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CITY ATTORNEY LAW LETTER

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Case Law

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There are several articles in this edition of C.A.L.L. which relate to domestic abuse. The first article found on page 12 helps answer the question of what constitutes a "dating relationship." Ark. Code Ann. §5-26-302 sets out the full definition of a dating relationship, however *Fuller v. State* goes further in its explanation. One important factor to remember when making a determination is that the relationship need not be sexual or monogamous to meet the definition of a dating relationship.

The second article, found on page 14, explains in detail Act 204 of 2007 in which the Arkansas General Assembly set out specific guidelines a law enforcement officer should consider in determining the predominate aggressor.

There are two other articles which relate to domestic abuse cases. The Importance of Pictures: *Bell v. State of Arkansas*, which is found on page 15, is about a child abuse case and the high value the court placed on photographs which assisted the prosecution in meeting its burden of proof at trial. New Laws: Interference with Emergency Communications, also found on page 15, covers the new law on interfering with emergency communications.

2007 Acts Affecting Law Enforcement

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Bluff Cemetery in Springdale

United States Supreme Court Holds Passenger in a Vehicle That is Stopped is Also Seized for Fourth Amendment Purposes

Facts from the Opinion: Early in the morning of November 27, 2001, California Deputy Sheriff Robert Brokenbrough and his partner saw a parked Buick with expired registration tags. In his ensuing conversation with the police dispatcher, Brokenbrough learned that an application for renewal of registration was being processed. The officers saw the car again on the road, and this time Brokenbrough noticed its display of a temporary operating permit with the number "11," indicating it was legal to drive the car through November. The officers decided to pull the Buick over to verify that the permit matched the vehicle, even though, as Brokenbrough admitted later, there was nothing unusual about the permit or the way it was affixed. Deputy Brokenbrough asked the driver, Karen Simeroth, for her license and saw a passenger in the front seat, Bruce Brendlin, whom he recognized as "one of the Brendlin brothers." He recalled that either Scott or Bruce Brendlin had dropped out of parole supervision and asked Brendlin to identify himself. Deputy Brokenbrough returned to his cruiser, called for backup, and verified that Brendlin was a parole violator with an outstanding no-bail warrant for his arrest. While he was in the patrol car, Deputy Brokenbrough saw Brendlin briefly open and then close the passenger door of the Buick. Once reinforcements arrived, Deputy Brokenbrough went to the passenger side of the Buick, ordered him out of the car at gunpoint, and declared him under arrest. When the police searched Brendlin incident to arrest, they found an orange syringe cap on his person. A pat down search of Simeroth revealed syringes and a plastic bag

of a green leafy substance, and she was also formally arrested. Officers then searched the car and found tubing, a scale, and other things used to produce methamphetamine.

Brendlin was charged with possession and manufacture of methamphetamine, and he moved to suppress the evidence obtained in the searches of his person and the car as fruits of an unconstitutional seizure, arguing that the officers lacked probable cause or reasonable suspicion to make the traffic stop. The trial court denied the suppression motion after finding that the stop was lawful and Brendlin was not seized until Brokenbrough ordered him out of the car and formally arrested him. Brendlin pleaded guilty, subject to appeal on the suppression issue, and was sentenced to four years in prison.

The California Court of Appeal reversed the denial of the suppression motion, holding that Brendlin was seized by the traffic stop, which they held unlawful. By a narrow majority, the Supreme Court of California reversed. The State Supreme Court noted California's concession that the officers had no reasonable basis to suspect unlawful operation of the car, but still held suppression unwarranted because a passenger "is not seized as a constitutional matter in the absence of additional circumstances that would indicate to a reasonable person that he or she was the subject of the peace officer's investigation or show of authority." Citation omitted.

The case was then appealed to the United States Supreme Court, who granted certiorari to decide whether a traffic stop subjects a passenger, as well as the driver, to Fourth Amendment seizure. 549 U.S. ____ (2007).

Decision by United States Supreme Court: The United States Supreme Court noted that the State conceded that the police had no adequate justification to pull the car over. The State argued, however, that the passenger was not seized and thus cannot claim that the evidence was tainted by the unconstitutional stop. The Court resolved the question by asking whether a reasonable person in Brendlin's position when the car was stopped would have believed himself free to "terminate the encounter" between the police and himself.

The Court held that in these circumstances, any reasonable passenger would have understood the police officers to be exercising control to the point that no one in the car was free to depart without police permission. "An officer who orders one particular car to pull over acts with an implicit claim of right based on fault of some sort, and a sensible person would not expect a police officer to allow people to come and go freely from the physical focal point of an investigation into faulty behavior or wrong doing. If the likely wrong doing is not the driving, the passenger will reasonably feel subject to suspicion owing to close association; but even when the wrong doing is only bad driving, the passenger will expect to be subject to some scrutiny, and his attempt to leave the scene would be so obviously likely to prompt an objection from the officer that no passenger would feel free to leave in the first place.

The Court also held it is reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation would not let people move around in ways that could jeopardize his safety. "In *Maryland v. Wilson*, 519 U.S. 408 (1997), we held that during a lawful traffic stop an officer may order a passenger out of the car as a precautionary measure, without

reasonable suspicion that the passenger poses a safety risk." In fashioning this rule, we invoked our earlier statement that "[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation." *Wilson, supra*, at 414 (quoting *Michigan v. Summers*, 452 U.S. 692, 702-703 (1981)).

The Court held Brendlin was seized from the moment Simeroth's car came to a halt on the side of the road, and it was error to deny his suppression motion on the ground that seizure occurred only at the formal arrest. The Court, in sending the case back to the California court, held it would be for the State court to consider in the first instance whether suppression turns on any other issue. The Court vacated the judgment of the California Supreme Court, and the case was remanded for further proceedings not inconsistent with the Court's opinion.

Case: This case was a unanimous decision of the United States Supreme Court decided on June 18, 2007. The case cite is *Brendlin v. California*, 551 U.S. ____ (2007).

Jeff Harper
City Attorney

United States Supreme Court Holds Los Angeles County Officers Did Not Violate Constitutional Rights of Occupants of Residence While Executing a Search Warrant

Facts from the Opinion: From September to December, 2001, Los Angeles County Sheriff's Department Deputy Dennis Watters investigated a fraud and identity

theft crime ring. There were four suspects of the investigation. One had registered a 9-millimeter Glock handgun. The four suspects were known to be African-Americans.

On December 11, Watters obtained a search warrant for two houses in Lancaster, California, where he believed he could find the suspects. The warrant authorized him to search the homes and three of the suspects for documents and computer files. In support of the search warrant an affidavit cited various sources showing the suspects resided at respondent's home. The sources included Department of Motor Vehicles reports, mailing address listings, an outstanding warrant, and an Internet telephone directory.

What Deputy Watters did not know was that one of the houses (the first to be searched) had been sold in September to a Max Rettele. He had purchased the home and moved into it three months earlier with his girlfriend, Judy Sadler, and Sadler's 17-year-old son, Chase Hall. All three, respondents herein, are Caucasians.

On the morning of December 19, Watters briefed six other deputies in preparation for the search of the houses. Watters informed them they would be searching for three African-American suspects, one of whom owned a registered handgun. The possibility a suspect would be armed caused the deputies concern for their own safety. Watters had not obtained special permission for a night search, so he could not execute the warrant until 7 a.m. See Cal. Penal Code Ann. § 1533 (West 2000). Around 7:15, Watters and six other deputies knocked on the door and announced their presence. Chase Hall answered. The deputies entered the house after ordering Hall to lie face down on the ground.

The deputies' announcement awoke Rettele and Sadler. The deputies entered their bedroom with guns drawn and ordered them to get out of their bed and to show their hands. They protested that they were not wearing clothes. Rettele stood up and attempted to put on a pair of sweatpants, but deputies told him not to move. Sadler also stood up and attempted, without success, to cover herself with a sheet. Rettele and Sadler were held at gunpoint for one to two minutes before Rettele was allowed to retrieve a robe for Sadler. He was then permitted to dress. Rettele and Sadler left the bedroom within three to four minutes to sit on the couch in the living room.

By that time the deputies realized they had made a mistake. They apologized to Rettele and Sadler, thanked them for not becoming upset, and left within five minutes. They proceeded to the other house the warrant authorized them to search, where they found three suspects. Those suspects were arrested and convicted.

Rettele and Sadler, individually and as guardians ad litem for Hall, filed a § 1983 suit against Los Angeles County, the Los Angeles County Sheriff's Department, Deputy Watters, and other members of the sheriff's department. Respondents alleged petitioners violated their Fourth Amendment rights by obtaining a warrant in reckless fashion and conducting an unreasonable search and detention. The District Court held that the warrant was obtained by proper procedures and the search was reasonable. It concluded in the alternative that any Fourth Amendment rights the deputies violated were not clearly established and that, as a result, the deputies were entitled to qualified immunity.

On appeal respondents did not challenge the validity of the warrant; they did argue that

the deputies had conducted the search in an unreasonable manner. A divided panel of the Court of Appeals for the Ninth Circuit reversed in an unpublished opinion. 186 Fed. Appx. 765 (2006). The majority held that

“because (1) no African-Americans lived in [respondents’] home; (2) [respondents], a Caucasian couple, purchased the residence several months before the search and the deputies did not conduct an ownership inquiry; (3) the African-American suspects were not accused of a crime that required an emergency search; and (4) [respondents] were ordered out of bed naked and held at gunpoint while the deputies searched their bedroom for the suspects and a gun, we find that a reasonable jury could conclude that the search and detention were ‘unnecessarily painful, degrading, or prolonged,’ and involved ‘an undue invasion of privacy,’ *Franklin v. Foxworth*, 31 F.3d 873, 876 (9th Cir. 1994).” *Id.*, at 766.

The case was appealed from the Ninth Circuit to the United States Supreme Court.

Decision by United States Supreme Court: The United States Supreme Court first noted that because respondents were of a different race than the suspects the deputies were seeking, the Court of Appeals held that [a]fter taking one look at [respondents], the deputies should have realized that [respondents] were not the subjects of the search warrant and did not pose a threat to the deputies’ safety.” *Ibid.* The United States Supreme Court opined that “we need not pause long in rejecting this unsound proposition. When the deputies ordered respondents from their bed, they had

no way of knowing whether the African-American suspects were elsewhere in the house. The presence of some Caucasians in the residence did not eliminate the possibility that the suspects lived there as well. As the deputies stated in their affidavits, it is not uncommon in our society for people of different races to live together. Just as people of different races live and work together, so to they might engage in joint criminal activity. The deputies, who were searching a house where they believed a suspect might be armed, possessed authority to secure the premises before deciding whether to continue with the search.”

“In *Michigan v. Summers*, 452 U.S. 692 (1981), this Court held that officers executing a search warrant for contraband may “detain the occupants of the premises while a proper search is conducted. *Id.*, In weighing whether the search in *Summers* was reasonable the Court first found that “detention represents only an incremental intrusion on personal liberty when the search of the home has been authorized by a valid warrant.” *Id.* at 703. Against that interest, it balanced “preventing flight in the even that incriminating evidence is found”; “minimizing the risk of harm to the officers”; and facilitating “the orderly completion of the search.” *Id.*, at 702-703; see *Muehler v. Mena*, 544 U.S. 93 (2005).”

“In executing a search warrant officers may take reasonable action to secure the premises and to ensure their own safety and the efficacy of the search.” Citation omitted. “The test of reasonableness under the Fourth Amendment is an objective one. *Graham v. Conner*, 490 U.S. 386, 397 (1989) (addressing the reasonableness of a seizure of the person). Unreasonable actions include the use of excessive force or restraints that cause unnecessary pain or are imposed for a

prolonged and unnecessary period of time. *Mena, supra*, at 100; *Graham supra*, at 396-399.”

The Court held that “the orders by the police to the occupants, in the context of this lawful search, were permissible, and perhaps necessary, to protect the safety of the deputies. Blankets and bedding can conceal a weapon, and one of the suspects was known to own a firearm, factors which underscore this point. The Constitution does not require an officer to ignore the possibility that an armed suspect may sleep with a weapon within reach. The reports are replete with accounts of suspects sleeping close to weapons.”

The Court further held that “the deputies needed a moment to secure the room and ensure that other persons were not close by or did not present a danger. Deputies were not required to turn their backs to allow Rettele and Sadler to retrieve clothing or to cover themselves with the sheets. Rather, “[t]he risk of harm to both the police and the occupants is minimized if the officers routinely exercise unquestioned command of the situation.” *Summers*, 452 U.S., at 702-703.”

The Court further opined that “this is not to say, of course, that the deputies were free to force Rettele and Sadler to remain motionless and standing for any longer than necessary. We have recognized that “special circumstances, or possibly a prolonged detention” might render a search unreasonable.” However, in this case there was no accusation that the detention was prolonged. “The deputies left the home less than 15 minutes after arriving. The detention was shorter and less restrictive than the 2-to 3-hour handcuff detention upheld in *Mena*.

See 544 U.S., at 100.” “And there is no allegation that the deputies prevented Sadler and Rettele from dressing longer than necessary to protect their safety. Sadler was unclothed for no more than two minutes, and Rettele for only slightly more time than that. Sadler testified that once the police were satisfied that no immediate threat was presented, “they wanted us to get dressed and they were pressing us really fast to hurry up and get some clothes on.” Deposition of Judy Lorraine Sadler in No. CV-0206262-RSWL (RNBX) (CD Cal., June 10, 2003), Doc. 26, Exh. 4., p. 55.”

The Court held that “the Fourth Amendment allows warrants to issue on probable cause, a standard well short of absolute certainty. Valid warrants will issue to search the innocent, and people like Rettele and Sadler unfortunately bear the cost. Officers executing search warrants on occasion enter a house when residents are engaged in private activity; and the resulting frustration, embarrassment, and humiliation may be real, as was true here. When officers execute a valid warrant and act in a reasonable manner to protect themselves from harm, however, the Fourth Amendment is not violated.”

Because the Court held that the respondents’ constitutional rights were not violated, the Court held “there is no necessity for further inquiries concerning qualified immunity.” *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The Court reversed the judgment of the Ninth U.S. Circuit Court of Appeals and remanded for further proceedings consistent with this opinion.

Case: This was a per curiam opinion of the United States Supreme Court decided May 21, 2007. The case cite as *Los Angeles*

County, California v. Rettele, 550 U.S. ____ (2007).

