The following is a compendium of news reports over the past month that may be of interest to our AG offices who are involved in criminal law issues. Neither the National Association of Attorneys General nor the National Attorneys General Training & Research Institute expresses a view as to the accuracy of news accounts, nor as to the position expounded by the authors of the hyperlinked articles.

**JULY 2015**

**Updates from the Attorney General Community**

**Arizona Attorney General Mark Brnovich** announced that a former State of Arizona employee was charged with EBT card financial fraud. The defendant worked as a Program Service Evaluator for the Department of Economic Security – Family Assistance Administration. In that role, she allegedly created false clients and approved the clients for cash assistance and food stamps. The benefits were sent to a P.O. box rented in her name. In total, the defendant allegedly obtained and spent more than $36,000.

**Delaware Attorney General Matt Denn** has announced the results of the first phase of Operation “In The House,” which was devised by the Delaware State Police and the Delaware Department of Justice to proactively impact violent crime in two counties in Delaware by targeting suspects participating in an organized criminal enterprise. The operation was initiated in March 2015. As a result of this extensive operation, defendants have been charged in connection with violent home invasion robberies and the widespread distribution of illegal narcotics. The first phase of the operation ended in May 2015 with the execution of 25 search warrants and the indictment of 30 people. Investigators seized large amounts of drugs, 19 firearms and over $135,000.

**Idaho Attorney General Lawrence G. Wasden** revealed a new partnership of non-profits, advocacy groups and state government agencies, called “The Idaho Scam Jam Alliance,” which will work to educate Idahoans about identity theft and fraud prevention. The alliance is self-funded through grants and internal processes from each member. In addition to General Wasden’s office, members include AARP Idaho, the Better Business Bureau, the Justice Alliance for Vulnerable Adults, the Idaho Department of Finance, Idaho Legal Aid Services, and many others.

**Illinois Attorney General Lisa Madigan** warned Illinois residents of a phone scam in which scammers pose as representatives of her office. The callers “spoof” caller ID devices and then claim to be representatives of the Attorney General’s office calling to collect unpaid fines.

The offices of **Louisiana Attorney General James “Buddy” Caldwell**, **New Mexico Attorney General Hector Baldera** and **Texas Attorney General Ken Paxton**, among others, recently participated in a
nationwide initiative called “Operation Broken Heart II,” a coordinated investigative operation which led to the arrest of more than 1,000 child predators.

Massachusetts Attorney General Maura Healey announced the indictment of a man and his business in connection with failing to pay more than $600,000 to the Commonwealth’s unemployment trust fund. The case is the result of an investigation referred to General Healey’s office by the Executive Office of Labor and Workforce Development’s Department of Unemployment Assistance “in a collaborative effort to target employers that fail to pay their quarterly unemployment contributions.”

New Jersey Acting Attorney General John J. Hoffman announced the indictment of twelve men in connection with “Operation Midnight Run,” an investigation into a cargo theft ring responsible for more than $1.5 million in theft of clothing, beauty products, automotive parts and beer. The ring operated in New Jersey, New York, and Pennsylvania. The investigation was a joint effort between state law enforcement and the U.S. Department of Homeland Security. Charges include conspiracy, money-laundering, theft by unlawful taking, fencing, and burglary, among others.

New Mexico Attorney General Hector Balderas has announced the expansion of his Violent Crimes Case Review Team, which now includes the widow of a police officer who was killed in the line of duty. The team is embarking on a “comprehensive, solution-based evaluation of breakdowns in New Mexico’s criminal justice system” and identifying opportunities “for systemic reforms.”

New York Governor Andrew Cuomo will sign an executive order appointing New York Attorney General Eric T. Schneiderman to investigate and if necessary, prosecute cases involving unarmed citizens killed by police officers. General Schneiderman requested this authority in December 2014.

Oklahoma Attorney General Scott Pruitt hosted the annual Oklahoma Victim Assistance Academy on June 21-26. The Academy is “an intensive week-long course of study for victim advocates, service providers, law enforcement professionals and social service providers who work directly with crime victims in any capacity in a paid or volunteer position.”

Rhode Island Attorney General Peter Kilmartin announced that former Rhode Island Speaker and former Vice-Chairman of the City of Providence Board of Licenses Gordon D. Fox was sentenced to three years in federal prison for stealing over $100,000 worth of campaign donations to pay for personal expenses as well as for accepting a bribe and filing false tax returns. This is the culmination of a case that began with a federal grand jury investigation which was led by both federal prosecutors and prosecutors from the Rhode Island Attorney General’s Office.

