



**To:** All OACP Members  
**From:** Kevin Campbell, Executive Director  
Oregon Association Chiefs of Police  
**Re:** **LEGISLATIVE SESSION UPDATE...Session-End  
Wrap-up and Results (7-7-2015)**

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### **2015 Oregon Legislative Session Update**

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At 6:04 p.m. last night, the 79th Session of the Oregon Legislature adjourned "Sine Die". 155 days ago, the 90 elected members of the Oregon Legislative Assembly convened the 2015 Legislative Session amid uncertainty around the strength of the Oregon economy, a looming Supreme Court decision regarding the PERS reforms adopted by the legislature in 2014 and allegations of misconduct by Governor John Kitzhaber and First Lady Cylvia Hayes. Just 11 days after the start of session, Governor Kitzhaber announced his resignation and five days later, Kate Brown was sworn-in as Oregon's 38<sup>th</sup> Governor. While most pundits expected chaos and a rough leadership transition to ensue, Governor Brown moved quickly to solidify her leadership team and to partner with the Speaker and Senate President.

### **2015 Session: Most Difficult for Policing in Decades:**

There were a number of reasons that the 2015 Legislative Session was challenging for law enforcement interests including the following:

**Political Imbalance:** History tells us that legislatures that are more evenly divided between Democrats and Republicans tend to pass less controversial legislation and less legislation overall. Members of both parties have to put aside the more radical parts of their agendas in order to accomplish the basic work involved in balancing budgets and completing their work in a timely manner. Legislatures that are controlled too much by either party lack a necessary balance and alternative perspective that can result in the passage of damaging legislation. In 2015, Democrats control the House of Representatives by a 35 to 26 margin, the State Senate with a commanding 18 to 12 margin and Governor Kate Brown is also a Democrat. While across the board Democrat control didn't eliminate conflict and disagreement, it did allow leadership to move forward with a number of shared priorities and a progressive agenda focused

on addressing social and economic inequality. These priorities included paid sick leave, ban the box and other progressive policies.

**Political Extremes Unite as the Moderate Middle Disappears:** The shrinking number of more moderate members of both parties meant more polarization and less agreement in the legislature on a wide range of issues with the exception of civil liberties and privacy rights. While liberal Democrats and libertarian Republicans disagree on a host of issues, they align around concerns about government intrusion. Libertarians oppose government intrusion into the lives of citizens while liberal democrats view some government as a threat to civil liberties.

**Political Influence and Special Interests:** Based on the Oregon Constitution, when a Governor leaves office during a term (either because of resignation or death), the Secretary of State is appointed to fill the vacancy and an election for Governor is set for the next General Election (November of 2016). The 2015 Legislative Session operated in the shadow of the next election because all statewide offices are up for election in the same year (Governor, Secretary of State, Treasurer, Attorney General). As a result, currently seated Democrat legislators who are eyeing these statewide offices actively courted the key party special interests including the Oregon Education Association, SEIU, Oregon Nurses Association, environmental interests and police and fire unions.

**PERS Decision Reverses Legislative Reforms and Assures a Future Budget Crisis:** At the end of April, the Oregon Supreme Court overturned a series of Public Employees Retirement System changes that were approved by the Oregon State Legislature in 2013. The decision resulted in a loss of millions of dollars that lawmakers expected to use to balance future budgets. The 2013 reforms reduced the PERS liability for future pension payments by \$5.3 billion with a majority of the savings coming from reductions to the COLA benefit for state employees. The PERS decision will impact all public employers including state agencies, municipalities, fire districts and schools and the increased costs will require increased revenue sources or cuts to services in order to address them. The PERS decision had an impact on the 2015 budget process and will have an even more pronounced impact on future budgets.

**May Revenue Forecast Resulted in “Kick” of the Personal Kicker and Additional Revenue:** On May 14<sup>th</sup>, the official state revenue forecast revealed that estimated revenue exceeded the threshold necessary to trigger the personal kicker at approximately \$477 million. These dollars will be returned to taxpayers as a credit on their 2015 tax returns (an average of \$248 per taxpayer). The forecast also provided lawmakers with an additional \$463 million in revenue for the 2015-2017 budget. Of the additional \$463 million, at least \$105 million was immediately appropriated to K-12 education based on the commitment the legislature made to share 40% of any new general fund revenue expected in 2015-2017 (40% of the \$264.5 million).

**Policing Public Relations Nightmare:** A relentless number of tragic and troubling news stories regarding police officer conduct from around the nation had a profound impact on the perception of policing within the walls of the Oregon State Capitol. This barrage of stories breathed life into bills dealing with bias policing, use of force, body-worn cameras, public recording of police officers and grand jury recordation. While none of these stories originated in Oregon, the political reality created a very challenging environment. Our efforts to educate Oregon lawmakers regarding the progressive nature of our Oregon policing leaders helped us turn legislation from damaging to annoying.

## Budgets and Funding:

**SB 5506: Criminal Justice Commission Budget:** As you know, the Criminal Justice Commission Budget includes a number of critical priorities for law enforcement agencies. Here are a few of the key appropriations within the budget:

- \$14 million for specialty courts (Mental health / Adult Drug / Juvenile / Veterans, etc.)
- \$40 million for Justice Reinvestment (HB 3194). Note: Securing \$5 million for county jail sanctions was not successful.