Jeff Harper
City Attorney

8th Circuit Upholds Qualified Immunity of Police Officer in Strip Search

Facts: On April 29, 2001, police officers of Brooklyn Center, Minnesota, received an anonymous tip that drugs were being sold from three identified rooms of a Motel 6. Officers Robert Bruce [Bruce], Garrett Flesland [Flesland], and Mike Reynolds went to the motel and knocked on the three doors. They received a response from only one room at first and when they were allowed into that room, they saw marijuana in the room. The officers obtained a guest list and Bruce called one of the two remaining rooms. Courtney Richmond [Richmond] answered the phone. Bruce did not identify himself and asked about buying drugs. Richmond hung up the phone. The officers went to Richmond’s room and Richmond came to the door and spoke to the officers through a partially opened door. Richmond stated his name was Tyrone Johnson. A check of that name revealed “no response”. Richmond then gave his real name and admitted having a warrant. The officers entered the room and arrested Richmond.

A search of Richmond revealed marijuana in his shirt pocket and over \$1,300 cash in his pants along with cell phones, pagers, and tear-offs. A computer check of Richmond’s real name revealed several felony narcotic arrests. Bruce told Richmond he believed he

may be concealing drugs and that he was going to check his “crotch area”. While Richmond was handcuffed, Flesland held him above the elbow to prevent his pulling away, while Bruce unbuckled Richmond’s pants and let them fall. Bruce then lowered Richmond’s boxers and visually inspected the area. Bruce noted that Richmond was clenching his buttocks. In testimony, Richmond stated that Flesland forcibly bent him over a table; Bruce testified that Richmond leaned forward on his own (and the Court seemed to believe Bruce’s testimony). Bruce stated he noticed a piece of tissue protruding from Richmond’s buttocks. Bruce put on a latex glove and with a quick swiping motion, avoiding touching Richmond’s skin, grabbed the corner of the tissue and threw it to the ground. The tissue contained 3.7 grams of cocaine.

In the state’s criminal prosecution the court suppressed the cocaine as fruit of an illegal search and the charges against Richmond were dismissed. Richmond filed this case against the police officers and the City of Brooklyn Center claiming damages under 42 U.S.C. § 1983. The case proceeded to jury trial where, although the jury found no excessive force was used, they found the strip search was not conducted in a reasonable manner and awarded Richmond nominal damages of \$35,000. Richmond moved for a new trial while Bruce moved to reduce the nominal award to \$1 and moved for judgment as a matter of law on his qualified immunity claim. The court reduced the award to \$1 but did not find qualified immunity. Both parties appealed.

Argument: “Qualified immunity protects a government official from liability in a section 1983 action unless the official’s conduct violated a clearly established

constitutional or statutory right of which a reasonable person would have known.” *Henderson v. Munn*, 439 F.3d 497, 501 (8th Cir. 2006). The test is to first determine whether the officer’s conduct violated a constitutional right. Then, secondly, it must be determined whether that right was clearly established at the time of the deprivation.

For the first prong of the test, the Fourth Amendment reasonableness of a strip search is determined by “the scope of the particular intrusion, the manner in which it is conducted, the justification for initiating it, and the place in which it is conducted.” *Bell v. Wolfish*, 441 U.S. 520, 559 (1979). It is undisputed that the search took place in Richmond’s motel room. With regard to justification, there was no challenge on appeal that the officers had reasonable suspicion to conduct a strip search. Also, the scope of the search, the visual inspection and removal were also well-established facts. The officers did not dispute on appeal; the jury’s finding that the strip search was conducted in an unreasonable manner.

For the second part of the test, a right is clearly established only if the contours of the right are so defined at the time of the incident that a reasonable officer in the defendant’s position would have understood that what he was doing violated the law. *Parks v. Pomeroy*, 387 F.3d 949, 957 (8th Cir. 2004).

Decision: The Court held that a reasonable officer in the defendant’s position would not have understood that the strip search of Richmond in his motel room would violate his constitutional rights. As the law existed in April, 2001, the search was conducted removed from public view. *See Franklin v. Lockhart*, 883 F.2d 654, 656 (8th Cir. 1989).

The search was conducted by officers of the same sex as the suspect. *See Roberts v. Rhode Island*, 239 F.3d 107 (1st Cir. 2001). And the search was performed in a hygienic fashion and not in a degrading or humiliating manner. *See Seltzer-Bey v. Delo*, 66 F.3d 961, 962 (8th Cir. 1995). The Court stated that although most strip searches are not performed in the field, the Fourth Amendment does not require officers to use the least intrusive method but permits a “range of objectively reasonable conduct.” *Shade v. City of Farmington*, 309 F.3d 1054, 1061 (8th Cir. 2002). The Court noted that the suspect could easily dispose of the evidence on the way to the police station. Therefore, Bruce was entitled to qualified immunity.

Case: This case cite is *Richmond v. City of Brooklyn Center*, 490 F.3d 1002 (8th Cir. 2007).

Note from Deputy City Attorney: Since the criminal case in this instance was dismissed because the evidence was suppressed, it should be a lesson that strip searches should only be conducted when necessary; and preferably in a controlled environment.

Brooke Lockhart
Deputy City Attorney

8th Circuit Upholds Prolonged Traffic Stop of Individual

Facts: On July 2, 2005, Nebraska State Patrol Trooper Greg Goltz [Goltz] placed signs along Interstate 80 warning drivers of an upcoming drug interdiction checkpoint that did not exist. He hoped that drivers

would exit the Giltner exit in response and engage in suspicious activity so he could make a traffic stop on the vehicle. Felipe DeJesus Gallardo [Gallardo] was driving on the Interstate, exited the highway, turned around in a driveway and then got back on the Interstate going the same way. Goltz noticed that Gallardo's vehicle did not have license plates, in violation of Nebraska state law.

Goltz turned on his lights which activated the vehicle's in-car camera and microphones. The entire encounter in the field was recorded. Goltz stopped Gallardo and, in English, told him why he stopped him. Gallardo spoke accented and broken English. Gallardo produced a Nebraska driver's license, a California identification card, and numerous documents for repairs on the vehicle. After looking at these repair invoices, Goltz determined that Gallardo had put around 39,000 miles on the truck in seven months. Goltz asked Gallardo to join him in his squad car while filling out paperwork. Goltz asked Gallardo about his travel plans, to which Gallardo stated he had a Nebraska license because he previously lived in Sioux City, Nebraska, but now lived in California. Gallardo stated he planned to stay in Sioux City for a few days to find a home because he had a job there and then he was going back to California.

The dispatcher acknowledged the license and identification cards were good and the vehicle was owned by Gallardo. The dispatcher also informed Goltz that Gallardo's address in California had been the site of a large methamphetamine bust two years earlier, but that Gallardo had no criminal record or warrants. Gallardo told Goltz that he had lived at the California address for 1 ½ years, and that he had applied for his vehicle license but it hadn't arrived yet.

Goltz returned Gallardo's paperwork to him and voided the ticket for the license plates. Gallardo then began to exit the squad car when Goltz asked if he "had a minute". Gallardo said yes and sat back down. Goltz informed Gallardo of the drug problems on the highway and then Goltz switched languages and asked if Gallardo had any guns or drugs in the vehicle, to which Gallardo responded "no". Goltz asked to search the vehicle and Gallardo agreed. Goltz, with seventeen years experience as a police officer, noticed an indentation in the engine's firewall area that had been repaired recently and he also noticed a fender that had been attached incorrectly using an electronic trunk-lock mechanism. Goltz suspected a hidden compartment was in the vehicle. Goltz arrested Gallardo and drove him to the station. Another trooper dismantled the part of the vehicle near the firewall and found thirty-one packages containing approximately seventy-eight pounds of cocaine.

At the station, Goltz attempted to inform Gallardo of the charges and his *Miranda* rights, but Gallardo expressed confusion. A Spanish-speaking agent from I.C.E. answered Gallardo's questions and read him the *Miranda* waiver form. Gallardo made several self-incriminating statements. The district court sentenced Gallardo to fifty-two months in prison, ordered forfeiture of the vehicle and the \$4,000 he had on him. Gallardo appealed arguing that the evidence and his statements should be suppressed.

Argument/Decision: Gallardo argued on appeal that he was unlawfully detained at the time of his consent to search since the reason for the traffic stop had ended and his paperwork was returned. The Court, however, determined that there was reasonable suspicion to prolong the stop due to the number of miles put on the vehicle in

the previous seven months, along with the officer's knowledge that California was a regular source of illegal drugs and Sioux City a known destination for drugs. The Court also found that the statement by Gallardo that he was going to find a place in Sioux City then return to California was not particularly credible. Also, the fact that there had been a large drug bust at Gallardo's address gave rise to the suspicion that he might be involved even though he stated he had not lived there at the exact time of the bust.

Gallardo also argued that his consent was not voluntary. The audio and video recording of the encounter provided the evidence needed to determine that the officer requested to search the vehicle and did not demand to search the vehicle. In fact, the Court determined that the encounter in the field was not inherently coercive due to the fact that Gallardo was not restrained in any way and due to the fact that Goltz, after voiding the citation, informed Gallardo of how to properly fill out paperwork after he received his license plates.

Gallardo also argued on appeal that the search exceeded the scope of his consent. But the Court determined that Gallardo did not put any qualifications on his consent to search. He was also not restrained in any way and sat in the front seat of the squad car, so he could have withdrawn his consent at any time, but made no effort to do so.

Finally, Gallardo argued that his statement to the officers should be suppressed. But, once again, the court found that once a Spanish-speaking officer answered Gallardo's questions and read him the *Miranda* waiver and that the *Miranda* waiver was in Spanish, Gallardo's waiver of his rights was voluntary and he had agreed

to answer questions without an attorney. The 8th Circuit upheld the conviction.

Case Citation: The case citation for this case is *U.S. v. Gallardo*, 06-3214 (8th Cir. 7-31-2007).

Note from Deputy City Attorney: While it is not exactly noted how long this stop took, it was at least 25 minutes. As we have previously discussed, a traffic stop can last longer if you have reasonable suspicion of other illegal activity. However, in Arkansas, it is advisable to ask for consent to search before returning paperwork and giving citations.

Brooke Lockhart
Deputy City Attorney

Fleeing Defendant Determined to Have Constructive Possession of Drugs

Facts: On January 26, 2003, Arkansas State Police Officer Jeff Thomas [Thomas] and his canine partner, Sida, were patrolling Interstate 40 in Miller County. Thomas observed a Ford Explorer with a Texas license plate cross the fog line and travel onto the shoulder on three occasions in less than a one-mile stretch. Thomas initiated a traffic stop. Both the driver, Martha Quirros Mojica [Mojica] and the passenger, Lorenzo Benitez [Benitez] produced their licenses. Mojica was the owner of the vehicle and she stated that Benitez was her brother-in-law and they were traveling to Arkansas; Benitez stated they were traveling to Indianapolis.

Thomas wrote a warning ticket for Mojica for improper lane usage but did not give it to

her at that time. The dispatcher informed Thomas the vehicle was Mojica's and that Mojica had no criminal history or warrants, but that Benitez did have a criminal history of weapons violations, terroristic threatening and drugs. Thomas then requested they both exit the vehicle and wait on the side of the road. Thomas requested permission from Mojica to search the vehicle and she consented. Thomas then walked Sida around the vehicle and Sida alerted several times on the vehicle. Thomas explained to Mojica and Benitez that this gave him probable cause to search the vehicle and that they were no longer free to leave the area. After a long search, Thomas, with the help of a pry bar, opened a false compartment in the rear of the vehicle. He found three large bundles wrapped in duct tape. Two of the bundles were cocaine and the third was heroin. The entire stop lasted almost two hours. After discovering the drugs, Thomas returned to where Mojica and Benitez had been to only find Mojica there. Benitez had fled.

Benitez was apprehended by Customs officials in Texas in October of 2004. Benitez, charged with two counts of possession of a controlled substance with intent to deliver, moved to suppress the evidence on grounds the search was unlawful. The trial court denied the motion and he was convicted and sentenced to two consecutive eighty-year terms in prison. Benitez appealed.

Argument/Decision: Benitez argued, first, that there was insufficient evidence to prove he was in possession of the drugs. He argued the drugs were not in plain view; he was not the owner of the vehicle; the drugs were not found near where he had been sitting; at the time of the stop, the officer had not noted any suspicious activity by Benitez; and there was no fingerprint

evidence linking him to the drugs. Benitez contended that the only things linking him to the drugs were that he had been riding in the vehicle, and that he had fled the scene.

While Arkansas courts have recognized constructive possession as sufficient possession of contraband, there must be some evidence that the accused had knowledge of the presence of the contraband in the vehicle. *Malone v. State*, 364 Ark. 256, (2005). The factors to be considered in cases involving vehicles occupied by more than one person are: (1) whether the contraband is in plain view; (2) whether the contraband is found with the person's personal effects; (3) whether it is found on the same side of the car seat as the accused or in close proximity to it; (4) whether the accused is the owner of the vehicle or exercised control over it; and (5) whether the accused acted suspiciously before or during arrest.

Although Thomas did not witness Benitez acting suspiciously during the stop, the Court determined there was sufficient evidence to link Benitez to the contraband. First, Benitez waited more than an hour while Thomas searched the vehicle, but did not flee until Thomas retrieved a pry bar from his squad car. When Benitez fled, he was a three-hour drive from home, late at night. He left his personal belongings and license and he left his family member by the side of the road. Testimony from Mojica was that Benitez "ran" from the scene. So, in this case, there is objective testimony to support the belief of the officer that Benitez had a connection to the drugs.

Next, Benitez challenged the search of the vehicle as an illegal search. However, since Benitez did not own the vehicle or have possession of the vehicle, Mojica did, and Mojica consented to the search; the Court

determined that Benitez did not have standing to challenge the search as unconstitutional. The conviction was upheld.

Case Citation: The case citation for this case is *Benitez v. State*, CA CR 05-1293 (Ark. App. 5-30-2007).

