

# 2009 Legislative Bills Effecting Municipal Court

## FINES, FEES AND COSTS

**HB 1800:** This new legislation allows municipalities to recoup their costs of collecting monies owed to them and in operating their courts. It provides 3 separate methods to do this. The bill was authored by Rep. Cooksey and Sherrer and Sen. Aldridge.  
*Effective May 22, 2009*

Section 1 creates a procedure for collection of delinquent payments, including unpaid court fines. It expressly authorizes municipalities to:

- A. Enter into contracts with collection agencies “for one or more of the following items:
  - 1. Debts and accounts receivable including, but not limited to, unpaid fees, penalties, interest, and other sums due the municipality, as applicable; or
  - 2. Court penalties, costs, fines and fees in cases in municipal court in which the accused has failed to appear or otherwise failed to satisfy a monetary obligation ordered by the court.”
  
- B. Authorize the addition of a collection fee in an amount not to exceed thirty-five percent (35%) on each item that is referred by the municipality to the collection agency for collection.

Section 2 increases court costs for municipal courts not of record from \$25.00 to \$30.00. Also, it confers authority on the governing body of municipalities having such courts to determine court-related fees in addition to costs to be charged and collected by the municipal court clerk.

Section 3 allows municipal courts to collect unpaid fines and costs or final judgment of at least Fifty Dollars (\$50.00) from an individual who has filed a state income tax return by filing a claim with the Oklahoma Tax Commission requesting that the amount owed to the municipal court be deducted from any state income tax refund due to that individual. This is modeled on an existing law providing for utilizing the Tax Commission to obtain payment for certain claims.

### **HOW DOES A CITY OR TOWN IMPLEMENT SECTION 1 OF THE BILL?**

1. Governing Body selects collection agency: The bill applies when the city or town “enters into a contract with a collection agency”.

2. Governing Body adopts an ordinance or resolution: "A governing body of a municipality that enters into a contract with a collection agency pursuant to this section may authorize the addition of a collection fee in an amount not to exceed thirty-five percent (35%) on each item described in subsection A of this section that has been referred by the municipality to the collection agency for collection."
3. Municipal Judge issues a standing order: If the collection fee is to be imposed on municipal court defendants who have not paid their fines, fees or costs, "the court shall order defendants to reimburse the fee and such court-ordered fee may be collected as provided by law for the collection of any other civil debt or criminal action."

#### **HOW DOES A MUNICIPALITY IMPLEMENT SECTION 2 OF THE BILL?**

1. The governing body must adopt an ordinance increasing the costs for the municipal court.
2. The governing body must adopt an ordinance or ordinances establishing local court-related fees and establishing an amount of such fee.

Note: Municipalities using this new authority should clearly define how the local fees are court-related. The Oklahoma Supreme Court has agreed to assume original jurisdiction in a case challenging state fees and, possibly, penalty assessments. Although the suit only listed three fees tacked onto civil filings, in a hearing on the matter the Supreme Court Justices raised questions about the legality of many other fees attached to criminal cases.

On October 07, 2009, the Tulsa World reported the following comments from the Justices:

Justice John Reif: "I think everything is on the table."

Justice Yvonne Kauger, observing that the Legislature, unwilling to raise taxes, is using the court system as a general revenue collection agency for the state: "Have we reached the tipping point where we've tacked on so many fees that it denies access?"

Justice Marian Opala, stating that the lawsuit is a "broad attack" on all payouts from court fees that go to other areas: "How can the Legislature sanitize those services as court-related?"

#### **HOW DOES A MUNICIPALITY IMPLEMENT SECTION 3 OF THE BILL?**

1. File a claim: "The claim shall be filed electronically in a form prescribed by the Tax Commission and shall contain information necessary to identify the person owing the debt, including the full name and Social Security number of the debtor."

2. Provide notice and hearing for the defendant-debtor: The legislation contains a specific procedure for notice to a debtor, including an opportunity for a hearing. The statutory procedure is spelled out in detail.

Note: The Oklahoma Tax Commission has informed OML that it will not honor claims from municipal courts despite the mandate of this new statute. Its rationale is that it does not have enough personnel to follow the law. OML expects OTC to attempt to repeal the law next session.