**SB 5534: Department of Public Safety Standards and Training (DPSST) Budget:** The DPSST budget included no reductions in current service level (very good news) and added two new Public Safety Training Specialists to implement a Mental Health/Crisis Response Training program. The budget also approved receipt of FEMA Assistance to Firefighters Grant dollars to replace the skid truck frame and the transfer of the Oregon HIDTA Program from Oregon DOJ to DPSST along with two employees that staff the program. The budget includes \$9.5 million in General Fund for debt service, \$37.5 million in Other Funds, and \$4.1 million in Federal Funds for a total biennial budget of \$51.1 million, including 139 positions or 137.17 full-time equivalent jobs. During budget presentations DPSST alerted the Ways and Means Subcommittee on Public Safety that the need to fund additional basic police and corrections classes may be necessary. If additional classes are needed, DPSST will approach the Ways & Means Emergency Board (E-Board) for additional resources.

**SB 5531: Oregon State Police (OSP) Budget:** The Oregon State Police budget added significant resources that will help the agency achieve their public safety mission. This is an excellent result. Here are some of the highlights:

- \$ 3.37 million in general fund to phase in 20 new trooper positions (criminal/patrol) and 2 additional forensic scientist positions to work on the DNA backlog
- \$ 5.2 million in general fund to preserve 18 Fish and Wildlife positions which would have been eliminated due to the revenue shortfall occurring at ODFW
- \$ 1.9 million in general fund to purchase patrol cars (this will allow us to move to 1 to 1 ratio of patrol car to trooper during this biennium)
- \$ 1.9 million in general fund to relocate the Springfield Office Complex and the Astoria Area Command
- \$ 5 million in other funds to begin the replacement of CrimeVue
- 3 additional F&W trooper positions to provide F&W enforcement on Sauvie Island and along the Columbia River (funding is provided by the Columbia River Endorsement Fee)
- \$ 1.36 million in other funds revenue from the implementation of BM 91 which includes 4 positions (3 detective positions and 1 forensic scientist)
- 1 additional trooper position for the Capital Mall Area Command

## Priority Bills Briefing:

The following is a review of some of the key legislation in play during the 2015 Legislative Session that impacts law enforcement leaders and agencies. Please note that this report doesn't include a comprehensive review of bills. There may be issues that are important to you that aren't included in the report.

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### Alcohol/DUII:

**HB 2936 Enrolled, Sobering Centers:** HB 2936 defines a sobering facility as a center that provides acutely intoxicated persons with a safe, clean, supervised environment until sobriety. The bill requires these facilities to adopt policies in consultation with addiction treatment programs or providers. The bill extends civil and criminal immunity to new sobering facilities for actions taken in good faith, on probable cause, and without gross negligence. The Oregon Health Authority is directed to maintain a registry of sobering facilities. In addition, the bill adds a sobering facility as an alternative to other locations, such as a home or a treatment facility, which law enforcement could take intoxicated persons. The new sober facilities coming online after January 1<sup>st</sup>, 2016 are limited to three. The Oregon Health Authority will study and report back to the legislature in 2017 on outcomes. \$500,000 was appropriated to support the Grants Pass Sobering Center project.

STATUS: HB 2936 C was passed by the House with a 59 votes and passed the Senate with 30 yes votes. The Governor is expected to sign the measure.

### Bias Policing, Police Accountability and Transparency:

**HB 2002 Enrolled, Bias Policing Legislation:** At the beginning of the session, House and Senate leadership signaled that they would pass a law dealing with bias policing in response to events around the nation. With this in mind and after confirming that a bill would pass if it reached both floors, we negotiated in good faith with proponents and legislators in order to remove a number of provisions in

the original bill that assumed police bias in Oregon, that included a very problematic definition of profiling, that mandated data collection on traffic stops and that provided consent decree and penalty authority to the Oregon Attorney General to intervene with agencies that demonstrate a “pattern and practice” of profiling. After weeks of negotiations, the final bill includes:

- A new definition of profiling that is unusual but not damaging. The new definition provides that: “Profiling” means that a law enforcement agency or a law enforcement officer targets an individual for suspicion of violating a provision of law based solely on the real or perceived factor of the individual’s age, race, ethnicity, color, national origin, language, gender, gender identity, sexual orientation, political affiliation, religion, homelessness or disability, unless the agency or officer is acting on a suspect description or information related to an identified or suspected violation of a provision of law.
- A requirement that all agencies have a policy prohibiting profiling that is in keeping with the definition of profiling established in the measure and procedures for allowing a complaint alleging profiling to be made to the agency by January 1, 2016.
- A new method for the public to make bias policing complaints directly to the Law Enforcement Contacts and Data Review Committee (LECC). Complaints would be returned to the agency for investigation. All bias policing complaints (agency and LECC) would be sent along with the disposition/results of the investigation to the LECC. Complaints (including officer and complainant) information will be exempt from public record requests.
- Funding for the Law Enforcement Contacts Policy and Data Review Committee (LECC) that is housed and resourced by Portland State University. Funding would include resources for training, a statewide perceptions survey, analysis of voluntarily collected stop data and resources to fund the new complaint process. The funding amount is \$250,431.
- An interim work group with 9 members appointed by the Governor and legislative leaders to:
  - Propose a process to identify any patterns or practices of profiling as defined in section 1 of this 2015 Act that impact groups of persons disproportionately on the basis of any of the factors listed in section 1 (3) of this 2015 Act.
  - Identify methods to address and correct patterns or practices of profiling.
  - Prepare a report identifying any statutory changes needed, including recommendations for legislation, to the interim committees of the Legislative Assembly related to the judiciary no later than December 1, 2015.