Brooke Lockhart
Deputy City Attorney

Arkansas Court of Appeals Reverses Conviction in Arson Case

Facts as set out in Opinion: After her home was destroyed by fire, Barbara Fowler (appellant) was convicted of arson, a Class Y felony, and sentenced to 120 months' imprisonment in the Arkansas Department of Correction. In a statement to police officers, which Fowler recanted at trial, she confessed to setting the fire. She gave officers a detailed description of how she carried out the act, complete with a diagram of the room where she set the fire. Several witnesses at trial testified that Fowler had stated her intentions to burn down the property or confessed her culpability after the fire.

The State also introduced evidence showing that Fowler was in bankruptcy and that her pending divorce would substantially reduce her annual income. The State also established that Fowler had discussed burning the house down for the "insurance money" and that just prior to the fire Fowler had stored many of her personal possession – especially items of sentimental value – in an off-site storage facility. Further, there was testimony that the night before her home burned she cleaned out her refrigerator

and pantry and gave the food to a friend. Finally, there was evidence that, before the fire, Fowler asked her son to remove items that his ex-wife was storing in the Fowler home, so they would no longer be on the property.

Fowler maintained that the State failed to offer corpus delicti proof of arson – proof that she actually set the fire. [The court noted in a footnote that corpus delicti is a Latin term, meaning "body of the crime," and in a legal vernacular it refers to the "act of the transgression." *See Black's Law Dictionary* (7th ed.).]

Decision by Arkansas Court of Appeals:

The Court noted that in arson, there are two components to corpus delicti – the fact of the loss (proof that the fire occurred) and the criminal agency of some person (proof that the fire did not ignite by accident). Further, there is a common law presumption that an unexplained fire was caused by accident. *See Johnson v. State*, 198 Ark. 871, 131 S.W.2d 934 (1939). Therefore, the State had the added burden of proving that the Fowler home "was burned by the willful act of some person criminally responsible for his acts, and not by natural or accidental cause." *Johnson*, 198 Ark. at 873, 131 S.W.2d at 935.

The Court held that at first blush, the remaining analysis of this case would appear remedial – it is clear that the home was burned by Fowler's willful act because she admitted as much. However, Arkansas law requires that Fowler's out of court confession requires more than Fowler's out of court confession. *See Thomas v. State*, 295 Ark. 29, 31, 746 S.W.2d 49, 50 (1988). "A confession of a defendant, unless made in open court, shall not warrant a conviction, unless accompanied with other proof that the offense was committed." The Court held

that the State was required to prove “other proof” that the offense was committed. *Id.* Thus, the Court noted that they were left to consider whether the State produced sufficient evidence – without Fowler’s confession – to overcome the common law presumption against arson and prove that the fire did not accidentally ignite.

On this issue, the Court noted that an attempt to show the requisite “other proof” was established at trial, the State points us to evidence showing many suspicious acts and circumstances preceding the fire, including Fowler’s financial distress, her off-site storage of sentimental items, and her distribution of personal and food items the evening before the fire. However, the State offers no “other proof” showing that Fowler actually undertook the act of igniting a fire. “The fire investigator was unable to independently identify the fire’s point of origin or establish that the fire was intentionally set. The investigator and the electrician who serviced the home were unable to definitively rule out the possibility of electrical malfunction. Further, there was no proof that the fire was fueled by an accelerant or other flammable substance.”

The Court opined that although the Court held that “although we are satisfied that the State presented ample evidence to support a conclusion that Fowler *intended* to burn her house down, without Fowler’s supporting confession, the State failed to carry its burden of proving that Fowler *actually* carried out the act. The Court then noted that in the *Johnson* case, Chief Justice Griffin Smith questioned the seemingly absurd effect of requiring “other proof” that a fire was intentionally ignited after a defendant had confessed his culpability in the arson. Smith noted that although it was “possible – perhaps probable – that the defendant’s confession was true ... it is more important

that the law’s symmetry be preserved than that a criminal be punished in a particular case.” *Johnson*, 198 Ark. 15 871, 131 S.W.2d at 935. The Court held that like the *Johnson* case, “we too must preserve the law’s symmetry.” Therefore, Fowler’s arson conviction was reversed and dismissed.

Note from City Attorney: This case shows that you can never take a conviction for granted. The Court held that because there is a common law presumption that an unexplained fire was caused by accident, this presumption has to be overcome by the State’s evidence. As noted in the opinion, the investigator was unable to identify the fire’s point of origin or establish that the fire was intentionally set; there was no proof that the fire was fueled by an accelerant or other flammable substance; and the investigator and electrician who serviced the home were unable to definitively rule out the possibility of electrical malfunction.

Case: This case was decided by the Arkansas Court of Appeals on June 20, 2007. The case cite is *Fowler v. State*, CACR06-943 (6-20-2007).

Jeff Harper
City Attorney

What Constitutes a “Dating Relationship?” *Fuller v. State of Arkansas*

The domestic battery third statute, §5-26-305, states that a person can be charged with domestic battery for purposefully or recklessly causing injury to “a household or family member.” “Family or household member,” includes people that have in the past, or are currently in a “dating relationship”. (See Ark. Code Ann. §5-26-

302) The statute defines a “dating relationship” as follows:

(1)(A) "Dating relationship" means a romantic or intimate social relationship between two (2) individuals that is determined by examining the following factors:

(i) The length of the relationship;

(ii) The type of the relationship; and

(iii) The frequency of interaction between the two (2) individuals involved in the relationship.

(B) "Dating relationship" does not include a casual relationship or ordinary fraternization between two (2) individuals in a business or social context.

The “dating relationship” definition assists an officer in determining what information to obtain to decide if the relationship was or is a dating relationship under the statute. In *Fuller v State*, CACR06-1291, (June 20, 2007), the Arkansas Court of Appeals further explained what meets the definition of a dating relationship under the domestic battery statute.

In *Fuller*, Robert Lee Fuller was convicted of third degree domestic battery and sentenced to probation for one year and a \$300 fine. On appeal, Fuller’s sole argument was that the evidence was insufficient to prove that he and the victim, Vonetta Henderson, were in a “dating relationship” under the domestic battery statute. The evidence presented at trial was that Fuller and Henderson had a romantic relationship from September 2004 through February 2005. The parties spent time outside of work together, they went to eat and the movies

together, spent the night together, had sexual relations “multiple times” and spent time together in the presence of Henderson’s children.

Fuller argued it could not have been a “dating relationship” because Henderson was married at the time of their relationship, there was insufficient evidence of the frequency of their interactions and Henderson did not state precisely how often she and Fuller had sexual relations.

In upholding the domestic battery conviction and finding that there was a dating relationship, the Court of Appeals stated that, “the legislature has expressly included a broad definition of “family or household member” to include “dating relationships” based on three factors, including “type.” “Here the relationship was a romantic one that lasted several months and included trips to the movies, dinner, overnight visits, and multiple instances of sexual relations.” The Court also held that there is no authority to show why an adulterous relationship does not come under statute. Most notably, the Court specifically held that a sexual relationship is not necessary for a relationship to come under the domestic battery statute. The Court stated that, “a dating relationship need not be sexual; under the statutory language it may be “romantic or intimate social relationship.”

In making a charging decision please get the information necessary from the victim to determine if the relationship could be construed to be a dating relationship under the statute. Remember the relationship need not be sexual or monogamous to meet the definition of dating relationship.

Amber Roe
Deputy City Attorney

Act 204 of 2007 – The Arkansas General Assembly Provides Guidelines in Determining the Predominant Aggressor in Domestic Abuse Cases

In the 2007 Arkansas General Assembly, Act 204 was passed and went into effect on July 31, 2007. For the first time, the Arkansas General Assembly has set out for law enforcement officers what factors to consider in determining if one party to an act of domestic abuse is the predominate aggressor. The Act specifically provides that a law enforcement officer shall consider the following factors based upon his/her observation:

- a) Statements from parties to the act of domestic abuse and other witnesses;
- b) The extent of personal injuries received by parties to the act of domestic abuse;
- c) Evidence that a party to the act of domestic abuse acted in self-defense; or
- d) Prior complaints of domestic abuse if the history of prior complaints of domestic abuse can be reasonably ascertained by the law enforcement officer.

The Act further provides that a law enforcement officer may consider any other relevant factors when determining if one party to an act of domestic abuse is the predominant aggressor.

Although it is my opinion in the past that

Springdale police officers have considered these factors in determining the predominant aggressor, specific factors are now set out in the law.

The Act further provides that when a law enforcement officer has probable cause to believe a person that is a party to an act of domestic abuse is the predominant aggressor and the act would constitute a felony or misdemeanor under Arkansas law, the law enforcement officer shall arrest the person who was the predominant aggressor with or without a warrant if the law enforcement officer has probable cause to believe that the person has committed the act of domestic abuse within the preceding four hours, or within the preceding twelve hours for cases involving physical injury as defined by Ark. Code Ann. §5-1-102, even if the incident did not take place in the presence of the law enforcement officer. The Act provides that the arrest with or without a warrant of the person who was the predominant aggressor shall be considered the preferred action by the law enforcement officer if there is reason to believe that there is an imminent threat of further injury to any party to the act of domestic abuse and the law enforcement officer has probable cause to believe the person has committed the act of domestic abuse within the time frame set out previously.

Finally, the law provides that any law enforcement officer acting in good faith and exercising due care in making an arrest for domestic abuse shall have immunity from civil liability.

Nothing really new has changed except the Arkansas General Assembly has now set out specific guidelines for the law enforcement

officer to use in determining the predominant aggressor. If you have any questions concerning the Act, please do not hesitate to contact our office.

Jeff Harper
City Attorney

**The Importance of Pictures:
*Bell v. State of Arkansas***

A recent Court of Appeals case reiterates the vast impact pictures have in battery cases. In *Bell v State*, CACR06-1286, June 20, 2007, Richard Bell Jr. was convicted of domestic battery first degree for scalding the skin off of a 15-month-old child's feet. At trial Detective Steven Caudill with the Blytheville police department introduced photos taken of the skin that had been burned off the child's feet, and Officer Justin Moody with Blytheville police department, described how he had collected the burnt skin off the bathroom floor.

On appeal the Court reviewed the pictures and stated,

“The photographs graphically depict the gruesome degloving of the child's feet. The admission of the photographs was not challenged at trial nor is it challenged on appeal. The depiction of the child's injuries evidenced in the photographs obviated the need for more extensive testimony regarding the severity of the injuries or the fact that the seriousness of the injuries was plain to an observer. This photographic evidence exemplifies the reasons underlying the admissibility of photographs to aid the fact finder in reaching its determinations.”

The Court essentially stated that the photos speak for themselves and the child's level of suffering was clear by the photographs. Because the photos were so graphic in and of themselves they, along with the defendants different versions of events from the night of the injury, assisted the trial court in determining the defendant had the requisite mental state to find him guilty of the crime.

This case is important to officers because it demonstrates the high value the court places on photographs in assisting the state in meeting its burden of proof at trial. The victim in this case could not speak for himself but these officers by taking photos and doing good investigative work made sure justice was served.

Amber Roe
Deputy City Attorney

**New Laws: Interference with
Emergency Communication**

There are several new laws that went into effect on July 31, 2007. One of the new laws is entitled Interference with Emergency Communication. This new law is found under Arkansas Code Annotated §5-60-124 and §5-60-125 and states as follows:

§5-60-124. Interference with emergency communication in the first degree.

(a) A person commits the offense of interference with emergency communication in the first degree if he or she knowingly displaces, damages, or disables another person's telephone or other communication device with

the purpose of defeating the other person's ability to request with good cause emergency assistance from a law enforcement agency, medical facility, or other government agency or entity that provides emergency assistance.

(b) Interference with emergency communication in the first degree is a Class A misdemeanor.

§5-60-125. Interference with emergency communication in the second degree.

(a) A person commits the offense of interference with emergency communication in the second degree if he or she recklessly prevents, interrupts, disrupts, impedes, or interferes with another person's attempt to request with good cause emergency assistance from a law enforcement agency, medical facility, or other government agency or entity that provides emergency assistance.

(b) Interference with emergency communication in the second degree is a Class B misdemeanor.

This statute is brand new, so case law does not yet exist. However, it appears from the statutory language that if the suspect knowingly interferes with the phone call and the suspects purpose in interfering is to stop the victim from calling to obtain emergency help, the suspect should be charged with an A misdemeanor under § 5-60-124. However, if the suspect is merely reckless in interfering, even if his or her purpose is not to impede the call for help, the suspect should be charged with a B misdemeanor under §5-60-125.

The most probable, but certainly not the only circumstance, in which charges under this statute will arise is in domestic cases. Often victims of domestic violence will attempt to grab a phone to contact police and the abuser will either take the phone away, or throw the phone causing it to break. In charging under the new statute the officer will need to get a detailed description of the victim's attempt to contact authorities or a medical facility and, if applicable, pictures of the damaged or broken phone.

Amber Roe
Deputy City Attorney

Note from City Attorney: There have already been eight persons arrested for interference with emergency communications as of September 15, 2007. Seven of these eight cases were domestic abuse incidents. Since the law just went into effect on July 31, 2007, this shows that it is not uncommon for domestic abuse offenders to interfere with emergency communications of the victim.

One other thing to remember is that this particular law (interference with emergency communications) does not authorize a probable cause arrest without a warrant like acts of domestic abuse do when they are committed in the time frames set out in the law. Therefore, if this is your only charge and you are on the scene of the incident, the offender would just need to be cited. If, however, as in most of the cases, you have arrested the offender on a domestic abuse crime, this charge can be added with a citation to the other charge of domestic abuse.

Jeff Harper
City Attorney

“Mini-Motorcycles” and Mopeds: What are the Rules?

Recently, a number of questions have arisen regarding “mini-motorcycles”, “pocket bikes”, and mopeds. These look like motorcycles, only they are much, much smaller. I have had several officers ask about the legality of these mini-motorcycles and mopeds, and which laws apply to their operation.

The laws of the State of Arkansas specifically define “motorized bicycle”, “motor-driven cycle”, and “motorcycle”. Under Arkansas law, a moped or a “pocket bike” would be considered a “motorized bicycle”, if it has an automatic transmission and a motor of not more than 50cc. It would be considered a “motor-driven cycle” if it has no more than 250cc. Obviously, over 250cc would be considered a “motorcycle”. Thus, mopeds and “pocket bikes” would more than likely be considered a motorized bicycle because mopeds and “pocket bikes” usually have an automatic transmission of not more than 50cc (usually 47cc or 49cc).

Can mopeds/“pocket bikes” be legally operated on the streets and highways of our city?

