emergency clause, effective May 3, 2021) provides an exception to the escort vehicle requirement found in 47 O.S. § 14-120.1. Tractor dealers pursuant to 47 O.S. § 1-118 and dealers in "implements of husbandry" pursuant to 47 O.S. § 1-125 who are hauling equipment within a one hundred fifty (150) mile air radius from their distribution point do not need to have escort vehicles. If you're curious what an implement of husbandry is, think tank trailers and similar farming equipment.

HB 1715 (emergency clause, effective April 26, 2021) repeals some educational requirements for driver licenses. 70 O.S. § 1210.515 formerly required any person under eighteen (18) to demonstrate that they could read at the eighth-grade level before they could apply for a driver license or permit. 47 O.S. § 6-107.3 formerly required applicants to furnish documentation of their high school or equivalent education.

HB 2271 (effective November 1, 2021) permits the holder of a Purple Heart license plate to park in a disabled parking space pursuant to 47 O.S. § 15-113.

SB 706 (effective November 1, 2021) creates several new sections of law dealing with "personal delivery devices." The new sections will be codified at 47 O.S. §§ 1800-1803. A personal delivery device is essentially a delivery robot. Some of the restrictions imposed by the bill include:

- Limiting the weight of the device to five hundred fifty (550) pounds;

- Limiting the speed of the device to ten (10) mph on sidewalks;
- Requiring the device to obey all traffic and pedestrian control signals; and
- Prohibiting the device from carrying hazardous materials.

Several states have adopted or are considering adopting substantially similar laws. You can find a publication by the Minnesota Department of Transportation dealing with personal delivery devices here. ***Disclaimer*** **–** this link is provided only for informational purposes and should not be relied upon as a statement of how Oklahoma law should or will operate.

HB 1770 (effective November 1, 2021) alters how bicycle riders are supposed to behave in traffic and provides them with some additional legal protections.

- **Bicycle Traffic Duties**, to be codified at 47 O.S. § 11-202.1.
  - **Defines "immediate hazard"** as "a vehicle approaching a person operating a bicycle at a proximity and rate of speed sufficient to indicate to a reasonably careful person that there is danger of collision or accident."
  - **Bike Riders at a Stop Sign** must slow down, stop if there's an immediate hazard, and yield to pedestrians or vehicles. If there is no immediate hazard, the rider can proceed through the stop sign or turn without stopping.
  - **Bike Riders at a Red Light** must come to a complete stop, yield to any traffic that constitutes an immediate hazard, then may go through the light.
  - **Bike Riders Turning at a Red Light** can make a right turn without stopping if they slow to a reasonable speed and yield to immediate hazards. They can make a left turn onto a *one-way street* at a red light after stopping and yielding to immediate hazards.
- **Throwing Objects Prohibited**, to be codified at 47 O.S. § 11-1210. Makes it a misdemeanor to maliciously throw objects at or in the direction of bike riders or animal-drawn vehicles, punishable by up to one (1) year in jail and/or a fine of up to $500.
- **Honking at Bike Riders and Animal-Drawn Vehicles Prohibited** pursuant to 47 O.S. § 12-401. Drivers may not use a horn when passing a person riding a bicycle or animal-drawn vehicle unless there is an imminent danger of collision.

HB 1795 (effective November 1, 2021) places some restrictions on holders of provisional driver licenses pursuant to 47 O.S. § 6-212.

- **From 6:00 a.m. to 11:59 p.m.** there are no limits to where you can drive with a provisional license.
- **From 12:00 a.m. to 5:59 a.m.**, provisional license holders cannot be on the road unless they are:
  - Between home and work or a potential workplace;
  - Driving in the scope and course of their employment;
  - Between home and a place of higher education;
  - Between home and their child's school or daycare;
  - Between home and a place of worship; or
  - Between home and a court-ordered treatment program.

SB 10 (emergency clause, effective April 13, 2021) lowers the fine for speeding one (1) to ten (10) mph from $10 to $5 in 47 O.S. § 11-801. The fine must be paid in addition to $95 in fees and costs.