STATUS: HB 2002 B was passed by the House with a 55 to 4 vote and passed the Senate with a 28 to 1 vote. The Governor is expected to sign the measure.

**HB 2571 Enrolled, Body-Worn Camera Legislation:** HB 2571 A was introduced based on conversations initiated through the Law Enforcement Responsible Technology Work Group (members include OACP, OSSA, ODAA, City of Portland, OSP, DOJ, etc.). The measure provides that deployment of body-worn cameras by a police agency is permissible (not mandated) and would include the following key provisions:

Provides an **exception to the audio recording prohibition** for:

- A video camera worn upon the officer’s person that records the officer’s interactions with members of the public while the officer is on duty, unless;
- The officer has an opportunity to announce at the beginning of the interaction that the conversation is being obtained; and

- The announcement can be accomplished without causing jeopardy to the officer or any other person and without unreasonably impairing a criminal investigation; or”.

Exempts body camera footage from **public records under 501** (ORS 192.410 to 192.505) unless the public interest requires potential disclosure based on the following factors:

- Recordings that have been sealed in a court's record of a court proceeding or otherwise ordered by a court not to be disclosed shall not be disclosed.
- If a recording is of an incident that involves the use of force by a law enforcement officer, the disclosure of that particular recording must be in the public interest.
- If a recording is of an incident that does not involve the use of force by a law enforcement officer, the incident itself must be of sufficient public interest that the public interest requires disclosure of that particular recording.
- The approximate date and time of the incident in question must be identified and the request must be reasonably tailored to include only material for which the public interest requires disclosure.

Adds important discovery provisions including:

- 60 day rule extension for just cause when editing (redaction) of digital video evidence is necessary if the defendant received discovery of digital video evidence [from body worn cameras] and, where discovery occurred in a reasonably timely manner.
- Statutory suppression of footage: provides that body worn camera footage would not be subject to suppression in most instances

STATUS: HB 2571 B was passed by the Senate with 29 yes votes, the House concurred in the Senate amendments with a 59 to 1 vote and the Governor signed the bill on June 25<sup>th</sup>. The law was effective on passage (June 25<sup>th</sup>, 2015) and the law is assigned to Chapter 550 (2015 Laws).

### **HB 2704 Enrolled, Exemption to audio recording prohibition for public recording of police**

**officer encounters:** As originally drafted, this ACLU sponsored bill would have created an exception to the audio recording statutes for the public recording officers engaged in performing their official duties and would have provided that merely recording an officer would not constitute interfering with a police officer. We were able to seek amendments to the measure that properly narrow instances where the public is authorized to audio record officers. As amended, House Bill 2704-B allows a person to record a conversation in which a law enforcement officer is a participant, if:

- The recording is made while the officer is performing official duties;
- The recording is made openly and in plain view of the participants in the conversation;
- The conversation being recorded is audible to the person by normal unaided hearing; and
- The person is in a place where the person lawfully may be

The measure also makes clear that the exemption does not authorize a person to engage in conduct constituting criminal trespass.

We made it clear on the record that we don't believe the measure authorizes a person to record an officer who is on a break with another officer where they have a reasonable expectation that they are not being recorded.

STATUS: HB 2704 A was passed by the Senate with a 23 to 6 vote, the House concurred in the Senate Amendments with a 53 to 6 vote and the Governor signed the bill into law on June 25<sup>th</sup>. The effective date of the law is January 1<sup>st</sup>, 2016 (Chapter 553, 2015 Laws)

## **Domestic Violence/Rape/Missing Children:**

**HB 2317 Enrolled, Rape Statute of Limitations Increase to 12 Years:** HB 2317 EN provides that a prosecution for crimes of rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first degree and sexual abuse in the first degree may be commenced within 12 years after commission of the offense. The bill also provides that if a victim was a minor at time of the offense, prosecution may be commenced either within 12 years or before victim attains 30 years of age. The measure prescribes that the bill applies to offenses committed before, on or after the act, but that the act does not operate to revive any previously barred prosecutions.

STATUS: HB 2317 A passed the House of Representative with 59 yes votes and passed the Senate with 28 yes votes. The Governor signed the measure on June 16<sup>th</sup> and an interim workgroup will be formed during the interim for the purpose of determining if the statute of limitations should be extended further or removed altogether. The workgroup will be charged with bringing a recommendation for consideration during the 2016 Legislative Session.

**HB 2601 Enrolled, Missing Children Clearinghouse 24 Hour notice requirement for abducted child:** HB 2601 requires a member of law enforcement agency to notify the Oregon State Police Missing Children Clearinghouse within 24 hours if they have probable cause to believe that custodial interference in the first or second degree, or kidnapping in the first or second degree, involving a child has occurred.

STATUS: HB 2601 A passed the House of Representatives with 59 yes votes, the Senate passed the bill with 30 yes votes and the Governor signed the measure into law on May 21<sup>st</sup>. Please note: This measure went into effect when the Governor signed the measure. In addition, the OSP Criminal Division developed an automatic update to the Oregon Missing Children Clearinghouse that satisfies the reporting requirements listed in the measure. It should relieve law enforcement from additional notifications to OSP. The update includes an easy process to address cases where the missing child should be excluded from an automatic posting to the website.

