

2020B LEGAL REVIEW
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**I. Kentucky General Assembly
2020 Session**

New Kentucky Statutes (2020)

“Long” session scheduled for 60 days.

Completed 53 days of the Session.

Scheduling and attendance impacted by COVID-19 pandemic.

Focus placed on budget bills after COVID-19 pandemic arrived.

II. EFFECTIVE DATE OF NEW LEGISLATION

Governed by Kentucky Constitution § 55.

New laws designated as “emergency” effective upon signature of Governor.

New laws become effective 90 days after adjournment.

General Assembly adjourned April 15, 2020.

EFFECTIVE DATE OF NEW LAWS: JULY 15, 2020

III. KENTUCKY SENATE

SB 8 - EMERGENCY SCHOOL SAFETY

Effective February 21, 2019.

Amends portions of the School Safety and Resiliency Act (SB 1 – 2019) found in KRS Chapter 158.

Require school boards, superintendents, “administrators of state controlled facilities,” and local law enforcement agencies to assign SROs to “serve each campus where one or more school buildings are used to deliver instruction...”

Each SRO “shall be armed with a firearm, notwithstanding any provision of local board policy, local school council policy, or memorandum of agreement.”

Clarifies SRO Certification requirements.

Clarifies mental health and counselors provisions.

Increases SLEO commissions to 4 years for school district SLEOs who serve as SROs.

Modifies some building requirements.

Classroom doors need not remain locked during instructional day when 1 student and 1 adult present; or,

Exemption is approved by State School Security Marshal.

Clarifies SRO certification:

If an officer loses SRO certification:

The officer will not count as “one or more certified school resource officers” under KRS 158.4414.

Any SRO who fails to successfully complete training requirements within the specified time periods, including any approved time extensions, shall lose SRO certification and shall no longer work in a school.

Clarifies delivery of mental health services for students:

Beginning July 1, 2021 or as funds and qualified personnel become available, school districts shall employ:

A least one counselor in each school with the goal of the school counselor spending at least 60% of time providing counseling services directly to students; and

At least 1 counselor or school-based mental health professional for every 250 students.

SB 8 - KRS 508.078(b)

TERRORISTIC THREATENING – 2nd Degree

Intentionally makes false statements by any means, including by electronic communication, indicating that an act likely to result in death or serious physical injury is occurring or will occur for the purpose of:

Causing evacuation of school property;

Causing cancellation of school activity; or

Creating fear of death or serious bodily harm among students, parents or school personnel.

SB 15 – CONSTITUTIONAL AMENDMENT FOR VICTIMS’ RIGHTS

Originally passed in 2018 as SB 3.

Ratified after popular vote in November 2018.

Declared unconstitutional by Kentucky Supreme Court after challenge to ballot language.

Westerfield v. Ward, 2019 WL 2463046 (Ky. 2019).

Entirety of the proposed amendment must be presented to the voters at least 90 days prior to election.

Ballot question will be 570 words in length.

If passed, the Constitution of Kentucky will be amended to:

Provide due process rights for crime victims.

Timely notice of all proceedings.

Right to consultation with prosecutors.

Reasonable protection from accused/family/etc.

Bail and restitution considerations.

Timely notification of release of accused.

SB 80 provides the amended KRS authority.

SB 21 VETERINARIANS

Creates KRS 321.188 and amends KRS 321.185

Veterinarians MAY report animal abuse and release information to the State Veterinarian concerning the care of on-farm livestock or poultry care standard, or to law enforcement for any other animal that occurs as a result:

KRS 521.125 – First-degree cruelty to animals.

KRS 525.130 – Second-degree cruelty to animals.

KRS 525.135 – Torture of a dog or cat.

KRS 525.137 – Sexual crimes against an animal.

SB 42

STUDENT HEALTH AND SAFETY

Creates KRS 158.038

ID Badges issues to public school students in grades 6-12 shall contain contact info for:

A national domestic violence hotline;

A national sexual assault hotline; and

A national suicide prevention hotline.

