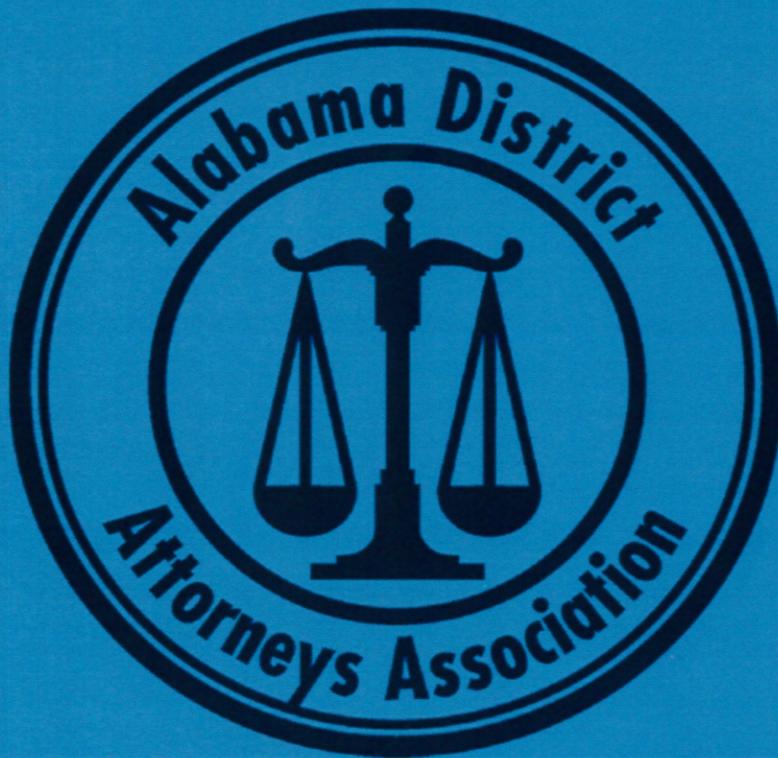


Newsletter & Legislative Update



Electronic Copy is available at:

www.alabamaprosecutor.com



Office of Prosecution Services, OPS

Randall I. Hillman
Executive Director

Barry D. Matson
Deputy Director

Executive Committee

OFFICERS

Robert L. Broussard
President
Huntsville

R. Scott Anderson
Vice President
Decatur

William R. Adair
Secretary-Treasurer
Jasper

Richard J. Minor
Immediate Past President
Pell City

Steven T. Marshall
NDAA Board Representative
Guntersville

Members-At-Large

Kenneth E. Davis
Phenix City

Randall V. Houston
Wetumpka

Michael W. Jackson
Selma

J. Christopher McCool
Carrollton

Stephen M. Billy
Brewton

Brandon K. Falls
Birmingham

Combating Cyber Crime through Law Enforcement Partnerships

A.T. Smith
Deputy Director
United States Secret Service

Over the past century the United States Secret Service has become best known for our protective responsibilities. Most people do not realize however, protecting our Nation's financial system from threats was the founding mission of the Secret Service. In 1865, the threat was counterfeit currency. As global and U.S. financial payment systems have evolved, from paper to plastic to, now, digital information, so too has our investigative mission. To carry out both of these missions and address emerging crimes and threats, it is critical that we continue to have very strong and viable relationships with local law enforcement and District Attorneys.

The United States Government first established unauthorized access to computers, access device fraud, and other related activities as specific federal crimes through the Comprehensive Crime Control Act of 1984. This act specifically assigned the investigation of these offenses to Secret Service jurisdiction.¹ Over the past three decades the Secret Service has continuously innovated how we investigate crimes to keep pace with the changing use of information technology in our economy and the efforts of criminals to exploit this technology. Today, our modern financial system relies heavily on information technology, for convenience and efficiency; this dependence results in new vulnerabilities for criminals to exploit and presents unique technical, legal, and policy challenges for law enforcement investigations.

Fundamental to the approach of the Secret Service is close partnership with state and local law enforcement, in addition to the private sector and academia, which designs, owns, or operates most of the information technology criminals commonly exploit. We developed this collaborative approach through the experience of our New York Electronic Crimes Task Force (ECTF), which was founded in 1995 for the purpose of partnering to combat cyber crime. In 2001, Congress directed the Secret Service to establish a nationwide network of ECTFs for the purpose of "preventing, detecting, and investigating various forms of electronic crimes, including potential terrorist attacks against critical infrastructure and financial payment systems."² Today, the Secret Service operates 35 ECTFs as part of this growing international network.

¹ See 18 USC § 1029 & 1030

² Public Law 107-67, Section 105.

The Growth of Cyber Crime

Over the past 30 years, the use of networked computers has rapidly expanded to perform a critical role in our society and as a part of our economy; today, an estimated two billion people have at least 12 billion computers and devices. To exploit this growth, criminals, motivated by greed, have adapted their methods and are increasingly using cyberspace to gain information that can be monetized in the cyber crime underground. This illicitly-obtained information is used to defraud our Nation's financial payment systems and other illegal activities.

Our Nation's telecommunications and banking sectors were among the first to be targeted. Starting around 1960, the criminal practice of manipulating phone systems to fraudulently obtain services became widespread.³ And, as early as 1970, criminals were manipulating computers used by banks to fraudulently obtain money.⁴ The commercialization and international growth of the Internet in the 1990s fueled the rapid rise of transnational cyber crime, which now impacts all sectors of the U.S. economy. According to a recent report by the Center for Strategic and International Studies, the total annual cost to the global economy from cyber crime exceeds \$445 billion.⁵ The widely-reported data breaches of Target, Neimen Marcus, P.F. Chang's, and the South Carolina Department of Revenue are just recent examples of this trend.

Today's cyber criminals have developed sophisticated capabilities. For example, they have conducted distributed denial of service attacks that have crippled small countries' critical infrastructure. They have developed and administered their own digital currencies and exchanges to facilitate the laundering and distribution of their criminal revenue.⁶ They are increasingly conspiring together in executing multi-million dollar transnational criminal schemes and sharing methods and capabilities through secretive criminal networks.

The reach of cyber criminals (being able to operate from a foreign country while targeting thousands of victims globally across multiple jurisdictions and countries) presents substantial challenges for law enforcement methods. Effectively investigating

³ Lapsley, Phil (2013). *Exploding the Phone*. New York, NY: Grove Press.

⁴ Beginning in 1970, and over the course of three years, the chief teller at the Park Avenue branch of New York's Union Dime Savings Bank manipulated the account information on the bank's computer system to embezzle over \$1.5 million from hundreds of customer accounts. This early example of cyber crime not only illustrates the long history of cyber crime, but the difficulty companies have in identifying and stopping cyber criminals in a timely manner—a trend that continues today.

⁵ Center for Strategic and International Studies, "Net Losses: Estimating the Global Cost of Cybercrime," (June 2014). Available at:

http://csis.org/files/attachments/140609_rp_economic_impact_cybercrime_report.pdf

⁶ For more on Digital Currency see the recent testimony of SAIC Edward Lowery before the U.S. Senate Committee on Homeland Security and Governmental Affairs. Available at:

<http://www.hsgac.senate.gov/hearings/beyond-silk-road-potential-risks-threats-and-promises-of-virtual-currencies>

these threats requires law enforcement to develop more effective methods for cooperating across multiple jurisdictions.

Partnering to Defeat Cyber Crime

Our network of Electronic Crimes Task Forces provides our partners the opportunity to benefit from added resources, information, expertise, and advanced research, while working collaboratively to investigate criminal activity with significant impact. For example, in 2008, e-Gold, an early digital currency, was shut down due to its major role in enabling cyber criminal activity and its failure to comply with federal money laundering laws and regulations as a result of a Secret Service investigation.⁷ Related to the investigation of e-Gold, the Secret Service's New York ECTF conducted a joint investigation with the Manhattan District Attorney's office into Western Express (a major exchanger of e-Gold and facilitator of cyber crime) resulting in the conviction of fifteen defendants for their role in a cyber fraud scheme.⁸ Another example of successful partnerships is a case from the New England ECTF's, which include the Secret Service, the New Hampshire State Police, and multiple other law enforcement agencies. This investigation centered on two defendants named Mr. Adrian-Tiberiu Oprea and Mr. Iulian Dolan. These two individuals conspired to remotely hack into the point-of-sale computer systems of over 200 U.S. merchants. Their transnational cyber crime enterprise stole more than 80,000 customers' payment card data, with potential for fraud losses to the victims totaling millions of dollars. Inter-agency cooperation led to the recovery of evidence that not only proved critical in obtaining a federal conviction, but also persuaded Romanian officials to extradite these criminals. On September 4th, 2013, Mr. Oprea and Mr. Dolan were convicted in federal court and sentenced to serve fifteen years and seven years in prison, respectively.

The Secret Service also closely partners with academic institutions to advance public understanding of current cyber crime trends, and to develop the techniques and tools needed for law enforcement to effectively investigate cyber crime. In total, over 200 academic institutions partner with the Secret Service nationwide through our ECTFs. These partnerships allow the Secret Service to engage in various research projects related to cyber crime. For instance, 14 years ago we began assigning special agents to Carnegie Mellon University to collaborate on research and development projects related to cyber crime. The production of critical reports on cyber crime trends, such as the

⁷ Department of Justice, "Digital Currency Business E-Gold Pleads Guilty to Money Laundering and Illegal Money Transmitting Charges." (July, 2008). Available at: <http://www.justice.gov/opa/pr/2008/July/08-crm-635.html>

⁸ Manhattan DA, "Western Express Cybercriminals Convicted At Trial Sentenced To Significant State Prison Time." (August 2013). Available at: <http://manhattanda.org/press-release/western-express-cybercriminals-convicted-trial-sentenced-significant-state-prison-time>

Insider Threat Study, are one such result.⁹

In 2008, the Secret Service opened the Cell Phone Forensic Facility at the University of Tulsa to improve law enforcement's ability to investigate crimes involving mobile devices and enhance the District Attorney's ability to prosecute these perpetrators. This facility has a three-pronged mission:

- 1) Training federal, state, and local law enforcement agents in embedded device forensics;
- 2) Developing novel hardware and software solutions for extracting and analyzing digital evidence from embedded devices; and
- 3) Applying the hardware and software solutions to support criminal investigations conducted by the Secret Service and its partner agencies, including state and local law enforcement and District Attorneys.

