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.

**JUNE 2015**

**Updates from the Attorney General Community**

California Attorney General Kamala D. Harris recently released a Model Memorandum of Understanding (MOU) for law enforcement agencies and institutions of higher learning to use to “improve their coordination, collaboration and transparency in response to cases of campus sexual assault.” To view the model MOU, click on this link and refer to the right column of the webpage.

The Office of Washington, D.C., Attorney General Karl A. Racine has asked a U.S. District Court judge to stay a decision which declared a portion of the jurisdiction’s concealed carry permit laws unconstitutional. The District Court recently struck down the provision of the law which stated that individuals applying for such a permit must “state a ‘good reason to fear injury to his or her person or property’ or another reason for carrying a pistol.”

Attorney General Racine also welcomed law enforcement officers to the city for National Police Week, which is an annual celebration of law enforcement occurring annually in Washington, D.C. during the week of May 15, Peace Officers Memorial Day.

Illinois Attorney General Lisa Madigan applauded members of the Illinois Senate for passing HB821, which requires Illinois higher learning institutions to take action to prevent campus sexual assault by developing a comprehensive campus sexual violence policy, notifying student survivors about their rights, providing survivors with a confidential advisor, adopting a fair and balanced adjudication process, and increasing training and awareness among students and campus employees.

Indiana Attorney General Greg Zoeller recently created a new division within his office, called the Victim Services and Outreach Division. The division will provide resources to “vulnerable victims who are in critical need,” including victims of human trafficking, domestic violence, and sexual assault. The division has already launched a Victim Advocates’ Network to coordinate with other victim-services groups and victim advocacy workers throughout the state to provide information sharing and training. General Zoeller’s office will also publish a Victim’s Rights Handbook.
Massachusetts Attorney General Maura Healey has launched a new unit in her office as well. The Community Engagement Division will connect the office with neighborhoods and communities throughout the state in order to ensure that citizens have the resources they need. To begin, the division will conduct training on the state’s new Earned Sick Time and Domestic Workers laws to ensure that both employers and employees are aware of their rights and responsibilities. The Division will also hold office hours at times that are convenient for working people and their families.

Nebraska Attorney General Doug Peterson intends to seek a court decision “to definitely resolve the issue of the State’s authority to carry out the death sentences previously ordered . . . for the . . . inmates now on death row” after the Nebraska legislature recently repealed the death penalty. The legislation states that “[i]t is the intent of the Legislature that in any criminal proceeding in which the death penalty has been imposed but not carried out prior to the effective date of this act, such penalty shall be changed to life imprisonment.” General Peterson believes that the stated intent is unconstitutional.

Nevada Attorney General Adam Paul Laxalt has urged the state Senate to concur with the state Assembly’s proposed amendments relating to SJR17, known as Marsy’s Law. This resolution will expand the rights of crime victims within the state, including the right to be informed of the status of related criminal proceedings, the right to be present at public hearings, and the right to be heard at all proceedings relating to the sentencing or release of persons convicted of crimes which involved the victims.

New Hampshire Attorney General Joseph A. Foster has announced the extradition and arrest of Anthony Barnaby, who has been charged in connection with the 1988 murder of two women.

New Jersey Acting Attorney General John J. Hoffman has announced that Carl F. Monto has been sentenced to seven years in state prison after fraudulently claiming tax exemptions on 120 luxury cars he purchased as part of an illegal business to sell vehicles to overseas buyers. He purchased these cars in the name of a children’s cancer charity. In total, he evaded more than $500,000 in state taxes.

New Mexico Attorney General Hector Balderas will chair the state’s Law Enforcement Academy Board. He proposed three priorities for the board: to maintain the highest standards of ethical and transparent public service; to train and support the state’s officers and ensure that all officer discipline is handled appropriately and timely; and to review the Board’s curriculum to ensure that it is up-to-date and meets the needs of the “culturally diverse state” and “the needs of the members of . . . communities who struggle with mental health challenges.”

The Third District Attorney’s Office in Las Cruces, New Mexico, together with the office of Attorney General Balderas announced that they have completed a review of an investigation conducted by New Mexico State police. As a result of that review, General Balderas and the District Attorney will jointly prosecute two former police officers. The incident at issue took place inside a holding cell in December 2014.

New York Attorney General Eric T. Schneiderman has proposed the End New York Corruption Now Act, described as a comprehensive ethics bill which will reform New York State government. The bill will be
sent to the legislature by the end of this year’s session. The proposal includes more than a dozen changes to state law including banning legislators from earning outside income, lowering campaign contribution limits, increasing legislative salaries and terms of office, and giving the attorney general’s office permanent jurisdiction to investigate and prosecute public corruption.