Creates KRS 164.2815

ID Badges issues to public and/or private students at colleges, universities or vocational schools shall contain contact info for:

A national domestic violence hotline;

A national sexual assault hotline; and

A national suicide prevention hotline.

SB 56 - SALE OF TOBACCO PRODUCTS

FEDERAL LAW – TOBACCO FREE YOUTH ACT (2019)

Enacted December 2019 via a spending bill.

Amends Food, Drug and Cosmetic Act.

Prohibits sale of tobacco products by retailers to anyone under the age of 21.

Does not address possession of tobacco products by anyone under the age of 18.

State law applies to possession.

Led to SB 56.

SB 56 SALE OF TOBACCO PRODUCTS

Amends KRS Chapter 438, KRS 600.020(65)(a), and KRS 610.010

Prohibits sale of tobacco products to anyone under 21.

Prohibits possession of tobacco products to anyone under 21.

Permits peace officers to confiscate tobacco products in plain view.

No citations to be issued.

Underage possession of tobacco IS NOT a status offense.

SB 72 FEMALE GENITAL MUTILATION

Creates KRS 508.125.

Defines “female genital mutilation”

Person is guilty of female genital mutilation when:

Knowingly performs female genital mutilation on another person under age 18.

Parent/Guardian/Custodian knowingly consents or permits female genital mutilation on another person under age 18.

Knowingly removes, causes, or permits removal of person under 18 from Kentucky for the purpose of performing female genital mutilation.

Not a defense that the conduct is:

Required by religion, custom, ritual or standard practice; or
Consented to by the individual (under 18) or parents/guardians.

Surgical procedure is not a violation if:

Necessary for health and performed by licensed person; or

Performed on person in labor or who has just given birth and is performed for medical purposes by licensed person.

CLASS B FELONY!!!!

Cabinet for Health and Family Services to develop and produce materials regarding female genital mutilation.

Health risks, emotional trauma and criminal penalties included.

CHFS to distribute this materials to law enforcement personnel who may reasonably come into contact with individuals who may be at risk of suffering female genital mutilation.

Education on this offense shall be provided to law enforcement during Basic Training.

Civil action available to victims.

Actual, compensatory and punitive damages available.

Treble damages if defendant's actions shown to be willful and malicious.

Statute of limitations within 10 years:

Of the procedure being performed, or

After victim attains age 18.

SB 80

CRIME VICTIMS' RIGHTS

Companion statute to SB 15 and takes effect if SB 15 is ratified in November 2020.

Make the Constitutional Amendment an operational law.

Defines "victim" for purposes of Marsy's Law.

Provides for full restitution to victims.

Does not alter presumption of innocence.

SB 122 OUTPATIENT MENTAL HEALTH TREATMENT

Amends KRS 202A.815(1).

Time period for ordering outpatient treatment if a person has been involuntary hospitalized under KRS 202A changed to at least 2 times in the past 24 months.

Formerly 2 times in the past 12 months.

Amends KRS 421.500 - KRS 421.576.

IV. KENTUCKY HOUSE OF REPRESENTATIVES

HB 2

HUMAN TRAFFICKING

Designates human trafficking involving commercial sexual activity as a “sex crime” for purpose of sex offender registration.

Requires posting of the National Human Trafficking Resource Center hotline number in English and Spanish in all public restrooms at:

Airports

Train stations

Truck stops

Bus stations.

Amends definitions in KRS 529.010.

“Commercial sexual activity” includes:

Any sex act, for which anything of value is given to, promised to, or received by any person;

Participation in the production of obscene material; or

Engaging in a sexually explicit performance.

“Debt bondage” includes pledge by debtor of his/her personal services or those of a person under debtor’s control as security for the debt.

Amends definitions in KRS 529.010.