Since opening, investigators trained at the Cell Phone Forensic Facility have completed over 6,500 examinations on cell phone and embedded devices nationwide.

Long ago the Secret Service recognized that the vast majority of crimes - both cyber and other - will have substantial local ties. To that end, in 2008 we partnered with the Alabama District Attorneys Association to undertake the largest and most comprehensive training program ever attempted for state and local law enforcement, prosecutors and judges in the cyber crime investigation and prosecution arena. This initiative is named the National Computer Forensics Institute (NCFI). The mission of NCFI is to provide state and local law enforcement, prosecutors, and judicial professionals a federally-funded, comprehensive education on current cyber crime trends, investigative methods, and prosecutorial and judicial challenges. Since opening in 2008, NCFI has held over 110 cyber and digital forensics courses in 14 distinct subjects and trained and equipped more than 3000 state and local officials from all 50 states and three U.S. territories. These NCFI graduates represent more than 1,000 agencies nationwide.

Graduates of NCFI return to their respective agencies and apply their newly acquired skills and equipment to investigating computer-based crimes. Additionally, these graduates are offered the chance to participate in the Secret Service's Electronic Crimes Task Force (ECTF) program, where they can work alongside other law enforcement agencies and private sector entities to combat cyber crime. For example, in the Romanian case heretofore referenced, a New Hampshire State Police Detective who is a graduate of NCFI, and a current member of our New England Electronic Crimes Task Force, performed a critical role in collecting and analyzing digital evidence as a part of the investigation. This case is just one example that highlights the importance of cross-

⁹ Available at: http://www.cert.org/insider_threat/

jurisdictional partnerships in combating domestic and transnational cyber crime.

In support of the Department of Homeland Security's mission to Safeguard and Secure Cyberspace,¹⁰ the Secret Service prioritizes investigating and defeating transnational cyber criminal threats. However, we cannot defeat cyber crime on our own and we need your help. Protecting our Nation against a crime that crosses international boundaries and knows no jurisdictional limits requires closer collaboration among state, local, federal, and international law enforcement agencies, in addition to partnerships with the private sector and academia.

Conclusion

Please know that our relationship with you and your agency is vitally important to us. For over thirty years, the Secret Service has been at the forefront of the federal law enforcement community in developing innovative means to combat cyber crimes. We will not waiver in our effort to keep and improve our already excellent relationship with local law enforcement and District Attorneys. Too, we will not waiver in our obligation to proactively investigate domestic and transnational cyber criminals to see that they are brought to justice in the United States criminal justice system. For us all to continue to be successful, we must continue to have great collaboration and cooperation amongst all law enforcement agencies - state and federal. The United States Secret Service and its international network of field offices and Electronic Crimes Task Forces thank you for what you do and are always on the ready to assist you in any way possible. We anxiously look forward to partnering with you in the future.

¹⁰ Department of Homeland Security, "The 2014 Quadrennial Homeland Security Review" (June 2014). Available at: <http://www.dhs.gov/sites/default/files/publications/qhsr/2014-QHSR.pdf>

'Unconditional love'

Willow VI, 2-year-old black Labrador retriever, joined the Family Justice Center in June

By Scott Johnson

Montgomery Advertiser

The Brooks-Sellers One Place Family Justice Center's latest addition provides calmness, relief and plenty of tail wags for the center's clients.

Willow VI is a 2-year-old black Labrador retriever who is trained as a service dog, and One Place is the first family justice center anywhere to have a facility dog. The center helps victims of domestic abuse, sexual abuse and elder abuse.

Willow also is the first service dog in the state to be used in courtrooms to help witnesses who are testifying.

Tamara Martin, Willow's handler, said the common reaction that One Place clients have to Willow is evidence of the comfort she brings.

"The first thing they do when Willow walks up to them is take her head and just bury their head into her and just break down and cry," Martin said.

Montgomery County District Attorney Daryl Bailey said his office used Willow to help victims testify during the most recent meeting of the grand jury.

She will accompany children who are testifying, but she also will help elderly witnesses and whoever else might need a little more inner strength when taking the stand, Bailey said.

She might even convince some people to testify who otherwise would not agree to it, he said.

"I think there are going to be folks who would not testify if it were not for Willow. I think she is going to provide that extra oomph that they need to tell their story," Bailey said.

The service that Willow provides is something the victims could not really receive any other way, she said.

"I think it is very beneficial for her to be here," Martin said. "To just have unconditional love and have somebody who is gonna not talk back, not give advice, not ask questions, but somebody who is just going to love them."

The National Family Justice Center Alliance has expressed interest in replicating the program at centers around the world, he said.

Martin is retired, having worked with victims for eight years and then with the federal court system for 21 years. She now works on a voluntary basis at One Place.

Willow was trained from birth by Canine Companions for Independence, a nonprofit that trains service dogs.

Martin said she started the process of trying to acquire a service dog for the center in December 2012.

The application process took about a year, and after Martin went to Orlando, Florida, to train with Willow, the two of them joined One Place in June.

While Willow has been valued at \$25,000, she was provided to One Place free of charge. She technically still belongs to Canine Companions, but as long as Martin meets requirements such as keeping her at the proper weight, Willow will remain at One Place.

Willow was trained to be extremely docile, so nothing much seems to bother her. Wednesday, she was lounging around on a couch at the justice center.

"She's so easygoing," Martin said. "She lowers your blood pressure."

Willow makes regular visits to the playroom for children at One Place, where she performs tricks for them and lets them pet her, Martin said.

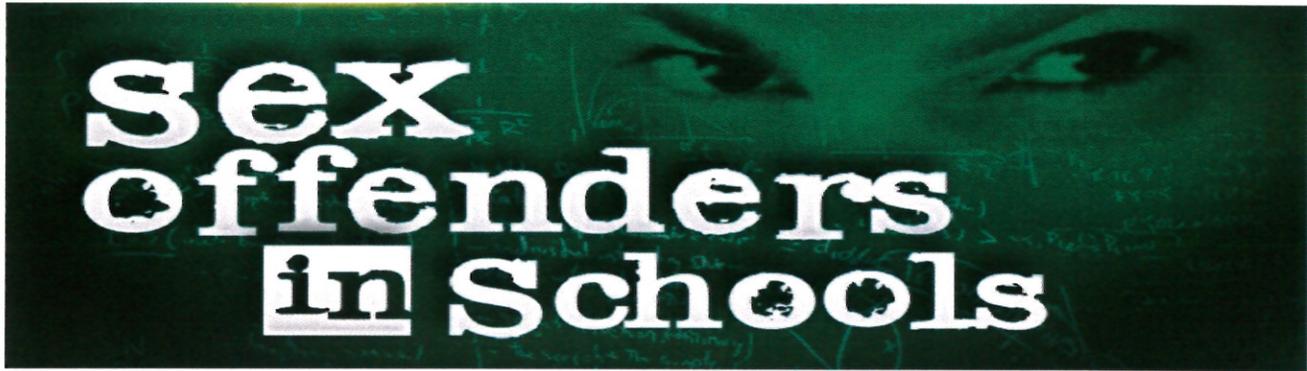
She knows about 38 different commands, including the usual ones like sit, stay and shake.

The command "visit" means it is time for her to greet a victim who needs consoling.

She also can open certain types of doors, turn the pages of a book and obey commands to relieve herself when she is outside or to jump into the tub for a bath.

Martin said those commands come in handy after Willow goes home with her every day.





The 2014 legislative session ended on April 3, 2014. There were several statewide bills filed regarding Alabama's Sex Offender Registration and Notification Act (ASORNA), however only one passed, Act 2014-421.

Act 2014-421 amended §15-20A-17, the loitering statute, to address the issue of an adult sex offender entering onto the property of a K-12 school while school is in session or attending any K-12 school activity. The law now states that an adult sex offender, who has been convicted of a sex offense involving a minor must do all of the following:

- (1) Notify the principal of the school, or his or her designee, before entering onto the property or attending the K-12 school activity.
- (2) Immediately report to the principal of the school, or his or her designee, upon entering the property or arriving at the K-12 school activity.
- (3) Comply with any procedures established by the school to monitor the whereabouts of the sex offender for the duration of his or her presence on the school property or attendance at the K-12 school activity.

A K-12 school activity is defined as an activity sponsored by a school in which students in grades K-12 are the primary intended participants or for whom students in grades K-12 are the primary intended audience including, but not limited to, school instructional time, after school care, after school tutoring, athletic events, field trips, school plays, or assemblies. For a public K-12 school, the local school board shall adopt a policy to address this section. The procedures established to address this subsection are limited to rules that allow the principal of the school, or his or her designee, to discreetly monitor the adult sex offender.

Please note that this amendment to the law only applies to adult sex offenders and youthful offender sex offenders treated as adult sex offenders. The amendment does not apply to juvenile sex offenders, youthful offender sex offenders treated like juveniles or registration only sex offenders.

If you would like a copy of Act 2014-421 or the K-12 Sex Offender Notification Form please send a request to Trisha.Mellberg@AlabamaDA.gov. Law enforcement can use the Sex Offender Notification Form to notify the adult sex offenders, and the youthful offender sex offenders treated as adults, of the new school notification requirement until the current registration form is amended to reflect the change.