**HB 2776 EN, Emergency Protective Orders:** HB 2776 was introduced at the request of Chief Don Johnson from Lake Oswego PD with the hopes of providing officers with an additional tool to protect parties to domestic violence. The bill would allow a peace officer to apply to a circuit court judge for an ex parte emergency protective order provided that victim consents. The measure authorizes a court to enter an order if the court finds probable cause to believe that the officer has responded to a domestic disturbance that requires mandatory arrest, the person is in immediate danger of abuse by a family or household member and the emergency protective order is necessary to a prevent person from suffering further abuse. Further, the bill provides that the protective order expires seven days after entry and provides that States that a violation of the emergency protective order constitutes contempt of Court.

STATUS: This measure passed the House of Representatives with 47 yes votes, passed the Senate with 29 yes votes and was signed by the Governor on June 4<sup>th</sup>. The measure takes effect on January 1<sup>st</sup>, 2016 (Chapter 252, 2015 Laws).

**SB 3 Enrolled, Repeat Violation of a Restraining Order:** Introduced by Senate President Peter Courtney, SB Senate Bill 3 B creates the crime of endangering a person protected by a FAPA order. Unlike a typical contempt of court action for a restraining order violation, it is not mere contact that constitutes the crime. Rather, the prohibited contact must be the type that recklessly places the protected party at substantial risk of physical injury, or attempts to place a protected party in fear of imminent physical injury. Therefore if persons commit the crimes of recklessly endangering another person (ORS 163.195) or menacing (ORS 163.190) while violating the order, they commit the crime of endangering a person protected by a FAPA order. Such behavior elevates the level of offense to a Class C felony, and is thus punishable by a maximum of five years' incarceration, \$125,000 fine, or both.

STATUS: SB 3 B was amended by the House and passed on the floor with 49 votes and the Senate concurred with the House amendments and passed the bill with 29 yes votes. The Governor signed the bill on June 22<sup>nd</sup> with an effective date of January 1, 2016 (Chapter 527, 2015 Laws).

**SB 525 Enrolled, Repeat Violation of a Restraining Order:** SB 525 B prohibits possession of a firearm or ammunition if a respondent is subject to a restraining order protecting an intimate partner or the child of an intimate partner issued or continued after the respondent received actual notice and was granted an opportunity to be heard. The measure applies the prohibition if the person has been convicted of a misdemeanor involving domestic violence that includes use or attempted use of physical force or use or threatened use of a deadly weapon as an element of the offense and where the defendant was a family member of victim at the time of the offense. The bill establishes definitions for family member, intimate partner and conviction, provides that the prohibition does not apply if offense is expunged and allows for relief from the prohibition upon court petition.

STATUS: SB 525 B passed the Senate with a vote of 24 to 6, passed the House with a vote of 51 to 8 and the Governor signed the bill on June 18<sup>th</sup>. The effective date of the law is January 1, 2016 (Chapter 497, 2015 Laws).

## Forensics/Evidence

**HB 3206 Enrolled, Post-Conviction DNA Testing Motion:** House Bill 3206-B changes when and how a person convicted of a criminal offense can seek post-conviction DNA testing. The measure expands the practice in the following ways:

- It expands the availability of testing to all felony offenses.
- It requires the defendant to identify the evidence to be tested with as much specificity as is practicable.
- It requires the defendant to make a prima facie showing that exculpatory evidence would lead to a finding that the person is actually innocent of the offense.
- It limits victim testimony in motion practice for testing. It changes when testing can be completed by labs other than the Oregon State Police.
- It requires the court to make written findings when denying a motion for testing.
- It clarifies the availability of court-appointed counsel to aid in the motions for testing.

STATUS: HB 3206 as amended was passed by the Senate with 29 votes, the House concurred with the Senate amendments with 58 votes and the Governor signed the bill on June 25<sup>th</sup>. The effective date of the law is January 1<sup>st</sup>, 2016 (Chapter 564, 2015 Laws).



## Hiring/Human Resources

**HB 3025 Enrolled, Ban the Box Legislation:** This measure is designed to remove obstacles to gainful employment for individuals with criminal records. The bill establishes that it is an unlawful employment practice if an employer uses a job application form that inquires about an applicant's conviction history; inquiring about or considering an applicant's conviction history prior to an interview; or inquiring about or considering an applicant's conviction history prior to making a conditional offer of employment when no interview is conducted. The bill also creates right of civil action for any violation.

When the measure passed the House of Representatives with a narrow 33 to 27 vote, the bill had no exemption for law enforcement hiring. In the Senate Workforce Committee, we successfully amended the bill in Section 1(4) to include an exemption to the bill for:

- (b) An employer that is a law enforcement agency;
- (c) An employer in the criminal justice system

STATUS: The amended version of the bill passed the Senate with a 21 to 8 vote, the House concurred in the Senate amendments with a 34 to 25 vote and the Governor signed the measure into law on June 25<sup>th</sup>. The effective date of the law is January 1<sup>st</sup> 2016 (Chapter 559, 2015 Laws).

**HB 2208 Enrolled, Release of Officer Personal Information:** HB 2208 B addresses a DOJ opinion that required DPSST to release officer date of birth information in response to an Oregonian Public Records request. The measure provides that the personal information of individuals certified by DPSST is exempt from public records release including current and past licensees or certificate holders. The bill exempts the residential address and telephone number, personal cellular numbers, personal email addresses, driver license numbers, emergency contact information, Social Security numbers, and dates of birth from disclosure. In addition, HB 2208 exempts the personal information of civil code enforcement officers from public records requests unless the public interest requires disclosure.