“Force, fraud, or coercion” includes, but it not limited to:

Use/threat of force against, abduction of, restraint, or serious harm of an individual;

Abuse or threatened abuse of law or legal process;

Facilitation, controlling, or threatening to control access to a controlled substance;

Hindering access to passport/immigration documents of person or family member;

Use of debt bondage; or

Use of individual’s physical/mental impairment when impairment has a substantial adverse effect on individual’s cognitive or volitional function.

“Serious harm” includes:

Physical or nonphysical harm that is sufficiently serious to compel a reasonable person to perform commercial sexual activity to avoid the harm.

Includes psychological, financial, or reputational harm.

Amends crime of Human Trafficking (KRS 529.100):

Intentionally subjects 1 or more persons to engage in:

Forced labor or services; or

Commercial sexual activity through the use of force, fraud, or coercion, except if the person is under 18

If under 18, force, fraud or coercion not needed.

Penalties under KRS 529.100(2):

Class C felony,

Class B felony if serious physical injury involved.

If victim is under 18, penalty shall be one level higher.

Human Trafficking Victims Service Fee

Not less than \$10,000 payment if convicted

Fund administered by Attorney General, not JPSC.

Amends KRS 529.180.

It is NOT A DEFENSE that:

Defendant was unaware of minor's actual age;

Minor consented to commercial sexual activity;

Intended victim was a law enforcement officer posing as minor;

The solicitation was unsuccessful, the conduct was not engaged in, or the law enforcement officer could not engage in the solicited offense; or

The victim is charged with an offense.

HB 44

KEY INFRASTRUCTURE ASSETS

Amends KRS 511.100 to include in the definition of key infrastructure assets:

Natural gas or petroleum pipelines/facilities.

Cable television headend.

Amends KRS 512.020 (Criminal Mischief, 1st)

Tampering with the operations of a key infrastructure asset in a manner that rendered the operations harmful or dangerous.

Imposes civil liability to anyone who damages or causes someone to damage a key infrastructure asset.

HB 204

SEX OFFENDER REGISTRANTS

Amends KRS 17.545.

Includes publicly leased playgrounds as places where a registrant shall not reside within 1,000 feet, or be present on the grounds.

Publicly leased playground restriction not retroactive!

Clarifies the 1,000 foot measurement.

Straight line from property line of the protected area to property line of registrant's residence.

HB 298

POLICE PURSUIT POLICIES

Creates KRS 61.298.

Requires law enforcement agencies to adopt, implement, enforcement and maintain written policies on vehicular pursuits.

Agencies must obtain written confirmation from every employed officer regarding receipt of policy.

Pursuit policies must be filed with JPSC.

Annual review of policies by agencies, with any revisions filed with JPSC within 10 days.

HB 382

GOLF CARTS

Amends KRS 189.286.

Deletes the restriction that a golf cart may only be operated on a public roadway between sunrise and sunset.

Leaves all other provisions governing golf carts in KRS 189.286 intact.

Golf Cart DUI? Mattingly v. Com. 2009 WL 109811 (Ky. App. 2019)

Golf cart is a motor vehicle for purposes of DUI.

HB 405 TERMS OF

CONSTITUTIONAL OFFICERS

Proposal to amend Kentucky Constitution to change terms limits to 8 years (beginning 2020) for:

Commonwealth's Attorney (currently 6 years).

To begin 2030

District Judges (currently 4 years).

HB 570

INTERLOCAL AGREEMENTS

Amends various statutes contained in KRS Chapter 65.

Defines “local government” and “public agency.”

“Local government” – county, city, urban county, etc.

“Public agency” – any local government, local agencies, boards, commissions, special taxing districts, school districts.

Provides process and requirements for “public agency” to enter into interlocal agreements.

Amends KRS 65.255 with respect to interlocal agreements providing for cooperative action in the use of peace officers.

Peace officers in the performance of their duties under an INTERLOCAL AGREEMENT outside their jurisdiction SHALL HAVE the same powers of arrest, other powers, immunities and privileges they possess in their own jurisdiction.

Interlocal agreements can be used to enlarge the jurisdiction for SLEO employed by a school district.

