Council on Law Enforcement Education and Training

2023 Legal Update

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July 31, 2023

Updated August 8, 2023

PREFACE

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

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

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

CASE LAW UPDATES

CASES—INDIAN[1] COUNTRY JURISDICTION

Buck v. State, 2023 OK CR 2. The Kickapoo Reservation Has Been Disestablished and so Does Not Constitute Indian Country Under ***McGirt***.

The case of *Buck v. State*, 2023 OK CR 2, represents a continuation in the post-*McGirt* legal world of determining which historic tribal boundaries still constitute reservations and, thus, Indian Country in Oklahoma. In 2019, Buck was charged in Pottawatomie County with multiple counts of lewd or indecent acts with a child under 16. Prior to trial, Buck filed a motion to dismiss for lack of jurisdiction under *McGirt* asserting that he is an Indian and his alleged crimes were committed within the historic boundaries of the Kickapoo Reservation and, thus, were committed in Indian Country. The trial court conducted a pre-trial evidentiary hearing on Buck's motion. At the hearing, the parties stipulated that Buck was an Indian and that the alleged crimes had occurred within the historic boundaries of the Kickapoo Reservation, but the state argued that the Kickapoo Reservation had been formally disestablished by Congress. After considering the evidence presented, the trial court found the Kickapoo Reservation was disestablished by Congress in 1891, less than 10 years after the reservation was originally established in 1883. *See* 27 Stat. 557. Because the reservation had been disestablished, the trial court determined the location did not constitute Indian Country and Buck was subject to state prosecution for his alleged criminal behavior.

Following jury trial, Buck was found guilty and handed several significant sentences. On appeal, he reasserted, among other things, that the State had no jurisdiction over him because he is an enrolled member of the Seminole Nation and because his crimes occurred within the historic boundaries of the Kickapoo Reservation. In its appellate review, the Court of Criminal Appeals looked at both Congress's Act of 1891 and a U.S. Supreme Court case from 1943 in which the high court found the Act "obliterated" the Kickapoo Reservation. *See U.S. v. Oklahoma Gas & Electric Co.*, 318 U.S. 206, 216 (1943). The Court of Criminal Appeals affirmed the trial court's decision and made clear that lands within the former area of the Kickapoo Reservation are not Indian Country for purposes of *McGirt* consideration. (This does not mean that some specific areas now owned by the Tribe itself would not be considered Indian Country.)

State v. Brester, 2023 OK CR 10. Ottawa Nation and Peoria Nation Reservations Appear to Be Indian Country.

On May 11, 2023, the Court of Criminal Appeals issued an opinion in *State v. Brester*, 2023 OK CR 10, in which the judges looked at claims that the Ottawa and Peoria reservations were still intact and therefore constituted Indian Country under *McGirt*. This is a state appeal from the district court's dismissal of a final conviction and three pending prosecutions in Ottawa County. The district court had dismissed the

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

cases upon determining that Brester is an Indian and that his charged offenses occurred in Indian Country, some within the boundaries of the historic Ottawa reservation and others on land within the historic boundaries of the Peoria reservation.

The state acknowledged that Congress created reservations for both the Ottawa and Peoria tribes but argued that those reservations had since been disestablished. The evidence at the hearing before the trial court demonstrated that Congress had disestablished both reservations in the 1950s. *See* 70 Stat. 963 (the Ottawa Termination Act) and 70 Stat. 937 (the Peoria Termination Act). However, some twenty years later Congress reversed courses and reinstated both the Ottawa and Peoria, along with others, as "federally supervised and recognized Indian tribes." *See* 92 Stat. 246. This reinstatement act "reinstated all rights and privileges" that "may have been diminished or lost" pursuant to the prior termination acts. *Id*. at subsection c.

On appeal, the state made various arguments that the reinstatement act did not reestablish the reservations. The Court of Criminal Appeals thoroughly reviewed the various acts of Congress in its opinion, however, and essentially found that "all" means all when the reinstatement act reinstated all rights and privileges of the Ottawa and Peoria Tribes. "These reservations," the Court said, "even if diminished or terminated by each Tribe's respective termination act, were restored by Congress with the express and unqualified repeal of these termination acts in the 1978 Reinstatement Act as well as with the express reinstatement of *all* rights and privileges lost in connection with termination." ***Brester***, 2023 OK CR 10 at ¶ 25 (emphasis in original). As such, the Court found "the district court did not err in ruling that, for purposes of federal criminal law, the land upon which the parties agree Brester allegedly committed the charged crimes . . . is Indian country." *Id*.

Just as a recap, so far since *McGirt,* courts have found the Cherokee, Chickasaw, Choctaw, Muscogee-Creek, Ottawa, Peoria, Seminole, and Quapaw reservations are still in existence and, on the other hand, that the Kiowa-Comanche-Apache and the Kickapoo reservations have been disestablished.

***Hooper v. City of Tulsa*, 22-5034 (10th Cir. 2023). Curtis Act May Not Be a Basis for Municipal Jurisdiction Over Indians in Cities Within Indian Country.**

At the end of June, a three-judge panel of the Tenth Circuit issued an opinion for publication in a case involving a municipal traffic ticket issued by the City of Tulsa to an Indian in a portion of the city deemed to be Indian Country pursuant to *McGirt v. Oklahoma*. The procedural posture of this case is a bit complicated, but in the end the Tenth Circuit makes a pretty simple finding: Section 14 of the Curtis Act no longer applies to cities in Oklahoma despite its application prior to statehood.

Hooper received a traffic ticket and paid a fine in Tulsa Municipal Court. Subsequent to *McGirt*, Hooper sought post-conviction relief in the municipal court arguing that Tulsa had no criminal jurisdiction over him as he is an Indian and his traffic violation occurred in a portion of Tulsa lying within the boundaries of the Muscogee (Creek) Nation and thus being Indian Country. The municipal court denied Hooper's request for post-conviction relief, finding that Tulsa had jurisdiction over him pursuant to Section 14 of the Curtis Act, 30 Stat. 495 (1898), regardless of his race or the fact that his offense occurred in Indian Country. Specifically, Section 14 provides that "all inhabitants of" cities and towns to which the Act applies "without regard to race, shall be subject to all laws and ordinances of such city or town governments, and shall have equal rights, privileges, and protection therein." *Id*. Because Tulsa appeared

to be relying on a federal grant of jurisdiction to exercise authority over Hooper, the municipal court advised Hooper that any appeal from its denial of post-conviction relief should be taken to the federal district court.

Hooper then initiated a civil case in the U.S. District Court for the Northern District of Oklahoma, asserting an appeal from the municipal court's denial of his post-conviction relief request and seeking declaratory judgment that Section 14 of the Curtis Act no longer granted authority over Indians to Tulsa. The federal district court agreed with the Tulsa Municipal Court's determination that Section 14 still applied and granted Tulsa's motion to dismiss Hooper's declaratory judgment claim and therefore dismissed his appeal of the post-conviction relief denial as moot.

In a thorough 36-page opinion, the Tenth Circuit reviewed questions of federal jurisdiction to consider these claims from a municipal court as well as dived into a historical investigation of Tulsa's history as a chartered city, the jurisdictional grants provided by the Curtis Act, and the impact of statehood on both Tulsa's charter and the Curtis Act. In particular, the federal appeals court found that Section 14's provision of jurisdiction to cities and towns over "all inhabitants . . . without regard to race" was a grant provided only to cities and towns incorporated in the Indian Territory under the provisions of "chapter twenty-nine of Mansfield's Digest, which is a digest of the laws of Arkansas." 30 Stat. 495; *Hooper*, Slip. Op. at 27.[2] Since Tulsa, and presumably all other Oklahoma towns and cities that were previously chartered under Indian Territory authority, is now chartered pursuant to Oklahoma law, the prior congressional grant of jurisdiction is no longer in effect. Because the case got to the Tenth Circuit on an order from the district court dismissing Hooper's case in favor of Tulsa, the case now goes back to the Northern District for further consideration.

Tulsa requested a stay from the U.S. Supreme Court to delay the application of the Tenth Circuit's ruling but on August 4, 2023, that request was denied. Justices Kavanaugh and Alito took the somewhat unusual step of issuing a statement in conjunction with the denial. The statement seems to invite Tulsa to argue that last year's case of *Oklahoma v. Castro-Huerta*, 597 U.S. __ (2022), which determined that Oklahoma has concurrent jurisdiction with the federal government in Indian Country over non-Indians who commit crimes against Indians may grant them jurisdiction over all citizens, including Indians. The statement further noted that "nothing in the decision of the Court of Appeals prohibits the City from continuing to enforce its municipal laws against all persons, including Indians, as the litigation progresses."

Dueling response statements followed from Oklahoma Governor Stitt and Cherokee Principal Chief Hoskins. Stitt haled Justice Kavanaugh's statement as "a victory for Oklahoma and the rule of law" and asserted that while he is governor he "will not let eastern Oklahoma become a reservation." Hoskins, on the other hand, praised the denial of the stay request as "[upholding] tribal sovereignty and settled federal law—reaffirming that states and municipalities do not have criminal jurisdiction over Indians in Indian Country."

The saga continues.

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

***Stroble v. Oklahoma Tax Commission*, TC-120806. Are Indians Who Are Employed by a Federally Recognized Tribe and Who Live Within the Historic Boundaries of a Non-Disestablished Reservation Exempt from Paying Oklahoma Individual Income Taxes?**

The U.S. Supreme Court went to some effort in its *McGirt* opinion to suggest that its ruling was limited to major crimes and that assertions the opinion would drastically affect civil matters too was simply pessimistic. However, the Oklahoma Supreme Court is currently considering the case of *Stroble v. Oklahoma Tax Commission*, TC-120806, which ended its briefing cycle earlier this summer. Stroble involves a Muscogee (Creek) member named Alicia Stroble who filed a protest in the OTC over her assessed individual income taxes for tax years 2017, 2018, and 2019, based on the McGirt determination that the Muscogee (Creek) reservation had never been disestablished. In addition to being an enrolled member of the Muscogee (Creek) Nation, Ms. Stroble was also an employee of the Nation and lived within the reservation boundaries. She argues that the state is barred from taxing reservation Indians on income derived solely from reservation sources—such as employment by a tribe within the tribe's reservation boundaries. The Tax Commission determined that although Ms. Stroble is an Indian for taxing purposes and her income was derived solely from her employment with the Muscogee (Creek) Nation, she did not actually live on qualifying reservation land because her home was purchased in fee from a non-Indian source. As such, the OTC said she was required to pay state taxes.

Why is this important? Well, all of us who are involved in law enforcement are paid and provided material support from taxes. If a significant percentage of tax-payers in those areas now held to be Indian Country in Eastern Oklahoma are exempt from paying state taxes—and possibly by extension municipal taxes—how does that effect our various tax bases? Anyway, this is one to watch.

CASES—SEARCH AND SEIZURE

***Reynolds v. State*, 2022 OK CR 14. Compelled Disclosure of Electronic Device Password.**

Reynolds is a case that was decided last summer after the 2022 Legal Update was released and so I've included it in the 2023 version. It involves a case out of Del City where Frank Reynolds shot and killed his daughter's boyfriend at a family gathering at Reynolds' home back in 2018. Investigators learned that Reynolds had a surveillance system at the home that likely captured the incident on video and obtained a search warrant to seize and search the device. When investigators presented Reynolds with the search warrant they informed him that he was required to turn over the password to the device, which he did. Investigators subsequently accessed the data which allowed the District Attorney to play video footage of the shooting to the jury at Reynolds' trial. Although Reynolds had claimed self-defense based on "stand your ground" principles, the video footage showed that the boyfriend did not make any physically threatening movements towards Reynolds before Reynolds shot him.