**General Schneiderman** and New York City Police Commissioner William Bratton have announced the arrest of nine reputed gang members in connection with the operation of a violent gun trafficking ring. In total, 93 guns were seized including assault weapons and a fully-automatic machine pistol. The ring allegedly purchased firearms in New York City, Westchester, Connecticut, and Maine for resale on the streets of New York City. Charges include felony conspiracy and criminal possession and criminal sale of firearms counts. One of the defendants has also been charged with Conspiracy in the Second Degree for allegedly plotting to kill a rival gang member.

**Oklahoma Attorney General Scott Pruitt** awarded Safe Oklahoma Grants to law enforcement agencies throughout the state. The grant money will be used to target violent crime hot spots through evidence-based policing strategies.

The South Carolina House passed a measure that will give state **Attorney General Alan Wilson** greater authority to investigate public corruption and other crimes through use of the state grand jury. The measure removes the requirement that a circuit judge approve the use of the grand jury. The bill must now undergo another House vote before moving to the Governor’s office for approval.

**General Wilson** also recently applauded the South Carolina General Assembly’s final passage of **S.3**, called the Domestic Violence Reform Package. The legislation provides “frontline law enforcement and prosecutors with the much-needed tools for combatting domestic violence.”

**Utah Attorney General Sean Reyes** recently testified before the U.S. Congressional & Presidential Commission to Eliminate Child Abuse & Neglect Fatalities (CECANF) during the organization’s public meeting in Salt Lake City. Members of CECANF are appointed by Congress with the approval of President Obama. CECANF works to develop a national strategy and recommendations for reducing fatalities resulting from child abuse and neglect. General Reyes spoke about the collaborative efforts made by his office and other stakeholders within Utah.

**State News**

Maricopa County, Arizona will pay a $3.5 million settlement in connection with a botched sexual assault investigation. The case is one of more than 400 that the County Sheriff’s office admitted to mishandling between the years of 2005-2007. The investigation to which the settlement relates involved the molestation of a developmentally disabled young girl by her uncle. Although physical evidence supported the victim’s account, investigators closed the case before DNA evidence could be tested. The uncle was eventually convicted of child molestation and sentenced to 24 years in prison.
Hearings are being held in St. Louis, Missouri, before Missouri Circuit Judge Joseph Walsh in order to determine whether a special prosecutor will be appointed to investigate the integrity of the grand jury proceedings in the Michael Brown shooting case.

The New York State Permanent Commission on Sentencing recently recommended that the state eliminate the use of indeterminate sentences. This recommendation will be presented to state lawmakers as part of a sentencing reform package. Many prominent members of the criminal justice community, including New York State Chief Judge Jonathan Lippman and New York County District Attorney Cyrus R. Vance, Jr., are in favor of the elimination.

Virginia Governor Terry McAuliffe signed new legislation (HB1785 and SB712) relating to college campus sexual assault. The legislation includes reporting requirements and calls for increased collaboration with sexual assault crisis centers and victim support services.

Federal News

A former staff member of the U.S. Senate Committee on Commerce, Science and Transportation has been charged with defrauding at least three women of approximately $500,000. These women were targeted because of their age, health, marital or family status, or other personal circumstances.

The city of Cleveland, Ohio has agreed to have its police department overseen by an independent monitor and to implement new strict and explicit rules on the use of force. These agreements are part of the city’s settlement with the U.S. Department of Justice (DOJ), after DOJ found that the police force engaged in the unnecessary and excessive use of force. The agreement also calls for the creation of a community police commission.

The U.S. Department of Justice (DOJ) has reached a settlement with the state of Alabama in connection with DOJ’s findings that the correctional officers at the Julia Tutwiler Prison for Women in Wetumpka, Alabama, subjected female prisoners to a pattern and practice of sexual abuse in violation of the Eighth Amendment. The settlement agreement requires the facility to protect women by ensuring that staff safely operates the facility and supervises prisoners and ensures that prisoners know of their right to be free from sexual assault and harassment, among other measures. DOJ applauded Alabama’s willingness to engage in this cooperative resolution and noted that the state has already begun implementing important reforms.

