

2022 Legislative Update

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This list does not contain all 2022 legislation that may impact the practice of criminal defense. My summaries may or may not be accurate. This summary is in no way intended to be a substitute for actual research. Still, it may prove a useful jumping off point.

Hope this is helpful.

Tim

HB3925 Effective: Upon Approval (Emergency Clause)

Court Costs. Cost Compliance Program.

This bill creates new law at Title 20 O.S. § 3007. This bill creates a “Cost Administration Implementation Committee within the Administrative Office of the Courts.” Thirteen members. This bill establishes a court cost compliance program. “The purpose of the program shall be to assist county sheriffs and the courts of this state with the collection of fines, costs, fees, and assessments associated with cases in which a warrant has been issued and the case has been referred to the court cost compliance program pursuant to Section 983 of Title 22 of the Oklahoma Statutes.”

Allows for warrant recall with \$100.00 payment and defendant signing a new “mutually agreeable” payment plan.

The 30% administrative fee on misdemeanor failure-to-pay warrants and cases is still there, but it may be waived if the amount owed is waived as well.

This bill amends Title 22 O.S. § 983 as follows:

“Section 983. A. 1. Except in cases provided for in Section 983b of this title, when the judgment and sentence of a court, either in whole or in part, imposes fines, costs, fees, or assessments upon a defendant, the court at the time of sentencing shall require the defendant to complete under oath a form promulgated by the Court of Criminal Appeals that provides current information regarding the financial ability of the defendant to pay.

2. The information to be required on the form shall include, but not be limited to, the individual and household income and living expenses of the defendant, excluding child support and any monies received from a federal or state government need-based or disability assistance program, the number of dependents, a listing of assets, excluding assets exempt from bankruptcy, child support obligations, health, mental or behavioral health conditions that diminish the ability of the defendant to pay restitution, and additional court-related expenses to be paid by the defendant.”

3. An order shall be filed in the case with the approval or disapproval by the court of the payment plan. If the court does not approve the payment plan recommended by the court clerk, the court shall enter

its order establishing the payment plan. The defendant shall be notified by certified mail or personal service of the order entered by the court and shall be given the opportunity for a cost hearing. 4. The district court for each county and all municipal courts shall set a regular time and courtroom for cost hearings. C. If the defendant requests a cost hearing, the court clerk shall set the hearing no later than sixty (60) days after sentencing. In determining the ability of the defendant to pay, the court shall rely on the verified information submitted by the defendant on the form promulgated by the Court of Criminal Appeals and any updates to the information. In addition, the court may make inquiry of the defendant and consider any other evidence or testimony concerning the ability of the defendant to pay. D. 1. If at the initial cost hearing or any subsequent cost hearing, the court determines that the defendant is unable to immediately pay the financial obligations or the required installments, the court may reduce the amount of the installments, extend the payment plan beyond seventy-two (72) months, or waive payment of all or part of the amount owed. The court may include a financial incentive for accelerated payment. Additionally, the court may order community service in lieu of payment. The defendant shall receive credit for no less than two times the amount of the minimum wage specified pursuant to state law for each hour of community service. 2. If at any time due to a change in conditions the defendant is unable to pay the financial obligations ordered by the court or any installment, the defendant may request an additional cost hearing. E. If the court determines that a waiver of any of the financial obligations is warranted, the court shall equally apply the same percentage reduction to all fines, costs, fees, and assessments, excluding restitution. F. 1. If a defendant is delinquent in the payment of financial obligations or an installment by more than sixty (60) days, the court clerk shall notify the court which shall, within ten ENR. H. B. NO. 3925 Page 10 (10) days thereafter, set a cost hearing for the court to determine if the defendant is able to pay. The hearing shall be set on a date that will allow the court clerk to issue a summons fourteen (14) days prior to the cost hearing. 2. No less than fourteen (14) days prior to the cost hearing, the court clerk shall issue one summons to the defendant to be served by United States mail to the mailing address of the defendant on file in the case, substantially as follows: SUMMONS You are ORDERED to appear for a cost hearing at a specified time, place, and date to determine if you are financially able but willfully refuse or neglect to pay the fines, costs, fees, or assessments or an installment due in Case No. _____. You must be present at the hearing. At any time before the date of the cost hearing, you may contact the court clerk and pay the fines, costs, fees, or assessments or any installment due. THIS IS NOT AN ARREST WARRANT. However, if you fail to appear for the cost hearing or to make the payment, the court will issue a WARRANT for "FAILURE TO APPEAR—COST HEARING" and refer the case to a court cost compliance liaison which will cause an additional thirty percent (30%) administrative fee to be added to the amount owed. 3. If the defendant fails to appear at the cost hearing or pay the amount due the court shall issue a warrant for FAILURE TO APPEAR—COST HEARING and refer the case to the court cost compliance program as provided in subsection K of this section. 4. Municipal courts, in lieu of mailing the summons provided for in this subsection, may give the defendant personal notice at the time of sentencing of a specific date, time, and place, not less than sixty (60) nor more than one hundred twenty (120) days from the date of sentencing to appear for a cost hearing if the fines, costs, fees, and assessments remain unpaid. G. If a defendant is found by a law enforcement officer to have an outstanding warrant for FAILURE TO APPEAR—COST HEARING, the law enforcement officer shall release the defendant and issue a citation to appear pursuant to Section 209 of this title. If the ENR. H. B. NO. 3925 Page 11 defendant fails to appear at the time and place cited by the law enforcement officer, the court may issue a summons or warrant as provided in Section 209 of this title. The provisions of this