On appeal, Reynolds argued that being compelled to turn over his password constituted a violation of his 5th Amendment right not to be compelled to be a witness against himself. In this case, the Court of Criminal Appeals considered the so-called "foregone conclusion" doctrine. According to the Court of

Criminal Appeals, the 5th Amendment privilege is limited to compelled communications that are both "testimonial" and "incriminating." If the "very act" of disclosing or turning over the evidence to authorities shows guilty knowledge or links the defendant with the incriminating evidence in a way the authorities did not already have, producing something like a password would be protected by the privilege. However, compelled production of potentially testimonial evidence does not violate the privilege if the evidence's existence is a "foregone conclusion." As an example, the Court referred to a U.S. Supreme Court case in which compelled disclosure of records a suspect had provided to his accountant did not violate the 5th Amendment because the existence and ownership of the records was a foregone conclusion. In Reynolds' case, he argued that in order to use the foregone conclusion doctrine the state would have to prove a foregone conclusion that incriminating evidence would be found on the surveillance system. Such an argument, however, confuses the protections of the 4th and 5th Amendments, at least according to the Court of Criminal Appeals. Reynolds' 4th Amendment rights against unreasonable searches was already protected by the requirement of a search warrant, in which a neutral magistrate found probable cause existed to justify the seizure and search of the device. Probable cause, as you will likely remember, does not require a certainty that incriminating evidence will be found, just a common-sense probability that it will.

Therefore, the OCCA determined that the appropriate foregone conclusion would be that because authorities were aware the recording device existed, that it was installed in Reynolds' home, that it was operating at the time of the shooting, and that it was password protected, requiring Reynolds to provide the password did not violate the 5th Amendment. The analysis would be different if it was not a known and foregone conclusion that the device was Reynolds'. For instance, if there were several cellphones located at Reynolds' home but he denied ownership of any of them, the 5th Amendment would prohibit compelled disclosure of the passwords to any of the cellphones by Reynolds because compelling him to provide the password would in essence compel him to admit ownership of the device and knowledge of and/or control over any materials on the device.

State v. Breznai, 2022 OK CR 17. Traveling in the Left Lane May Be a Basis for a Traffic Stop.

This is another 2022 case. It stems from a traffic stop in Custer County in 2021 that led to a dog sniff and an eventual search of the vehicle and a discovery of stolen property, CDS, paraphernalia, and possession of a firearm by the driver after former conviction of a felony. Prior to trial, the defendant filed a motion to suppress the evidence and dismiss the case and the motion was heard by a district judge. At the conclusion of the hearing, the judge sustained the motion, suppressed the evidence, and dismissed the case finding that the original basis for the stop was illegal and so everything related to the stop was tainted. The State appealed and the Court of Criminal Appeals reversed the trial court's order and remanded for further proceedings.

The incident began as Breznai was traveling westbound on I-40 near Weatherford when an officer observed him "traveling in the left lane slightly behind a semi-truck in the right lane. The semi-truck was traveling slightly faster than Breznai." *Breznai*, 2022 OK CR 17 at ¶ 4. The officer, who had been on the

side of the highway, pulled onto the interstate and caught up with Breznai about a mile later where he observed Breznai still traveling in the left lane, not passing or overtaking the semi. The officer noted that had Breznai moved into the right lane he would have been following the truck too closely. No other traffic was in the immediate area and no road conditions required Breznai to be in the left lane. The officer then initiated a stop for traveling in the left lane without passing or overtaking another vehicle in violation of 47 O.S. § 11-309. That statute provides: "A vehicle shall not be driven in the left lane of a roadway except when overtaking and passing another vehicle; provided, however, this paragraph shall not prohibit driving in the left lane when traffic conditions, flow or road configuration, such as the potential of merging traffic, require the use of the left lane to maintain safe traffic conditions; provided further, this paragraph shall not prohibit driving in the left lane of a roadway within the city limits of a municipality as long as such roadway is not part of the National System of Interstate and Defense Highways."

Because it was uncontested that Breznai was traveling in the left lane and was not overtaking and passing the semi and none of the exceptions to the statute applied in his case, the Court of Criminal Appeals determined that the initial traffic stop was good so the subsequent dog sniff and resulting probable cause search was appropriate. This despite the trial court's determination that Breznai was not creating unsafe traffic conditions.

State v. Burtrum, **2023 OK CR 7. Non-Consensual Blood Draws.**

This is an interesting case regarding blood draws from drivers who are involved in accidents and who could be cited for any traffic offense when such accident resulted in a death or great bodily injury. *See* 47 O.S. § 10-104(B). In June 2020, a trooper responded to a four-wheeler accident in Garfield County. Burtrum identified himself as the driver of the ATV at the time of the wreck and his female passenger died at the scene after being treated by EMTs. The trooper told Burtrum that state law required blood draws in all cases involving serious injury or death. Based on the trooper's statement, Burtrum accompanied another trooper to the hospital where his blood was drawn and analysis showed a .109 BAC. Burtrum was subsequently charged with first degree manslaughter.

At a hearing on Burtrum's motion to suppress, the trooper said he'd told Burtrum state law allowed investigators to draw blood and that Burtrum agreed to cooperate. Had Burtrum not agreed, the trooper said he would have sought a search warrant. Burtrum was not read the implied consent card or advised that he could refuse the blood test and the trooper testified that it was his understanding that state law did not require consent but allowed police to conduct a nonconsensual blood draw of drivers in fatality crashes. The state law the trooper was relying on was 47 O.S. § 10-104(B). Although no one obtained affirmative consent or advised Burtrum of implied consent, troopers testified that Burtrum "portrayed consent through his actions and willingness to cooperate" including riding unhandcuffed to the hospital and allowing the blood draw to occur.

Following the suppression hearing, the district court found Burtrum was under arrest at the time he submitted to the blood draw because "under the totality of the circumstances surrounding the incident, Burtrum would have believed that he was not free to leave until blood was drawn." The court also found Burtrum did not freely and voluntarily consent to the blood draw because "[s]ubmitting to a uniformed

officer's directive is not the equivalent of consent when you are provided no other option." The state appealed to the Court of Criminal Appeals.

Essentially, the Court said that it had already provided guidance to the Legislature and to law enforcement that 47 OS 10-104(B) could not deprive a suspect of their right to have a search warrant issue before a nonconsensual blood draw can occur. That guidance was provided in a published opinion in the case of *Stewart v. State*, 2019 OK CR 6, and was provided more than a year before the incident involved in this case occurred (*Stewart* was published in May 2019, wreck occurred in June 2020). Because of that, the troopers' reliance on the statute could not be said to have been in "good faith" and so the blood draw was improper and the evidence had to be suppressed.

In his special concurring opinion, Judge Lumpkin said that it is "the duty of law enforcement leaders to ensure all personnel are regularly subject to continuing education to ensure they are up to date on all existing law relating to their duties. The result in this case could have been avoided," he said, "IF the troopers involved had been advised of this Court's decision in *Stewart*" (capitalization in original).

CLEET has covered *Stewart* in the basic academy legal block since 2019 but in 2019 CLEET's annual legal update only included statutory changes. Since 2021, CLEET has incorporated significant cases into its legal update, but of course the legal update is not fool proof—as you can tell since I just covered two 2022 cases that were not included in last year's legal update. Anyway, what Judge Lumpkin says about law enforcement leaders needing to ensure their officers are regularly updated on changes in the law is true and we certainly do our best to try to keep you as informed as possible. Just so you are aware, annual written legal updates are available on CLEET's website under the "CLEET Training" tab.

***Samilton v. U.S.*, __ F.4th __ (10th Cir. 2022). Warrantless Search in Traffic Stop.**

This Tenth Circuit case involves a federal felon in possession of a firearm prosecution out of the Western District of Oklahoma. The case began when Oklahoma City police received a 911 call from a hotel clerk who reported that a vehicle had been sitting in the hotel's parking lot for hours with a woman in the drivers seat and a man in the front passenger seat. The clerk called because the man had started waiving a pistol around inside the vehicle and knocking on various hotel room doors.

Officers were dispatched to the hotel and upon arrival located the vehicle. One of the responding officers activated his body camera and approached the car. Although the car was stationary in the parking lot when officers arrived, the encounter is treated as a traffic stop. At a suppression hearing, the officer testified that while he was walking toward the car he saw the male passenger making movement which he interpreted as the passenger's attempt to hide a firearm under the seat. Also at the time he heard a noise that he equated with a firearm or ammunition magazine having been thrown from the car and landing on the pavement. The officer then opened the passenger door of the car and asked the man, later identified as Samilton, what he had thrown from the window. Samilton denied throwing anything and produced a hotel key and his drivers license for the officer. The officer then asked Samilton if he had any firearms, to which Samilton replied he did not. The officer then asked for and received consent from Samilton to frisk the man, which the officer did, without locating a weapon. Samilton was then placed in the back

seat of the officer's police vehicle. Once inside the police vehicle, the officer asked Samilton if there were any firearms in the car he had just been sitting in. Samilton gave evasive responses to the question but after being pressed eventually stated "no, not to my knowledge." The officer testified that his interactions with Samilton and Samilton's evasive answers made him suspicious because in his experience individuals who were authorized to carry firearms typically disclosed that they were carrying but those who were prohibited from possessing guns often denied such possession and made efforts to physically separate themselves from where a firearm was located.

After leaving Samilton in the police car, the officer returned to the suspect vehicle and asked the driver if there was a gun in the car. After "prevaricating" the driver told the officer there was a firearm on the passenger side. The officer asked for and received consent to search the car and immediately found a live 9mm bullet on the floorboard but no gun. He then walked back to the police vehicle and again asked Samilton where he had thrown the gun and Samilton again denied ever having a gun. The officer then returned to the suspect vehicle and searched in and around the vehicle again. After more minutes of fruitless search, the officer went back to the police cruiser, placed Samilton in handcuffs, and frisked him again, and again did not locate a firearm. The officer then went back to searching the suspect car and surrounding area. After more unsuccessful searching, the officer began entering Samilton's and the driver's information into a police database. As he did so, the officer asked Samilton if he was a felon and Samilton confirmed that he was. After entering the information into the data base—which was about 19 minutes into the encounter—the officer once again searched the suspect vehicle and this time found a firearm that had been concealed under the front passenger seat of the car.

Before trial, Samilton sought to suppress the firearm claiming the encounter was unreasonably prolonged and so violated the Fourth Amendment. After holding a hearing on the claim, the district court determined that (1) the traffic stop was justified at its inception and (2) reasonable suspicion supported the extended encounter. The district court also found that the officer's detention of Samilton had no factual nexus to the seizure of the firearm because the vehicle in which the gun was found belonged to the driver who had voluntarily consented to the search. Having denied the motion to suppress, the district court allowed Samilton's case to proceed to jury trial at the conclusion of which he was found guilty.

Samilton appealed his conviction to the Tenth Circuit, which initially noted that although Samilton may not have had the required possessory or ownership interest in the car to contest the search of the vehicle, he can contest the lawfulness of his own detention and if he was wrongfully detained he can challenge the use of the evidence found in the vehicle as fruit of the illegal detention. *See U.S. v. Nava-Ramirez*, 210 F.3d 1129, 1131 (10th Cir. 2000). However, the court reiterated long-existing standards that a *Terry* stop is constitutional if justified at it inception and if the officer's actions during the brief detention are reasonably related in scope to the bases for the initial stop. Although a stop becomes unconstitutional if unreasonably prolonged, the stop may be properly extended if the officer has reasonable suspicion that an occupant of the vehicle is engaged in illegal activity. To demonstrate reasonable suspicion, the detaining officer "need only articulate 'some minimum level of objective justification' for the detention." *Samilton*, Slip Op. at 11 (quoting *U.S. v. Sokolow*, 490 U.S. 1, 7 (1989)).

