

## 2018 OKLAHOMA CRIMINAL LAW LEGISLATIVE UPDATE

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Set forth below is a synopsis of Oklahoma criminal law legislation passed by the Legislature and signed by the Governor in 2018. You may obtain copies of the following bills from the Oklahoma State Legislature website [oklegislature.gov](http://oklegislature.gov) as follows: 1) type in the bill number in the "Find Legislation" box and click "Search," 2) click the "Versions" tab on the next screen, and 3) click on the "Enrolled (final version)" line. Be sure you select the "Enrolled" version, as any other version you choose may not reflect the language contained in the bill's final form.

### **Pardon and Parole**

HB2286      Overhaul of pardon and parole process. Amends 57 O.S. §§ 332.2, 332.7 and 571; eff. Nov. 1, 2018.

- part of criminal justice reform legislation
- creates an administrative parole docket
- for crimes committed on or after Nov. 1, 2018, any person in DOC custody shall be eligible for parole, as follows:
  - the person serves 1/4th of the sentence or consecutive sentence, provided no inmate serving LWOP shall be eligible
  - person shall be eligible for administrative parole as set forth below once the person serves 1/4th of the sentence or consecutive sentence imposed, excluding persons serving LWOP, a sentence for a violent crime set forth in 57 O.S. § 571, or any crime enumerated in 21 O.S. § 13.1
- eligible inmate may be considered for parole up to 2 months prior to the parole eligibility date
- person in DOC custody whose parole consideration date is calculated pursuant to 57 O.S. § 332.7(B) or (C), and not serving an LWOP sentence or convicted of a violent offense under 57 O.S. § 571 or an offense under 21 O.S. § 13.1 shall be eligible for administrative parole
  - board shall, by a majority vote, grant administrative parole to any person in DOC custody if:
    - 1) the person has substantially complied with the requirements of the case plan established pursuant to 57 O.S. § 512;
    - 2) a victim, as defined by 57 O.S. § 332.2, or the DA speaking on behalf of a victim, has not submitted an objection;
    - 3) The person has not received a primary class X infraction with 2 years of the parole eligibility date;
    - 4) the person has not received a secondary class X infraction within 1 year

- 5) of the parole eligibility date; or
- 5) the person has not received a class A infraction within 6 months of the parole eligibility date

-any person granted administrative parole shall be released from the institution at the time of the parole eligibility date of the person as calculated under 57 O.S. § 332.7(B) or (C)

-no less than 90 days prior to the parole eligibility date, DOC shall notify the board in writing of the compliance or noncompliance of the person with the case plan and any infractions

- the board shall not be required to conduct a hearing before granting administrative parole

-any person who is not granted administrative parole shall be otherwise eligible for parole pursuant provided by 57 O.S. § 332.7

-any person who is granted administrative parole shall be supervised and managed by DOC in the same manner as a parolee who has been granted parole

- person shall be subject to all of the rules and regulations of parole

-parole of aging prisoners

-board may parole prisoner who:

- 1) is 60 years or older;
- 2) has served the shorter of 10 years or 1/3rd of the total term or terms of imprisonment;
- 3) poses minimal public safety risks warranting continued imprisonment;
- 4) is not imprisoned for violent crimes pursuant to 57 O.S. § 571 or 21 O.S. § 13.1; and
- 5) has not been convicted of a crime that would require the person to be subject to registration under Sex Offenders Registration Act.

-authority to grant parole under 57 O.S. § 332.2 rests with board

-board shall use evidence-based risk-assessment instrument to assess the public safety risk posed by aging prisoners upon release

-unless eligible for release at an earlier date, and aging prisoner shall have the ability to request a parole hearing if the prisoner has served the shorter of 10 years of the term or 1/3rd of the total term or terms

-once a prisoner requests a hearing, the board may place prisoner on the next available docket

-the board may grant parole to a prisoner if it finds by a preponderance of the evidence that the prisoner, if released, can live and remain at liberty without posing a substantial risk to public safety

-board may use the selected evidence-based risk assessment instrument

-board may provide the prisoner the opportunity to speak on his/her own behalf and the option of having counsel present

-defines "aging prisoner" and "evidence-based"

-violent crime definitions under 57 O.S. § 571 clarified

- provides statutory cites where absent to crimes listed in statute

SB 185      Qualifications and training. Amends 57 O.S. §§ 332.1A and 332.1B; eff. Nov. 1, 2018.

- board members now required to complete annual training based on guidance from organizations that provide training and technical assistance related to the probation and parole process, with curriculum including identifying, understanding and targeting criminogenic needs, the principles of effective intervention, core correctional practices and how to support and encourage offender behavior change
- master's degree or juris doctor no longer alternative requirement
- requires a bachelor's degree and at least 5 years of experience in one or more of following fields: parole, probation, corrections, criminal law, law enforcement, mental health services, substance abuse services or social work
- at least 2 members of the board shall have 5 years of training or experience in mental health services, substance abuse services or social work

### **Property Crimes**

HB 2281      Penalties decreased; felony thresholds increased. Amends 21 O.S. §§ 1416, 1451, 1532, 1541.2, 154.3, 1577 - 1579, 1592, 1702, 1704, 1705, 1713, 1720, 1731; 47 O.S. §§ 4-102, 4-103, 17-102; 59 O.S. § 1512; eff. Nov. 1, 2018.