STATUS: The amended version of the bill passed the Senate with a 27 to 3 vote, the House concurred in the Senate amendments with a 55 to 4 vote and the Governor signed the bill on June 10<sup>th</sup>.

## Marijuana Issues:

The legislation adopted to implement Ballot Measure 91 and to increase regulation around the Oregon Medical Marijuana Act, while not perfect, is remarkable considering the political environment during the 2015 Legislative Session. Special thanks to Rob Bovett for his leadership and tireless effort on behalf of law enforcement and local government (the following outline of measures was written by Rob). Thanks are also in order for the OSSA members who serve on the "Oregon Law Enforcement Marijuana Legislation and Rules Review Committee" for investing their time and contributing their expertise including:

- Deputy Chief Jeff Kuhns, Keizer Police Department
- Lt. Kevin Walruff, Medford Police Department
- Sergeant Robert Hayes, Albany Police Department
- Officer Jeff DeBolt, Beaverton Police Department

## **1. HB 3400 Enrolled, (Retail and Medical omnibus):** With just a few weeks remaining

### **A. Local Option** (Sections 133 to 136)

- Provides two paths for local opt out of any one or more category of marijuana businesses. There are four retail categories (producer, processor, wholesaler, retailer) and two medical categories (processor and dispensary):
  - Opt out by action of the county or city governing body for counties, and cities in counties, that voted against Measure 91 by at least 55 percent (Baker, Crook, Gilliam, Grant, Harney, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wheeler).
    - Opt out must be done within 180 days of the effective date of HB 3400A.
    - Grandfathering for existing medical processors and dispensaries that have successfully completed the local land use process.
    - If a county or city opts out of any category, local option tax (*see below*) is prohibited, as well as disqualification for shared state tax revenue (*see below*).
  - Opt out by local vote referred by any county or city governing body.
    - Temporary moratorium until election.
    - Election must be held at the next general election (November of even-numbered year).
    - Grandfathering for existing medical processors and dispensaries that have successfully completed the local land use process.
    - If a county or city opts out of any category, local option tax (*see below*) is prohibited, as well as disqualification for shared state tax revenue (*see below*).

### **B. Local Time, Place and Manner Regulations** (Sections 33 and 89)

- Clarifies reasonable time, place and manner regulatory authority over marijuana businesses.

### **C. Land Use** (Section 34)

- Marijuana given status as a farm crop.
- In EFU zones, prohibits farm stands, farm commercial activities, and new farm dwellings based on marijuana crops.
- Allows counties to permit marijuana crops in farm and forest zones, similar to EFU.
- Requires a completed Land Use Compatibility Statement (LUCS) from local government prior to issuance of marijuana business license by OLCC.

### **D. Local Option Tax** (Section 34a)

- Allows local tax on sale of retail marijuana items, if approved by local voters at a general election, not to exceed 3 percent.
- Prohibits local option tax if city or county prohibits any category of marijuana business.

### **E. OLCC**

- Expands powers and duties relating to regulation, investigation, and enforcement with regard to OLCC licensed marijuana businesses.
- Requires handler permit for employees of retail marijuana businesses that handle marijuana.
- Requires a seed-to-sale tracking system.

- Allows OLCC to require age verification scanners for licensed retail stores.
- Provides for state licensed testing laboratories to test all retail marijuana products.
- Provides for packaging, labeling, and dosage standards.
- Provides for state certified public and private research facilities.
- Allows medical marijuana growers to opt-in to the retail marijuana supply chain to sell excess medical marijuana, subject to licensing and regulation by OLCC.

## **F. OMMA**

### *Tracking*

- Requires registration and tracking of all grow sites, processing sites, and dispensaries in an OHA database.
- Requires designated growers, processors, and dispensaries to submit monthly information to the database regarding amounts possessed and transferred.
- Permits law enforcement, and city and county regulatory agencies, to access database, except for transaction information, which requires a subpoena.

### *Growers and Processors*

- Requires registration of designated grow sites and processing sites.
- Prohibits persons convicted of certain drug crimes from being the designated person responsible for a site.
- Authorizes OHA to inspect sites, and records related to those sites.
- Authorizes OHA to revoke the registration of a site for violation of the OMMA, or local time, place, and manner ordinances.
- Limits the number of plants that may be grown at a single address:
  - 12 mature plants in residential zone in city, with up to 24 for grandfathered sites.
  - 48 mature plants in all other zones, with up to 96 for grandfathered sites.
- Allows designated grower to possess usable marijuana at the rate of 12 pounds per mature outdoor plant, and 6 pounds per mature indoor plant.
- Allows cardholder to assign a portion of the cardholder's possession rights to their designated grower.
- Prohibits marijuana extract processing sites in residential zones.

### *Dispensaries*

- Authorizes OHA to revoke the registration of a dispensary for violation of the OMMA, or local time, place, and manner ordinances.
- Prohibits dispensaries in residential zones.
- Allows dispensary to remain registered if a school opens within 1,000 feet of the dispensary after the dispensary is already operating.

### *Products and Testing*

- Provides for testing of all marijuana items, and requires testing laboratories to be OHA licensed.
- Provides OHA with regulatory authority over testing, and the production of edibles, extracts, concentrates, and other products.
- Imposes requirements for labeling and packaging.

