

SOUND JUDGMENT

Hello Judges!

By Judge Rod Ring, (Ret.)
OBA/OHSO Judicial Outreach Liaison

It is time to register for the November 11th OBA/OHSO Fall 2021 Statewide Judicial Education Program held in conjunction with the OBA Annual Meeting. The program will be at the Sheraton Oklahoma City Downtown Hotel, One North Broadway Ave. in OKC.

Six hours of NO COST MJCLE credits are made possible by a grant from the National Highway Traffic Safety Administration and the Oklahoma Highway Safety Office administered by the Oklahoma Bar Association. The goal of this grant is to reduce impaired driving in Oklahoma. This year's program includes presentations by Oklahoma Lawyers, Law Enforcement, and Mental Health Professionals.

As a reminder, if your duty station is more than 60 miles from the conference site you may be reimbursed for one night's lodging. Additional nights must be paid by the individual. Contact Craig Combs at craigc@okbar.org to make hotel reservations at the Sheraton Downtown. Judges making their own room reservations at a different hotel will only be reimbursed \$135.00, excluding taxes.



All judges can be reimbursed for mileage. Reimbursement forms and instructions will be emailed to you in advance of the conference and will be available there.

You do not need to be registered for the OBA Annual Meeting but if you want to take part in those events, details and registration can be found by clicking [HERE](#).

Early registration ends October 22nd.

INSIDE PAGES

Federal Judiciary calls on Congress to add New Judgeships in Oklahoma

The federal judiciary asked Congress in September to add five federal judgeships in Oklahoma as courts grapple with an expanded caseload...

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2021 Statewide Judicial Education Program

The 2021 Statewide Judicial Education Program will be held this year with an IN PERSON program held November 11th during the OBA Annual Meeting at the Sheraton Downtown OKC Hotel.

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To register and for details about the Judicial program. [CLICK HERE](#)

We look forward to seeing you on November 11th in OKC.

Senate Bill 367: An Update for Law Enforcement, Prosecutors, and Judges

Senate Bill 367 was passed by the 58th Session of the Oklahoma Legislature in 2021 and signed by Governor Stitt. The effective date of the Act is November 1, 2021. SB 367 contains a number of changes impacting impaired driving cases. These changes impact both the enforcement of impaired driving laws and prosecution/adjudication of impaired driving cases. The changes are outlined below from those perspectives.

ENFORCEMENT

1. Law enforcement officers are no longer obligated to seize the driver license of the individual arrested for impaired driving. This will eliminate the need to surrender the license to DPS or issue a temporary driver license/receipt for driver license to the arrested individual.

2. SB 367 authorizes the Department of Public Safety to create a process to receive the

Officer's Affidavit and Notice of Revocation/Disqualification (OANRD) electronically. The Department will accept electronically submitted, legible, OANRDs in PDF format at DUAffidavits@dps.ok.gov. Each OANRD must be attached to a separate email.

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SB 367 continued from Page 1

PROSECUTION/ADJUDICATION

The bulk of the changes brought on by SB 367 relate to the prosecution/adjudication of impaired driving cases. These changes will affect both criminal prosecutions and administrative appeals of driver license revocations.

1. Authorized blood collectors – SB 367 includes a list of medical professionals licensed by any state who are authorized to collect blood. Previously, Oklahoma licensure was required. The bill also adds Intermediate Emergency Medical Technicians and Advanced Emergency Medical Technicians (Paramedics), licensed in Oklahoma, to the

list of authorized blood collectors.

2. Analysis of blood specimens – The bill departs from the long-standing reliance on the rules of the Board of Tests for Alcohol and Drug Influence to determine admissibility questions regarding the analysis of blood specimens. Instead, the statutes now rely on accreditation of the testing laboratory under the ISO/IEC 17025 accreditation standard. See also, 74 O.S. §150.37.