- part of criminal justice reform legislation
- embezzlement:

- if value less than \$1,000, a misdemeanor punishable by jail not exceeding 1 year, or at discretion of the court, county jail for one or more nights or weekends pursuant to 22 O.S. § 991a-2, and/or fine not exceeding \$1,000
- if value between \$1,000 and less than \$2,500, a felony punishable by imprisonment not exceeding 2 years or jail not to exceed 1 year, and/or fine not exceeding \$5,000
- if value between \$2,500 but less than \$15,000, a felony punishable by imprisonment not exceeding 5 years and/or fine not exceeding \$5,000
- if value is \$15,000 or more, a felony punishable by imprisonment not exceeding 8 years and/or fine not exceeding \$10,000, and restitution provided by 22 O.S. § 991f

- false personation, receiving money intended for another; publishing counterfeited instruments or coins as true; larceny of lost property; delivery of merchandise with bill of lading:

- if value less than \$1,000, a misdemeanor punishable by jail not exceeding 1 year, and/or fine not exceeding \$1,000
- if value between \$1,000 but less than \$2,500, a felony punishable by imprisonment not exceeding 2 years, or jail not exceeding 1 year, and/or fine not exceeding \$5,000

-if value between \$2,500 and less than \$15,000, a felony punishable by imprisonment not exceeding 5 years, or jail not exceeding 1 year, and/or fine not exceeding \$5,000

-if value is \$15,000 or more, a felony punishable by imprisonment not exceeding 8 years, and/or fine not exceeding \$10,000

-obtaining/attempting to obtain property by trick or deception, false statement or pretense, confidence games:

-if value between \$1,000 but less than \$2,500, a felony punishable by imprisonment not exceeding 2 years, or jail not exceeding 1 year, and/or fine not exceeding \$5,000

-if value between \$2,500 but less than \$15,000, a felony punishable by imprisonment not exceeding 5 years or jail not exceeding 1 year, and/or fine not exceeding \$5,000

-if value \$15,000 or more, a felony punishable by imprisonment not exceeding 8 years and/or fine not exceeding \$5,000

-restitution provided by 22 O.S. § 991f

-false or bogus checks:

-if total sum of 2 or more false or bogus checks, drafts or orders is between \$500 but less than \$2,000, a misdemeanor punishable by jail not exceeding 1 year, or jail for one or more nights or weekends pursuant to 22 O.S. §991a-2, a fine not exceeding \$5,000 and restitution

-if total sum of 2 or more false or bogus checks, drafts or orders is between \$2,000 but less than \$2,500, a felony punishable by imprisonment not exceeding 2 years or jail not exceeding 1 year, and/or fine not exceeding \$5,000

-if total sum of 2 or more false or bogus checks, drafts or orders is between \$2,500 but less than \$15,000, a felony punishable by imprisonment not exceeding 5 years or jail not exceeding 1 year, and/or fine not exceeding \$5,000

-if total sum of 2 or more false or bogus checks, drafts or orders is \$15,000 or more., a felony punishable by imprisonment not exceeding 8 years, and/or fine not exceeding \$5,000

-sale, delivery or receipt of forged notes; possession of forged notes or instruments; other forged instruments:

-if value is less than \$1,000, a misdemeanor punishable by jail not exceeding 1 year and/or fine not exceeding \$1,000

-if value is between \$1,000 but less than \$2,500 a felony punishable by imprisonment not exceeding 2 years or county jail not exceeding 1 year, and/or fine not exceeding \$1,000

-if value is between \$2,500 and less than \$15,000, a felony punishable by imprisonment not exceeding 5 years or jail not exceeding 1 year, and/or fine not exceeding \$1,000

-if value is \$15,000 or more, a felony punishable by imprisonment not exceeding 8 years and/or fine not exceeding \$1,000

-series of offenses may be aggregated into one offense when result of formulation of plan or scheme or setting up a mechanism which, when put into operation, results in the taking or diversion of money or property on a recurring basis

- when all acts result from a continuing course of conduct, they may be aggregated into one crime

- acts forming an integral part of the first taking which facilitate subsequent takings, or acts taken in preparation of several takings which facilitate subsequent takings, are relevant to determine the intent of the party to commit a continuing crime

-grand larceny:

- definition modified to include property taken of a value of \$1,000 or greater (previously greater than \$1,000)

- if value less than \$1,000, a misdemeanor punishable by jail not exceeding 1 year or jail one or more nights or weekends, and/or fine not exceeding \$1,000

- if property is one or more firearms, taken from the person of another or the value is between \$1,000 but less than \$2,500, a felony punishable by imprisonment not exceeding 2 years, or jail not exceeding 1 year, and/or fine not exceeding \$1,000

- if value is between \$2,500 but less than \$15,000, felony punishable by imprisonment not exceeding 5 years or jail not exceeding 1 year, and/or fine not exceeding \$1,000

- if value is \$15,000 or more, a felony punishable by imprisonment not exceeding 8 years and/or fine not exceeding \$5,000

- restitution provided by 22 O.S. § 991f

-receiving stolen property:

- if value under \$1,000, a misdemeanor punishable by jail not exceeding 6 months and/or fine not exceeding \$500

- if value between \$1,000 and under \$2,500, a felony punishable by imprisonment not exceeding 2 years or jail not exceeding 1 year and/or fine not exceeding \$500

- if value is between \$2,500 and under \$15,000, a felony punishable by imprisonment not exceeding 5 years or jail not exceeding 1 year, and/or fine not exceeding \$500

- if value is \$15,000 or more, a felony punishable by imprisonment not exceeding 8 years and/or fine not exceeding \$500

-theft of aircraft, automobile or automotive driven vehicle:

- if value less than \$50,000, a felony punishable by imprisonment not exceeding 5 years

- if value is \$50,000 or greater, a felony punishable by imprisonment for 3 to 10 years

-larceny from retailer or wholesaler:

- misdemeanor elements still same (under \$1,000/30 days in jail, fine \$10 - \$500)
- if value is \$1,000 to under \$2,500, a felony punishable by imprisonment not exceeding 2 years and fine not exceeding \$1,000
- if value is \$2,500 to under \$15,000, a felony punishable by imprisonment not exceeding 5 years and fine not exceeding \$1,000
- if value is \$15,000 or more, a felony punishable by imprisonment not exceeding 8 years and a fine not exceeding \$1,000
- where 3 or more separate offenses are committed within a 90 day period, the value of the property may be aggregated to determine to value for purposes of punishment
- if person engages in conduct in concert with at least one other individual, the person is liable for aggregate value of all property taken by all individuals, and subject to penalties under 21 O.S. § 421
- restitution under 22 O.S. § 991f
- for a third or subsequent conviction, and property value is less than \$1,000, a misdemeanor punishable by jail not to exceed 1 year and/or fine not exceeding \$1,000