To address Samilton's complaints, the Court reviewed Samilton's and the officer's actions across the encounter. The panel found that the initial stop and search were valid as (1) the 911 caller had described Samilton as brandishing a firearm and knocking on multiple hotel doors in a location police frequently encountered or responded to violent crimes, including armed robberies, (2) Samilton's actions upon the arrival of police that suggested he was trying to hide contraband was inconsistent with the behavior of someone who is authorized to carry a firearm combined with the officer hearing what sounded like a gun or magazine being disposed of, and (3) Samilton's evasive answers to the officer's questions about the presence of a firearm all constituted specific and articulable facts supporting reasonable suspicion for the initial search. *Id.*, Slip Op. at 14. The Court also found that although the officer conducted several searches of the area and of Samilton and that such searches took many minutes, such did not constitute unreasonable delays. Instead, the officer's efforts were both reasonable and diligent and justified the time taken to confirm his suspicion that Samilton had engaged in criminal activity by possessing a firearm. *Id.*, Slip Op. at 14-16.

Bottom line? As many courts have stated over the years, there is no specific amount of time that renders an extension of a traffic stop unreasonable and thus unconstitutional. Instead, each case must be evaluated individually. So long as reasonable suspicion exists and an officer is diligently pursuing a means of investigation to confirm or dispel his or her suspicions quickly, no constitutional violation will be found. The court also reminds us that reasonable suspicion involves a level of suspicion which is "considerably less than proof by a preponderance of the evidence or that required for probable cause." *Id.*, Slip Op. at 11.

***U.S. v. Anderson*, No. 21-2151, __ F.4th __ (10th Cir. 2023). Warrantless Arrest of a Pedestrian.**

This case from New Mexico involves the arrest of a pedestrian by Albuquerque police after a bystander accused the person of harassing her. I've included it because it provides a good review of reasonable suspicion and *Terry* stops and frisks.

Anderson was stopped by police after a woman flagged down an officer and pointed to Anderson asserting he was harassing her and would not leave her alone. Anderson was walking down the street (not on the available sidewalk) when police approached him. Because the woman appeared to the officer to be genuinely "frightened, concerned, and shaken up" and because she relayed specific acts Anderson had allegedly done, including harassing her, not leaving her alone, repeatedly asking her for her number and to date her, asking whether she had a boyfriend, and asking her for money, the responding officer reasonably suspected Anderson of criminally harassing the woman. The officer also observed Anderson walking in the street contrary to Albuquerque's jaywalking ordinance. Once police contacted Anderson, he was not forthcoming in answering questions, acted abnormally nervous, was wearing multiple layers of clothing, and did not have any identification. *Anderson*, Slip Op. at 4-5.

In analyzing Anderson's claim that he was improperly stopped, the Tenth Circuit notes that "as long as [an officer] (sic) has a particularized and objective basis for suspecting an individual may be involved in

criminal activity, he may initiate an investigatory detention even if it is more likely than not that the individual is not involved in any illegality." *Id.* at 7-8 (quoting *U.S. v. Johnson*, 364 F.3d 1185, 1194 (10th Cir. 2004)). With regard to the alleged crime of harassment, the Court considered whether the officer had reasonable suspicion to stop Anderson for a crime that included "a pattern of conduct" as an element. The victim's statement to the officer that "he's not leaving me alone," was sufficient evidence of a pattern of conduct, at least for purposes of a *Terry* stop. *Id*. at 9. As the Court noted, "[t]he information available to [the officer] was sufficient to meet the *low* reasonable suspicion bar[.]" *Id*. (emphasis added).

In addressing the claim that he was improperly frisked, the Court reminds us of the familiar *Terry* standard that "if 'a reasonably prudent [person] in the circumstances would be warranted in the belief that his safety or that of others was in danger[,]'" then a limited pat-down frisk for weapons is authorized. *Id*. at 10. The articulable facts supporting the reasonable suspicion for the frisk included Anderson's delayed answer when asked if he had any weapons, his particularly nervous state, his raised hands while officers spoke to him, and his bulky jacket. *Id*. at 3.

Of particular interest to me with this opinion is its record of the fluidity of police interactions with suspects. First, we have the officer approaching Anderson on reasonable suspicion of engaging in criminal harassment and jaywalking. Then we have the officer consider the likelihood of Anderson being armed and potentially dangerous, which leads to the *Terry* frisk. The frisk produced no weapons or other contraband. In the course of the *Terry* stop and frisk, however, Anderson is asked for identification and he provides a name and social security number belonging to someone else. From this provision of a false identity, Anderson was then arrested and in the course of the search incident to arrest a firearm and methamphetamine is found on Anderson, who is also determined to be a felon. State charges are then brought for trafficking methamphetamine and other crimes. A federal indictment then comes down for Anderson being a felon in possession and the state charges are dropped. Anderson eventually plead guilty and was sentenced for being a felon in possession, which was enhanced for possessing a firearm in connection with another felony offense (the drug trafficking).

CASES—HEARSAY AND CONFRONTATION

Foote v. State, 2023 OK CR 12. Testimony of Minor Victims of Sex Crimes.

In this case out of Lincoln County, the Court of Criminal Appeals considered the requirements for confrontation of witnesses who are minor victims of sex crimes. The case involves what the Court described as the "horrific sexual abuse of [the victim] when she was between the ages of 6 and 8." *Foote*, 2023 OK CR 12 at ¶ 4. When the victim was 10, she disclosed to her mother that Foote had abused her. Id. During a forensic interview at the child advocacy center in Shawnee, the victim disclosed to the interviewer a laundry list of sexual acts the defendant performed on her including touching her vagina with his fingers, inserting his penis into her vagina, putting his mouth on her vagina, and forcing her to put her mouth around his penis. *Id*. at ¶ 6. The victim was also examined by a sexual assault nurse examiner (SANE nurse) and disclosed information similar to what she had told the forensic examiner but also stated that the defendant had also put his penis in her anus. *Id*. at ¶ 7.

Prior to trial, the State provided notice to the defendant that it was going to offer the forensic examiner's testimony pursuant to the Uniform Child Witness Testimony by Alternative Methods Act, 12 O.S. § 2803.1. Under the language of that provision, hearsay statements attributed to minor witnesses in sex abuse cases may be admissible if (1) the trial court holds a hearing to determine the statements are inherently trustworthy and (2) the child witness either testifies or is available to testify at the hearing in open court or through an alternative method. The court held a pre-trial hearing on the victim's statements and found them to be inherently trustworthy. *Foote* at ¶ 14. At trial, the State called both the forensic examiner and SANE nurse[3] and asked them about statements the victim made to them. The defendant did not object to such testimony at trial but complained on appeal that he was denied his Sixth Amendment right to confront witnesses against him because the child victim did not testify.

The Court noted that the analysis for admissibility of hearsay in a criminal trial is centered on the "primary purpose test," that is, what was the original purpose of the statements. If the original purpose of the statements was to develop evidence for testimony at trial, the statements are testimonial and are not admissible unless the declarant testifies. If, on the other hand, the statements were made for some other purpose—such as receiving medical diagnosis or treatment—they are non-testimonial and may be admissible at trial. *Id*. at ¶¶ 11-13. This means the provisions of Section 2803.1 that provide for the admission of child victim hearsay statements so long as the victim is available to testify do not necessarily meet the current constitutional requirements set forth by the U.S. Supreme Court.

Whether testimony is admissible or not is generally a matter for attorneys and judges to deal with, not peace officers. So why bring this case to your attention? Two reasons: (1) Responding and investigating officers develop the majority of evidence presented at trials. Therefore, it is important for responding and investigating officers to at least be familiar with the basics of the "primary purpose test" and how different evidence gathering techniques are implicated by it. (2) Responding and investigating officers should avoid making any promises or statements that suggest minor victims will not have to testify in any particular case. If questions arise, we recommend referring the victim/guardian to the DA's office.

In this particular case, the Court found defense counsel made "clear strategy" decisions in choosing to allow the hearsay statements rather than requiring the child victim to testify. In particular, the Court found the strategy was designed to "limit the emotional impact on the jury of [the victim's] account of the abuse." *Id*. at ¶ 17.

CASES—*MIRANDA* ISSUES

Norman v. State**, 2023 OK CR 4. If a Person Is Incarcerated on Unrelated Charges, Are They "In Custody" for Purposes of *Miranda*?**

This Tulsa County child sex crimes case involves the question of whether a person who is in police custody on an unrelated matter at the time he is interviewed on another matter renders the person "in custody" for

[3] When considering evidence gathered by and the admissibility of testimony from SANE nurses, another case worth reviewing is that of *Thompson v. State*, 2019 OK CR 3, which thoroughly assessed confrontation and evidence gathered by SANE nurses.

purposes of *Miranda*. As you'll recall, "*Miranda* warnings are only required when a person is subject to a custodial interrogation which occurs where questioning is initiated by law enforcement officers after a person has been taken into custody or is otherwise deprived of his freedom in any significant way. A person is in custody for purposes of Miranda when there is '"a formal arrest or restraint on freedom of movement" of the degree associated with a formal arrest.'" *Norman*, 2023 OK CR 4 at ¶ 8 (quoting *Mason v. State*, 2018 OK CR 37, ¶18 (internal citations omitted)). However, "imprisonment alone is not enough to create a custodial situation within the meaning of *Miranda*." *Howes v. Fields*, 565 U.S. 499, 511 (2012).

Norman was questioned by a detective and DHS investigator while he was being held in the Tulsa County Jail on a warrant related to drug charges. He was admitted to an interrogation room with the detective and investigator but was told he did not have to speak to the officers and that he could leave the room any time and return to his cell. Although the door to the room was closed it was not locked and Norman was apparently not physically restrained in anyway during the interview. Norman never asked to leave the interrogation room and appeared to cooperate with the interrogation. Norman denied committing any crimes against the minor victim or of having any knowledge about the allegations against him. At the conclusion of the interview Norman was not arrested but was allowed to return to his cell pod.

Based on the evidence presented at the suppression hearing, the Court of Criminal Appeals found the district court did not abuse its discretion in finding Norman was not "in custody" for purposes of *Miranda*. Although there are circumstances where investigators are not required to read *Miranda* before beginning an interview with a potential suspect, it seems there is little downside to doing so. Had the investigators read Norman his rights in this case, there would have been no basis for him to pursue this claim on appeal. As always, however, make sure your practices conform to your departmental policy and legal guidance by your district attorney, city attorney, or other appropriate legal counsel.

CASES—EXCESSIVE FORCE.

State v. Mitchell, S-2021-880 (Okla. Court of Crim. Appeals) Unpublished.

In this case, the Court of Criminal Appeals approved the dismissal of charges against a peace officer who responded to an active shooter in Blackwell in 2019. Mitchell eventually fired approximately 60 rounds into, or at, the shooter's truck during his response to and pursuit of the shooter. The shooter was later pronounced dead at the scene and the medical examiner's report recorded multiple gunshot wounds to the shooter's head and back and injuries to the brain, left lung, heart, and abdominal organs.