HB 2053 (effective November 1, 2021) requires peace officers to note the tread depth of tires when issuing a tire-related citation pursuant to 47 O.S. § 12-405. The notation must be included on the citation.

SB 184 (effective November 1, 2021) amends 47 O.S. § 11-1209 regarding Class 3 electric-assisted bicycles. Class 3 electric-assisted bicycles are equipped with a motor that only kicks in while the rider is operating the pedals, and kicks off automatically when the bicycle reaches twenty-eight (28) mph. This bill allows Class 3 electric-assisted bicycles to be ridden on all bike or multi-use paths in the state, unless the local authority (cities, counties, etc.) or agency having jurisdiction over a path bans them.

Title 63 – Public Health and Safety (and related provisions).

HB 1567 (effective November 1, 2021) amends 63 O.S. § 2-415 which delineates trafficking and aggravated trafficking in various controlled dangerous substances. It makes aggravated trafficking an "85% crime," i.e., a person so convicted must serve 85% of their sentence before they are eligible for parole. It draws the line between amounts that constitute trafficking and amounts that constitute aggravated trafficking as follows:

- **Heroin:** twenty-eight (28) grams or more is aggravated trafficking punishable by a fine of $50,000 to $500,000.
- **LSD:**
  - One (1) gram or more is trafficking punishable by imprisonment in DOC custody for up to twenty (20) years and/or a fine a $50,000 to $100,000.
  - Ten (10) grams or more is aggravated trafficking punishable by two (2) years to life imprisonment in DOC custody and./or a fine of $100,000 to $250,000.
- **PCP:**
  - Twenty (20) grams or more is trafficking punishable by up to twenty (20) years in DOC custody and/or a fine of $20,000 to $50,000.
  - One hundred and fifty (150) grams or more is aggravated trafficking punishable by two (2) years to life imprisonment in DOC custody and/or a fine of $50,000 to $250,000.
- **Fentanyl:**
  - One (1) gram or more is trafficking punishable by up to twenty (20) years in DOC custody and/or a fine of $100,000 to $250,000.
  - Five (5) grams or more is aggravated trafficking punishable by two (2) years to life imprisonment in DOC custody and/or a fine of $250,000 to $500,000.

SB 1033 (emergency clause, effective May 28, 2021) – medical marijuana overhaul bill #1. Among other things, does the following:

- **Caregiver Licenses, 63 O.S. § 420** – an individual with a caregiver license has the same rights as an individual with a patient license, excluding the right to use marijuana or marijuana products. Additionally, a caregiver can cultivate marijuana for up to five (5) patients.
- **Dispensary Zoning,** 63 O.S. §§ **425, 426.1** – no new dispensaries can be opened within 1,000 feet of an entrance to a school, but dispensaries already within that limit are grandfathered in. Municipalities can object to the renewal of a dispensary license if the dispensary is within 1,000 feet from the entrance to a school.
- **Marijuana That Isn't Marijuana, 63 O.S. § 427.2** – excludes plants recognized under the Oklahoma Industrial Hemp Program, 2 O.S. § 3-401 et seq., from the definition of marijuana. More specifically, plants containing delta-8 or delta-10 THC are excluded.
- **Enforcement, 63 O.S. § 427.3** – the Department of Health is authorized to enter into memoranda of understanding with other state agencies regarding enforcement of medical marijuana laws.

HB 1784 (effective November 1, 2021), the Oklahoma Kratom Consumer Protection Act, creates several new statutes regulating the sale of kratom. Kratom contains a substance that appears to fall somewhere between caffeine and nicotine in terms of psychoactive effects – but closer to nicotine. Among many other regulations, the bill prohibits vendors from "distributing, selling, or exposing for sale" a kratom product to a person under eighteen (18) years of age. The act will be codified at 63 O.S. § 1-1432.1 et seq.

HB 1638 (effective November 1, 2021) amends 63 O.S. § 1-324.1 concerning unlawful activities related to death certificates. The law makes it a felony to knowingly provide false personal data to a certifier of a death certificate, and to knowingly misrepresent any person's relationship to the decedent.

