

ARTICLES FOR 5-18-17 ROUNDUP

FALLEN OFFICERS REMEMBERED DURING NATIONAL POLICE WEEK

BISMARCK, ND – Next week is National Police Week and North Dakota's fallen law enforcement officers will be remembered and honored during public events at the state capitol and in local communities across the state.

“The memorial service gives us an opportunity to pay our respects to the law enforcement officers who have made the ultimate sacrifice, and to publicly thank those who continue to protect and serve,” said Stenehjem. “After dusk on Tuesday evening, for the first time the State Capitol building windows on two floors will be lit to display a ‘Thin Blue Line,’ in a show of support and respect for law enforcement,” he continued.

The Thin Blue Line blue light display was suggested by Bismarck Police Chief Dan Donlin, who asked Attorney General Wayne Stenehjem to seek approval for the display. Stenehjem asked legislative leaders to support the idea and it received enthusiastic support from the North Dakota Legislature, which authorized the display in Senate Concurrent Resolution 4015.

“What better way for the State of North Dakota to show support for its law enforcement officers, who go out every day and put their lives on the line serving and protecting, than to have a ‘Thin Blue Line’ lit up on our State Capitol during National Police Week! That ‘Thin Blue Line’ represents the law enforcement officers, past and present, who stand strong between violence and anarchy, and peace and order,” said Bismarck Police Department Chief Dan Donlin.

On Tuesday, May 16, 2017, a Blue Mass honoring law enforcement and first responders will be held at the Cathedral of the Holy Spirit in Bismarck, beginning at 5:30 pm. Honor guards from the ND Peace Officers Association will be represented. The Mass is open to the public.

On Wednesday May 17, 2017, the annual Law Enforcement Memorial Service will be held on the Capitol grounds in Bismarck, beginning at 1:30 pm. In January this year, Rolette County Sheriff's Deputy Colt Allery was shot and killed, becoming the sixty-fourth North Dakota law enforcement officer to die in the line of duty. His name has been added to the state's Law Enforcement Memorial.

Chief Justice Gerald VandeWalle and US Attorney Chris Myers will speak at the Memorial service, Chief Robert Timian of ND Game and Fish will serve as the Master of Ceremonies, and Captain Mickey Harmon of the Cass County Sheriff's Department will play the bagpipes. Chaplains from the Crisis Care Chaplaincy will officiate and read the Roll Call of fallen officers. The Crisis Care Chaplaincy is a volunteer organization providing faith-based crisis counseling in concert with emergency service agencies in the Bismarck area.

“The past year has been difficult and stressful for North Dakota's law enforcement officers. We are extremely grateful to our neighbors, local businesses, and communities across the state for the outpouring of support for us,” said Jackie Lundstrom, President of the ND Peace Officers

Association. "This year we added another fallen officer's name to the memorial. It is years like this that make the memorial itself and the memorial service even more important," Lundstrom continued. The ND Peace Officers Association organizes the annual Memorial Service.

On Wednesday night after the Memorial Service, the Capitol building's Thin Blue Line light display will shine for a second night in honor of the fallen officers.

AG DEREK SCHMIDT PRAISES PASSAGE OF BILL TO STRENGTHEN KANSAS RESPONSE TO HUMAN TRAFFICKING

TOPEKA – (May 11, 2017) –Legislation approved today by the Legislature will strengthen the Kansas response to human trafficking, Attorney General Derek Schmidt said.

Schmidt praised legislators of both political parties for their unanimous show of support for anti-human trafficking efforts. The measure, Senate Bill 40, won final approval today 40-0 in the Senate after previously being approved 120-0 by the House of Representatives. It now will be presented to the governor for his consideration.

The legislation provides for several changes in law relating to minor victims of human trafficking, strengthening enforcement efforts, discouraging demand, and expanding awareness training. Among its key provisions are:

Requiring holders of commercial driver's licenses to have training in the signs of human trafficking, a step that is part of the Kansas partnership with Truckers Against Trafficking.

Making it easier for minors who are trafficked to expunge criminal convictions arising from their conduct while being trafficked and to qualify for crime victims assistance.

Making explicit that minors cannot consent to being trafficked.

Strengthening criminal statutes that prohibit human trafficking and child exploitation, including making it a crime to sell travel services knowing the travel involves 'sex tourism,' to use an electronic device to facilitate human trafficking or commercial sexual exploitation of a child, or to knowingly use the internet to trade in child pornography.

Increasing penalties for buying sex with minors and for certain other crimes against children.