Current Status of Sexual Misconduct

On June 13, 2014, the Alabama Court of Criminal Appeals, in Williams v. State, issued a ruling declaring § 13A-6-65(a)(3) of the Sexual Misconduct Statute unconstitutional. No. CR-12-1385, 2014 WL 2677722, at *6 (Ala. Crim. App. June 13, 2014). In the Williams case the defendant was indicted on one count of sodomy in the first degree. At trial the jury found the defendant guilty on the lesser included charge of sexual misconduct, § 13A-6-65(a)(3). The court held, as a matter of first impression, that the provision in the statute stating that consent is no defense to a prosecution under this subdivision was unconstitutional. 2014 WL 2677722, at *3.

§13A-6-65(a)(3) of the Sexual Misconduct provides “(a) A person commits the crimes of sexual misconduct if: ... (3) [h]e or she engages in deviate sexual intercourse with another person under circumstances other than those covered by Sections § 13A-6-63 [Sodomy I] and § 13A-6-64 [Sodomy 2]. *Consent is no defense to a prosecution under this subdivision.*” §13A-6-65, Ala. Code 1975. The commentary to the statute states that “[i]n the original draft, § 13A-6-65(a)(3) covered deviate sexual intercourse without lawful consent under the same terms and circumstances as subdivision (a)(1) covers vaginal intercourse. If both actors were adult and both consented, there was no offense; but this subdivision was changed by the legislature to make all homosexual conduct criminal, and consent is no defense.” *Id.*

In Williams the State argued that the Court should strike the unconstitutional language and remand the case back for a new trial. The Court declined to strike the unconstitutional language, held that § 13A-6-65(a)(3) was unconstitutional, and stated that remanding the case for a new trial would violate Double Jeopardy. The Attorney General’s Office has requested a rehearing, however, the court has not ruled on the rehearing request at this time.

The finding in this case impacts many of the cases that are investigated and prosecuted in juvenile court. If you have a case that was decided prior to the court's opinion, and this issue was not reserved for appeal, then the case should stand as is. For those cases that are still pending, you may want to consider asking the court to place the case on an administrative docket until the court rules on the Attorney General's request for rehearing. Keep in mind the statute of limitation on misdemeanors. If the statute is close to running you may want to consider alternative charges such as enticing, assault or harassment if the facts are appropriate.

Written by Trisha Mellberg

Search Warrant Generally Required to Search a Cell Phone!

Cell phones are an ingrained part of everyday life. Whether used to text, take photos, send emails, or surf the Internet, cell phones contain a great amount of information about our everyday lives. With cell phones being so commonplace, they present search and seizure issues for law enforcement. Recently, the United States Supreme Court dealt with this issue in *Riley v. California*. 134 S. Ct. 2473 (2014). The court combined two cases, *Riley* and *United States v. Wuire*, involving a smart phone and flip phone, respectively. The issue in both cases was whether the police may conduct a warrantless search of a cell phone seized incident to arrest. The Supreme Court held that a search warrant is generally required before searching data on a cell phone, even when seized incident to arrest. *Id.* at 2493. Thus, the search incident to arrest exception does not apply to cell phones. *Id.* at 2494.

The Court explained the rationale of the holding by explaining how cell phones, and specifically the digital data contained therein, are different from other items searched incident to arrest. First, “digital data stored on a cell phone cannot itself be used as a weapon to harm an arresting officer or to effectuate the arrestee’s escape.” *Id.* at 2485. Second, once a cell phone is secured, there is not a risk that the arrestee will delete digital data. *Id.* at 2486. Any concerns related to remote wiping and/or data encryption focus on the actions of third parties or the normal function of a cell phone rather than the actions of the arrestee. *Id.* Law enforcement may take appropriate steps to prevent remote wiping, such as turning off the phone, removing the battery, or placing the phone in a “Faraday bag.” *Id.* at 2487.

In reaching the decision, the Court was further concerned by the amount and type of information contained on a cell phone as compared to other items that may be searched incident to arrest. *Id.* at 2489. Cell phones combine many functions and store a vast amount of information. *Id.* at 2489. The difference in the physical practicality of carrying the items that would contain that information (diaries, mail, rolodexes) and the digital capacity of the phone is significant and only expected to grow. *Id.* A related concern is the type and sum of digital information, which could expose very personal information, or a vast array of information related to every call, search history, or photographs with date and location information. *Id.* at 2489-90. Finally, some of the information accessed via the cell phone is not in the phone, but is instead stored on a separate server. *Id.* at 2491.

In declining to approve a warrantless search incident to arrest, the Court stated that other case-specific exceptions to the warrant requirement may justify a warrantless search, such as exigent circumstances. *Id.* at 2494. Examples included “the need to prevent the imminent destruction of evidence in individual cases, to pursue a fleeing suspect, and to assist persons who are seriously injured or are threatened with imminent injury.” *Id.* at 2494. Examples of such circumstances discussed by the Court include a suspect texting an accomplice preparing to set off a bomb or a child abductor with information regarding the child’s location on the phone. *Id.* at 2494. Law enforcement will still have to answer the question of whether the emergency justified the warrantless search. *Id.* at 2494. Additionally, if law enforcement faces an imminent threat of remote wiping, then “they may be able to rely on exigent circumstances to search immediately.” *Id.* at 2487. Also, law enforcement is also authorized to secure a scene for the preservation of evidence while obtaining a warrant. *Id.* at 2488. Actions to preserve evidence include disabling a cell phone’s automatic-lock feature. *Id.* at 2487. Ultimately, the final words of the opinion set out what law enforcement must do before searching a cell phone seized incident to a lawful arrest, and should do in most, if not every, circumstance regarding searches of cell phones. “Get a warrant.” *Id.* at 2495

Written By: **Tamra Bryant**
Law Clerk, OPS
Jones School of Law (3L)

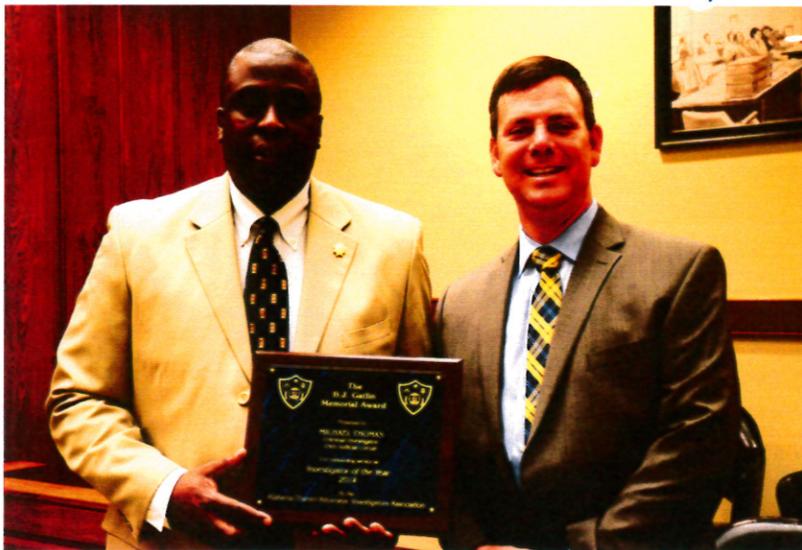
CONGRATULATIONS!

DISTRICT ATTORNEY OF THE YEAR

Mike O'Dell, District Attorney of Cherokee and DeKalb Counties was recently selected for District Attorney of the Year. O'Dell has been elected three times since his appointment. He began his career with the District Attorney's office in 1981.

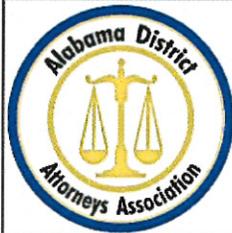
The District Attorney of the Year Award was established in 1986 in memory of Brad Morris, who was an investigator for former Jefferson County District Attorney David Barber and was a founding member of the Alabama District Attorneys Investigators Association.

INVESTIGATOR OF THE YEAR



Deputy Chief Investigator Mike Thomas was the recipient of the award. Thomas is employed by the Montgomery County District Attorney's office. This award is presented by the Alabama District Attorneys Investigators Association.

Alabama Prosecutor



Alabama Computer
ACFL
Forensic Laboratories



Dear Colleague,

As you know, every year the Alabama legislature enacts new laws that impact all levels of law enforcement in this state. These laws range from a very minor changes in existing laws to groundbreaking new laws that will substantially affect what we do every day. We at ADAA and OPS are deeply involved in this process by drafting, amending and shepherding bills through the system. We truly feel that this was one of our most successful legislative sessions ever with regard to law enforcement issues.

The following summary has been prepared by the Alabama District Attorneys Association (ADAA) and the Office of Prosecution Services (OPS) to familiarize you with these new laws and with changes to existing laws. Please pay special attention to the new statutes on forfeiture, synthetic drugs and expungement of certain limited arrests and dismissals. These bills were drafted by ADAA and OPS and will make a huge difference in our ability to carry out our duty to protect and serve our citizens.

We at ADAA and OPS would like to express our appreciation to the many Senators, Representatives and legislative staff who recognize the importance of our input in this process and who agree to sponsor legislation that is critical to our mission. We also wish to thank those District Attorneys, Assistant District Attorneys and other law enforcement officials who have assisted in this effort. Lastly, we would like to thank the staff at ADAA and OPS for their tireless efforts and their commitment to doing what is the right thing, every time, every single day.

