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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

The 2006 session of the Oklahoma Legislature was highlighted by several bills that impact law enforcement and alters punishments for a number of criminal offenses.

The following 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.

CRIMINAL JUSTICE

The Caitlin Wooten Act, **SB 1037**, was enacted after young Caitlin Wooten was killed by a person who had been released from jail on a kidnapping charge. The bill expands the circumstances under which bail can be denied to include capital offenses, violent offenses, offenses where the maximum punishment may be life or life without parole, and felony offenses committed by a person who has two or more prior felony offenses. The measure also allows the Attorney General to establish a notification system relating to crime victims, witnesses, and persons who have filed protective orders to assist public officials in carrying out their duties to notify and inform crime victims and witnesses as the Attorney General establishes by rule.

Legislation aimed at protecting the public from sex offenders was the focus of several measures this session. **SB 1800** allows a court or jury to sentence a person to death or life without parole upon conviction for gross sex offenses against a child under the age of 14 years if the person has a prior conviction for one of these crimes.

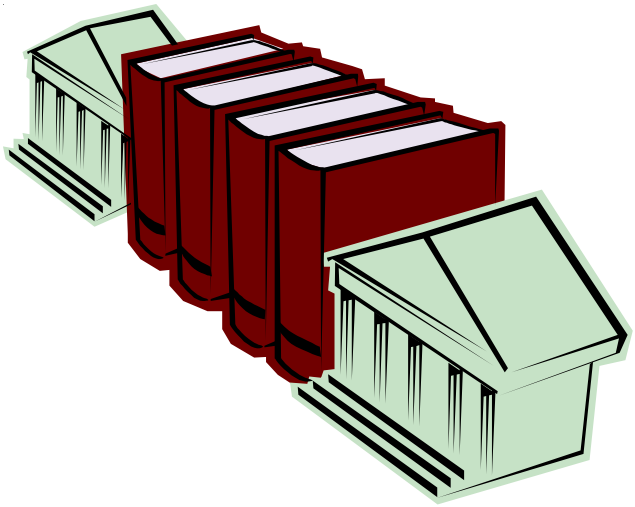
Sex offenders who are released from prison will be required to submit to polygraph testing every six months under the provisions of **SB 1964**. The measure also allows a court to order up to three years of post imprisonment supervision of sex offenders and to require sex offenders to participate in treatment programs while in prison and under supervision.

A final measure, **SB 1755,** increases the punishment of several sexually-based crimes. The measure increases the minimum punishment for lewd molestation from not less than one year in prison to not less than three years in prison and increases the punishment for sexual battery from not more than five years in prison to not more than ten years in prison. Punishments are also increased against registered sex offenders who violate the state's "Zone of Safety" law by making convictions for violation a felony punishable by imprisonment for not more than one year for a first offense. Any second or subsequent offense is punishable by up to three years in prison. The minimum punishment for a second or subsequent violation of a protective order is increased from a misdemeanor to a felony and imprisonment from not less than ten days in jail to not less than one year or more than three years imprisonment. The measure also increases the punishment from a misdemeanor to a felony punishable by up to a $3,000 fine and not less than one year imprisonment against sex offenders who are caught residing within 2,000 feet of a school. Second and subsequent offenses are punishable by a fine of up to $3,000 and not less than three years imprisonment.

Look for a continuation of the 2006 Legislative Session Highlights in next month's issue of the Legal Eagle

The Prevention of Youth Access to Alcohol Act is created by **HB 3056**. The measure increases fines associated with alcohol-related criminal acts and uses the increased fines to fund programs designed to end alcohol abuse. The bill provides a fine of up to $500 and up to one year in jail for any person convicted of selling low-point beer to a minor. A second offense within one year is punishable by a fine of not more than $2,500 and up to one year in jail. A third offense within one year is a felony punishable by a fine of up to $5,000 and up to five years imprisonment. One-half of any fine collected is to be deposited in the Prevention of Youth Access to Alcohol Revolving Fund. The bill increases the fine amount from $750 to $1,250 for alcohol or drug-related traffic offenses. Any amount in excess of $750 is to be used to defray the costs of enforcing laws related to juvenile alcohol access.