3. Breath test administration – The changes to the breath testing scheme of the State of Oklahoma are the most far reaching included in SB 367. The Legislature changed the standard of admissibility from compliance with the rules of the Board of Tests for alcohol and Drug Influence to a more statutory based

process. Effective November 1, 2021, admissibility of the results of a breath test conducted in Oklahoma depends upon:

- a. An operator holding a permit from the Board of Tests (47 O.S. §759(C)(1));
- b. Administering a test on an instrument appearing on NHTSA's Conforming Products List and utilizing a reference method appearing on NHTSA's Conforming Products List (47 O.S. §759 (C)(2));
- c. Maintenance of the instrument by the Board of Tests for Alcohol and Drug Influence (47 O.S. §759 (C)(3));
- d. Performance of the breath test in accordance with operating procedure prescribed by the Board of Tests or the State Director of Tests (47 O.S. §759 (C)(4)).

4. Screening Tests – The statute also now clarifies that “screening tests” are not evidential tests used to prove DUI in fact, but merely a law enforcement tool to aid in establishing probable cause. See 47 O.S. §759(E).

CONCLUSION

This Update is the combined effort of the Department of Public Safety and the Board of Tests for Alcohol and Drug Influence. Please direct any questions raised by the Update to Kevin Behrens (kevin.behrens@dps.ok.gov) AND Josh Smith (Joshua.smith@bot.ok.gov). For your convenience the following link leads to the enrolled version of SB 367: <https://www.sos.ok.gov/documents/legislation/58th/2021/1R/SB/0367.pdf>.

Free Course for Traffic Court Judges

The National Judicial College (NJC) is offering the following free course for traffic court judges with funding from NHTSA .

DRUGGED DRIVING ESSENTIALS

In-Person November 2-4, 2021

[CLICK HERE TO REGISTER](#)

After this course, you should be able to describe the major classes of drugs and how they affect driving; discuss what a drug recognition expert (DRE) does, and how to qualify him or her as an expert; identify effective and efficient sentencing options; and prepare a legally sufficient order for continued court supervision.

Federal judiciary calls on Congress to add new judgeships in Oklahoma

By Cameron Langford
www.courthousenews.com
September 28, 2021

(CN) The federal judiciary asked Congress on Tuesday to add five federal judgeships in Oklahoma as courts grapple with an expanded caseload caused by a Supreme Court ruling that shifted prosecutions of Native Americans from state to federal courts.

In a 5-4 order in *McGirt v. Oklahoma*, the high court held in July 2020 that federal or tribal courts, not state courts, have jurisdiction over cases in which Native Americans are accused of committing crimes on Muscogee (Creek) Nation land in eastern Oklahoma.

The decision was later expanded to the eastern Oklahoma lands of the Cherokee, Choctaw, Chickasaw and Seminole tribes.

It prompted a flurry of post-conviction appeals by other Native American inmates demanding their release from Oklahoma state prisons and forced federal prosecutors to bring their own charges to keep violent criminals behind bars.

The shift in jurisdiction has caused the number of criminal cases to increase more than 400% in the Northern District of Oklahoma, headquartered in Tulsa, and 200% in the Eastern District of Oklahoma based in Muskogee, according to the Judicial Conference of the United States, the policy-making body for the federal court system. The conference consists of 26 judges led by Supreme Court Chief Justice John Roberts.

So the Judicial Conference on Tuesday recommended that Congress authorize three new judgeships for the Eastern District of Oklahoma and two for the Northern District of Oklahoma.

The McGirt decision further complicated operations for Oklahoma federal courts as they, like courts across the country, are dealing with jury trial delays caused by the pandemic.

Doug Horn, senior litigation counsel for the Eastern District of Oklahoma's U.S. Attorney's Office, said before McGirt his office would prosecute 100 cases a year.

"In April we did 90. In May we did 84 and of those 56 of them were first-degree murder cases. That gives you sort of an indication of where we're at," Horn said in a phone interview.

To keep up with the caseload, Horn said, the Department of Justice added 33 more

criminal-case prosecutors to the eight in his district and has also brought in other prosecutors from across the country.

The two federal judges assigned to the Eastern District of Oklahoma are also getting a lot of help.

"They're bringing in judges from other districts to handle the workload," Horn said. "There's been a visiting judge here from Louisiana that has taken a full caseload. There are six judges from Oklahoma City that are coming in to try cases. There was an additional magistrate that came in from Texas to handle some of the initial appearances and detention hearings."