V. 2019 LEGISLATION EFFECTIVE JULY 1, 2020

SB 85 DUI / Blood Testing

Effective 7/1/2020

Tweaks use of blood tests for controlled substances if taken more than two hours after cessation.

Inadmissible for per se, but admissible under other subsections.

Refusal to submit to breath test not an aggravating circumstance for first offenders.

Tweaks sentencing option for substance abuse treatment.

Amends multiple statutes in KRS 189A.010.

Presumption of not under influence drops from .05 to .04 BAC.

SB 85 DUI / Refusals/Suspensions

Effective 7/1/2020

LE may record refusals subject to existing provisions.

Note KRS 189A.100(7) – renumbered – 1st degree official misconduct if the video is released to an unauthorized party.

Refusal may result in suspension (not revocation).

Requires surrender of plates of vehicles owned by offender unless they qualify for an ignition interlock or hardship license.

SB 85 DUI / Ignition Interlock
Effective 7/1/2020

Repeals and reenacts Ignition Interlock options for qualified offenders.

Updates Ignition Interlocks to require cameras.

Penalties for violating conditions of Ignition Interlock use both for driver and anyone who assists driver with false statements, etc.

Provisions for financial assistance to obtain Ignition Interlock devices.

Note: A revised implied consent warning is available on the DOCJT Legal Publications Website.

VI. UNITED STATES SUPREME COURT

Mt. Lemmon Fire District v. Guido, 139 S.Ct. 22 (2018)

Issue surrounded the definition of “employer” under 29 U.S.C. § 630(b).

“The term ‘employer’ means a person engaged in an industry affecting commerce who has twenty or more employees.... The term also means (1) any agent of such a person, and (2) a State or political subdivision of a State....”

ISSUE: Does the Age Discrimination in Employment Act (ADEA) of 1967 apply to government entities with fewer than 20 employees?

HOLDING: Yes. ADEA applies to all states and the political subdivisions of the states, regardless of the number of employees.

NOTE: This was a unanimous opinion (8-0).

U.S. v. Stitt / U.S v. Sims, 139 S.Ct. 399 (2018)

ISSUE: Is burglary a violent crime under the Armed Career Criminal Act?

HOLDING: Yes (most of the time).

NOTE: This was a unanimous opinion (9-0).

Stokeling v. U.S., 139 S.Ct. 544 (2019)

ISSUE: Is a robbery under the common law, or any crime that includes an element of physical force, sufficient to serve as a predicate offense for the ACCA?

HOLDING: Yes.

City of Escondido v. Emmons, 139 S.Ct. 500 (2019)

ISSUE: Is an officer immune from suit if no clearly established law exists concerning use of force during an encounter with police during a DV situation?

HOLDING: Yes. 9th Circuit reversed.

Nieves v. Bartlett, 139 S.Ct. 1715 (2019)

ISSUE: Does probable cause to arrest defeat a First Amendment retaliatory-arrest claim under 42 U.S.C. §1983?

HOLDING: Yes, in most instances.

Gamble v. U.S., 139 S.Ct. 1960 (2019)

ISSUE: May an individual be prosecuted for the same essential offense under both state and federal law?

HOLDING: Yes.

Mitchell v. Wisconsin, 139 S.Ct. 2525 (2019)

ISSUE: Does a statute authorizing a blood draw from an unconscious motorist provide an exception to the Fourth Amendment warrant requirement?

HOLDING: No....but it can be justified under exigency.

Timbs v. Indiana, 586 U.S. _____ (2019)

Timbs purchased a Land Rover for \$42,000 using proceeds from his father's life insurance policy.

Timbs used the Land Rover to transport heroin.

Timbs was eventually stopped and arrested.

Convicted of trafficking, sentenced to 6 years in prison (5 years suspended) and agreed to pay costs.

Indiana sought forfeiture of the Land Rover.

Maximum fine: \$10,000.00.