Yes, there is no state statute or ordinance preventing these “pocket bikes” from being operated on the streets of the City of Springdale. The only exception is contained in Ark. Code Ann. §27-20-111(b), which provides that it shall be unlawful for any person to operate a motorized bicycle upon interstate highways, limited access highways, or sidewalks. In other words, mopeds and “pocket bikes” would not be allowed on I-540.

Must the operator of a moped or “pocket bike” obey the rules of the road?

Yes. Arkansas Code Annotated §27-20-111(a) provides that the operators of motorized bicycles shall be subject to all state and local traffic laws, ordinances, and regulations. Furthermore, §27-20-111(b) specifically prohibits the operation of a motorized bicycle on sidewalks.

Must the operator of a moped or “pocket bike” have a drivers' license?

Yes, the operator must either have a drivers' license or a certificate to operate a motorized bicycle. Ark. Code Ann. §27-20-111(c) provides that it is unlawful to operate a motorized bicycle upon a public street or highway unless the person has a certificate to operate such a vehicle. However, if a person already has a motor-driven cycle license, a motorcycle license, or a Class A, Class B, Class C, or Class D drivers' license, then the person shall not be required to obtain a certificate. A certificate is required for any person over the age of 10 that does not otherwise have a license. The statute also provides that a certificate shall not be issued to a person under 10 years of age. Thus, the statute seems to prohibit the operation of motorized bicycle by a child under the age of 10. In other words, “pocket bike” riders must have a valid drivers' license, a motorcycle endorsement, or a certificate to operate a motorized bicycle.

Must the operator of a “pocket bike” wear safety equipment?

Yes, Ark. Code Ann. §27-20-104(b) provides that drivers and passengers of mopeds and “pocket bikes” who are under 21 are required to have the same safety equipment as drivers and passengers under 21 on motorcycles or motor driven cycles. This requirement went into effect in August of 2005. As such, riders of mopeds or “pocket bikes” are required to wear

protective eyewear, and are required to wear a helmet if under 21 years of age.

Must the owner of a “pocket bike” register it with the State?

No. Ark. Code Ann. §27-20-105 only requires that motorcycles and motor-driven cycles be registered, not motorized bicycles. Thus, a moped or “pocket bike” does not need to be registered.

Must the operator of a “pocket bike” provide proof of liability insurance?

The provisions of the Motor Vehicle Safety Responsibility Act (Ark. Code Ann. §27-19-101, *et seq.*) apply only to those vehicles subject to registration under the motor vehicle laws of this state. As mentioned earlier, motorized bicycles are not required to be registered, so they would fall outside these provisions. This conclusion was set forth in a 1992 Attorney General’s Opinion (92-118). However, motor-driven cycles and motorcycles are required to have insurance. Thus, it would appear that mopeds and “pocket bikes” are not required to have liability insurance.

Having a good understanding of these basic rules and regulations will prevent confusion when dealing with the operator of a moped or “pocket bike”.

Ernest Cate
Senior Deputy City Attorney

No “Usable or Measurable” Amount of Contraband Leads to Reversal of Conviction

Facts: Two police detectives, after receiving information about drug activity,

went to Kathleen Ann Porter’s [Porter] duplex. When the detectives questioned her she got upset and stated that any “stuff” they were looking for was gone. She then led them to the bedroom and pulled a plastic bag out of a shirt pocket and gave it to them. In the bag were three coin-type plastic bags that contained an “off white, kind of brownish powdery substance” according to the detective.

The State’s forensic chemist could not weigh the residue. The chemist washed out the residue with a methanol solution and tested the resulting mixture which tested positive for methamphetamine. Neither the chemist nor any other witness testified that the bags contained a usable amount of a controlled substance.

At trial Porter moved for a judgment of acquittal which was denied. She was convicted of possession of methamphetamine and appealed.

Argument/Decision: The possession statute was interpreted in the case of *Harbison v. State*, 302 Ark. 315 (1990). *Harbison* determined that the rule for residue cases is that the legislature intended to prohibit the possession of a controlled substance to prevent the use of and trafficking in a controlled substance and that possession of a trace amount or residue which cannot be “used” contributes to neither evil. *Harbison*, 302 Ark. at 322.

In this case, Porter effectively possessed bags “which had had [methamphetamine in them], and that is not a crime.” *Harbison*, 302 Ark. at 323. Possession of a container with a trace amount or residue of contraband that is neither measurable nor usable is not possession of a controlled substance under Ark. Code Ann. § 5-64-401.

The conviction was reversed and dismissed.

Case Citation: The case citation for this case is *Porter v. State*, CA CR 06-1114 (Ark.App. 5-30-2007).

Brooke Lockhart
Deputy City Attorney

2007 Acts Affecting Law Enforcement

The following is a summary of Acts passed by the 2007 Arkansas General Assembly, which may affect law enforcement officers. We have divided the Acts into categories: General Criminal Laws, Laws Related to Domestic Abuse, Drug Laws, Laws Related to Sex Offenders, Traffic Laws, and Laws of General Interest to Law Enforcement. These laws were the subject of classes put on by our office for the Springdale Police Department on July 26th and July 30th, 2007. If any officers desire to access any of the Acts listed, you can go to www.arkleg.state.ar.us, click on "Acts," then click on "Full Text of the Act" and enter the Act number.

All Acts with an emergency clause are already in effect, and those Acts without an emergency clause went into effect on July 31, 2007. However, there are a few laws that will not take effect until a later time, and those laws have the effective date set out in the summary. If you should have any questions, please contact our office.

General Criminal Laws:

Act 38 – “An Act to Increase the Penalty Classification of the Offenses of Indecent Exposure and Internet

Stalking of a Child under Certain Circumstances”

This Act amends Ark. Code Ann. §5-27-306, to make the offense of internet stalking of a child a Class B felony under certain circumstances. Previously, it was a Class C felony. The Act should be consulted for the details. This Act also amends the indecent exposure statute, Ark. Code Ann. §5-14-112, to provide enhanced penalties for the 4th or subsequent conviction of indecent exposure. This Act contained an Emergency Clause and went into effect on January 30, 2007.

Act 83 – “An Act to Repeal Arkansas Code §5-73-121 Concerning the Offense of Carrying a Knife as a Weapon”

This Act repeals Ark. Code Ann. §5-73-121, pertaining to the offense of carrying a knife as a weapon. Thus, “carrying a knife as a weapon” will no longer be a separate criminal offense. However, possession of a knife could still be prosecuted under Ark. Code Ann. §5-73-120, “carrying a weapon,” if the knife is possessed “with the purpose to employ it as a weapon”. This Act contains no Emergency Clause.

Act 85 – “An Act to Enhance the Penalty for Financial Identity Fraud under Certain Circumstances; to Create the Offense of Nonfinancial Identity Fraud; to Amend Arkansas Code §5-37-227 to Include Provisions Concerning Restitution and Venue”

This Act 1) creates the offense of non-financial identity fraud, which is defined as knowingly obtaining another persons identifying information without their consent and using the identifying

information for any unlawful purpose, including to avoid apprehension or criminal prosecution, to harass another person, or to obtain or to attempt to obtain a good, service, real property, or medical information of another person. Non-financial identity fraud is a Class D Felony, unless the victim is disabled or elderly, in which case it is a Class C Felony. This Act 2) also increases the penalty for financial identity fraud to a Class B Felony when the victim is disabled or elderly, otherwise financial identity fraud is a Class C Felony. This Act 3) provides that criminal prosecution for financial identity fraud and non-financial identity fraud may be in either the county where the violation occurred, in the county where the victim resides, or in the county where property that was fraudulently used or attempted to be used was located. This Act 4) provides that a Court may order restitution in these types of criminal cases and specifies what types of restitution may be awarded. This Act contains no Emergency Clause.

Act 111 – “An Act to Remove the Duty to Retreat Prior to the Use of Deadly Force under Certain Circumstances”

This Act amends Ark. Code Ann. §5-2-607 by providing that a person who is “on the curtilage surrounding the person’s dwelling” does not have a duty to retreat prior to using deadly force. In other words, the right to use deadly force now exists not just inside a person’s dwelling, but in the cartilage as well. The term “curtilage” is defined as “the land adjoining a dwelling that is convenient for family purposes and habitually used for family purposes, but not necessarily enclosed, and includes an outbuilding that is directly and intimately connected with the dwelling and in close proximity to the

dwelling”. This Act contains no Emergency Clause.

Act 163 - “An Act to Increase the Penalty Classification for Obstructing Governmental Operations Under Certain Circumstances”

This Act amends Ark. Code Ann. §5-54-102, the obstructing governmental operations statute, to make a second or subsequent offense of falsely identifying oneself to a law enforcement officer a Class A Misdemeanor. Previously, it was a Class C Misdemeanor. This Act contains no Emergency Clause.

Act 165 - “An Act Concerning Self-Service Displays of Cigarette Products”

This Act amends Ark. Code Ann. §5-27-227, which is the statute which prohibits the providing of tobacco products to minors, by making it unlawful for any person to sell or distribute a cigarette product by use of a self-service display. Exceptions are made for a vending machine or a retail tobacco store. This Act contains no Emergency Clause.

Act 187 - “An Act to Further Define the Criminal Act of Voyeurism”

This Act amends Ark. Code Ann. §5-16-101, which is the statute setting forth the crime of video voyeurism, by making it a Class B Misdemeanor to “knowingly use a camcorder, motion picture camera, photographic camera of any type, or other equipment that is concealed or disguised to secretly or surreptitiously videotape, film, photograph, record, or view by electronic means a person that is covered with clothing and for which the person has a reasonable expectation of privacy, without the person’s

knowledge or consent, and under circumstances in which the person has a reasonable expectation of privacy. The exceptions currently existing in this statute also apply to this amendment, primarily having to do with security monitoring. This Act also amends Ark. Code Ann. §5-16-102, which contains the definitions for the offense of voyeurism, by adding “or breast of a female” to the definition of “nude or partially nude”. This Act contains no Emergency Clause.

Act 248 - “An Act to Increase the Penalty Classification for and to Clarify the Offense of Transportation of Minors for Prohibited Sexual Conduct”

This Act amends Ark. Code Ann. §5-27-205, which is the “transportation of minors for prohibited sexual conduct” statute, but increasing the penalty to a Class A Felony (previously, it was a Class C Felony). This Act contains no Emergency Clause.

Act 258 - “An Act to Create the Offense of Unlawful Dog Attack; to Protect the Health and Safety of the General Public”

This Act creates a new criminal offense, called “unlawful dog attack” and is codified at Ark. Code Ann. §5-62-125. A person commits the offense of unlawful dog attack if the person owns a dog that the person knows or has reason to know has a propensity to attack, cause injury, or endanger the safety of other persons without provocation; the person negligently allows the dog to attack another person; and, the attack causes death or serious physical injury to the person attacked. Unlawful dog attack is a Class A Misdemeanor. The statute also authorizes an award of

restitution for damages caused by the attack. This Act contains no Emergency Clause.

Act 265 - “An Act to Increase the Penalty Classification for the Offense of Destruction or Removal of a Cemetery Marker or Grave Marker”

This Act amends Ark. Code Ann. §5-39-401 to increase the penalty for the criminal offense of “destruction or removal of a cemetery or grave marker” to a Class C Felony. Previously, it was a Class D Felony. This Act contains no Emergency Clause.

Act 266 - “An Act to Increase the Penalty Classification for Defacing Objects of Public Respect under Certain Circumstances”

This Act amends Ark. Code Ann. §5-71-215 to increase the penalty for the criminal offense of “defacing objects of public respect” to a Class D Felony if the object damaged is a cemetery or burial monument and the damage is less than \$500, to a Class C Felony if the object damaged is a cemetery or burial monument and the damage is between \$500 and \$2,500, and to a Class B Felony if the object damaged is a cemetery or burial monument and the damage is in excess of \$2,500. This Act contains no Emergency Clause.

Act 283 - “An Act to Improve the Enforcement of Adult Maltreatment Protection Laws by Amending the Adult Maltreatment Custody Act Regarding the Definition of Abuse and Provisions Regard Emergency Custody, Probable Cause Hearings, and the Availability of Custody and Protective Services Records; to

**Amend the Adult and Long-Term
Care Facility Resident
Maltreatment Act”**

This Act amends Ark. Code Ann. §9-20-103 and §12-12-1703, to amend the definition of “abuse” in the Adult Maltreatment Custody Act and in the Long-Term Care Facility Resident Maltreatment Act. This Act also amends Ark. Code Ann. §9-20-114 to give a law enforcement official the additional authority to take a maltreated adult into emergency custody if the adult has a mental impairment or a physical impairment that prevents the maltreated adult from protecting himself or herself from imminent danger to his or her health or safety. This Act also amends Ark. Code Ann. §12-12-1718 to make it a Class C Misdemeanor to disclose to any person, other than those authorized by statute, any screened out, pending, and unfounded reports compiled pursuant to the Adult and Long-Term Care Facility Resident Maltreatment Act. The Act should be consulted for the details. This Act contains no Emergency Clause.

**Act 346 - “An Act to Enhance the
Penalties for Obscenity Offenses
under Certain Circumstances”**

This Act amends Ark. Code Ann. §5-4-201, to provide that a person convicted of certain obscenity offenses may be sentenced to pay a fine of up to two hundred fifty thousand dollars (\$250,000) if the person has derived pecuniary gain (i.e., received income, benefit, property, money, or anything of value) from the commission of the offense. The Act should be consulted for the exact obscenity offenses included. This Act contained an Emergency Clause and went into effect on March 19, 2007.

**Act 363 - “An Act Concerning Employees
of or Persons Contracting with****Agencies Providing Services to the
Department of Corrections or
Other Entities”**

This Act amends Ark. Code Ann. §5-14-126, the sexual assault third degree statute, to include persons “employed or contracted with or otherwise providing services, supplies, or supervision to an agency maintaining custody of inmates, detainees, or juveniles, and the victim is in the custody of” ADC, DCC, DHS, or any city or county jail. This Act contains no Emergency Clause.