The incident began in the early morning hours of May 20, 2019, when the shooter, driving a white pickup, twice rearended a vehicle in town. When the driver of the damaged vehicle stopped to look at the damage, the shooter pulled up to him and told him nothing was wrong with his vehicle. When the driver responded to the shooter that his vehicle was damaged, the shooter pulled out a semiautomatic handgun and fired two gunshots into the hood of the stopped vehicle. The shooter eventually drove off. The driver called police and several officers responded to investigate.

A short time later, another report of shots fired was submitted to Blackwell police. After some investigation, an officer located the shooter's vehicle at her home. (At the time, the officer did not know the shooter was the person involved in the earlier shooting that night or that she had just fired her gun at her mother. The shooter, however, was well known to the officer and, in fact, the officer had been to her home the previous night because the shooter's mother was concerned about her mental health.) At the home, the officer spoke to the shooter's mother, who was sitting in a car and reported the shooter had a gun and had taken a shot at her. The officer then realized the shooter was sitting in her white pickup and was pointing a gun at him. He also realized that the shooter was the person responsible for the earlier shooting.

The officer scrambled to take cover and ordered the shooter to put down her gun. The shooter refused and told the officer to put his down first. The shooter then fired toward the officer and the bullet went into the front of her mother's vehicle, behind which the officer had retreated for cover. The situation grew more complicated as the officer tried without success to get the shooter's mother to retreat to safety while at the same time trying to calm the shooter and get her to surrender. The shooter's delusional state apparently intensified during this time. Eventually gunfire was exchanged between the shooter and the officer and then the shooter started moving her truck toward her mother's car and the officer. The officer ordered the shooter to stop but she continued forward as if she intended to ram her mother's car to get out of the driveway. The officer fired one round at the front of the pickup. This caused the shooter to "stop the truck, back through the yard, and then drive off into the night." While backing up, the shooter fired additional rounds at the officer and hit his patrol unit. The officer fired an additional round at the truck as the shooter rounded the corner.

The officer began pursuit of the shooter. During the pursuit, the officer heard additional gunfire but was unsure whether the shooter was firing or if the shots came from Mitchell, who was attempting to intercept the shooter. Dashcam video showed that Mitchell fired several shots at the shooter as she turned on to the road he had set up on. The shooter was still being pursued by other officers. Mitchell's efforts did not stop the shooter, who continued on down the road. Mitchell joined the other pursuing officers and eventually overtook the other officers to lead the pursuit. Mitchell fired several shots at the shooter from inside his vehicle, blowing out his own windshield in the process. He fired a dozen additional rounds before the shooter turned on to another street. It appears the shooter fired back at police at least a couple of times during the pursuit.

After turning onto the other street, the shooter's pickup rolled to a stop on the side of the road. Mitchell exited his vehicle and began walking toward the pickup, firing fifteen rounds from an assault rifle as he did so. The pickup then started rolling forward again and Mitchell emptied his rifle's magazine, firing 24 or more additional rounds into it. Another officer also fired three shots at the pickup. Officers were then able to approach the vehicle, found the shooter incapacitated, and called for an ambulance.

After being charged with first degree manslaughter, Mitchell filed a pretrial motion to quash the information. Although the state is not required to present at a preliminary hearing evidence sufficient to convict, the state must produce sufficient evidence to "coincide with guilt and be inconsistent with

innocence for a bindover to be proper." First degree manslaughter occurs when "perpetrated unnecessarily either while resisting an attempt by the person killed to commit a crime, or after such attempt shall have failed." 21 O.S. § 711(3).

The state's theory was that once the shooter had turned the corner and come to a stop, Mitchell was required to cease fire and give her an opportunity to surrender. Because the truck had stopped, the state argued, the shooter was no longer fleeing and the stop suggested her compliance with police directives.

Mitchell's defense team argued that his continued use of deadly force was objectively reasonable based on the totality of the circumstances including the fact that the shooter was a violent fleeing felon who was an ongoing threat to police and civilians and that she did not affirmatively indicate to officers an intent to surrender or submit to their authority.

The "'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight," the Court of Criminal Appeals noted. *Mitchell* at p. 23 (quoting *Graham v. Connor*, 490 U.S. 386, 396 (1989)). Although it is clear that police cannot use deadly force against unarmed, non-dangerous suspects, when officers have probable cause to believe the suspect poses a threat of serious physical harm to officers or others, it is not constitutionally unreasonable to employ deadly force. *See Tennessee v. Garner*, 471 U.S. 1, 11 (1985). After recounting the numerous dangerous circumstances involved in the events involved in this entire episode, the Court opined that "Mitchell was not required under these circumstances to stop firing and hope for the best based on the immediate and ongoing threat the officers faced[.]" *Mitchell* at p. 26.

This case provides a thorough analysis of a type of use of force and how in these circumstances it was constitutionally reasonable. It also constitutes somewhat of a "win" for peace officers who use deadly force in addressing threats to themselves and the public, but because the Court chose not to publish the case it does not have any formal precedential value moving forward.

Mitchell and other officers and the City of Blackwell were all sued in a § 1983 action in the federal district court for the Western District of Oklahoma for damages resulting from the death of the shooter in this case. That lawsuit was dismissed with prejudice in May 2023 but I don't know what, if any, settlement agreement may have led to that dismissal. Just a reminder that civil claims and criminal charges often arise from the same incident but they are not judged by the same standards.

CASES—SECOND AMENDMENT.

U.S. v. Harrison, CR-22-00328-PRW (OKWD 2023).

Harrison is an interesting order by a judge[4] of the United States District Court for the Western District of Oklahoma, which is headquartered in Oklahoma City. The case involves an individual who was on bond awaiting trial for a Texas shooting and who was pulled over by a Lawton PD officer for running a red

[4] U.S. District Court Judge Patrick Wyrick, who formerly sat on the Oklahoma Supreme Court, is the author of the order.

light. Upon approaching Harrison's vehicle, the officer detected the smell of marijuana and when Harrison was questioned about it he told the officer he was on his way to work at a medical marijuana dispensary but that he did not have a state-issued medical marijuana card. Eventually officers searched Harrison's vehicle and found "a loaded revolver on the driver's side floorboard; two prescription bottles in the driver's side door, one empty and one containing partially smoked marijuana cigarettes; and a backpack in the passenger seat. The backpack contained marijuana, THC gummies, two THC vape cartridges, and a pre-rolled marijuana cigarette and marijuana stems in a tray." *Harrison* at p. 2.

Harrison was arrested and charged with possession of marijuana, possession of paraphernalia, and failure to obey a traffic signal. Subsequently, a federal grand jury returned an indictment against Harrison for "possessing a firearm with knowledge that he was an unlawful user of marijuana, in violation of 18 U.S.C. § 922(g)(3). In light of the U.S. Supreme Court's recent pronouncement in *New York State Rifle & Pistol Association, Inc., v. Bruen*, ___ U.S. ___, 142 S.Ct. 2111, 2129-30, that a court must find a governmental regulation "is consistent with the Nation's historical tradition of firearm regulation" before upholding any infringement on the right to bear arms, the district court determined it is unconstitutional to "strip[ ] someone of their right to possess a firearm solely because they use marijuana[.]" *Harrison* at p. 7.

This is a long and detailed order running a total of 54 pages. I have not read the entire order and do not pretend to know all the intricacies of the reasoning of the order. However, I make note of this case in our legal update because it demonstrates changes on the ground with regard to firearms regulation.

With the focus on historicity, I'm curious to see if we find ourselves facing any changes in the applicability of firearms restrictions in cases of domestic violence. Unfortunately, protecting the vulnerable from abuse at home was not recognized as a historically important governmental function and, in fact, wives and children were subject to "correctional" beatings by their husbands and fathers at the time the Constitution was adopted and for decades afterward. *See* Domestic Violence Timeline produced by the Pennsylvania Child Welfare Resource Center.

STATUTORY UPDATES

TITLE 21 – CRIMES AND PUNISHMENTS (and related provisions)

HB 1328 (effective November 1, 2023) adds provisions to the seizure and forfeiture statute.

This bill adds three subsections to the seizure and forfeiture statue, 21 O.S. § 1738. The new subsections address catalytic converter theft, copper theft, and other scrap metal violations and authorize the seizure and forfeiture of any equipment or instrumentality used to commit such crimes as well as any monies, coins, currency, or financial instruments used, derived from, or traceable as proceeds from such crimes.

HB 1893 (effective May 1, 2023) adds county officers to list of persons protected under special assault and battery statute.

This bill adds "any county commissioner, county clerk, county assessor, [and] county treasurer" to the list of persons specially protected by 21 O.S. § 650.6. Previously the statute protected officers of state district and appellate and workers compensation courts to include judges, bailiffs, court reporters, court clerks or deputy court clerks, witnesses, and jurors.

SB 0481 (effective July 1, 2023) addresses election security.

This bill amends provisions of 21 O.S. § 1176, 26 O.S. § 4-115.2, 26 O.S. § 16-109, 26 O.S. § 16-113, and 26 O.S. § 16-124. The amendment to Section 1176 adds "election official[s]" to the list of officers who are protected by the statute from electronic harassment, threats, or publication of personally identifiable information. "Election official" is defined as "a member or employee of the State Election Board or a county election board, the Secretary of the State Election Board or a county election board, or a person serving as a precinct official or absentee voting board member[.]" The amendments to Title 26 authorize the secretary of the State Election Board to keep confidential the residence and mailing address, upon application to do so, of state and county election board officials and employees (Section 4-115.2)—peace officers and their immediate family members are already included in this group, but to take advantage of the protection you must request it from the election board; the amendments also make the direct or indirect threat or intimidation of any election official with intent to improperly influence an election a misdemeanor (Section 16-109); make persons who falsely impersonate election officials with intent to improperly influence an election a misdemeanor (Section 16-113); and add some wording to the provision prohibiting tampering with any election equipment or software and making such act a felony (Section 16-124).

Section 1176 is also amended by HB 2172 to add protections to "medical care providers." See below.

SB 0537 (effective November 1, 2023) amends some provisions related to domestic violence.

This bill removes the intent provision from subsection J of 21 O.S. § 644, which involves assault and battery by strangulation against an intimate partner or a family or household member. The previous version required that to be guilty of domestic violence by strangulation, the perpetrator had to commit "any assault and battery with intent to cause great bodily harm by strangulation or attempted strangulation." This bill deletes the intent to cause great bodily harm provision.

The bill also amends 57 O.S. § 571, which defines "violent crime," by adding to the list of violent crimes "domestic assault and battery resulting in great bodily injury."

HB 1737 (effective November 1, 2023) authorizes innkeepers to eject persons and a person who is ejected but fails to vacate the lodging establishment becomes a trespasser and may be removed by law enforcement.

This bill amends 15 O.S. § 508 to make clear that once a person has been ejected by an innkeeper for a permissible reason the person becomes a trespasser and if the person refuses to vacate the premises, the

innkeeper may enlist the assistance of a peace officer to remove the person pursuant to 21 O.S. § 1835. Section 1835 is also amended to reflect the change in Section 508.

The bases for ejecting a person under Section 508 include (1) non-payment; (2) disorderly conduct or intoxication such that a public nuisance is created; (3) lodging is being used for unlawful purposes; (4) violation of federal, state, or local laws or regulations related to lodging establishments; and (5) violations of any conspicuously posted rules of the lodging establishment so long as the rules are not illegally discriminatory.

HB 1789 (effective November 1, 2023) enacts significant changes to the Self-Defense Act.

