Oklahoma State Bureau of Investigation

# LEGAL EAGLE

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**NOTICE:** The Legal Eagle is a news publication for police officers and is not designed to give legal advice. Always contact your police legal advisor or district attorney concerning legal matters.

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# 2006 Legislative Session Highlights Pt. II

The following is a continuation of last month's update of the 2006 session of the Oklahoma Legislature. The session was highlighted by several bills that impact law enforcement and alters punishments for a number of criminal offenses.

The information was obtained through the publication "Session Overview - Second Regular Session of the 50th Legislature" as prepared by the Oklahoma House of Representatives Staff. Additional information regarding the 2006 Oklahoma Legislative Session and the above referenced report can be found at www.okhouse.gov.

# GOVERNMENT REFORM / AGENCY OVERSIGHT

**HB 2357** requires governmental agencies to expediently notify persons of a breach of computer systems which results in unauthorized release of personal information unless the delay is caused by law enforcement purposes.

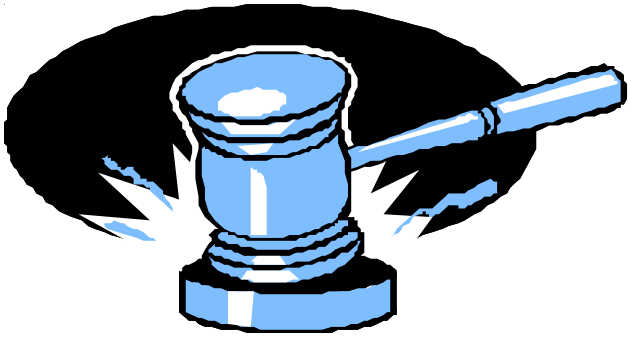
Similarly, **HB 2396** provides the consumer with more protection from identity theft by modifying the Oklahoma Open Records Act. This new law allows public bodies that provide utility services to the public to keep social security numbers of individual customers confidential.

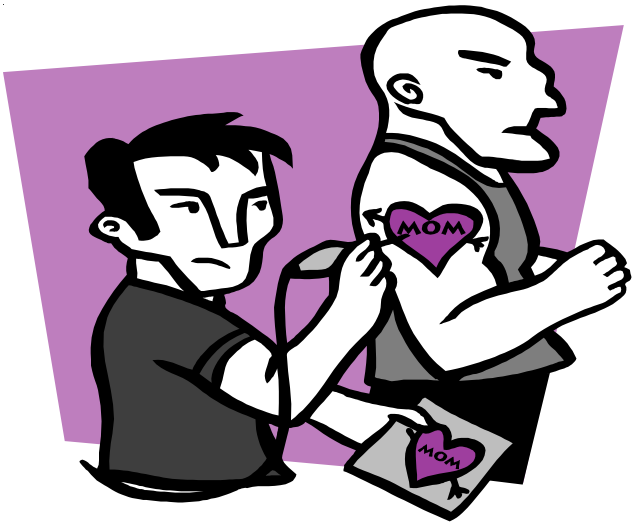
# HEALTH AND HUMAN SERVICES

## Child Abuse and Neglect

The shocking and highly publicized murder of two-year-old Kelsey Smith-Briggs last year resulted in the Legislature taking action to strengthen the adjudication and custody determination process following an investigation of alleged child abuse. **HB 2840** requires the court to use uniform orders in all deprived proceedings and record the recommendations of the parties and participants made at a hearing related to custody or placement of a child and allows DHS, through the district attorney, to appeal a decision of the court when the department objects to the removal of a child from state custody. The measure also authorizes the Oklahoma Commission on Children and Youth's Office of Juvenile System Oversight to provide to the court information gathered in an investigation regarding placement of a child or release of a child from state custody and recommendation for placement of the child. Other provisions of the measure include:

- Requiring court appointed special advocates to complete required training and undergo a criminal history background check;
- Requiring DHS to establish a performance-based incentive compensation program for child welfare specialists;
- Expanding the scope of the records disclosure requirement following the death or near death of a child to include recommendations made by DHS and other parties with regard to the custody or placement of a child;
- Authorizing district court judges and the director of DHS to request an investigation by the OSBI in cases where criminally injurious conduct has occurred; and
- Establishing the Oklahoma Children and Juvenile Law Reform Committee to undertake a comprehensive review and study of Title 10 of the Oklahoma statutes and make recommendations with regard to updating and recodifying the statutes.