## **G. Further Reduction in Marijuana Offense Levels** (see separate pamphlet)

STATUS: HB 3400 passed the House with a 52 to 4 vote, the Senate with a 24 to 4 vote and the Governor signed the measure into law on June 30<sup>th</sup> (before the July 1<sup>st</sup> BM 91 effective date). The Oregon Laws chapter number was assigned by the Secretary of State as 614.

### **2. Senate Bill 460 Enrolled (“Early Start”)**

- Allows medical marijuana dispensaries to sell limited marijuana retail products, beginning October 1, 2015
  - Seeds.
  - Dried leaves and flowers.
  - Plants that are not flowering.
- Limits amount that can be sold to each customer.
- Allows cities and counties to prohibit these retail sales by ordinance.

STATUS: Senate Bill 460 A passed the Senate with a 23 to 6 vote and passed the House of Representatives with a 40 to 19 vote. The Governor is expected to sign the bill.

### **3. House Bill 2041 Enrolled (Retail Taxation)**

- State tax on sale of retail products, in lieu of Measure 91 tax on grower products:
  - 17% tax rate (but see “Early Start” special rate below).
- Retains net distribution formula from Measure 91
  - 40% to the Common School Fund.
  - 25% to substance abuse treatment and prevention.
  - 15% to the Oregon State Police.
  - 10% to cities and 10% to counties, to assist with enforcing Measure 91.
- Disqualifies a city or county from receiving any distribution if the city or county prohibits any one or more of the six categories of marijuana business licensees.
- “Early Start” special tax rate:
  - 25% tax rate, beginning January 4, 2016.

STATUS: HB 2041A passed the House with a 43 to 15 vote and passed the Senate with a 24 to 4 vote. The Governor is expected to sign the measure into law.

### **4. Senate Bill 844 Enrolled (Miscellaneous)**

- Research task force
- Reduces expunction waiting period from three years to one year for person adjudicated or convicted of marijuana offenses when they were under 21.
- Changes OMMA “agitation incident to Alzheimer’s disease” qualifying condition to “a degenerative or pervasive neurological condition.”
- Allows certain medical organizations to be a designated OMMA caregiver.
- Prohibits transplant hospitals from discriminating against OMMA cardholders.

STATUS: Senate Bill 844 A passed the Senate with a 21 to 8 vote and passed the House of Representatives with a 45 to 14 vote. The Governor is expected to sign the bill.

**Please Note: House Bill 2668B** (Hemp) was defeated on the Senate Floor with 19 no votes

## **Police Officer Authority:**

**SB 343 Enrolled, Tribal Police Authority Sunset Removal:** In 2011, the Legislative Assembly passed Senate Bill 412, which provides tribal law enforcement officers in Oregon the same arrest and police powers as other state, local, and special police officers based on compliance with a few parameters that were outlined in the original measure. At the time Senate Bill 412 was passed, a sunset provision was included that would have ended the authority on June 30, 2015 unless formally extended by the legislature. SB 343 makes Tribal police officer authority permanent by removing the sunset date.

STATUS: SB 343 was passed by the Senate with a 28 to 1 vote was passed by the House with a 53 to 3 vote and the Governor signed the bill into law on June 1<sup>st</sup>. The effective date of the bill is May 26<sup>th</sup>, 2015 (Chapter 174, 2015 Laws).

## **Privacy and Civil Liberties:**

### **SB 641 Enrolled, Portable Electronic Device Forensic Imaging/Data Dump Prohibition:**

OACP/OSSA and ODAA worked with Oregon DOJ and the Oregon District Attorneys Association to reach agreement with the ACLU on amendments that significantly narrow the scope of the measure to language that responds to recent court cases like *Riley v. California* that prohibited searching cell phones incident to arrest. The practice of forensically imaging a device at the scene of an arrest for the purpose of securing data (and avoiding a remote sweep of the device) for a later search pursuant to a warrant is not a common practice and is unlikely to stand up to constitutional scrutiny. In *Riley v. California*, the court described a number of methods for preventing the remote wipe of devices including the use of Faraday bags and our technology experts indicate that it isn't difficult to prevent a phone from being erased remotely. As amended, SB 641 A includes the following provisions:

- Prohibits law enforcement from forensically imaging the data on a portable electronic device unless the investigating officer has obtained consent or a search warrant to do so.
- Provides that only the owner of the device or a person who has a reasonable expectation of privacy in the device can challenge the admission of evidence that was obtained in violation of the bill.
- Provides that when a person seeks the return of a portable electronic device that is no longer needed as evidence, the court may order the state to return any forensic copies of the device as well.

The measure does not prohibit any manual searching or copying of data from a portable electronic device. That is, the bill does not prohibit an officer from manually searching (scrolling) through a device, taking screenshots or photos of data on the device, taking notes about data on the device, or taking any other action that does not include forensically copying the device.

The measure was amended in the House Judiciary Committee to:

- Changes "appropriate consent" to "lawful consent" which is the correct statutory designation

- Exempt correctional facilities, state hospital, community corrections, and probation officers from the prohibition on forensic imaging to the extent those agencies are engaged in otherwise lawful conduct.

We may have to pursue legislation in the future to address devices like the iPhone 6 where the content can't be unencrypted once locked and where the Apple is also unable to access the information. To do so, we will need to identify instances where the exigency would have made a difference in a case.