House Bill 1789 makes several changes to the Oklahoma Self-Defense Act, apparently to bring it into more conformity with so-called Constitutional Carry. 21 O.S. § 1290.2, which is the definitions section of the Act, is significantly changed to incorporate rifles and shotguns rather than just handguns as previously devised. Section 1290.4 is changed from a restrictive provision—prohibiting the carrying of firearms except under the terms of the Act—to a permissive provision—authorizing any citizen or lawful permanent resident who can lawfully purchase or possess a firearm under state law to carry or transport a concealed or unconcealed firearm. Section 1290.7 is amended to incorporate all types of firearms. Section 1290.8 is amended to remove requirements that a person be licensed to carry a concealed or unconcealed firearm in the state. The section is also amended to provide that a person carrying a concealed or unconcealed firearm must carry a valid handgun license, valid military identification card, valid driver license, or state photo identification card at all times while carrying a firearm and that in the absence of reasonable and articulable suspicion of criminal behavior, a law enforcement officer may not disarm a person unless the person fails to display one of the four authorized identifications. Section 1290.24 is updated to reflect the use of the term firearm versus handgun. Section 1290.25 updates the Legislative Intent provisions in light of so-called Constitutional Carry. Section 1290.26 is amended to authorize persons entering Oklahoma with a concealed or unconcealed firearm that have either a valid firearm license from another state, a valid military identification card, a valid drivers license from another state, or a valid photo identification card from another state to carry concealed or unconcealed in the same manner as Oklahoma residents.

HB 2054 (effective July 1, 2023) amends provisions of the prostitution law.

This bill amends 21 O.S. § 1029 to provide clarifying language that makes both the solicitation of funds in exchange for the provision of lewd acts, assignation, or prostitution and the provision of money or other item or service of value to another for such services a violation of the law. Section 1031 of Title 21 makes knowingly offering money or anything else of value for sex a felony while other acts outlined in Section 1029 are misdemeanors. And the Bill creates new law at 21 O.S. § 1040.57 making it illegal for anyone "who pays a fee for a sexual encounter to publish a review of that sexual encounter or to publish a review of the pubic area, buttocks, or breasts experienced in the sexual encounter on a website that facilitates, encourages, offers, solicits, or promotes sexual conduct with another for a fee." Such offenses are felonies

with increased penalties for serial offenses or if the victim of the offense is less than 18. Upon a third conviction, a person will be required to register as a sex offender.

SB 1046 (effective May 5, 2023) upgrades first offense of domestic abuse against a pregnant woman from misdemeanor to felony.

This bill amends 21 O.S. § 644 to make a first offense of domestic abuse against a pregnant woman, so long as the offender has knowledge of the pregnancy, a felony with punishment upon conviction being imprisonment in the Department of Corrections for not more than five (5) years. A second and subsequent offense remains a felony with its previously existing punishment range of not more than ten (10) years imprisonment.

HB 2154 (effective November 1, 2023) expands the protected class in prohibition on assaults and batteries of medical care providers and updates statistical reporting requirements.

This bill amends 21 O.S. § 650.4 and 21 O.S. § 650.5 to expand the definition of medical care provider to include other employees and independent contractors working in or for a health care facility. The bill also amends 63 O.S. § 1-114.3 to update reporting requirements for incidents of assault in health care facilities. The new requirements provide that personally identifying information shall not be provided in the statistical reports.

HB 2172 (effective November 1, 2023) adding medical care providers to the protected class in the law prohibiting electronic intimidation, harassment, or unauthorized disclosure of personally identifiable information.

This bill adds medical care providers to the list of professions and other individuals protected by 21 O.S. § 1176. The previous version of the statute provided the same protection to peace officers and still continues to do so. The bill defines "medical care provider" to include doctors, residents, interns, nurses, nurse practitioners, nurses' aides, ambulance attendants or operators, paramedics, emergency medical technicians, laboratory technicians, radiologic technologists, physical therapists, physician assistants, chaplains of health care facilities, volunteers of health care facilities, pharmacists, nursing students, medical students, members of hospital security forces, and any other employees or contractors working in or for health care facilities. It also includes a caveat not applicable to the other protected professions and individuals: "To the extent the provisions . . . apply to medical care providers, the protections provided herein shall not apply when the incident is unrelated to the provider's professional duties."

Section 1176 was also amended by SB 0481 this year to add "election officials" to the list of protected persons. See above.

HB 2236 (effective November 1, 2023) increases amounts the Crime Victims Compensation Board can pay for sexual assault exams and related medications and creates new law establishing a SANE statewide coordinator through DAC.

This bill increases the amount the Crime Victims Compensation Board can pay from the sexual assault examination fund for sexual assault examinations and medications related to sexual assault under 21 O.S. § 142.20. For exams, the amount is increased from $450.00 to $800.00 and for medications from $50.00 to $100.00. (The last time the amounts were increased was in November 2007, when the amount per exam went up from $250.00 to $450.00. Medications were authorized at $50.00 per applicant in 2007.)

The bill also establishes within the District Attorneys Council the position of Sexual Assault Nurse Examiner (SANE) Statewide Coordinator. This is accomplished through new law at 19 O.S. § 215.41. Such position, however, is subject to the availability of funding and is only established until October 1, 2025. The job of the coordinator is to "oversee forensic medical examination training throughout the state, recruit and develop SANE professionals, create and expand local Sexual Assault Nurse Examiner programs and Sexual Assault Response Team programs throughout this state, and coordinate payments from the Sexual Assault Examination Fund."

SB 0661 (effective November 1, 2023) creates the Victims of Human Trafficking and Prevention Revolving Fund.

This bill adds new law at 21 O.S. § 748.3 to create a revolving fund in the Attorney General's Office to be designated the "Victims of Human Trafficking and Prevention Revolving Fund." The fund will consist of monies received from penalties imposed on convictions of human trafficking violations as well as funds from other potential sources, such as legislative appropriations. Funds are to be used to educate the public about the ills of human trafficking, assist in combatting recruitment in schools, establish a survivors' resource center, coordinate between law enforcement and service providers, and provide information regarding expungement of criminal histories for people.

SB 0674 (effective June 6, 2023) creates the Oklahoma Organized Retail Crime Task Force.

This bill adds new law at 21 O.S. § 2200 to create the Oklahoma Organized Retail Crime Task Force. The task force is designed to provide the Legislature and the Governor with information on organized retail crime and recommend various countermeasures for combatting the issue. The task force will be made up of 15 members as follows: 3 appointed by the governor, one of whom is to represent state or local law enforcement; 2 appointed by the president pro tem of the Senate; 2 appointed by the Speaker of the House; 1 appointed by the District Attorneys Council; 1 appointed by the Oklahoma Retail Merchants Association; 1 appointed by the State Chamber; 1 appointed by the Oklahoma Sheriffs Association; 1 appointed by the Oklahoma Association of Chiefs of Police; 1 appointed by the Attorney General; one from the Convenience Distributors of Oklahoma; and 1 from Oklahoma Grocers Association.

TITLE 22 – CRIMINAL PROCEDURE (and related provisions)

SB 2537 (effective November 1, 2023) amends statute imposing criminal liability on peace officers who use excessive force.

This bill amends 22 O.S. §§ 34.1 and 34.2, which deal with criminal consequences to peace officers who use excessive force. The amendments remove references to department policy and guidelines when determining if a particular use of force is excessive. They also add some interesting language. Previously, the law provided that peace officers who use excessive force in pursuance of their law enforcement duties would be subject to the criminal laws "to the same extent as any other citizen." The amendment, however, adds the following ". . . if excessive force is established as an element of any alleged violation under the criminal laws of this state." It will be interesting to see the effect of this statute. A quick search of Title 21, where many of the state's criminal statutes are found, shows no use of the term "excessive force" in any of its sections. Familiar crimes that do involve uses of force—assaults and batteries, manslaughter, murder—do not include legal "elements" of excessive force but include elements of "assault and battery," "the death of a human, caused by the defendant," and "the death of a human, caused by the defendant," respectively. I assume the amended statute will be used as a defense to charges brought against peace officers who are accused of unlawfully killing or injuring someone in the course of their peace officer duties. What the effect of it will be is yet to be seen.

The bill also moves the requirement for law enforcement entities to adopt polices and guidelines regarding the use of force by peace officers from Section 34.1 to Section 34.2. It also removes the previous requirement that such policies and guidelines had to "be complied with by peace officers in carrying out the duties of such officers within the jurisdiction of the law enforcement entity."

HB 2041 (effective November 1, 2023) authorizes "verbal warnings" when encountering someone with misdemeanor warrant.

This bill modifies 22 O.S. §§ 177 and 185 to allow peace officers who come into contact with individuals who have misdemeanor warrants to "[i]ssue a verbal warning about the existence of the warrant and further advise the defendant to contact the clerk of the court for the purpose of resolving the outstanding warrant." If such a warning is given, it is to be documented on a department-issued warning ticket. The option of arresting the defendant remains available.

HB 2259 (effective November 1, 2023) creates a court cost compliance program.

HB 2259 is a relatively lengthy bill (at 17 pages) and does a pretty thorough overhaul of 22 O.S. § 983, 19 O.S. §§ 514.4 and 514.5, and 28 O.S. § 101 as it creates a court cost compliance program in an effort to assist county sheriffs in collecting and managing court costs. It also implements two types of warrants related to failures to comply with court cost payments: (1) "cost arrest warrants," which authorize arrest for failing to comply with terms of a payment plan, failing to appear at a cost hearing, or failing to appear at the court clerk's office within 10 days of being cited for failure to comply with costs; and (2) "cost cite

and release warrants," which can be issued for failure to comply with the terms of a payment plan or for failure to appear at a cost hearing. Sheriffs' offices should make sure to review this bill with their legal counsel because of the widespread changes in the statutes.

SB 0291 (effective November 1, 2023) expands VPO availability.

This bill adds language to subsection G of 22 O.S. § 60.2 to allow victims of child abuse to petition for an emergency temporary order or emergency ex parte order under the statute regardless of any relationship or scenario. The amendment also inserts the provision "or have a petition filed on the victim's behalf if the victim is a minor."

This bill was initially vetoed by Governor Stitt but the House and Senate overwhelmingly voted to override the veto.

SB 0623 (effective July 1, 2023 (partial); November 1, 2023 (partial)) updates various statutes to substitute Service Oklahoma for DPS.

This bill amends various statutes to substitute Service Oklahoma for the Department of Public Safety as the agency responsible for the assorted driver license-related tasks mandated by those statutes. The effected statutes are 22 O.S. §§ 171.3, 471.6, 983, 991a, 1111.2, 1115.1, 1115.1A, and 1115.5. The bill also provides for the substitution of Service Oklahoma for the Oklahoma Tax Commission in various statutes related to vehicle titles and registrations including 42 O.S. §§ 90, 91, and 91A. In addition, the bill makes some substantive changes in various motor vehicle statutes including 47 O.S. §§ 3-106, 6-101 (Real ID), 6-105, 6-110, 6-111, 6-113, 6-116, 6-205.1, 6-211, 156.1, 752, 753, 754, 761, 802, 803, 804, 805, 1109, 1135.5, and 1140 and repealed 47 O.S. §§ 2-106 and 1114.2. 63 O.S. § 1-229.13, 68 O.S. § 118, 70 O.S. § 19-115, and 75 O.S. § 250.4 were also included in the amendments.

This bill was originally vetoed by the governor in April along with several other measures "authored by Senators who have not stood with the people of Oklahoma and supported [his plan to cut taxes and reform education]." The legislature overrode the veto.

SB 0483 (effective November 1, 2025) relieves sheriffs of obligation of receiving, storing, and securing personal property seized by other law enforcement entities in relation to violations of liquor or gambling laws.