Wisconsin Attorney General Brad Schimel has announced the creation of the Office of Open Government at the Wisconsin Department of Justice. The unit will be responsible for interpretation and application of Open Meetings Law, Public Records Law and other statutes and rules relating to open government, the development of open government policies and protocols, custodial services for records and efficient and effective response to public records requests, and legal counsel on open government issues and citizen complaints.
State News

Lawmakers in Connecticut approved bills addressing excessive use of force by police and criminal justice reforms proposed by Governor Dannel Malloy. H.B. 7103 increases police training and provides incentives to municipalities who implement body-worn cameras and mandates that, in cases involving deadly force, the Chief State’s Attorney appoint a prosecutor from outside the county to investigate. HB 7104 is known as the “Second Chance Society” Legislation and makes changes to laws relating to drug possession and drug free school zones.

In May 2015, the District of Columbia Court of Appeals held that a prosecutor’s ethical responsibility to disclose exculpatory evidence is significantly broader than the Brady legal standard. In In re Andrew Kline, the court held that “Rule 3.8(e) . . . requires a prosecutor to disclose all potentially exculpatory information in his or her possession regardless of whether that information would meet the materiality requirement of Bagley, Kyles, and their progeny.

Community leaders in Cleveland, Ohio, invoked a “seldom-used Ohio law” and filed a request with a municipal court to have the officers involved in the fatal shooting of 12-year old Tamir Rice arrested. In Ohio, anyone with “knowledge of the facts” may file a court affidavit and ask a judge to issue an arrest warrant.

Click on this link to read an interview with Cuyahoga County Common Pleas Judge John P. O’Donnell, who presided over the trial of Cleveland Police Officer Michael Brelo and found him not guilty of involuntary manslaughter.

This article provides an overview of the Brevard County, Florida, Mental Health Court, which began operating in 2003 and which allows non-violent offenders with mental illness to enter a one-year program. The defendants must work with a case manager, make all doctor and court appointments and take their medications. If the defendants comply with the terms of their programs, their charges will be dismissed. The court is modeled after Broward and Alachua, Florida, counties and does not accept sex offenders or individuals charged with DUI. Certain battery offenses are only accepted upon consent of the victim. This article details the innovative Part Two courtroom in Newark, New Jersey, which uses the concepts of procedural justice to address low-level crimes.

New York Governor Andrew Cuomo has proposed legislation to combat campus sexual assault which includes requiring institutions of higher education to mark the transcript of any student found responsible after a conduct process of a “crime of violence” with the words “suspended/expelled after a finding of responsibility for a code of conduct violation.” The bill also establishes a statewide definition of “affirmative consent” and defines consent as a “knowing, voluntary and mutual decision among all participants to engage in sexual activity.” The legislation has been passed by the Senate and the Assembly.
Federal News

The Second Chance Reauthorization Act has been introduced in the U.S. Senate. To learn more about the Act, click on the PDF file, below.

The U.S. Senate Committee on Appropriations has advanced the FY2016 Commerce, Justice & Science Appropriations Bill, a $51 billion measure that supports many programs, including those relating to criminal justice. The bill increases funding for the U.S. Department of Justice, the FBI, and the DEA and also provides funding for the United States Marshalls Service, U.S. Attorneys, the federal prison system, law enforcement grant programs, and the Crime Victims Fund.

U.S. House Representatives Jim Sensenbrenner and Bobby Scott are sponsoring the Safe, Accountable, Fair and Effective (SAFE) Justice Act, which would make broad changes to the criminal justice system. In order to see a full list of these changes, click on the PDF file below to view a “two pager.” Certain reforms listed include “allow[ing] victims of regulatory over-criminalization to contact the inspector general . . . clarify[ing] original Congressional intent by examining the role an offender plays in a drug offense and targeting higher-level traffickers for mandatory minimums and recidivist enhancements . . . [and] “require[ing] fiscal impact statements for sentencing and corrections bills.” To view the language of the bill, click on this link.

A former FBI Special Agent has been indicted for allegedly stealing over $100,000 worth of drug proceeds seized during warrant executions and then obstructing justice by taking steps to hide the theft. Charges include money laundering, conversion of property by a federal employee, obstruction of justice, falsification of records, and witness tampering.