Note: Tag Agents' 2010 Legislative Proposal. The 2010 OML legislative program will include a joint effort with tag agents to amend state law to allow tag agents to collect outstanding municipal fines and fees. The proposed bill will direct tag agents (for a fee) to put a hold on applications until the applicant provides proof that he has paid money that is owed to municipal courts. The applicant – not the municipality -- would be charged a fee for this collection process. The tag agents currently have this authorization for the collection of PikePass funds.

## JUVENILES

**HB 2029** is a 337 page bill making many changes to the Oklahoma Juvenile Code. It recodifies the entire current juvenile code as a new Title 10A. *Effective May 21, 2009.*

Title 10A utilizes a new numbering system. To add to the confusion, the bill rearranges the order of some provisions, including the section that allows for municipal court jurisdiction over juveniles under an interlocal agreement. For example, municipal court jurisdiction for violation of a municipal traffic ordinance now appears as para. F of 2-2-102 of Title 10A.

Municipal court jurisdiction of other cases involving children was contained in Chapter 2 of Title 10 at §7303-1.2, para D. Under the new codification it is found as a stand-alone section in Chapter 9 of 10A at §2-2-103. (See, Session Laws at Ch. 234, §108.)

Although the recodification does not appear to make substantive changes to existing language, confusion is caused by new language in the rest of the existing section 10 O.S. §7303-1.2, para D (now 2-2-102). The amendment states:

Except as otherwise provided in the Oklahoma Juvenile Code, a child who is charged with having violated any state or municipal ordinance, other than those enumerated in Section 2-5-101, 2-5-205 or 2-5-206 of this title shall not be tried in a criminal action but in a juvenile proceeding.

If, during the pendency of a criminal charge against any person, it shall be ascertained that the person was a child at the time of committing the alleged offense, the district court or municipal court shall transfer the case, together with

all the papers, documents and testimony connected therewith, to the juvenile division of the district court.

It will take a period of searching for other sections pertaining to juveniles in municipal court. The Session Laws contain a recodification listing.

## **OFFENSES**

**CONTROLLED DANGEROUS SUBSTANCES ACT. HB 1707** amends 63 O.S. §2-402 to add a fine not exceeding \$1,000 to the misdemeanor penalty for violation of possession of marijuana or other controlled dangerous substances. *Effective November 1, 2009.*

**DISABLED PARKING. HB 1007** requires posted signage for disabled parking to display sign R7-8, which includes the words "RESERVED PARKING" and the blue and white international symbol of access. Van-accessible reserved parking spaces shall also display sign R7-8a. Municipalities shall adopt ordinances in compliance with this bill by January 1, 2010. Signs erected prior to this date may be used in lieu of sign R7-8 if they contain language appropriate to reserving the space for the physically disabled. *Effective November 1, 2009.*

**Driver's License. HB 2263** authorizes DPS to extend the suspension, revocation or denial of driving privilege for an additional 12 months upon receiving a record of conviction for violation of the new law contained in 47 O.S. Section 11-905. This new law (section 3 of HB 2263) creates one misdemeanor offense and two felony offenses for driving which causes injury to any person in another vehicle. This Section 11-905 offense may be brought in addition to any other chargeable offense allowed by law.

The offense is triggered if the driver is driving (1) without a valid drivers license, (2) while knowingly disqualified, or (3) driving when he/she knows or should have known that his/her driver license is canceled, denied, suspended or revoked. The misdemeanor penalty includes imprisonment in the county jail for not more than 1 year, or by a fine not exceeding \$2,000 or by both. If the injury qualifies as a "great bodily injury" as defined by the Act, or if the a death occurs, the offense is a felony. *Effective July 1, 2009.*

**Drug Court Program. SB 1075** in Section 3 amends 47 O.S. Section 18-101. The language amended impacts those offenses that are not required to be reported by a court. The amendment substitutes "any" offense for current law's "a felony drug" offense for which the offender is eligible for participation in an approved drug court program. *Effective November 1, 2009.*

**DUI. SB 1138** amends 47 O.S. Section 11-902 by stating if a person 18 years old or older is the driver, operator or the person in actual physical control is convicted of violating this section while having a child of less than 18 years old in the vehicle, the fine is double the amount imposed for the underlying DUI which shall be in addition to any

other penalties allowed by this section. Nothing in this subsection prohibits the prosecution of a person pursuant to 21 O.S. Section 852.1 (pertaining to child endangerment). Current law does not specify 18 as the age of the driver and limits the age of the child to 15 years old. *Effective July 1, 2009.*