This bill relieves sheriffs and their departments of the obligation to receive, store, and secure wine, whiskey, beer, or other intoxicating liquor or other personal property seized in conjunction with liquor law or gambling law violations from other law enforcement officers. It does so by amending 22 O.S. § 1261. Presumably, that means that any law enforcement department involved in such a seizure will be required to store and secure such contraband and evidence themselves. The obligation of the seizing officer to provide a report under oath to the court clerk of the appropriate county, such report containing the name of the officer making the seizure, the place the seizure occurred, and an inventory of the property seized remains in effect. This amendment, however, does not take effect until November 1, **2025**.

HB 2490 (effective July 1, 2024) new law providing for early evaluations of certain sentences.

This bill create a new section of law at 22 O.S. § 991a-4.2 providing for "early evaluation hearings" for certain sentences. The sentences that will be affected include (1) suspended sentences that exceed five years and (2) split sentences in which the suspended portion is for more than five years. An early evaluation hearing may be requested after serving five years of the suspended sentence or five years of the suspended portion of the split sentence. At such a hearing, the court will determine if the person (1) completed all requirements of his or her probation, including treatment and rehabilitative programming; (2) has had no criminal violations during the term of probation; (3) has no pending revocation hearings; and (4) the DA does not object on behalf of the state or the victim of the applicable crime. If the judge finds all of those factors exist, the court may modify the length of the remaining sentence.

There are also provisions for being able to request the hearing one year earlier if the person has received a high school diploma or HS equivalency diploma, any college-level degree, or a vocational, technical, or career training certification or degree while serving his or her sentence.

If a DA objects, either on behalf of the state or a victim, the objection must be reduced to writing, specify of behalf of whom the objection is made, and include specifics as to why the objection is made.

This bill will not go into effect until July 1, **2024**.

TITLE 12 – CIVIL PROCEDURE

SB 0619 (effective November 1, 2023) increases the age for which special hearsay rules may apply for minor victims of physical or sexual abuse.

This bill modifies 12 O.S. § 2803.1 regarding the admissibility of hearsay statements made by minor victims of physical or sexual abuse by increasing the applicable age to 16 years. Under the statute, if a minor makes a statement describing any act of physical abuse or sexual contact, the statement "is admissible in criminal and juvenile proceedings in the courts in this state" if the court holds a hearing outside the hearing of the jury and determines that the statement is "inherently trustworthy" and the child either testifies or is available to testify or if unavailable to testify, there is corroborative evidence of the act.

Please see the discussion on *Foote v. State*, 2023 OK CR 12, above at page 12, regarding hearsay and the confrontation clause. This statute is implicated in that case.

HB 1618 (effective November 1, 2023) allows court clerks to deliver notice of a hearing on an application for a process server license to the DA, sheriff, OSBI, and AOC by electronic means.

In order to obtain a license as a process server, an applicant must appear at a hearing before an assigned judge. Notice of that hearing must be provided by the court clerk to the district attorney, sheriff, Oklahoma State Bureau of Investigation, and the Administrative Office of the Courts at least 20 days before the hearing. Previously, such notice was required to be mailed or delivered. Pursuant to this amendment of 12 O.S. § 158.1, the notice may be provided "by electronic means."

TITLE 10A – CHILDREN AND JUVENILE CODE

HB 2210 (effective November 1, 2023) creates new law authorizing departure from mandatory minimum sentences in certain circumstances.

This bill creates new law at 10A O.S. § 2-5-401 providing courts the means of departing from mandatory minimum sentences when the person convicted of a crime was a minor at the time of the commission of the crime but was tried as an adult AND when the victim of the crime for which the minor was convicted is found by clear and convincing evidence to have been someone who had trafficked or sexually abused or sexually assaulted the minor within 90 days before the minor committed the crime. Options open to the judge in these cases are (1) to depart from mandatory minimum or enhanced sentencing; (2) to suspend any portion of an otherwise applicable sentence; or (3) to transfer the minor to the jurisdiction of the juvenile court for further proceedings.

HB 1072 (effective October 1, 2023) provides for court review and approval of placements of children in qualified residential treatment programs.

This bill adds a subsection C to 10A O.S. § 1-4-703 to provide that a court must set a hearing within 60 days of the start of each placement of a child in a qualified residential treatment program at which to consider the "assessment, determination, and documentation made by the qualified individual conducting the assessment," determine whether the child's needs can be met in a foster home or if placement in a qualified residential treatment program provides the most effective and appropriate level of care in the least restrictive environment, determine if the placement is consistent with short and long-term goals for the child, and to approve or disapprove the placement. This amendment becomes effective October 1, 2023, rather than the typical November 1 date.

TITLE 11 – CITIES AND TOWNS

SB 0462 (effective November 1, 2023) updating qualification requirements for municipal judges.

This bill amends 11 O.S. § 27-104 to remove residency requirements for municipal judges (previously municipal judges had to reside in the county in which the municipality sat or in an adjacent county—or maintain a permanent office in the municipality) and to impose requirements that new municipal judges appointed after July 1, 2026, must be attorneys licensed to practice law in Oklahoma. The statute also imposes educational requirements beginning July 1, 2026, wherein all municipal judges must complete a 12-hour certification program approved by the Oklahoma Municipal Judges Association. A copy of the certification of completion must be filed with the county clerk in the county in which the municipality is located and with the municipal court clerk.

HB 2131 (effective November 1, 2023) amends provisions of the Oklahoma Police Pension and Retirement System (OPPRS).

This bill amends several sections of the Oklahoma Police Pension and Retirement System (OPPRS). It amends 11 O.S. §§ 50-109 and 50-110 to require payments from participating municipalities be made to the system online. The bill also amends 11 O.S. § 50-124 to allow for payment of child support payments and arrearages from funds of the system.

SB 0630 (effective May 1, 2023) also amends provisions of the Oklahoma Police Pension and Retirement System (OPPRS) as well as the Oklahoma Law Enforcement Retirement System (OLERS).

This bill amends several sections of the Oklahoma Police Pension and Retirement System (OPPRS) and the Oklahoma Law Enforcement Retirement System (OLERS). It amends 11 O.S. §§ 50-114, 50-114.4, and 50-115 as well as 47 O.S. §§ 2-300 and 2-305.1C. If you are covered by either of these retirement systems you may want to check with the systems to see what, if any, affect these amendments may have to your retirement.

TITLE 19 – COUNTIES

SB 0951 (effective May 25, 2023) increases travel allowance for sheriffs and county commissioners.

This bill amends 19 O.S. § 165 to increase the amount a sheriff or county commissioner may receive in a monthly travel allowance from $700.00 to $1,000.00. The amounts for county assessors increase from $600.00 per month to $900.00 per month and the amounts for county clerks, court clerks, and treasurers go from $500.00 per month to $800.00 per month. The bill also provides that beginning in fiscal year

2028 and every fiscal year thereafter the travel reimbursement allowances for these officers will increase annually by two percent (2%).

This bill became law on a veto override.

SB 0776 (effective November 1, 2023) explicitly authorizes county commissioners to enter into intergovernmental cooperative agreements.

This bill amends 19 O.S. § 339 to authorize county commissioners to enter into intergovernmental cooperative agreements for shared services with local governmental units. The agreements must be compliant with the Interlocal Cooperation Act, which is found at 74 OS. § 1002 et seq. Other amendments to Section 339 regarding fulltime county employees continuing education programs were made by SB 0775.

SB 1248 (effective November 1, 2023) deems records that are scanned and digitized as originals for county accounts payable and inventory purposes.

This bill amends 19 O.S. § 155.7 to provide that records which have been photographed, digitized, photostated, reproduced on film, or stored on optical disk by any county office are deemed original and now, in addition to being admissible in court and administrative agencies, are also appropriate for accounts payable and inventory purposes. The bill also adds language to allow county clerks to elect to sign, accept, or receive documents using a digital signature.

TITLE 37A – INTOXICATING LIQUORS, ALCOHOLIC BEVERAGES

HB 1596 (effective November 1, 2023) creates new law allowing ABLE to use funds to purchase evidence in appropriate cases.

This bill creates new law at 37A O.S. § 8-101 to authorize the Alcoholic Beverage Laws Enforcement (ABLE) Commission to establish "official advanced funds" (OAF) for the purpose of supplying its agents with money for enforcement of actions to obtain critical evidence for case presentations. The amount of OAF is limited to $5,000.00.

TITLE 43A – MENTAL HEALTH

SB 0510 (effective November 1, 2023) authorizes ODMHSAS to use mechanical restraints during transportation of "consumers" in certain circumstances.

This bill amends 43A O.S. § 1-110 to authorize the Department of Mental Health and Substance Abuse Services or an entity contracted by ODMHSAS to use mechanical restraints on so-called consumers during transportations in three instances: (1) when the individual being transported physically assaults or attempts

to assault the person conducting the transportation; (2) when the individual being transported attempts or causes serious injury to him or herself; or (3) when the individual being transported has a propensity toward violence as indicated by past transports, criminal charges, or mental health history. Use of mechanical restraints is to be limited to no longer than is necessary and every use of mechanical restraints must be documented as part of the clinical record of the consumer.

TITLE 47 – MOTOR VEHICLES

SB 0510 (effective November 1, 2023) provides for several new license plate designs.

This bill amends 47 O.S. § 1135.2 and 47 O.S. § 1135.5 to authorize several new license plate designs including one for recipients of the Meritorious Service Medal, one to demonstrate support for ROAD (the Recovering Oklahomans After Disaster organization), one to feature Tulsa's iconic Golden Driller and Route 66 Rising sculptures to demonstrate support for the Tulsa community, and one to be designed in consultation with the Oklahoma Rifle Association to show support for the ORA. Service Oklahoma provides an online specialty license plate catalog that allows you to see all the different designs that are available.

HB 1390 (effective November 1, 2023) extends the period for temporary license plate validity to two months.

This bill amends 47 O.S. §§ 1137.1 and 1137.3 to extend from 30 days to two (2) months the length of time a temporary license plate is valid for both used and new cars.

HB 1393 (effective November 1, 2023) redirects payments for oversized or hazardous transport escorts from the Department of Transportation to the Department of Public Safety.

This bill redirects from the Department of Transportation to the Department of Public Safety fees paid by individuals or entities who must have a law enforcement escort provided by the Oklahoma Highway Patrol for either road or rail shipments. Said fees will now be deposited in the Department of Public Safety Revolving Fund rather than the State Transportation Fund. The affected statute is 47 O.S. § 14-120.2.

SB 0682 (effective July 1, 2023) removes references to various immigration statuses in statute authorizing non-domiciled commercial learner permits and driver licenses.

This bill amends 47 O.S. § 6-111 by removing language in subsection D of the statute that referenced H2A Temporary Agricultural workers and J-I Exchange Visitor Program participants. The amendment leaves the following guidance for granting of permits and licenses to non-domiciled applicants: "A person applying for such permit or license must comply with all testing and licensing requirements in accordance with applicable federal regulations, state laws and Service Oklahoma rules. The issued license shall be valid until the expiration of the visa for the non-domiciled worker."

HB 2133 (effective November 1, 2023) updates definitions of autocycles, mopeds, motorcycles, and motor-driven cycles.

This bill updates definitions of autocycles (47 O.S. § 1-103.2), mopeds (47 O.S. § 1-133.2), motorcycles (47 O.S. § 1-135), and motor-driven cycles (47 O.S. § 1-136).

HB 2869 (effective November 1, 2023) authorizes CLEET to purchase passenger vehicles and makes non-vehicular modifications to CLEET's statute.