The FBI has released its 2014 Internet Crime Report which highlights the FBI’s Internet Crime Complaint Center (IC3)’s efforts to prevent and reduce the prevalence and impact of Internet crimes. The report also reveals budding Internet crime trends, including the increased use of social media to mine personal data and the prevalence of perpetrators capitalizing on the vulnerabilities of digital currency systems.
According to the Congressional Charles Colson Task Force on Federal Corrections and the Urban Institute, overcrowding in the federal prison system is most prevalent at the highest security facilities. Click on this link to view the full policy brief.

The U.S House Appropriations Commerce, Justice, Science and Related Agencies Subcommittee released its draft bill and report language for the Fiscal Year 2016 cycle. It is being considered by the U.S. House of Representatives this week.

Below please find the text of the recently introduced National Criminal Justice Commission Act as well as a one-pager explaining the bill. The Act calls for Congress and the President to appoint a 14-person commission to review the criminal justice system and then issue recommendations to improve public safety and community recommendations. The Act has the support of the International Association of Chiefs of Police as well as the National Sheriffs’ Association, the Association of Prosecuting Attorneys, and the Fraternal Order of Police.

U.S. Supreme Court Decisions

The U.S. Supreme Court issued a number of decisions in late May and early 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.

*City and County of San Francisco, California, et al. v. Sheehan.* Respondent Sheehan lived in a group home for individuals with mental illness. She began acting erratically and threatened to kill a social worker. The City and County dispatched police officers were dispatched to escort her to a facility for temporary evaluation and treatment. When officers first entered her room, she grabbed a knife and threatened to kill them. They retreated and closed the door. Concerned with what Sheehan might do, they reentered her room. She again confronted them with a knife. Pepper spray proved ineffective. The officers then shot Sheehan multiple times. Sheehan sued the petitioner on the grounds of violating Title II of the Americans with Disabilities Act of 1990 (ADA) by arresting her without accommodating her disability and also sued each officer in their personal capacities on the grounds that they violated her Fourth Amendment rights. The Supreme Court addressed two questions: (1) whether the ADA requires law enforcement officers to provide accommodations to an armed, violent, and mentally ill suspect in the course of bringing the suspect into custody and (2) whether the officers were entitled to qualified immunity from liability for injuries sustained by Sheehan. The Court held that: (1) the first question was dismissed as improvidently granted. Certiorari was granted on the understanding
that the City and County would argue that Title II of the ADA does not apply when an officer faces an armed and dangerous individual but instead the City and County argued that Sheehan wasn't qualified for an accommodation. This argument was not passed on by the court below; and (2) the officers were entitled to qualified immunity from liability for the injuries suffered by Sheehan. They did not violate the Fourth Amendment when they reopened her door rather than attempting to accommodate her disability and an alleged failure on the part of the officers to follow their training does not itself negate qualified immunity where it would otherwise be warranted.

*Elonis v. United States.* The petitioner’s wife left him and he began to use a pseudonym to post self-styled rap lyrics on Facebook which contained graphically violent language and imagery concerning his wife, co-workers, a kindergarten class, and state and federal law enforcement. These posts were often interspersed with disclaimers that the lyrics were “fictitious” and not intended to depict real persons and with statements that Elonis was exercising his First Amendment rights. His boss and his wife both saw the posts as threatening. He was fired for threatening co-workers and his wife sought and was granted a state court protection-from-abuse order against him. His former employer informed the FBI of the posts and the agency began monitoring his activity and eventually arresting him for violations of 18 U.S.C. §875(c), which makes it a federal crime to transmit in interstate commerce “any communication containing any threat . . . to injure the person of another.” At trial, Elonis requested a jury instruction that the Government was required to prove that he intended to communicate a “true threat.” Instead, the District Court told the jury that he could be found guilty if a reasonable person would foresee that his statements would be interpreted as a threat. Elonis was convicted of four out of five counts. The Third Circuit affirmed the District Court’s decision, holding that section 875(c) requires only the intent to communicate words that the defendant understands and that a reasonable person would view as a threat. **Held:** The Third Circuit’s instruction, requiring only negligence with respect to the communication of a threat, is not sufficient to support a conviction under section 875(c). Section 857(c)’s mental state requirement is satisfied if the defendant transmits a communication for the purpose of issuing a threat or with knowledge that the communication will be viewed as a threat. The Court declined to address whether a mental state of recklessness would also suffice. The case was reversed and remanded to the Third Circuit. The Court also stated that, given the disposition, it was unnecessary to consider any First Amendment issues.

