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2025 Minnesota Legislative Session Update

By: Patrick Roche

The Minnesota Legislature passed ten budget bills and four non-budget bills after reconvening for one day in a 16-hour marathon of a Special Session to conclude the remaining 90% of its 2025 Legislative Session agenda not passed during the regular session, which adjourned in the early-morning hours of June 10, 2025.

The ratio of DFL to Republican members of this year's Legislature in both the House and Senate was about even, meaning an inordinate amount of compromise and negotiation was involved in passing this year's legislation. Members of each party, and the Governor, have lamented both pros and cons of this fact, noting that although they may not have achieved what they would have liked to this year, the overall result of their compromises makes for better legislation.

First and foremost, the Legislature successfully avoided a government shutdown by approving the two-year, $66.8 billion State budget and a $700 million bonding package for infrastructure improvements. The funding represents a largely balanced budget for this biennium and results in a substantial reduction in the projected budget deficit Minnesota faces in coming years.

$700 Million Bonding Bill

The legislature passed $700 million in bonding for Infrastructure improvements including funding for water and sewer treatment projects, local roads and bridges, and veterans' homes, as well as funding for the Metro Regional Treatment Center in Anoka County, which will reduce the number of severely mentally ill people housed in county jails across the state.

Repeal of MinnesotaCare for Undocumented Adults

Perhaps the most-contested political issue that passed was repealing MinnesotaCare public health insurance for the roughly 19,000 undocumented immigrant adults who were enrolled in the program, which was approved in 2023 by the Legislature and took effect in January of this year. Despite the DFL's uniform opposition to repealing this initiative, three DFL senators and one DFL house member crossed party lines to approve the measure to avoid a government shutdown.

Funding Vocational Programs and Support

Allocations for vocational training programs including funding for rural cancer-care professionals and a youth employment program on West Broadway in North Minneapolis. Additionally, $250,000 was allocated for an experimental equine-therapy program for first responders suffering from job-related post-traumatic stress disorder (PTSD).

Earned Sick and Safe Time (ESST) Law Changes

Modest changes to ESST laws were approved this legislative session, which include:

1. Permitting ESST information to be provided electronically (if the employer provides employees with access to a computer to access the information) instead of requiring it be provided on an employee's pay stub. Employers are still free to report this information on pay stubs but the change was meant to offer them more flexibility in doing so.

2. Clarifying that employees who are anticipated to work at least 80 hours in a year for an employer are covered by the ESST law, and clarifying that ESST requirements do not apply to volunteer or paid on-call firefighters, volunteer ambulance attendants, paid-on-call ambulance service personnel, elected officials, appointees to elected offices, and individual/family farm employees who work 28 days or less per year. In addition, family caregivers can waive their ESST rights.

3. Extending ESST requirements to paid time off provided in excess of minimum ESST (e.g., if an employee receives 50 hours, instead of the 48 required, and protections about notice, documentation, anti-retaliation, replacement workers, etc. apply to any extra ESST-qualifying paid time off (PTO).

4. ESST bereavement leave can now be used to make funeral arrangements, attend a funeral service or memorial, or address financial/legal matters that arise after the death of a family member.

5. Clarifying that "days" when used in the context of the rule that an employee's use of more than three consecutive days of ESST triggers the employer's ability to require reasonable documentation, refers to scheduled workdays, as opposed to calendar days. It further clarifies that an employee's written statement qualifies as "reasonable documentation" for absences related to domestic abuse, sexual assault or stalking, when other documentation cannot be obtained in a reasonable time or without added expense.

6. Exempting certain essential employees (firefighters, police, 911 dispatchers, prison guards, and CDL public employees) from claiming ESST for inclement-weather-related or public-emergency office, school, care-facility closures affecting them or their immediate families, with certain exceptions.

7. ESST violations are now punishable by requiring an employer to provide any ESST they wrongfully denied to an employee, plus an equal amount as liquidated damages. If the exact ESST hours owed is unclear, employers are liable for 48 hours per year ESST was not provided, plus an equal amount as liquidated damages.

8. The bill also codifies widespread practices of permitting employees to find suitable replacements for their shifts, but prohibits employers from requiring them, and also permits employers to advance employee sick time based upon the number of hours an employee is expected to work.

Energy Tax Exemptions for Tech Data Centers

The Legislature passed a bill to entice Microsoft and Amazon into placing data centers in Minnesota through tax exemptions for software, hardware and electricity, increasing the current exemptions from 20 years to 35 years or until 2042, whichever comes later (which previously read whichever came earlier).

DWI Reform

The lookback period for conditioning a person's driving privileges upon participation in the Ignition Interlock program, which requires participants to provide an alcohol-free breath sample before their cars will start, increases from ten years to 20 years for people with impaired-driving convictions on their records. This legislation was in response to an impaired-driving offense that killed two people and injured nine more at the Park Tavern in St. Louis Park, after it was discovered that the driver had several qualifying convictions on his record over the past 40 years.