This bill amends 47 O.S. § 156 to authorize CLEET to purchase passenger vehicles. (CLEET has existing authority under 70 O.S. § 3311.10 to purchase passenger automobiles or buses for use as training vehicles.) It also allows the CLEET executive director to have a take-home car. 47 O.S. § 156.1.

HB 2684 (effective November 1, 2023) amends the Bernardo-Mills Law creating the offense of endangerment of an emergency worker.

This bill amends 47 O.S. § 11-314 to update the name from Bernardo's Law to Bernardo-Mills Law. It also provides that if the mandates of the law—essentially traveling with due caution and changing lanes if possible when emergency workers, DOT or Turnpike Authority workers, or licensed wrecker workers are present on or adjacent to the roadway—are disregarded, the driver will be guilty of the new offense of endangerment of an emergency worker. For first offenses, when no injury or death to an emergency worker occurs, violators will be subject to a $1,000.00 fine. For second offenses, without injury or death, the fine is $2,500.00. If an injury or death of an emergency worker occurs as a result of the driver's failure to drive safely, the offense becomes aggravated endangerment of an emergency worker with a fine of not more than $5,000.00 if the offense resulted in injury and a fine of not more than $10,000.00 if the offense resulted in the death of an emergency worker.

HB 1962 (effective November 1, 2023) makes significant changes to farm permit provisions.

This bill amends 47 O.S. § 6-105 by significantly changing the provisions related to farm permits that allow underaged drivers who live and work on farms some driving privileges. The new provisions allow any person who is less than 17 years old but at least 14 years old and who lives or works upon a farm in Oklahoma to obtain a "farm permit," which will authorize the person to operate any Class D motor vehicle under certain circumstances. The bill contains about four pages of specific authorizations and restrictions for driving under a farm permit. Some of those include limitations on hours of the day the permit is effective, how many and what categories of passengers may be in a vehicle with a farm permit driver, and restricting such drivers from operating a motor vehicle on an interstate highway or turnpike or within the limits of any cities with populations of more than 100,000 residents.

HB 2416 (effective November 1, 2023) law enforcement-related memorial roads.

This bill names several transportation features in honor of various Oklahomans including several law enforcement officers.

The intersection of US Highway 77, also known as the Broadway Extension, and Comfort Drive in Edmond is designated the "SGT. Christopher James 'CJ' Nelson Memorial Intersection." 69 O.S. § 1698.398. Nelson was killed in July 2022 when a driver slammed into him and four other vehicles at the intersection. Nelson was on-duty and riding a department motorcycle at the time of the wreck. According to news reports, Nelson is the first Edmond peace officer to lose his life in the line of duty.

The segment of US Highway 62 between the highway's intersections with State Highway 6 and US Highway 283 is designated as the "Trooper John R. Barter Memorial Highway." 69 O.S. § 1698.399. Barter, a six-year veteran of the OHP at the time of his death, was shot and killed after stopping a parolee at a disturbance near Altus back in January 1959. The culprit was later apprehended and after being found guilty of Barter's murder was executed in 1960.

The section of US Highway 271 beginning at the south edge of Antlers and extending south to the intersection of Airport Road in Pushmataha County is designated as the "Trooper Don Henley Memorial Highway." 69 O.S. § 1698.400. Henley served for many years as an OHP trooper and passed away in 2019 at the age of 84. According to his obituary, he loved "hunting, fishing, coon hunting, guns, and arresting bad guys[.]"

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

TITLE 57 – PRISONS AND REFORMATORIES (and related provisions)

HB 1546 (effective November 1, 2023) creates "Orange Alerts" to inform residents of escaped prisoners.

This bill provides for a new section of law at 57 O.S. § 701 to require the Department of Corrections to create an "Orange Alert" communication system for each correctional facility in the state that can notify any resident within a 40-mile radius of the facility when a prisoner escapes from the facility. Notice on how to register to receive the alerts is to be posted in a newspaper of record within the county in which the correctional facility is located. It is the responsibility of individual residents to register to receive the alerts.

SB 0247 (effective November 1, 2023) defines "barrack-style" spaces for city or county jail facilities.

This bill adds the definition of "barrack-style" to 57 O.S. § 57 and 74 O.S. § 192 as it applies to inmate housing areas in city or county jail facilities. Section 57 previously authorized city and county jails to utilize barrack-style facilities but did not define exactly what that meant. Section 192 previously authorized counties to build barrack-style jails but also failed to define the term. Under this bill, barrack-style is defined as "a single designated space within a city or county jail facility for the purpose of housing three or more inmates."

SB 0711 (effective November 1, 2023) distribution of emergency opioid antagonists by DOC and county jails.

This bill creates new law at 57 O.S. § 4.1 and 43A O.S. 2-401.1 to mandate the Department of Mental Health and Substance Abuse Services to provide emergency opioid antagonists to the Department of Corrections and county jails for distribution to appropriate inmates. ODMHSAS is also to prepare and provide an opioid overdose education program that explains the causes of opioid overdoses, instructs how to administer life-saving rescue techniques and an emergency opioid antagonist, explains how to contact appropriate emergency medical services, and provides information on how to access emergency opioid antagonists. Once the discharging inmate is provided with the education program, two doses of the emergency opioid antagonist will be provided to the inmate, if he or she is diagnosed with an opioid use disorder, upon discharge from a DOC facility or to jail inmates who have been diagnosed with an opioid use disorder or who are confined for an offense related to possession of an opioid drug.

TITLE 63 – PUBLIC HEALTH AND SAFETY

HB 2095 (effective November 1, 2023) grants authority to OBN, OSBI, and AG agents to conduct onsite inspections and investigations of medical marijuana businesses.

In addition to other amendments, this bill adds language to 63 O.S. §§ 427.6, 427.19, and 430 to authorize agents of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, the Oklahoma State Bureau of Investigation, and the Attorney General's office to perform the same types of onsite inspections and investigations of medical marijuana businesses as agents of the Oklahoma Medical Marijuana Authority are permitted to do. The bill also adds a provision in 63 O.S. § 427.14 to provide the OMMA as well as the OBN, OSBI, and AG's Office with subpoena power in cases in which reasonable suspicion that a medical marijuana business is illegally growing, processing, transferring, selling, disposing, or diverting marijuana to allow such agencies the ability to obtain records and documents necessary to "establish the personal identifying information of all owners and individuals with any ownership interest in the business." It also gives the OBN, OSBI, and AG's office authority to enforce provisions in 63 O.S. § 427.16 regarding the transportation of medical marijuana.

SB 0475 (effective May 2, 2023) provides new procedures for OBN to take action against non-compliant medical facility registrants.

This bill amends several sections in Title 63 but makes sweeping changes to the procedures for the Oklahoma Bureau of Narcotics and Dangerous Drugs Control to take action against medical facility registrants the OBN Director has reason to believe are operating inconsistently with the statute. Those changes are found in 63 O.S. § 2-305 and include provisions for giving notice and allowing registrants due process under the Administrative Procedures Act.

HB 1408 (effective November 1, 2023) creates the First Responders Job Protection Act.

This bill adds several new sections of law at 63 O.S. §§ 1-539.11, 1-539.12, and 1-539.13, to be known collectively as the First Responders Job Protection Act. The law appears to be designed to protect first responders from adverse employment actions when they may have been exposed to a controlled dangerous substance while responding to an emergency. It provides that any first responder who is subject to employment-related drug testing is to verbally report to the responder's employer prior to testing any known potential passive exposure to any controlled dangerous drug that occurred while responding to an emergency in the previous 14 days. If the subsequent drug test shows positive for a controlled dangerous substance, the medical review officer is to be provided documentation of the employee's verbal report as well as a subsequent written report from the employer "in order to rule out passive exposure."

The statute defines "passive exposure" as a situation in which an individual is exposed to a controlled dangerous substance without actually ingesting or using the substance themselves. It also defines "first responder" to mean an individual who performs emergency medical services on scene in accordance with the Oklahoma Emergency Response Systems Development Act (OERSDA) and related rules. This may exclude most peace officers, despite the fact that peace officers are often the first on scene at medical emergencies and are often called upon to render emergency aid until paramedics or other medical providers arrive. However, in 63 O.S. § 1-2506.1, a section of the OERSDA that deals with authority to administer opiate antagonists, the Act defines first responders to include "law enforcement officials."

If you are subject to drug testing and believe you have been exposed to CDS prior to being called in to test, you may want to try invoking this provision.

HB 1590 (effective November 1, 2023) adds new sections of law and amends many others with regard to 911 systems.

This sweeping 25-page bill adds new law at 63 O.S. § 2872 to be known as the Haiden Fleming Memorial Act and which requires the Oklahoma 911 Management Authority to maintain an online training platform for 911 emergency telecommunicators. In addition, on or before July 1, 2024, all emergency telecommunicators who provide dispatch services for emergency medical services must complete a 40-hour state-recognized course for basic call handling and dispatch services. New hires after January 1, 2024, must complete such training within six months of their hire dates. Moreover, on or before July 1,

2024, emergency telecommunicators must also complete a nationally recognized telecommunicator CPR training course which incorporates recognition protocols for out-of-hospital cardiac events.

Lots of other changes are made to various sections impacting the 911 system. If you are involved in operating a 911 system, make sure to check them out.

SB 0712 (effective November 1, 2023) distribution of emergency opioid antagonists by hospitals.

This bill creates new law at 63 O.S. § 1-706.21 and 43A O.S. 2-401.2 to mandate the Department of Mental Health and Substance Abuse Services to provide emergency opioid antagonists to hospitals in the state for distribution to certain patients who present themselves to an emergency department with symptoms of opioid overdose, opioid use disorder, or some other adverse event related to opioid use. Two doses of the emergency opioid antagonist will be provided upon discharge. However, there are lots of limitations on who is eligible for such antagonists and when they will be distributed. The program is premised upon the receipt of sufficient federal funding.

HB 2153 (effective November 1, 2023) extends misdemeanor status to second and third violations of 63 O.S. § 2-402.

Section 2-402 of Title 63 prohibits the possession of a controlled dangerous substance except as obtained through a valid prescription, the purchasing of certain preparations listed in 63 O.S. § 2-313 except as authorized in that section, and the selling, advertising, marketing, etc., of any product containing ephedrine, its salts, optical isomers, or salts of optical isomers for various purposes including stimulation, mental alertness, weight loss, etc, unless FDA approved. Previously, first violations of the section were misdemeanors and subsequent violations were felonies but this bill amends Section 2-402 to make second and third convictions misdemeanors, with options for judges to order consenting defendants to complete diversion programs. These amendments do not apply to violations related to the possession of marijuana, however.

SB 0978 (effective November 1, 2023) authorizes use of firearms for self-defense from a water-borne vessel.

This bill amends 63 O.S. § 4210.3 to authorize discharge of a firearm from a vessel for self-defense purposes. A "vessel" includes every device, other than a seaplane on the water, used or capable of being used as a means of transportation on water. See 63 O.S. § 4002.

HB 1077 (effective November 1, 2023) creates the Kasey Alert for critically missing adults.

This bill creates new law at 63 O.S. §§ 1-10990.8, 1-1990.9, 1-1990.10, 1-1990.11, 1-1990.12, 1-1990.13, 1-1990.14 establishing the Kasey Alert system for critically missing adults. The act is named for Kasey Russell, a 29-year-old who went missing in 2016 while walking home from a casino but, apparently

because he was an adult, his disappearance was never investigated until his body was discovered some time later.