ISSUE: Is the Eighth Amendment's Excessive Fines Clause applicable to the states under the Fourteenth Amendment's Due Process Clause?

HOLDING: Yes.

Could impact in rem forfeiture of facilitation assets.

Kansas v. Glover, ---- U.S. ---- (2020)

ISSUE: For purposes of an investigative stop under the Fourth Amendment, is it reasonable for an officer to suspect that the registered owner of a vehicle is the one driving the vehicle absent any information to the contrary?

HOLDING: Yes. When a police officer lacks information negating an inference that a person driving is the vehicle's owner, an investigative traffic stop made after running the vehicle's license plate and learning that the registered owner's driver's license has been revoked is reasonable under the Fourth Amendment.

VII. OPINIONS FROM KENTUCKY SUPREME COURT, KENTUCKY COURT OF APPEALS AND SIXTH CIRCUIT COURT OF APPEALS.

Official Liability

Gonzalez v. Johnson, 581 S.W.3d 529 (Ky. 2019)

Joint KSP/Scott Co. S.O. sting operation/heroin dealer.

Controlled buy set up; Dep. Johnson to perform a traffic stop if possible.

Johnson sees suspect run a red light, begins pursuit.

Rain made the road slippery.

Deputy's lights were functioning, sirens were broken in violation of KRS 189.940 and agency policy.

Upon approaching S-curve, pursuit terminated.

Suspect loses control and crashes into another car.

ISSUE: Can a law enforcement officer be the cause-in-fact of damages inflicted upon a third party as a result of a negligent pursuit of a criminal suspect?

HOLDING: Yes.

So...what does Gonzalez mean for us?

Defines the duty of care in pursuit liability.

KRS 189.940

When responding to emergency calls/pursuits and suspension of traffic laws are necessary, in addition to following policies/procedures, law enforcement MUST:

Continuously illuminate WARNING LIGHTS;

Continuously sound SIREN, and;

Operate vehicle with DUE REGARD for the safety of all persons/property upon the highway.

Vanderhoef v. Dixon, 938 F.3d 271 (6th Cir. 2019)

Dixon, an off duty reserve police officer, driving home.

Vanderhoef lost control of his vehicle in a curve, strikes Dixon's vehicle, then hits a telephone pole.

Dixon holds Vanderhoef and his passengers at gunpoint for several minutes and issued numerous orders.

Dixon never identified himself as a police officer until the very end of the event.

Vanderhoef and his friends are all teenagers.

Vanderhoef awarded \$500 judgment at trial.

Graham v. Connor, 490 U.S. 386 (1989) examined on appeal.

Use of force applications judged upon:

Totality of the circumstances;

From the perspective of a reasonable officer on the scene;

At the moment the force was used without 20/20 hindsight in circumstances that are tense, uncertain and rapidly evolving.

Factors:

Severity of crime, any immediate threat to officers, any resisting of arrest; and flight?

ISSUE: May an off-duty officer be held liable for actions taken under color of law?

HOLDING: Yes.

DUI LAW

KRS 189A.105(2)(b) - Court Ordered Testing

If an INJURY results, you MAY seek a search warrant to get a blood test if no voluntary submission to test.

If a FATALITY results, you SHALL seek a search warrant to get a blood test if no voluntary submission to test.

A search warrant is directed to ALL PEACE OFFICERS & THE SUSPECT (which does not include medical personnel).

Ask the Judge for a COURT ORDER as well – directing the medical personnel to take the blood.

Whitlow v. Commonwealth, 575 S.W.3d 663 (Ky. 2019)

Driver strikes and kills two pedestrians.

Arrested for suspicion of DUI and taken to hospital.

Driver refuses blood test.

Officer seeks “court order” for blood test and submits affidavit in support of the court order.

District Court issues “court order” to obtain blood.

Driver moves to suppress, arguing that “court order” was not a “search warrant.”

Kentucky Supreme Court held: “Court order” was a “search warrant” in this instance because the officer’s affidavit demonstrated was based on probable cause and contained all essential elements of search warrant.