**Act 388 - “An Act to Provide for
Charitable Bingo and Raffles”**

This Act creates a new section of statutes, codified at Ark. Code Ann. §23-114-101, *et seq.* and known as the Charitable Bingo and Raffles Enabling Act. This Act sets forth the regulations and conditions by which a qualifying organization may conduct bingo games and/or raffles. The Act defines those organizations which are eligible to conduct these games, limits bingo sessions to five (5) hours in any given day, requires that a license be obtained from the State, limits the amount of prizes made available in a bingo game or through a raffle, and provides penalties for violations of the Act. This Act also amends Ark. Code Ann. §5-66-118, the statute making lotteries a criminal offense, by increasing the maximum fine to \$10,000 for violating this statute (previously, was \$500 maximum fine), and making a second or subsequent offense a Class D Felony. This Act contains no Emergency Clause.

**Act 465 - “An Act to Address County
Problems with Burn Bans; to
Amend the Section Concerning
Declaration of a Local Disaster
Emergency”**

This Act amends Ark. Code Ann. §5-38-310 to make it a Class A Misdemeanor to set on fire or cause to be set on fire any brush, forest, or other flammable material in violation of a burn ban unless the defendant was acting pursuant to a permit issued by chief executive of the political subdivision which issued the burn ban. This Act contains no Emergency Clause.

Act 531 - “An Act to Add Certain Relationships of Supervision and Trust to the Offense of Sexual Indecency with a Child”

This Act amends the “sexual indecency with a child” statute, Ark. Code Ann. §5-14-110, to include acts taking place with persons in certain relationships of trust with the minor. The Act should be consulted for the details. This Act contains no Emergency Clause.

Act 555 - “An Act to Increase the Penalty for the Offense of Keeping a Gambling House”

This Act amends Ark. Code Ann. §5-66-103, to make the offense of “keeping a gambling house” a Class D Felony. Previously, it was punishable by between 1 and 3 years in jail. This Act contains no Emergency Clause.

Act 579 - “An Act to Require Material Harmful to Minors to be Kept Behind Blinder Racks”

This Act amends Ark. Code Ann. §5-68-501, concerning the display of material harmful to minors, to provide that, unless material harmful to minors is not contained on the front cover, back cover, or binding of the displayed materials, such material must be kept behind “blinder racks” so that the lower two-thirds (2/3) of the material is not exposed to view. This Act also deletes the

requirement that such material be “segregated in a manner that physically prohibits access to the materials by a minor”. This Act contains no Emergency Clause.

Act 586 - “An Act to Amend the Child Maltreatment Act”

This Act amends Ark. Code Ann. §12-12-503 to amend the definition of “sexual abuse” to include the acts of “voyeurism” and “forcing listening to a phone sex line” by a caretaker to a person younger than eighteen (18) years of age. The Act also amends Ark. Code Ann. §12-12-509 to remove the requirement that the Department of Health and Human Services provide notification of any report of child maltreatment within five (5) business days to local law enforcement on an allegation of severe maltreatment. This Act also amends Ark. Code Ann. §12-12-510 to provide that the person conducting the investigation into the alleged child maltreatment shall have the right to obtain a criminal background check, including a fingerprint-based check in any national crime information database, on any subject of the report. The Act amends Ark. Code Ann. §12-12-516 to provide that a police officer may take a child into protective custody if the child is subjected to neglect (as that term is defined in Ark. Code Ann. §12-12-503) and the department assesses that the child or children are at substantial risk of serious harm such that the children need to be removed from the custody or care of the mother. This Act contains no Emergency Clause.

Act 594 - “An Act Amending Arkansas Law Concerning Notification of the County Coroner of Certain Deaths”

This Act amends Ark. Code Ann. §12-12-315, which contains the types of deaths for which the coroner must be notified, to include a death that poses a potential threat to public health or safety. The Act also requires the coroner to notify the Department of Health and Human Services in this type of death as well. This Act contains no Emergency Clause.

Act 622 - “An Act to Amend Arkansas Code §5-13-201 Concerning the Offense of Battery in the First Degree; to Increase the Penalty Classification for Battery in the First Degree if the Victim is Four (4) Years of Age or Younger under Certain Circumstances”

This Act amends the First Degree Battery statute, Ark. Code Ann. §5-13-201, to add that a person commits 1st Degree Battery if the person “knowingly causes serious physical injury to any person four (4) years of age or younger under circumstances manifesting extreme indifference to the value of human life”. The Act also provides that a violation of this part of the statute is a Class Y Felony. Otherwise, 1st Degree Battery is a Class B Felony.

Act 630 - “An Act to Create the Offense of Theft of Scrap Metal”

This Act creates a new statute, to be codified as Ark. Code Ann. §5-36-123, to create the criminal offense of Theft of Scrap Metal. Scrap metal is defined as copper, copper alloy, copper utility wire, any bronze, or any aluminum. The penalty for Theft of Scrap Metal is the same as Theft of Property, but the penalty may be enhanced if the person caused incidental damage to the owner of the scrap metal or to the property of the owner of the scrap metal and the damages are more than \$250. The penalty is also

enhanced if the person transported the scrap metal across state lines to sell or dispose of the scrap metal. The Act should be consulted for the details. This Act contains no Emergency Clause.

Act 632 - “An Act to Amend the Penalty Provisions Relating to Delivery of Worthless Checks”

This Act amends Ark. Code Ann. §5-37-305 to increase the felony threshold amount on hot checks from \$200.00 to \$500.00. This Act contains no Emergency Clause.

Act 654 - “An Act Amending Ark. Code Ann. §9-10-113 Concerning the Custody of a Child Born Outside of Marriage”

This Act replaces the words “custody of illegitimate child” with “custody of child born outside of marriage.” This statute still reads the same as to custody of a child born outside of a marriage. As far as legal custody of a child born to an unwed woman, legal custody of that child shall be in the woman giving birth to the child until the child reaches the age of 18 unless a court of competent jurisdiction enters an order placing the child in the custody of another party. This Act contains no emergency clause.

Act 669 - “An Act to Create the Offense of Interference with Custody; to Establish Procedures for the Department of Health and Human Services in Cases Involving the Offense of Interference with Custody”

This Act creates a new statute, to be codified at Ark. Code Ann. §5-26-503 and creates the criminal offense of Interference with Custody. This statute is in addition to the

already codified “interference with custody” statute which currently exists (Ark. Code Ann. §5-26-502), but the pre-existing statute only applied to “court ordered custody”. The new statute clarifies the circumstances under which a person may be charged with interference with custody. Interference with custody is a Class C Felony. The Act should be consulted for the details. This Act contains no Emergency Clause.

Act 670 - “An Act to Amend Arkansas Code §5-1-110 Concerning the Prosecution of Conduct Constituting more than One (1) Offense”

This Act amends Ark. Code Ann. §5-1-110, concerning criminal offenses for which a separate conviction and sentence are authorized, to provide that attempted capital murder and attempted first degree murder are separate offenses from any felony utilized as an underlying felony for the attempted capital murder or attempted first degree murder. This Act contains no Emergency Clause.

Act 680 - “An Act to Protect Women who Breast-Feed their Children; to Create a Cause of Action to Prevent Interference with the Breastfeeding of a Child”

This Act amends Ark. Code Ann. §5-14-112 to provide that a woman is not in violation of the indecent exposure statute if she breast-feeds her child in a public place or any place where other individuals are present. This Act creates a new statute, to be codified at Ark. Code Ann. §20-27-2001, to provide that a woman may breast-feed a child in a public place or any place where other individuals are present. This Act contains no Emergency Clause.

Act 693 - “An Act to Classify Theft of Building Material from a Permitted Construction Site as a Class B Felony”

This Act amends Ark. Code Ann. §5-36-103, the theft of property statute, to provide that it is a Class B Felony if the property stolen is building material obtained from a permitted construction site (defined as any location for which a building permit has been issued) and the value of the building material is \$500.00 or more. This Act contains no Emergency Clause.

Act 703 - “An Act to Implement the Findings of the Arkansas Legislative Task Force on Abused and Neglected Children; to Protect Child Victims of Abuse and Neglect; to Enhance the Confidentiality of Items that Depict the Sexual Exploitation of a Child by Classifying them as Contraband; to Require the Department of Arkansas State Police to Investigate all Cases of Severe Child Maltreatment; to Create Child Safety Centers; to Improve Operations of the Abuse and Neglect Hot Line; to Improve Enforcement of Child Abuse and Neglect Laws”

This Act amends Ark. Code Ann. §5-5-101 to amend the definition of “contraband” to include certain items dealing with the sexual exploitation of children. The Act also provides that these items shall not subsequently be retained by the law enforcement agency. The Act should be consulted for the details. This Act also creates a new section of statutes, to be codified at Ark. Code Ann. §9-5-101, and known as the Arkansas Child Safety Center Act, the purpose of which is to establish a

program that provides a comprehensive, multidisciplinary, nonprofit, and coordinated response to the investigation of sexual abuse of children and serious physical abuse of children in a child-focused and child-friendly facility known as a child safety center. The Act should be consulted for the details. This Act also amends Ark. Code Ann. §12-8-502 regarding the investigation of child abuse reports, and amends Ark. Code Ann. §12-12-507 regarding child abuse hotline reports. The Act should be consulted for the details. This Act also creates a new statute subsection, to be codified at Ark. Code Ann. §12-12-516(a)(3), to provide a mechanism whereby a sheriff or chief of police may place a child in a foster home. The Act should be consulted for the details. This Act contains no Emergency Clause.

Act 709 - “An Act to Increase the Penalty Classification for Battery in the First Degree if the Victim is a Law Enforcement Officer Acting in the Line of Duty” (Corporal Scott Baxter Law)

This Act amends Ark. Code Ann. §5-13-201, the first degree battery statute, to provide that first degree battery is a Class Y Felony if the injured person is a law enforcement officer acting in the line of duty. This Act contains no Emergency Clause.

Act 742 - “An Act to Protect the Confidentiality of Juvenile Records”

This Act creates a new statute, to be codified at Ark. Code Ann. §9-28-217, to set forth who a juvenile detention facility, a community based provider for the Division of Youth Services of the Department of Health and Human Services, or the Division

of Youth Services of the Department of Health and Human Services may release juvenile information to. Law enforcement is on the list, but the Act provides that it is a Class C Misdemeanor to subsequently disclose this juvenile information to someone not otherwise entitled to this information. The Act also provides that no information pertaining to a juvenile shall be released by a juvenile detention facility, a community-based provider for the Division of Youth Services, or the Division of Youth Services after the juvenile reaches eighteen (18) years of age unless the juvenile remains in the custody of the division, the juvenile consents, or a court order requires it. This Act contains no Emergency Clause.

Act 749 - “An Act to Streamline and Strengthen Nonferrous Scrap Metal Recordkeeping Requirements; to Assist Law Enforcement in Investigating Thefts; to Expand the Information Collected at the Point of Sale; Regulating Sales by Minors”

This Act amends Ark. Code Ann. §17-44-101, *et seq.*, dealing with scrap metal dealer record keeping requirements. This Act basically revamps this whole section of statutes. Ark. Code Ann. §17-44-102 sets forth the records which are required to be kept; Ark. Code Ann. §17-44-103 places restrictions on the purchase of certain items; Ark. Code Ann. §17-44-104 pertains to theft notification; and Ark. Code Ann. §17-44-105 deals with sales by minors. This Act also creates a new statute, to be codified at Ark. Code Ann. §17-44-106, which provides that it is a Class B Misdemeanor to fail to comply with this Act, or for a person to give false information in the records required to be kept pursuant to this Act. This Act contains no Emergency Clause.

Act 922 - “An Act to Provide for an Administrative Suspension of Driver’s License for the Offense of Possession of Fraudulent or Altered Personal Identification under Certain Circumstances”

This Act amends Ark. Code Ann. §5-27-503 to provide that a person under the age of 21 who attempts to purchase alcohol or use a fake or altered ID for the purpose of purchasing alcohol shall have their driver’s license suspended and shall surrender their driver’s license to the arresting officer. The suspension period is 60 days for a first offense, 120 days for a second offense, and 1 year for a third or subsequent offense. The Act should be consulted for the details. This Act contains no Emergency Clause.

Act 1578 - “An Act Concerning the Powers of the Governor and Law Enforcement Officers During a State of Insurrection or Emergency”

This Act amends Ark. Code Ann. §12-61-115, to provide that if the Governor declares a state of emergency, that law enforcement shall not have the authority to seize or confiscate any firearm or ammunition from any individual who is lawfully carrying or possessing the firearm or ammunition. The Act should be consulted for the details. This Act contains no Emergency Clause.

Act 1595 - “An Act to Adopt the Uniform Money Services Act”

This Act creates a new section of statutes, to be codified at Ark. Code Ann. §23-55-101, *et seq.*, and to be known as the “Uniform Money Services Act”. This Act requires the licensing of those who engage in the business of providing money transmissions or currency exchange. The Act contains the

qualifications and procedure for obtaining such a license, and provides what types of records must be kept by these businesses. Ark. Code Ann. §23-55-806 provides for the criminal penalties for violating this Act. The Act should be consulted for the details. This Act goes into effect on January 1, 2008. This Act also repeals the “Sale of Checks Act”, which was codified at Ark. Code Ann. §23-41-101, *et seq.*

Act 1608 - “An Act to Create the Offense of Aggravated Residential Burglary”

This Act creates a new statute, to be codified at Ark. Code Ann. §5-39-204, to create the criminal offense of aggravated residential burglary. A person commits aggravated residential burglary if he or she commits residential burglary of a residential occupiable structure occupied by any person, and he or she (1) is armed with a deadly weapon or represents by word or conduct that he or she is armed with a deadly weapon; or (2) inflicts or attempts to inflict death or serious physical injury upon another person. Aggravated residential burglary is a Class Y Felony.

Laws Related to Domestic Abuse:**Act 139 - “An Act to Allow a Circuit Court to Extend the Duration of an Order of Protection”**

This Act amends Ark. Code Ann. §9-15-205 to increase the maximum duration of an Order of Protection from two (2) years to ten (10) years. This Act contains no Emergency Clause.

Act 162 - “An Act to Create the Offenses of Interference with Emergency Communication in the First Degree and Interference with

**Emergency Communication in the
Second Degree”**

This Act creates new statutes, Ark. Code Ann. §5-60-124 and §5-60-125, which creates the criminal offenses of Interference with Emergency Communication in the 1st Degree and Interference with Emergency Communication in the 2nd Degree. Interference with Emergency Communication in the 1st Degree is if a person “displaces, damages, or disables another person’s telephone or other communication device with the purpose or defeating the other person’s ability to request with good cause emergency assistance”. It is a Class A Misdemeanor. Interference with Emergency Communication in the 2nd Degree is if a person “recklessly prevents, interrupts, disrupts, impedes, or interferes with another person’s attempt to request with good cause emergency assistance”. It is a Class B Misdemeanor. This Act contains no Emergency Clause.