STATUS: SB 641 B passed the House with a 44 to 4 vote, the Senate concurred in the House amendments with a 26 to 2 vote and the Governor signed the bill into law on June 30<sup>th</sup>. The effective date of the law is January 1<sup>st</sup>, 2016 (Chapter 613, 2015 Laws).

## **Traffic/Motor Vehicle:**

**HB 3402 Enrolled, Speed Limit Bill:** HB 3402 increases the speed limit for passenger vehicles/certain other vehicles on segments of:

- Interstate 84 between The Dalles and Idaho State Line: 70 mph/65 mph
- Highway 95 between Idaho and Nevada state lines: 70 mph/65 mph
- Highway 20 between Bend and Ontario: 65 mph/60 mph
- Highway 197 between The Dalles and Highway 97: 65 mph/60 mph
- Highway 198 between Highway 97 and Klamath Falls: 65 mph/60 mph
- Highway 31 between Valley Falls and LaPine: 65 mph/60 mph
- Highway 78 between Burns Junction and Burns: 65 mph/60 mph
- Highway 395 between Burns and John Day: 65 mph/60 mph
- Highway 395 between Riley and California State Line: 65 mph/60 mph
- Route 205 between Burns and French Glen: 65 mph/60 mph
- Highway 26 between John Day and Vale: 65 mph/60 mph

The measure exempts portions of Highway 95, Highway 20, and Highway 197 that fall inside of city limits. Implementation of the bill included a one-time appropriation of \$735,000 from the State Highway Fund to replace 370 speed limit signs on more than fifteen hundred miles of highway.

STATUS: HB 3402 B was passed by the House with a vote of 52 to 5 and Senate with a vote of 22 to 6. The Governor is expected to sign the bill.

## **Weapons/Firearms:**

**HB 2357 Enrolled, Firearms for Honorably Retired and Off Duty Law Enforcement:** HB 2357 C refines and expands on existing exceptions to a handful of weapons crimes for law enforcement personnel including:

- For both the crimes of unlawful possession and possession in public buildings, federal officers are exempted;
- For the crime of possession in public buildings, off-duty police and off-duty reserve officers, as well as honorably retired law enforcement are added to the list of exemptions;

- For the violation of casting an artificial light from a vehicle in the presence of a weapon, an exception for honorably retired law enforcement was added;
- For the violation of operating an off-road vehicle with a loaded weapon, exceptions were added for both law enforcement and honorably retired law enforcement.

The exemptions added for honorably retired law enforcement officers above do not apply to retired law enforcement officers that have been convicted of an offense that would make them ineligible to obtain a concealed handgun license under ORS 166.291 and 166.292.

STATUS: HB 2357 C passed the Senate with 28 votes, the Senate concurred with the House amendments with 60 votes and the Governor is expected to sign the bill.

**SB 941 Enrolled, Background Checks for Private Transfer:** SB 941 A includes the following key provisions:

- Requires all private transferors of firearms to appear at a gun dealer in person with both the transferee and firearm and request a criminal background check before transfer.
- Specifies exceptions for family members, law enforcement, inherited firearms and certain temporary transfers.
- Provides that a violation of the background check law constitutes a Class A misdemeanor for first offense and a Class B felony for second and subsequent offenses.
- Provides that if transferor and transferee live over 40 miles from each other, the transferor may ship or deliver the firearm to a gun dealer located near the transferee.
- Allows Department of State Police to notify local law enforcement when a background check demonstrates that the transferee is prohibited from possession of a firearm.
- Allows a court to prohibit a person from participating in outpatient treatment from possession of a firearm during the period of treatment upon certain findings.

STATUS: SB 941 passed the Senate by a vote of 17 to 12, passed the House with a vote of 32 to 28 and was signed by the Governor on May 11<sup>th</sup>.

## **Dead Bills – Measures we Successfully Defeated:**

The following is a review of key legislation that we were able to keep from moving forward for the 2015 Legislative Session. Here is a few of the many bills we were able to defeat:

- SB 629 – Oregon Right to Rest Act
- HB 2901/SB 640- Privacy Bills
- HB 3098 – Officer Involved Domestic Violence
- SB 904 – Privacy and Civil Rights Oversight Commission
- SB 743 – Brady Bill (Fraternal Order of Police)
- HB 2978 – Collective Bargaining Supervisory Definition
- HB 2900 – Creates Commercial Bail System
- SB 575 – Requirement to Announce Right to Refuse Search
- HB 2538 – Transfer of Fish & Wildlife from OSP to Dept of Fish & Wildlife
- SJR 17 – Constitutional Amendment Referral – Oregon Right to Privacy
- HB 2699, 2701, 2702, 2705, 3374 & SB 871, 910, 911 – Use of Deadly Force

## **Moving Forward/Unfinished Business/Next Steps:**

Now that the results of the 2015 Legislative Session are known, there are a number of issues that will require follow-up and additional attention:

**Automatic License Plate Reader Legislation (SB 639 A):** An ongoing negotiation with the ACLU to establish a plate data retention limit hit some snags when the ACLU backed away from their commitment to a one-year retention period. Despite their efforts to seek an unworkably restrictive retention period, we successfully amended the bill to reflect the one-year agreement. The bill was passed from the Senate Judiciary Committee to the Rules committee where it remained when Legislative Session adjourned "Sine Die". The measure would have established a one-year retention period for ALPR data and a dash 9 amendment we drafted would include the following additional provisions:

- Permits law enforcement to use ALPR to identify vehicles not only registered to a suspect but vehicles that a suspect may be using.
- Permits law enforcement to use ALPR to gather evidence in a criminal investigation. This provision will allow law enforcement to use the nearby ALPR data to assist in locating victims, suspects and obtaining evidence about what happened and who was present at a crime scene.
- Permits law enforcement to compare ALPR data to any database of known data that would assist in identifying vehicles involved criminal acts
- Requires law enforcement to obtain court order to preserve data longer than one year. Requires law enforcement to prove reasonable suspicion of a crime and supply court with specific information about the nature of the request before approval. Court must specify a time when the order expires. Permits law enforcement to apply to the court for extensions on the court order.

