



the SOURCE

NEW LEGISLATIVE MANDATES FOR OSBI



Oklahoma lawmakers passed several bills this past session which will have an indelible impact on the Oklahoma State Bureau of Investigation. Many of these bills are directed at keeping Oklahoma's children safe.

The Kelsey Law was named after a two-year-old girl from Meeker killed at the hands of her stepfather in October 2005 (The case against Michael Porter has not gone to trial yet). This law, also known as the Child Protection Act, allows the director of the Department of Human Services and district judges to request OSBI assistance in a "criminally injurious" case involving a child. According to DHS statistics from 2004, OSBI could be called more than 200 times a year for such cases. No statistics exist for district judges. Currently, OSBI handles 600 criminal cases each year with approximately 80 agents. With this information in hand, the bureau informed legislators, specifically the bill's authors Rep. Chris Steele (R-Shawnee) and Sen. Harry Coats (R-Seminole), OSBI would need at least 12 agents to answer this call for service.

A companion bill written by Sen. Jonathan Nichols (R-Norman) and Rep. Fred Morgan (R-OKC) creates the Child Abuse Response Team or CART. This law specifies the makeup of the team as having at least one investigator and at least one forensic interviewer. The qualifications for this two person team is also laid out in law and includes the agent having worked at least 500 child abuse cases and the interviewer having conducted at least 500 child forensic interviews in cases of physical or sexual abuse.

Oklahoma Governor Brad Henry also had Rep. Purcy Walker (D-Elk City) and Sen. Jim Wilson (D-Tahlequah) sponsor a child related bill. This piece of legislation focuses on child predators on the Internet and creates an Internet Crimes Against Children Unit within OSBI. The Governor's office requested OSBI determine what resources the bureau would need for such a unit. OSBI responded with seven employees and \$800,000 to pay for those positions.

All three bills were passed and signed into law. Of the 21 positions needed to

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accommodate these mandates, OSBI received nine and funding for six and one half for a half year. The two CART positions will be filled. That gives the bureau four and one half more positions. These

will go toward filling the need for “criminally injurious” cases against children requested by DHS and district judges. OSBI will fulfill the Governor’s mandate by using existing Computer Crimes Agents.

OSBI will do its best to fulfill each of these laws. The bureau will monitor the Child Protection Law to determine the impact on the agency. The bureau may go to the legislature next session and ask for more agents.

OSBI Provides Best Record Checks Available

Criminal history records maintained in the OSBI database became accessible to the public with the passage of the Oklahoma Open Records Act in 1985 creating an environment in which an ever-increasing number of employers want to use that information to screen applicants of all types. In addition, the legislature has passed other laws that mandate criminal history checks for childcare and home health providers, nursing homes, educators and other service professions in an effort to protect vulnerable populations such as children, the elderly and disabled persons. Individual citizens request criminal history searches for a variety of reasons – from screening potential babysitters to checking out their daughters’ most recent boyfriends.

A myriad of private sector entities now market their ability to provide background reports. This phenomenon is not specific to Oklahoma. These third-party entities can be found nationwide and generally offer their customers background “packages” of varying costs. Many create their own commercial databases from which to draw information by purchasing “dumps” of comput-

erized court or corrections data or compiling information through on-site visits to county courthouses and local and state law enforcement agencies. Others simply access information available through the Internet, e.g., on-line state repository records, computerized court records like those on the Oklahoma Supreme Court Network (OSCN) and the Offender Information/Lookup option on the Oklahoma Department of Corrections site, etc. Once purchased or collected, these records may or may not be updated; even when updating happens, there may be a significant time lag before it occurs.

According to *The Attorney General’s Report on Criminal History Background Checks*, a United States Department of Justice publication dated June 2006, “Most private employers’ demand for criminal history background checks is currently met by private sector enterprises that provide professional background screening services and/or commercial databases that aggregate criminal records that are available to the public from government agencies. The commercial databases are not complete because not all states, and not all

agencies within individual states, make their records available to such databases; nor does the FBI make its federal or state criminal records available to such databases. In addition, the information in the commercial databases may only be updated periodically. The commercial databases may also be missing important disposition information that is relevant to a conviction record’s use for employment suitability purposes, such as sealing and expungement orders or entry into a pre-trial or post-trial diversion program.”