**Act 204 - “An Act to Provide Guidelines
for Law Enforcement Officers to
Use in Determining the
Predominant Aggressor in Cases
of Domestic Abuse for the Purpose
of Arrest”**

This Act amends Ark. Code Ann. §16-81-113 to provide guidelines for law enforcement officers to use in determining the predominant aggressor in cases of domestic abuse for the purpose of arrest. The Act should be consulted for the details and will likely be the subject of a C.A.L.L. article. This Act contains no Emergency Clause.

**Act 671 - “An Act to Amend Arkansas
Code §5-26-303 Concerning the****Offense of Domestic Battering in
the First Degree”**

This Act amends Ark. Code Ann. §5-26-303 to provide that a person may be charged with first degree domestic battery if the person commits any act of domestic battery and has two (2) or more prior convictions of either second degree domestic battery or third degree domestic battery within the last ten (10) years in this state or any other jurisdiction. This Act contains no Emergency Clause.

**Act 676 - “An Act to Comply with Stop
Violence Against Women Formula
Grant Program and Department
of Justice Reauthorization Act of
2005 Funding Requirements”**

This Act creates a new statute, to be codified at Ark. Code Ann. §5-26-313, to require a person who is convicted of any misdemeanor of domestic violence to be notified by the court that it is unlawful for the person to ship, transport, or possess a firearm or ammunition. This Act also amends Ark. Code Ann. §9-15-207 to require that an order of protection include notice that it is unlawful for any person subject to a protective order or convicted of any misdemeanor of domestic violence to ship, transport, or possess a firearm or ammunition. This Act also creates a new statute, to be codified at Ark. Code Ann. §12-12-106, to prohibit law enforcement from requiring that the victim of a sex offense take a polygraph test as a condition of investigating the alleged sex offense, and the victim’s refusal to take such a test shall not prevent the investigation, charging, or prosecution of the alleged sex offense. This Act also amends Ark. Code Ann. §12-12-403 to provide that reimbursement for costs of a forensic medical exam to a victim of a sex offense are not contingent upon the

victim reporting the offense to law enforcement, and the victim does not have to cooperate with law enforcement or participate in the investigation or prosecution of the offense in order to receive reimbursement for charges incurred for the medical exam. This Act contains no Emergency Clause.

Act 682 - “An Act to Assist Residential Tenants that are Victims of Domestic Abuse, Sex Crimes, or Stalking”

This Act creates a new statute, Ark. Code Ann. §18-16-112, to provide that a landlord shall not terminate, fail to renew a lease, or retaliate against the victim of domestic abuse because of the domestic abuse. This Act provides that the victim of domestic abuse or the landlord may change the locks to the residence, and the offender may only have access thereafter by court order. The Act should be consulted for the details. This Act contains no Emergency Clause.

Act 1414 – “An Act to Create the Spousal Abuse Safety Plan Act for Education and Training on the Prevention of an Intervention in Spousal Abuse; and For Other Purposes”

This Act creates new statutes (Ark. Code Ann. §9-15-41, et. seq.) and the law shall be known and cited as the “Spousal Abuse Safety Plan Act”. The Act encourages safety plans to help protect victims. Consult the Act for the details. The Act does not contain an Emergency Clause.

Drug Laws:

Act 199 - “An Act to Amend Arkansas Code §5-64-101(14) to Include all Controlled Substances in the

Definition of Certain Drug Paraphernalia Objects”

This Act amends Ark. Code Ann. §5-64-101(14), which contains the definition of “drug paraphernalia”, to include all controlled substances in the definition of certain drug paraphernalia objects, and also adds an “aluminum foil boat” as a drug paraphernalia object. This Act contains no Emergency Clause.

Act 200 - “An Act Concerning Enhanced Penalties for the Manufacture of Methamphetamine in the Presence of Certain Persons”

This Act amends Ark. Code Ann. §5-64-407, which is the statute setting forth enhanced penalties for manufacturing methamphetamine in the presence of minors, by expanding the statute to include enhanced penalties for manufacturing methamphetamine in the presence of an “elderly person, or incompetent person”. An elderly person is defined as a person over the age of seventy (70), and an incompetent person is defined as a person who is incapable of consent because he or she is physically helpless, mentally defective, or mentally incapacitated. This Act contains no Emergency Clause.

Act 345 - “An Act to Provide Enhanced Penalties for Persons Selling a Controlled Substance at or near School Bus Stops”

This Act amends Ark. Code Ann. §5-64-411, to provide for an additional prison term of ten (10) years if a person sells, delivers, possesses with intent to deliver, dispenses, manufactures, transports, administers, or distributes a controlled substance within one thousand feet (1,000’) of a designated bus stop as identified on the route list published

by a public school district each year. This Act contains no Emergency Clause.

Act 493 - “An Act Concerning Property Subject to Forfeiture under the Uniform Controlled Substances Act”

This Act amends Ark. Code Ann. §5-64-505 to add firearms to the list of property subject to forfeiture under the Uniform Controlled Substances Act, and to provide that the odometer or hour reading of vehicles or equipment seized shall be included in the inventory of seized property. This Act contains no Emergency Clause.

Act 508 - “An Act to Provide for a Real-Time Electronic Logbook for a Pharmacy to Record Purchases of Ephedrine, Pseudoephedrine, and Phenylpropanolamine; to Require a Pharmacy to Enter Certain Transactions into the Electronic Logbook; to Require the Arkansas Crime Information Center to Maintain and Control Access to the Electronic Logbook; to Provide Penalties for Unauthorized Disclosure and Access; and for Other Purposes”

This Act creates a centralized real-time electronic logbook to document transactions made at pharmacies that involve the sale of products containing ephedrine, pseudoephedrine, and phenylpropanolamine. This Act creates a new statute, Ark. Code Ann. §5-64-1104, which requires ACIC to give pharmacies access to this real-time electronic logbook, and requires pharmacies to log these transactions into the electronic logbook, and this logbook will be created and maintained by ACIC. The Act provides that the information entered into the logbook is confidential and is not subject to the

FOIA. An unauthorized release of the information contained in the logbook is a Class A Misdemeanor. The Act also provides who may have access to this logbook. This Act is subject to funding becoming available for this project prior to May 15, 2008.

Act 547 - “An Act to Increase the Criminal Penalties for Manufacturing, Delivering, or Possession with Intent to Manufacture or Deliver Controlled Substances in Schedule VI under Certain Circumstances”

This Act amends Ark. Code Ann. §5-64-401, concerning criminal penalties for manufacturing, delivering, or possessing with intent to manufacture or deliver controlled substances, to make it a Class Y Felony if the amount of the Schedule VI controlled substance is five hundred pounds (500 lbs.) or more, and a Class A Felony if the amount of the Schedule VI controlled substance is between 100 lbs. and 500 lbs. This Act contains no Emergency Clause.

Act 558 - “An Act to Protect the Health and Safety of Arkansans; to List Tramadol as a Schedule IV Controlled Substance”

This Act creates a new statute, to be codified as Ark. Code Ann. §5-64-210, to provide that Schedule IV controlled substances includes any material, compound, mixture, or preparation that contains any quantity of tramadol or that contains any of tramadol's salts, isomers, or salts of isomers. This Act contains no Emergency Clause.

Act 585 - “An Act to Protect the Health and Safety of Arkansans; to List Tramadol as a Schedule IV Controlled Substance”

This Act creates a new statute, to be codified as Ark. Code Ann. §5-64-210, to provide that Schedule IV controlled substances includes any material, compound, mixture, or preparation that contains any quantity of tramadol or that contains any of tramadol's salts, isomers, or salts of isomers. This Act contains no Emergency Clause. This Act is identical to Act 558.

Act 864 - "An Act to Protect Property Owners from Contamination by Manufacturing of Controlled Substances; to Authorize the Arkansas Department of Environmental Quality to Create a Program for Remediation of Contaminated Property; to Require Public Notification of Contaminated Property"

This Act creates a new section of statutes, to be codified at Ark. Code Ann. §8-7-1401, *et seq.*, and known as the "Controlled Substances Contaminated Property Cleanup Act". This Act requires property owners who find a controlled substance laboratory on their property to notify law enforcement, and to have property inspected by a contractor who is certified by ADEQ. If, after inspection, it is revealed that a laboratory for the manufacture of controlled substances has been on the property, ADEQ shall place the property on the contaminated properties list until such time as the property has been adequately remediated. ADEQ will make this list of contaminated properties available to law enforcement. The Act should be consulted for the details. The Act also requires that if law enforcement discovers a controlled substance laboratory or arrests a person for having equipment used in manufacturing controlled substances on real property, the officer shall at that time remove all persons from the residence, post a "notice of

removal" on the property, and deliver a copy of the notice to the owner and occupants. Violations of the terms of this notice of removal is a Class B Misdemeanor. Once a property has been remediated and removed from the contaminated properties list, there is not requirement that the past contamination be disclosed to future buyers or renters. This Act contains no Emergency Clause, but does state that remediation standards be developed by ADEQ by March 1, 2008, and that a certification program be developed for contractors by May 1, 2008.

Laws Related to Sex Offenders:

Act 210 - "An Act to Amend the Definition of Sex Offense in the Sex Offender Registration Act of 1997"

This Act amends Ark. Code Ann. §12-12-903 to include "felony-homicide" within the definition of "sex offense" for purposes of sex offender registration, if the underlying felony is considered a sex offense. This Act contains no Emergency Clause.

Act 392 - "An Act to Create an Offense Prohibiting Registered Sex Offenders from Obtaining or Possessing Identification Cards or Drivers' Licenses with Incorrect Physical Addresses"

This Act creates a new section of statute, codified at Ark. Code Ann. §5-14-130, which makes it a Class D Felony for a registered sex offender to provide false information to obtain an identification card or a drivers' license that indicates an incorrect permanent physical address of residence. It is a Class A Misdemeanor for a registered sex offender to be in possession of an identification card or drivers' license that indicates an incorrect permanent

physical address of residence, unless the person has notified the Office of Driver Services as required by Ark. Code Ann. §27-16-506. This Act contains an Emergency Clause and went into effect on March 20, 2007.

Act 394 – “An Act to Create a Criminal Offense Prohibiting Sex Offenders from Living near Victims or Contacting Victims; to Amend Various Sections of the Arkansas Code Concerning the Sex Offender Registration Act of 1997”

This Act creates a new statute, codified at Ark. Code Ann. §5-14-130, which makes it a Class D Felony for a registered sex offender to reside within two thousand feet (2,000’) of the residence of the victim, or to have direct or indirect contact with the victim for the purpose of harassment. This Act also amends Ark. Code Ann. §12-12-903 to add the offenses of “internet stalking of a child”, “video voyeurism”, and “voyeurism” to the definition of “sex offense”. This Act also amends Ark. Code Ann. §12-12-904 to provide that a person may no longer assert the “right to avoid self incrimination” as an affirmative defense to the charge of refusal to cooperate with the sex offender assessment process. This Act also amends Ark. Code Ann. §12-12-906 to provide that a registered sex offender must register within three (3) business days of entering this state from another jurisdiction (previously had 10 days to register). This Act also amends Ark. Code Ann. §12-12-906 to provide that if a sex offender’s address changes within the state or to another state due to an eviction, natural disaster, or any other unforeseen circumstance, the sex offender shall provide the new address within three (3) business days (previously was 5 business days) to ACIC. Also, each person subject to lifetime

sex offender registration must report in person to local law enforcement every six (6) months after registration. The Act also requires the offender to provide information on any vehicles the offender owns, operates, or to which he has access. The Act also provides that a new photograph is to be taken of the offender at each registration verification, and shall give fingerprints if the offender’s fingerprints are not confirmed to be in AFIS. The Act also creates a new section of Ark. Code Ann. §12-12-906, subsection (h), which deals with the sex offender registration requirements for “sexually violent predators subject to lifetime registration”. For example, these offenders are required to report every three (3) months after registration. The Act should be consulted for the details regarding the registration requirements of sexually violent predators. This Act also amends Ark. Code Ann. §12-12-913 regarding what information shall be made public regarding the offender, and shall be posted on the State of Arkansas home page. The Act should be consulted for the details. This Act also amends Ark. Code Ann. §12-12-917 to provide that local law enforcement may request the committee to reassess a sex offender’s assigned risk level at any time, by submitting a list of the facts and circumstances that prompted the requested reassessment. This Act contains an Emergency Clause and went into effect on March 21, 2007.

Act 818 – “An Act to Prohibit Certain Sex Offenders from Residing near Public Parks or Youth Centers”

This Act amends Ark. Code Ann. §5-14-128 to provide that a sex offender cannot reside within 2,000 feet of a public park or youth center. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 992 – “An Act to Protect Public School Children from Registered Sex Offenders”

This Act creates a new statute, Ark. Code Ann. §5-14-131, to prohibit a Level 3 or Level 4 registered sex offender from entering upon school grounds, except under certain conditions. The Act should be consulted for the details. A violation of this statute is a Class D Felony.

Traffic Laws:**Act 137 - “An Act to Amend Arkansas Code §12-9-110 to Allow Municipal Police Department Personnel to Issue Citations at an Accident Scene”**

This Act amends Ark. Code Ann. §12-9-110, which is the statute authorizing civilians employed by police departments to prepare traffic accident reports and issue parking violations. This Act re-inserts language authorizing these individuals to issue traffic citations related to traffic accidents. This language had been mistakenly removed in the past. This Act corrects that problem. This Act contains no Emergency Clause.

Act 145 - “An Act to Impose a Duty on the Driver of a Vehicle to Remain at the Scene of an Accident Under Certain Circumstances”

This Act amends Ark. Code Ann. §27-53-103, which is the statute requiring the driver of a motor vehicle involved in an accident to provide information to the other driver, or to render aid if there is an injury. This Act adds a new sub-section to this statute which requires the driver of any vehicle involved in an accident to remain on the scene of the accident (for up to 30 minutes) until an

officer arrives if the driver knows that a law enforcement agency was contacted regarding the accident. There is an exception if it is necessary to leave the scene to transport an injured person to the hospital. This Act contains no Emergency Clause.