Modifying the fines structure for various sex crimes to encourage their assessment and collection. "Enactment of this important legislation should help Kansas reach the top tier of states leading the fight against human trafficking," Schmidt said. "These changes provide important tools to strengthen enforcement, discourage demand for trafficking victims, support and assist human trafficking survivors, and help identify this crime when it occurs along our roads and highways."

Schmidt, who proposed the legislation in February, worked with legislators and other interested parties across the state and with national anti-trafficking organizations in crafting it.

Combating human trafficking in Kansas has been a priority for Schmidt. While serving in the State Senate, he supported the 2005 legislation that created the first Kansas anti-human trafficking statute and proposed legislation in 2010 that strengthened state law. After being elected attorney general, he joined in 2013 with the governor to propose comprehensive legislation to strengthen Kansas law against human trafficking, and in 2015 he proposed further refinements that became law. The new laws have resulted in more effective prosecution, additional training and better support for victims.

According to the U.S. Department of Justice, human trafficking is one of the largest and fastest-growing criminal industries in the world. It is based on recruiting, harboring and transporting people for the purpose of exploitation. Both sex trafficking and labor trafficking occur in Kansas and both adults and children are victims.

To request additional information about human trafficking or to learn more about potential signs of human trafficking, go to <http://ag.ks.gov/human-trafficking>.

AG Brnovich Calls for Expanded Medicaid Fraud Authority to Prosecute More Senior Abuse Cases

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PHOENIX – Attorney General Mark Brnovich is urging the federal government to change its policy to allow state attorneys general to use federal funds to investigate and prosecute in-home Medicaid abuse and neglect cases involving seniors. Brnovich joined 36 other state attorneys general and the District of Columbia in signing the bi-partisan letter calling for expanded Medicaid fraud authority.

“The statistics are alarming, 1 in 10 persons age 65 and older who live at home will become a victim of abuse,” said Attorney General Mark Brnovich. “We need to do everything in our power to protect all Arizona seniors from abuse and neglect including those who are under in-home care services.”

Medicaid Fraud Control Units (MFCUs) investigate and prosecute state Medicaid provider fraud and resident abuse complaints in Medicaid-funded health care facilities. In most states, MFCUs operate in the state attorney general’s office. The Social Security Act expressly allows use of MFCUs to investigate and prosecute patient abuse/neglect in “health care facilities” or “board and care facilities,” but the statute does not prohibit use of federal MFCU funds to investigate abuse/neglect in non-institutional settings. This regulatory restriction arbitrarily limits the scope of potential abuse or neglect cases MFCUs can investigate or prosecute. More than 6.4 million people enrolled in the Medicaid program are age 65 or older.

The letter offers two recommendations:

Allow MFCU federal funds to be used to investigate and prosecute abuse and neglect of Medicaid beneficiaries in non-institutional settings (i.e. home health care).

Allow use of MFCU federal funds to freely screen or review any and all complaints or reports of whatever type, in whatever setting.

The letter was sent to the U.S. Department of Health and Human Services Secretary Tom Price.

COLORADO PAUSES TO CLARIFY ROLE ATTORNEYS CAN PLAY IN UNDERCOVER INVESTIGATIONS

State and federal prosecutors argue that attorney oversight is routine and that the rule is being interpreted to an extreme

By Sara Randazzo

The future of undercover investigations in Colorado is in flux in the face of an ethical debate over the role attorneys are allowed to play in such probes.

Colorado Attorney General Cynthia Coffman said in a recent court filing that she has abandoned all undercover investigations until the state's high court clarifies whether attorneys are ethically allowed to oversee nonlawyer investigators who use false identities or other tactics to catch lawbreakers.

The issue came to the forefront over the past year after a defense attorney for a convicted sex offender questioned whether the underlying investigation that led to his client's conviction violated state ethics rules forbidding attorneys and their employees from engaging in dishonest or fraudulent conduct.

State and federal prosecutors argue that attorney oversight of such investigations is routine and that the rule is being interpreted to an extreme. But, not willing to risk how Colorado's attorney disciplinary body would rule in the sex offender case, a local district attorney's office shut down the operation that led to the man's arrest. That prompted Ms. Coffman's office to halt its own investigations and file a petition to the Colorado Supreme Court asking it to intervene.

"It's an issue that cries out for clarity," said Peter Weir, the district attorney for Colorado's Jefferson County, which ran the sex-offender operation that came up in the disciplinary case. The unit, which had led to 900 convictions of internet sex offenders, is now housed in the local sheriff's office without his office's involvement.