SB 511 (emergency clause, effective April 20, 2021) amends two laws governing drug paraphernalia and authorizes the operation of "harm-reduction services." The bill first amends 63 O.S. §§ 2-101, 2-101.1 to exclude hypodermic needles and other injection devices possessed by harm-reduction services from the definition of drug paraphernalia. Second, the bill authorizes certain public and private entities, such as state agencies, tribal governments, and churches, to operate harm-reduction services. Harm-reduction services may possess and distribute clean needles, testing kits, and opioid antagonists, conduct testing for HIV, hepatitis-C, and sexually transmitted infections (STIs), and conduct rapid substance testing to analyze potency and toxicity of unknown substances. Here is a dramatized example of how a harm-reduction service might operate.

HB 2656 (effective November 1, 2021) makes certain exceptions for marijuana-based prescription drugs in the Uniform Controlled Dangerous Substances Act, 63 O.S. §§ 2-101, 2-204. The bill excludes all FDA-approved drugs derived from marijuana from the definition of marijuana under the Uniform Controlled Dangerous Substances Act. It also excludes such prescription drugs approved by the FDA and DEA from Schedule I and allows them to be manufactured, distributed, and dispensed in accordance with the law.

HB 2646 (effective November 1, 2021) – medical marijuana overhaul bill #2. Among many other minor regulatory tweaks, does the following:

- **63 O.S. § 421** is amended to allow dispensary licensees to sell pre-rolled products to patient licensees.
- **63 O.S. § 422** is amended to allow commercial grower licensees to sell pre-rolled products to dispensary licensees.

Title 2 – Agriculture (and related provisions).

SB 775 (effective November 1, 2021) creates new law at 2 O.S. § 2-16.1 and amends 21 O.S. § 1716 which addresses larceny of livestock or implements of husbandry.

The new law authorizes the Department of Agriculture, Food, and Forestry to create and maintain a "Livestock Offender Registry," with public access through the department's website. The registry is to list all persons convicted of violating 21 O.S. § 1716. Section 1716 is amended to provide that persons convicted of the crime described in the section are to be registered in the new Livestock Offender Registry, and places an obligation on the county in which an offender is convicted to submit a certified copy of the judgment and sentence to the department.

HB 1001 (effective November 1, 2021) amends 2 O.S. §§ 11-91, 11-92, and 11-93 changing provisions of the Scrap Metal Dealers Act and renames the Act the Sergeant Craig Johnson Metal Theft Act. Johnson, who served with the Tulsa PD, was shot during a traffic stop in Tulsa early in the morning on June 29, 2020 and died of his injuries the next day. Officer Aurash Zarkeshan was also seriously injured during the incident. The bill was named in Johnson's honor because he had been actively involved in helping to craft the legislation, which brings all laws relevant to scrap metal dealing into one statutory location. The bill:

- Requires scrap dealers to keep a record of sellers of scrap metal, including photo identification, address, license tag or VIN, date and place of the transaction, description and weight of the items sold, the form of the scrap metal (sheet, wire, cable, etc.), and a digital image of the items sold (digital image to be retained by the dealer for a minimum of ninety (90) days from the date of purchase).
- Requires that such records be kept for two (2) years from the date of the transaction and that records be made available for inspection to anyone authorized by law to inspect them.
- Changes language such that persons over the age of sixteen (16) may sell scrap metal to a dealer without written consent of a parent or guardian of the minor.
- Requires scrap dealers to induce proof of ownership of a vehicle, trailer, or non-motorized recreational vehicle from the seller in the form of:
  - A certificate of title;
  - A notarized power of attorney from the person on the certificate of title permitting the seller to sell the vehicle; or
  - A statement of ownership from the seller averring that the item was purchased from the lawful owner, accompanied by a bill of sale, a statement that there are no liens on the vehicle, and a statement that the vehicle is inoperable or incapable of operation on a highway and has no resale value except as scrap.
- Prohibits scrap dealers from purchasing certain items if the items are not delivered in a motor vehicle, such as:
  - Highway guard rails, manhole covers, street and traffic signs, etc.;
  - Light poles and associated hardware;
  - Copper wire, 4-gauge or larger, in any form;
  - Copper wire from which the coating has been burned, melted, or exposed to heat or fire; and
  - Remote storage batteries.