HB 3056 also establishes greater penalties on businesses that sell beer to minors and on the minors that attempt to purchase beer from these businesses. The bill allows for the suspension of the business permit to sell low-point beer for 30 days upon a first violation. A second violation by the same employee within a 24-month period results in a mandatory 30-day suspension of the permit to sell beer. A third violation within a 24 month period results in a mandatory 30-day suspension of the permit to sell beer. If all three violations were by the same employee, the period of suspension is to be 180 days. A fourth violation within a 24-month period results in a mandatory revocation of the permit to sell beer. In addition, to prevent family operated businesses from simply changing the name of the licensee, the measure prevents the licensing of family members of a person who has received a fourth violation. Fines are increased from $100 to $300 for purchasing or attempting to purchase beer while under the age of 21. The court may also order up to 30 hours of community service for any minor convicted of purchasing or attempting to purchase beer. A second offense is punishable by a fine of up to $600 and 60 hours of community service. A third offense is punishable by a fine of up to $900 and 90 hours of community service. Another provision sure to garner the attention of minors is that the bill requires a mandatory revocation of the violator's driver's license. A minor's driver's license may also be revoked after conviction for being in an enclosed bar area.



Finally, HB 3056 allows cities with a municipal court of record to establish fines of up to $1,250 and up to six months in jail for alcohol or drug-related traffic offenses. A municipality may also establish a fee of up to $800 for each deferred sentence for an

alcohol or drug related offense. Fifty dollars of each fine is remitted to the municipality to help defray the costs of enforcing laws related to juvenile alcohol access.

In other criminal justice matters: **SB 1807** establishes a procedure outlining the steps necessary to determine if a person is mentally retarded and ineligible for the death penalty in capital cases in which questions of mental retardation are raised. **HB 3004** prohibits the sale of video games to minors and restricts the placement of sexually oriented business signage on state highways. **HB 2813** prohibits a dog owner from allowing their dog to run at large after the dog has bitten someone. Violators will be subject to a misdemeanor punishable by up to one year in the county jail and up to a $5,000 fine.

HB 2615 creates the Stand Your Ground law by expanding Make My Day law protections to allow persons to protect themselves not only in their home, but also in any residence or occupied vehicle. A person found justified in their use of defensive force is immune from criminal prosecution and civil action for the use of the defensive force. The measure becomes effective November 1, 2006.

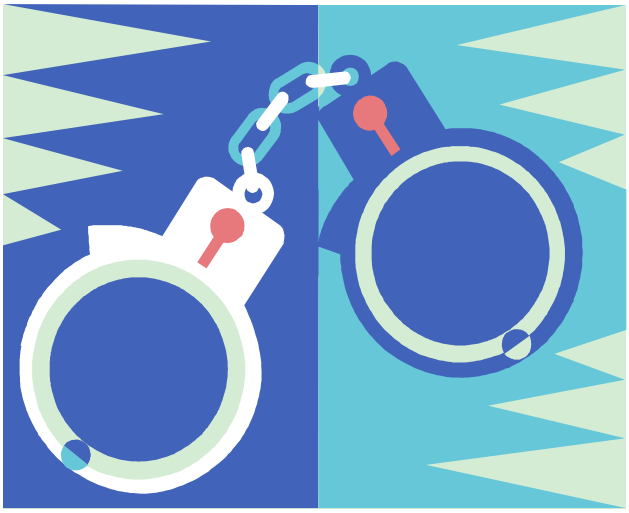
JUVENILE JUSTICE

Several bills were enacted this session to strengthen how the state treats juvenile offenders. A measure reorganizing how the Office of Juvenile Affairs contracts with service providers and modifications to the Youthful Offender Act were of major importance.