"Critically missing adults" are defined under the act as people who are at least 18 years old and no older than 59 years old whose whereabouts are unknown and who are believed to have been abducted or taken against their will. The Department of Public Safety is tasked with the responsibility for developing the system and making rules including procedures for law enforcement agencies to verify whether a missing adult is considered abducted, criteria for such agencies to consider in circumstances where an missing adult may not be a critically missing adult but for whom the issuance of a Kasey Alert would nevertheless be beneficial, procedures for law enforcement agencies to follow in initiating a Kasey Alert, methods for distribution of information to statewide media outlets, procedures for receipt and evaluation of information received from the public in response to the alert, and procedures for terminating an alert.

Section 1-1990.12 provides that when a law enforcement agency receives notice of a critically missing adult, the following actions are to be taken: (1) enter the missing individual into the National Crime Information Center (NCIC) database; (2) conduct an investigation into the disappearance; and (3) collect identifying information about the critically missing adult. If after completing those steps the agency determines there is sufficient information to issue a Kasey Alert, one is to be activated.

SB 0230 (effective November 1, 2023) adds the requirement that the state emergency operations plan include a component detailing the response to a catastrophic health emergency.

This bill amends 63 O.S. § 683.2, which created the Oklahoma Department of Emergency Management and charged it with the duty to formulate and execute an emergency operations plan for the state. The amendment specifically requires OEM to include a component in the state emergency operations plan that details the response protocols to a catastrophic health emergency as that term is defined in 63 O.S. § 6104. Section 6104 defines catastrophic health emergency to mean an occurrence of imminent threat of an illness or health condition that is believed to be caused by a nuclear attack, bioterrorism, a chemical attack, or the appearance of a novel or previously controlled or eradicated infection agent or biological toxin and which poses a high probability of a large number of deaths or serious or long-term disability in the population or widespread exposure to a toxic agent that poses a significant risk of substantial future harm to a large number of people.

HB 2010 (effective November 1, 2023) requires motorized vessels sold or operated in Oklahoma to have a carbon monoxide warning sticker affixed in plain view to the interior of the vessel.

This bill amends 63 O.S. § 4207 to include a requirement that motorized vessels, other than personal watercraft, that are sold or operated in Oklahoma must display a carbon monoxide warning sticker. The Department of Public Safety is to develop and approve the sticker but can approve a sticker that has previously been okay'd by the U.S. Coast Guard for similar uses in other states. Stickers already

developed by a vessel manufacturer and affixed to vessels are specifically stated to meet the statute's requirements. Service Oklahoma is to provide the stickers at no cost to vessel owners along with annual registration materials.

The amended statute is to be known as "Andy's Law" in remembrance of Andy Free a boy who died after a day of boating on Lake Eufaula in 2020.

HB 2281 (effective May 11, 2023) makes it illegal to obtain or purchase a license to distribute any CDS through a "straw person."

This bill amends 63 O.S. § 2-406 to add a prohibition of obtaining or purchasing a license to distribute any controlled dangerous substance through a "straw person" or "straw party." It also amends 63 O.S. § 2-101 to define a straw person or straw party as a third party who (1) is put up in name only to take part in a transaction or otherwise is a nominal party to a transaction; (2) acts on behalf of another person to obtain title to property and executes documents and instruments the principal may direct respecting property; or (3) purchases property for another for the purpose of concealing the identity of the real purchaser or to accomplish some purpose otherwise in violation of Oklahoma law.

TITLE 68 – TAXES (and related provisions)

HB 1956 (effective November 1, 2023) authorizes garnishment versus license nonrenewal.

This bill creates amends 68 O.S. § 238.1. Previously, individuals who held state licenses but were not in compliance with income tax laws were subject to having the Oklahoma Tax Commission notify the applicable licensing agency that the persons' licenses were not to be renewed. The amendments to the statute now provide for the OTC to garnish such individuals' wages or other assets instead of prohibiting renewal of their state licenses.

TITLE 70 – SCHOOLS (and related provisions)

HB 2903 (effective July 1, 2023) provides for a School Resource Officer pilot program.

This bill creates new law at 70 O.S. § 5-148.1 authorizing the State Department of Education to establish a three-year school resource officer pilot program. Under the program, school resource officers who are employed or contracted by participating school districts must complete law enforcement active shooter emergency response training provided by CLEET and DPS. For purposes of the program, "school resource officer" is defined as "a law enforcement officer with sworn authority and training in school-based law enforcement and crisis response who is assigned by an employing law enforcement agency to work collaboratively with one or more schools using community-oriented policing concepts." The bill also creates a revolving fund connected to the program. See 70 O.S. § 5-148.2.

HB 2904 (effective July 1, 2023) funds School Resource Officer pilot program.

This bill appropriates $150 million for costs associated with implementing HB 2903, which will provide active shooter emergency response training for school resource officers and provide funding for physical security enhancements for schools.

HB 1634 (effective November 1, 2023) updates authority to search students.

This bill amends 70 O.S. § 24-102 regarding the searching of students by school authorities, which include superintendents, principals, teachers, or security personnel, which presumably include School Resource Officers. Strip searches of students have long been prohibited, but the amendments clarify that students may be required to remove cold weather outerwear, shoes, and hand and head coverings (except religious head coverings). The amendments also allow school personnel to transport contraband seized during the search of a student, such as dangerous weapons, controlled dangerous substances, alcoholic beverages, and missing or stolen property, to a central school district location or to a law enforcement office. While transporting such items, the school personnel are to have their school identification and a letter from the superintendent authorizing them to transport such items and the items are to be transported in a locked container.

HB 2265 (effective November 1, 2023) authorizes school districts to offer elective courses in law enforcement to high school juniors and seniors.

This bill creates new law at 70 O.S. § 11-103.15 to allow school districts to offer elective courses in law enforcement to high school juniors and seniors. Any such elective course must include instruction covering (1) a general introduction to law enforcement training, (2) critical skills and entry requirements for law enforcement professionals, and (3) career opportunities in law enforcement. The State Board of Education is authorized to coordinate with CLEET to develop instructional material and curricula for school districts to use.

SB 0710 (effective May 5, 2023) amends school districts' authority to administer opiate antagonists.

This bill amends 70 O.S. § 1210.242 to allow school districts to administer emergency opioid antagonists, regardless of whether there is a prescription or standing order in place, whenever a student or other individual exhibits signs of an opioid overdose. A definition of "emergency opioid antagonist" is added to the statute.

HB 1925 (effective November 1, 2023) authorizes "academy cities" to require promissory notes from cadets.

This bill amends 70 O.S. § 3311.11 to allow law enforcement agencies which have been approved by CLEET to operate a basic peace officer academy to require attendees of their programs to execute

promissory notes related to academy training expenses. CLEET has long been authorized to require promissory notes from all cadets attending CLEET-conducted academies. All costs associated with cadet training at CLEET's facility are borne by the state including facilities, faculty salaries, technology subscriptions, housing, meals, vehicle expenses for driving training, ammunition and targets, etc. The promissory note program is designed to encourage graduates of the basic academy to stay in Oklahoma law enforcement by authorizing a credit against the promissory note for every day the graduate remains employed as an Oklahoma peace officer. If a graduate remains actively employed as an Oklahoma fulltime peace officer for four years, his or her promissory note has been fulfilled and the graduate owes no money to the state. If the graduate decides to leave law enforcement during the four years immediately following basic academy training, the graduate will be obligated to pay the state for a portion of the training costs, prorated by the number of days the graduate was an active fulltime officer. So-called "academy cities" may now implement a similar program to encourage graduates of their academies to remain employed with their agencies.

HB 2869 (effective November 1, 2023) moves authority over Assistant Director of CLEET from the Council to the Executive Director.

This bill, which was discussed previously with regard to its provisions related to motor vehicles, also amends 70 O.S. § 3311 to authorize the executive director of CLEET to hire an assistant director to perform such duties as the director mandates. Previously the Council had the statutory authority to hire the assistant director.

TITLE 74 – STATE GOVERNMENT (and related provisions)

SB 0100 (effective July 1, 2023) allows certain records related to school security to be kept confidential.

This bill amends 74 O.S. § 51.2b to add eligibility criteria for school security grants, which include completion of a risk and vulnerability assessment conducted by the Oklahoma School Security Institute or a nationally qualified risk and vulnerability assessor. The bill creates new law at 70 O.S. § 5-148.1a to require all school districts to undergo a risk and vulnerability assessment before July 1, 2026 (districts that completed such assessments within the two years prior to July 1, 2023, are exempt from the requirements to undergo an assessment by July 1, 2026). It also amends the Open Records Act at 51 O.S. § 24A.28 to allow such risk assessments, "including recommendations to increase security on school district property and work papers directed related to preparation of the risk and vulnerability assessments," to remain confidential.

SB 0297 (effective November 1, 2023) authorizes OSBI to issue non-judicial subpoenas.

This bill creates new law at 74 O.S. § 150.5a to authorize the director of the Oklahoma State Bureau of Investigation to issue non-judicial subpoenas in cases related to internet crimes against children, child abuse or exploitation, violations of the computer crimes act, threats against public officials, suspicious

deaths, and violent crimes. The issuance of a subpoena must be recommended and approved by an agent with the rank of captain or above and the general counsel or assistant general counsel of the OSBI. Such subpoenas may require witnesses to appear and give testimony and/or to produce documents or other items of evidence. A subpoena issued in this manner will be effective anywhere in the state but can only compel appearance to a designated location in the county seat of the county of the person's residence or business or in a county where the person is found. Recipients of such a subpoena can choose to comply, can ask the district court to quash it, or can send written refusal to the OSBI. If a written refusal is received, the OSBI may invoke the aid of the district court to compel compliance.

SB 1000 (effective November 1, 2023) authorizes OSBI to inquire into sexual assault evidence kit statuses.

This bill amends 74 O.S. § 150.28b to authorize the Oklahoma State Bureau of Investigation to "inquire as to the condition and location of a sexual assault evidence kit that has not been submitted to a forensic laboratory" within twenty days after receipt of the evidence by a law enforcement agency, unless the victim requests that the kit not be tested. The bill also amends 74 O.S. 150.28c to authorized the OSBI to "initiate an investigation on any previously untested or partially tested sexual assault evidence kit once testing has been completed."

HB 2851 (effective November 1, 2023) authorizes OSBI to provide scholarships to Oklahoma law enforcement agencies for training purposes.

This bill amends 74 O.S. § 150.2 and creates a revolving fund for the Oklahoma State Bureau of Investigation to be designated the "Alaunna Raffield Revolving Fund," from which the OSBI may provide scholarships to county and municipal law enforcement agencies to attend accredited trainings provided by the OSBI. The fund is named for Alaunna Raffield, a 14-year-old Prague girl who died in December 2020 under uncertain circumstances.

HB 1394 (effective November 1, 2023) name change now designates OSBI unit as the Oklahoma Statistical Analysis Center.

This bill amends 74 O.S. § 150.17a to change the name of the Office of Criminal Justice Statistics to the Oklahoma Statistical Analysis Center. The unit will remain a part of the Oklahoma State Bureau of Investigation.

SB 0515 (effective April 20, 2023) changes to how the Legislature reviews proposed administrative rules.

Although not in Title 74, this bill involves state government and so has been included in this section of the legal update. Senate Bill 0515 amends several sections of the Administrative Procedures Act, which is found in Title 75, and modifies the players and processes involved in the legislative review of administrative rules proposed by state agencies. The affected sections include 75 O.S. §§ 250.3, 253, 303.1, 307.1, 308, and 308.3. The bill also repeals 75 O.S. § 303a.