Randy Hillman

Randy Hillman
Executive Director, ADAA/OPS

Barry Matson

Barry Matson
Deputy Director, ADAA/OPS



The Alabama State House, Montgomery Alabama

Sine Die Report Prepared by:

Barry Matson, *Deputy Director*

Trish Mellberg, *SORNA*

Beau Brown, *General Counsel*

Office of Prosecution Services, OPS
Alabama District Attorneys Association, ADAA
Montgomery, Alabama 36104
(334) 242-4191

IMPACT LEGISLATION

Comprehensive Criminal Forfeiture

Act 2014-306

Senate Bill 332

Sponsor Senator Arthur Orr

Representative Allen Treadaway

The “Alabama Comprehensive Criminal Proceeds Forfeiture Act” (the “Forfeiture Act”) is a general forfeiture law that allows law enforcement to seize proceeds obtained from and/or instrumentalities used in the course of any act that is chargeable as a felony offense. Importantly, the Forfeiture Act expands the current forfeiture laws from several statutorily designated offenses to **any felony offense**.

Through a civil in rem proceeding, law enforcement can now seize: a) any proceeds derived from or realized through any act that is chargeable as a felony offense, and b) any property or instrumentality of any kind used or intended for use in the course of any act that is chargeable as a felony offense.

PROVISIONS INCLUDE:

1. The State has 42 days to file suit from date of seizure.
2. The Forfeiture Act expands the definition of “innocent owner,” and if an “innocent owner” or lien holder claims the seized property, the State must prove that the offense was committed with the “innocent owner” or lien holder’s knowledge or consent.
3. Upon the presentation of a valid claim by a true “innocent owner,” the State may stipulate that the “innocent owner’s” interest is exempt from forfeiture.

4. An “innocent owner” may request an expedited ‘show cause’ hearing, which the court shall set within 60 days. At the hearing, the State must prove that probable cause exists for the forfeiture in order to proceed against the subject property.
5. On the motion of either party, the civil forfeiture proceeding may be stayed pending the resolution of the underlying criminal case.
6. Proceeds shall be divided among participating law enforcement agencies, including the district attorney’s office, and as payment of restitution to any victims. Division of proceeds shall be at the recommendation of the prosecutorial entity.
7. Court costs must be deducted from the total award at the conclusion of the civil case and *may not be waived*. In the event that the property is returned to the claimant or the case is dismissed, the filing fees and publication costs (if any) must be paid within 15 days of disposition.

ABANDONED PROPERTY PROVISION: The Forfeiture Act Provides for the disposition of abandoned property as follows:

1. The law enforcement agency in possession of abandoned property shall file a sworn affidavit stating the circumstances of abandonment, including any and all efforts made to locate any owners and lien holders.
2. Law enforcement must check each of the following for owner information: the Alabama Department of Revenue, the Probate Court, and the Secretary of State.
3. The District Attorney shall then file an action in Circuit Court, attaching the above affidavit, and requesting an order declaring the subject property to be deemed abandoned.
4. If the whereabouts of the owner are unknown, service shall be at the last known address *and* by publication on a governmental website or newspaper for a period of 3 weeks.
5. Court costs cannot be waived or remitted, but may be paid form the final disbursement of the award if the plaintiff prevails.

Synthetic and Analogue Revision

Act 2014-184

Senate Bill 333

Senate Sponsor Arthur Orr

House Sponsor Allen Farley

This bill shall be known as Landon’s Law.

This act was a collaborative effort between the Office of Prosecution Services, (OPS), the Alabama District Attorneys Association, (ADAA), the Alabama Law Enforcement Agency, (ALEA), the Drug Enforcement Administration, (DEA), the Alcohol Beverage and Control Board, (ABC), and the Alabama Department of Forensic Sciences, (ADFS). The bill clarifies the name designation for known *synthetic drugs* and *synthetic analogue drugs*. Known synthetic drugs are now designated, ‘synthetic controlled substances’.

Synthetic Controlled Substances, (designer drugs, spice, K2, bath salts, JWH, 25-I) were initially discovered through research or experimentation upon the structure and activity of existing drugs. Synthetic Controlled Substances are chemical compounds that have binding activity at the brain receptors and cause a depressant, hallucinogenic, or stimulant effect on the central nervous system. These psychoactive designer drugs are now synthesized in China or Eastern Europe and shipped via the black market to America in powder form. The powder is usually broken down by using an agent such as acetone, then sprayed or mixed with some other vehicle that acts as a mechanism for consumption or inhalation. The strength of the drug is determined by the criminal manufacturer overseas and often lead to renal and pulmonary damage, psychosis, suicide and extreme dependency or addiction.

Synthetic Controlled Substance Analogues are chemical compounds that are ‘substantially similar’ to a Scheduled I or II controlled substance and cause the same depressant, hallucinogenic, or stimulant effect on the central nervous system. Simply, they are *analogous* to and mimic Scheduled I or II controlled substance.

Trafficking in Synthetic Controlled Substances. This brings the known synthetic controlled substances identified in 20-2-23 (4) into the trafficking statute rather than having to rely upon the analogue statute. The legislation also raises the quantity required for trafficking in synthetic controlled substance and synthetic controlled substances analogues from 28 grams to 56 grams or more. It is the consensus of law enforcement and forensic chemist that the 56 gram threshold is a much more appropriate amount for trafficking purposes.

DID YOU KNOW?

The Alabama Legislature meets in annual Regular Sessions, each of which can consist of no more than 30 Legislative (meeting) days, within a 105 Calendar day period. By statute, the dates for convening of annual sessions, for each year of a Quadrennium (4-year period), are as follows (all times, Noon):

- 1st Year: 1st Tuesday in March
- 2nd Year: First Tuesday in February
- 3rd Year: First Tuesday in February
- 4th Year: 2nd Tuesday in January

Special Sessions may be called at any time, by the Governor, for emergency or extraordinary reasons. Special Sessions can consist of no more than 12 Legislative (meeting) days, within a 30 Calendar day period. In his/her Proclamation, calling the Legislature into such session, the Governor will state the date and time for convening of such session.

New Additions to the Synthetic Controlled Substance list found in 20-2-23 (4), the act defines a new list of synthetics identified by DEA and ADFS as well as other surrounding states.

Clarification of Synthetic Controlled Substance Analogue list found in 20-2-23(5), the act also clarifies the base structures of synthetic controlled substance analogues. These synthetic controlled substance analogues are being distributed or marketed commercially and on the black market for such purposes.

Expungement of Arrest Records Act 2014-292

Senate Bill 108

Senate Sponsor Roger Bedford

House Sponsor Chris England

This act creates an expungement process for the records relating to arrests where the person was found not guilty or the case was dismissed or no billed by a grand jury. It relates only to misdemeanors that arose in a municipal, district or circuit court action. Its application to felonies is very limited and applies only to non-violent arrest records. Violent offenses are defined in 12-25-32(14), Code of Alabama 1975:

SECTION 1 Expungement of Misdemeanors and Violations; Section 1 (a) A person charged with a misdemeanor, violation, traffic offense or municipal ordinance violation may file to have the records related to that arrest expunged under certain circumstances when the offenses were dismissed, no billed or resulted in acquittal. **[NO CONVICTIONS]**

SECTION 2 Expungement of certain nonviolent Felonies; Section 2 (a) A person charged with certain felonies may file to have the records expunged under certain circumstances when the offenses were dismissed, no billed or resulted in acquittal. **[NO CONVICTIONS]**

An expungement *may not* be provided in any of the following instances pursuant to 12-25-32(14), Code of Alabama 1975:

1. Capital murder pursuant to Sections 13A-6-2 and 13A-5-40.
2. Murder pursuant to Section 13A-6-2.
3. Manslaughter pursuant to Section 13A-6-3.
4. Criminally negligent homicide pursuant to Section 13A-6-4.
5. Assault I pursuant to Section 13A-6-20.
6. Assault II pursuant to Section 13A-6-21.
7. Compelling street gang membership pursuant to Section 13A-6-26.
8. Kidnapping I pursuant to Section 13A-6-43.
9. Kidnapping II pursuant to Section 13A-6-44.
10. Rape I pursuant to Section 13A-6-61.
11. Rape II pursuant to Section 13A-6-62.
12. Sodomy I pursuant to Section 13A-6-63.
13. Sodomy II pursuant to Section 13A-6-64.
14. Sexual torture pursuant to Section 13A-6-65.l.
15. Sexual abuse I pursuant to Section 13A-6-66.
16. Enticing a child to enter a vehicle for immoral purposes pursuant to Section 13A-6-69.
17. Stalking pursuant to Section 13A-6-90.

18. Aggravated stalking pursuant to Section 13A-6-91.
 19. Soliciting a child by computer pursuant to Section 13A-6-110.
 20. Domestic violence I pursuant to Section 13A-6-130.
 21. Domestic violence II pursuant to Section 13A-6-131.
 22. Burglary I pursuant to Section 13A-7-5.
 23. Burglary II pursuant to Section 13A-7-6.
 24. Burglary III pursuant to Section 13A-7-7.
 25. Arson I pursuant to Section 13A-7-41.
 26. Criminal possession of explosives pursuant to Section 13A-7-44.
 27. Extortion I pursuant to Section 13A-8-14.
 28. Robbery I pursuant to Section 13A-8-41.
 29. Robbery II pursuant to Section 13A-8-42.
 30. Robbery III pursuant to Section 13A-8-43.
 31. Pharmacy robbery pursuant to Section 13A-8-51.
 32. Terrorist threats pursuant to Section 13A-10-15.
 33. Escape I pursuant to Section 13A-10-31.
 34. Promoting prison contraband I pursuant to Section 13A-10-36, involving a deadly weapon or dangerous instrument.
 35. Intimidating a witness pursuant to Section 13A-10-123.
 36. Intimidating a juror pursuant to Section 13A-10-127.
 37. Treason pursuant to Section 13A-11-2.
 38. Discharging a weapon into an occupied building, dwelling, automobile, etc., pursuant to Section 13A-11-61.
 39. Promoting prostitution I pursuant to Section 13A-12-111.
 40. Production of obscene matter involving a minor pursuant to Section 13A-12-197.
 41. Trafficking pursuant to Section 13A-12-231.
 42. Child abuse pursuant to Section 26-15-3.
 43. Elder abuse pursuant to Section 38-9-7.
 44. Terrorism pursuant to Section 13A-10-152.
 45. Hindering prosecution for terrorism pursuant to Section 13A-10-154.
 46. Any substantially similar offense for which an Alabama offender has been convicted under prior Alabama law or the law of any other state, the District of Columbia, the United States, or any of the territories of the United States.
- b. The basis for defining these offenses as violent is that each offense meets at least one of the following criteria:
1. Has as an element, the use, attempted use, or threatened use of a deadly weapon or dangerous instrument or physical force against the person of another.
 2. Involves a substantial risk of physical injury against the person of another.
 3. Is a nonconsensual sex offense.
 4. Is particularly reprehensible.
- c. Any attempt, conspiracy, or solicitation to commit a violent offense shall be considered a violent offense for the purposes of this article.
- d. Any criminal offense which meets the criteria provided in paragraph b. enacted after 2003.