Honorable Mention

The Stillwater prison is being phased out over the next four years, with a target closure date of June 30, 2029. The prison, which was built in 1914, is crumbling and thus poses health and safety concerns to the occupants and staff.

The Legislature extended unemployment benefits for the roughly 630 Iron Range miners who were laid off in spring of this year when mining operations shut down.

Additional funding was allocated to the Workers' Compensation Court of Appeals and to support wage-theft investigation and enforcement.

Performance-based auditing funding for the Department of Employment and Economic Development (DEED) was also approved to identify waste and withhold grant funding if grantees fail to provide up-to-date information to the agency in an effort to combat fraud, waste, and abuse.

The Legislature enhanced penalties for unemployment insurance fraud.

Teachers will be eligible to collect their pensions beginning at age 60, from what was 62, after 30 years of service. The law also rewards "career" teachers who have dedicated their careers to teaching.

Recent Supreme Court Use of Force Ruling and its Implications on Municipal Liability in the Eighth Circuit

By Sarah Austin

Since 2016, there has been a notable uptick in interest, and representation, in the municipal liability space. We are seeing new faces, particularly on the Plaintiff's side, likely given the rise in coverage and outcry regarding critical incidents involving law enforcement.

Central to municipal liability is the concept that courts do not armchair-quarterback an officer's decisions in the heat of the moment. As eloquently stated in *Graham v. Connor*, 490 U.S. 386, 396, 109 S. Ct. 1865, 1872 (1989):

> The 'reasonableness' of a particular use of force must be judged from the perspective of a reasonable officer *on the scene*, rather than with the 20/20 vision of hindsight. . . . With respect to a claim of excessive force, the standard of reasonableness *at the moment* applies: 'Not every push or shove, even if it may later seem unnecessary in the peace of a judge's chambers,' violates the Fourth Amendment. The calculus of reasonableness must embody allowance for the fact that police officers are often forced to make *split-second judgments* -- in circumstances that are tense, uncertain, and rapidly evolving -- about the amount of force that is necessary in a particular situation.

The principles set forth in *Graham*, were addressed by the United States Supreme Court in *Barnes v. Felix*, 145 S. Ct. 1353 (2025). The Court noted that with the increase in plaintiffs' attorneys in this space, it is more important than ever to ensure the law created by the Courts is precise and clean, and that the principles set forth in *Graham* continue to ring true, decades later. This is a challenging endeavor, given the new faces in this space, combined with the task to "slosh our way through the factual morass" that is inherent in use of force cases. *Barnes v. Felix*, 1345 S. Ct. 1353, 1358 (2025).

In *Barnes,* Respondent Roberto Felix, Jr., a law enforcement officer, pulled over Ashtian Barnes for suspected toll violations. Felix ordered Barnes to exit the vehicle, but Barnes began to drive away. As the car began to move forward, Felix jumped onto its doorsill and fired two shots inside. Barnes was fatally hit but managed to stop the car. About five seconds elapsed between when the car started moving and when it stopped. Two seconds passed between the moment Felix stepped on the doorsill and the moment he fired his first shot.

Barnes's mother sued Felix on Barnes's behalf, alleging that Felix violated Barnes's Fourth Amendment right against excessive force. The District Court granted summary judgment to Felix, applying the Fifth Circuit's "moment-of-threat" rule. The Court of Appeals affirmed, explaining that the moment-of-threat rule requires asking only whether an officer was "in danger at the moment of the threat that resulted in [his] use of deadly force." 91 F. 4th 393, 397. Under this rule, events "leading up to the shooting" are "not relevant." *Ibid.* The lower courts held that the "precise moment of threat" was the "two seconds" when Felix was clinging to a moving car. *Id.*, at 397-398. Because Felix could then have reasonably believed his life in danger during those two seconds, the shooting was lawful. *Id.*, at 398. *Barnes v. Felix*, 145 S. Ct. 1353, 1354-55 (2025).

The United States Supreme Court disagreed, holding that the "moment of threat" rule impermissibly narrowed the scope of the Fourth Amendment "totality of the circumstances" test as imposed by *Graham v. Connor*, 490 U.S. 386, 109 S. Ct. 1865 (1989), which requires courts to look at the totality of the circumstances surrounding the officer's use of force.

Notably, *Barnes* presented the United States Supreme Court with the opportunity to analyze the "officer created danger" theory that is a frequent legal theory of plaintiffs. It goes something like this: if you wouldn't have stepped on my car while I was fleeing, you wouldn't have been in danger, and therefore wouldn't have needed to shoot me. However, *Barnes* declined to analyze this theory, as the Fifth Circuit and its district inherently could *not* analyze the moments leading up to the use of force – arguably, the moments that caused the danger. Notably, the Court did not dispose of this theory under the reasonableness inquiry under *Graham.*

The Court's failure to review the "officer created danger" theory has

implications for municipal liability cases here at home in the Eighth Circuit, namely, that this theory will continue to persist and must not only be vigorously defended, but kept separate from the reasonableness inquiry in line with Eighth Circuit precedent.