-unauthorized use of vehicle or implement of husbandry:

- if person is not entitled to possession of a vehicle without consent of owner and intent to deprive the owner of the vehicle, a felony punishable by imprisonment not exceeding 2 years
- if implement of husbandry, a felony punishable as provided by 47 O.S. § 17-102 (imprisonment 1 -5 years and/or fine not exceeding \$5,000)

-property to pawnbroker under false ID or declaration:

- if value under \$1,000, a misdemeanor punishable by jail not exceeding 1 year and/or fine not exceeding \$500
- if value is between \$1,000 and under \$2,500, a felony punishable by imprisonment not exceeding 2 years or jail not exceeding 1 year and/or fine not exceeding \$500
- if value is between \$2,500 and under \$15,000, a felony punishable by imprisonment not exceeding 5 years or jail not exceeding 1 year and/or fine not exceeding \$500
- if value is \$15,000 or more, a felony punishable by imprisonment not exceeding 8 years and/or fine not exceeding \$500

## **Burglary**

SB 786      Third degree burglary. Amends 21 O.S. §§ 1435 and 1436; eff. Nov. 1, 2018.

-part of criminal justice reform legislation

-second degree burglary now defined as breaking and entering the dwelling house of another, in which there is at the time no human being present, or any commercial building or any part of any building, room, booth, tent, railroad car or other structure or erection in which any property is kept, or breaks into or forcibly opens, any coin operated or vending machine or device with intent to steal any property therein, or to commit any felony

-punishment not to exceed 7 years imprisonment (previously 2 to 7 years)

-third degree burglary is defined as breaking and entering any automobile, truck, trailer or vessel of another, in which any property is kept, with intent to steal any property therein or to commit any felony

-punishment not to exceed 5 years

## **Sentencing**

SB 689      Sentence modification. Amends 22 O.S. §§ 982a, 983, 985.1, 988.2, 988.8, 988.18, 988.19, 988.20, 988.22, 991a, 991b and 991c; eff. Nov. 1, 2018.

-part of criminal justice reform legislation

-sentencing court may modify offender's LWOP sentence if offense was for other than a violent crime set forth in 57 O.S. § 571, who has served at least 10 years of sentence, upon a finding that the best interests of the public will not be jeopardized

-prior to granting a sentence modification, the court shall provide notice of the hearing to the victim or representative of the victim and allow the victim or representative the opportunity to provide testimony

-the court shall consider the testimony of the victim/representative when rendering a decision to modify the sentence

-directs COCA to implement procedures and rules for payment of fines, costs, fees, and assessments by indigents to include establishing payment plans

-departure by court of imposing applicable sentence under 22 O.S. § 985.1 now gives the court the alternative option of finding that the mandatory minimum sentence is not necessary for the protection of the public or finding that imposition of the mandatory minimum sentence would result in substantial injustice to the defendant (instead of current law requiring both factors to be present before making such finding)

-departure from the mandatory minimum sentence shall not reduce the sentence to less than 25% of the mandatory term

-under Community Sentencing Act, references to "Level of Services Inventory" are replaced with "risk and needs assessment"

-also deletes requirement of scoring in a range other than the low range on the LSI

-"eligible offender" definition in Community Sentencing Act modified to delete

- requirement of having been convicted of a least one prior felony
- available services regarding varying levels of supervision by DOC probation officers or other qualified supervision sources now includes specialized supervision for repeat offenders, offenders with convictions for sex crimes, offenders with conviction for domestic violence offenses and offenders with diagnosed mental health needs
  - further includes cognitive behavioral treatment and any other programming or treatment needs as identified from the results of the risk and needs assessment
- judge no longer needs to order an assessment and evaluation for the defendant to be considered for community punishment if one was completed within the last 6 months
- community punishment is not limited to 30 days in jail, but subject to 22 O.S. § 991b per motion for modification
  
- person being sentence for a conviction for a violation of 21 O.S. § 644 (punishment for assault and battery) can be required to receive an assessment for batterers, which shall be conducted through a certified treatment program for batterers
- removes from § 991a the reference to offenders of nonviolent felony offenses being sentenced to the Community Service Sentencing Program
- persons convicted of domestic abuse may be required to participate in an intervention program for batterers certified by the Okla. A.G.
  - where defendant alleges s/he is a victim of domestic abuse and the current conviction is a response to that abuse, court may require the defendant to undergo an assessment by a domestic violence program certified by the Oka. A.G., and if based upon the results of the assessment the defendant is determined to be a victim of domestic violence, the defendant shall undergo treatment and participate in a certified program for domestic violence victims
  
- applicability of suspended sentence provisions of § 991a(A)(1) expanded
  - preclusion applies to a 3<sup>rd</sup> or subsequent conviction of a violent crime enumerated in 57 O.S. § 571 or a fourth or subsequent conviction for any other felony crime (current law precludes a 3<sup>rd</sup> or subsequent conviction of a felony)
- extended supervision under §991a(E) no longer includes supervision extended by the court for a failure to pay fines, fees and other costs, excluding restitution, except upon a finding of willful nonpayment
- DNA misdemeanor testing extended to persons convicted of unlawful carry of a firearm, illegal transport of a firearm, and discharging of a firearm
  
- when a sentence has been suspended by the court, the suspended sentence may not be revoked in whole for a technical violation unless a petition setting forth the grounds for revocation is filed by the DA and competent evidence justifying the revocation is presented to the court at a hearing within 20 days after plea of not guilty to the petition, unless waived by both the state and the defendant
- the state may dismiss without prejudice one time upon good cause shown, provided that any successor petition must be filed within 45 days of the date of dismissal of the petition
  - any revocation of a suspended sentence based on a technical violation shall not

exceed 6 months for a first revocation and 5 years for a second or subsequent revocation