HB 2999 provides specific guidelines to be followed by the Office of Juvenile Affairs (OJA) and nonprofit youth services agencies when providing core community based services. Core community based services are those services provided to youth by local youth services agencies through contracts with OJA. The bill establishes a system of peer review of youth services agencies to better inform OJA of the organization, programs, records, and financial condition of the agencies contracting with the Office. Another provision of the measure reorganizes and creates new divisions within OJA to better monitor the relationships between OJA and youth services agencies. The Division of Institutional Services is charged to be responsible for the institutions operated by or contracted for by the Office. The Division of Community-based Youth Services is responsible for contracting with, monitoring, evaluating, and supporting community-based youth services agencies. The Division of Juvenile Services is responsible for intake, probation, and parole services. The Division of Residential and Treatment Programs is created to be responsible for contracting for, monitoring, and evaluating residential and treatment programs other than institutions and community-based youth services agencies. Other provisions of the bill grant youth services agencies the ability to negotiate the documentation required to show that the agency has fulfilled contracted obligations. OJA is prohibited from funding any new or replacement youth services agency if the funding would lower the contract amount from the previous fiscal year for the existing

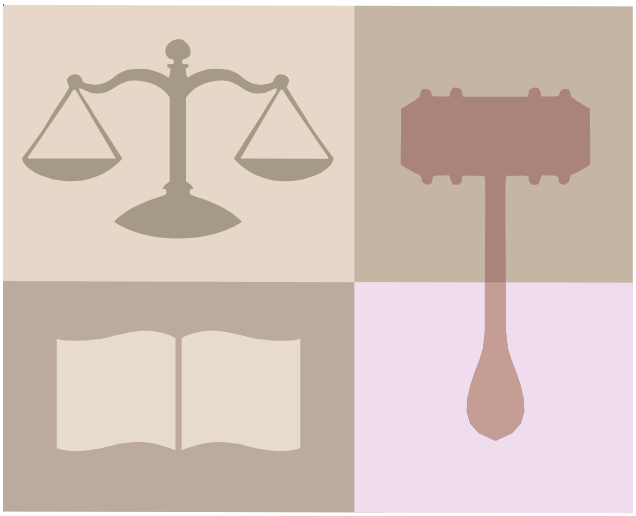
youth services agency. Finally, the measure requires OJA to give full consideration to any recommendations of the Oklahoma Association of Youth Services regarding community-based facilities, programs, or services when planning and coordinating statewide juvenile justice and delinquency prevention services.

A series of four bills affecting juvenile justice were enacted as the result of the work of the Youthful Offender Task Force of 2005. The Task Force was created to evaluate the effectiveness of the Youthful Offender Act and to study the best practices for similar types of adjudicated juveniles in other states and jurisdictions, study the ability and effects of transferring youth to the Department of Corrections, and make recommendations for changes to the Legislature.