Ms. Coffman argues that legal guidance from government attorneys is essential to ensure undercover investigations "not only comply with the letter of the law and respect individual rights, but also that they produce evidence admissible in court." Such investigations are used by the office in cases ranging from consumer fraud to drug conspiracy, she said in the court petition.

Dozens of law-enforcement officials have voiced their support for allowing prosecutors to supervise covert investigations. One such letter came from Robert Troyer, the acting U.S. attorney for Colorado, who said attorney involvement is often rightly required by federal law or Justice Department policy.

James Coyle, attorney regulation counsel for the Colorado Supreme Court, said “it is not the goal of this office to interfere with or change law enforcement investigations,” but that he is charged with enforcing the rules on the books. A 2002 case from the state’s highest court, he said, makes clear that “even governmental lawyers cannot engage in deception.”

Colorado is an outlier in how it appears to be interpreting its ethics rules, attorney ethics experts said. “The overwhelming view is that prosecutors can and indeed should supervise undercover work as a way to ensure that they are done lawfully,” said Stephen Gillers, a professor at New York University School of Law.

Some states have expressly clarified that attorneys are capable of overseeing undercover investigations.

A handful of disciplinary cases exist involving attorneys themselves engaging in subterfuge that crossed ethical lines. But Ms. Coffman said in her brief she could find no examples of government attorneys anywhere in the country being disciplined merely for supervising undercover investigators or providing legal advice on such operations.

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AGO FILES CAMPAIGN FINANCE COMPLAINT AGAINST KING COUNTY DEMOCRATIC CENTRAL COMMITTEE

OLYMPIA —The Attorney General’s Office (AGO) announced that it filed a complaint in Thurston County Superior Court today alleging campaign finance violations by the King County Democratic Central Committee (KCDCC). Specifically, the AGO asserts KCDCC failed to timely file a total of \$65,442 in expenditures and \$74,261 in contributions throughout 2016.

Attorney General Bob Ferguson recused himself from any involvement in the matter.

After the state Public Disclosure Commission began an investigation, the AGO received a Citizen Action Notice alleging multiple violations of the state’s public disclosure laws in March 2017.

After receiving the notice, AGO staff determined KCDCC failed to timely file any reports of contributions received or expenditures made during election year 2016. An initial review showed numerous reports were filed between one and eight months late.

Among other reporting deficiencies:

KCDCC received contributions from seven political committees totaling \$30,000, and failed to timely report the activity.

In the weeks leading up to the 2016 general election, KCDCC made contributions to five candidates for public office, totaling \$30,500. KCDCC did not timely report those contributions. KCDCC did not begin filing updated reports until Nov. 21, after the PDC staff began investigating, and two weeks after the Nov. 7 general election, inhibiting the public’s right to know who is contributing to Washington political committees.

KCDCC also failed to timely update its committee information with the PDC when it appointed a new treasurer.

The state seeks penalties and injunctive relief. The defendant will have 20 days from the date they are served to respond to the state's complaint.

Senior Assistant Attorney General Linda Dalton and Assistant Attorney General Walter Smith are handling the case.

When the Attorney General's Office receives a Citizen Action Notice, it has 45 days to investigate and respond to the citizen. If the Attorney General's Office or local prosecutor does not start litigation, the individual may sue in the name of the state. If litigation is successful, any penalties awarded would go to the state, and the individual's attorney could recover attorney fees and costs. If the citizen's litigation is unsuccessful, the defendant may recover attorney fees from the state.

The Attorney General's Office enforces the state's campaign finance disclosure law to ensure free, open and fair elections in Washington state.

ATTORNEY GENERAL BECERRA ANNOUNCES APPROVAL OF \$66M FOR CALIFORNIA IN SETTLEMENT WITH VOLKSWAGEN

SACRAMENTO – This morning, Judge Charles Breyer of the United States District Court for Northern District of California approved a \$250 million settlement with Volkswagen over its “defeat device” software to bypass emissions controls in its 3.0 liter diesel vehicles. The settlement was negotiated by attorneys and technical experts from the U.S. Environmental Protection Agency, U.S. Department of Justice, California Air Resources Board (CARB), and California Attorney General's Office.

California will receive \$66 million from this settlement among the United States, California, and Volkswagen. Of this amount, \$41 million will go to air quality mitigation projects selected by CARB and \$25 million will fund CARB programs that help replace polluting cars with zero emission vehicles. Volkswagen is also required to buy back or modify 85 percent of its polluting vehicles in California and provide fair compensation to owners.