**Tattooing**

Supporters of legalized tattooing were successful this session in pushing for the passage of **SB 806**. The measure requires that tattoo operators and artists be licensed by the State Department of Health and prohibits the Department from granting a license to a body piercing or tattoo operator whose business is within 1,000 feet of a church, school, or playground.

The bill also prohibits any person under eighteen (18) years of age from receiving a tattoo and requires written parental consent and the presence of a parent during a body piercing procedure for any person under the age of eighteen (18). With the passage of SB 806, tattooing is now legal in all 50 states.

## INSURANCE

In an effort to further address the growing problems and financial tolls caused by uninsured motorists, **HB 3115** directs the Department of Public Safety (DPS) to implement statewide, no later than July 1, 2008, an online verification system for motor vehicle insurance or bond which will provide for direct inquiry and response between DPS and insurance carriers and direct access to insurers' records by authorized personnel, such as law enforcement officers.

The measure also provides that it is a misdemeanor to purchase, display, or possess an altered or fictitious security verification form and provides that it is a felony for anyone, other than an insurance carrier, to create, issue, or sell security verification forms.

## JUDICIARY

On the topic of crimes, **HB 2480** extends the statute of limitations for solicitation for murder to seven years from discovery. Discovery is defined as the date upon which the crime is made known to anyone other than a person involved in the solicitation.

**HB 2099** raises the maximum fine that an individual can be prosecuted for in a municipal court without triggering a jury trial from no more than $200 to no more than $500.

## PUBLIC SAFETY

The Legislature enacted two measures designed to protect our soldiers. **HB 2643** makes it illegal for any person or business to use the name or picture of any service member in any advertisement without having first obtained the consent of the person or the consent of the surviving spouse if the person is deceased. Punishment for violation is a misdemeanor subject to a $1,000 fine and up to a year in the county jail.

The second measure, **SB 1020**, is known as the Oklahoma Funeral Picketing Act. The Act prevents picketing within 500 feet of an armed service member's funeral. Any person convicted of violating this act is guilty of a misdemeanor subject to a fine of $500 and up to 30 days in the county jail.

A companion bill to this legislation, **SB 1951**, extends the ban on funeral protests to include any place where a portion of a funeral service is held.

# COURT OF CRIMINAL APPEALS

## Drug Convictions Violate Double Jeopardy

*Lewis v. State, No. F-2005-824, Published December 7, 2006*

Carl Tyrone Lewis, Appellant, was tried by an Oklahoma County jury and found guilty of Count 1, trafficking in illegal drugs (cocaine); and Count 2, trafficking in illegal drugs (heroin), in violation of 63 O.S. § 2-415 . The jury sentenced Lewis to twenty-five (25) years imprisonment and a $100,000.00 fine for Count 1, and fifteen (15) years and a $100,000.00 fine for Count 2. The presiding judge ordered the sentences served consecutively, and Lewis appealled.

In late January, 2000, Appellant constructively possessed and brought into Oklahoma almost two kilograms of cocaine and almost twenty-five grams of heroin, packaged separately and stashed in a single travel bag carried by an accomplice. Narcotics officers discovered the drugs while conducting an investigation at the Oklahoma City bus terminal.

Lewis aruged that his convictions and consecutive sentences for trafficking cocaine

and heroin violated Oklahoma's statutory prohibition against multiple punishments, and constituted multiple punishment for the same offense in violation of the constitutional prohibitions against double jeopardy.

The Appellant's argument presented a question of first impression before the Court of Criminal Appeals. However, the Court had previously interpreted the Legislature's prohibition of multiple punishments, and its focus on the relationship between the crimes.

> If the crimes truly arise out of one act...then [Oklahoma law] prohibits prosecution for more than one crime. One act that violates two criminal provisions cannot be punished twice, absent specific legislative intent.

In that case, the Court held that when determining whether a defendant has suffered multiple punishments for the "same offense" in violation of the constitutional prohibitions against double jeopardy, it must be considered "whether each provision requires proof of an additional fact which the other does not."