Title 29 – Game and Fish (and related provisions).

SB 839 (effective November 1, 2021) amends 29 O.S. § 3-201 to prohibit a game warden from using or placing a game or wildlife camera on private property without permission of the owner or controller of the property or without a valid warrant. This was an Oklahoma Farm Bureau bill.

HB 2214 (effective November 1, 2021) amends 29 O.S. § 5-301 to permit certain license holders to use predator traps throughout the year. The bill allows holders of big game, combination big game/upland game, and farmed Cervidae (deer) licenses to set predator traps within a commercial hunting area at any time throughout the year.

HB 1112 (effective November 1, 2021) makes several changes to Title 29.

- Authorizes the Wildlife Conservation Commission (WCC) to promulgate rules creating exceptions to the general ban on certain types of devices used to kill animals pursuant to 29 O.S. § 5-201.
- Authorizes the WCC to promulgate rules governing the taking of furbearers pursuant to 29 O.S. § 5-405.
- Eliminates statutory dates for squirrel season and authorizes the WCC to set season and bag limits on squirrel by rule pursuant to 29 O.S. § 5-409.
- Eliminates the requirement that trappers keep written permission of the owner or occupant of land with them while on the land found in 29 O.S. § 5-501.
  Repeals entirely 29 O.S. § 5-502, which regulated trapping devices.

Title 57 – Prisons and Reformatories (and related provisions).

HB 1023 (effective November 1, 2021) creates a new law at 57 O.S. § 21 regarding forfeiture of contraband seized in a jail or penal institution. It changes the language of the statute to provide that any contraband item seized as a result of the section shall be "forfeited by the agency that seized the contraband item following the procedures outlined in Section 2-506 of Title 63 of the Oklahoma Statutes." Previously the statute only allowed for agencies to "dispose of or sell" electronic communication devices seized in jails and prisons.

SB 304 (effective November 1, 2021) amends 57 O.S. § 37 regarding Department of Corrections facilities that reach maximum capacity. Prior to the amendment, the Department of Corrections could reach out to sheriffs in surrounding counties to contract for space in county jails. The amendment permits either the sheriff or a jail trust administrator, if the county has one, to make such arrangements with DOC.

Title 74 – State Government and Title 75 – Statutes and Reports (and related provisions).

SB 1031 (emergency clause, effective February 10, 2021) amending the Open Meetings Act to allow for more liberal use of videoconferencing. Like its predecessor bill from 2020, this Bill amends 25 O.S. §§ **307.1** and **311** to allow public bodies to hold their open meetings using exclusively videoconferencing or teleconferencing technology during the existence of the COVID-19 emergency. The bill made the changes effective through either February 15, 2022, or thirty days after the expiration or termination of the state's state of emergency related to COVID-19. By executive order (**EO 2021-11**) Governor Stitt terminated the state of emergency on May 4, 2021, which rendered the effectiveness of SB 1031 null on June 4, 2021.

In a related matter, the Governor issued **EO 2021-16** on May 28, 2021, which included a general recission of any mask mandates in state owned or leased buildings, with exceptions for medical facilities.

SB 809 (effective November 1, 2021) adds a new category of peace officer who may keep their badge and sidearm after retirement under 74 O.S. § 150.23. After the effective date of the act, campus police officers will become eligible to retain their badges and sidearms upon their retirement.

HB 1776 (effective November 1, 2021) expands who must provide a blood or saliva sample for the CODIS database pursuant to 74 O.S. § 150.27a. Previously, persons convicted of possession of a controlled substance had to provide a blood or saliva sample if the substance was prohibited under Schedule IV. The bill removes the specification of Schedule IV, meaning that persons convicted of possession of *any* controlled substance will have to provide a blood or saliva sample for registration in the CODIS database.