Jurisdiction of Expungement Proceedings; Section 1 (b) and Section 2 (b) The Criminal Division of the Circuit Court in the jurisdiction where the expungement is sought has exclusive jurisdiction over the proceedings. Because records susceptible to expungement may be located in many different locations and with many different agencies or entities, it is critical that a competent court of record is in charge of the process of expungement. This protects all parties, by providing due process and a record for future reference.

SECTION 3, The Petition for Expungement: Section 3 (a) (b) (c) A person filing a petition must swear under penalty of perjury that the petitioner has satisfied the requirements of the Act and whether the petitioner has applied for and/or been granted an expungement previously. The petitioner must include as part of the filing: a certified record of arrest, disposition, or case action summary; certified official criminal record; and set out what criminal charges are to be considered.

The district attorney, law enforcement agency, and clerk of court shall be served with a copy of the petition.

Safeguards: Section 3 (c) To prevent unqualified or improper expungements, the district attorney must review each petition for expungement and file an objection in such an event. The district attorney may also make reasonable efforts to notify victims if the petition relates to a dismissal after the successful completion of a pre-trial diversion program and the victim is not a governmental agency.

The district attorney and victim have 45 days to object. If no objection is filed, the right to object is deemed waived and the court may rule on the merits of the petition without a hearing. If an objection is filed, a hearing shall be set in which the court shall consider certain enumerated factors. The Alabama Rules of Evidence shall apply.

The burden is on the petitioner to prove to the court's reasonable satisfaction that the petitioner complied with the requirements of the Act. The court's ruling is appealable, but shall not be reversed absent a showing of an abuse of discretion.

SECTION 4 Filing Fee; Section 4 (a) A fee of \$300 shall be paid at the time the petition is filed and distributed among those agencies involved in the process of expungement. The Fee structure is as follows:

1. \$75 to AOC
2. \$25 to ADFS
3. \$50 to DA
4. \$50 to the Circuit Clerk
5. \$50 to Public Safety fund, (ALEA)
6. \$50 to County if Sheriff or to Municipality if Police have records

Indigence of Petitioner; Section 4 (b) The section provides for indigency, however, the court may set forth a payment plan that must be paid in full before any order of expungement is granted.

Underlying case was a frivolous action; Section 4 (c) The cost shall be waived if the court in the original case made a clear and unequivocal finding that the arrest had no foundation of probable cause.

SECTION 5 Objections, Review and Hearings; Section 5 (a) If the district attorney or victim files an objection, then court shall conduct a hearing. This section sets forth the method of notice and procedures as well as matters the court must consider.

Section 5 (d); If no objection is filed by the district attorney, the Court may rule on the merits of the petition and relief will be granted.

SECTION 6 (a) If a petition is granted, the court shall order that all records related to the case be expunged, absent some exceptions. All agencies are required to certify compliance with the order to the court.

SECTION 6 (b) The Granting of a Petition; After expungement, the proceedings regarding the charge shall be deemed never to have occurred and all agencies, with some exceptions, shall reply to any inquiry that no record exists on the matter.

What happens to the records once the court orders expungement? *Section 7 and 8 address the archival and future access to such records.*

SECTION 7 Archiving and Maintenance of Records; Section 7 (a) All law enforcement agencies shall forward records to the Alabama Criminal Justice Information Center (ACJIC), which will archive the records. Such records will be retained indefinitely. Some agencies will be allowed to retain certain documents, but must keep those documents sealed.

NCIC; Section 7 (b) A request will be made that any expunged records be removed from federal databases and not be made available in any interstate criminal database. Further, sealed records shall not be transmitted to the FBI national criminal records repository.

SECTION 8 Archiving and Maintenance of Records; Section 8 All other agencies shall forward records to the Alabama Criminal Justice Information Center (ACJIC), which will archive the records. Such records will be retained indefinitely. Some agencies will be allowed to retain certain documents, but must keep those documents sealed.

SECTION 9 Definition of Records, Section 9; This definition is broad enough to cover the various ways and methods of record keeping in Alabama regarding an arrest.

SECTION 10 Law Enforcement Exception for Investigative Files. Section 10: Certain law enforcement and forensic agencies may maintain files and information for certain purposes.

SECTION 11 Court's order required to have sufficient identifiers to identify the correct person connected to the order of expungement and the records to be expunged.

SECTION 12 An order of expungement shall not be granted unless all court ordered money has been paid in the original case absent a finding of indigency. The Alabama Office of Courts shall provide to the Legislature, upon request, a report setting the numbers and information related to expungement requests.

SECTION 14 This Act does not apply to the Alabama Securities Commission and information that the Commission requires.

SECTION 15 If federal gun rights are affected, they can only be restored by action of Pardons and Parole through a pardon. This is current Alabama Law.

SECTION 16 Criminal Release of Expunged Records: Any person who maliciously divulges information related to an expungement will be guilty of a Class B misdemeanor. A person is immune from civil liability based on any provision in place and/or absent unreasonable, wanton, willful, or intentional conduct.

Immunity: Section 16 (b) and (c) These sections provide immunity for unintentional and accidental release of expunged records and business immunity for actions of employees if the business was unaware of a prior expungement.

SECTION 17 Petition was Fraudulent; If a petition was granted based on false pretenses made by the petitioner, then that order shall be reversed.

SECTION 18 Any applicant for a law enforcement or correctional officer must disclose the incident and APOST shall have access to archived expunged records at ACJIC.

SECTION 19 ACJIC shall adopt rules for the submission of data from agencies for purposes of archival.

Juvenile and Youthful Offender Records Access

Act 2014-432

SB398

Sen. Dial

This Act amended sections 12-15-133 and 15-19-7, Code of Alabama to specifically establish that prosecutors shall be granted access to information in the case files of juvenile and youthful offender cases for which there is a pending case. Further, such access is now statewide and not limited to a prosecutor's county. Information associated with the juvenile case that is not in the case file (such as DHR or DYS reports) may be obtained by the prosecutor upon a written request filed with juvenile court setting out the reason for the request, the use to be made of the information, and the names of the individuals/entities that will have access to the information.

What is Sine Die?

Sine Die [Latin, Without day.] Without day; without assigning a day for a further meeting or hearing. A legislative body adjourns sine die when it adjourns without appointing a day on which to appear or assemble again.

Boating Under Influence, Criminally Negligent Homicide and Assault, Repeal of Crime of Homicide by Vehicle

Act 2014-427

SB89

Senator Taylor

Representative Beckman

To amend Sections 13A-6-4 and 13A-6-20 of the Code of Alabama 1975, relating to the offense of criminally negligent homicide and assault in the first degree, respectively, and providing when the offenses are committed by persons unlawfully driving a motor vehicle under the influence of alcohol or drugs; to provide that the offense may be committed by a person while driving or operating any vehicle, including a vessel, while unlawfully under the influence of alcohol or drugs; and to repeal Section 32-5A-192, Code of Alabama 1975, providing for the crime of homicide by vehicle or vessel.

DID YOU KNOW?

The 2014 Legislative session began on January 14, 2014 and adjourned Sine Die on April 5. A Regular Session may consist of no more than 30 Legislative Days within the framework of a 105-calendar day period.

DHR; TANF Assistance; Drug Testing

Act 2014-438

SB63

Sen. Pittman

DHR shall implement and administer a drug screening program for any adult applicant for temporary cash assistance who is otherwise eligible for TANF. This also applies to certain recipients upon reasonable suspicion that the adult uses or is under the influence of a drug. Reasonable suspicion is set out in the Act. DHR shall require each applicant to disclose any criminal drug conviction on any TANF application under penalty of

perjury. The Act sets out the process for payment and what happens upon refusal of a positive drug screen. The results of any drug screens under this Act shall not be admissible in any criminal proceeding.

AL Pre-need Funeral/Cemetery

Act 2014-216

SB98

Sen. Bussman

This Act amends multiple statutes in order to strengthen consumer protection and eliminate ambiguity in the requirements for the proper handling of preneed (funeral services) and cemetery endowment care funds. Of particular relevance, the Act amends 27-17A-22, in which a person who knowingly receives payments for a preneed contract without having a valid certificate of authority commits a Class B or C felony, or a Class A misdemeanor depending on the amount of the payments made for the contract. Further, a person who willfully fails to timely deposit the money in a listed trust account commits a Class B or C felony depending on the amount of the contract. Further, a person who knowingly withdraws funds or assets from a listed trust account in a manner not authorized by the chapter commits a Class B or C felony depending on the amount withdrawn. A Class C felony is committed if a person knowingly delivers, or makes available during an investigation, a required document to the Insurance Commissioner with false information contained therein concerning a material matter, or a person who makes or fails to correct false entries in business records, or fails to make correct entries or prevents corrected entries from being made related to preneed contracts. If not specifically stated, a willful violation of this chapter is a Class A misdemeanor. The duties and authority of the insurance fraud unit created under Section 27-12A-40, Code of Alabama, extends to these investigations.