-“technical violation” defined as a violation of the court-imposed rules and conditions of probation, other than:

- 1) committing or being arrested for a new crime;
- 2) attempting to falsify a drug screen, or 3 or more failed drug or alcohol screens within a 3 month period;
- 3) failing to pay restitution;
- 4) tampering with an electronic monitoring device;
- 5) failing to initially report or missing assigned reporting requirements for an excess of 60 days;
- 6) unlawfully contacting a victim, co-defendant or criminal associates;
- 7) five or more separate and distinct technical violations within a 90-day period; or
- 8) any violation of the Specialized Sex Offender Rules

-absent a finding of willful nonpayment by the offender, the failure of an offender to pay fines and costs may not serve as a basis for revocation, excluding restitution

-conditions period for a deferred judgment modified from 10 to 7 years

-except where court has ordered restitution as a condition of supervision and that condition has not been satisfied

-prior to termination or expiration of the supervision period, the court can order an extension of supervision for a period not to exceed 3 years

-supervision in the community modified to a period not to exceed 18 months (currently 2 years) subject to same exceptions

-deferred judgment may not be accelerated for any technical violation unless petition setting forth the grounds for such acceleration is filed by the DA and competent evidence justifying the acceleration is presented to the court at a hearing, held not more than 20 days after the entry of a not guilty plea to the petition, unless waived by both the state and defendant

-any acceleration based on a technical violation shall not exceed 90 days for the first acceleration or 5 years for a second or subsequent acceleration

-deferred judgment applies to defendants who have not received more than 1 deferred judgment for a felony within the past 10 years (currently requires no deferred judgments)

SB 649      Sentence enhancement restricted. Amends 21 O.S. §§ 51.1 and 51.2; eff. Nov. 1, 2018.

-part of criminal justice reform legislation

-deletes provision providing that if a subsequent conviction is for petit larceny, the punishment is for a term not exceeding 5 years

-previous conviction for possession of a CDS pursuant to 63 O.S. § 2-402, or equivalent law for possession of a CDS from any other jurisdiction, may not be used to enhance punishment pursuant to § 51.1

-punishment by imprisonment for not more than twice the maximum sentence that could have been imposed for a first conviction for every person who, having previously been convicted of a felony other than one enumerated in 57 O.S. § 571, is convicted of a second or subsequent felony for:

- 1) uttering a subscription on instrument as one with same name (§ 1592);
- 2) receiving or concealing stolen property (§ 1713);
- 3) false personation of another (§ 1531);
- 4) unauthorized use of motor vehicle (47 O.S. § 4-102);
- 5) grand larceny (§ 1705);
- 6) false declaration of ownership to a pawnbroker (59 O.S. § 1512);
- 7) 2<sup>nd</sup> degree forgery (§ 1577);
- 8) receiving, possessing or concealing a stolen vehicle (47 O.S. § 4-103); or
- 9) larceny of merchandise from a retailer (§ 1731)

-except as provided in 21 O.S. § 51.1a, no person shall be sentenced as a second and subsequent offender under § 51.1, or any other section of the Oklahoma Statutes, when a period of 10 years has elapsed since the completion of the sentence imposed on the former conviction, so long as the person has not been convicted of a felony (removes reference to misdemeanor involving moral turpitude as a disqualifying factor)

SB 904      Eligibility for community sentencing modified. Amends 22 O.S. § 988.18; eff. Nov. 1, 2018.

-unless otherwise prohibited by law, only “eligible offenders,” as identified under the more expansive definition of “eligible offender” found under 22 O.S. § Section 988.2, shall be eligible for any state-funded community punishment

SB 900      Delayed sentencing program - exclusion of adjudicated juvenile delinquents or youthful offenders. Amends 22 O.S. §§ 996.1 and 996.3; eff. May 1, 2018.

-definition of “offender” under Delayed Sentencing Program for Young Adults modified to exclude juveniles who have been *adjudicated* as a juvenile delinquent or youthful offender

-upon completion of the program, DOC shall notify the sheriff of the county from where the court order placing the offender in the program was filed, requiring the sheriff to take custody of the offender

## **Expungement**

SB 650      Eligibility for nonviolent felony offender modified. Amends 22 O.S. § 18; eff. Nov 1, 2018.

-part of criminal justice reform legislation

-affects person convicted of a nonviolent felony offense (not listed in 57 O.S. § 571)

- removes requirement that the person has received a full pardon for the offense
- provision requiring lack of any other felony conviction or separate misdemeanor within last 15 years modified to require absence of any other felony or separate misdemeanor within last 7 years
- requirement of passage of 10 years from felony conviction to passage of 5 years from completion of the sentence for the felony conviction

### **Controlled Dangerous Substances**

SB 793      CDS violation punishments reduced. Amends 63 O.S. §§ 2-401, 2-415 and 2-509; eff. Nov. 1, 2018.

- part of criminal justice reform legislation
- distribution, dispensing, transporting with intent to distribute or dispense, possession with intent to manufacture, distribute or dispense, etc:
  - transporting or possessing with intent to transport a Schedule I or II CDS, except marijuana, a felony punishable by not more than 7 years and fine not exceeding \$100,000 (previously listed only certain substances, punishable by not less than 5 years)
    - second conviction a felony punishable by imprisonment not exceeding 14 years
    - third or subsequent conviction a felony punishable by imprisonment not exceeding 20 years
  - any other CDS classified as Schedule III, IV, V, or marijuana, a felony punishable by imprisonment not exceeding 5 years (previously not less than 2 or more than life)
    - second conviction felony punishable by not more than 10 years
    - third conviction a felony punishable by not more than 15 years
    - second conviction involving an imitation controlled substance, defined in § 2-101, a felony punishable by not more than 2 years (previously 5)
- provision prohibiting manufacture, cultivation, distribution or possession with intent to distribute a synthetic CDS modified to prohibit manufacture and distribution of a controlled or synthetic controlled substance
  - distributing or manufacturing a CDS a felony punishable by imprisonment not exceeding 10 years and fine not exceeding \$25,000
    - second conviction felony punishable by imprisonment not less than 2 nor more than 20 years
    - third conviction a felony punishable by not less than 10 years nor more than life
  - convictions under this provision subject to suspended or deferred sentences, or probation pursuant to 22 O.S. § 991a
- 18 year old using/soliciting services of person less than 18 to distribute, dispense, transport with intent to distribute or cultivate a CDS, or in the presence of a person under 12 years of age, punishable by imprisonment not less and 2

nor more than 10 years

- second violation punishable by not less than 4 years nor more than 20

- third or subsequent violation punishable by not less than 10 years to life

- transporting with intent to distribute, distributing or possessing with intent to distribute a CDS within 2,000 feet of school, college, university, recreation center, public park, etc. no longer required to serve 50% of the sentence prior to becoming eligible for DOC earned credits