While *Barnes* has little immediate effect on longstanding Eighth Circuit precedent, *Barnes* reflects the high court's unwillingness to touch the oft combined "totality of the circumstances" and "officer created danger" tests when analyzing an officer's use of force. We anticipate further litigation attempting to combine these two doctrines. From a defense perspective, it is important to keep them separate.

Despite the *Barnes* holding, the Eighth Circuit is clear on this issue: The Fourth Amendment prohibits unreasonable seizures, not unreasonable or ill-advised conduct in general. *Cole v. Bone*, 993 F.2d 1328, 1333 (8th Cir. 1993). The Eighth Circuit has noted that *Graham's* use of the phrases "at the moment" and "split-second judgment" are strong indicia that the reasonableness inquiry extends *only* to those facts known to the officer at the precise moment the officers effectuate the seizure. *Schulz v. Long*, 44 F.3d 643, 648 (8th Cir. 1995). Liability rests on the reasonableness of the seizure itself and not "its elaborate prelude." *Gardner by & Through Gardner v. Buerger*, 82 F.3d 248, 254 (8th Cir. 1996).

These cases, as applied in the context of the "officer created danger theory," show that an officer's unreasonable conduct leading up to a seizure is not sufficient by itself to establish a Fourth Amendment violation. The evidence that an officer "created the need to use force by their actions prior to the moment of seizure is irrelevant" to whether he or she participated in a seizure that violated the Fourth Amendment's reasonableness requirements. *Schulz*, 44 F.3d 648-49. *See also Mick v. Gibbons*, No. 4:22-CV-3025, 2022 U.S. Dist. LEXIS 151312, at *15-16 (D. Neb. Aug. 23, 2022). Where a reasonable jury could conclude that a particular seizure was unreasonable, evidence of the preceding circumstances may be relevant to determining whether the conduct of an individual officer who participated in the seizure was reasonable. *Gardner*, 82 F.3d at 254.

Given the Supreme Court's decision in *Barnes,* we can anticipate further litigation from plaintiffs pursuing a theory that officers created the danger necessitating force. Under Eighth Circuit precedent, it is important to make it abundantly clear that this is not a valid consideration under the Fourth Amendment, as it flies in the face of the Eighth Circuit's reluctance to armchair quarterback.

1 "We are careful not to indulge in armchair quarterbacking or exploit the benefits of hindsight when evaluating police officers' use of deadly force." *Gardner by & Through Gardner v. Buerger*, 82 F.3d 248, 251 (8th Cir. 1996)

Congratulations

Congratulations to **Joe Flynn**, **Elisa Hatlevig**, **Tessa McEllistrem** and **Pat Skoglund** for being named to the 2025 list of Minnesota Super Lawyers and Rising Stars.




Super Lawyers is a Thomson Reuters business that provides a rating service of outstanding lawyers from more than 70 practice areas, who have attained a high-degree of peer recognition and professional achievement. The selection process is multi-phased and includes independent research, peer nominations and peer evaluations. Rising Stars selections undergo the same selection process as Super Lawyers but recognizes attorneys who are 40 years old or younger, or have been practicing for 10 years or less. No more than 2.5% of lawyers in Minnesota are named to the Rising Stars list.

Congratulations

JLO Partner **Elisa M. Hatlevig** who has been included in Minnesota Monthly's list of 2025 Top Lawyers! This list is based on an online peer-review survey sent out to all lawyers in Minnesota. Thousands of votes were cast honoring excellence in all areas of practice.

JLO Paralegal **Deanne M. Wavra** has been awarded the Outstanding Paralegal of the Year by the Minnesota Paralegal Association.

About the Authors

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Patrick Roche joined JLO law in Spring of 2025 after having worked for judges and in private practice as a commercial real estate transactions attorney. Patrick's practice is almost exclusively construction-defect litigation. He previously worked in construction trades as a journeyman flat roofer. Patrick attended undergrad at the University of St. Thomas and obtained dual bachelor's degrees in political science and communications journalism. He went to law school at Mitchell Hamline School of Law. In his free time he enjoys hanging out with his two young sons, wife, and their Irish Wolfhounds, and getting to the cabin in Wisconsin's northland as much as he is able.

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Sarah is an Associate at Jardine, Logan & O'Brien, P.L.L.P. and earned a J.D. from Mitchell Hamline School of Law in 2024. Her practice is primarily focused on Government Liability, Civil Litigation, and Employment Law.

About the Firm

Jardine, Logan & O'Brien, P.L.L.P., is a mid-sized civil litigation law firm that has handled some of the region's largest and most difficult disputes with outstanding results for clients. Litigation has always been our primary focus. With trial attorneys admitted in Minnesota, Wisconsin, North Dakota, South Dakota, and Iowa our firm has the ability and expertise to manage cases of any size or complexity. We are trial lawyers dedicated to finding litigation solutions for our clients.

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