Public Assistance Fraud

Act 2014-424

SB114

Sen. Orr

Creates certain crimes related to public assistance fraud, sets out admission of evidence by certification similar to hospital records, and allows for forfeiture. This is a wide reaching section that encompasses criminal activity related to all forms of public assistance. A violation of this section is either a class C felony or class A misdemeanor, depending on the amount (greater or less than \$200). Three or more violations of this Act establish a rebuttable presumption that the individual knowingly violated the Act. There are some exceptions made for hospitals and doctors in regards to Medicaid payments. For example, whereas repayment of funds cannot be used as a defense in most circumstances, a doctor or hospital may use

that as a defense in the case of Medicaid payments. Further, the Act amends 40-18-100, Code of Alabama, to include a housing authority as a "claimant agency."

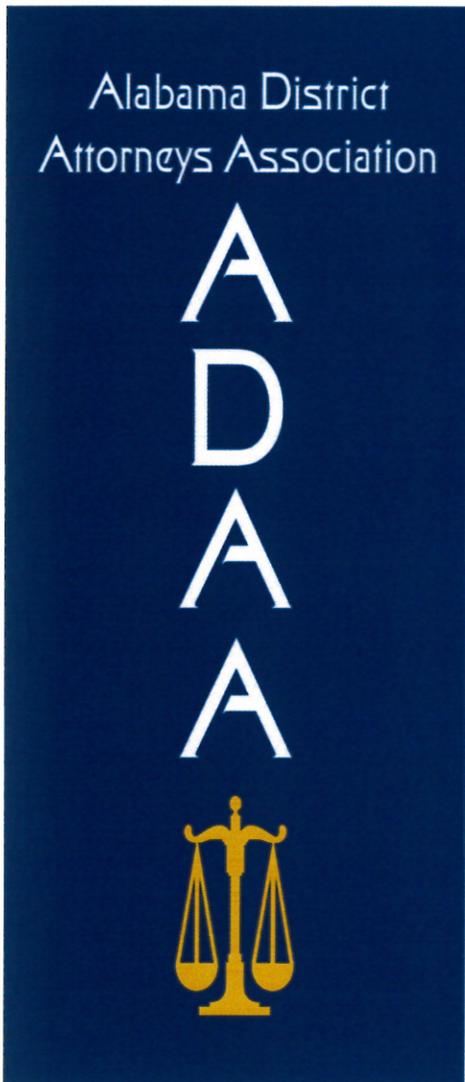
TANF Eligibility Requirements

Act 2014-425

SB115

Sen. Orr

This Act amends 38-4-2, 38-4-4, and 38-11A-2, Code of Alabama, relating to eligibility for public assistance. Total income for the purposes of TANF assistance is determined based on the total income of the applicant and the spouse or cohabitating partner of the applicant. The recipient, spouse, or cohabitating partner of the recipient must report any income later received in excess of that reported at the time of the application. Finally, a TANF applicant must apply for three (3) jobs before completing the TANF application process. Any recipients who voluntarily quit a job or refuse employment without good cause shall be ineligible for TANF



Prohibiting the Use of Public Assistance Benefits to Purchase Alcohol, Tobacco, etc

Act 2014-419

SB116

Sen. Orr

Prohibits a person on TANF from accepting funds for the purchase of any alcoholic beverage, tobacco product or lottery ticket. The Act prohibits a recipient from withdrawing or using public assistance funds in an establishment that primarily sells alcohol, a casino, a tattoo or body piercing facility, a place providing psychic services, or a place that provides adult entertainment. Penalties are set out in the form of loss of benefits for a period of time based on the number of previous violations. DHR is required to determine if any recipients are incarcerated or deceased on a monthly basis, and if so, stop payment.

Disclosure of the Government Purchase of Real Property

Act 2014-133

SB173

Sen. Pittman

The state, county, municipality, governmental entity, or quasi-governmental entity shall disclose information concerning the purchase of any real property with public funds within 60 days following the purchase. Such disclosure, with required information as set out in the Act, shall be made by means of a report available to the public and published on the website if the body maintains a website. There is an exception for decisions to purchase made at open meetings with advance notice.

Cannabidiol (CBD) Use and Defense of Necessity

Act 2014-277 (Carly's Law)

SB174

Sen. Sanford

Rep. Allen Farley

Act creates the affirmative and complete defense to the prosecution of possession of CBD oil by the patient, or by the parent/caretaker of a patient who has a debilitating epileptic condition and who has a prescription for such as authorized by UAB. A

child may not be removed from the home if possession of the CBD oil is authorized by this Act. UAB has the exclusive authority to prescribe CBD oil, be the sole source CBD oil, and be the sole determiner of the amount of CBD oil to use. Those UAB personnel involved shall not be subject to prosecution as long as CBD oil is only provided to those individuals diagnosed with a debilitating epileptic condition. UAB will establish a study to determine the medical uses of CBD oil. OPS and ADAA was able to include in the Act a provision that required, pursuant to Rule 15.3 ARCP, a defendant to produce a

valid prescription, certification of a debilitating epileptic condition, and the name of the prescribing health care professional authorized by the UAB department. Debilitating epileptic condition is defined in the Act.

Omit the Address of Domestic Violence Victims from Voter Registration Lists

Act 2014-221

SB280

Sen. Dunn

This Act amends sections 11-46-36, 11-46-107, 17-4-33, 17-9-15, and 17-11-5, Code of Alabama, to provide for the omission, from the list of registered voters, the mailing address of any registered voter who is a victim of domestic violence or who is the custodian of a minor victim of domestic violence upon the written affidavit of the registered voter. Such written and signed affidavit shall be made to the board of registrars of the county in which the individual is registered or intends to register, affirming that: 1) the registered voter, or minor in the legal custody of the registered voter, is or has been the victim of domestic violence as provided in Article 7, commencing with Section 13A-6-130, of Chapter 6 of Title 13A; or 2) that a domestic violence order is or has been issued by a judge or magistrate pursuant to the Domestic Violence Protection Order Enforcement Act, to restrain access to the registered voter or a minor in the legal custody of the registered voter.

DUI Ignition Interlock

Act 2014-222

SB319

Sen. Holzclaw

Under existing law, certain persons convicted of driving under the influence are required to have an ignition interlock device installed on their motor vehicles as a condition of driving. This bill would authorize the Director of Public Safety to stay the required 90-day suspension of the driver's license upon a first conviction for driving under the influence if the offender has an ignition interlock device installed on his or her motor vehicle. This bill would authorize the director to reduce the suspension period for a subsequent offense if the ignition interlock device is installed. This bill would require certain offenders to have the ignition interlock device installed. This bill would provide further for the distribution of the fee associated with monitoring the interlock device. This bill would provide for installation of the device where the offender is adjudged indigent.

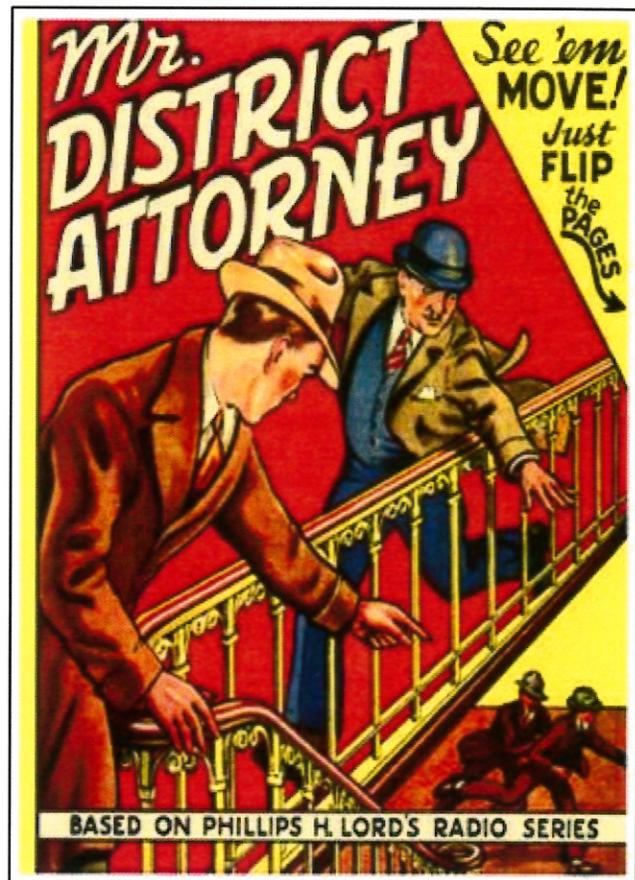
Booking Fee in Elmore County

Act 2014-

SB448

Sen. Brewbaker

Requires that a \$25.00 booking fee be assessed in addition to other court costs if the defendant is incarcerated in the Elmore County Jail and the defendant is convicted or pleads guilty in the circuit or district court of the county. The fee is to be used by the Elmore County Commission for the operation of the Sheriff's Office to purchase motor vehicles and information technology equipment or for other law enforcement purposes.



State Department of Finance Database of All State Property

Act 2014-414

HB20

Rep. DeMarco

The State Department of Finance must develop and maintain an automated inventory of all facilities and lands owned, leased, rented, or otherwise occupied or maintained by any agency of the state or by the judicial branch. Facility is defined

as buildings, structures, and building systems. The inventory shall include location and ownership. The inventory shall be updated at least once every three (3) years, and must be updated to reflect acquisitions of new facilities and lands and significant changes in existing facilities and lands as they occur. Each agency must report significant changes as they occur.