One example of a commercial database that contains criminal history record information is US SEARCH. This company offers instant state and nationwide criminal searches; nationwide appears to be defined as “over 35 states searched”. The web site further identifies the states, the data sources, a description of information available and from what year, and update frequency. With the exception of arrest information from the Minnesota Department of Public Safety, all of the listed data sources are Department of Corrections (DOC) agencies or Administrative Offices of the Courts (AOC). Update frequency varies – most are updated monthly or quarterly, one is updated daily, another

weekly, one semi-annually, and one is listed as “never” updated. Information for Oklahoma includes records on persons who have passed through the state prison system since the early 1980’s; updates occur monthly. US SEARCH offers a number of packages including instant (on-line) state criminal searches for \$24.95; instant (on-line) nationwide criminal searches for \$59.95; state criminal searches/on-premises county courthouse searches for \$59.95; department of corrections searches - \$34.95; basic background checks (state criminal search, bankruptcies, tax liens, and small claims judgments) - \$39.95; and advanced background checks (current address and up to 10-year history with available listed phone numbers, relatives/roommates/neighbors, bankruptcies, tax liens, small claims civil judgments, home value and property ownership) - \$59.95.

A search through this company would *not* include results for Oklahoma felons given unsupervised suspended sentences, those placed in diversion programs and/or given deferred sentences; nor would it include results for persons who were convicted of serious misdemeanors and then served their time in a county jail or were placed on probation. It also would *not* identify individuals with charges pending adjudication or reflect arrests for which no formal charges have been filed, charges which were dismissed for such reasons as “witness declined to cooperate”, “witness unavailable”, “in the best interests of jus-

stice”, etc. Municipal charges, some of which could be serious misdemeanors, also would *not* be included. Court records, like those reported on OSCN, have the added disadvantage of sometimes being maintained solely by name and court number. Without other screening parameters such as date of birth, age or social security number, it may be difficult, if not impossible, to determine that a search has produced the correct subject’s record. Since court records are not fingerprint-based, there is no mechanism by which a person can prove that a specific record is not his or hers.

Because such a mechanism is an essential part of a state repository’s operation, the OSBI has established a process by administrative rule (OAC 375:9-1-3.1) that allows the subject of a criminal history record (his/her parent[s] in the case of a minor; the person’s attorney or legal guardian) to challenge the correctness and/or completeness of that record. There is no OSBI fee associated with these record challenges but the person making a challenge based on a claim of inaccuracy or incompleteness may be asked to provide certified court documents, which may not be free of charge. In instances where the challenger maintains the record belongs to someone else, he/she may be asked to travel to OSBI Headquarters in Oklahoma City in order to be fingerprinted. This challenge process is critical to name-based searches since a fingerprint comparison is the only way truly to confirm or disprove the identity of the arrestee.

US SEARCH’s services are in-

dicative of those offered on other vendors’ Internet web sites.

While the state repository does struggle with the issues of fingerprint quality and reporting compliance, we are dedicated to overcoming these obstacles and believe this database remains the best source for statewide criminal history information.

A number of years ago, the OSBI’s enabling statute (Title 74, O. S., §150.1 et seq.) was amended to include mandatory reporting requirements* for municipal and county law enforcement agencies and county prosecutors in an effort to improve the quality of these records. The recent addition of 38 LiveScan devices in 33 locations throughout the state facilitates electronic capture of fingerprints and booking information and allows that data to be transferred to the repository in “real” time.

Since June 2005, the repository has been receiving electronic criminal case dispositions through JustWare, a product of the state’s District Attorneys’ Council. Currently, all but three DA Districts are utilizing JustWare.

Also, in September 2001 OSBI began a project to convert tapes containing Tulsa County disposition data from January 1995 forward into a readable format for manual entry into the database. The backlog of tapes has been eliminated and new tapes are being processed as they are received. In addition, we are

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OSBI Request Bills Become Law How They Affect Front Line Law Enforcement

The OSBI had a number of request bills this session. Many focused on enhancing the bureau's performance in both investigations and criminalistics.

Auto Theft

OSBI asked for the dissolution of the legally mandated Auto Theft Unit due to personnel constraints.

Rep. John Nance (R-Bethany) and Sen. Don Barrington (R-Lawton) carried House Bill 2487. The bureau asked that the Director have the flexibility to draw upon the bureau's scarce resources and assign agents to cases based upon need.