subsection shall not apply to a municipal court if the municipal court has previously provided personal service to the defendant of an opportunity for a cost hearing. H. In determining whether the defendant is able to pay delinquent financial obligations or any installments due, the court shall consider the criteria provided in subsection C of this section.”

K. All counties of the state shall fully utilize and participate in the court cost compliance program. Cases shall be referred to the court cost compliance program not less than thirty (30) days nor more than sixty (60) days after the defendant fails to appear for a cost hearing unless the defendant pays the amount owed on the financial obligation, or an installment due. When the court refers the case, the updated contact information on file shall be forwarded to a court cost compliance liaison for collection purposes.

HB2992 Effective: November 1, 2022

Uniform Child Witness Testimony by Alternative Methods Act.

This bill amends sections of Title 10A, Title 12, and Title 22 as they relate to child testimony in child testimony in deprived and criminal cases. Changes of note: the amendments remove the specific age limits for a child witness to testify by alternative methods. The age limits are no longer 12 years of age in deprived cases and 13 years of age in criminal cases. Any unmarried person under the age of 18 years may qualify for testimony by alternative methods if the court deems it appropriate.

This bill significantly impacts the following statutes:

10A O.S. § 1-4-505

12 O.S. §§ 2611.4, 2611.12, and 2615

22 O.S. § 765

HB3024 Effective: November 1, 2022

Expungements.

This bill amends Title 22 O.S. § 18 to increase the class of individuals who may qualify for an expungement by adding the following language:

“14. The person was charged with not more than two felony offenses and the charges were dismissed following the successful completion of a deferred judgment or delayed sentence, none of which were felony offenses listed in Section 13.1 of Title 21 of the Oklahoma Statutes or would require the person to register pursuant to the provisions of the Sex Offenders Registration Act, no felony or misdemeanor charges are pending against the person, and at least ten (10) years have passed since the charges were dismissed;”

HB 3316 Effective: November 1, 2022

Expungements. “Clean Slate Bill”

This bill amends Title 22 O.S. §§ 18 & 19 by establishing a procedure through which qualified individuals may have their criminal records “automatically” expunged. The OSBI will identify potentially qualified individuals each month. Notices will be given to prosecutors and the arresting agency. Objections will be considered within 45 days of the notice. Etc. Individuals may still petition for expungements on their own.

HB3053 Effective: November 1, 2022

Oklahoma Drug Court Act.

This bill amends Title 22 O.S. § 471.9. Previously, cases were to be dismissed when an offender successfully completed drug court. With this the case may be dismissed “or the sentence [may be] deferred for a period not to exceed two (2) years” if the offense was first a felony offense.

HB3066 Effective: January 1, 2023

Arrest and Prosecution Information Reporting.

This bill amends Title 74 O.S. § 150.12. This is the statute that requires courts, prosecutors, and law enforcement agencies to report arrest and prosecution information to the Oklahoma State Bureau of Investigations. This amendment extends those obligations to municipal courts.

HB3070 Effective: November 1, 2022

Improper Transportation of Firearms.

This bill amends Title 21 O.S. § 1289.13A. This section allows for a \$70.00 fine for illegally transporting a firearm in a car. The bill strikes the following language, “as authorized by the Oklahoma Self-Defense Act or using a valid license from another state and is” in violation of any law related to the carrying or transportation of firearms in the vehicle, may be issued a traffic citation. . .

Basically, if you get pulled over for a traffic violation and you are illegally transporting a firearm in your car, you get a \$70.00 fine no matter what.

HB3133 Effective: November 1, 2022

Children: Detention and Transportation.

This bill amends Title 10A O.S. § 2-3-103. This amendment adds county sheriffs “of the arresting agency” and “any peace officer” to the list of authorities who may transport children to and from OJA detention. This amendment also increases the rates for transporting and feeding the children during transportation.

HB3171 Effective: November 1, 2022

Drones.

New Law. This bill creates Title 21 O.S. 1743 which makes it a crime to do certain things with one’s unmanned aircraft system (UAS) or drone. No trespassing with your drone to eavesdrop or surveil. No secretly placing your drone without consent on another’s private property to observe, photograph, record, amplify, or broadcast sounds or events, etc. Creepy drone acts under this new law will be misdemeanors. Exceptions allowed for unintentional violations of the new law when conducted bona fide business or bona fide government activity.