- second or subsequent violation punishable by thrice the imprisonment or fine authorized in § 2-401 (no longer references habitual offender statute - 21 O.S. § 51.1)

- deletes reference to habitual offender statute (21 O.S. § 51.1) and deletes requirement of serving 85% of sentence prior to becoming eligible for earned credits or parole eligibility

- provides that any person convicted of a second or subsequent felony violation of the provisions of 63 O.S. § 2-401, *except* subsections (B)(1) and (2), (C)(2), (3), (4) and (5), (E) (1), (2) and (3) and (F)(1) and (2) shall be punished as a habitual offender under 21 O.S. § 51.1

-Trafficking in Illegal Drugs Act:

- specific punishment regarding “cocaine base” deleted, instead added to provisions addressing punishment for trafficking cocaine and coca leaves

- 30 tablets or 10 grams of 3,4-Methylenedioxy methamphetamine punishable by imprisonment not exceeding 20 years (fine of \$25,000 to \$100,000)

- 100 tablets or 30 grams punishable by imprisonment of not less than 2 years to life (fine of \$100,000 to \$500,000)

- 1,000 grams or more of morphine, 400 grams or more of oxycodone, 3,750 grams or more of hydrocodone, 500 grams or more of benzodiazepine punishable by imprisonment not exceeding 20 years (fine \$100,000 to \$500,000)

- violation of § 2-415 with respect to marihuana, cocaine, coca leaves, cocaine base, heroin, amphetamine or methamphetamine in a quantity specified in § 2-415(C) (1), (2), (3) and (4):

- first trafficking conviction punishable by imprisonment not exceeding 20 years

- second trafficking conviction punishable by imprisonment not less than 4 years nor more than life, serving 50% of the sentence before being eligible for parole consideration

- third or subsequent trafficking conviction punishable by not less than 20 years nor more than life, serving 50% of the sentence before being eligible for parole consideration

- persons convicted of trafficking shall not be eligible for earned credits or any other type of credits which have the effect of reducing the length of sentence to less than 50% of the sentence imposed

- penalties specified in § 2-415(C) and (D) are subject to the enhancements enumerated in 63 O.S. § 2-401(E) and (F)

- cultivation of Schedule I and II CDS and extracting marihuana into hashish:
  - felony punishable by imprisonment no more than 10 years (\$50,000 fine)
  - 2<sup>nd</sup> violation punishable by imprisonment not less than 2 years to 20
  - 3<sup>rd</sup> or subsequent violation punishable by imprisonment not less than 10 years nor more than life

SB 939      Methylphenidate (Ritalin) definition expanded. Amends 63 O.S. § 2-206; eff. Nov. 1, 2018

-Schedule II definition of methylphenidate expanded to include salts, isomers and salts of isomers

SB 940      Schedule I list expanded to include Fentanyl. Amends 63 O.S. § 2-204; eff. Nov. 1, 2018.

-adds the following to Schedule I:

- N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl]-acetamide
- N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl]-butenamide
- N-phenyl-N-[1-(2-phenylethyl) -4-piperidinyl]-2-furancarboxamide
- N-phenyl-1-[1-(2-phenylethyl) -4-piperidinyl
- N-(1-phenethylpiperidin-4-yl) -N-phenylcyclopropranecrboxamide
- N-ethylpentylone

SB 1078      Fentanyl added to trafficking list. Amends 63 O.S. § 2-415; eff. Nov. 1, 2018.

-fentanyl and its analogs and derivatives added to Trafficking in Illegal Drugs Act
 

- one gram of fentanyl or carfentanil, or analogs/derivatives further punishable by fine of not less than \$100,000 nor more than \$500,000

SB 1367      No arrest or prosecution for seeking drug overdose medical attention. New law codified at 63 O.S. § 2-309.1; eff. Nov. 1, 2018.

-a peace officer may not take a person into custody based solely on the commission of an offense involving prescription drugs if the officer, after making a reasonable determination and considering the facts and surrounding circumstance, reasonably believes that the following apply:

- 1) the officer has contact with the person because they were requesting emergency medical assistance for self or another individual who reasonably appeared to be in need of assistance due to a drug overdose, and
- 2) the person a) provided the person's full name and other relevant information requested by officer, b) was incapacitated and in need of medical assistance due to a drug overdose or remained at the scene with

the individual reasonably appearing to be in need of medical assistance due to a drug overdose until emergency medical assistance arrived, and c) cooperated with emergency medical assistance personnel and law enforcement officers at the scene

- person who meets this criteria shall not be subject to prosecution or receive a mitigated sentence for a drug offense, or shall not have property seized or forfeited on the basis of a drug violation if evidence obtained that they sought emergency medical assistance
- civil immunity to officer

### **Court Appointed Counsel**

SB 1021      Consideration of bail in court appointment process. Amends 19 O.S. § 138.5; 20 O.S. § 55 and 22 O.S. § 1355A; eff. Nov. 1, 2018.