Commonwealth v. Morgan, 683 S.W.3d 432 (Ky. App. 2019)

Morgan arrested for DUI and taken for breath test.

Morgan taken to jail for breath test.

During observation period, Morgan asked to use restroom.

Officer denied the request and conducted breath test.

After test, officer printed citation in car and turned off body cam. Morgan's BAC was .187.

Morgan used restroom after breath test.

Officer failed to advise of independent breath test.

ISSUE: Must a DUI suspect be offered an independent blood test after completion of all tests requested by a peace officer?

HOLDING: Yes, pursuant to KRS 189A.105(4)

Penal Code and Related:

Tampering With Physical Evidence KRS 524.100

Conceals or removes evidence

That a person believes is about to be produced in an official proceeding

With the intent to impair its availability in an official proceeding.

Commonwealth v. James, 586 S.W.3d 717 (Ky. 2019)

ISSUE: Does dropping contraband while walking away from an officer constitute tampering?

HOLDING: No. Suspect must make an active attempt to conceal, remove, or destroy evidence.

Clark v. Commonwealth, 567 S.W.3d 565 (Ky. 2019)

ISSUE: Does moving a dead body and cleaning up the blood after a homicide constitute tampering?

HOLDING: Yes. Moving the body (and cleaning up the blood) changed the condition of the evidence

Search and Seizure

Warick v. Commonwealth, 2019 WL 4072774 (Ky. 2019)

Warick and two passengers stop at Prestonsburg's DQ.

Warick backs into a parking space.

Drive thru worker sees an open beer in the console, calls 911.

Officers arrive, Warick passes all FSTs, including PBT.

In a pat-down, officer finds cash on Warick.

Marijuana cigarette and needle found on a passenger.

Officers call for a K-9 unit.

K-9 finds a baggie containing marijuana and a pill bottle in a grassy area behind Warick's car.

Pill bottle said it contained an antibiotic for Warick.

Pill bottle actually contained seven oxycodone pills.

Nobody has a prescription for oxycodone.

Search warrant executed on car, with cell phones and a drug ledger written on a napkin found.

Warick arrested and charged with trafficking.

ISSUE #1: Does a driver of a private automobile possess a reasonable expectation of privacy?

HOLDING #1: Yes.

ISSUE #2: Is a driver of an automobile unlawfully detained when he is held beyond the time necessary for issuing a citation?

HOLDING #2: Yes. Search of passenger and K-9 search of the grassy area invalid.

Coffey v. Carroll, 933 F.3d 577 (6th Cir. 2019)

Officers were dispatched to the scene of a car break-in.

911 caller (who was in the vehicle) described the burglars, who had fled the scene.

Upon arrival, officers saw no suspects, but traced footprints in the snow to the home of Nicholas Coffey.

Officers arrived at the house, forced entry and a violent struggle occurred between Coffey (who was asleep) and the officers.

Officers claimed entry valid due to "hot pursuit."

ISSUE: May "hot pursuit" begin inside of a subject's residence when no pursuit occurred in a public place?

HOLDING: No.

Exigent Circumstances

Giles v. Commonwealth, 577 S.W.3d 118 (Ky. App. 2019)

CI advises of trafficking in cocaine and marijuana out of his Louisville apartment.

"P" was the trafficker, and CI described "P's" vehicle.

"P" was "Holyparadox Apollyon," who had a history of drug convictions.

Detectives observe “P” leave the apartment and walk a block down the street.

Detectives stop “P” and engage in conversation.

Subject identifies himself as “Holyparadox Apollyon.”

Holyparadox admits to possessing drugs on his person, and marijuana is found in his pocket.

Holyparadox arrested on Indiana arrest warrant, and then taken back to his apartment.

Asserting exigent circumstances, officers enter the apartment to secure it, see cocaine and marijuana in plain view, and obtain search warrant.

ISSUE: Does an arrest a block away from a subject’s residence constitute an exigent circumstance justifying a warrantless search of the suspect’s home?