Act 256 - “An Act to Repeal the Allowance for a Restricted Commercial Driver License for School Bus Drivers in Order to Conform the Arkansas Requirements for Issuance of Commercial Driver Licenses to Federal Standards”

This Act amends Ark. Code Ann. §27-23-110 and §27-23-111 to repeal the allowance for a commercial driver’s license that is restricted to the operation of a school bus. Now, a school bus driver must obtain a regular commercial driver’s license. This Act contains no Emergency Clause.

Act 305 - “An Act to Amend the Arkansas Code to Change the term “All-Terrain Cycle” to “All-Terrain Vehicle”; to Amend Requirements for Registration and Operation of All-Terrain Vehicles”

This Act amends the various sections of the Arkansas Code to change the term “all-terrain cycle” to “all-terrain vehicle”. This Act also specifically includes six-wheeled all-terrain vehicles in all code sections regulating three-wheeled or four-wheeled all-terrain vehicles. This Act also amends Ark. Code Ann. §27-21-102 to change the definition of “all-terrain vehicle” to increase the maximum amount of allowed engine displacement from 650cc to 1,000cc, and to delete the maximum dry weight allowed for all-terrain vehicles. This Act also provides that sales taxes for sales of all-terrain vehicles will be collected by the seller at the

time of sale, as opposed to being collected at the time of registration. This Act contains no Emergency Clause.

Act 338 - “An Act to Increase the Fine for Failure to Yield to an Emergency Vehicle”

This Act amends Ark. Code Ann. §27-51-901, the “fail to yield to emergency vehicle” statute, to increase the possible fine for violating this statute from \$100 to \$400. This Act contains no Emergency Clause.

Act 349 - “An Act to Authorize Holders of Disabled Veteran Special License Plates to Park in Areas Designated only for Persons with Disabilities”

This Act creates a new statute, codified at Ark. Code Ann. §27-15-316, to allow the holder of a disabled veteran special license plate to park in areas designated for persons with disabilities, as long as the vehicle is in use for the actual transporting of a disabled veteran. This Act contains no Emergency Clause.

Act 364 - “An Act to Require a Signal of Intention to Change Lanes in a Vehicle before Changing Lanes”

This Act amends Ark. Code Ann. §27-51-403, to provide that a driver must signal before changing lanes. This Act contains no Emergency Clause.

Act 453 - “An Act to Clarify Statutes Concerning Weight Limits Posted on Public Bridges”

This Act amends Ark. Code Ann. §27-66-501, to make it a Class C Misdemeanor to drive a vehicle of a size or weight exceeding the posted weight limit on a public bridge, and requires the person to pay for any

damage caused to the bridge by the overweight or oversized vehicle. This Act also repealed Ark. Code Ann. §27-66-506, which required a plank to be placed over bridges and culverts before heavy machinery could move over them. This Act contains no Emergency Clause.

Act 485 - “An Act to Require all Motorists to Carry Minimum Motor Vehicle Liability Coverage; to Require Named Driver Exclusions to be Listed on Proof of Insurance Cards; and to Require that a Notice Concerning a Named Driver Exclusion be Given to the Insured”

This Act amends Ark. Code Ann. §23-89-213 to provide that automobile insurance cards shall contain the names of any drivers excluded from the policy. This Act also amends numerous vehicle insurance statutes to provide that not only must the driver provide proof that the vehicle is insured, but must also provide proof that the person’s operation of the vehicle was covered under the policy as well. The Act should be consulted for the details. This Act goes into effect on January 1, 2008.

Act 626 - “An Act to Ensure that Towing Operations are Afforded the Same Safety Protections as Other Emergency Vehicles”

This Act creates a new traffic statute, to be codified as Ark. Code Ann. §27-51-904, to require drivers approaching a towing operation to exercise due caution or move into the farthest lane from the towing operation. This Act contains no Emergency Clause. See also Act 1412.

Act 640 - “An Act to Amend Vehicle Weight Regulations”

This Act amends Ark. Code Ann. §27-35-203 to increase the maximum weight that is allowed on a front or steering axle from 12,000 lbs. to up to 20,000 lbs., as long as the manufacturer has attached a plate indicating what the maximum ratings are for that vehicle. This Act also eliminates the 40 mph maximum speed requirement on secondary highways for these vehicles, and does away with the penalty provision relating thereto. The Act should be consulted for the details. This Act contains no Emergency Clause.

Act 681 - “An Act to Provide for the Safe Passing of Bicycles by Motor Vehicles”

This Act creates a new statute, to be codified at Ark. Code Ann. §27-51-311, to provide that the driver of a motor vehicle passing a bicycle shall exercise due and care and pass to the left at a safe distance of not less than three (3) feet from the bicycle. A violation of this statute is a fine of up to \$100.00. A violation of this statute resulting in the death or serious physical injury to the person riding the bicycle can result in a fine of up to \$1,000.00. This Act contains no Emergency Clause.

Act 718 - “An Act to Revise the Penalty for Passing a School Bus; to Simplify the Reporting of Violations of the Passing of a School Bus”

This Act amends Ark. Code Ann. §6-19-110 to require bus drivers to report to the superintendent, within two (2) hours, information regarding a vehicle that has violated the statute on passing a stopped school bus. The superintendent then turns the information over to the local prosecuting attorney. The Act requires the prosecuting attorney who is provided this information to provide a written notice to the

superintendent regarding the outcome of the bus driver’s report. This Act contains no Emergency Clause.

Act 753 - “An Act to Revise and Modernize the Access to Parking for Persons with Disabilities Act, §27-15-301, et seq.; to Ensure that Driver Education Programs and the Driver’s Instruction Manual Include Information about Parking for Persons with a Disability”

This Act amends various aspects of the parking for persons with disabilities statutes. For example, the Act amends Ark. Code Ann. §27-15-308 to provide that the owner of a motor vehicle that is issued a special license plate for parking in a handicapped spot shall submit every four (4) years a physician recertification for the vehicle to continue to qualify for the special license plate, unless the person has a permanent disability. Furthermore, the person to be transported is to be given a photo identification by the state, indicating the person has a disability, and this identification shall be good for four (4) years as well. This Act also amends Ark. Code Ann. §27-15-312 to provide that a handicap spot that is marked “van accessible” may only be used by such vehicles, unless that is the only handicap spot on the parking lot. The Act also requires that driver’s license tests contain questions regarding handicap parking requirements, that the drivers license manual contain information regarding handicap parking requirements, and that driver education classes in schools contain information regarding handicap parking requirements. This Act contains no Emergency Clause.

Act 861 - “An Act to Clarify the Procedures Concerning the Nonconsensual Towing of a Vehicle”

This Act amends Ark. Code Ann. §27-50-1101 to provide that each police department shall, within twenty-four (24) hours of receiving notification of the removal of a vehicle, provide to the towing and storage firm certain information regarding ownership and liens on the towed vehicle. The Act should be consulted for the details. The Act also gives municipal authorities the right to enforce Ark. Code Ann. §27-50-1101, *et seq.*, dealing with the nonconsensual towing of abandoned vehicles, and §27-50-1201, *et seq.*, dealing with the removal of unattended or abandoned vehicles, and specifies how the proceeds from the fines are to be divided. The Act should be consulted for the details. This Act contains no Emergency Clause. See also Act 506 and Act 1053.

Act 997 - “An Act to Prohibit Parking on Interstate Highway Rights-of-Way”

This Act amends Ark. Code Ann. §27-51-1302 to provide that no person shall stop, or park a vehicle on the shoulders, medians, ramps, or right-of-way along an interstate or fully controlled access highway, except in designated parking areas, but that stopping, standing, or parking that is brief in duration and is due to an emergency, vehicle disablement, or to correct or avert an unsafe condition shall not be considered a violation. This Act contains no Emergency Clause.

Act 1053 - “An Act to Amend the Law Regarding Nonconsent Towing and Recovery of Vehicles”

This Act amends Ark. Code Ann. §27-50-1206, concerning the notice provided by law enforcement to a licensed towing firm, to provide that if a law enforcement officer issues a hold against the release of a vehicle, the order to remove and store the vehicle shall include a written explanation for the issuance of the hold, and when the hold is released, the law enforcement officer who issued the hold shall provide written notice of the release to the towing firm. This Act amends Ark. Code Ann. §27-50-1207 to provide that if an owner or lienholder of a vehicle that was towed alleges that the vehicle was not legally towed or properly subject to a law enforcement hold, that the owner or lienholder has 30 days to seek a review of the tow or the hold. Previously, such a review had to be requested within 20 days. This Act amends Ark. Code Ann. §27-50-1208 to provide that a towing company may not place a lien on certain items of personal property that may be found in a towed vehicle, and that these items shall be returned to the vehicle's owner without charge if, within 45 days, the owner requests that the items be returned. These items include legal or personal documents, medications, child restraint seats, wallets/purses and their contents, prescription eyeglasses, prosthetics, cell phones, photographs, and books. This Act also states that a possessory lien for towing and storage not only attaches to the vehicle being towed, but also to any trailer attached to the vehicle at the time it is towed, and any contents of such trailer including boats and other vehicles. This Act contains no Emergency Clause. See also Act 506 and Act 861.

Act 1412 - “An Act to Require Motorists to Move Over at Emergency Scenes; to Authorize Emergency Warning Lights at the Scene of an

**Accident; to Provide for a Special
Tow Vehicle License”**

This Act amends Ark. Code Ann. §27-51-310, to provide that when passing an emergency response vehicle, the driver must move to the farthest lane away from the emergency response vehicle, if possible. Previously, this applied only to law enforcement vehicles. This Act also amends Ark. Code Ann. §27-36-305 and §27-49-219 to allow certain tow vehicles and wreckers to use red flashing or rotating lights in addition to amber lights, but these red lights may only be used when the wrecker or tow vehicle is stopped on or within ten (10) feet of a public way. This Act also creates a new statute, to be codified at Ark. Code Ann. §27-14-601, to provide for a special license plate for tow vehicles. This Act contains no Emergency Clause. See also Act 626.

**Laws of General Interest to Law
Enforcement:****Act 100 – “An Act to Amend Arkansas
Code §27-50-1205 to Give Code
Enforcement Officers the Power to
Tag Vehicles”**

This Act amends Ark. Code Ann. §27-50-1205 to allow code enforcement officers to tag vehicles they find which are on or near a public way that appear to be unattended or abandoned. Previously, only law enforcement officers could tag these vehicles. This Act contained no Emergency Clause.

**Act 134 – “An Act Concerning the
Certification of Retired Law
Enforcement Officers to Carry a
Concealed Handgun”**

This Act amends Ark. Code Ann. §12-15-202, the statute which lists the requirements

for a retired law enforcement officer to carry a concealed handgun. This Act adds that a retired law enforcement officer who gets certified or recertified as a law enforcement officer within the preceding twelve-month period is authorized to carry a concealed handgun. The certification process and training is done at the retired law enforcement officer’s expense. This Act contained no Emergency Clause.

**Act 135 - “An Act to Clarify the
Definition of “Imminent Danger to
Health or Safety” in the Adult
Maltreatment Custody Act”**

This Act amends Ark. Code Ann. §9-20-103 to change the term “severe bodily injury” to “serious bodily injury” in the Adult Maltreatment Custody Act. This was done because “serious bodily injury” is a defined term and is much clearer than the term “severe bodily injury”. This Act contained no Emergency Clause.

**Act 171 - An Act to Require a Motor
Vehicle Owner to Sign the Front
Side of a Motor Vehicle Certificate
of Title Upon Receipt; to
Eliminate the Requirement that
an Owner Sign the Reverse Side of
the Title Upon Receipt; and For
Other Purposes.”**

This Act amends Ark. Code Ann. §27-14-713(d)(1) and requires the owners of a motor vehicle to sign the front of the certificate of title instead of the back. This Act contains no Emergency Clause.

**Act 194 - “An Act to Improve the
Procedures Concerning Coroner’s Death
Investigations”**

This Act amends Ark. Code Ann. §12-12-315 to provide that the county coroner and

the chief law enforcement official of the county and municipality shall be notified of the death of any individual in their jurisdiction that is under the age of eighteen (18), even in cases where a previous medical history exists to explain the death. This Act also amends Ark. Code Ann. §14-15-302 to provide that a coroner's preliminary written report shall be completed within five (5) working days of the death, and sets forth the information which must be contained in the preliminary report. This Act also creates a new statute, Ark. Code Ann. §14-15-306, which deals with how prescription medication of a deceased person is to be handled and dispositioned. This Act contained no Emergency Clause.

Act 217 - "An Act to Protect Archeological Sites; to Increase the Penalties for Disturbing Archeological Sites"

This Act amends the various statutes pertaining to the penalties for disturbing archeological sites. These statutes are found at Ark. Code Ann. §13-6-303, §13-6-306, §13-6-307, and §13-6-308. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 232 - "An Act to Implement the Federal Unified Carrier Registration Act of 2005 Pertaining to the Registration of Motor Carriers Engaged in Interstate Commerce"

This Act amends Ark. Code Ann. §23-13-601, *et seq.*, which deals with the registration of motor carriers with the State of Arkansas. This Act sets forth the penalties for failure to comply with the Federal Unified Carrier Registration Act of 2005, and provides that 50% of the fines collected from these violations are to remain

with the jurisdiction where the violation occurred. This Act can be enforced by the ASP, AHP, and local authorities. This Act contained an Emergency Clause and went into effect on March 9, 2007.

Act 241 - "An Act to Allow a Permit for the Movement of Earthmoving Equipment that is a Tractor with a Dirt Pan in Tow upon the State Highways if the Owner is Primarily Engaged in Farming or Earthmoving Operations"

This Act amends Ark. Code Ann. §27-35-210 to allow permits to be issued for the movement of earthmoving equipment that is a tractor with a dirt pan in tow upon state highways if the owner is primarily engaged in commercial earthmoving operations. This Act contained no Emergency Clause.

Act 257 - "An Act to Amend the Jurisdiction of Juvenile Courts to Ensure that a Felony or Misdemeanor that is Committed by a Juvenile Before the Juvenile is Eighteen (18) Years of Age may be Prosecuted in the Juvenile Division of Circuit Court when the Juvenile is Eighteen (18) Years of Age or Older"

This Act amends Ark. Code Ann. §9-27-306 to clarify that individuals over the age of eighteen (18), but under the age of twenty-one (21), may still be prosecuted in juvenile court if the crime was actually committed prior to the individual turning eighteen (18). This Act contained an Emergency Clause and went into effect on March 9, 2007.