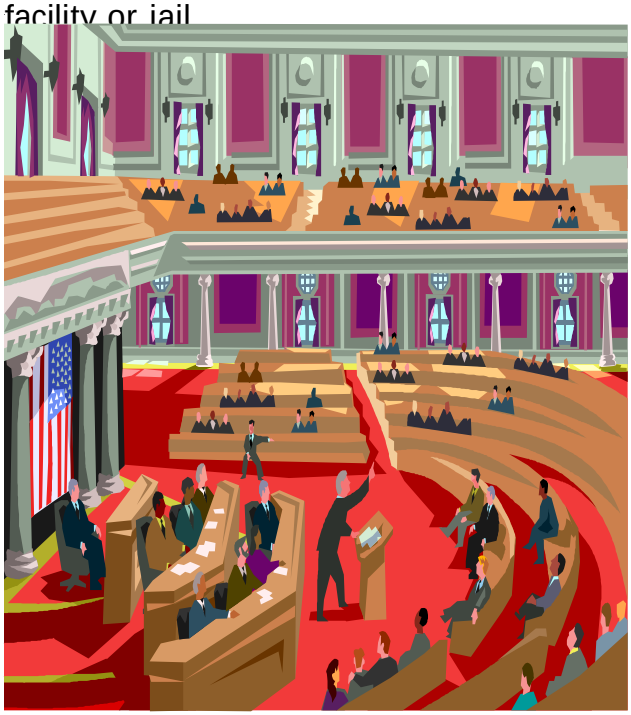


SB 1756 requires the judgment and sentence of a person who is or has been certified as a youthful offender to clearly identify the person as a youthful offender and detail the history of the application of the Youthful Offender Act as it relates to the person when the person is being bridged from the Office of Juvenile Affairs to the custody of the Department of Corrections.

SB 1760 removes a provision that allows juveniles age 15, 16 or 17 years of age and who are charged with murder in the first degree to be treated as youthful offenders. The measure requires that these juveniles who are charged with murder in the first degree be held accountable as if the person is an adult.



SB 1799 clarifies the process used by OJA and the courts when making determinations on the release from custody or transfer of a youthful offender to the adult corrections system. The bill requires the court to schedule annual reviews for every youthful offender in the custody of OJA and allows incremental yearly extensions of OJA custody for these offenders until the offender reaches their twentieth birthday. An offender may be retained in OJA custody until their twenty-first birthday if the Office has established a separate youthful offender facility. The measure adds to the list conditions that allow for the transfer of a youthful offender from OJA custody to the adult corrections system by including the failure of the offender to substantially complete the reasonable treatment objectives and if the offender commits battery or assault and battery on a state employee or contractor of a juvenile facility while in custody. Finally, the bill provides legislative intent stating that eligible 17-year-olds should have the opportunity to be

processed as youthful offenders and should have the ability to be transferred to the Department of Corrections when incarceration or additional supervision is required.

Finally, **SB 1765** makes numerous changes on how the courts are to proceed in youthful offender matters. The bill provides that preliminary hearings must commence within 90 days of the filing of information to determine whether a crime was committed and whether there is probable cause to believe the accused person committed the crime. If the preliminary hearing is not commenced within 90 days, the state is prohibited from seeking an adult sentence unless the 90-day requirement is waived by the defendant. If the accused person flees the jurisdiction, purposely avoids apprehension for the charges, or fails to cooperate with providing information on locating the parent, guardian, or next friend of the accused, the right to have the preliminary hearing within 90 days is waived. The bill requires the court to give more weight to some criteria the court must consider when making determinations as to whether a juvenile will be considered a juvenile, youthful offender, or adult for purposes of prosecution. The court must give more weight if the offense was committed in an aggressive or violent manner, if the offense was against a person and personal injury resulted, and the court must consider the record and past history of the accused. Things to be given less weight are issues such as sophistication and maturity of the accused, the accused person's capability of distinguishing right from wrong, emotional attitude, and pattern of living. Less weight is also given to likelihood of rehabilitation and if the offense occurred while the person was escaping or in escape status from an institution. The bill allows a district attorney to file a motion to impose an adult sentence on a person arraigned as a youthful offender if the district attorney believes that the person will not reasonably complete a plan of rehabilitation or the public will not be protected if the person were sentenced as a youthful offender. This motion must be filed within 30 days of the formal arraignment or 14 days prior to the start of the preliminary hearing. The bill also contains the provisions from SB 1799 relating to the annual review of all youthful offenders and the ability to extend OJA jurisdiction until the offender attains the 21 years of age if OJA has a youthful offender facility. Youthful offenders who are still in custody at 18 years of age are allowed to authorize and consent to the medical care sought on behalf of the youthful offender by OJA. Lastly, the measure requires any child under 18 years of age who is a legal resident of Oklahoma and who has been detained or arrested to be identified within 72 hours of the detention or arrest for educational needs and be given educational opportunities by the State Department of Education without delay while in a detention facility or jail.