COLLEAGUES FROM TEXAS AND LOUISIANA ARE HELPING OKLAHOMA FEDERAL JUDGES KEEP UP WITH AN INFLUX OF CRIMINAL CASES AGAINST NATIVE AMERICANS. BUT PERMANENT HELP IS NEEDED. THE U.S. JUDICIAL CONFERENCE SAID.

It's the same situation in the Northern District of Oklahoma, where Acting U.S. Attorney Clint Johnson said he supports the Judiciary's request for new judges.

In the past year, Johnson said, his office has hired 24 prosecutors to deal with the exponential increase of Indian Country cases.

Before the McGirt decision, Johnson's office prosecuted 240 cases a year. "Currently, we are indicting 50 to 75 cases each month," he said in an email. He noted he is prioritizing tribal cases involving violent crime and crimes against children.

"We are also working closely with attorneys general from the Cherokee and Muscogee nations as we refer cases to their offices," Johnson added.

Horn said the FBI has also had to bring in dozens of agents to Oklahoma to keep up with criminal investigations that became the responsibility of the feds thanks to the McGirt ruling.

An Oklahoma state court convicted Jimcy McGirt, a member of the Seminole Nation, of

first-degree rape of a 4-year-old child in 1997 and sentenced him to two 550-year terms in state prison.

But his counsel successfully argued before the Supreme Court that because Congress never dissolved the Muscogee reservation where the crime took place, Oklahoma lacked criminal jurisdiction in his case.

He never got out of prison.

Weeks after the high court ruled in his favor, federal prosecutors charged him for the rape. He was sentenced to life in federal prison last month after a jury found him guilty of two counts of aggravated sexual abuse and abusive sexual contact.

Non-Indian defendants arrested on Oklahoma tribal lands can still be prosecuted in state court.

The Judicial Conference's request Tuesday for five new judgeships in Oklahoma is in addition to 79 new ones they requested of Congress in March.

Leading the conference's wish list is a request for 15 new permanent judges for the Central District of California. It has also asked Congress to authorize new federal judgeships in Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Idaho, Indiana, Iowa, Kansas, Missouri, New Jersey, New Mexico, New York, North Carolina and Texas and two appellate judges for the Ninth Circuit.

As of Sept. 1, there were 82 federal court vacancies.

Since taking office in January, President Joe Biden, a Democrat, has nominated 41 people for federal judgeships and the Senate has confirmed 14 of them.

Judicial appointments were a priority for Biden's Republican predecessor, Donald Trump.

He shifted the Supreme Court to the ideological right with his appointment of Justices Neil Gorsuch, Amy Coney Barrett and Brett Kavanaugh, who abortion rights advocates fear are eager to join the court's other conservatives in rolling back the constitutional right to the procedure. The high court will hear arguments Dec. 1 in a challenge of Mississippi's ban on abortions after 15 weeks of pregnancy.

All told, Trump, with the votes of a Republican majority in the Senate, appointed more than 200 judges to the federal bench, an accomplishment experts say will have consequences for decades to come as federal judgeships are lifetime appointments.



WHEN TO COLLECT ORAL FLUID DURING AN INVESTIGATION

- | | | |
|--|------------------------------|------------------------------|
| Vehicle in Motion | Personal Contact | Pre-Arrest Screening (SFSTs) |
| Arrest | Probable Cause ² | Field Screening ¹ |
| Seek Consent/Exigency/Warrant ³ | Collect Laboratory Sample(s) | Drug Influence Evaluation |

ORAL FLUID AUTHORIZED TO DETECT DRUGS?

What is your state's program in your state?

- Stakeholders to consult:***
- Law Enforcement
 - Toxicology Personnel
 - Traffic Safety Resource Prosecutor(s)
 - SFST & DRE State Coordinators
 - Judiciary Representatives
 - Device Manufacturers
 - Local Impaired Driving Groups
 - Researchers and/or Data Analysts
 - State Highway Safety Office
 - Probation Personnel
 - State Public Health Agency
 - Driver Licensing Officials



- Alabama Department of Forensic Sciences | www.adfs.alabama.gov/services/tox/toxicology-oral-testing-program
- DRE Program | www.theiacp.org/projects/the-international-drug-evaluation-classification-program
- National Safety Council | www.nsc.org/work-safety/get-involved/divisions/alcohol-drugs-and-impairment
- Traffic Safety Resource Prosecutor List | www.ndaa.org/programs/ntlc/impaired-driving/resources/tsrp-list
- Society of Forensic Toxicology FAQs | www.soft-tox.org/files/2018%200F%20FAQ_FINAL.pdf

Oral fluid field screening (OFFS) and preliminary breath test, if applicable.
 Based on totality of investigation.
 First seek consent if no consent, are there exigent circumstances? If none,

IMPORTANT TERMS

Approved Training: Training by the manufacturer of a device and/or an authorized agency.