Alabama Board of Funeral Service

Act 2014-125

HB101

Rep. Brown

Amends a number of statutes related to the Alabama Board of Funeral Services as to the licensing and conduct of licensees. The Act amends 34-13-1, Code of Alabama, by adding the definition of "conviction" as "the entry of a plea of guilty or a guilty verdict rendered by any court of competent jurisdiction, excluding traffic violations." Also adds a definition for "moral turpitude" in the same statute. These definitions deal with administrative license issues to be determined by the board as required in 34-13-56, Code of Alabama.

Autauga County Sheriff Authorized to Sell Unclaimed Property

Act 2014-241

HB300

Rep. Beckman

Authorized the Autauga County Sheriff to sell unclaimed property in the Sheriff's possession. The property must be retained at least six (6) months before sale or auction unless perishable. Firearms may only be sold to gun dealers with a federal firearm license. The proceeds of the sales are to be deposited in a bank in Autauga County designated as the Sheriff's Fund, and used for the exclusive purposes of law enforcement in the discharge of the sheriff's office as the sheriff sees fit.

DID YOU KNOW?

A total of 1,779 Senate and House bills were introduced while only 397 passed. In 2013 1,847 bills were introduced which is a sharp decrease from 2011 when 2339 bills were considered by the Alabama Legislature.

Jefferson County Distribution of Pistol Permit Fees Act 2014-454

HB316

Rep. Carns

Amends Section 2 of Act 99-594 to establish how the money from permit fees is to be distributed and handled in regards to the newly created Jefferson County Legislative Delegation Office Fund, and how the money currently in old delegation account is to be dispersed.

Alabama Crime Victims Compensation Commission

Act 2014-335

HB352

Rep. DeMarco

Amends sections 15-23-3, 15-23-5, and 15-23-15, Code of Alabama. The Act increases the allowance expense from \$5,000 to \$7,000 for expenses related to funeral, cremation, or burial. Amends the definition of work loss to include loss of income of an offender charged with DV under sections 13A-6-130, 131, and 132 when the victim was residing with the offender at the time of the offense and the offender's income was a significant source of direct support for the victim. The maximum compensation for work loss, replacement services loss, dependent's economic loss and dependent's replacement services loss was increased to \$600. The maximum compensation to a victim and all other claimants sustaining economic loss because of injury to or death of that victim was increased to \$20,000 in the aggregate. An amendment was made as to how the commission determines if a lump sum for future economic loss may be made. The Alabama Crime Victim's Compensation Commission has the authority to provide promotional items.

Tobacco Products

Act 2014-262

HB404

Rep. Jones

Amends a number of code sections and adds a code section dealing with tobacco. Specifically amends 40-25-7, Code of Alabama, to make the crime of not providing invoices related to tobacco products an administrative violation before the Department of Revenue rather than a criminal misdemeanor. Amends 40-25-13, Code of Alabama, in the same way, in that any group that fails to preserve records or permit the Department of Revenue to inspect records is now subject to an administrative violation rather than a misdemeanor. Same for 40-25-20, Code of Alabama, in that it's an administrative violation to reuse or refill tobacco containers rather than a misdemeanor.

Single Invitation to Bid for Multiple State Contracts

Act 2014-343

HB518

Rep. Williams P.

Amends 41-16-27, Code of Alabama, by rewording a section stating when multiple purchase contracts resulting from a single invitation-to-bid do not apply. The following language was removed, "contracts for the purchase of personal property for which a service or service contract, whether subject to competitive bidding under this article or not, is necessary to utilize the personal property throughout the period of utilization of the personal property the purchase of Integrated Digital Enhanced Network equipment and related services property," and replaced with "contracts for the purchase or use of push to talk services, which shall be purchased through a separate competitive bid process."

Referendum for Winston County to Increase the Fee for Service of Process

Act 2014-416

HB586

Rep. Johnson K.

Local Act for Winston County that will become operative if approved by a vote of the county. It would allow a service of process fee of \$20 to be collected along with all other costs in a criminal case for each document requiring personal service of process. Since it's a cost that is "in addition to all other charges, fees, judgments, and costs of court" this fee should be assessed on the defendant and not the DA since only the defendant pays costs in a criminal case. However, the \$20 fee also applies in civil cases on each document requiring personal service of process. This would affect the DA in forfeiture proceedings. The fee is split equally between the County Commission for law enforcement purposes and the Circuit Clerk's Fund.

Immunity; Local Board of Education Employees for Acts within Scope of Employment

Act 2014-124

HB 64

Representative Jones

This bill provides that an officer, employee, or agent of the state acting in his or her official capacity is immune from liability in any suit pursuant to Article I, Section 14 of the Alabama Constitution. It would also provide that they are not personally liable for any act that is incident to or within the scope of their employment position unless they act willfully, maliciously, fraudulently, in bad faith or beyond their authority. This bill also provides the same protection for education employees

Confidential Records of Insurance Holding Company and Sharing with Law Enforcement

Act 2014-324

HB 111

Rep. Hill

This Act revises the Alabama Insurance Holding Company System Regulatory Act. Specifically as to DA's, the Insurance Commissioner may share documents, materials, or other information with state law enforcement agencies, but the recipient must agree to keep the information confidential. An added criminal component is that any officer, director, or employee of an insurance holding company system who willfully and knowingly makes, subscribes to, or causes a false statement,

report, or filing with intent to deceive the Commissioner shall be imprisoned for not more than five (5) years or fined \$50,000, or both.

Statute of Limitations Expansion for Securities and Certain Theft Offenses

Act 2014-348

HB 325

Representative DeMarco

This bill would increase the statute of limitations for all felonies, except for the conversion of public revenues, certain offenses that have no limitation, or any other felony that has a specified limitation, from three (3) years to five (5) years. This bill would also provide that the statute of limitations for prosecutions of theft by deception and certain securities violations do not commence or begin to accrue until discovery of the facts constituting the deception, after which the prosecution must be commenced within five (5) years.

Juvenile Court Exclusive Jurisdiction for Termination of Parental Rights

Act 2014-350

HB 376

Representative Jones

This bill would restore to the juvenile court exclusive original jurisdiction over all actions for the terminations of parental rights.

Right to Hunt, Fish and Harvest Wildlife in Alabama

Act 2014-286

HB 322

Representative Mark Tuggle

This bill would guarantee the right to hunt, fish and harvest wildlife in Alabama. This measure seeks to strengthen Alabama's current right to hunt and fish constitutional provision. The passage of this bill requires a constitutional amendment to be included on the general election ballot this November. HB 322 would promote wildlife conservation and management. In addition, it specifies that hunting, fishing and harvesting of wildlife shall be used as the preferred means of managing and controlling wildlife.

Trapping Fur-Bearing Animals

Act 2014-181

SB229

Sen. Allen

Changes elements of criminal violations in 9-11-59, Code of Alabama, regarding trapping fur-bearing animals. It increases the fees to obtain a license and requires metal tags to be attached to each trap with the name and address of the owner.

DID YOU KNOW?

*Each year the **Office of Prosecution Services (OPS)** and the **Alabama District Attorneys Association (ADAA)** reviews each piece of legislation and all resolutions to determine their potential impact upon the criminal justice system and its stakeholders. Typically these bills create new criminal offenses or modify existing statutes. The impact of legislation may be obvious and direct, but often can result in unintended consequence.*

Recusal of Judges Based on Substantial Campaign Contributions

Act 2014-455

HB543

Rep. Ball

In any civil action, upon motion of a party, a judge or justice shall recuse from a case based upon a substantial campaign contribution or electioneering communication made to or on behalf of the judge/justice in the preceding election by a party in the case if certain circumstances exist. A rebuttable presumption exists that a judge/justice shall recuse if a campaign contribution made directly by a party exceeds certain percentages set out in the Act during the election cycle and the contribution was made when it was reasonably foreseeable that the case could come before the judge/justice. The term "party" is defined. An order denying recusal is appealable. Repeals 12-24-1 and 12-24-2, Code of Alabama.

Baldwin County, Court Costs

Act 2014-131

HB 393

Representative McMillan

This bill relates to Baldwin County and increases the court fees for the creation and maintenance of the library and for the purpose of judicial administration, the costs paid to the county commission to \$15.00. It reduces the amount allocated to the purchase of books to \$1.50 and increases the amount allocated for judicial administration to \$13.50.

Baldwin County, Court Costs.

Act 2014-132

HB 394

Representative McMillan

This bill relates to Baldwin County and increases the court fees to \$20.00.

Expand Definition of Negotiable Instruments.

Act 2014-444

HB 450

Representative Hill

This bill amended 13A-9-13.1, Code of Alabama, to expand the definition of negotiable instrument to include electronic drafts.

Patent Trolling

Act 2014-218

SB 121,

Sen. Orr

This law will make it a crime for anyone to assert a claim of patent infringement in bad faith and authorizes the attorney general to investigate claims and file enforcement actions.

Air Bag Fraud

Act 2014-138

SB 163

Sen. Jerry Fielding

The law makes it a crime to knowingly install a defective air bag or to not install one. Governor Bentley signed it on March 11.

DID YOU KNOW?



The Alabama District Attorneys Association created the **NATIONAL COMPUTER FORENSICS INSTITUTE, NCFI?**

The NCFI is a partnership between the Alabama District Attorneys, the State of Alabama, the United States Department of Homeland Security, the United States Secret Service, the Alabama Securities Commission, the City of Hoover, Alabama and Shelby County.

With the ever-increasing use of technology by individual criminals and organized criminal groups (domestic and international), federal, state and local law enforcement officers must have the technological resources and expertise to effectively conduct investigations.

The NCFI is committed to providing the proper training and tools for state law enforcement, prosecutors and judges to keep the pace with cutting-edge technological changes and the ultimate protection of our cyber security. Today's high tech environment presents new challenges to criminal justice professionals as cyber criminals exploit computers and the internet to threaten our communities, and critical infrastructures. Of paramount importance to this facility and its trainers is the ultimate protection of the homeland and the safety of its American citizens.