**NEXT STEPS:** Senator Prozanski is committed to reintroduce this measure for the 2016 Legislative Session with a one-year retention period. We need to identify a group of bipartisan sponsors for the bill and seek votes of support in advance of 2016.

**Body-Worn Camera Policy (HB 2571 Enrolled):** With the passage of HB 2571, additional work to prepare agencies to deploy the technology is necessary.

**NEXT STEPS:** The Body Camera subcommittee of the Law Enforcement Responsible Technology Workgroup (under the leadership of Captain John Scruggs from the Portland Police Bureau) should continue work to create a statewide body-worn camera policy framework for distribution to all Oregon police agencies.

**Law Enforcement Pre-employment Polygraph (SB 316):** SB 316 A would have authorized police agencies to utilize polygraph as a pre-employment hiring tool. As amended, the bill permitted (not mandated) law enforcement agencies to utilize a polygraph examination as a pre-employment screening measure before a person's initial full-time employment as a peace officer. The measure would prohibit law enforcement agencies from requiring or requesting polygraph examinations following a peace officers hiring and would exempt documents, materials and other information relating to polygraph tests administered under ORS 659.840 from public records disclosure under ORS 192.505. SB 316 passed



the Senate with 29 yes votes but died in the House Judiciary Committee because of concerns expressed by the Chair. An informational hearing was held in the House Judiciary Committee on June 15<sup>th</sup>.

**NEXT STEPS:** We need to continue to work with Representative Jeff Barker to secure his support for legislation to authorize pre-employment polygraph for law enforcement hiring. We plan to reintroduce the legislation for the 2016 Legislative Session.

**Officer Involved Domestic Violence (HB 3098):** This measure would have required law enforcement agencies to adopt prescriptive written policies relating to domestic violence by police officers in response to an incident in Clackamas County. We successfully defeated the measure but will need to take action in order to prevent the bill from returning in 2016.

**NEXT STEPS:** The following objectives are recommended as a plan of action:

- Create an updated police agency policy framework on officer involved domestic violence as a resource for all Oregon policing agencies.
- Schedule training on the topic of officer involved domestic violence for the OACP/OSSA Fall Leadership Conference at DPSST.
- Distribute the National Prevention Toolkit for the Prevention of Officer Involved Domestic Violence to all Oregon agencies.

**Privacy Modernization Legislation (HB 2901):** During the 2014 interim, the Law Enforcement Responsible Technology Workgroup (LERT) drafted legislation designed to modernize privacy statutes in response to a damaging proposal introduced by the ACLU during the 2014 Legislative Session. The LERT draft was introduced as HB 2901 during the 2015 Session as the “Privacy Protection and Safe Communities Act”. While HB 2901 didn’t move forward during the Session, other competing proposals (Like SB 640) also failed to move forward.

**NEXT STEPS:** Senator Prozanski is committed to convening a work group during the interim to seek consensus among stakeholders with the hopes of introducing a bill for the 2016 Legislative Session. The LERT should be activated to play a role in reviewing and forwarding proposed language and representatives of the LERT should participate in the workgroup process. If a consensus measure isn’t achieved, we should reintroduce the contents of HB 2901 as a bill in 2016.

**Racial Profiling/Police Legitimacy (HB 2002 Enrolled):** While the passage of HB 2002 during the 2016 Legislative Session helped to calm the public outcry about high profile police encounters from around the nation, the call for additional legislation is certain to surface in 2016.

**NEXT STEPS:** The following strategic objectives are recommended: Participate in the workgroup created by HB 2002 and direct the focus of the workgroup to hiring, training and police-community relations as the most strategic investments to address concerns.

**Untested Sexual Assault Kits (SB 563):** This measure would have required all police agencies to conduct an inventory of all untested sexual assault kits. We were able to prevent the bill from moving forward by making a commitment to conduct an inventory of these kits voluntarily. The impetus for the effort to address untested sexual assault kits comes from a national group, under the umbrella of the

Joyful Heart Foundation is behind a movement called “End the Backlog” that is actively working throughout the nation to insure that SAFE kits are tested and test results are entered into CODIS.

NEXT STEPS: A coalition including law enforcement and sexual assault victim advocacy groups and sexual assault survivors are working together to accomplish the following three objectives:

- Conduct an inventory of untested sexual assault kits in law enforcement agency possession (in process).
- Seek resources to eliminate the untested sexual assault backlog (grants, state funding).
- Create an updated police agency policy framework on sexual assault investigations.
- Create a survivor sensitive continuum of care model to address the reactivation of dormant cases.

It is a privilege to work with all of you. If you have questions, please contact me at [kevin@victorygrp.com](mailto:kevin@victorygrp.com).

Kevin

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