SB 684 (effective November 1, 2021) creates a new law permitting interagency transfers between several state agencies. The law covers the OSBI, OBNDD, OHP, and ABLE Commission, and allows the chief executive officer of each agency to negotiate transfers for their agents to other agencies for periods of two (2) to five (5) years. The law will be codified at 74 O.S. § 11000.

SB 172 (effective November 1, 2021), Ida's Law, creates a new Office of Liaison for Missing and Murdered Indigenous Persons within the OSBI. The law will be codified at 74 O.S. § 150.12A-1. It requires the OSBI to collaborate with the federal Department of Justice to secure funding for and coordinate efforts to address the issue of missing and murdered indigenous persons in Oklahoma. The Office will be staffed by persons who have significant experience working with tribal communities. The Office will be available to law enforcement agencies as a resource for investigations and training. The law is named for Ida Beard, a member of the Cheyenne and Arapaho tribes from El Reno, who has been missing since 2015.

Other Miscellaneous Legislative Actions That May Be of Interest.

HR 1024 and SR 16 (April 19, 2021) memorialize the 26th anniversary of the Alfred P. Murrah Federal Building bombing. In addition to other statements, the House Resolution expresses the "heartfelt remembrances" of the House to "those injured in the bombing," the Senate Resolution "remembers and honors the 168 lives lost, the hundreds injured, and the thousands forever changed," and both resolutions express gratitude to the many first responders, rescue workers, medical personnel, and volunteers—the "brave souls"—who assisted in the aftermath of the attack.

HB 1876 (emergency clause, effective May 3, 2021) amends 51 O.S. § 24A.7 to make certain information of current and former public employees confidential. The protected information includes home addresses, home telephone numbers, private email addresses, and private mobile phone numbers. But **public records created using a private email address or private mobile phone are not protected** and may be disclosed under the Open Records Act.

SB 200 (effective November 1, 2021) provides a mechanism for victims of certain crimes to terminate a lease without being penalized pursuant to 41 O.S. § 111. If a person is a victim of domestic violence, sexual violence, or stalking, the person "may terminate a lease without penalty by providing written notice and a protective order of an incident of such violence within thirty (30) days of such incident, unless the landlord waives such time period." It also codifies a new section of law, 41 O.S. § 113.3, which prohibits a landlord from denying, refusing to renew, or terminating a tenancy because someone is a victim or has previously terminated a lease pursuant to 41 O.S. § 111. And finally, it adds a subsection to 41 O.S. § 113 making it unlawful for a rental agreement to include a provision limiting or waiving a person's "right to summon a peace officer or other emergency assistance in an emergency."

HB 1029 (effective November 1, 2021) amends the definitions section of the Oklahoma Security Guard and Private Investigator Act in 59 O.S. § 1750.2. The bill adds active reserve certified peace officers to the list of persons not considered security guards for the purposes of the Oklahoma Security Guard and Private Investigator Act.

HB 2746 (effective November 1, 2021) modifying jury qualifications for peace officers. The bill amends 38 O.S. § 28 to add municipal or state law enforcement officers who are employed in any county with a population of 255,000 or more and federal law enforcement officers to the list of persons not qualified to serve as jurors. It also provides that municipal or state law enforcement officers in a county with a population of less than 255,000 are only eligible to serve on noncriminal (civil) juries. (Previously, all law enforcement officers were eligible to serve on civil juries.)

SB 143 (effective Nov. 1, 2021) amends 19 O.S. § 339 regarding employee recognition banquets, luncheons, etc. The bill amends subsection 27 of Section 339 to specifically authorize "formal or informal ceremony[ies], banquet[s], reception[s] or luncheon[s], the cost of which may be

expended from monies available in the county department's or division's operating fund" at which employee recognition awards may be presented.

HB 1026 (effective November 1, 2021) authorizes CLEET to establish and certify criminal justice programs at technology centers pursuant to 70 O.S. § 3311.16. Technology center schools supported by the State Board of Career and Technology Education are eligible to participate. Courses are limited to persons between the ages of sixteen (16) and nineteen (19) years of age. The cost of tuition and fees will be determined by the State Board of Career and Technology Education.