Confirmatory Testing: A test resulting in a definitive result that verifies the presence of a specific drug; typically using mass spectrometry techniques.

Drug: Any substance that, when taken into the human body, can impair the ability of the person to operate a vehicle safely.

Limit of Detection (LOD): Lowest quantity of a drug in a sample that can be identified.

Metabolite: Any substance produced during metabolism (synthesized or broken down from a parent drug).

Method: An orderly and systematic approach to analyze a biological sample for the presence of drugs.

Observation Period: The operator of a device must watch the subject for at least ten minutes prior to the administration of the screening device in accordance with manufacturer's guidelines.

Oral Fluid: A clear, tasteless fluid comprised of saliva produced by multiple salivary glands, and other constituents inside the mouth.

Parent Drug: A drug administered in its original form that is typically pharmacologically active (e.g., Delta-9-THC, cocaine).

Per Se Law: Statutory assignment of a specific concentration of a drug in a biological sample at or above which is an offense to drive.

Pharmacodynamics: How the drug affects the body.

Pharmacokinetics: What the body does to a drug.

IMPORTANT STUDIES TO KNOW

Reviews

Desrosiers NA, Huestis MA. Oral fluid drug testing: Analytical approaches, issues and interpretation of results. *J Anal Toxicol.* 2019 Jul 24;43(6):415-443. doi: 10.1093/jat/bkz048.

Evaluation of roadside oral fluid test devices

Logan BK, Mohr AL, Talpins SK. Detection and prevalence of drug use in arrested drivers using the Dräger Drug Test 5000 and Affiniton DrugWipe oral fluid drug screening devices. *J Anal Toxicol.* 2014 Sep;38(7):444-50. doi: 10.1093/jat/bku050.

Edwards LD, Smith KL, Savage T. Drugged driving in Wisconsin: Oral fluid versus blood. *J Anal Toxicol.* 2017 Jul;41(6):523-529. doi: 10.1093/jat/bkx051.

Newmeyer MN, Swortwood MJ, Andersson M, et al. Cannabis edibles: Blood and oral fluid cannabinoid pharmacokinetics and evaluation of oral fluid screening devices for predicting Δ9-Tetrahydrocannabinol in blood and oral fluid following cannabis brownie administration. *Clin Chem.* 2017 Mar;63(3):647-662. doi: 10.1373/clinchem.2016.265371.

Rohrig TP, Moore CM, Stephens K, et al. Roadside drug testing: An evaluation of the Alere DDS² mobile test system. *Drug Test Anal.* 2018 Apr;10(4):663-670. doi: 10.1002/dta.2297.

Veitheimer AM, Wagner JR. Evaluation of oral fluid as a specimen for DUID. *J Anal Toxicol.* 2017;41(6):517-522. doi: 10.1093/jat/bkx036.

Effect of drugs on driving

Bogstrand ST, Gjerde H. Which drugs are associated with highest risk for being arrested for driving under the influence? A case-control study. *Forensic Sci Int.* 2014 Jul;240:21-8. doi: 10.1016/j.forsciint.2014.03.027.

Society of Forensic Toxicologists, Inc. Drugs and Driving Literature. www.sof-fox.org/duid_literature

Support of oral fluid for DUID testing

Truver MT, Palmquist KB, Swortwood MJ. Oral fluid and drug impairment: Pairing toxicology with drug recognition expert observations. *J Anal Toxicol.* 2019 Sep 10;43(8):637-643. doi: 10.1093/jat/bkz075.

Arroyo A, Marrón MT, Leal MJ, Vidal C. Oral fluid and driving under the influence of drugs (Duid): A Brief Review. *Int J Forensic Sci Pathol.* 2015 Jun;3(5):127-135.