Act 262 - "An Act to Permit Cities and Counties to Require Electronic Data Transfer of Pawnshop Records"

This Act amends Ark. Code Ann. §12-12-103, to provide that a city or county may pass an ordinance to require pawnshops and pawnbrokers to submit required records in an electronic format, and these records shall be used for the sole purpose of investigating crimes involving property. This Act contained an Emergency Clause and went into effect on March 9, 2007.

NOTE: The Springdale City Council passed such an ordinance and the ordinance will take effect on August 27, 2007.

Act 271 - “An Act to Minimize the Spread of the Communicable Disease of Human Immunodeficiency Virus (HIV) Carried by Inmates of the Department of Correction; to Require Testing or Screening of Inmates Under Certain Circumstances; and For Other Purposes.”

This Act requires the Department of Correction to test inmates before their release of HIV. This Act does not contain an Emergency Clause.

Act 279 - “An Act to Provide that Nonviolent Felony Sex Offenders Awaiting Transfer to the Department of Correction or the Department of Community Correction shall not be Temporarily Released from the Custody of a Sheriff”

This Act amends Ark. Code Ann. §16-90-122, to provide that a circuit judge shall not authorize the temporary release of a person convicted of a sex offense (defined in Ark. Code Ann. §12-12-903) who is awaiting

transfer to ADC or DCC. This Act contained no Emergency Clause.

Act 300 - “An Act to Amend Arkansas Code §12-41-503 to Authorize Sheriffs to use Alternative Detention Resources for Convicted Persons Sentenced to County Jails”

This Act amends Ark. Code Ann. §12-41-503 to authorize sheriffs to allow persons convicted and sentenced to county jails to serve their sentences “by any other lawful alternative to continual detention in the county jail that rehabilitates the inmate or benefits the county”. Previously, the only other alternatives to jail time were weekends and electronic monitoring. This Act contained no Emergency Clause.

Act 365 - “An Act to Authorize the Award of the Pistol Carried by a Municipal Police Officer upon Retirement; to Allow a Retiring Municipal Police Officer to Purchase his or her Duty Shotgun”

This Act creates a new statute, codified at Ark. Code Ann. §14-52-112, to authorize that the pistol carried by a law enforcement officer may be awarded by the mayor to the officer upon the officer’s retirement, or to the spouse of an officer who dies while still employed with the department. This Act also allows a retiring officer to purchase the shotgun used while on duty at a fair market price to be determined by the Mayor. This Act contained no Emergency Clause.

Act 371 - “An Act to Provide for the Establishment of Criteria for Granting or Withdrawing Authorization for Municipal Police to Patrol Controlled-Access Facilities; to Clarify that the

Director of the Department of Arkansas State Police may Withdraw Authorization for Municipal Police to Patrol Controlled-Access Facilities”

This Act amends Ark. Code Ann. §12-8-106, to provide for the establishment of criteria for granting or withdrawing authorization for municipal police to patrol controlled-access facilities (limited access highways). This Act also provides that the Director of the Arkansas State Police may withdraw this authorization. This Act contained no Emergency Clause.

Act 382 - “An Act to Repeal Arkansas Law that Allows the Issuance of a Nonresident Commercial Driver License to a Nonresident of the United States”

This Act amends Ark. Code Ann. §27-23-103 and repeals Ark. Code Ann. §27-23-109 to eliminate the provisions which previously allowed a nonresident of the United States to obtain a nonresident commercial drivers’ license. This Act contained no Emergency Clause.

Act 387 - “An Act to Limit the Location of Adult-Oriented Business in Proximity to Locations Frequented by Children”

This Act creates a new section of statutes, codified at Ark. Code Ann. §14-1-301, *et seq.*, to provide for state-wide regulations on adult-oriented businesses. The Act should be consulted for the details, but prohibits any adult-oriented business from being located within one thousand (1,000) feet of a child care facility, park, church, playground, public library, recreational area or facility, residence, school, or walking trail. A violation of this statute is a Class A

Misdemeanor. This Act contained no Emergency Clause.

Act 433 - “An Act to Allow Municipal Police Departments to Exchange Property”

This Act creates a new statute, codified at Ark. Code Ann. §14-52-112, to allow a municipal police department to exchange real or personal property with another municipal police department, provided the exchange is approved by the governing body of the municipalities. This Act contained no Emergency Clause.

Act 497 - “An Act to Amend the Adult and Long-Term Care Facility Resident Maltreatment Act; to Further Protect Endangered Senior Citizens by Providing the Department of Health and Human Services with Expanded Investigative Authority; to Provide Court Procedures for Overseeing the New Investigative Authority”

This Act amends Ark. Code Ann. §12-12-1708 to add animal control officers and code enforcement officers to the list of persons required to report adult or long-term care facility resident maltreatment. This Act contained no Emergency Clause.

Act 498 - “An Act to Amend Various Sections of the Arkansas Code Regarding the Powers and Duties of Institutional Law Enforcement Officers”

This Act amends Ark. Code Ann. §25-17-301, *et seq.*, regarding the powers and duties of institutional law enforcement officers, and sets forth the circumstances in which an institutional law enforcement office may

make an arrest outside of their jurisdiction. This Act contained no Emergency Clause.

Act 506 - “An Act to Amend Current Law to Limit the Possessory Lien of a Towing and Storage Firm to the Vehicle Only”

This Act amends Ark. Code Ann. §27-50-1208 to provide that a towing and storage company may not place a lien on certain items of personal property that may be found in a towed vehicle, and that these items shall be returned to the vehicle’s owner without charge if, within 45 days, the owner requests that the items be returned. These items include legal or personal documents, medications, child restraint seats, wallets/purses and their contents, prescription eyeglasses, prosthetics, cell phones, photographs, and books. This Act also states that a possessory lien for towing and storage not only attaches to the vehicle being towed, but also to any trailer attached to the vehicle at the time it is towed, and any contents of such trailer including boats and other vehicles. This Act contained an Emergency Clause and went into effect on March 26, 2007. See also Act 861 and Act 1053.

Act 539 - “An Act to Amend the “Revised Uniform Adoption Act”, Arkansas Code §9-9-201 *et seq*; to Amend Provisions of the “Streamline Adoption Act”

This Act amends Ark. Code Ann. §9-9-212 to provide that upon request by the Department of Health and Human Services, local law enforcement shall provide criminal background information on prospective adoptive parents and all household members sixteen (16) years of age and older who have applied to be an adoptive family. This Act contained no Emergency Clause.

Act 576 - “An Act to Require the Administrative Office of the Courts to Provide Assistance and Support to Cities and Counties in the Adoption of Local Court Security Plans and the Provision of Court Security for Circuit and District Courts; to Provide for the Certification and Training of Court Security Officers; to Establish a State Court Security Grant Program; and for Other Purposes”

This Act creates the “Arkansas Court Security Act”, to be codified at Ark. Code Ann. §16-10-1001, *et seq.*, and will be applicable to district courts. This Act provides for court security officers and sets the qualifications for such officers. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 582 - “An Act to Amend the Arkansas Public Safety Communications Act of 1985 to Add Definitions; to Levy Additional Service Charges; to Change the CMRS Emergency Telephone Services Board’s Name; to Clarify the Board’s Duties Concerning the Funds Collected from Levies”

This Act amends Ark. Code Ann. §12-10-318, to increase the amount of the commercial mobile radio service emergency telephone service charge from forty cents (\$.40) per month to fifty cents (\$.50) per month. The Act also provides that this monthly charge will also be assessed on prepaid wireless telephone service subscribers, on voice over internet protocol connections, and on non-traditional service connections. The Act should be consulted for the details. This Act contained an

Emergency Clause and went into effect on March 28, 2007.

Act 584 - “An Act to Amend Arkansas Code §27-23-108(b) to Waive the Commercial Driver’s License Skills Test for Qualified Drivers of Military Vehicles”

This Act amends Ark. Code Ann. §27-23-108, to provide that the State Police may waive the skills test for a person applying for a commercial driver’s license that already has a valid military commercial driver’s license. This Act contained no Emergency Clause.

Act 587 - “An Act to Amend Provisions of the Juvenile Code Related to Cases Arising Under Dependency-Neglect, Families in Need of Services, and Delinquency”

This Act amends Ark. Code Ann. §9-27-303 to provide that a person conducting a home study shall have the right to obtain a criminal background check on any person in the household age sixteen (16) and older, including a fingerprint-based check of national crime information database, and this criminal background check shall be provided by local law enforcement upon request of the person conducting a home study. This Act also amends Ark. Code Ann. §9-27-303 to amend the definition of “sexual abuse” to include the acts of “voyeurism” and “forcing listening to a phone sex line” by a caretaker to a person younger than eighteen (18) years of age. This Act contained no Emergency Clause.

Act 605 - “An Act to Provide the Department of Health and Human Services with the Power to Obtain Information for Administrative Purposes”

This Act creates a new statute, to be codified as Ark. Code Ann. §9-28-412, to provide that the Department of Health and Human Services shall have the power to obtain from businesses, financial entities, and state and local government agencies, any and all information known or chronicled regarding a parent or putative father, notwithstanding any other provision of law making the information confidential. This information must be turned over to the Department within thirty (30) days of the request. This Act contained no Emergency Clause.

Act 651 - “An Act to Amend the Arkansas Public Safety Communications Act of 1985 to Require Public Safety Communications Personnel to Respond to a Subpoena Issued in a Criminal Investigation or Criminal Prosecution; to Provide Civil Immunity to Public Safety Communications Personnel for Complying with the Subpoena”

This Act amends Ark. Code Ann. §12-10-306, to provide that public safety communications personnel are required to release without the consent or approval of any supervisor any information in their custody to a prosecuting attorney if requested by subpoena for use in the prosecution or the investigation of any crime, and provides that public safety communications personnel shall be entitled to civil immunity for complying with such subpoena. This Act contained no Emergency Clause.

Act 664 - “An Act to Amend Provisions of the Arkansas Code Concerning the Administration of Concealed Handgun Licensing by the Department of Arkansas State Police; to Require a Concealed Handgun License to Bear a Digital

Photograph of the Licensee under Certain Circumstances”

This Act amends various provisions of Ark. Code Ann. §5-73-301, *et seq.*, the statutes dealing with concealed handgun licenses. For example, this Act shortens the period in which the applicant must have been a resident of the state from twelve (12) months to ninety (90) days. The Act also provides that an expunged or sealed conviction does not render an applicant ineligible for a concealed handgun license under certain conditions. The Act also provides that a person with an active warrant may not obtain a concealed handgun license. The Act also requires a concealed handgun license to contain a digital photograph of the licensee under certain circumstances. The Act should be consulted for all the details. This Act contained no Emergency Clause. See also Act 1014, which expands the length of a concealed handgun license from four (4) years to five (5) years.

Act 674 - “An Act Concerning Bail Bondsmen”

This Act amends Ark. Code Ann. §17-19-306 to provide that the list of registered bail bondsmen (that is required to be posted) is to be prepared by the Bail Bondsman Licensing Board. Previously, this list was prepared and disseminated by the circuit clerk. This Act contained no Emergency Clause.

Act 675 - “An Act to Amend Various Sections of the Arkansas Code to Clarify Possession of Handguns and Concealed Handguns by Law Enforcement Officers”

This Act amends Ark. Code Ann. §12-15-201 to amend the definition of “certified law enforcement officer” to remove the

requirement that the officer work more than 40 a week to be eligible to carry a handgun. This Act amends Ark. Code Ann. §12-15-202 to remove the requirement that a retired law enforcement officer have “nonforfeitable rights to benefits under the retirement plan of a public law enforcement department” before the retired law enforcement officer may legally carry a concealed handgun. This Act contained no Emergency Clause.

Act 714 - “An Act to Require Referrals for the Criminal Prosecution of Certain Cases of Nonpayment of Child Support”

This Act amends Ark. Code Ann. §9-14-241 to require the Office of Child Support Enforcement to refer to the prosecuting attorney all nonpayment of child support cases that meet certain criteria. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 841 - “An Act to Amend §12-12-211 to Allow the Arkansas Crime Information Center to Give Information to a Constable who has met Certain Requirements; to Require a Constable to Wear Uniform Clothing and Identification; to Require the Arkansas Commission on Law Enforcement Standards and Training to Develop a Course for Constables”

This Act amends Ark. Code Ann. §12-12-211 to provide that a constable shall have access to ACIC information if the constable has completed the course required by Ark. Code Ann. §14-14-1314. The Act also creates a new statute, to be codified at Ark. Code Ann. §14-14-1314, which sets forth the constable training requirements, the uniform requirements, and the vehicle

requirements. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 1013 - “An Act to Authorize the University of Arkansas System Criminal Justice Institute to Train and Instruct Law Enforcement Officials, Including Jail Personnel, on the Handling of Persons with Mental Illness”

This Act creates a new section of statutes, to be codified at Ark. Code Ann. §6-64-1201, *et seq.*, to provide for the development of a mental health curriculum for law enforcement officers and jail personnel, and to develop training standards for crisis intervention. The Act should be consulted for the details. This Act contained no Emergency Clause.

Act 1014 - “To Make Licenses to Carry Concealed Handguns Valid for Five (5) Years”

This Act amends Ark. Code Ann. §5-73-302, §5-73-319 and §5-73-320, to expand

the length of a concealed handgun license from 4 years to 5 years. This Act contained no Emergency Clause. See also Act 664.

Act 1047 - “An Act to Restrict the Eligibility for Parole or Community Correction Transfer of Persons Sentenced to Enhanced Penalties under Certain Circumstances”

This Act amends Ark. Code Ann. §16-90-120, pertaining to the term of confinement imposed on a person convicted of a felony who employed a firearm as a means of committing or escaping from the felony, to specify the time a person must serve before being eligible for parole or community correction transfer for certain offenses. The Act should be consulted for the details. This Act contained no Emergency Clause.

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C.A.L.L. is a publication of the Springdale City Attorney’s Office. The purpose of this publication is to educate Springdale Police Officers on laws, court decisions and other legal information which may affect law enforcement in the City.