- removes posting bond as a rebuttable presumption that the person is not indigent
- court may consider the defendant's posting of bond in determining eligibility of appointment of public defender or OIDS counsel, provided that such consideration shall not be the sole factor in the determination of eligibility
- intent of the legislature that a criminal defendant shall be entitled to an individualized determination of bail as guaranteed by the Oklahoma Constitution
  - removes language in 20 O.S. § 55 providing that payment of bail prima facie evidence that defendant can employ his or her own attorney

### **Executions**

HB 3283      Treatment to restore competency to be executed. Amends 22 O.S. § 1007 and 1175.6a; eff. May 3, 2018.

- if jury finds defendant insane because of a mental illness which causes the person to be presently unable (1) to have a rational understanding as to why he or she is being executed and 2) to have a rational understanding that he or she is to be executed and that execution is imminent, the court shall order DMHSAS to provide, where the defendant is currently incarcerated, treatment, therapy or training which is calculated to allow the defendant to be restored to his or her sanity such that the defendant is able 1) to have a rational understanding as to why he or she is being executed and 2) to have a rational understanding that he or she is to be executed and that execution is imminent
  - DMHSAS may designate a willing entity to provide such restoration services on behalf of the Department, provided the entity has qualified personnel
- clarifies that procedure addressing competence to stand trial applies "prior to conviction"

## Juveniles and Youthful Offenders

SB 224      Confidentiality of records, extension of OJA supervision. Amends 10A O.S. §§ 2-2-301, 2-2-501, 2-4-107, 2-5-204 through 2-5-209; repeals 10A O.S. § 2-5-101; eff. Nov. 1, 2018.

-appointment of counsel now mandatory where petition filed pursuant to 10A O.S. § 2-5-201

-appointment under this or petition filed under § 2-2-104 shall continue at every hearing or review through completion or dismissal of the case

-requires the court to advise the attorney of the child of reports prepared for the court prior to disposition

-gives child's counsel right to move to continue hearing to receive more reports

-clarifies that youthful offender court records for person who is certified to stand trial as an adult or youthful offender are considered adult records

-all reports, evaluations, motions, records, exhibits or documents regarding the education history, mental health or medical treatment or condition of the offender submitted to the court or admitted into evidence during the hearing on the motion for certification as a youthful offender or motion for imposition of an adult sentence shall be confidential and shall be filed or admitted under seal

-such records shall be provided to OJA

-any testimony regarding the reports, evaluations, motions, records, exhibits or documents shall be given *in camera* and not open to the general public

-persons having a direct interest in the case as provided by § 2-2-402(A)(1) shall be allowed to be present during the testimony but admonished not to discuss the testimony following the hearing

-all reports, evaluations, motions, records, exhibits or documents shall be released from under seal by order of the court if the youthful offender is sentenced to DOC custody pursuant to §2-5-209(B)(1) or 2-5-210(B)(5) or if the youthful offender is later charged as an adult with a felony crime

-under provision permitting a 1<sup>st</sup> degree murder charge against a 13 or 14 year old as an adult, or enumerated charges against 15 through 17 year old offenders, if preliminary hearing did not commence within 90 days from the filing of the information due to the absence or inability to locate the accused, the preliminary hearing shall commence within 90 days after the state has actual notice of the in-state location of the accused

-if found out of state, the court shall set the hearing within 90 days after the accused has been returned to the state

-OJA custody or supervision of youthful offender extended to 18 years and 6 months, or until 19 years of age if jurisdiction has been extended as provided in § 2-5-209(B)

-court may assess fee payable to OJA from \$25 to \$500 for certification investigation

-upon youthful offender attaining age of 18 years 6 months, OJA may recommend s/he

be returned to OJA custody or supervision until age 19 to complete reintegration phase of the treatment program or community supervision as determined by OJA

-during any period of extension, offender may be transferred to DOC pursuant to § 2-5-210(B), whether the offender is placed in an out-of-home placement or in the community

-if court has extended jurisdiction until 19 years of age, the offender shall remain in OJA custody or supervision until discharged or sentenced by the court, or until the offender's 19<sup>th</sup> birthday, at which time the offender shall be returned to the court for final disposition of the case

-any order issued by the sentencing court under §2-5-209(B) shall be a final order, appealable when entered.

-repeals 10A O.S. § 2-5-101

SB 1066 Additional deferral of delinquency proceedings. Amends 10A O.S. § 2-2-404; eff. Nov. 1, 2018.

-court may defer delinquency adjudication proceedings for an additional 180 days (past the initial 180 days) if the court determines that the child has made satisfactory progress and that such extension is necessary to accomplish treatment goals and objectives

## **Sex Offenses**

SB 1005 Sodomy, rape, lewd or indecent proposals to children and human trafficking definitions expanded; protection of victims. Amends 21 O.S. §§ 748.2, 888, 111, 1123; eff. Nov. 1, 2018.

-any peace officer or employee of a district court, juvenile bureau or OJA who has reasonable suspicion that a minor may be a victim of human trafficking and is in need of immediate protection shall assume protective custody over the minor and immediately notify DHS

-minor transferred to emergency custody of DHS and provided with services

-DHS may release the minor to custody of a parent or legal guardian if determined the minor will not be subject to further exploitation

-if no such determination made, minor shall be subject to deprived child provisions of Okla. Children's Code

-minor shall not be subject to juvenile delinquency proceedings for prostitution or other nonviolent misdemeanor offense committed as a direct result of being a victim

-it shall be an affirmative defense to delinquency or criminal prosecution for any misdemeanor or felony offense that the offense was committed during the time of and as the direct result of the minor being a victim of human trafficking

-definitions of forcible sodomy, rape, and lewd or indecent proposals or acts to children under 16 now include acts committed upon a person who is at least 16 years of age but less than 18 by a "person responsible for the child's health, safety or welfare" which includes:

- 1) a parent;
- 2) a legal guardian;
- 3) a foster parent;
- 4) a person 18 years of age or older with whom the child's parent cohabitates;
- 5) any other adult residing in the home of the child;
- 6) an agency or employee of a public or private residential home, institution, facility or day treatment program as defined in 10 O.S. § 175.20; or
- 7) an owner, operator or employee of a child care facility, as defined by 10 O.S. § 402.