**Insurance Verification. SB 1161** makes technical changes to insurance verification requirements. *Effective November 1, 2009.*

**PERSONAL RECOGNIZANCE: ELECTRONIC SIGNATURES. HB 1674** provides for electronic signatures to be used in the procedures currently in the State and Municipal Traffic Bail Bond Procedures Act. The bill does this by adding new law that virtually replicates the existing statutes regarding bail and release upon personal recognizance. *Effective November 1, 2009.*

## **PENALTY ASSESSMENT**

**HB 2250** deletes current law's \$5 fee for those entering a guilty or nolo contendere to misdemeanor possession of marijuana which is paid to the Bureau of narcotics Drug Education Revolving Fund. This language is then recreated in a new subsection F in 20 O.S. Section 1313.2 and enlarged to include drug paraphernalia as well a marijuana possession. *Effective July 1, 2009.*

## **Vehicles**

**Class D Vehicles. SB 1185** classifies vehicles operated by drivers employed by a unit of local government to remove snow or ice from a roadway by plowing, sanding or salting as Class D vehicles. The vehicle must be operated within the boundaries of the local government and the Department of Public Safety is directed to develop applicable procedures, if:

- a. the properly licensed employee who ordinarily operates a commercial vehicle for these purposes is unable to operate the vehicle, or
- b. the employing governmental entity determines that a snow or ice emergency requires additional assistance. *Effective November 1, 2009.*

**Overweight Vehicles. HB 1813** amends 47 O.S. §14-109 to allow a vehicle utilizing auxiliary power or idle reduction technology unit in order to promote reduction of fuel use and emissions because of engine idling shall be allowed an additional 400 pounds total to the total gross weight limits set by this section. The operator must obtain written proof or certification of the weight auxiliary power or idle reduction and be able to show the idle reduction technology is fully functional. *Effective November 1, 2009.*

**Utility Vehicles. SB 301** amends 47 O.S. §562, by adding in Section 7 of the bill, "utility vehicles" to the definition of "motor vehicle". *Effective November 1, 2009.*

## ***Financing the courts in tough economic times . . .***

Oklahoma judges crack down on fees

Criminals may pay more as courts try to offset 7 percent decrease in funding

BY NOLAN CLAY

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Criminals in Oklahoma could soon pay more in fines as judges look for ways to overcome a loss in taxpayer dollars.

"We ... want to impress upon you — if you're not already impressed with it — the urgency of your mission," state Supreme Court Chief Justice James E. Edmondson has told judges. "I cannot tell you how important this is."

Judges are encouraged at workshops to raise fines in certain instances and to not forgive court costs. They also have been told they should require those getting probation to pay more upfront.

A handbook encourages "defendants to pay their fines, fees and costs by credit card."

The state judiciary depends mostly on fines and court costs for its operations, but it also gets state funds. The Legislature appropriated 7 percent less this fiscal year for court operations. Further cuts are expected. The Supreme Court responded by sponsoring workshops for judges to improve court cost collections. The workshops begin with a recorded statement from the chief justice.

Prosecutors and defense attorneys often work out punishments through plea negotiations. Judges say prosecutors many times don't bother to include fines in the deals.

Judges are being encouraged to reject plea agreements with unacceptably low fines.

"I would suggest to you that a plea bargain that does not take into consideration the court which must accept it, ratify it and enforce it is one that should be looked at askance," Edmondson said.

In an example shown at the workshops, a judge rejects a plea deal for a burglar to pay a \$1 fine and \$200 to the Oklahoma Crime Victims Compensation Fund. In the demonstration, the judge accepts the plea deal once the fine is raised to \$250 and the victims fund payment is changed to \$50.

Judges are specifically told the victims fund payment should not be more than the fine.

Officials say the chief message of the workshops is to be persistent in collecting fines and court costs already imposed.

***[Editorial comment: distinguish financing other government operations]***

Not all court costs go to fund court operations. Some of the money instead to the Oklahoma Highway Patrol, the Oklahoma State Bureau of Investigation, the District Attorneys Council and other places. Criminals often also have to pay additional amounts for time spent in jails or to prosecutors for probation supervision.

Oklahoma County Public Defender Bob Ravitz and other defense attorneys say the financial burden interferes with rehabilitation efforts.

"The full scope of these is just too much," he said.

He said substance abusers in particular are likely to relapse into drug use because of depression over their bills.

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