The NCFI succeeds by sharing current expertise among federal, state and local officers in cyber crime detection, investigation, prosecution as well as prevention and education. Furthermore, with the continued efforts and support of the State of Alabama, the Secret Service and the Department of Homeland Security we will provide an advanced, modern training facility for electronic crime investigators and all those in law enforcement.

While providing a substantial economic impact to Alabama, the NCFI is a one-of-a-kind cutting edge national facility which provides training to law enforcement, prosecutors and judges from across the nation.

This training is absolutely no cost to trainees and many are provided with equipment, hardware and software to carry out their newly acquired skill.

Sex Offenders on School Property

Act 2014-421

SB 297

Senator Figures

This bill adds language to prohibit a sex offender convicted of a sex offense involving a minor from entering the property of a K-12 school while school is in session or attending any K-12 activity unless the offender does all of the following: (1) Notifies the principal, or his designee, before entering onto the property or attending the K-12 activity; (2) Immediately reports to the principal, or designee, upon entering the property or arriving at the K-12 activity; and (3) Complies with any procedures established by the school to monitor the whereabouts of the sex offender for the duration of his/her presence on the school property or K-12 activity. Procedures are limited to rules that allow the principal, or designee, to monitor the adult sex offender. This bill defines a school activity as an activity sponsored by a school in which students in grades K-12 are the primary intended participants or audience. It includes, but is not limited to school instructional time, after school care, after school tutoring, athletic events, field trips, school plays or assemblies.



ALABAMA PRISON REFORM TASK FORCE

Created by Joint Resolution SJR 20

SJR20

Senator Ward

The Resolution stated the following:

WHEREAS, overcrowding and understaffing of Alabama prisons have created a potential federal takeover of the state prison system; and

WHEREAS, the Alabama Legislature needs to take proactive steps to avert the looming overcrowding crisis of the state prison system; and

WHEREAS, the Alabama Corrections System is the most overcrowded in the United States; and

WHEREAS, Alabama spends less per inmate than any other state corrections system in the nation; and

WHEREAS, the primary responsibility of state government is to provide for the public safety of its citizens and victims of crime; now therefore,

BE IT RESOLVED BY THE LEGISLATURE OF ALABAMA, BOTH HOUSES THEREOF CONCURRING, That there is created the Alabama Prison Reform Task Force to be comprised of the following members:

- (1) One member of the Alabama Senate appointed by the Lieutenant Governor.
- (2) Three members appointed by the Alabama District Attorney's Association.
- (3) One member appointed by the Victims of Crime and Leniency (VOCAL).
- (4) One member of the Alabama House of Representatives appointed by the Speaker of the House of Representatives.
- (5) One representative of the Attorney General's Office appointed by the Attorney General.
- (6) The Commissioner the Department of Corrections.
- (7) One representative of the Department of Public Safety appointed by the Director of Public Safety.
- (8) Five representatives of the Governor's office appointed by the Governor.
- (9) Three representatives appointed by the chair of the Joint Prison Task Force.
- (10) One member of the House of Representatives appointed by the Chair of the House Judiciary Committee.
- (11) One member of the Senate appointed by the Chair of the Senate Committee on Judiciary.
- (12) One member of the Senate appointed by the Senate President Pro Tempore.
- (13) The Director of the Alabama Law Institute.
- (14) Three representatives of the Judicial Department appointed by the Chief Justice of the Supreme Court.

- (15) One attorney licensed in Alabama appointed by the President of the Alabama Bar.
- (16) One representative appointed by the Alabama Sheriff's Association.

The Governor shall appoint the chair once all appointments have been made to the task force.

The task force membership shall be inclusive and shall reflect the racial, gender, geographic, urban, rural, and economic diversity of the state, as well as the diversity and demographics of the Alabama prison population.

The task force shall study and identify causes and potential legislative solutions for the overcrowding of the prison system and the understaffing of corrections personnel in the system.

The task force shall study a broad range of issues related to prison inmate overpopulation including, but not limited to: Court procedures and sentencing; data on reported crimes and arrests; problem-solving suggestions and policies of the courts; felony and parole policies; prison admissions and length of stay; community work center programs; recidivism, rates; and alternative drug court sentencing. The task force shall report its findings, conclusions, and recommendations or proposed legislation to the Legislature no later than the 15th day of the 2015 Regular Session, where upon it shall stand dissolved and discharged of any further duties.

Each nonlegislative member of the task force may be reimbursed for expenses related to attending meetings consistent with the policies of the various appointing authorities.

Upon the request of the chair, the Secretary of the Senate and Clerk of the House of Representatives shall provide necessary clerical assistance for the work of the task force.

Each legislative member of the task force shall be entitled to his or her regular legislative compensation, per diem, and travel expenses for each day he or she attends a meeting of the task force in accordance with Amendment 871 of the Constitution of Alabama of 1901. These payments shall be paid out of any funds appropriated to the use of the Legislature by means of warrants drawn by the state Comptroller on the State Treasury.

Repeal of Kirby

Act 2014-165

Repealed § 13A-5-9.1 of the Code of Alabama, the *Kirby* statute, effective March 13, 2014. [Repeal of Motions for Review of Life Without Parole Sentences of Adult Offenders.](#)

This handout includes summaries of opinions from the United States Supreme Court, the Alabama Supreme Court, and the Alabama Court of Criminal Appeals **as well as Act of the 2014 Alabama Legislature**. The summaries may not note whether the cases cited have been appealed to higher courts or whether applications for rehearing are pending. Furthermore, these summaries do not necessarily discuss all the issues that were addressed in the opinions themselves. **Likewise, the legislative summaries and resolutions passed in the 2014 session of the Regular Session of the Alabama Legislature do not note any pending constitutional challenges or their application in conjunction with other Acts of Alabama**. The reader should not rely on these summaries as definitive treatments of the cases or acts discussed herein and should instead review the entire case **and acts** in which he or she is interested and exercise his or her own judgment regarding the holding of the case.



Mission Statement: *To improve the criminal justice system of Alabama by promoting professionalism through education, legislation, fiscal services, and information; and to be advocates for the administration of justice; to be persons of honor, courage, and humility; to be firm and uncompromising in our principles, with fairness and honesty as our standard.*

Office of Prosecution Services (OPS) * Alabama District Attorneys Association (ADAA)
515 South Perry Street * Montgomery, AL 36104
P.O. Box 4780 * Montgomery, AL 36103-4780
(334) 242-4191 * 1-800-423-7658

Meet the Staff...

Randy Hillman

Executive Director

Randy.Hillman@AlabamaDA.gov

Beau Brown

General Counsel

Beau.Brown@AlabamaDA.gov

Trisha Mellberg

Sex Offender Resource Prosecutor

Trisha.Mellberg@AlabamaDA.Gov

Mike Trotter

Chief Investigator

Forensic Examiner

Mike.Trotter@AlabamaDA.gov

Debbie Wright

Executive Assistant

Training Coordinator

Debbie.Wright@AlabamaDA.gov

Chris Sustarich

Administrative Assistant

Chris.Sustarich@AlabamaDA.gov

Tamra Bryant

Law Clerk (Internship)

Tamra.Bryant@AlabamaDA.gov

Barry Matson

Deputy Director

Chief Resource Prosecutor

Barry.Matson@AlabamaDA.gov

Brandon Hughes

Traffic Safety Resource Prosecutor (TSRP)

Brandon.Hughes@AlabamaDA.gov

Larry Smith

Legislative Staff

Retired Investigator, Madison County

Larry.Smith@AlabamaDA.gov

Melissa Gargus

Fiscal Officer

Melissa.Gargus@AlabamaDA.gov

Debra Montesano

Payroll Officer

Debra.Montesano@AlabamaDA.gov

NATIONAL COMPUTER FORENSICS INSTITUTE (NCFI)
2220 Valleydale Road, Suite 209 * Hoover, AL 35244
(205) 989-5300

Barry Page

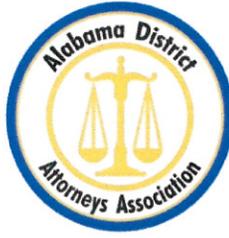
Deputy Director

Barry.Page@AlabamaDA.gov

Brooke Grigsby

Administrative Assistant

Brooke.Grigsby@AlabamaDA.gov



FINAL THOUGHT

The Office of Prosecution Services and the Alabama District Attorneys Association are fortunate to work with dedicated partners in the criminal justice arena. We at the ADAA and OPS cherish our professional relationships within each branch of state and federal government as well as other advocacy groups and professional associations. These valued partners work with us to engage in the process with the sole motivation to keep Alabama's criminal justice system fair, just, and effective. At OPS, our stock and trade is our zealous work ethic *and* our earned reputation for giving an honest and fair opinion regardless of its consequence. It is our nature as prosecutors to stand in hard places, say things that need to be said and fight fights that need to be fought.

We hope this Sine Die report for law enforcement and other criminal justice professionals provides a helpful guide for the legislation that passed in the 2014 Alabama Legislature

TO OBTAIN A COPY OF A LEGISLATIVE ACT

If you want a copy of any Act of the Legislature from the 2014 legislative session or from a prior year, please follow these directions.

To view a PDF of the actual legislation that is signed by the Governor, go to the Alabama Secretary of State's web site at <http://www.sos.alabama.gov>
On the left of the screen is a tab labeled "Governmental Records". Click that link and you will be taken to the page for governmental records. Press the link for "Legislative Act" and when that screen opens, enter the Act number provided with each summary.

If you have any difficulty in accessing an Act of Alabama or need any assistance in obtaining an Act referenced in this Sine Die Report, please do not hesitate to call the Office of Prosecution Services at 334-242-4191.

With every good wish,
I am, Sincerely,

Barry Matson

Barry Matson
Alabama District Attorneys Association, ADAA
Office of Prosecution Services, OPS