HB4194 Effective: November 1, 2022

Criminal Procedure - Bail Setting in Domestic Violence Cases – Patterns of Abuse

This act amends Title 22 O.S. § 1101. The section includes the procedures and standards judges are to follow when setting bail. The change in law adds a category of **individuals who may be denied** bail with the addition of the following paragraph:

“E. If the person was arrested for any crime provided for in the Protection from Domestic Abuse Act or a violent crime provided for in Section 571 of Title 57 of the Oklahoma Statutes, the court shall be responsible for assessing prior patterns of abuse and shall present written findings on the bail amount.”

HB4224 Effective: November 1, 2022

Crimes – Human Trafficking

This act amends Title 21 O.S. § 748 which addresses human trafficking. Youthful offenders and juvenile delinquent defendants are added to the class of individuals who may claim the affirmative defense of being a victim of human trafficking at the time of their alleged offenses. Here is the language:

“D. It is an affirmative defense to prosecution for a criminal, youthful offender, or delinquent offense that, during the time of the alleged commission of the offense, the defendant or alleged youthful offender or delinquent was a victim of human trafficking.”

Also:

“2. The minor shall not be subject to juvenile delinquency proceedings or child-in-need-of-supervision proceedings for prostitution offenses or misdemeanor or nonviolent felony offenses committed as a direct result of being a victim of human trafficking.”

And:

“C. No child who is a victim of human trafficking provisions shall be subject to juvenile delinquency or criminal proceedings for the offenses described in subsection A of this section which occurred as a result of the child being a victim of human trafficking.”

HB 4373 Effective: November 1, 2022

Crimes – Burglary - Cars

This act amends Title 21 O.S. § 1435 to add stealing items attached to vehicles (tires, catalytic converters, etc.) as actions constituting third degree burglary. The amendment keeps the five (5) year range of punishment and adds a potential fine of up to \$5,000.

SB217 Effective: November 1, 2022

Youthful Offender Act

This act amends Title 10A O.S. § § 2-5-201, 2-5-202, 2-5-203, 2-5-204, and 2-5-205. This is a substantial reworking of the Youthful Offender Act.

Notable changes:

For offenses committed after November 1, 2022 “the state shall not base the timing of the filing of any charges solely on the applicability of the Youthful Offender Act;”

“No older youth should be deemed ineligible or denied consideration as a youthful offender who is otherwise lawfully eligible based upon the age of the youth being seventeen (17) years, but it is the intent of the Legislature that such youthful offender shall not remain in the custody or under the supervision of the OJA beyond the youthful offender's maximum age of eighteen (18) years and six (6) months or until nineteen (19) years of age if jurisdiction has been extended as provided in subsection D of Section 9 of this act. To deny access to an otherwise eligible older youth without cause is to circumvent the original intent of the Legislature in creating the Youthful Offender Act.”

A careful reading of this statutory change to the Youthful Offender Act is necessary.

SB924 Effective: November 1, 2022

Drivers Licenses – Human Trafficking

This act amends Title 47 O.S. § 6-205.2. DPS shall disqualify any person from operating a Class A, B or C commercial motor for life upon that person's final felony conviction for human trafficking while operating a commercial motor vehicle.

SB1152 Effective: November 1, 2022

This act amends Title 63 O.S. § 2-204. The amendment adds a couple of new benzodiazepines to the list of Schedule I substances.

SB1367 Effective: November 1, 2002

Medical Marijuana

This act amends Title 63 O.S. § 427.6. The act makes several changes to the MMA.

One change of note: This language was **added**.

Paragraph H: "3. Any person who shares less than three (3) grams of medical marijuana with an unauthorized person, without the transfer being for value or other consideration, shall not be subject to criminal prosecution but shall be subject to an administrative fine of Four Hundred Dollars (\$400.00)."

And this language was **removed**:

"J. Nothing in this section shall be construed to prevent the criminal prosecution, after the presentation of evidence and a finding beyond a reasonable doubt, of a licensed medical marijuana patient or caregiver, medical marijuana business or employee of a medical marijuana business who has diverted medical marijuana, medical marijuana concentrate or medical marijuana products to an unauthorized person with the intent or knowledge that the unauthorized person was to engage in the distribution or trafficking of medical marijuana, medical marijuana concentrate or medical marijuana products."

If this is your area of practice, you will need to read these and other amendments carefully.

SB1548 Effective: November 1, 2022

Criminal Procedure - Drug Court Act

This act amends Title 22 O.S. §§ 471.1 – 471.10

This act broadens the class of individual who may participate in drug court and establishes standards and procedures for admission to and administration of drug courts.

SB1569 Effective: November 1, 2022

Protection from Domestic Abuse Act

This act amends Title 22 O.S. § 60.14 to include protections for victims of human trafficking or child abduction.

SB1738 Effective: November 1, 2022

Death Penalty Procedure

This act amends Title 22 O.S. § § 1005, 1006, 1007, and 1008.

This act creates Title 22 O.S. § 1005.1. This act establishes a procedure and standard for determining the competency of death row inmates prior to execution.