OSBI will continue working auto theft cases as needed.

Forensic Science Center Funding

OSBI enjoyed overwhelming support for a bill that would allow the bureau to expand the bonding authority for the Forensic Science Center being built in Edmond next to the University of Central Oklahoma.

After hurricanes ravaged parts of the Gulf Coast last summer, the cost of building materials skyrocketed. The \$20 million set aside for construction would no longer cover costs.

The new law carried by both Republicans and Democrats passed giving OSBI \$6 million more in

bonding authority. It also increased the general revenue for the bureau by \$500,000 each year to pay for that bond.

Due to the passage of House Bill 2516, the FSC remains on schedule and should be open by Fall 2007.



Artist's view of front entrance



Construction on front entrance

DNA Technical Manager

The OSBI lab system employs one DNA Technical Manager position. This highly trained position is in high demand across the United States. In order for OSBI to keep that position filled in case the current employee were to leave, OSBI requested exemption from the state's Competitive Bidding Act for this position alone.

Other labs across the state and nation have met great difficulty in pursuing qualified applicants. The private scientific industry pays much better for someone qualified for such a position. This position most hold at least a Master's Degree in Forensics and have 3 years' experience working cases.

This bill was incorporated into the auto theft bill mid session.

Testing Blood For Drugs Versus Alcohol

Recently, the OSBI Toxicology Unit has been inundated with blood drug cases asking for both a qualitative (positive/negative for presence) and a quantitative test (how much).

By state statute, prosecution is based solely on the mere presence of drugs in a person's system. Therefore, the second, more time consuming and costly test to determine the amount of a specific drug is not needed.

Midway through session, the bill was incorporated into a separate motor vehicle bill and passed.

This will allow OSBI's Toxicology Unit to provide a quicker turnaround time for simple blood drug tests. If needed, OSBI will perform a quantitative test.

Criminal History Record Checks Continued...

working with Oklahoma County to achieve electronic submission of their data and recently have updated 10,000+ Oklahoma County arrests in the repository using Judgment and Sentence documents collected by the Oklahoma Criminal Justice Resource Center. Improved records benefit

everyone and all of these efforts are focused on providing our customers with the most timely, accurate and complete information possible.

*72 hours for arrest or reception at corrections facility, release, DA's declination to file; 30 days for actions taken by prosecutors; acquittals; conviction or other

court disposition at trial or before, during or following trial (including pleas or other agreements); imposition of sentence; commitment to or release from DOC custody or incarceration in any jail or other correctional facility, escape from custody of any correctional facility, jail or authority; order of any appellate court; pardon, reprieve, commutation of sentence or other change in sentence; revocation of probation or parole or other change in probation or parole status.

Southwest Region Promotes Child Identification

OSBI investigators in the southwest region of the state spent a Saturday in late July not investigating crimes, but rather getting out into the community and promoting child identification.

Agents set up a booth at the Sixth Annual Walters Car Cruz July 22nd. This family event attracts car aficionados from every age range

with mud races in Sultan Park and car show contests.

OSBI officials set up camp at the Kiddy Corner and handed out free identification kits and swore in numerous junior agents.

The Walters Chamber of Commerce requested OSBI presence to provide the Child ID Kits.



Agents Brian Rizzi and Daniel Flores talk with citizens about DNA Identification

FBI Recognizes OSBI Criminal Analyst for Work on Prostitute Murders Case

During the Fifth Truck Driver Serial Killing conference in Albuquerque, New Mexico, in April, the FBI presented OSBI Criminal Analyst Terri Turner a plaque for her dedicated work on this years' long case.

FBI Special Agent with the Behavioral Analysis Unit handed Turner the award which reads: "In recognition for your efforts and support of the Truck Driver Serial Killing Investigation. Presented by the FBI's National Center for the Analysis of Violent Crime".

Since the beginning of these cases, Turner has coordinated case information with ViCAP (Violent Crime Apprehension Program) Analysts, local law enforcement and private trucking companies helping to prepare comprehensive timelines on possible suspects.

The event was sponsored by the FBI Violent Crime Apprehension Program, the FBI BAU, FBI Albuquerque Office and the OSBI.



Terri Turner, Senior Criminal Intelligence Analyst