U.S. Supreme Court Decisions

The U.S. Supreme Court issued a number of decisions in June relating to criminal law. The following list includes a summary of the decision, which has been taken from that decision’s syllabus, as well as a link to the text of the decision.

Brumfield v. Cain, Warden. Petitioner Brumfeld was convicted of murder in Louisiana and sentenced to death before the Supreme Court’s decision in Atkins v. Virginia, 536 U.S. 304, which prohibited the
execution of the intellectually disabled. After the Atkins decision, the Louisiana Supreme Court stated that an evidentiary hearing is required when a defendant provides objective factors sufficient to raise a reasonable ground to believe that he has an intellectual disability. The Louisiana court also defined “intellectual disability” in its decision. See State v. Williams, 2001-1650 (La. 11/1/02), 831 So. 2d 835, 857, 861, 854. After the Williams decision, Brumfeld amended his pending state post conviction petition to raise an Atkins claim and offered evidence in order to obtain an evidentiary hearing. The trial court dismissed his petition without holding a hearing and Brumfeld subsequently sought federal habeas relief, which was granted; however, on appeal, the Fifth Circuit found that his petition failed to satisfy either of the requirements for habeas relief under 28 U.S.C. § 2254(d)(2). The Court held that Brumfeld was entitled to have his Atkins claim considered on the merits in federal court, as the evidence of intellectual disability that he presented satisfied the requirements of 28 U.S.C. § 2254(d)(2).

Ohio v. Clark. Respondent Clark sent his girlfriend away to engage in prostitution while he cared for her three-year-old son and 18-month-old daughter. When the son’s preschool teachers noticed marks on his body, he identified Clark as the abuser. Clark was subsequently tried and, at trial, the State introduced the statements to the teacher as evidence of guilt, though the son did not testify. A jury convicted Clark, who argued that the introduction of these statements violated the Confrontation Clause. The Court held that the introduction of the statements did not violate the confrontation clause, as the “primary purpose” of the statements was not to create an out-of-court substitute for trial testimony, and so the statements were not “testimonial” in nature. Additionally, the Court made clear that the Confrontation Clause does not bar every statement that satisfies the “primary purpose test,” recognizing that the Confrontation Clause does not prohibit the introduction of out-of-court statements that would have been admissible in a criminal case at the time of the founding. Thus, the primary purpose test is a necessary, but not always sufficient, condition for the exclusion of the out-of-court statements under the Confrontation Clause. The Court stated that as a historical matter, statements like those in this case were regularly admitted at common law. The Court rejected Clark’s assertion that mandatory reporting obligations convert a conversation between a concerned teacher and her student into a law enforcement mission aimed at gathering evidence for prosecution.

City of Los Angeles, California v. Patel et al. The petitioner City required hotel operators to record and keep specific information about their guests on the premises for a 90-day period. The city’s Municipal Code stated that hotel operators would be subject to criminal charges upon failure to provide such records to any officer of the Los Angeles Police Department for inspection . . . at a time and in a manner that minimizes any interference with the operation of the business. The respondents were a group of motel operators and a lodging association who challenged the Municipal Code on Fourth Amendment Grounds. The Court held that (1) the respondents could proceed with a facial challenge of the statute and (2) that the statute in question is facially unconstitutional because it fails to provide hotel operators with an opportunity for precompliance review. The Court explained that administrative searches are an exception to the warrant requirement but that for administrative searches to be constitutional, the subject of the administrative search must, among other things, be afforded an opportunity to obtain precompliance review before a neutral decision maker. The statute at issue does not afford hotel operators this opportunity. This opportunity can be provided without imposing onerous burdens on law
enforcement. For instance, officers in the field can issue administrative subpoenas without probable cause that a regulation is being infringed. The narrow holding does not call into question the portions of the statute that require hotel operators to keep records nor does it prevent police from obtaining access to those records when a hotel operator consents to the search, where the officer has a proper administrative warrant, or where some other exception to the warrant requirement applies. The Court rejected the petitioner’s argument that the ordinance is facially valid under the more relaxed standard for closely regulated industries, as there is nothing inherent in the operation of hotels which poses a comparable clear and significant risk to the public welfare and that even if hotels were closely regulated, the statute would still fail to satisfy the criteria that must be met for searches of closely regulated industries to be reasonable.