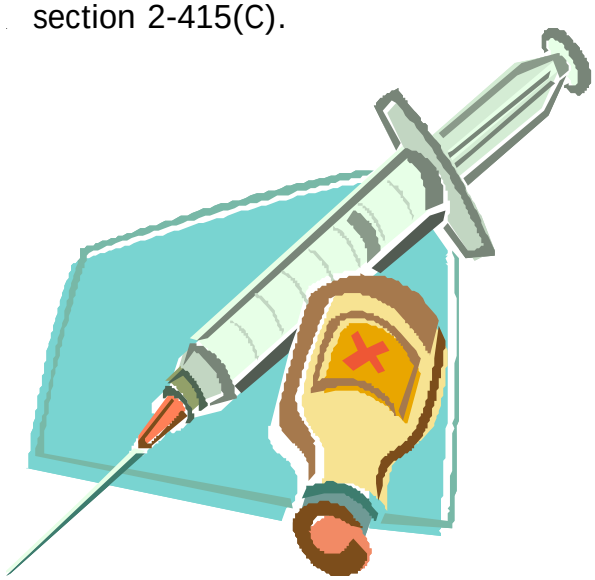
The Court had also previously found that convictions and punishments for two or more counts of possession of different controlled dangerous substances, either at one time or while contained in the same package or container, violated double jeopardy. In Watkins v. State, the defendant received a shipment of cocaine and phencyclidine (PCP) in a single package from California. Convicted on two counts of conspiracy and two counts of possession with intent to distribute (one count for each drug, respectively), and punished with four consecutive thirty-year sentences, he claimed double jeopardy. The Court of Criminal Appeals agreed. In their ruling, the Court held that the Uniform Controlled Dangerous Substances Act contained a substantive criminal prohibition against possessing a "controlled dangerous substance" with intent to distribute, but made no distinction in the controlled substances criminally possessed. Thus, the Court found no legislative authorization for inflicting multiple penalties based on the number or type of controlled drugs embraced in a single possessory event. Finding double jeopardy, the Court reversed the defendant's convictions for conspiracy

to possess PCP and possessing PCP with intent to distribute, and remanded with instructions to dismiss.

In the present case, Lewis's argument presented two questions: 1) whether his convictions for trafficking in quantities of cocaine and heroin "truly arise out of one act" and thus violate double jeopardy; and 2) whether each offense requires proof of a fact which the other does not.

The Court reasoned that the Trafficking in Illegal Drugs Act makes it unlawful for a person to knowingly distribute, manufacture, bring into this state, or possess "a controlled substance *specified in subsection A* of this section *in the quantities specified in subsection C*..." (emphasis added). The offense denominated by the statute as "trafficking in illegal drugs" thus requires proof of the following elements:

> First, knowingly;
>
> Second, distributing, manufacturing, bringing into Oklahoma, or possessing;
>
> Third, a controlled dangerous substance specified in section 2-415(A), in the quantity specified in section 2-415(C).



The Court recognized that "the Oklahoma Legislature has the power to create separate penal provisions prohibiting different acts which may be committed at the same time," but it also found the Legislature had *not* created separate criminal offenses of possession regarding different controlled dangerous substances. Therefore, their interpretation of the controlled drug possession statute in Watkins applied with equal force to the Trafficking in Illegal Drugs Act. The Legislature has defined "trafficking" as distributing, manufacturing, bringing into Oklahoma, or possessing any of the enumerated controlled drugs in specified quantities. When Appellant possessed almost two kilograms of cocaine and almost twenty-five grams of heroin, he "trafficked" in illegal drugs in violation of the statute.

Therefore, the Court held that based on Watkins, the Appellant's one act of possessing cocaine and heroin in a single container constituted but one violation of the drug trafficking statute, punishable only once according to double jeopardy.

Under this double jeopardy analysis, Watkins compelled the conclusion that Appellant's convictions in Counts 1 and 2 were based on the "same evidence"—that he possessed one or more controlled drugs in a trafficking quantity—and thus constituted the same offense. As a result, Appellant's two convictions and consecutive sentences for trafficking in quantities of cocaine and heroin subjected him to multiple punishments for the same criminal act, and punished him twice for the same offense in violation of the constitutional prohibition against double jeopardy. Based upon this reasoning, the Court reversed and remanded the Appellant's case to district court with instructions to dismiss the second count against him.