-forcing or requiring a child to defecate or urinate upon the body or private parts of another, or for the purpose of sexual gratification, added to list of lewd and lascivious acts under 21 O.S. § 1123

HB1124      Sex offender registration - safety zone and residency restrictions expanded. Amends 21 O.S. § 1125; 57 O.S. § 590; eff. Nov. 1, 2018.

-Justice for Danyelle Act of 2018

-safety zone definition to include residence of a victim of a sex crime

-offender prohibited from loitering within 1,000 feet of the residence of the victim if 1) the person who committed a sex crime against the victim has been convicted of said crime, and 2) the person is required to register pursuant to the Sex Offenders Registration Act

-provision prohibiting person required to register under Act from residing within 2,000 feet of various sites now includes residence of victim

HB 3330      Exclusion zone defined by Oklahoma Child Care Facilities Licensing Act. Amends 57 O.S. § 590; eff. Nov. 1, 2018.

-adds family child care home to list of places in which sex offender prohibited from residing within 2,000 feet

-definition of a licensed child care center or family child care home now provided by Oklahoma Child Care Facilities Licensing Act

## **DUI**

HB 2643     Removes DA discretion to seek enhance after prior conviction. Amends 47 O.S. § 11-902; eff. April 23, 2018.

SB 1091     Same language as HB 2643, also removing DA discretion to seek enhance after prior conviction. Amends 47 O.S. § 11-902; eff. Nov. 1, 2018.

-removes discretionary “and against whom the district attorney seeks to enhance punishment” clause relating to DUI sentencing under § 11-902(C)(2), (3) and (4)

## **Electronic Monitoring**

HB 2630     Modifies eligibility requirements. Amends 57 O.S. § 510.9; eff. May 3, 2018.

- removes requirement that the inmate has to have been incarcerated for 90 days
  - replaces language with “a home offer”
  - still requires meeting of eligibility requirement under section C and be processed through the DOC assessment and reception center
- modifies the list limiting or prohibiting an offender from eligibility:
  - previous exclusion of inmates serving a sentence of over 5 years (with 11 months or more left on sentence) modified to only exclude those serving a sentence exceeding 10 years (with 24 months or more left on sentence)
  - clarifies that inmates convicted of a violent offense within the previous 10 years or convicted of a violation in 21 O.S. § 13.1 ineligible
  - inmates convicted of any violation of the Trafficking in Illegal Drugs Act; inmates denied parole within the previous 12 months, and inmates removed from the EMP or any other alternative to incarceration authorized by law for violation of any rule or condition of the program and reassigned to imprisonment now eligible
  - inmates who have escaped from a medium or maximum penal or correctional institution (no longer only minimum) now eligible

## **Drug Courts**

HB 2881     Eligibility expanded. Amends 22 O.S. §§ 471.2 through 471.4; eff. Nov. 1, 2018.

-opportunity for review of an offender for a drug court program shall now occur at any time prior to disposition of the case and sentencing of the offender, including

sentencing on a petition to revoke a suspended sentence or any probation violation  
-admission to a drug court program within the previous 5 years shall not make the offender ineligible for consideration in a new program  
-the drug court investigation may (previously “shall”) be conducted before or after the initial hearing for consideration but shall occur before the hearing for final determination of eligibility for the program

## **Stalking**

HB 3260     Use of GPS. Amends 21 O.S. § 1173; eff. May 1, 2018.

-“following” under the stalking statute defined to include the tracking of movement or location of an individual through a GPS device or other monitoring device by a person, or person acting on behalf of another, without the consent of the individual being tracked

-this does not apply to lawful use of GPS or other monitoring device or to the use by a new or used motor vehicle dealer or motor vehicle creditor, including a device to remotely disable the ignition of a motor vehicle in the connection with lawful action after default of the terms of a motor vehicle credit sale, loan or lease, and with the express written consent of the owner or lessee

## **Self-Defense and Firearms**

HB 2632     Self-defense; firearms in churches. Amends 21 O.S. § 1289.25; eff. Nov. 1, 2018

-person who uses defensive force knew or had a reasonable belief that person against whom defensive force was used entered or was attempting to enter into a dwelling, residence, occupied vehicle, place of business or place of worship for purpose of committing a forcible felony, defined in 21 O.S. § 733, and that defensive force was necessary to prevent the commission of the forcible felony, presumed to have held a reasonable fear of imminent peril of death or great bodily harm to him or herself or another when using defensive force intended or likely to cause death or great bodily harm to another

-allows places of worship to establish policies regarding possession of weapons on property

-defines “place of worship” as any permanent building, structure, facility or office space owned, leased, rented or borrowed, on a full-time or temporary basis, when used for worship services, activities and business of the congregation, including but not limited to churches, temples, synagogues and mosques

HB 2527     County employees. Amends 21 O.S. § 1277; eff. Nov. 1, 2018.

-county sheriff may authorize certain employees of the county who possess a valid handgun license under the Okla. Self-Defense Act, to carry a concealed handgun when acting in the course and scope of employment within the courthouses in the county in which the person is employed

-sheriff may required additional instruction or training before person may received authorization to carry within the courthouse

-does not allow the employee to carry the handgun into a courtroom, sheriff's office, adult or juvenile jail or any other prisoner detention area

-board of county commissioners may authorize certain employees possessing a valid license to carry a concealed handgun when acting the course and scope of employment on county annex facilities or grounds surrounding the county courthouse

HB 2625     Clarifies manner in which retired peace officers carry firearms. Amends 21 O.S. § 1289.8; eff. Nov. 1, 2018.

-authorization to carry "anywhere" to "throughout" the State of Oklahoma

### **Jails and Prisons**

HB 3393     Limited restraints where prisoner is pregnant. New law codified at 57 O.S. § 4.2; eff. Nov. 1, 2018.