*Mellouli v. Lynch.* The petitioner was a lawful permanent resident of the United States. He pleaded guilty to a Kansas misdemeanor offense (possession of drug paraphernalia to store or conceal a controlled substance). The paraphernalia in question was a sock in which the petitioner stored four unidentified orange tablets. An Immigration Judge ordered his deportation under 8 U.S.C. §1227(a)(2)(B)(i), which authorizes the deportation of an alien “convicted of a violation of . . . any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of Title 21.” Section 802 limits the term “controlled substance” to any drug included in one of the five federal schedules while Kansas law defines “controlled substance” as any drug included in its own schedules, without reference to section 802. At the time of the petitioner’s conviction, Kansas’ schedules included at least nine substances not on the federal list. **Held:** the conviction did not trigger removal. The state conviction triggers removal only if, *by definition,* the
underlying crime falls within the category of the removable offenses defined by federal law. The Court rejected both the Board of Immigration Appeals (BIA) and Government’s interpretation of the language of 8 U.S.C. § 1227, finding that the Government’s interpretation was too broad and that the BIA’s history of disparate approach to drug possession and distribution offenses and paraphernalia possession leads to consequences Congress could not have intended such that an alien is not removable for possessing a substance controlled only under Kansas law but is removable for using a sock to contain that substance.

Research and Training

The George Mason University Center for Evidence-Based Crime Policy has published its Spring 2015 issue of Translational Criminology. Issues explored include body worn cameras, license plate readers, employment and youth, and crime prevention through regulation, among others. The Center also provides “one pagers,” or one page summaries of important articles and research projects by Center team members and affiliated scholars.

Click on the following link to access a recent guide published by The Office of Community Oriented Policing Services entitled “Identifying Hot Spots of Juvenile Offending: A Guide for Crime Analysts.”

AEquitas will be holding webinar on June 17 at 3:00 p.m. Eastern entitled, “Ethical Considerations for Prosecutors in Intimate Partner Violence Cases.” The presentation will address the ethical considerations involved in the context of charging decisions, immunity, compulsion of victim testimony, Crawford, and the investigative function of a prosecutor. To register, click on this link.

SEARCH has published a White Paper which examines the importance of information sharing for justice reform.

The John D. and Catherine T. MacArthur Foundation will invest $75 million into a project which aims to reduce the way that jails are used in this country. The foundation will award 20 $150,000 grants to “plan experiments aimed at demonstrating that many low-level offenders and defendants waiting for disposition of their cases don’t have to be behind bars – with no harmful impact on public safety.”

“Hot Topic” of the Month: Body-Worn Cameras

The Department of Justice’s Office of Justice Programs Bureau of Justice Assistance launched the National Body-Worn Camera Toolkit, an online clearinghouse of resources designed to help law enforcement professionals and the communities they serve plan and implement body-worn camera programs. The toolkit consolidates and translates research, promising practices, templates, and tools that have been developed by subject matter experts.

Patrol officers from the Seattle, Washington, have begun to post “over-redacted” (very blurry), silent versions of body-worn camera footage on YouTube in an effort to increase transparency while
protecting the privacy of those depicted. The Birmingham, Alabama, Police Department will begin to implement a body-worn camera program. The Birmingham Police Department is the largest in the state of Alabama.

Lawmakers in 15 states have introduced bills to exempt body-worn camera video footage from state public records laws or limit what can be made public. These states include Kansas, Iowa, and Minnesota, among others.

This article details some of the processing and storage costs surrounding body-worn camera footage. This article explores five “myths” of body-worn cameras in an effort to show that the cameras can be a helpful tool but not a panacea.

In May, the Senate Judiciary Subcommittee on Crime and Terrorism held a hearing on body-worn cameras. One of NAAG’s legal fellows attended the 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.

Other News of Interest

This article discusses the legal issues surrounding the videotaping of police officers. The author asserts that courts have not uniformly recognized a right to record the police.

Seattle, Washington’s Law Enforcement Assisted Diversion (LEAD) Program has produced significant results over the past three years. It is a pre-booking diversion program which addresses low-level drug and prostitution crimes in two areas of Seattle. It was launched as a pilot program in 2011 and is based on a harm-reduction model in which law enforcement officers redirect low-level drug and prostitution offenders to community-based services instead of jail.

Francesca Liquori is the Editor of the Criminal Law Newsletter and may be reached at 202-326-6041. The Criminal Law Newsletter is a publication of the National Association of Attorneys General. Any use and/or copies of this newsletter in whole or part must include the customary bibliographic citation. NAAG retains copyright and all other intellectual property rights in the material presented in this publication. NAAG, 2030 M Street, NW, Eighth Floor, Washington, DC 20036 (202) 326-6000 | http://www.naag.org/