Logan BKL, D'Orazio AL, Mohr ALA, et al. Recommendations for Toxicological Investigation of Drug-Impaired Driving and Motor Vehicle Fatalities—2017 Update. *J Anal Tox.* 2017; 2017;1-6. doi: 10.1093/jat/bkx082

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OBA/OHSO Fall 2021 Statewide
Judicial Education Program

AGENDA

8:30 a.m.
Registration

9 a.m. – 9:50 a.m.
Autism Spectrum Disorder and
Law Enforcement
*MSgt. Cory Sutton,
Oklahoma University Police Department*

9:50 a.m. - 10 a.m.
BREAK

10 a.m. – 11:40 a.m.
Marijuana Trends in Oklahoma
*Vince Barnard,
Oklahoma Board of Tests
Trooper B.J. Keeling,
Oklahoma Highway Patrol*

FOR OBA ANNUAL LUNCHEON
(Registration for OBA Annual Meeting required)

2 p.m. – 2:50 p.m.
Jurisdiction Considerations in
Impaired Driving Cases
*Courtney Jordan,
Special Assistant U.S. Attorney*

2:50 p.m. - 3 p.m.
BREAK

3 p.m. – 3:50 p.m.
Crisis Intervention Team (CIT) Training
*Tania Woods, LCSW, Law Enforcement
Liaison, Oklahoma Department of Mental
Health and Substance Abuse Services*

2:50 p.m. - 3 p.m.
BREAK

4 p.m. – 4:50 p.m.
Communicating with an Addict
Benjamin F. Rogers, JD

4:50 P.M.
Wrap-Up and Travel Claims

TO REGISTER
[CLICK HERE](#)

REGISTRATION OPEN!

OKLAHOMA BAR ASSOCIATION/OKLAHOMA HIGHWAY SAFETY OFFICE

2021 Statewide Judicial Education Program

November 11, 2021

Sheraton Downtown OKC Hotel

The 2021 Statewide Judicial Education Program will be held this year with an In-Person program held November 11th during the OBA Annual Meeting at the Sheraton Downtown OKC Hotel, [1 N. Broadway Ave., OKC, OK 73102](#)

The Program will provide 6 Hours of No Cost MJCLE. Judges do not need to register for the OBA Annual Meeting unless they want to attend OBA programs and events. However, there is some quality programming during this year's Annual Meeting and registration is only \$25. To register for Annual Meeting and/or the Statewide Judicial Education Program, [click here](#).

This is the 2021 OBA Annual Meeting website and you will need to select “Register for Conference.”

Register for Conference

You will then be prompted to login with your OBA credentials.

And, once you are logged in,

Hello, Janet
My Account ▼

you will need to click “Register for Conference” again.

Register for Conference

Once that selection has been made, you will be taken to a separate registration page. In order to see the Statewide Judicial Education Program, you must choose Judge as your profile when you reach the “I would like to Register” page.

Our NHTSA grant will pay mileage and one night at the Sheraton for judges whose duty station is more than 60 miles from OKC. Additional nights must be paid by the individual.

Sheraton Hotel reservations must be made by contacting Craig Combs, OBA Director of Administration **BEFORE October 22nd** at: craigc@okbar.org or 405.416.7028 or Toll Free: 800.522.8065 or P.O. Box 53036 OKC, OK 73152

If you have questions or need assistance with registration contact:

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loloklahoa@gmail.com or
405.246.5023
Ors
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marks@okbar.org
405.416.7026

Hope to see you all there!

PLEASE TELL US WHAT YOU WANT



The purpose of the State Judicial Outreach Liaison program administered through the Oklahoma Highway Safety office and the OBA is to increase judiciary knowledge of challenges in adjudication Impaired Driving cases. We do this through peer-to-peer judicial education, technical assistance and links to resources.

We try to review and distribute current research, data and information on

evidence-based sentencing practices, DUI Courts, Ignition Interlocks, caselaw and offender assessment and treatment.

But we can't meet our goal without help from you. Please let us know about interesting issues, facts and arguments you have encountered in your courts. Share your successes and failures and tell us what you want to learn more about.

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SUBMISSIONS/ COMMENTS

**Please send your submissions
or comments to:**

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