HOLDING: No. Search warrant or consent required for initial entry into residence.

Hackworth v. Commonwealth, 2019 WL 2563021 (Ky. App. 2019)

ISSUE: Is a person presumed to be aware of marijuana plants located on the person’s property within 25 feet of the person’s residence?

HOLDING: Yes.

Automobile Searches

U.S. v. Coleman, 923 F.3d 450 (6th Cir. 2019)

ISSUE: Is the parking lot to an apartment (that is open to the public) curtilage?

HOLDING: No, because the lot was open and served as the entry point to the complex.

Taylor v. City of Saginaw, 922 F.3d 328 (6th Cir. 2019)

ISSUE: Does chalking a vehicle’s tires in a public place by law enforcement to enforce parking ordinances constitute a warrantless search?

HOLDING: Yes. Pre-violation chalking of an automobile’s tires constitutes an intrusion upon private property.

Commonwealth v. Garrett, 585 S.W.3d 780 (Ky. App. 2019)

ISSUE: May and officer conduct a warrantless search of a vehicle in a public place without probable cause or exigent circumstances?

HOLDING: No.

Ward v. Commonwealth, 568 S.W.3d 824 (Ky. 2019)

“Richard” calls 911 at 3:57 AM and reports a car parked in a church parking lot for 15 minutes with lights off.

“Richard” only described the car and said “they do turn a lot of tricks in this lot...”

S.R. (age 17) was in the car performing oral sex on Ward, a convicted sex offender.

Police identify the car "Richard" described, and interrupt S.R. and Ward.

Ward and S.R. offer different versions of the incident.

ISSUE: Can reasonable suspicion to conduct a Terry stop of a motorist parked in a public parking lot be based on a semi-anonymous tip?

HOLDING: Yes.

Asset Forfeiture

Martin v. Commonwealth, 586 S.W.3d 252 (Ky. App. 2019)

Martin convicted of various drug offenses.

Commonwealth moved to forfeit Martin's truck, utility trailer and tools that were seized upon arrest.

At forfeiture hearing, Martin denies using truck and tools for drug trafficking.

Claims tools were either inherited or purchased using proceeds obtained from construction work.

Commonwealth only traced the truck to drug trafficking.

ISSUE: For asset forfeiture, is law enforcement required to produce some evidence that links the property to be forfeited to criminal activity?

HOLDING: Yes. Commonwealth must produce "some evidence," then burden shifts to defendant to rebut by clear and convincing evidence.

Suspect Identification

Shull v. Walgreen Co./City of Crossville, TN, 782 Fed.Appx, 373 (6th Cir. 2019)

ISSUE: Is showing a witness a suspect's photo that was issued for a driver's license suggestive?

HOLDING: No.

U.S. v. Lett, 782 Fed. App. 429 (6th Cir. 2019).

ISSUE: Is showing a witness a suspect's photograph taken by an officer's cellular phone and stored on the officer's cellular phone permissible?

HOLDING: Yes.

Use of Force

Baker v. City of Trenton, 936 F.3d 523 (6th Cir. 2019)

Baker, a high school senior, tried LSD on “Senior Skip Day.”

Baker started acting “odd” a week later and was believed to be under the influence of something.

Officer called to the school, contacts Baker’s mom.

Baker’s mom allows him to leave school and go home.

Baker ultimately found in his father’s basement with a knife.

A 911 call occurred, and the dispatcher advised officers that Baker was armed and holding his mother hostage.

Baker was, in fact, alone in the basement when officers arrived at his father’s house.

Upon entry, Baker demanded the officers leave and yelled obscenities at them.

Officers go to basement steps and try to talk to Baker.

Baker appears at the bottom of stairs with a lawnmower blade, causing a standoff.

Baker tased as he is coming up the stairs.

Baker starts swinging the blade and his shot and killed.

936 F.3d 523 (6th Cir. 2019)

ISSUE: May an officer use deadly force against a citizen if the officer has probable cause to believe the citizen poses a significant threat of death or serious physical injury to the officer or to others?