-applies to all penal institutions, detention centers and county jails

-must use the least restrictive restraints necessary when facility has actual or constructive knowledge that an inmate is pregnant

-presumption is that no restraints of any kind shall be used, unless otherwise directed by the physician in charge, when transporting an inmate who is in labor, during any phase of labor, while the inmate is delivering her baby, or the inmate is recuperating from delivery, unless there are compelling grounds to believe the inmate represents an immediate and serious threat of harm to herself, staff or others or there is a substantial flight risk and cannot be reasonably contained by other means

-consultation with medical staff is required prior to application of restraints

-prohibits certain types of restraints

-provides procedures

-unlawful for any correctional officer or county detention officer to use prohibited restraints

-misdemeanor punishable by jail not exceeding 1 year and/or fine not exceeding \$1,000

## **Fines, Fees and Costs**

SB 340      Community service in lieu of municipal fines. Amends 11 O.S. § 28-124; eff. Nov. 1, 2018

-applies to persons convicted in municipal criminal court of record  
-if defendant is without means to pay the fine or costs, and no undue hardship would result, the municipal judge may direct the defendant to perform community service at a rate of not less than the current federal minimum wage

SB 1203      Fine for driving up to 10 mph over the speed limit reduced. Amends 47 O.S. § 11-801, new law codified at 47 O.S. § 11-801e; eff. August 1, 2018.

-fine for driving 1 to 10 miles per hour over the speed limit punishable by a fine of \$5 and costs and fees not to exceed \$95  
-sets forth allocation costs and fees to various funds and agencies

HB 3284      Jail fee. Amends 28 O.S. § 153.3; eff. Nov. 1, 2018.

-clarifies that \$25 of every \$35 fee imposed on a defendant booked into (and not sentenced to) jail is remitted to the Sheriff's Jail Fund

HB 2889      Sheriff fingerprint fee. Amends 21 O.S. § 1290.12; eff. Nov. 1, 2018.

-clarifies that sheriff may charge a fee up to \$25 for two sets of fingerprints

## **Criminal Justice Reform**

SB 1098      Criminal Justice Reclassification Coordination Council. New law codified at 22 O.S. § 1701; eff. August 1, 2018.

-creates Criminal Justice Reclassification Coordination Council  
-Council recommendations intended to reduce or hold neutral the prison population, reviewing:

- 1) classification of all felonies under Oklahoma law into appropriate categories;
- 2) appropriate sentence lengths for each class of felonies;
- 3) appropriate enhanced sentences for crimes committed after offenders have been convicted of other crimes; and
- 4) other appropriate changes that will improve the criminal justice system in Oklahoma and ensure public safety of its citizens

-comprised of 22 members: the attorney general, two district attorneys, two police chiefs, two sheriffs, one public defender, the directors of DOC, OIDS, DMHSAS, OSBI,

OBNDD, P & P, the Okla. Coalition of Domestic Violence and Sexual Assault, president of the State Chamber of Commerce, a local chamber of commerce, the Governor, President ProTempore of the Senate, the Speaker of the House of Representatives, a retired district judge, selected by Presiding Judge of COCA, and the Administrative Director of the Courts, or any designees thereof  
-report of findings and recommendations annually by December 31, 2018 and the same day each year thereafter to the Governor, President Pro Tempore of the Senate and Speaker of the House

### **Abuse Reporting**

HB 2259     Child abuse reporting - teachers - additional requirements. Amends 10A O.S. § 1-2-101; eff. Nov. 1, 2018.

-every teacher of any child under 18 years of age having reason to believe that a child under the age of 18 is a victim of abuse or neglect shall report the matter immediately to DHS

-reports shall be made to the hotline provided for in statute

-any allegation of abuse or neglect reported in any manner to a county office shall immediately be referred to the hotline by DHS

-in actions for custody by abandonment (30 O.S. § 2-117), there shall be no reporting requirement

-every teacher of a student 18 years or older having reason to believe that a student 18 or over is a victim of abuse or neglect shall report the matter immediately to local law enforcement

-failure to report a misdemeanor

HB 3104     Child abuse reporting - midwives - fetal alcohol syndrome. Amends 10A O.S. §§ 1-1-105, 1-2-101 and 1-2-102; new law codified at 10A O.S. § 1-9-124; eff. May 3, 2018.

-midwives involved in the prenatal care of expectant mothers or the delivery or care of infants shall promptly report to DHS instances in which and infant tests positive for alcohol or a CDS

-general reporting requirement for physicians, surgeons or other health care professionals (and now midwives) shall report where diagnosis of neonatal abstinence syndrome or fetal alcohol spectrum disorder

-failure to report a misdemeanor

HB 3064     Creates Vulnerable Adult Abuse Neglect and Exploitation Report. New law codified at 43A O.S. § 10-111.1; eff. Nov. 1, 2018.

-requires Attorney General to promulgate and maintain report, accessible to public on the internet

-include list of defendants who have been prosecuted by the AG and found guilty for abuse, exploitation or neglect of the elderly or vulnerable adults in the preceding 12 months

### **Pretrial Release**

SB 363      Special Judge Authority to Determine Pretrial Release Eligibility. Amends 22 O.S. § 1105.3; eff. March 8, 2018.

-authority of district and associate district judges to release persons charged with certain crimes set forth in 22 O.S. § 1105.3(C) extended to special judges

### **Trash**

HB 2702      Trash dumping. Amends 21 O.S. § 1761.1; eff. Nov. 1, 2018.

-increases penalty for dumping item of furniture or item that exceeds 50 pounds  
-punishable by a fine of not less than \$1,000 to not more than \$6,5000, and/or jail not exceeding 60 days

### **Trespass**

HB 3370      Increased penalties for trespass on farming and ranching property. Amends 21 O.S. § 1835.2; eff. Nov. 1, 2018.

-fine for trespassing on land primarily devoted to farming, ranching, or forestry purposes increased to \$750 to \$2,000  
-fine for willfully or maliciously entering property to commit waste, theft or damage increased to \$1,000  
-second or subsequent offense fine increased to not less than \$2,500