*Kingsley v. Hendrickson et al.* The petitioner was awaiting trial in county jail and failed to abide by officers’ instructions. As a result, the officers forcibly removed him from his cell. The petitioner brought suit, alleging excessive force in violation of the Fourteenth Amendment’s Due Process Clause. The Court ruled on a plaintiff’s burden of proof in bringing excessive force claims. The Court held that a pretrial detainee must show only that the force purposely or knowingly used against him was objectively unreasonable. The determination must be made from the perspective of a reasonable officer on the scene, including what the officer knew at the time, and must account for the legitimate interests stemming from the government’s need to manage the facility in which the individual is detained, appropriately deferring to policies and practices that, in the judgment of jail officials, are needed to preserve internal order and discipline and to maintain institutional security. The Court explained its reasoning for deciding on an objective, versus subjective standard, including that the objective standard is consistent with precedent, is workable and consistent with jury instructions in several Circuits, and adequately protects an officer who acts in good faith.

*Glossip v. Gross.* Oklahoma death-row inmates filed an action claiming that the use of sedative midazolam as the first drug in Oklahoma’s three-drug lethal injection protocol violates the Eighth Amendment. Four of the inmates filed a motion for a preliminary injunction and argued that the dose would not render them unable to feel the pain associated with the administration of the second and the third drugs. The District Court denied the motion for the preliminary injunction and the Tenth Court affirmed. The Supreme Court agreed, holding that the inmates failed to establish a likelihood of success on the merits of their claim that the use of the sedative midazolam as the first drug in Oklahoma’s lethal injection protocol violates the Eighth Amendment. To succeed on an Eighth Amendment method-of-execution claim, a prisoner must establish that the method creates a demonstrated risk of severe pain and that the risk is substantial when comparable to the known and available alternatives. The Court held that the petitioners failed to establish that any risk of harm was substantial when compared to a known and available alternative method of execution. The Court found that the District Court did not commit clear error when it found that midazolam is likely to render a person unable to feel pain associated with administration of the two drugs that follow (a paralytic agent and potassium chloride) and that the petitioners’ speculative evidence did not establish that the District Court’s findings were clearly erroneous.
Research and Training

There seems to be “no precise accounting” of how many people have been killed during confrontations with the police but the data that is known “suggests that the number of killings by police officers has crept upward only slowly, if at all, in recent years.” The number of police-involved shootings and deaths has led to a review of procedures and trainings by police departments around the country.

On September 9-11, 2015, the National Center for Victims of Crime will hold its 2015 National Training Institute at the Hyatt Regency in Orange County, CA. To learn more about this event, please click on this link.

The National Association of Drug Court Professionals will hold its 21st Annual Training Conference and Justice for Vets 3rd Annual Vet Court Con in Washington, D.C. from July 27-30, 2015. For more information, please click on this link.

A study recently published in the Journal of Criminal Justice explores whether jail sanctions for parole or probation violators are more effective than community-based sanctions. The results indicated that jail sanctions do not outperform community based sanctions.

This article examines the effects of the U.S. Supreme Court’s decision in Riley v. California and advances in encryption technology on police and prosecutor practices.

Other News of Interest

In June, the U.S. House Judiciary Subcommittee on Crime, Terrorism, Homeland Security and Investigations held a hearing relating to H.R.320, also known as the Rapid DNA Act of 2015. One of NAAG’s summer interns attended this hearing. If you are interested in viewing his notes from the hearing or learning more about the testimony presented, please email me at fliquori@naag.org.

The U.S. House Judiciary Committee also held a Listening Session on Criminal Justice Reform. A NAAG summer intern attended this as well. To view the notes from this session, please email me at fliquori@naag.org.

On June 26, I attended a roundtable discussion, held by the National Sheriffs’ Association, which focused on the criminal justice system. Representatives from various stakeholder groups attended as well.

This article explores the extensive costs surrounding the adoption of body worn camera technology as well as federal and state efforts to fund programs which implement such technology.

The bipartisan Coalition for Public Safety announced the details of a plan to dramatically change the country’s sentencing system, reduce incarceration, and improve reentry. The coalition’s membership
includes the Right on Crime Together organization, FreedomWorks, Americans for Tax Reform, the Center for American Progress and the American Civil Liberties Union. The coalition receives funding from both liberal and conservative organizations.

This article examines the legality of wearing Google Glass while driving a car. Google Glass “is a hands-free device that has the same capabilities as a smartphone and allows the user to surf the internet, send texts, and scroll through social media.” At least seven states are considering legislation which would ban the use of such devices by drivers.

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