HOLDING: Yes.

Studdard v. Shelby County, TN, 934 F.3d 478 (6th Cir. 2019)

ISSUE: May officers use deadly physical force against an individual who constitutes a threat only to himself?

HOLDING: No.

NOTE: A petition for certiorari was filed on November 14, 2019 and is pending.

McGrew v. Duncan, 937 F.3d 664 (6th Cir. 2019)

ISSUE: Can bruising on the wrists as a result of an officer’s refusal to loosen handcuffs after a suspect’s complaints of uncomfot constitute excessive force?

HOLDING: Yes.

Rudolph v. Babinec, 939 F.3d 742 (6th Cir. 2019)

Kyle received a phone call from his son about Rudolph possibly being suicidal and having a gun.

Kyle visits Rudolph and takes the gun.

Kyle stopped for a traffic violation, and explains why he has the gun.

Officers who conducted traffic stop on Kyle conduct a welfare check.

During the welfare check, Rudolph is forcibly removed from the residence and injured during the encounter.

ISSUE: In the context of a mental health seizure, must an officer have probable cause to believe that the person posed a danger to herself or others?

HOLDING: Yes.

Dolbin v. Miller, 786 Fed.Appx. 52 (6th Cir. 2019)

ISSUE: May officers seize an individual and transport that person for a mental health evaluation based upon a credible threat of suicide?

HOLDING: Yes.

Burgess v. Bowers, 773 Fed. Appx. 238 (6th Cir. 2019)

ISSUE: Should officers enter a third-party's home without an arrest or search warrant to execute an arrest for evasion of civil process?

HOLDING: No.

Interrogation Law

Easterling v. Commonwealth, 580 S.W.3d 496 (Ky. 2019)

Easterling, a juvenile, was a suspect in murder.

Detectives interrogate Easterling at the sheriff's department without advising him of Miranda rights.

Easterling confesses to shooting Cole three times.

Mother requested counsel. Interrogation stopped.

While in the interrogation room, Easterling admitted to killing Cole while speaking to family members.

Officers neglect to stop recording equipment.

ISSUE #1: Must a juvenile be advised of Miranda rights prior to any custodial interview?

HOLDING: Yes, as required by KRS 610.200. Original confession suppressed.

ISSUE #2 Is a statement made by a juvenile to family members in the interrogation room that was inadvertently recorded after the juvenile invoked the right to counsel inadmissible as eavesdropping?

HOLDING: No, if a reasonable expectation of privacy does not exist, which will be determined based upon the totality of the circumstances.

E.C. v. Commonwealth, 565 S.W.3d 171 (Ky. App. 2018)

Juvenile, 13, questioned by police detective at CHFS offices.

Juvenile's social worker present.

Juvenile believed this concerned placement.

Door to room closed.

Interrogation about sexual abuse of juvenile's cousin lasted 45 minutes.

Detective told juvenile he could not leave room or call his mother.

Detective told juvenile she wanted "to get to the bottom of it" and that they can keep this discussion between them.

Juvenile admitted to sexual abuse and charged with rape.

Detective testified that she did not Mirandize juvenile because he was "not in custody" because the interview did not take place at school.

Detective also testified that she intentionally waited 4 hours to make an arrest to avoid Miranda.

ISSUE: Is a juvenile in custody for purposes of Miranda when a law enforcement officer asks incriminating questions during a meeting with the juvenile's social worker at the social worker's office?

HOLDING: Yes.

U.S. v. Clayton, 937 F.3d 630 (6th Cir. 2019)

ISSUE: May a deficient Miranda warning, read to a suspect from memory, be sufficient if the warning conveys the rights to the suspect?

HOLDING: Yes, but the best practice is to read a pre-printed Miranda warning and obtain a written waiver!

QUESTIONS?

If you have any questions concerning this presentation, please feel free to contact the Legal Training Section in one of the following ways:

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