“There is no excuse for what those at Volkswagen did,” said Attorney General Xavier Becerra. “They lied to consumers and environmental regulators. They cheated on emissions tests. They did harm to our environment. They put profits before people, and that's inexcusable. Today's action should serve as further warning to wrongdoers who believe they can run and hide – we will hold you accountable.”

“I want to thank Senior Assistant Attorney General Nicklas Akers, Supervising Deputy Attorney General Judith Fiorentini, Deputy Attorneys General Jon Worm and Laurel Carnes, and their colleagues in our Consumer Law, Environment, and Natural Resources Law Sections, for their efforts to protect California's consumers and environment in this case,” added Attorney General Becerra.

In addition to today's settlement, California has previously reached two settlements with Volkswagen: one for a landmark \$14.7 billion in environmental mitigation and consumer relief related to Volkswagen's inclusion of defeat devices in its 2.0 liter vehicles, and the other for \$86 million in civil penalties.

The settlement approved today is documented in two partial consent decrees, one among the United States, California and Volkswagen, and the other between California and Volkswagen. Both are attached to the online version of this news release at www.oag.ca.gov/news.

BNSF RAILWAY CHALLENGES STATE'S REVIEW OF LONGVIEW COAL DOCK

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BNSF Railway has appealed a final environmental review of the Longview coal project, arguing the state and county overstated or miscalculated the risk of cancer for people living near the rail line to the terminal site.

A final environmental impact statement released in April says diesel particulate emissions from trains serving the Millennium Bulk Terminal would cause "an unavoidable increase" in the cancer risk rate for Longview's Highlands-area residents. Officials from Cowlitz County and the state Department of Ecology say there would be a 10 percent increased cancer risk over background levels for Cowlitz County. Millennium Bulk Terminals officials point to different figures in the review that suggest there would be a 3 percent increased cancer risk.

But BNSF spokeswoman Courtney Wallace said there are "no credible scientific studies" suggesting that locomotive diesel emissions substantially increase cancer risk for Washington residents who live by a rail line.

"There is no basis to say that, so it's concerning for us to have that out there in the public domain," Wallace said Friday. "We take great pride that our fleet of locomotives are adhering to the highest standards ... no matter what kind of product we're moving, whether that's grain, automobiles or energy products."

In an appeal filed with Cowlitz County, the railroad company argues that the environmental impact statement is "extremely broad and amounts to an evaluation of the rail system across Washington state." The company argued that broad scope of the analysis isn't allowed under the State Environmental Policy Act, and that only the federal government has the authority to regulate rail emissions.

Cowlitz County officials who co-wrote the environmental study could not be reached for comment Friday.

Camille St. Onge, spokeswoman for Ecology, said the environmental impact statement was not intended to be a statewide or national report.

“The main focus of the study was evaluating the potential impacts to the local community where impacts would be greatest,” St. Onge said in an emailed statement.

She said the review is not a permit decision, but a scientific study aimed at informing agencies responsible for permitting the terminal, which would add 16 train trips a day through the Longview industrial area.

The draft environmental impact statement did evaluate diesel particulate matter. Since then, however, the state has learned that four locomotives will be needed to pull trains to the coal dock, not three as assumed earlier. That triggered an updated analysis that led the review to conclude that there would be “unavoidable increase in cancer risk” that disproportionately affects minority and low-income populations.

“The final EIS expanded the analysis of diesel emissions to respond to information that became available during the comment period. This is how the EIS process is supposed to work. Public comment on the draft study compelled us to look closer ... at the issue of increased diesel emissions,” St. Onge said by email.

But Wallace, with BNSF, suggested politics surrounding the coal terminal impacted the analysis.

“When does that same analysis get applied to a grain terminal? Will it get applied to Sound Transit’s ST3 project ... up in Puget Sound? I don’t think it will,” Wallace said. “If there are concerns about a particular commodity ... don’t take that policy and apply it to the rail line.”

Wallace noted that the environmental impact statement uses national averages on railroad emissions, rather than data specific to BNSF trains, which tend to have lower emissions, she said.

About 98 percent of BNSF trains use idle control devices which automatically shut down locomotives that aren’t being used, cutting down on fuel consumption and air emissions.

Under federal regulations, the railroad company is required to comply with increasingly more stringent “tiers” aimed at controlling emissions. BNSF locomotives are remanufactured every six to eight years to reduce emissions and upgrade efficiency, the company said.

And because trains can carry more cargo than trucks, each intermodal train effectively eliminates 280 trucks on the highway, according to BNSF.

Millennium Bulk Terminals said it does not expect BNSF’s appeal to delay its permitting process.